

**GNSO
Operations Steering Committee (OSC) GNSO Council Operations Work Team
17 February 2010 at 17:00 UTC**

Note: The following is the output of transcribing from an audio recording of the Operations Steering Committee (OSC) GNSO Council Operations Work Team teleconference on 17 February 2010 at 17:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to the meeting, but should not be treated as an authoritative record.

<http://audio.icann.org/gnso/gnso-ops-20100217.mp3>

On page:

<http://gnso.icann.org/calendar/#feb>

(transcripts and recordings are found on the calendar page)

Participants on the Call:

Ray Fasset – Registries
Ron Andruff - CBUC
Wolf Ulrich Knoben – ISPC
Avri Doria – NCSG

Staff:

Ken Bour
Julie Hedlund
Glen de Saint Gery
Gisella Gruber-White

Apologies:

None

Coordinator: This call will now be recorded. Please go ahead. Thank you.

Gisella Gruber-White: I'll do a quick roll call for you, Ray.

Ray Fassett: Thank you.

Gisella Gruber-White: Good morning, good afternoon to everyone. On today's call we have Ray Fassett, Ron Andruff, Avri Doria, Wolf-Ulrich Knoben. From staff we have Julie Hedlund, Glen de Saint Gery and myself, Gisella Gruber-White. I don't have any apologies for today. And if I can please remind everyone to state their names for transcript purposes. Thank you. Over to you, Ray.

Ray Fassett: Great, thank you, Gisella. So a bit of housekeeping first. We're - I think everyone's aware we do have an in person meeting set up now for the ICANN public meeting in Nairobi. It is on March 7 at 9:00 am local time.

I don't have the room arrangement yet - I don't think I do anyway - but that will be coming to us in the near term. And I believe Avri has kindly accepted chairing that meeting for that day which I sincerely appreciate. And I will do my best to participate remotely that day. And it's not unfeasible time zone wise either. I believe it's a 4 hour difference or something like that.

So and there's a preliminary agenda. I think everybody saw that linked of what it is. And the last thing is is anybody on the call today - do they know today of whether they have a conflict for that time on Sunday in Nairobi? Wolf, is there a conflict for you at that time?

Wolf-Ulrich Knoben: No, I will be there.

Ray Fassett: Okay, good. Great, all right. So that's that bit of housekeeping. I think we should as an agenda today jump right in. Well, is Ken Bour's probably not on the call, right? Oh, I had the meeting view, I would know that.

Julie Hedlund: Yes, I don't - this is Julie - I don't see Ken on the call. I thought he had planned to attend.

Ray Fassett: Yes.

Julie Hedlund: Maybe I'll send him a jabber to see if he's planning on joining us as well.

Ray Fassett: Yes, specifically I'm looking for an update on getting the abstention procedure that we put together and he is going back and forth with it at our request with ICANN legal counsel. Getting that in front of the OSC so that we can get it in

front of the council is probably part of the Nairobi meeting, so I want to stay on top of that.

Julie, if you could find out from Ken - I'm trying to nail down when we should send this to the OSC stating in the affirmative that ICANN legal counsel has looked at it and does not foresee any material changes or what have - whatever blessing we need to get from ICANN legal so that we can communicate that to OSC that would give them the comfort level to go ahead and recommend it over to the GNSO council.

Julie Hedlund: Right. This is Julie. Ray, I've just heard from Ken. He is planning on joining the call. He will be here shortly and I'm sure he will be able to (unintelligible).

Ray Fassett: Okay, so let's move that agenda item down to the last so we can remind me as we get closer to the 1 o'clock. We'll try to stay to an hour. Someone could remind me to bring that back up, you know, 10 minutes to the hour. Because let's go now right into the SOI documents unless anybody objects, and open that up for discussion and comments.

I have a discussion item but I'll ask if anybody else has a discussion item. If not I will jump to where we kind of left off last week when we talked which has to do with this sort of concept that has to do with privacy as mentioned by (Samantha). Her exact quote is, "There has to be some allowance for confidentiality here in the publication of statement of interest forms."

Where she goes on to say, "I don't think that we should require as a precursor to participation in ICANN that people should have this information publicly available." Ron Andruff made a counter-comment to that which is, "Unless we have stringent rules, we have nothing. What is needed is a reality check by using the GCOT as guinea pigs to see how we like the outcome."

Now with that said, I think each of us were supposed to go through - there are five questions. If we all have the document opened, there were five questions

that basically everyone would have to complete, you know, as a statement of interest form. How long would it take and how cumbersome would that be?

I did do that exercise and it took me 15 minutes. So I'm sharing with you what I did. Did anybody else do the exercise?

Avri Doria: I think I might have.

Ron Andruff: This is Ron. I did as well - the same, 10 minutes.

Ray Fassett: Yes.

Wolf-Ulrich Knoben: I'm (unintelligible).

Ray Fassett: Wolf?

Wolf-Ulrich Knoben: Sorry, I didn't, I didn't.

Ray Fassett: Okay, okay. Well, unless we hear from people that have done this that it is too cumbersome, my own personal experience was it's not too cumbersome. And then I think the secondary question becomes, okay, well should it become public?

I think that's what (Samantha)'s raising here in this privacy, you know. I don't think that we should require as a precursor to participation in ICANN that people should have this information publicly available.

I want to throw that out for comment. We have, you know, Ron sort of counter opinion to that.. We have - and I think these are opinions, too by the way. This is coming from (Samantha) who's ICANN's legal but it seems to me an opinion.

So we're evaluating here an opinion. Not a legal opinion, just an opinion. So can we have a quick discussion on this? Anybody have any thoughts on this?

Ron Andruff: Ray, this is Ron.

Ray Fassett: Yes, Ron.

Ron Andruff: You know, as you said, it took 15 minutes to do this thing and when you look at the questions themselves, they're relatively innocuous. Current employer and position - that's on our ICANN Wiki right now so, you know, anybody who's signed up to ICANN Wiki it already states that, so it's in public domain.

Types of work performed in the above, because I'm the president of a company I oversee the management of operations of the company. Then you get into number 3, identify ownership and investment and then compensation.

This is not to say how much am I getting paid or how much do I own? I own 80% of the company. That's not what this is about. It's to say, "Yes, I have an ownership interest in this entity or with the entity that has - is doing the transaction."

So it's just to confirm that I have an ownership interest or I have no ownership interest. With regard to compensation - yes, I'm compensated or no, I'm not compensated. So I think that she may be reading more into this thing than we are trying to achieve.

But from my point of view it was really a yes or no question to these things to kind of ascertain from where Ron Andruff is coming when he's responding to a specific topic or, you know, issue. So that's how I saw that.

I saw it as a more - a document that's a little bit more "yes-no" as opposed to being so detailed. So that's why I don't see this as being so difficult to put out

there. It's not like this information is not in the public interest - or public domain already.

Ray Fassett: Okay. Avri, what's your - what do you think?

Avri Doria: I think that it is just a binary. I mean reading what's there you can easily interpret that it's looking for more. And it's looking for detailed information on those things which would be inappropriate. But I think the binary questions are okay.

Ray Fassett: Maybe then it's a matter of format. Should we outline those into questions? Please provide a yes or no question to each of the following. Do you have an ownership or investment in any NC in which ICANN has a transaction? Yes or no.

Ron Andruff: Yes, it's like a contract.

Avri Doria: The way it's identified now it says, "Identify any compensation arrangement."

Ray Fassett: Yes.

Avri Doria: Well, that could be taken to mean "tell me how much you make."

Ray Fassett: Yes. So maybe it's a formatting issue.

Ron Andruff: I think so, Ray. I would agree with you. If it was just listed with yes, no and just put in that format. It's - like right now it's five questions but there are multiple questions within a question. Maybe it turns out to be a list of 15 questions.

