

**Transcription ICANN Helsinki
GNSO – NCSG Policy Committee Meeting
Tuesday, 28 June 2016**

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Marilia Maciel: Hello everyone, good morning. We are starting the meeting up -- the (unintelligible) meeting of the non-commercial stakeholder group. I'd like us to please start the recording at this moment. And thank you. And please let us know if we have remote participants. Maryam, I think that you are looking at it. I'd like to ask you to please speak your name clearly on the mic before you make your interventions. If you want to ask questions you can always most of the table -- we still have places on the table -- if not, you can just come to the mic in the center. We don't - we do not have roving mics at this moment. But we do have a mic in the center so you can come.

So you can see the agenda items for today. We have briefly discussed these agenda items and since we are in a meeting -- B meeting -- which is a meeting that is focused on policy development and pretty much oriented by the work of the working groups that we had, we thought that it would be interesting to have a meeting of our policy committee also focused on the working groups and the tasks that we have in front of us and the most pressing issues that we have for the next month.

So we have divided the agenda basically in four parts. We will need to be very strict on time because this will be a very short conversation and we have assigned 15 minutes for each of these topics. We have asked some of you to kindly introduce the topic. The idea is not that we go back and explain the whole issue. We had a brief meeting over lunch yesterday that was kindly organized by Tapani in which we had some newcomers and we had the opportunity to explain some of the issues in more length.

The idea of this meeting is to discuss where we are right now, so what is the status quo inside this working group and to try to make some strategic planning. So what are the pressing issues on the table? How can we the TC and our community help you who are working inside the working groups to move the work forward? So see this discussion as a more touching base of where we are, what are the strategic concerns, and how we can organize ourselves to work better inside a working group.

The first part of the session will be dedicated to our GNSO motion that has been tabled by the intellectual property of community. We are a bit concerned about it. We will need to vote it in our GNSO session on Thursday. That's why we wanted to bring to this discussion of this motion here in the policy committee. And as a starting point if you want to add something, Matt, I would like to pass the microphone directly to Ed so Ed can present the topic. Ed.

Ed Morris: Thanks, (unintelligible). Do we have the slides I sent to Maryam? Okay. Okay, ICANN is changing. For those of you who perhaps haven't been following accountability as closely as some of us, accountability really is corporate reorganization in many ways. The GNSO now needs to reorganize itself in part to be able to take part in the new ICANN in something called the Empowered Community. Seven new superpowers -- this is what James Bladel - the GNSO Council Chair -- has called them. Other powers - there's a right to ask for documents through inspection or the right to request an investigation if you - we suspect some wrongdoing, say in finances. Or

powers that are actually not part of the empowered community but have been devolved directly to the SOAC's such as the GNSO.

So we need to rewrite some of our organizational rules here in the GNSO. And if we can go to - and that's basically what point one of the resolution states is that we have to do something here to respond to the accountability reforms and the bylar (sic) reforms. Could we go to slide two, please?

This is the question. Point two, they're the before - and that we need some input. So drafting teams shall comprise volunteers from the GNSO community who can demonstrate reasonable knowledge or experience with the process of revising the ICANN bylaws. So we get a separate drafting team to actually do the work. And the question is who should be on the drafting team?

A big thing for the NCSG is selection equity. We got to make sure -- at least in my view -- we need to make sure that all parties within the GNSO -- all four stakeholder groups -- are represented equally. We don't want a situation where there's a call for lawyers or a call for those with experience in the CCWG -- an open call -- because we'll be terribly outnumbered. Who should select the folks that are going to be on the drafting team? Should it be the council? Or should (unintelligible) devolve to this group, to the NCSG policy committee to select our representatives and the other stakeholder groups select their representatives?

And what should the qualifications be, if any? Should they be set by council? Or should we -- each stakeholder group -- be able to select our representatives - should we go in that direction on the basis of our own criteria? At the GNSO working session yesterday I did make the point that we needed to have equitable participation. We know the staff wants to be a small group, so the council chair James Bladel in passing said, "Maybe we just have two per group." But we need to open it up to the floor in terms of who

should select, who should be on it, and what qualifications -- if any -- do we want?

And I might as well get my personal view out of the way. As long as we have equal numbers I'm not so concerned about the selection. Initially I was part of those who thought councilors should be part of the group. But James has made some posts that actually have switched my view. I do believe that it's in our interest to open it up to anybody in the NCSG and my preference would be for the NCSGPC to select our representatives and not have council do it. But why don't we open it up for others and get input for what folks think. But the one thing that I would stress is I think it's very important that we make sure that the appointees are appointed on the basis of stakeholder groups and not constituencies as the IPC will propose. And that we have equal numbers. That's my principle concern. Thanks.

Marilia Maciel: Thank you very much, Ed, for these clear explanation. I would like to open the floor for comments. I think that Ed has posed very clear three questions to guide the debate and it would be excellent for us to hear your views so we can have a more informed discussion on the (unintelligible).

(Gil): (Gil) (unintelligible) for the record. I just -- again -- like to remind that there are members of the GNSO that are not part of any constituency.

