

**ICANN
Transcription ICANN Kobe
GNSO Working Session Part 1
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Keith Drazek: I assume we're recording this session? So if we could go ahead and begin the recording? Thank you very much. Appreciate it. So good morning, everybody. I'm Keith Drazek. Welcome to the GNSO Council Working Session of the 10th of March, 2019 here in Kobe, Japan.

I will take this opportunity to review the agenda. If there are any questions about the agenda for today feel free to ask. And then we will get to our meeting with the representatives from the NomCom. So first the agenda review. So just very briefly we'll go ahead and go through the agenda.

First is the chair welcome, I think that's been done; the - we will be meeting with the NomCom reps from 8:40 until 9:10, time necessary and permitting. And then we will have an update on the CCWG on Auction Proceeds. Then we will have a session from 9:45 until 10:15 for prep with meetings with the Board, ccNSO and GAC. And then a coffee break at 10:15 to 10:30.

From 10:30 to 11:00 a meeting with Finance; 11:00 to 11:45 will be our internal discussion on PDP 3.0 coming out of the Los Angeles face to face

meeting, strategic planning session. This will be an important opportunity for us as the Council to understand where we are and understand where we need to be and the work that needs to be done to implement the PDP 3.0 recommendations.

From 11:45 to 12:15 we'll have an update on the EPDP Working Group. And then from 12:15 to 1:15 we will have a lunch meeting with the ICANN Board here in this room. From 1:20 until 1:50 we'll have a meeting with the GDD staff. From 1:50 to 2:05 a meeting - a PDP update on Subsequent Procedures, so welcome Jeff and of course Cheryl is with us. From 2:05 to 2:20 we'll have a PDP update on the RPM PDP working group.

And I'll just note that there has been some recent developments just over the last 24 hours on the question about enforcement of the expected standards of behavior, the situation I think that most of us are familiar with that came out of the Barcelona meeting about some disciplinary questions coming out the work of that group so we'll have a more detailed discussion on that.

Then we'll focus from 2:20 to 2:40 on motion prep. We have no votes scheduled for this week, there's no formal motion in terms of a standalone vote but we do have a couple of things on the consent agenda. And then from 2:20 until 3:00 pm we'll have a visit from the group - the Global Commission on the Stability of Cyberspace, the GCSC, to give us an overview and an update on their work.

Then a coffee break. And then at 3:15 we will be meeting with the GAC this afternoon in the GAC room, so following basically at three o'clock as we head into the coffee break we'll get our - gather our things and be ready to move towards the GAC room. And we'll update on specifically where that is as we get closer.

So any questions, any comments, anything else that we ought to be adding or considering for the agenda today? Okay. I don't see any hands in the

room. I'm not in Adobe at the moment, or it's not in front of me anyway. So yes, I don't see any hands in Adobe either.

So with that, let us then move to welcome our colleagues on the Nominating Committee, so if you all would please come up front, and we look forward to your update.

Damon Ashcraft: My name is Damon Ashcraft. And I am the Chair of the Nominating Committee. And first off I just want to thank you for taking some time out of your meeting to allow me to come talk with you and meet with you. What I wanted to do today is just have sort a short meeting just to make myself available, also kind of briefly go over the positions that the Nominating Committee is going to be filling this year and some interesting situations we face because of the geographic diversity limits with respect to the Board so that you all could be aware of that.

Don't have a real formal presentation, but I did want to go over a couple of the slides that I have that really discuss the general open positions that we have today. And so if we could go to Slide 4 please? I'm skipping some of these because it's stuff you're fairly familiar with. Go back one, I'm sorry.

So basically this year on the NomCom we're going to be filling - we have lots to seats to fill. We've got three seats on the Board of Directors, two on this Council, we have three on the ALAC and you may not be able to read it but the ALAC seats do have some geographic limitations, one of them is Asia, Australia, Pacific Islands, one is Africa, one is Latin America and Caribbean, one on ccNSO Council. And then also we are filling a seat this year for the PTI Board, or Public Technology Identifiers Corporation Board.

That is a bit of an anomaly for us because if you go back you'll get a history of the NomCom, we've only filled one seat on the PTI Board. We did that two years ago, we did not have a seat open last year for that group. And so last

year we didn't fill a seat and so this year we're filling another seat on the PTI Board. So that's a general overview of the positions that we're filling.