Ray Fassett: Yes, right. So the three - well, we'll call it a category - identify - identification of interest. And then I don't know, 3a, 3b, 3c, 3d, something like that.

Avri Doria: Question on this. Avri again.

Ray Fassett: Yes, Avri, go ahead.

Avri Doria: Is it really just yes, no. I mean I think I'm probably fine with that or do we need to say what company?

Ron Andruff: What company, Avri - this is Ron -I agree. We need to say, you know, "I'm president and CEO of RNA Partners. RNA Partners has a - is intending to apply for a top-level domain dot support." So there is detail there but not to the extent that it's not already in the public domain.

Avri Doria: Right, okay.

Ray Fassett: If yes - yes or no - ownership or investment interest, yes or no. And then if yes, identify the entity. In other words somebody could put no there then they don't have to answer.

Ron Andruff: Exactly.

Ray Fassett: Yes. Okay. Now, Ron, you just said something though I'm not sure clear about. Is it really necessary, for example, in this for you to say like, "Yes, we are considering filing for a top level domain?"

Ron Andruff: Well, there's the part that - let me see, it's more in the number 3, maybe it is. Let's see - potential investment or investment compensation given an individual can negotiate contract - so it's basically the idea here is that to try to clarify where we have an interest in the outcome - where I have an interest in the outcome. So that it's been stated publicly. So I'm just trying to find where the exact wording was but (unintelligible).

Ray Fassett: (Unintelligible).

Ron Andruff: Number 5 for example says, "where the relevant party has an interest - has a particular interest and will receive tangible benefits from policy outcomes for issues under consideration." In this case, where, you know, maybe we're discussing elements of policy around new top-level domains.

So it's really with whatever the topic is that's on the table at that time as I understand it. So this is really my statement of interest in that topic. And then the disclosure of interest is again the same situation.

If you go back up to the top to definitions - that's where I'm looking at this now - disclosure may - under disclosure of interest it says, "Disclosure made prior to any direct or indirect interest may be commercially or non-commercially oriented."

And so it's really falling into those categories just to find - as those definitions are we just need to ask questions that will reflect back on those definitions.

Ray Fassett: Okay, so let me think about this. Let's try some living examples. I am a - who can I pick on? I'll pick on Microsoft. I'm a trademark lawyer for Microsoft. And I'm not for this new gTLD process at all.

Top - would - and this party wants to submit of course a statement through - to the - now this is a good point here. And I kind of just picked up on this recently.

The scope of this is only related to matters under the GNSO, right? So if ICANN is holding a public comment process for expressions of interest, which is not under the GNSO, this whole thing of statements of interest is moot, right?

Ron Andruff: Correct. The statements of interest and declarations of interest speak to the issue of when we're sitting around the table at a GNSO meeting or a work

team meeting or some kind of other grouping that's been gathered together to work on kind of specific task.

It's under those circumstances that everyone needs to have something filed. But someone that's just making a public comment on EOI, as you just suggested, that's any person under the sun can make that comment without any issue. It's a comment they're making in that public forum.

Now the other question though was when people come up into the open mic and this is where I think Wolf-Ulrich was a little bit concerned is that if I come to the open mic and I make a statement, any individual theoretically can walk up to the open mic and make a statement.

Ray Fassett: Yes, to the board. To the ICANN board.

Ron Andruff: To the board, exactly.

Ray Fassett: But the GNSO also has an open mic.

Ron Andruff: Yes, exactly, and so this is where it starts - where we have to make that differentiation as I see it. And if, you know, the board's statement it's just any person can make a comment about whatever they want, but when we start to get into GNSO level in theory we're drilling down a little deeper into formulating something, policy or whatever that might be.

So that's how I saw it more on that side when it's work teams or GNSO or public open mic at GNSO, those kinds of things that people have filed a statement of interest because now you're kind of in a work environment as opposed to just a public statement environment. That was the distinction I drew in any case.

Ray Fassett: Right, so let's stick with the GNSO open mic situation. And it's like we have these ICANN meetings. Right now someone is to come up and state their full

name, and that's really all it asks. We might offer the idea that you - the Chair of the council says to the person - people who come to the mic, "Please state your name and state whether you have submitted a statement of interest."

And they could say, "My name is Ray Fassett. No, I have not submitted a statement of interest." Now go ahead and talk. At least everybody now who is listening or will review later will have the intelligence that the party is - has not submitted a statement of interest.

So if I say I have submitted a statement of interest, reasonably speaking I would think that what I'm saying has a little bit more credibility. So that's the distinction. So we want to...

Ron Andruff: And what if somebody were trying to hide behind that loophole to say, you know, "I'm here and I'm an active participant in the ICANN process. But I didn't submit an SOI just so that I don't have to disclose who I'm working for."

Ray Fassett: Well, me the reader or the listener to that might say, "All right, well, I'll hear your comment but I'm not going to take it as much weight as somebody who - else that is making comments that has."

In other words I don't know if we can make it bullet-proof on the one hand, and on the other, you know, I don't think we should through the procedures inhibit, just use Nairobi as an example - somebody local in Nairobi who's just trying to learn about the ICANN processes and is coming to participate in the - and then they can't speak at the microphone because they didn't even know about this whole idea of a statement of interest.

So go ahead and let them speak, it's just that allow the audience, the reader, the listener to weigh in their own independent view whether it matters or not.

Avri Doria: This is Avri. Can I comment?

Ray Fassett: Yes, please.

Avri Doria: I guess I'm - I don't see the reason for the statement of interest for the person standing in line. I think that statement of interest should be filed, should be where people can find them.

Any one of the, you know, people that cares to check and see whether a speaker has filed one can do so. But I tend to think it would be intimidating for the sort of cross section and cross dialogue that we'd like to have whether it's an AOAC or a GAC person speaking.

Certainly I think, you know - and we do ask for name and affiliation and I think that is good. So somebody says, "I'm so-and-so and I'm a GAC member or, you know, I'm (Dibrallo) from East Asia or whatever.

That is good but or, "Hi, I'm local and I'm, you know, from Nairobi and I'm interested in." But to go further than that starts to be almost intimidation that, "I'm going to question you on whether you're one of us or not and whether you've done this."

We can all check as long as we've got them in a repository, we can all check. But I'm sort of worried about this being something that stifles comment as opposed to making it richer.

Ron Andruff: Yes.

Ray Fassett: That's fair.

Ron Andruff: I support that too, Avri. This is Ron. But I have a question, Avri. As you were the Chair of the GNSO, in your experience when - the only time that people are actually speaking at the microphone is kind of when the GNSO does the briefing on the Saturday or the Sunday meeting, whatever - you know, the early meeting, correct? It's not...

Avri Doria: No, there's a Wednesday. I don't know that (Chuck) will organize the meeting the same way but certainly for each topic there was an open mic time on that topic and then there was a general open mic time for 45 minutes to an hour at the end of the meeting.

Ron Andruff: At the end of your meeting or at the end of the ICANN meeting?

Avri Doria: No, the end of the...

Ron Andruff: Your meetings, the GNSO meetings.

Avri Doria: Once they opened, you know, the one where everyone sits on the stage like a (unintelligible).

Ron Andruff: Yes.

Avri Doria: Yes.

Ray Fassett: You know I would be inclined to agree with what you've just said. But I mean the idea - it certainly is about being more open and transparent. It's not about trying to separate, you know, people into groups. So I agree with that.

And as I say I was coming back more to the point that, you know, all GNSO representatives would have to have these things filed and just to make sure that everybody understood who was speaking for whom.

And then any work team of members would be requested to file an SOI/POI documentation so that people knew where they were coming from. So that was what I envisioned in my mind's eye originally.