Marilia Maciel: Good point. Any more comments? (Unintelligible).

Matthew Shears: Matthew Shears, for the record. Can you give us a sense maybe as to what the workload is going to be and what can we reasonably expect, given the length of the bylaws and the new bylaws and what are we looking for from these individuals? Thanks.

Ed Morris: I would suggest a fairly substantial commitment early on. We talked about the (unintelligible). You can see under point three the initial proposal was to get this done by July 31st. That isn't happening. We do need or it would be very

nice to have this done by October 1st, which is the earliest day that the empowered community needs to come into an existence. I would suggest early on the workload's going to be quite intense. That of - well, Matt, you've experienced and those of us in the CCWG have experienced it can be quite intense.

It's - we're going to have a lot of help from staff. There - at least I've been told that we may have one staff person more or less dedicated to doing this work with us for the first portion of the process. It's going to go on long term. I assume that they would deal with the WS2 reforms as well and there are going to be things involving the GNSO that's going to come out of there. So I'd suggest it would be a long term commitment but top heavy in terms of time of involvement.

Marilia Maciel: Yes, (unintelligible).

Man: I think connected to the question of who shall we select or who should be in the drafting of (unintelligible) I think it would be very important that we ensure how the people who are in the drafting team actually can report back to the group of the constituency and actually can make sure that these things are going. I think we should - it's - actually for me it's not so important who is going to do it, it's more important how we help them, support them, and get - and keep the dialogues going. I think that's - might really be the most - more important question. Thank you.

Marilia Maciel: Thank you; absolutely right. We can include this topic in a PC calls regularly until it's done. Ed.

Ed Morris: Yes, one point I would want to make - there's been some talk that only CCWG members should be part of this team. I disagree with that. I think you need to have two skillsets. One is the CCWG and the CWG and the other skillset is knowledge of the GNSO. So for example, for someone had just joined ICANN recently that's been part of the CCWG but doesn't really

understand how the GNSO itself works is probably not a good person to have on the team. At the same point, having somebody that has the skills and knows how the GNSO works but has no knowledge of the CCWG is probably not an ideal pick either. We're probably looking for a combination.

Marilia Maciel: James?

James Gannon: Hi, James. I just want to make sure that people didn't misinterpret my mail. Because I had it in my mail that as an example of why I felt it shouldn't just be council members because there are many people on the CCWG that were not council members rather than saying that it should only be CCWG participants or members. If we have some lawyers here -- for example -- that were not CCWG members that want to help us out with it, please, you know. I want to make sure it's clear, that I'm not being misinterpreted.

Marilia Maciel: All right, (Ben Clause). (Ben)?

Avri Doria: (Unintelligible). Just a quick question. I didn't quite understand what Ed was saying, because he was saying it didn't need to be people who were in the CCWG but it needed to be people who understood the CCWG. So that seemed to me like a contradiction. So I was just curious.

Ed Morris: Well, you can understand the output if you weren't directly involved in the working group, I would suggest. You just need somebody that's familiar with the output overall as well as a knowledge of the GNSO. At least in my view. And I could be wrong.

Man: I think when you read the questions, I mean, this one's clean for lawyers. So we should make sure that only a certain percentage of the participants are lawyers. Maybe that we say maximum 25% of them, even if it's completely discriminating in my opinion should be no more than 5%, but it doesn't matter. But I think we should make a conscious effort not to push in too many lawyers.

Marilia Maciel: (Unintelligible).

David Cake: I just wanted that course that councilors not be the only people that really understand the GNSO. Ex-councilors would be excellent and anyone who's been involved in enough working groups and followed the GNSO enough to know what's going on. I don't think - you know, and of course you can always ask, you know, a counselor or someone who's on the SCI or other body that deals with the minutia of council process and we'll be happy to help you.

Marilia Maciel: Ed?

Ed Morris: Actually, can I ask a question - David has been around the Swiss a lot more than I have. Is there a reason we're just not sending much of this to the FCI?

David Cake: The - mostly - that's a good question and a lot of the stuff about implementing the GNSO improvements from the review discussed about this on the weekend about actually the SCI -- which is supposed to be the committee for improvement should be dealing with a lot of these issues about how the council is changing. And it really is - just is - I think it's a sort of mental block that traditionally we've tended to think of the SCI as being, you know, dealing with the minutia of council process rather than sort of big issue changes and stuff.

Marilia Maciel: Just a quick comment on this question, because this was asked in the meeting and it seems that the position from staff perspective was that the charter of the committee was really clear and it did not leave it any further work besides what has been done already. So it would be not allowed to work unless GNSO decides to pre-discuss that. It would have no role in implementing the accountability proposals. I have that Stephanie Perrin and then James.

Stephanie Perrin: Stephanie Perrin for the record. I was just going to ask that for the benefit of newcomers and those of us who have acronym fatigue spelling out the acronyms -- which David did for the SCI - for the structural committee on improvements -- might be helpful. Thanks.

James Gannon: Hi, James (unintelligible). I also must admit I don't know why the SCI isn't in - I had assumed that might have been out of scope for them or something, but if it is potentially within their scope, I don't see why they're not doing it.