We - with respect to where we're at, at the process, our application period is open right now. It will be open until March 22. And I would really encourage this group to, if you have any candidates or prospective candidates that you think that would be good for these seats, please let us know. We're here, the Nominating Committee, there's 17 of us, and we're here to be a resource to help you recruit people.

So if you would like us to meet with prospective candidates, to describe a little bit more about what we're doing and help recruit people please do let us know, we really would enjoy working with you. We appreciate any collaboration we could have with this group, it's very helpful.

Go on and advance to the next slide. And this is strictly, what I'm showing you right now is a world map, and it basically goes to geographic diversity and geographic diversity limits with respect to just the ICANN Board. And I'm sure most of you know this, but in case you don't, under ICANN's bylaws, there is a requirement that the total number of Board - of Board of Directors, including NomCom appointees and directors that come from outside of the NomCom in the community, you have to have at least one from each geographic region and you can't have more than five.

And so that at times can pose some different challenges for us because you can't just go to the same region and recruit a whole bunch of different directors. What is interesting with respect to this year is that North America is essentially full. That means that unless the composition of the Board changes, which would only happen either through, you know, a resignation or someone else left the Board for another reason, we cannot fill a Board seat with someone from North America.

If you look at that map, the regions that are low in Board members are Latin America, Caribbean Islands, Africa, Asia, Australia Pacific. Europe has four Board members; it does not mean Europe is not closed by any means, but it does have four Board members so we can't fill all three slots from Europe, we could fill a maximum of one slot with the European candidate.

Therefore, because of these limits and because of the bylaws of ICANN, we are heavily recruiting this year in those three regions that are underrepresented on the Board. Recognizing those challenges what we've done is we've worked with ICANN Org and the staff and they've identified - we typically have worked with one professional recruitment firm, we're working with three this year.

We have the firm that we've used in the past and we've also hired two additional firms. One is based in South Africa, they're specifically tasked with helping us recruit people from Africa for the Board. And then one is also based in Singapore and they're helping with recruitment in Asia. So those are sort of the - some of the unique challenges, and some of the differences that we're facing this year.

And, you know, at this point that's - I wanted to go ahead and see if this group had any questions or what could we do to provide you with more information about our process or where we're at right now.

Keith Drazek: Okay. Thanks very much, Damon. Much appreciated. And I should take a moment to acknowledge the - both the importance of the role that the Nominating Committee plays in our ICANN ecosystem, and the structure as far as, you know, these really important appointments on the Board but also in other important parts of the community including the GNSO and the GNSO Council.

So I imagine that some of our - some of the Council colleagues here may have some questions or some follow up for you. But I also want to

acknowledge the importance of the geographic diversity requirements that are built into the bylaws. I think that's something that we all recognize is a very important component and an important structure. It does present the NomCom some challenges but I think those, as I said, it's an important requirement.

So let me open it up for any questions. Would anybody else like to ask a question? Erika, I see your hand, go ahead.

Erika Mann: Erika Mann. I mean, the NomCom work is to some degree quite important for this community, not just for the Board. But I was wondering when you look back, do you ever have actually a discussion why you lose quite frequently very good members on the Board? And when you look in particular back some female members quite recently. So do you have a discussion about this? Do you do an evaluation? Why is this the case? Even before you evaluate if you want to actually make a recommendation to reassign them to the post. So is there ever - have you ever had a debate about this topic?

Damon Ashcraft: Thank you very much, Erika. I understand your question is why - do we have a discussion as to why certain people leave the Board...

Erika Mann: No, I'm not interested why certain people leave so I'm not interested in their individual decisions, that's absolutely totally up to them. But maybe there are organizational issue which, you know, hinder them or which make it harder for them to stay or which where they don't see a career path or whatever the reason is. So more the organizational question, I'm more interested in not so much in the individual question which is much harder, of course and maybe not even interesting for us to know.

Damon Ashcraft: Sure. It's a very good question; it's a very good point. I can tell you with respect at the NomCom we don't go back and look at sort of our organizationally what makes it challenging for certain people to serve. We're

basically focused on trying to fill the positions and trying to find the best people to support the organization.

I do understand and certainly recognize the Board - the commitments that we're filling and the seats that we're filling all require a tremendous amount of work. And frankly from my perspective what we ask of Board candidates, GNSO councilors, etcetera, is a lot. And I think that does hinder people's ability to continue on in those positions and it also hinders our ability to recruit. It's also something that I think is a little bit out of our hands as far as with respect to, you know, for example time commitment on the Board, huge time commitment.