Ron Andruff: Yes.

Ray Fassett: But I'm still - it still kind of bothers me that sometimes people within our community -and we know who they are because people are wearing so many multiple hats they - sometimes they're speaking for themselves, sometimes they're lobbying for a client, sometimes they're doing something else. So it would have been nicer if we could sort out which one is which as opposed to - or put them on the spot to have them declare that as opposed to us trying to sort it out.

That's where I was trying to see this thing go. But as you say - as you speak right now, Avri, I think you're probably right. We're going to find ourselves in a - we're pushing this in the wrong direction.

Ray Fassett: Okay, let me ask this question. Is it clear in 3.2 that what is contained below for the statement of interest does not apply to the open mic?

Ron Andruff: No.

Ray Fassett: Okay. So we need to add that clarity.

Avri Doria: Yes, I agree, this is Avri. I agree that it's for anybody participating in a team, in a group, in whatever organized activity.

Ray Fassett: Okay, so now we're going to make it clear to actually define where it applies, not where it does not apply, but actually define where it does apply.

Avri Doria: (Unintelligible).

Ray Fassett: Is that...

Avri Doria: Yes, I would say something like, "for any, you know, GNSO organized activity such as, you know, drafting team, working team, working group."

Ray Fassett: Yes.

Avri Doria: And, you know, because who knows somebody may invent a new name for organized working activity, you know, down the road because well we're doing something that isn't the same as the things before. But this would still apply.

Ray Fassett: Yes.

Avri Doria: So it would be an organized working (unintelligible).

Ray Fassett: Okay, so then...

Avri Doria: Organized activity or however you wanted to put it.

Ray Fassett: Right, okay, so with that said, is it clear that it's required for anybody that...

Julie Hedlund: (Unintelligible).

Ray Fassett: Yes, I'm sorry, who's that?

Julie Hedlund: Yes, Ray, this is Julie. I just - could I get in queue?

Ray Fassett: Oh, please go ahead.

Julie Hedlund: I have a (unintelligible) comment. You'll note that as far as what this policy applies to or to whom it applies, in our definitions at the top of the document, we do define what is a relevant party, and these, you know, these procedures then apply to a relevant party.

And we say a relevant party is an individual to participates as a member in working group, meeting member or other such policy development bodies formed by and under the supervision of the GNSO as well as all elected and appointed members of the GNSO policy council.

So do we need - I don't have a, you know, then my question is do we need a further definition in Section 3. Is it not clear that the following sections then, you know, and the following procedures then apply to relevant parties as defined above?

Ray Fassett: Yes. Probably not. I think that probably would be duplicative as long as we cite down in 3.2, which we do. I believe we do. Relevant parties, yes we do. Now wait a minute, ICANN staff shall develop (unintelligible) two relevant parties, right.

And then the only other question I would have then is do we say it's required in order to participate? I think that is the spirit, right? We're saying that anybody who is a relevant party is required to provide a statement of interest. And then ICANN is required to post these statements of interest. Is that - am I correct, or discussion.

Ron Andruff: Right, this is Ron. I think that Julie - she's hit the nail on the head. The relevant party is well defined there, but if we were to add the relevant - an individual who participates in a work team da da da would be - is required to fill this in or add that the sentence in there, that would be very helpful.

Because this is - this is a requirement to be on a work team. You need to state who you are, what your affiliations are, and that's where you're coming from. So everybody's clear. What we're trying to achieve here is transparency. So if we don't have that in there, I think that should be added in.

Julie Hedlund: This is Julie. What we say in Section 3 is, say 3.1, "Relevant parties shall provide to the GNSO Secretariat a statement of interest et cetera, et cetera." But we could strengthen that and say, "Relevant parties are required to provide et cetera, et cetera," if we want to make that stronger.

Ron Andruff: Well, yes, or are obligated to provide. In order to become a relevant party, you have an obligation, and I agree with that.

Ray Fassett: Yes, I think I would probably prefer, just for clarity, "are required." And then what that does is put, I think, a burden on the Chair people, whether it's a working group, a task force, or whatever it is to, you know, tidy that up and make sure that that's done by all the people that are participating.

Ron Andruff: Now I'm assuming - this is Ron. I'm assuming that the way we're going to be going forward is very similar to the way our work team is operating, that any other work team that comes up, there will be this wiki, there will be this place where community members can go and look and go back and listen to recordings and so forth.

So perhaps that's where the - or there's a link there back to these SOI documents or something so that it's very, you know, here's a - here's a list of the work team, and click here, you'll get their SOI.

Ray Fassett: Yes, that's an approach. I don't know how granular we want to get, but I suppose in my brain I was thinking that ICANN would have - maybe in this dropdown box on its home page things of interest. Click on that, then you got A through Z. And then if you're looking for a specific party...

Ron Andruff: Right.

Ray Fassett: ...you'll find them.

Ron Andruff: Yes, that's it.

Ray Fassett: I don't know if we want to get granular like that.

Ron Andruff: ...no I mean it's not our job but I - just thinking it all through from the beginning to the end, and I think that's probably what will happen, and I think

if we were able to just, you know, each work team, just links back with their name back to that spot.

The whole point here then again is everyone's able to review that information very easily without having to go dig for it in the ICANN site and try to figure out where it might be.

It might be very simple with a dropdown box statements of interest. But then again, you know, we live in a world where people get confused pretty easily.

Ray Fassett: Yes, especially me. Okay so...

Woman: (Unintelligible).

Ray Fassett: Okay, so I don't see, okay, so what are the two things we want to do. Do we want to make it - strengthen the language for it to be required to (unintelligible) relevant parties.

Ron Andruff: Yes.

Ray Fassett: The scope I think is properly addressed in the definition of relevant party. And then the other thing would be to go into 3.3 and modify that to be more- especially Number 3 in 3.3, and perhaps in other questions - but to break those out into more yes or no, and then if yes, provide an answer.

Ron Andruff: Correct.

Ray Fassett: Okay, so Julie, are you able to work on that for us?

Julie Hedlund: Yes, sorry I was...

Ray Fassett: On that last action item?

Julie Hedlund: Yes, sorry I was taking myself off mute. Now this is Julie. Yes, actually I have the document up right now. I'm saving it as a new version. I've made the change to "are required" and then I've taken as an action item to rewrite the question section, the 3.3 section to conform to a yes or no answer type of format including a if yes, then, you know, what type of...

Ron Andruff: Yes, and I think the spirit of why we're asking that to be done is to bring some level of reasonableness on this issue of confidentiality. It's like, you know, we're not, this isn't about disclosing your life's history. This is simply about answering some very basic questions that really should not compromise confidentiality, privacy. That's the spirit, right?

Man: Yes.

Ray Fassett: Okay, why don't we - I don't have anything else for 1 through - or 3.3. Anybody else?

Man: No.

Ray Fassett: Wolf, you're being quite over there. Are you okay?

Wolf-Ulrich Knoblen): Yes, (unintelligible). I'm in line with you, yes.

Ray Fassett: Okay. My next question - I'll go ahead - has to do with 4.4. Now this is - this one to me is a little circular because we have - we start out with if it is determined that a relevant party, then the Chair or Vice Chair will take such, you know, these actions.

My first question is, who is making that determination? I can see somebody coming forward and saying, "I think that this person did not disclose a direct or indirect interest." But that's different than a determination. So there needs to be a determination, then once the determination is made, then the Chair or Vice Chair takes X action.

Ron Andruff: So if I understand you, Ray, this is Ron here, we're trying to establish what is the mechanism to bring forward this determination?

Ray Fassett: Yes, yes right. Somebody has to make a determination, first (unintelligible).

((Crosstalk))

Ron Andruff: Well, somebody has to make a comment...

Ray Fassett: Yes.