David Cake: I'm sure it will be discussed. Whether or not it's in scope, it will probably get discussed at the SCI and I would like to make this - take this opportunity to say that if anyone would like to take my position on the SCI, that's - I wouldn't object.

Marilia Maciel: (Unintelligible) trying, David. Statistically speaking, I think we should think about if it's a good thing, thinking about the composition and the involvement of people and SCI would be a good thing to send there or to create a fresh structure for it. Ed, do you want to speak? I wanted to bring forward because we have time, but...

Ed Morris: One last point. One of the things we may want to consider about baking in to the drafting team is take forward the SCI requirement for full consensus to go forward. I'm a little bit concerned that we're going to be outnumbered in some of this. And these are key issues for the structure of the GNSO that we're going to have to live with for years, if not decades.

Avri Doria: Avri Doria again. Two things. One, the scope of the SCI is determined by the council. So its scope is irrelevant. And in terms of the SCI's procedures itself, it's on any issue it can decide that that's not an issue that it has to do by full consensus. So - and if the council does expand their scope to include this, then they can define it as a non-consensus item. And I wish you luck, David. It took me a full year and a half to find someone to take my place.

Man: Ed, you keep mentioning outnumbered. Do we - how do we address that strategically?

Ed Morris: We - the key numbers for newcomers when you're looking at how we compose things in the GNSO the two key numbers are seven and four. Seven are the number of constituencies, four are the number of stakeholder groups. Our friends in the commercial community tend to like to do things in seven. We need to be stressed that we need to do this in fours, by stakeholder group. We address it by basing the organization of the group on the structure of the council, rather than on the number of constituencies.

Marilia Maciel: Thank you, Ed. And that brings me to the point that I wanted to reach, which is to move these questions forward. I think that many of us have reiterated that it's important to - that these members are appointed in a stakeholder level. I did not hear any voices saying the opposite. Are we in a rough consensus that they should be selected on the stakeholder level? Is that it? Excellent. And then we should select I think that it comes normally that the NCSG should select and maybe we should take in our group this issue to the PCT. Maybe make a call for nominations -- self-nomination -- and then the PC with these names of volunteers make the selection?

And the last point, which was qualifications. I think that I heard that it's important to have people with experience in a discussion of the CWG topics, not necessarily involved in a working group but that are very familiar with the outcome and the issues but also have a good knowledge of the GNSO and operating procedures of the GNSO. Is that it? Anything else to add in terms of qualifications that you think will be relevant? You can always come back to that because if we do succeed to take this issue to the stakeholder level we'll have a moment to discuss this in the MCSG future discussion, where if you can think about something, just let us know.

Any other point on this agenda item or can we move forward? Okay, so moving forward to our second agenda item we are now discussing the

different working groups that we have in front of us. Maybe let's start with the easiest one - not in terms of subject but in terms of its (unintelligible) maybe the not so old working group. Kathy, why don't you give us an overview of where we are in terms of (unintelligible) protection mechanism discussion and how are the strategic issues that we have in front of us and how we could assist the work of members of the working group at this stage.

Kathy Kleiman: Sure. I'm Kathy Kleiman, I apologize for being a little late. And I'm one of the co-chairs of the Wright Protection Mechanism working group. For those who don't know, the Wrights Protection Mechanisms are the ways we handle domain name disputes and other forms of trademark protection. So we're - this working group is going to be looking at the uniform dispute resolution policy, which was ICANN's first consensus policy adopted about 19 - 16 years ago. And also the trademark protections we created for the new top level domains, including the trademark clearinghouse, something called the sunrise period that allows trademark owners kind of a right of first refusal and new top level domains for domain names, and something called the trademark notice.

I need to tell you what our constituency has contributed to this, which is the balance. We put in the protections over the years for registrants. Right, Maria? We work really hard on that to make sure that there was due process that was - that there was fairness, that there was fair use protections and fair dealing protections. If we don't argue for them, no one will. And so that's kind of been our role in all of this.

So we are certainly looking - I'd love to know; who in this - at this table is a member of the Wrights Protection Mechanism working group? Fantastic. Who's an observer? Is anybody an observer? Is there anyone who would like to join and join us? You don't have to be an intellectual property person. You could be a human rights person. And that would be really good. Go ahead, (Neil).

Because I can tell you, there's an army of intellectual property people there, as there should be. This is what they're paid to do is to expand and work with trademark rights and their protection rights. And it's ours to push back and try to represent all those who have domain names and will want them in the future and maybe using dictionary words that happen to be trademarked.

So strategically we could use more people. Let's start with that. We could definitely use more members from the stakeholder group and we could use coordination with everyone who's on the subsequent procedures working group. Avri, we've been having - we had a call - the co-chairs are having calls, but nonetheless, we could use, you know, people who want to talk who are some of the - both working groups and want to work with us. Because ultimately what this - my working group does feeds into what the subsequent procedures working group does and the new applicant guidebook that will come out for new top level demands. What other questions did you have, (unintelligible)?