It is a hindrance, when you, you know, to find people when you say all right, it's - here's how much time you have to serve, here's the compensation you get in return for that. Is that something we as the NomCom can change? Probably not. It's something I think the organization would have to work to change and it's a large, it's a big discussion to have.

So that's - so I guess to answer your question probably not because it's more of an organizational question, but we do work with the Board and the organization to identify and say all right, here's sort of the feedback that we're getting from folks.

Erika Mann: I don't want to occupy the discussion here but just maybe one - something you can maybe in your discussions with the Board and in your discussion with the organization maybe you want to pick up this topic because, I mean, when you look at this the quite recent decision in particular about younger women who left, I think there is a reason for it and the organization needs to understand it. So beyond the individual question, you know, is this what I want to do? This is up to them to decide.

But we need to understand is there an organizational issue which makes it harder for them to stay? And it's not the workload, they are perfectly fine to

work long hours; it is something else. So I believe it is important for this organization to understand it because otherwise we will be always limited to a certain group, you know, which was then - of people who will want to become the chair or the co-chair in the future and I would love to see this change. So that's why I'm asking this question.

Damon Ashcraft: Thank you very much. I think that's a good point. And it is noted and I will take that back so thank you, Erika.

Keith Drazek: Okay. Thank you, Erika. Thank you, Damon. Would anybody else like to get in queue and ask any questions? Okay, Michele, thank you.

Michele Neylon: Yes thanks. Michele for the record. I suppose just the - I'm not interested in getting into all this thing about the diversity and all that. But I think one of the issues we have seen, and it kind of links a little bit to what Erika was talking about where people are not completing their terms. The other one is that, excuse me, that there's been several people who have been appointed to various councils and other positions who don't seem to have been aware of the workload and essentially haven't turned up.

So you've got positions that are officially filled but they might as well not be because the person in question either doesn't turn up ever, or turns up so rarely they might as well not be there. And we've seen that across multiple groups over the last few years. And I just wonder, you know, is it being made really clear to candidates what the actual commitment is? And are they being asked to formally commit to, you know, actually turning up?

And I don't know what - how that's panning out. And because they're - it's - they're NomCom appointees, they're not subject to the same kind of controls that those of us who represent stakeholder groups and constituencies would be. Because, I mean, if I go off the reservation it's not easy for them to remove me but they can remove me.

And it's the same with pretty much everybody else at this table with the exception of the NomCom appointees, which is no reflection on NomCom appointees, I'm not trying to pick on them. Well I am sort of but not that way if you know what I mean.

Damon Ashcraft: It's a very good point. And, yes, so we do tell people what the time commitment is. One of the major challenges we face with respect to the non-Board positions on the NomCom is that we have not, and we do not, personally interview those candidates for the Board or for the, you know, for the GNSO and the ccNSO. We actually bring in and we do live interviews with the Board candidates and the PTI Board candidates. We do not interview on a live basis candidates for the GNSO and ccNSO.

Personally I think that's something that could be improved upon. It would radically change our selection meeting, it would radically change the budget of the NomCom but it is, yes, it's a good question, have you asked them about the time commitment? And the answer is, in front of the whole Nominating Committee, no we haven't because we don't interview. And I think that's something that I think we ought to change.

And there's a review that's going - that's happening right now but it's - it is - it's a challenge to appoint someone to a group when you've never actually had them in and interviewed them. They're interviewed in smaller teams but we don't have an in-person interview, and I think that's a weakness in the system and one that we should address.

Keith Drazek: Thanks, Damon. I've got a queue building so Michele, you probably want to respond and then I'm going to go to Julf and Tatiana and Scott. Thank you.

Michele Neylon: Thanks. Michele again. That's both interesting and incredibly disturbing. Sometimes I get the distinct impression that ICANN's budgetary processes seems to be penny wise and pound foolish. I'm not sure if you understand the expression, but I mean, it's this kind of thing where okay, you'll save say

\$20,000, \$50,000, \$100,000 in January but you'll have lost a half million dollars by the end of the fiscal period. I mean, it makes - this kind of thing makes no sense to me.

And I, you know, the NomCom has always been both one of those things that I think a lot of us understand its importance but a lot of us don't really understand the ins and outs of it which is partially due to the way you operate. But when these kind of things come out I'm left scratching my head, smacking my head against the keyboard, I mean, all those things. And it's - that really does disturb me.