Ron Andruff: ...to somebody...

Ray Fassett: Yes.

Ron Andruff: ...and then there will be a determination that it is either so or not so.

Ray Fassett: Yes.

Ron Andruff: Right?

Ray Fassett: Right.

Ron Andruff: Yes, that's a good catch.

Ray Fassett: And this is where it gets challenging because it becomes now a policing function.

Ron Andruff: Well, maybe it actually goes back to 4.3. Maybe it's a tag on at the end of that second paragraph in 4.3 because the Chair is asking if there is any disclosure of - if there's any disclosures of interest that we should be aware of.

And then we should be maybe putting a note that it should probably fall in there because 4.4 reads pretty clearly that, you know, that follows on but that element about how we get to that determination needs to be added. Maybe it's 4.3.1 or it's another, or we just renumber them, but that's where the paragraph goes between those two paragraphs 4.3 and 4.4.

Ray Fassett: And what are you suggesting it would say? Not verbatim, but in (unintelligible).

Ron Andruff: I'm not quite there yet, but basically it's saying that should a member of the community or - I guess member of the community because this is all addressing the community - feel that, you know, just talking off the top of my head - should a member of the community feel that...

Ray Fassett: Yes.

Ron Andruff: ...a disclosure is lacking or a statement of interest is incorrect, they would then bring that to the attention of blank for review.

Avri Doria: Can I - this is Avri. Can I make a (unintelligible).

Ray Fassett: Yes.

Avri Doria: Another suggestion.

Ray Fassett: Yes.

Avri Doria: In all my time as Chair, I think it happened twice, and what happened was during the period when I asked, you know, does anybody need to update their statement of interest - it was called statement of interest, not disclosure of interest - please speak up. And twice someone asked the question about someone else.

Ray Fassett: Yes.

Avri Doria: Once - one of the times it was about me. And so perhaps just the sentence could be changed so encourage all participants, you know, to update, you know, all disclosures of interest prior to beginning their remarks. Questions about people's disclosure of interest are permissible at that time.

Ron Andruff: But then what happens after that, Avri? Then from...

Avri Doria: Then (unintelligible).

Ron Andruff: But then how do we get to it so that it has now been determined?

Avri Doria: (Unintelligible).

Ron Andruff: What would be the next...

Avri Doria: I mean that's, you can sort of leave that open. I mean a question comes up. They'll respond to it or not respond to it. And then it falls into 4 where the Chairs and Vice Chairs have to follow up on it.

And I don't know that you need a formal procedure for that, a question's been raised. And so if it's been determined, and that determination would have to be made by the Vice Chairs and Chair.

Now I don't know that we need to get terribly formal about it. Just the fact that a question's been raised, it just (unintelligible).

Ron Andruff: Yes, yes, yes, I agree. Yes, I can agree with you because the language further on there does say that the Chair in consultation with the Vice Chair.

Avri Doria: Oh, yes, non disclosing. So basically, if, you know, after that exchange, they determine, and just by allowing in 4.3 that someone can ask a question about

someone, you know, actually they're - the (unintelligible) there were a couple of questions. You know please explain what does this mean, et cetera, but...

Ron Andruff: And did those parties come forward then and...

Avri Doria: Yes, yes, yes.

Ron Andruff: Yes.

Avri Doria: Yes, they came forward. A couple of times they came forward right then and once, you know, a written thing was sent in later. You know and on mine, I had started being an affiliate with some company that did some ICANN work even though I wasn't doing ICANN work for them. So I had to add a line to say while I work for (unintelligible) I am, you know, Chinese walls away from any of their ICANN stuff.

Ron Andruff: Well, I support that. I support Avri's approach.

Ray Fassett: And then can somebody summarize it for me?

Avri Doria: Yes, basically just out of Clause 4.3 saying that, you know, that that time for other participants to ask any questions they have about someone's disclosure (unintelligible).

Ron Andruff: So it's another sentence after the sentence finishes with...

Avri Doria: (Unintelligible).

Ron Andruff: ..."beginning their remarks." Prior to beginning their remarks, and that's where that gets added in.

Avri Doria: Or it could be a merge sentence, you know, but I don't care.

Ray Fassett: That makes sense.

Avri Doria: Because you could have taken the previous sentence and said, you know, they'll encourage all participants to update and ask questions about disclosures of interest. You know you can phrase it that way and then it's just a couple extra words in the sentence.

Ray Fassett: Yes, that's the place for it to happen, before the meeting gets underway.

Avri Doria: Right. And I prefer something that calls it questions as opposed to it starting accusatory that you're not disclosing. If, you know, somebody may just have a question, and it gets asked.

Ray Fassett: So in 4.3, "Any person may question a relevant party's statement of interest at the beginning of any ICANN public meeting, forum, or discussion anyone may question a relevant party's statement of interest." Something like that?

Ron Andruff: At the beginning of any public meeting (unintelligible). No, why don't we just pick it up and say, you know, "Prior to beginning the remarks at that time, anyone feeling," , you know, find the appropriate language, but let me just say it out. "

Anyone feeling that has a question with regard to an SOI of any other member of that group, work team, whatever." Or maybe a relevant party would bring that forward at this time, or something.

But the key here is that if you - we have this phrase here, "ICANN public meeting forum or discussion." And this is where we started this whole dialog, does someone have to have an SOI to be saying that?

So really what we're saying is the Chair, at the beginning of any of these kind of discussions will then invite people to provide disclosures of interest if they have one with regard to this. Anyone who feels that - or has a question with

regard to a disclosure of interest from the relevant party because it really comes back to who's ever on that work team. Who's ever on the GNSO.

It's not - I'm not going to ask to a Nigerian, do you have an SOI? Why don't you have one? Because that person's just asking a question. They have no relevance to that.

But the work team or the or the GNSO counselor, they are a relevant party. So if anybody has a question with regard to a relevant party's disclosure of interest, they would make it at that time or they would bring that to the Chair's attention. You understand the distinction?

Ray Fassett: (Unintelligible) yes, yes, I think I do. I think I do. Julie, do you understand the distinction?

Wolf-Ulrich Knochen: Sorry, Wolf speaking. So, for me, not clear because I understood 4.2 and 4.3. Ron, 4.3, (4.28) I understood related to members of work teams and so on, yes?

Ron Andruff: Right.

Wolf-Ulrich Knochen: In those two - but 4.3 related to anybody else who is participating in a (unintelligible) meeting or discussion. So what you are just discussing is I understood it the first part, but if somebody has a question with regards to a DOI under 4.2.

Ron Andruff: Okay, right, you're correct, Wolf. I just read that through, I beg your pardon. I would suggest the one I've just said should be 4.2, not 4.3, correct. You're correct. I beg your pardon, I didn't read 4.2, but that is correct.

Ray Fassett: Okay, summarize it again for me.

Ron Andruff: Okay, so what I was saying about the idea that the Chair, that anyone who would like to question the disclosure of interest would then advise the Chair, period, would go into 4.2 at the very end of that paragraph, not 4.3 because that my point was in 4.3 we can't ask anyone speaking in a public forum to update their disclosure of interest when, in fact, they may not even have one.

Ray Fassett: Okay, so we'll update 4.2 with the concept which I think is reasonable unless somebody objects. Now a question I have though then is can someone do so privately to the Chair. I, you know, I have an issue with somebody on some given work team. I don't want to make it public that I have this issue with somebody on that work team.

Ron Andruff: Right.

Ray Fassett: I want to communicate to you privately that I have this issue for you to investigate or do what you do. Is that - you know, any thoughts on that?

Ron Andruff: I can certainly see why you'd want to it. Why people might want to do it privately because they have relationships and they don't want to upset.

Ray Fassett: Yes.