Marilia Maciel: Where are you in terms of discussion at this very moment?

Kathy Kleiman: We're working on something called the PVDRP, which is the Post-Delegation Dispute Resolution Procedure, which has to do with actually challenging the top level domain. And initially this was a trade - it was the ability of the trademark owner to take away an entire top level domain. And we negotiated a very high bar for that, because there could be a million registrants in that top level domain at some future time in the new GTLD. So no one's ever used this procedure, so we're looking at - we thought it would be an easy place to start to look at something no one's ever used, get our feet on the ground, learn how to work together.

We're going out to the trademark clearinghouse, which is this database of trademarks that in the old days when we created some new top level domains each one created a separate database. Each individual registry created a separate database of trademark owners who were interested in

that. And this is kind of for efficiency, we created one big database. But is it being used properly? Is it being overused? Is it extending the rights of trademark owners? Is it not doing enough? So those are questions we're asking now. That will be the next level until we're in data gathering phase for that.

So I will ask again, but not for hands. I will put out a plea for anyone who is interested in trademarks for use, fair dealing, balance, basic words, access to small organizations to future domain names, that this is a really good place to be to work out the balance of who can get domain names in the future.

Thanks.

Man: Kathy, are there specific things and specific skills or specific writing abilities that you need? And what exactly are we looking for here in terms of support? I think it would be really useful to get a real sense of what would be strategically useful in terms of additional resource.

Kathy Kleiman: Anyone who does not believe Time-Warner owns the words time, life, people, and fortune. That's it. For those who don't know, those are titles of major magazines of theirs. And so there are pushes for certain brand owners to own basic, generic words. And our job traditionally -- for 15 years -- has been to push back. So you don't have to be an intellectual property attorney, you just have to love words.

Marilia Maciel: Two questions, Kathy. We were going to bring this towards the end of the meeting because it's more related to administrative issues of the PC, but one of the things that we want to propose to you guys is that we take our calls -- our two hour call -- that we divide this call in two parts and part we do go through the GNSO agenda, but maybe more in a more expeditious manner. And the other part of the session we dedicate to substantive issues. And since we are in this moment and we three want to attract volunteers, maybe it would candidate for substantive issue that we could discuss in a manner that you will really explain what are the issues, what are the different types of

protection mechanisms that we have so people feel encouraged to be involved and really help you out in the (unintelligible).

Because I feel - I think that for newcomers, this seems like a huge lot of work that is very specific but maybe not so if people stop and understand what is at stake. Will you think it would be helpful for you if we organize a substantive call soon on this particular issue? Would you be willing to present it and...?

Kathy Kleiman: I would actually urge someone else to present it. I would urge anyone else who's a member of the working group. We should be sharing these types - I'd be happy to work with them, but I would urge someone else to learn it and present it so we have at least two people who are really up to speed on the issue. So that's...

Marilia Maciel: And then the second question, I do know a lot of lawyers related to intellectual property that do creative commons, do work on the sort of society organizations that litigate but that are not involved in ICANN. Do you think that this would be a moment to do a reach out for this group that we know and maybe raise awareness of the importance of what we are discussing here? Because the issue is maybe a good moment to have a discussion with them will be the upcoming call that we will have. So it could be not a call for our members but trying to expand the base of people that are involved with this particular area.

Kathy Kleiman: If we're bringing new people in -- particularly people with expertise -- I would recommend that - it would be great to know who they are and what their base of expertise is. And maybe to plan it as a special type of outreach meeting. Because they may not know anything about ICANN. They may not know anything about what we do. Kind of where their starting point is becomes our starting point. They may know a lot about internet rights, they may know a lot about trademarks but - copyrights but not trademarks. It would help to know kind of who they are so we can base our workshop around that.

Marilia Maciel: Excellent. Avri Doria?

Avri Doria: Avri Doria speaking. Quick question that that brings up. Is there a course, a set of lectures, a set of slides that someone could put together to - here's the 101 for a lawyer who speaks lawyer stuff already that you would need to know on entering the ICANN fray? Is that something that - because I hear that frequently is, you know, we bring in experts from outside but this place is just off kilter enough that they don't understand how their knowledge applies and spend a lot of time suffering and getting frustrated? So I'm wondering whether that's something that one of the many fine educators among this crowd can actually think about so that we could bring people in and give them a quick, you know, here's how to take your legal knowledge and make it applicable to this strange place.

Marilia Maciel: That's an excellent idea and I think that it would be relevant for so many areas of what we do, but if the one seems like a good candidate -- again -- I was just while you were speaking looking at ICANN learn, because I do know that they have developed courses on different issues related to the organization. I do not particularly see on eon rights protection, but maybe there is. We could use it as a starting point, considering that many of the courses that ICANN learn produces -- at least for me -- a little bit promotional. And so we could use the starting point but view the point and discuss the issues that probably would not be presented there.