Damon Ashcraft: I think it should and I think it's something we need to work on. And, you know, with respect to - one of the things I'm trying to do, my predecessor, that he did last year is we're trying to make the NomCom more open, more transparent, and have conversations like this. I mean, the, you know, the fact that you're a GNSO councilor and you didn't know that is an issue. And I think, you know, we all should be aware of these things and these limitations and it's one of the things that you know, we need to work on.

I don't know if it's something, I mean, as far as changing the interview process and bringing people in, I don't know if the NomCom can do that by itself without some type of change from the organization, but I think it's something we should work on.

Keith Drazek: Okay. Thanks, Damon. So we'll go to Julf and then Tatiana.

Julf Helsingius: Julf Helsingius for the record. Actually my first question was going to be exactly about what you have been talking about but then a slightly different angle which is that of individually many NomCom members have talked to me about the fact that they seem very preoccupied with selecting the Board members in terms of maybe if there's a little bit time over they look at things like GNSO Council. And so if you have any comments on that.

But then also another question that ties into that is sometimes you actually have some new candidates coming in but also people who have already been in the position for their first period, and I understand there's also no review of their performance and so whether they actually did a good job or not and that doesn't factor in, in the choice in any way. Am I correct in that?

Damon Ashcraft: Let me tackle that second question first. With respect to reviewing people's performance, with respect to - well it kind of goes for all the positions that we're filling. It's difficult to review people's performance because everything that goes on in the NomCom, all the applicants are confidential. So if Joe Smith from the GNSO applies, I can't go back and say hey how's he doing?

We do ask for references. We would hope that those references would include people that would have a good sense of that individual's performance. I know with respect to the Board candidates and things like that we ask for, you know, their internal reviews etcetera. And the Board, you know, gives us what they give us in that regard. And so it is something we definitely - we seek to find answers out but we do have some challenges with respect to that.

With respect to giving, you know, the GNSO or ccNSO, and ALAC, less important or less time than the Board, I don't think that happens as much. One of the things that we did last year which I think is a big improvement in our process is we used to not actually discuss all the candidates in person. We did a bunch of phone calls. Well that's just nuts to sit there and to do everything via phone call.

And so we implemented some changes last year where we actually had in person intercessional and we go through and we talk about every single candidate after they're initially ranked. And it doesn't matter if the candidate is ranked higher or poor, we discuss each candidate. And I think that has been a great improvement. Now are there additional things we could do? Yes. But that's - so that's sort of where we're at right now.

Keith Drazek: Okay. Thanks, Julf. And I'll just follow up that question and then Tatiana, you're next. I guess the follow on is, would it make sense or have you considered the possibility of doing sort of exit interviews with the actual NomCom appointees to GNSO and ccNSO, sort of at the conclusion of their term to better inform sort of like the next phase of the work or the next opportunity? I don't think that happens today but I'm wondering if that would be a valuable resource for future planning and better informing the, you know, the debates and the discussion at the NomCom.

Damon Ashcraft: We don't do that. That's a great idea. And it's a fantastic idea. I had not thought of that. It's a very good idea to do an exit interview.

Keith Drazek: I can't take credit for that, but I think we all know where that may have come from. Tatiana.

Tatiana Tropina: Thank you. Tatiana Tropina for the record. It's not a question it's rather a comment. I want to join those calls, you know, for more due diligence because between, you know, thoroughly interviewing candidates and not paying attention at all, you know, there are lots of tabs that can be taken. But we even had NomCom candidates who listed their affiliation wrong so even that wasn't checked and was discovered after they were already selected.

So I do believe that, you know, maybe - yes just a bit more due diligence, who we are getting here on our respective councils and so on, because yes. Really just to check affiliation, to check if people really have any idea what they're going to do, maybe phone interviews, yes thanks.

Keith Drazek: Okay. Tatiana, thank you. Scott and then Paul.

Scott McCormick: Thanks, Keith. Scott McCormick for the record. Damon, one of the things that I realize - I've been around ICANN for quite some years, and again, agree

with Michele, NomCom has always been kind of this black hole that people are not aware of anything really of what goes on.

In full transparency and disclosure, I would argue that there's no reason that process and procedures can't be posted and that metrics can't be kept on a candidate basis and posted out so that at least it's transparent. We're not asking for names; we're asking to say Candidate 1, Candidate 2, you know, obfuscate that. So I'd love to hear comments on that.