Avri Doria: I don't - this is Avri. I don't see any reason why not. I don't know that we need something special for that because that's another way. If somebody goes to a Vice Chair or a Chair because, you know, I'm just not sure I've seen signs, whatever. But the Chair or Vice Chair does background investigations to decide, yes, it's warranted, or no it's not. Yes?

Ron Andruff: I agree with that, and what we may be saying is that they keep as little - as Avri said, we don't have to make these things so tight. So maybe with something along the lines that that individual will bring that to the Chair's attention.

Ray Fassett: Yes.

Ron Andruff: Now whether you do it privately or publicly, that's their - at their discretion.

Avri Doria: Believe me, people bring lots and lots and lots of (unintelligible) to the Chair's attention.

Ron Andruff: Yes.

Ray Fassett: Yes, a lot of people do. I can imagine that. But I guess what I'm trying to get at is a certain level of accountability now by the Chair. The Chair as a lot of discretion to say well I'm going to ignore this or not ignore this.

Ron Andruff: No, but we've said here that the Chair has to then, in consultation with the Vice Chair, so there then you would have two people colluding in fact if that were the case.

Ray Fassett: Yes.

Ron Andruff: Just, you know, to say we're not going to look at this. That would put, you know, that just brings another measure of accountability in my view.

Avri Doria: Yes, you maybe ought to change 4.4, make it easier. If it is determined the relevant party may not have disclosed, and then if, you know...

Ron Andruff: Right. (Unintelligible) may not have disclosed a direct or indirect interest.

Avri Doria: Right, then, you know, then you go down further in this long run-on sentence. Any action by blah blah blah. You know the...

Ray Fassett: Okay.

Avri Doria: Say if warranted, ask the nondisclosing relevant party to provide a disclosure.

Ray Fassett: Okay, so.

Avri Doria: That's, you know...

Ray Fassett: Lessen up the strictness of 4.4 by using "may."

Ron Andruff: Yes, may have, may have not...

Ray Fassett: May have not disclosed. If it is determined, yes. I think that's okay.

Avri Doria: And then it's really up to the Chairs and Vice Chairs. And you do have the safeguard of accountability of the person that spoke in private is going to get more and more agitated and escalate it more and more...

Ron Andruff: Good point.

Avri Doria:... to get an answer. Definitely seen that happen.

Ray Fassett: Okay, now I'm comfortable with that stuff. Wolf, how about you?

Wolf-Ulrich Knoben: That's okay. I'm okay with that.

Julie Hedlund: So, Ray, this is Julie. Maybe I can go over and make sure I've captured these changes correctly.

Ray Fassett: Yes, sure, please.

Julie Hedlund: So I have changes in 4.2. I heard a couple of different things, and let me see if I've captured them correctly. Reading 4.2, "the GNSO Council Chair or Vice Chair or working Group Chairs, Work Team Chairs, Committee Chairs and Chairs of any other organizations formed by the GNSO shall remind all

participants to provide disclosures of interest," and I added, "an update to disclosures of interest." Because I think that was something that Avri noted.

At the beginning of each meeting, during which the relevant parties will discuss or act upon the specific matters to which the disclosure pertains, and this disclosure shall be recorded the minutes of that meeting. And the next sentence says all parties should be polled for an affirmation that there is no change to their respective - and that says, SOI, disclosures of interest and the responses recorded in all minutes.

And then I added, "at that time, anyone who has a question with regard to a disclosure of interest from the relevant party will advise the Chair." Does that sound correct?

Ray Fassett: Yes, I would say rather than, "advise the Chair," that sounds like I need to speak out right now I will make the Chair aware or will, you know. Well maybe I'm being a little - I'm splitting hairs here.

Ron Andruff: Will communicate to the Chair?

Ray Fassett: "Will communicate that to the Chair," that's a better way.

Julie Hedlund: Okay (unintelligible).

Ray Fassett: But I wonder if that should be SOIs and DOIs there. Julie, you just caught that SOI and you went, "No, that should be DOI?"

Julie Hedlund: Talking about disclosures of interest in this section.

Ray Fassett: Right, so that's the DOI.

Julie Hedlund: Right.

Avri Doria: This is Avri.

Julie Hedlund: Communicate that with the Chair.

Woman: Yes.

Avri Doria: This is a question I've got, and I think it's partly because I didn't pay a lot of attention a long time ago. I'm not clear on the difference between an SOI and a DOI now.

Ray Fassett: Let me try. I think Ron could do better, but I'm going to try because Ron has taught me.

Ron Andruff: Well, there's also definitions at the top of the document.

Avri Doria: Oh, okay, I see. I'm sorry.

Ray Fassett: Oh, darn, you weren't supposed to have looked - darn it all. Okay, so a statement of interest is sort of the ongoing document that people submit. It's more general, okay. While we are asking specific questions in the statement of interest, it's more of a living document if you will. But then, from time to time, a certain issue arises that is of material impact to a relevant party.

And at that moment, what we're expecting in terms of accountability and transparency is so that relevant party now, you're given an opportunity by the Chair say, "Look, I got to disclose an interest here in the outcome of this matter." Whereas a statement of interest allows me to participate in the work group or the work team and be involved with this, provide my expertise, et cetera.

But at some points where you start going down the path of whatever the initiative is about, or policy is about, it the situation could arise where well I'd

better not participate in that part of it because I have to disclose that I have a benefit on the outcome of that specific piece to what is under discussion.

Avri Doria: So I don't just add that to my SOI. (Unintelligible).

((Crosstalk))

Ron Andruff: No, let me give you - yes, maybe that wasn't very good. No, now let me give you an example. I think you said it right, Ray. But I'll give you kind of an example of what that might be.

Ray Fassett: Okay.

Ron Andruff: Let's say that I am a registry operator and it's all in my SOI. I'm a registry operator. I have this role with the company and these are my tasks and so forth. And now there's a thing before the Board or the GNSO or whatever and the discussion is another registry is applying for some special ability to do something.

And then I go to the microphone and say, you know, this is really good thing and I really support that. We should do this. The disclosure of interest would be, and by the way should this go through, we get a benefit too.

Now this is kind of a simple explanation, but it's just to say that if I'm supporting this and not because I'm supporting that company, but in fact, if the board were to approve that, then I'm going to ask for the special exemption from (ITLD) as well.

That's a disclosure of interest because the topic that's being discussed will impact us, but it's not part of my statement in interest. I don't have anything to do with that other registry. They're merrily doing what they do. But I'm speaking in strong support of it because in fact we would have a benefit too.

So again, it's coming back to being more transparent. I'm not speaking to support that other organization as much as I'm speaking to support that idea because I feel it would be of benefit my organization. Does that help clarify it a little bit?

Ray Fassett: Yes.

Avri Doria: Partially, but I guess so and these things would be treated and these things would be written up and they would be filed. And so we're talking about maintaining two separate lists, databases, what have you, one of the SOIs and one of the DOIs. Does one take a DOI and tack it onto the bottom of an SOI? If I come and I'm - I guess...

Man: Yes.

Avri Doria: I'm confused about how we handle these things. But you said it's (unintelligible).

Ray Fassett: SOIs are public documents that are in the record as I see it. And a DOI is something that would - I'm sorry.

Avri Doria: These are just ad hoc statements that people would make?

Ray Fassett: Exactly, a DOI was just noted in the public record.

Avri Doria: Okay, okay I got it.

Ron Andruff: No, that would have been the simple explanation wouldn't it ,Avri. That would have cleared it up for you. Statements of interest are formally things people have to fill out, will be submitted as a form posted on a Web site whereas a declaration of interest is not that. It's ad hoc. It's disclosing a statement of interest at the time the Chair is asking for such things.

Ray Fassett: I see.

Ron Andruff: So does that help explain the difference?