Kathy Kleiman: Quick note when it comes to trademark issues that ICANN has spent a lot of time educating trademark earners. We have to be very careful about the materials that we want. They spent a lot of time and a lot of money educating trademark owners and not a cent educating registrants. And that's a real problem. So - not that I'm offering to create their materials -- although I did at one time and they said no -- so - for ICANN learn. The just - I'm not sure what they created is the balance types of material that we need. So I just throw that warning out there. We do -- as I think was being suggested -- someone really in this group should develop - a great teacher should develop material.

And we can help them. But it would be nice to have really balanced material.
Thanks.

Ed Morris: Thanks (unintelligible). Ed Morris for, I guess, the record. One thing for those in the room and those remotely who - first, that was a great idea, Avri Doria. But for those who are in the room or remotely who are thinking about joining us and joining the RPM group, Kathy and the chairs and staff I guess put together some wonderful introductory slides to the issues that are going to be faced by the RPM. The first few weeks of this working group were a little bit unique for me because they concentrated on explaining the issues rather than diving in and solving them. So for anybody interested in joining, just go into the archives and you have some great slide sets to introduce you to the issues.

Kathy Kleiman: Actually, Ed's exactly right. We created two workshops not only for members but for observers also -- for everyone -- and we laid out everything in a very fair and balanced manner, since we all worked on it and edited it together. I forgot about that. We can send out the links to those introductory sessions that we created for members and observers. That - it's a great starting point because what we assumed was that somebody might know the uniform dispute resolution policy but not - might not know the trademark clearinghouse. So we want to make sure that everyone knew everything. So I forgot about those. Thanks.

Marilia Maciel: Excellent. Any other comments about this particular working group? I don't see any hands. And we are going now with our agenda, so maybe we should move forward to the next one. This is new (unintelligible) subsequent procedures. We have one of the co-chairs of this working group that belongs to NCSG, Avri Doria. So Avri I will pass the mic to you so you can give an overview of where you are in some of the discussion, what do you think are the most important issues strategically for NCSG and how can I help you.

Avri Doria: Thanks. Avri Doria speaking yet again. So I'm one of the three co-chairs. One of the things that was pointed out – and I'll bring this up as an aside so I'll start with a rabbit hole before I even get to the group – is that this is one of two groups in the GNSO that's been singled out as not being sufficiently diverse in having three North American chairs.

So there may be a push eventually to diversify the chairs on it. And given my wants I will immediately put my hand up as the person to be replaced so therefore possibly will look inside NCSG for someone to replace me because I love being replaced on things. It's actually become one of my favorite ICANN sports.

So going on with that, so basically we've got this. It's a very complex PDP or a policy development process in that it's both complex and simple. It could be simplified in that we have a policy for new gTLDs. We have an application guidebook, the AGB that people speak of.

And if we change nothing then we can just go on. We don't need to change anything but we can change everything. So the complexity comes into do we want to change anything and if so, what? It's complex enough in that we basically - there's normally - it used to be called constituency comments. Now it's called community comments.

But it's basically you send out to all the SOs and the ACs and the constituencies and the stakeholder groups and ask for comments. We sent the first one out which is on what we called fix overriding issues. And the overriding issues – and I have to use a crib sheet because this is more complex than my memory can deal with – is basically these overarching issues.

And the overarching issue is - oh I should have kept that in front of me. But the first one is should we have another round? Actually, no. Should we have

any more new gTLDs? Do we want to call it a round? Do we want to have rounds or are these subsequent procedures an ongoing issue?

What are some of the others? You'd think I'd remember all these things. TLD differentiation. In the last round we just did there were standard and there were community. Now we know about brands. Now we know about geographical names. Now we've had all kinds of emerging kinds.

So do we want to have differentiation for all of those? How do we assess them, you know? Predictability – the last time we made a very strong demand for a predictable round. It didn't end up so predictable but then again when people are talking about flexibility and dealing with situations that hadn't been - so anyhow, there's a bunch of these issues.

And we've put out our first call for comments that's gone to the NCSG and the NCUC and NPOC. And that call for comments went out 9 June and I believe needs to be responded to by 24 July. So that's probably the first thing that's important about this group is looking at that, getting someone to start saying, you know, I know that there's probably a division in the community of NCSG on do we need more gTLDs? Do we have enough of them already?

I mean, I think we need more of them but, you know, that's kind of a question there, and so on. So we really need to do a bit of conversation to actually figure out what the NCSG believes about all this.

We're having three meetings this time. We have one meeting today. We have one of those cross-community meetings on this topic later this afternoon and then we have two meetings tomorrow, one of which where we're talking on the document that we've put out for community comment. And then the second one where we start talking about the future work.

The future work is basically four or five tracks of different things looking at process, looking at things like community, looking at contractual conditions.

Basically there's - I forget the number of topics but it's many. It's several score I believe of topics that have been grouped into a couple groupings that we're then going to start working on.

Again that's a new place for people to come volunteer, be part of. The process we go through and we went through on the first part is we talk about them. We blue sky the issues. We collect the first impressions and the questions and then basically send out the community comments for want of a better name and ask each of the communities to say this is what we want. This is our impression.

And then we'll write the first draft of the recommendations. Then we'll have, you know, a comment period and then we'll do the final. Our slate is to be done with this sometime in '17, whether it's halfway through the year or the end of the year. It really depends.