Damon Ashcraft: I agree with that and actually our Operating Procedures are on our current Web site, our process is not confidential nor are our Operating Procedures. What we keep confidential are candidate names and identities and also our internal deliberations about those candidates. As far as other things though, we are doing our best and I think we've made a lot of changes to be more transparent.

Keith Drazek: Okay. Thanks, Scott. Paul.

Paul McGrady: Thanks. Paul McGrady for the record. So we've given you a lot of feedback. We also wanted to say thank you. This is a really hard job. Before the fall of Imperial Russia I did it for about three months and I quit, I was the - on the Nominating Committee for the IPC and it was the hardest job in ICANN-land by far that I'd come across. And I couldn't cut it. So I thank you for your time and we just want to make sure that while you leave here with a lot of good feedback, you also leave here with our thanks because it's a tough job.

Damon Ashcraft: Well, Paul, thank you very much. And I do - I appreciate the opportunity to talk with all of you about this, and, you know, it's a real privilege to be the Chair of the NomCom and, you know, I want to encourage more discussions within the community. So let me know, if you have further questions and also to the extent that if you have candidates, I've heard some feedback about candidates not performing once they've been appointed.

Keep in mind we can only appoint from the pool of candidates we have and so if there are folks that you think would be good on this Council, please approach us, you know, utilize us as a, you know, as a resource to help recruit those folks.

Keith Drazek: Thanks very much, Paul, for the comments. And Damon. So I see a couple of cards still up but I think those are old. Anybody else like to get in queue at this point on the NomCom updates? Anyone else? Okay, Damon, thank you very much for coming to join us today and thanks for all your hard work.

Damon Ashcraft: Thank you.

Keith Drazek: All right thank you, everybody. With that we will move to our next item on the agenda. We're five minutes ahead of schedule. And that is an update on the CCWG on Auction Proceeds. So for this one I'm going to hand it over to Erika and Ching. Erika.

Erika Mann: Yes, Keith, thank you so much. I will do a short presentation. Ching, why don't you come here? It's nicer. It's ok? Yes. So just few reminders maybe and then we'd like to present the major challenges where we will need your help and support and where we need in particular your help in ensuring that the SO and ACs you are representing are well informed, because these decisions are going to be quite substantial.

So just a reminder for the first slide you can see here so this group was formed in January 2017. It is chartered by all of the ICANN supporting organization and advisory committees. And we do have 26 members, 45 participants, and 35 observers. Having said this, we see some major drops in numbers.

Keep in mind we - it started in 2017, many other political challenges came up in the meantime so this organization is stretched and we definitely experience this in our group. So please be so kind, reach back to your groups and

ensure that the members who were assigned to work here really do participate in the meetings.

Having said this, so we were expected to review the scope of the fund allocations, we were expected to define what we call a mechanism, which is the funding structure for the future organization, to set up due diligence requirements, and how to deal with conflict of interest and accountability measures. These were the major big topics.

We then identified - can we go to the next page please. I come back to this one, I skipped this one, Marika, so I come back to this one a little bit later. Let's go first to the legal and fiduciary requirement, yes. So these are the legal and fiduciary requirements we identified. And keep in mind, we did this in very strong cooperation with the legal and the finance team of ICANN.

They participated and we - it was greatly appreciated plus the Board members, and in case topics came up which were more conflictual and we couldn't decide this between us, we always engaged the Board either in asking them to come back or staff and asking them to come back with an answer to us in due time or we had even a formal exchanges of letter because we wanted to avoid to have a clash at the very end once we have finalized the process, we were - we didn't believe it's a good idea just to wait and then to debate the potential disputes.

So and we identified, it has the structure and the design of the structure has to be consistent with ICANN mission. It can't benefit any - the use of benefit of an individual. It can't be used for political activities. It can't support any lobbying - pure lobbying activities. The conflict of interest consideration has to be very tight. And they are layered, so over the course of the two years until now, we identified they have to be layered.

So one thing is to discuss how the members participating and shaping the future mechanism and what kind of conflict interest they may have, but then

of course it has to be in the future further strengthened because if we work with a different entity for example, I come and show this to you a little bit later, this entity will have to prove it as well that it actually accepts and respects these kind of conflict of interest considerations.