Avri Doria: So therefore that wouldn't happen at the beginning of a meeting. That would happen at that point at which you were actually talking about the topic.

Ron Andruff: Probably, you know in the case of - let's use another example. Right now there's been the dialog with regard to whether the board should be compensated or not. And so I've spoken at those particular meetings. Not the public forum, but those are the, you know, the meetings where that discussion is happening.

And so Ray just used the right word. He says the disclosure. So I would say, "My name's Ron Andruff, RNA Partners, and in the interest of full disclosure, we may or may not be applying for a new top level domain. I would like to say I support the issue of the Chairman getting paid."

So I've disclosed that I'm actually an applicant. So I take that out of the way. So it's not like I'm just telling this thing the Chair should get paid so that have a - you know, look at me fondly and try to help our cause when he can.

I'm disclosing right from the get go that we may have a - that we put an application in, but the bottom line is I support this from our, you know, my personal point of view and our corporate point of view. But I'm disclosing the fact that we're also involved in that. So it's just again, transparency.

Avri Doria: Okay, I've got another question on that one as well here.

Ray Fassett: Sure, go ahead Avri.

Avri Doria: If on that particular example, let's say I've got my name in with (NAMCOM) to become a director. Would I have to disclose that also, since obviously I'm

commenting. I'm also hoping I get picked for the board. Do I - am I under obligation to say, "And by the way, I've put my name into this super secret process to become a director."

Ron Andruff: That would be - I would think that would be a disclosure of interest, yes.

Avri Doria: So you would expect that anyone that speaks on the topic in Nairobi affords executive compensation would have to say whether they wanted to be a director or not?

Ron Andruff: Yes.

Avri Doria: Okay, cool.

Ray Fassett: Okay. So with that said, you know, there's no hard and fast rules. I think if people are regular participants in ICANN say, which we want, right? The more people effectuate these things, do these things, the more credibility they start earn over time.

(Rob): And the organization, that's the critical factor here.

Ray Fassett: And those that aren't doing it, I think will not earn the same level of credibility. So while it is up to each individual to disclose, and there's no hard and fast rules or concrete of what applies to when, if I - like myself, if I am asking myself the question, I wonder if I should disclose that? Chances are I'll arrive, well, if I'm even asking myself the question, I probably should.

And then if I do this now habitually because there are procedures in place that either are asking me or reminding me or whatever, I have a feeling - and I'm just guessing, it's up to each individual's own interpretation - but I have feeling that my credibility is going to rise over time. That's just my thinking on it and it's a theory.

(Rob): And I support that, absolutely. And your definition, your litmus test was quite correct. If I'm questioning myself on this issue and it's, you know, it's kind of niggling me, then that means I need to do this. If it's not - if I question myself and say, no I don't really need to, then I know the answer.

Ray Fassett: And what we can't do is police against those that are wanting to purposefully, when they ask themselves this question, how do I hide it. There's nothing we can do, you know. But I think over time, their own credibility will suffer as a result.

(Rob): Well, and that's the embarrassment aspect that we hope that, you know, that it would be so embarrassing that should something come out like that and people kept, you know, a little bit of finger pointing going on behind their back. Well, you know, "He or she did this and that," you know, that would be very uncomfortable, I think. And I'm hopeful that that will be the determinant - the factor that will push people away from trying to sneak things through, so to speak.

Avri Doria: It's ICANN we're talking about.

Ray Fassett: Yes, that's right, that's right. So it's all about improving the integrity of ICANN which is made up what, of individuals. It's not like ICANN makes cars or anything or something like that, it's just an organization made up of individuals.

And the more we can do in what our little role as GCOT to add integrity as part of the individual process, we hope over time that it adds up for ICANN to be considered legitimate and credible, right? That's all in theory.

Ron Andruff: Well said. So that's exactly the point.

Ray Fassett: Okay. So I don't have anything else on - let me page back down - anything else prior to Section 5. Does anybody else? And Julie, are you comfortable?

Julie Hedlund: Yes, I think I've captured this. Ray, this is Julie. I should note that we are now 3 minutes before the top of the hour, and I think that you had wanted an up (unintelligible). So I don't mean to interrupt, but I just wanted to point that out.

Ray Fassett: Oh yes, very good. Okay, is Ken Bour on the call?

Ken Bour: Hi, Ray. Yes, I am.

Ray Fassett: Okay, hang tight there, okay?

Ken Bour: Sure.

Ray Fassett: Real quickly on Section 5 here, to keep going. This is going to be a discussion, I think. I'm questioning whether we want ICANN staff to review relevant party statements of interest to insure truthfulness and completeness.

I'm wondering if that's more of - in other words, ICANN staff or ICANN as the organization's role here administrative. Here's the site, here's the statement of interest, here's where we ask for them.

But this is a little different now than evaluating the truthfulness or completeness. I think that should be a Chair obligation. And I would - for example, if I'm a Chair and I know I need to get these (unintelligible) these statements of interest, I'm going to look at them and I'm going to see are they, you know, complete?

Whether they're truthful, that's judgment, but are they complete? When we get into things like truthfulness and then saying ICANN staff, now I think we're sort of, in my view just sort of adding a complication to this. Any thoughts on this?

Ron Andruff: This is Ron. My first thought is only that the Chair and the Vice Chair have kind of got so much going on that, you know, would they - it's like another added burden. The first thing that came to mind was maybe the Chair and Vice Chair would convene a three party group, but then we have to get into all of the issues about how that - you know, a group would be, or a team would be convened to do this review. So it is a pretty - it's a tricky one indeed.

But if we're just asking the staff to review the statement of interest and review the - in relation to what issue has been raised, and come back and say that, "In our view, the person who's brought our attention to this is correct or incorrect," that's all we're asking them to do as staff people. You know, you have time, you're getting paid, you know, to do this - to do work. Please, just do a review and see if this is true or not true and report that back to the Chair.

Then the Chair and the Vice Chair can start to make that determination themselves. In other words, they can look at it more closely, but someone's going to do the legwork to say, "Okay, this is what was published. This is what's been said."

Maybe take the staff out of it just to deliver that information to the Chair and Vice Chair, and say that, "Here's what was printed. Here's what was stated." So then at least the Chair and Vice Chair then could pick it up from there. But someone has to do that work to make sure they gather that information just to ease the burden on the Chair and Vice Chair.

Ray Fassett: So let me think here. If I have to complete a statement of interest, who am I sending it to? Am I sending it to the GNSO secretariat? Am I sending it to an ICANN staff person? Am I sending it to a Chair?

(Rob): As I understand, the staff is going to create a form and we're going to fill that out, and those are going to get published in the, you know, the same place all the time. So all we're - there's just a form there that we go and fill out, so there's no staff involvement per se.

Ray Fassett: Right, but when I fill it out, am I submitting it online? It's an online form, I fill it in.

(Rob): Yes.

Ray Fassett: Okay, then I click Submit. Then it goes to who?

(Rob): Well, it goes into the statement of interest box. As you had said, a drop down menu A to Z and there it goes, you know. So I'm now published in there.

Ray Fassett: Okay, so now what we've got to watch - here's what I'm thinking then. What we've got to watch is somebody puts in, you know, Bugs Bunny working for Walt Disney World - fictitious things.

(Rob): No, I think it should be a given that people - you know, staff will review that from time to time to make sure there's nothing going on as staff does the Web site today. But that's a lesser issue. Let's just take our own work team for example. Let's take our own work team.

And here I am talking about this and that but I haven't disclosed something. And Wolf-Ulrich says, "Geez, you know, this doesn't sound quite right to me." It seems to me that there would be a - the way this would work is that he would come to the Chair, who would then ask staff to please pull the SOI on Ron Andruff and send it to him, and Wolf-Ulrich would submit his concern.