We have an incredibly complicated schedule but looks like an engineering schedule to build an airplane in terms of the parts and interconnections because as it was said before, we're also waiting on output from other groups.

So, you know, it's probably one of the most complicated PDPs I've been involved with since I've been here, maybe one other was close, but... So, you know, that's a very quick hand wave. And indeed I did hand wave. So I guess I could take questions.

But I would come, you know, to today's cross-community if you've got nothing better to do to get a detailed view of what's going on with it because there's really pretty slides.

Marilia Maciel: Quick question. You mentioned the overarching issues that you are looking at. And the baskets that you have identified in the beginning are going to be

(tackled) afterwards? Or have you divided the work into those baskets with the different clusters of issues?

Avri Doria: We've divided them into several different classes of issues and for example one issue - and one of the things we're going to do in the meeting this week is actually talk about the baskets and make sure that the things are in the right basket, that we have everything in the basket we need to have in the basket and so on. But the first one is process support and outreach.

Second one is legal and regulatory. Third one is string contention, objections, and disputes. The fourth one is internationalized domain names, technical and operational. So that's a very wide basket.

You know, but just to give you a quick example, if we look at proposed Track 3, string contention, objection and disputes, freedom of expression versus GAC advice, community processes, reserved names, string similarity evaluations, effective, fair and efficient were they, objections, review rules around standing fees, consolidation, consistency of outcomes, appeals, oversight, role of independent objector, accountability mechanisms, community applications and community priority evaluations. So that's just one of the baskets.

Marilia Maciel: We get the complexity. Carlos please.

Carlos Raul Gitierrez: Yes can we go back to the questionnaire? The questionnaire is very long and we expect the questionnaire to be answered by the groups. Are we right? And we don't have you to draft answers I guess. So I think it's very urgent to look at this questionnaire and try to get a group ready. This is not a questionnaire that can be answered during an afternoon.

Marilia Maciel: Thank you Carlos. I will ask Maryam to include this as one of the urgent projects in our control (lists) and (trouble) that we're going to speak about. So

Carlos just taking advantage that you are here, are you in any way involved because of the...?

Carlos Raul Gitierez: I'm the liaison of the competition review and that group. That's why I do follow regularly the calls as far as I can and participate in the meetings of the chair of the competition and the chairs of the policy groups. So yes I'm directly involved.

Avri Doria: This is Avri again. It would be a really good one outright too because he understands what we're doing.

Marilia Maciel: Any more comments on this particular working group? Kathy?

Kathy Kleiman: Do you want to use this opportunity maybe to create a small group that wants to work on some of the issues to respond? We're going to have this with every working group that in the old days kind of informally often whoever was on the - you know, whoever was kind of co-chairing would help draft the comments.

But it's gotten too big and too busy. So we really need I think for each working group, when each set of public comments comes in, maybe the first thing we could do is form a subgroup of people who are interested and maybe can take - it's overwhelming.

I mean Avri what you just read is overwhelming to try to respond to. But until we start breaking off pieces - and it's probably too big to assign to one person unless somebody really wants to jump in and do it. But if we say the subgroup maybe everybody can take pieces of it.

Marilia Maciel: Excellent. Can we maybe have an expression of interest here or maybe take it to the list and people could volunteer. That will be nice. I just would like to call attention to a document that (Fidushi) has produced together with the people from the cross-community working party on ICANN and human rights

on identifying human rights issues, potential human rights issues arising from the discussions on the working group.

I think that it's a valuable document as well. It has been circulated in the (CWP) mailing list but I'm going to forward it to the NCSG mailing list as well. So thanks (Fidushi) for the work.

Avri Doria: I just wanted to add one thing. I personally don't think that especially people that are co-chairs of the working groups should be the ones writing a constituency's comments. But I'm certainly willing to help and explain and talk at length and hopefully in an unconfusing way next time.

But I really wanted to give an impression of the complexity to help and make sure that what we're asking for is understandable and clear.

Marilia Maciel: Thank you Avri. We don't want to put you under pressure but if you want to be involved maybe you can retell to us again at this session and we can talk to some of these smaller group to work in a comments. But of course we'll send an e-mail to the list and ask for volunteers. Is that okay? Okay so I think we can move on to our next...

Carlos Raul Gitierrez: Just the last...

Marilia Maciel: Yes (unintelligible).

Carlos Raul Gitierrez: ...(unintelligible) commence his answers to the questionnaire. So we need enough time afterwards, after the small group does that, to circulate it and look at it and try to find out if we have a common position on all the questions or if we have divergent positions on the questions.

That's very useful already for the group as such to follow up. So do it with enough – we should do it – of course I'm also ready to help – but do it with enough time that we circulate and the people really that didn't participate in

drafting the answers, not the comments, the answers, if they agree or if they are different colors of the responses and so on would be most useful.

Marilia Maciel: Thank you Carlos. Sounds like a good way forward and thank you for volunteering. I think we can move on to the last topic on our agenda item – WHOIS 2 and what’s going on in the discussions related to WHOIS and privacy.