Accountability procedures have to be very high. And the Board and the officers of ICANN hold fiduciary duties independent of the mechanism selected. So this is a topic which we believe is super important. Can we now go back to the one page I skipped?

This is an interesting one because it shows you pretty much where we are. So and these are the various stages. You can find this page later in the full slide set which you can find on the wiki page. There are many, many more pages we just selecting very few pages today for this presentation so you can have the full overview of all the slides. And I like this one in particular because it shows you where we are in our phases.

Marika, can we go - continue?

Keith Drazek: Erika, this is Keith.

Erika Mann: Yes.

Keith Drazek: Could - back to that slide real quick?

Erika Mann: The last one?

Keith Drazek: Yes. That one.

Erika Mann: Yes.

Keith Drazek: So could you remind us all for the benefit...

((Crosstalk))

Erika Mann: So we had the review, the comment period review is done...

Keith Drazek: ...where are we.

Erika Mann: ...and we're now reviewing the comments from the comment - from the public comment period and which are quite intensive. Marika, can you remind me how many comments we received?

Marika Konings: This is Marika. I think it's on one of the next slides, somewhere in the 30...

((Crosstalk))

Marika Konings: Yes, yes I think we have the numbers, a mix between individuals and...

((Crosstalk))

Erika Mann: So we are reviewing it, certain things we have to review in more and we will show to you the question in a second. So some are more - will need more time to review and some are minor recommendation which we can either adjust to or where we will have to - if they are not minor decisions we then will have to have a discussion in the GNSO, SO ACs plus the Board will have to intervene as well.

Marika, can we go to the next one? One more. One more. Yes. So that's the report, a short overview about the public comment period on the initial report. So and we published it on October 18 and we closed it on November 27. And we received 37 community submission, nine groups and 28 comments from individuals, which was quite actually quite good outcome.

So what we now will have to do, and that's what we are doing, we're re-evaluating. We will have a meeting - two meetings this week very likely,

definitely one, one on Monday, and one on Wednesday. And I hope we can make actually progress in being able to either say we are accepting this recommendations, we are adding them to the set of recommendations we already made, or we have to make a new decision.

And then if we have to make a new decision on this new decision will diverge substantially from the old recommendation, we may have to go for a new public comment period. But that's something we will have to discuss. It depends on the final set of recommendations we are planning to make.

So the - let me just read quickly the main topics maybe from this one. Can we - no it's not actually here. Can I see the next slide, Marika? I can't see it here in the moment on my slide set, apologies. I have an old version in front of me here.

Marika Konings: Yes, this is Marika. Erika, we're having some issues with the conversion. The next slide is basically the one that shows the four mechanisms.

Erika Mann: Yes, this I would like to see...

((Crosstalk))

Marika Konings: Yes, we're trying to...

Erika Mann: ...I would love to show the main question.

Marika Konings: ...get it up.

Erika Mann: And I can't see it on my slide, otherwise - yes.

Keith Drazek: There you go.

Erika Mann: Here we are. So this is the mechanism in which we had included in our original discussion in the group. So we debated four mechanism, so one was - and this is Mechanism A, to in-house, the mechanism, the financial and the funding mechanism, in-house inside of ICANN. The idea was to - and is to have a separate unit inside of ICANN which will deal exclusively with this kind of operation, and nothing else.

Of course there might be overlaps with regard to how the financial unit will participate in some of the issues, or legal, but that's something which would impractically at least the people who are supporting this mechanism are believing it would be easier to implement, it would allow quick overlap with other units, but of course it has to ensure that the structure would be independent.

The second one would be what we call Mechanism B, would be a merger between such a unit, ICANN in-house plus a separate entity, which already is familiar with such kind of funding models. And we looked in particular when we had our exchange with external expert with a model - the Nominet had implemented in the past. They're actually now fully in-house, their operations, but in the past they were testing this model and they had quite some good experience. So it would be in-house, in a separate unit, plus an entity which already exists but is more or less familiar with this environment.

And the third one would be a foundation, an ICANN foundation. Now the advantages of an ICANN foundation is it can run much longer, it is more independent but of course like A, B and C, it would have to respect the fiduciary and legal obligations so the oversight, some degree of the oversight would be still with the ICANN organization, the ICANN officers and the Board. So it is independent but of course with oversight from the organization.

And then D was we externalized it completely to a separate entity, still with the oversight from ICANN and the ICANN Board. Now during our discussion for the recommendation for the public comment period, we recommended

practically to favor A and B and to have C still included because there was still quite big support from some community members but to exclude Mechanism D.