And those two documents would be gathered by staff and given to you, Ray, to look at and say, "Hmm, this does look a little strange." Or, "No, from my point of view, I don't think it's that far off."

But then it would come up in the next call that there was a concern raised - we wouldn't even have to say it came from Wolf-Ulrich - there was a concern raised that there was a SOI situation. I've looked at the SOI document and

I've looked at the concern that was posted and in my view, I don't think that exists. And that gets entered into the record and moves on.

Ray Fassett: Okay. Well, I guess I'm going a roundabout way. For the next call, I don't think we're going to get this done today, but for the next call let's think about this concept where staff ensures truthfulness. I can get there with completeness, in other words, all the questions are answered. But I'm having difficulty with staff will ensure truthfulness.

Avri Doria: This is Avri. I'm about to drop off, but one of the things I'd recommend is that when thinking about staff doing verification of information, or being requested by Chairs to verify information. But any notion of adjudication or further processing is done by the Chairs. So there's - the staff can be requested to verify information.

Ray Fassett: Okay, great. Don't drop off yet, Avri. Ken, real quick, how are you making out with (Samantha) in terms of our ability to get the abstention procedures in front of the OSC?

Ken Bour: Yes, I'll be brief. On the 10th, I sent a note to the team basically outlining four categories of issues that (Sam) had identified early on. I won't go through those now, you can see that.

In the last 7 days, we have been through three formal sort of iterations where I responded and then there's another set and then I respond and there's another set. And we're on our fourth one. The good news is that (Dan) and (Sam) are both engaged. And I am just about today to send back the fourth iteration.

There are just - this is a very complicated procedure, as you guys well know, and there are just a lot of little sentence fragments here and there, and making sure that what we said up here follows at the bottom. And I think

there's just a continued, I don't want to say nervousness, but concern that we make sure we tie this all down properly. And so yes, we're - it's just...

((Crosstalk))

Ray Fassett: Well, let me ask this. Based on your discussions, would they be comfortable with us sending it to the OSC. That it may not be in complete form, but we do not anticipate - it has been through legal review and we do not anticipate any material changes.

Ken Bour: I would ask you to hold off on that just - let me get it through one - this last - yes.

Ray Fassett: That's why I wanted to know.

Ken Bour: Yes, this last iteration because, you know, there are a couple of questions that are coming up now that - like, for example, (Dan)'s asking, "You may remember that we provided a limitation on proxy where we said, 'Only one proxy per counselor, per issue at a time,' right?"

Well, we didn't do anything like that on the temporary alternate, and so he said, "Well, shouldn't we have some kind of limitation there," right? So for example, I'm a counselor and I've got a temporary alternate for one issue, and because I have an abstention issue on another issue, I've got another temporary alternate sitting in for me on a different issue.

And these are the kinds of things that, you know, it's hard to think through them all, but every time a different set of eyes gets on it, you see a different twist, right? And so what we're really doing is just working through all these permutations and combinations, and the document will really be tight when we're finished with this.

Ray Fassett: All right. Well, okay, but let me just throw out this comment to you. It's not - it's constructive. It's intended to be constructive. So what I'm hearing is that we're having legal people make a determination on day-to-day practices which is different than a legal interpretation and getting their blessing of how this can fit within the bylaws and fit within the rules of procedure consistent to ICANN's organizations, obligations, or what have you.

Now we've got - what we have is legal people interpreting in permutations of how this may work in practice. I'm not saying there is some blurring there, but I'm not sure. Now if you were to say, "Well, ICANN staff operational people are looking at this and giving us these kinds of comments," I might say, "That's a good set of eyes for that, to come up with these permutations."

But I'm questioning whether legal is the appropriate place to be coming up with these permutations and how this will work in practice and then coming up with the recommendation of how to alter how it will work in practice. Does this make sense to anybody, what I'm saying?

Man: Yes.

Ray Fassett: Or am I way off on a tangent here?

Ken Bour: This is Ken, and what you said makes sense based on all my prior business and industry experience. But I have the impression, and maybe (Rob) can speak to this, that in ICANN when it comes to things like procedures and bylaws and other matters of that type, legal provides more than just legal opinion. They also provide a sort of managerial views. That's just an impression.

Ray Fassett: See, I would want the OSC doing this. This is exactly where I would want those guys who are very versed in GNSO procedures and practices and been through the wars and the trials and tribulations. This is where I want that discussion to take place.

Well, what happens if there's more than one alternate on different occasions - whatever these permutations may be. I think what I got to watch here is the OSC doesn't come back to us and say, "Well, what is legal doing coming up with the practices? We don't - we're great that you went to legal and got their blessing in terms from a legal perspective, but I'm not too crazy GCOT, how you went to legal and got operational advice from them. I'm not sure I like that idea. That's our (unintelligible)." That's where I'm getting concerned.

(Rob): That's not the impression I have had in reviewing the correspondence that's going back and forth here.

Ray Fassett: Okay.

(Rob): The key reason for reaching out to legal is to make sure that the ultimate processes are consistent with the bylaws and that's certainly the tone and expressions of feedback that I'm perceiving from legal.

They aren't dictating anything at this point, but they are providing feedback and suggestions that say, "You need to tighten this up because it does create potential concerns or areas of potential pitfalls." So I think...

Ray Fassett: Okay, so we - wait, wait, I want to stop you there (Rob). I'm not trying to be difficult here, but I just want to make sure we don't get trapped between the OSC and staff here. I think it's important.

Avri Doria: I'm going to drop, I'll be back.

Ray Fassett: Okay, Avri. And I think this is an important point which is - man, I just lost my train of thought.

(Rob): Well, yes, you won't be trapped because, I mean, they're going to provide - they're providing their perspective and feedback. When Ken and I come back with that document and you say, "No, you know, we want to go this way."

I mean the challenge that we don't run into is to have you guys go through all the work and the recommendations, provide them to the OSC, have the OSC approve them and GNSO Council approve them, and then have legal come back and say, "Yes, but that's not consistent with the bylaws."

We'd like to know now if it's not consistent with the bylaws. And if it's not, then to make adjustments either to make it consistent or to advise you guys it's not consistent so we also have to recommend changes to the bylaws.

Ray Fassett: Okay, so we're not there yet. We don't have that sort of legal opinion that - what has been presented to them is, in their view, consistent to the bylaws. In other words, legal is not comfortable with us getting this in front of the GNSO Council via the OSC, legally.

(Rob): I think - what we are doing is working with the legal team. They make recommendations and we're trying to be very careful in the discussions that, you know, we are adhering to the bylaws in the process.

They may, and I've seen Ken going back and forth, they will make suggestions, often as anyone will do, to say, "You know, maybe you want to think about doing it a different way." Or, "Maybe you want to consider this operational change."

We recognize where the line is and that's part of the dialogue that Ken is diplomatically referring to because there may be cases where they're making recommendations and we may not necessarily agree with them because they are operational issues.

Ray Fassett: There is a blurring, and I'm not dismissing the concept that there can be a blurring. What I am trying to, though, sort of articulate is we are on a time frame, and I do want to get this thing - I think we've hashed it out as a work team very soundly. And I'm trying to stand up for the work team members here by saying, you know, I really want to get this thing in front of the OSC. And I'm looking to find out if legal has a problem with that because we want to get this thing in front of the council as a part of Nairobi. I don't want to create false deadlines.

Ken Bour: Ray?

Ray Fassett: Yes, I'm sorry.

Ken Bour: Yes, this is Ken. No, I hear that question and I am literally - today I will be sending this additional iteration. I will ask that question of (Dan).

Ray Fassett: Thank you.

Ken Bour: (Unintelligible) that the GCOT team wants to give a version, and is this version close enough now to give to the OSC recognizing there might be some additional changes, but substantively it's okay. I'll ask that question.