We had a session on just the four-hour session, and I’m sure that Stephanie Perrine can update us on what are the issues on the table at this particular moment and how we can assist you. What are the strategies for the future. But I know that there are several members here -- (Aiden) and James -- so looking forward to hearing from you guys.

Stephanie Perrin: Okay thanks very much. Stephanie Perrin for the record. At the risk of sounding like I’m making a pretty complex working group even more complex, I’d like to bring in some of the other activities that are going on that relate to the WHOIS replacement or the registration data services.

And there is not even agreement on whether RDS is Registration Data Services or Registration Directory Services. And that’s two different things. So I won’t bother trying to explain that right now.

I do think I’ve been musing about this discussion over general education. And I’ve been at this quite a while and I still find the RDS Group very confusing at times, hard to keep all the documents straight.

So the thought of maybe running a sort of RDS 101 with occasional Webinars just for itself just so that we can follow is something that might be useful.

Anyway, what’s happening, the GNSO has struck this committee some time ago. David can remind me when no doubt but we’ve been at it for a while. We proceeded in a manner that where we gather documents that might be

relevant to the original charter and the original issues report – 87 pages, excellent report.

Then we have been distilling possible requirements and by requirements that's a very broad definition of requirements including legal requirements, data element requirements, the utility requirements, flexibility, technical, you name it.

Anything that somebody thinks is a requirement could wind up in this thing, and I don't know the number. We've been joking about 999, but I do think it's something like 800 requirements.

Man: It was 1960 three days ago, but more have come through today.

Stephanie Perrin: And I thought they were kidding. Okay let's go with 999 requirements. So at the last meeting which was we've taken a very egalitarian approach to meetings, which isn't always the case. At ICANN once a month there's a 1 o'clock in the – for me one o'clock in the morning – in other words, a middle of the night meeting for North America.

The Australians really appreciate this. Half the time David's traveling in North America when it hits but...

David Cake: The Australians and everyone else who is in the single most populated time zone in the world.

Stephanie Perrin: Oh dear. Anyway, I'll leave that one alone. So at the last meeting, which was just before this meeting, it was decided that staff and Susan Kawaguchi who is one of the co-chairs I guess you're calling yourself, even though there's three, right?

David Cake: We refer to her - what they do is talk about the leadership team (generally).

Stephanie Perrin: The leadership team.

David Cake: One chair and three vice chairs, and I'm the vice chair from (unintelligible).

Stephanie Perrin: Well they have started the noble job of distilling these down to commonalities. And that was to be done by Friday, which I think is beyond Herculean. And I should say that I have actually read a lot of these documents just because I'm doing a dissertation on it, but I challenge anybody in this group to tell me that they've read all the documents because I seriously doubt it.

Anyway, that's where we are. This is a huge pile of very difficult documentation to follow. And there are inherent problems in assessing them because some of the documents have legal status. An opinion from the Article 29 group for instance have some legal status because that's how they're going to opine on a data protection law which they alone are responsible for in Europe.

So that's not the same as somebody's paper that they've written for instance or somebody's book or whatever or a wish list that was published by somebody. So we have kind of apples and oranges and grapes in there in the same pile. So good luck to the guys distilling it.

So we had a public session which unfortunately I missed yesterday because I went to a last minute meeting that was called to discuss a letter that went from the intellectual property constituency to the board regarding compliance.

And why does compliance have anything to do with the WHOIS? Well it has to do with compliance and accuracy and how much the compliance section of ICANN is enforcing the contracts.

So this does have some relevance on what we're talking about because it has to do with of course law enforcement access and intellectual property access.

So we did have a public session where the working group members were not encouraged to jump in and others were encouraged to provide more requirements. And I guess that's where we got the 39 extra.

I don't mean to make light of this. This is very serious business but we have to retain our sense of humor or we're going to run screaming from the room because this is going to take a long time.

So we had another meeting today at which we reached the agreement that we would start looking at purpose first because we have - I'm going to be like Avri. I should know these things by heart but I don't.

So we've got purpose, privacy, and data elements are the three major categories that we've been looking at. And I should say that we had previously split into small working groups where we figured out all of the places where there were documents that might provide these requirements.

So we decided to start looking at purpose. Now if I may, since you were foolish enough to ask me to speak on this I'm going to crawl on my hobby horse about purpose. I'm concerned and have been concerned and I haven't won this battle but that doesn't mean I'm going to stop.

We can't really start talking about a new data system – whether it's a directory or not – without determining what ICANN is up to in dealing with this. And in the original enfranchisement of ICANN it was right in there in the requirements from the commerce department that there would be a WHOIS database and the following elements would be in there.

And those data elements have grown over the years. Despite the fact that the data commission has opined many times that this was not legal, the number of elements continues to grow. The data retention requirements continue to grow.

The original purpose has never been defined. The WHOIS review team went with a very narrow technical purpose just for the purpose of getting through that particular exercise. But the actual reason that ICANN collects uses, discloses and retains registration data has not been defined.