Now, the challenge is in the public comments we received there are many who are favoring actually Mechanism C. And they are quite strong - quite strong ICANN communities, so we will have to reevaluate that and the process we are right now to reevaluate the A, B and C. And there are two options at the end practically which we have available. So either we can come to a conclusion that this group will recommend just one single mechanism which is the most ideal recommendation, because it's straightforward, but we don't know where we have sufficient support for this decision.

Or B, would be, we have a hierarchy and recommendation would be let's take an example, A, B and C, but it could be C, B or A and so we would recommend a hierarchy and then the final decision will have to be made by the Board and by the - probably by the Board, which is maybe the - maybe for procedural issues not the most ideal situation. It would be much better, we can make a single recommendation. Where we get there we don't know.

So that's the most and prominent decision we have to take. There are some others which are quite problematic too but this is the most important one, Keith.

((Crosstalk))

Ching Chiao: So this is Ching for the record. So probably see on slides, the A, B, C, D doesn't mean that the group has already made the presents, it's just a symbol, the label.

Erika Mann: Yes, we had...

((Crosstalk))

Erika Mann: We had made one in the original recommendation set, we made A, B and we favored C less, but now because of the many comments we received with regard to C, which favored C, we have to reconsider our decision and we haven't made a decision, you're absolutely right.

Ching Chiao: Right.

Keith Drazek: Okay. Thank you very much Erika and Ching. Erika, that was an excellent summary and overview both in terms of process, excuse me, process and in terms of the actual substantive discussions that are still ongoing. Before I lose the thought, I want to go back to one of your first comments on the process and making sure that there's adequate participation and engagement.

So I'm asking myself, is there anything that I can do or we can do as the GNSO Council leadership team either among our community or in working with the other SO AC leaders, since this is a CCWG, as we know, to basically have a call for, you know, people to engage, participate and if they're not able at this time, to be replaced.

And I guess the question is, would it be beneficial to have a new person that is engaged at this stage of the game or is it really a matter of trying to re-energize the people who have been participating all along? So that's a question.

Erika Mann: I believe we would agree, re-energize the people. They're still around, there are very few who left this community - these communities completely, so they just have to be re-energized and I'm trying my best and Ching as well this week to talk to them individually but it would be good...

Keith Drazek: Yes.

Erika Mann: ...just to approach them and say please, it's important; decision will be taken soon, don't come at the end and don't expect we will do another round, you know, where we can consider totally new comments coming in; we will not do this.

Keith Drazek: Yes. Thanks very much, Erika, that's helpful. So before I get to the queue, and please, if you're interested in speaking to the Auction Proceeds issue or have any questions put your hand up.

But everybody here now has an action item with your communities is to go back to your groups and make sure that the people who have volunteered or appointed to the CCWG are engaged and are providing you regular updates and are really working within the group's structure at this critical moment where the public comments have been received, there's the analysis going on and then the really difficult questions are going to be tackled about making either a set of recommendations perhaps in a priority order or coming to a single recommendation.

So please at least within the GNSO let's make sure that we're energizing our colleagues who are appointed to this group. So thank you. Ching, please go ahead and then I've got a queue building.

Ching Chiao: Thank you, Keith. And just building on top of what you just said and just and also to make things clearer that I'm actually, I mean, I was being appointed by the ccNSO here so I would suggest that this would be a great topic for you, the Council, to further engage with the CC Council.

I believe that in terms of the engagement, the CC made things very clear in the beginning that this is G's money but the CC would like to, you know, being on the sideline and see how things are going and also bringing in, you know, the CC orgs which have the charity functions and then to see they can

be - so in any level of help. So I would like to bring this up and then maybe it's a good topic for you. Thank you.

Keith Drazek: Thanks, Ching, that's a great point. And we'll obviously have interaction with other parts of the community this week and so that's a good call for us to make sure that we raise the issue and at least flag it. I do have one other question just in terms of process and timeline, Erika, if - do you have a target date as to when the next phase or this phase will end and - I guess I'm just wondering how much time is left before a final report is anticipated?

Erika Mann: No, we don't have a real target date, but we do want to push it as fast as quickly, and I know staff is supporting this too, we don't want to have a long process anymore. It's just all these groups take too long anyhow, so we want to have a short and painful period and quick as much as possible. Can we get there? It depends on how many interventions we receive, how quick, you know, the participants are willing to take a decision, how much diversity we have, maybe the diversities we see is not even relevant.