Ray Fassett: Right. I'll put you on the spot, Ken.

Ron Andruff: Ray, this is Ron.

Ray Fassett: Yes, Ron, thank you.

Ron Andruff: Yes, no, I just wanted to support what you're saying. I think, you know, let's be all clear about this. You know, we couldn't get any of this work done without staff support and we really value everything's that going on from both (Rob), and (Judy), and Julie, and all of you guys, Ken. But the bigger issue

here is we as a community have to kind of come to terms with what those issues are.

So I would support what Ray has suggested that we send this to the OSC, we say that there is a discussion with regard to that element, and if you could just kind of define what that element is, that they - that the community can come up with this decision.

Because there is this very prevalent feeling that there was a time, not so long ago, when there was nobody on staff and there was a big bottle neck of us jamming stuff towards staff and they couldn't get it back to us.

Now we've got this massive group of staff and consultants dealing with stuff, but if there's a perception that all of a sudden there's a takeover happening here. Staff is making recommendations to the board, staff is making recommendations here and there. And so we really want to make sure that this work is done by the work team and by the OSC and then it's clarified on the legal perspective from the legal department.

So let's move down that road. And I heard what you said. You're going to put that question forward today, but I'm saying, it's not a question that (Dan Halloran) and that team, it's a statement that we are going to send this to the OSC with this caveat that we need to really finalize this, but it's really up to the OSC to take this discussion to the next level.

Ray Fassett: I'll tell you what. I want to just back up. I don't necessarily disagree with you, Ron, but I will take that one tea leaf that Ken offered. If we had legal come back and say from a legal perspective we're - we don't have material issues, not that something may not arise, I would be more comfortable then going to the OSC.

Ron Andruff: Yes, exactly. That's what I'm saying. I'm suggesting exactly that.

Ray Fassett: You're saying the same thing?

Ron Andruff: Yes, I am.

Ray Fassett: All right. So, yes, Ken, if you could ask that question. And if (Dan) comes back with, "No, I don't think it's a good idea." I think at the same time then we should, you know from a legal perspective, we should take - as a work team under consideration and not send it to the OSC just yet. Does anyone - Ron, what do you think of that?

Ron Andruff: I'm not going to push back too hard. I just wanted to draw that distinction that it's really important that the community is pushing the stuff forward and then staff and legal are, you know, making sure that it's all correct. That's the point I'm trying to draw here.

Ray Fassett: Yes, so I'm just looking for a little bit of scope when we ask the question of why or why not. If it's why not, it's because from their legal position it's not yet a good idea. If we can get even a little bit more detail, that'd be great as it pertains to the bylaws, as it pertains to whatever their legal issue hang up is, that kind of explanation would be helpful to us a work team. If it's because, "Well, we haven't worked out all the permutations of how this may work in practice," no, no.

Ron Andruff: Exactly, exactly because the OSC is anxious to get this stuff and we need to get the GNSO moving according to these new operational procedures. And we cannot continue to delay because there's some - exactly what you just said, permutations that need to be reviewed. We'll review those permutations.

Ray Fassett: Okay, now, Ken, have I put you in too much of a difficult position? Is this something I need to get involved with?

Ken Bour: I don't think so at this point, and I'll lean on (Rob), and he and I'll work together on that communication.

Ray Fassett: Okay, I'd appreciate that. And if you need my involvement in any way, please, don't hesitate to ask.

Ken Bour: I'll be guided by that, thanks.

Ray Fassett: Okay, anybody else? Now my suggestion is that our next call we pick up with Section 5 on - we're getting - we made pretty good progress today on this statement of interest. Any objection to picking up the next call where we left off?

Julie Hedlund: Ray, this is Julie. I do have a question.

Ray Fassett: Yes.

Julie Hedlund: So when is our next call scheduled? And I will note that I will be - if it's in two weeks time, I will be traveling that day, that Wednesday to Nairobi, so I'm not sure I'll be able to do the call at the usual time. I was wondering if you might want to do a call next week.

Ray Fassett: Good, good, good, good. Yes, I forgot because we kind of got off our rotation because of last week's attendance level. Yes, I'm all for it. Let's pick it up again on the 24th, right?

Yes, the 24th, does anybody have any objection to that? And then go back to the two weeks from there, which of course we'll have a March 7 meeting in between. But in terms of the teleconferences, pick it up from the 24th, every two weeks.

Julie Hedlund: That sounds good. I've noted that, Ray, thank you.

Ray Fassett: Okay, thank you very much.

Ken Bour: Ray, this is Ken. Maybe I interject one other question?

Ray Fassett: Yes, please.

Ken Bour: What date by which you would want to send the document to the OSC? Can I reference anything in particular?

Ray Fassett: Okay, so let's think about this. That's a good question. We want to get it in front of the council. Are we even given the OSC time with what - Nairobi's what? Two weeks away, right?

Ken Bour: Yes. Well, the council meets on the Saturday the 6th of March, and the 7th, right? I'm not sure if it's those 2 days that we would have to - yes, I think you have to go back 8 days before you can put something before the council.

Ray Fassett: For a vote.

Ken Bour: Well, right.

Julie Hedlund: Ray, this is Julie. I think that actually the OSC is probably going to want to discuss it at their meeting on the 7th. They'll want to discuss it. And then they can decide at that point if they think it's ready to go on the council agenda, although I don't think it would be on the agenda - the Nairobi Council agenda - for a vote, but probably for discussion.

Ray Fassett: Yes, let's shoot for that. I mean, that's going to be our recommendation to the OSC is to get this into GNSO Council discussion as part of Nairobi. There's really - that's not realistic to think that this could be voted on, no. Maybe someone on the OSC will think differently who are council members and who knows. But right now our expectations, I think, should be to get this to the OSC as soon as we possibly can. We'd like to do it as is.

Ken Bour: Can I say the 22nd?

Ray Fassett: Yes, that's fine. We'd like to do it today, as is, but only reason we're not is because we just don't know from ICANN staff legal if they have a legal issue or not. That's the only think stopping us.

And then from there the objective is for the OSC to do what it does in its review. And our recommendation would be to the OSC to get in front of the Council for discussion as part of Nairobi. Does that help?

Ken Bour: Yes. I'll suggest that we want to give the OSC one full week before - well, two full weeks, I guess, the 22nd through the 5th, before Nairobi. And so really want to get a version to them no later than the 22nd, how does that sound?

Ray Fassett: Fair.

Ken Bour: Okay, thank you.

Ray Fassett: Okay, any other business? All right, if not let's go ahead and - well, first of all thank everybody for joining today, and adjourn our call and end the recording.

Woman: Thanks, Ray.

Ron Andruff: Ray, can you stay on for a second?

Ray Fassett: Yes.

Ron Andruff: Just a quick question, with regards to Nairobi, (unintelligible) to meeting there. I'm seeing messages come from (Chuck) and (Phillip) to ask if I might chair the OSC meeting. You're still with me, Ray?

Ray Fassett: Yes.

Ron Andruff: Okay, good. It's just everything went dead for a second. So the point is I would assume that Avri then will give the report for our work team?

Ray Fassett: Yes.

Ron Andruff: Okay, very good. I just wanted to make sure that you follow up with her on that just to make sure that she's informed that she'll be making that report because I'm going to respond back to (Chuck) now and just say that I'll chair that meeting on behalf of him and (Phillip) taking on later, okay?

Ray Fassett: Yes, very good. Very good, I'll follow up with Avri on that, great.

Ron Andruff: Okay, very good.

Ray Fassett: Thank you, Ron.

Ron Andruff: All right, bye for now.

Woman: Bye.

Ron Andruff: Bye, everyone.

END