So in my view, we should define that first and then start figuring out the requirements. I would liken this 999 requirements to like theoretically everything in a food store is good to eat except the household cleaners aisle and the pet food aisle.

We're just going through and throwing everything in. We can't pay for it and we're not going to eat it. But we still have now a choo-choo train of shopping carts coming along. Good luck sorting it into a decent dinner. I didn't use that today but, you know.

How we get back to this I don't know, but I'm heartened and opinions differ here on how we go at this strategically. But I'm heartened by the fact that we're at least starting with purpose.

Now what we've been talking about in that pile of purposes is the purpose for which I use the data as whoever you are – law enforcement, registrar, whatever. That's not the same as the purpose for which ICANN is performing this function which is what I'm talking about.

And in order to figure that out under data protection law, that's sort of step one in figuring out whether anything is legal or not. So – but at least if we start looking at some of the purposes then we can start imagining that we had asked the preliminary question first and referring back and figuring out whether it's a secondary purpose or a tertiary purpose or whatever.

So we don't have a meeting next week. We have one the following week. And as much as I have been basically telling you about how this is a hair pulling out experience, it's also a very big fun working group where you will...

Okay stop, come on. Keep a straight face, Avri. Come on.

Man: (Unintelligible).

Stephanie Perrin: Yes I am. Well we need to cover our burnout level, you know. No, all kidding aside, there's a couple of hundred people on this. You do not - you can be an observer. It's a great way to learn about ICANN, maybe a little confusing but we're very happy to explain things to you.

So I would encourage anyone who's new to ICANN and saying, "How do I get my feet wet?" become an observer. At any point we can pull you in as a participant should you feel that okay I really would like to stand up and say something here and get involved. Perfect.

And like I say we're - just like David's trying to wiggle out of the committee on improvements and getting nowhere with it, we are looking for recruits, trainees, mentees. Kathy has signed up as a mentor.

We need all the help we can get on this because it promises to be about a five-year process. Thanks. Any questions happy to answer.

Marilia Maciel: Thank you Stephanie. Any other comments? Yeah, Kathy?

Kathy Kleiman: Yes I was wondering who in the room - and I'm sorry if you already asked - who in the room is a member of the working group? Fantastic. Who's an observer? Anybody? Fantastic. And who would like to join? That's all the other hands, right? Okay.

Stephanie Perrin: I should say that we are very, very lucky that the Council of Europe is sending Peter Kimpian. He's unfortunately on his way back home because it's been very difficult to get skilled data protection help. And he's a former - well he's with the Hungarian Data Protection Office but he's also assigned to the Council of Europe.

So we have somebody who knows what he's talking about here in this matter. So we're trying to keep him engaged. It's tough because data commission offices don't have the resources. We frequently hear the GAC saying we don't have the resources to look after ICANN.

Well data commissions are (covering) the entire marketplace, you know, of data protection issues so they don't have it either. So we're very lucky. And we have quite a few other experts.

Marilia Maciel: (Dave) and then Kathy.

David Cake: So yes, so, I mean I'm part of the leadership team of this (unintelligible) which means I've been trying to help deal with the sort of procedural and methodological issues which clearly have gone a bit off the rails lately. I mean I don't think it's a big secret the leadership team were not expecting the requirements process to end up with the quite, you know, nudging (1000).

The requirements I'm going to say to - even though it sounds very intimidating, part of the process we (went) every document or something that someone had said important. We went through it and we went okay what requirements could we extract.

So I mean some of these are things that we are very much in favor of like data protection law from - you know, from Europe and other jurisdictions. Some of these are things we aren't very keen on like, you know, (IPC) demanding the rights to business.

This is all very much - and some of this is - I mean it's people almost speaking off the cuff. So some of this will - and we've got a big process to kind of boil them down. A lot of them are duplicated. A lot of them are self-evident. Yeah, a lot of them are...

You know, every document, what should the WHOIS do? And, you know, it should not, you know, follow the regular and we go yes WHOIS. So but still that (unintelligible) is monstrous and the idea that we get through it by this week was ridiculous.

But it's become pretty clear that we do need to move to purpose after much to-ing and fro-ing. We're really hoping this one we're nearly out of the worst of the kind of procedural weeds of it and we can really start actually arguing about the things that matter. But hopefully it will get a little more interesting than it has been - well, a little more fun perhaps than it has been for the last six months.

And we have a special - the GNSO Council realizes this one is huge. There is a special provision that they were to sort of jump in at any time. That's not how it normally works on working groups, but we're really very welcoming on this particular one. The different issues will come up.

We want people from all sorts of backgrounds explicitly on this one. It isn't all about law. There will be - there are very practical technical things that we will, you know, not address directly yet but address in the abstract at the moment.

There are all sorts of issues. We need all sorts of people on this group. Don't let anyone think oh I'm not a privacy expert or I'm not a whatever. Please join.

Marilia Maciel: I have Kathy but we do need to wrap up immediately. Okay, thank you Kathy. Yes we had some (BCs) to discuss with you operation. We are going to send an e-mail to the list. Please make sure that you read it. It helps you work better as a BC. Thank you.

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