You know, in some cases maybe we can find a diplomatic choice between all the differences and we can come up with a hierarchy. And many issues actually comments we received we can push forward to what we call the implementation period. Keep in mind there is still a period which follows ours which we call the implementation period where all the nitty-gritty, once the mechanism is selected you still have many tiny things to decide.

So many things we can push forward, but there are - this one is a major one, another one is - not a big one, as you know, can universal acceptance and similar outreaches be financed from this money, etcetera. So there are two, three which are big and the rest I believe we can handle quickly.

Keith Drazek: Excellent, Erika.

Erika Mann: Hopefully summer. My idea would be Marrakesh, everything is over.

Keith Drazek: Excellent.

Erika Mann: But can we get there I don't know. She's laughing.

Keith Drazek: All right well thank you very much for that response. So I've got Paul and then Maxim in queue. Would anybody else like to get in? Go ahead.

Paul McGrady: Hi it's Paul McGrady. Erika, thank you for this. Was there - can we go back to the other slide that was just up there? Was there any discussion about how A, B and C could affect the - either the ICANN Org or a standalone foundation which may have some influence with ICANN Org, the desire for auctions to be the mechanism of last resort in Round 2 and forward? In other words, if we build a structure and we hire people either within the ICANN Org or in the foundation, those people are going to want to keep working, right?

And if we - does that tie our hands as the GNSO to say, actually auctions are, you know, not the best way forward, we can think of something better, you know, maybe in Round 2, maybe in future rounds we do further reviews. Mechanism D doesn't have that problem obviously. So was there talk about that? Are we, you know, are we essentially signing up to have our hands tied on that issue if we - if A, B or C end up where we end up? Thanks.

Erika Mann: I mean, but that's my personal answer. We had at the very early phase we discussed - we (unintelligible) discussed this briefly. But then our recommendation was let's not go into the theoretical debates because then we will have never finished our work. So because of two reasons primarily, Paul, one, our goal was to define a mechanism and for this period of allocation proceeds so for auction proceeds, for this period, so not thinking about what might happen in the future.

B, and I believe this is important, I personally believe, and I have worked in different funding more capital-oriented but still funding environments, I believe

it is really not relevant which mechanism we would select. And even if in the future one would decide to change the mechanism it isn't - it can be done quickly, easily; it's not super complicated.

Independent - what kind of mechanism you will select because then you already have the main structure in place and from there you can say okay, we are not happy for example with Mechanism A because it shows there's still too many conflicts between the original organization and too much involvement, a new CEO comes in and wants to get engaged all the time and the community is not happy and community oversight is not ensured because there's too much interference. So suddenly you decide you want to move to Mechanism C, it's not a super complicated process actually to do it.

Or you start with Mechanism B and, you know, you say suddenly we don't want to work with this organization any longer and suddenly you decide to re-source or you decide to create a foundation, in particular looking at your second question, you know, how shall, you know, future auction proceeds, how shall they be, you know, or where shall they be hosted.

So maybe in the end C is the most ideal option but I believe it's a theoretical question, so maybe it's more important to start with A, you know, with a kind of mechanism and the most ideal ICANN mechanism all the combined communities actually can agree upon and then test it, get the structure right and test it and see how it is working and then stay open to decide maybe in the future for a different structure if it's not working well. I wouldn't make it too theoretical and discuss it for far too long.

Keith Drazek: Okay. Thanks, Erika. And Paul, if you have a follow up feel free to get back in the queue. Maxim, I'll get to you next but I do want to just take a moment to welcome everybody that's in the room that's not part of the Council. Thank you for being with us here this morning. You are welcome to engage in our conversations today, this is a Council working session, and of course you're part of the community. There's a standing microphone there if you - any of

you would like to get involved in this conversation you're certainly welcome to do so. So thanks for joining us.

Maxim, you're next.

Maxim Alzoba: Maxim Alzoba for the record. I have a question, could we move to Slide 5 of the first part of the presentation? Yes, this. I think it's something which might not be directly relevant to the work of the CCWG, and but highly relevant to current issues of GNSO Council. It's in the middle, the private benefit concern and I think - have you checked - have anybody checked if the provision of legal services for some person from GNSO can be seen as a provision of benefits? For example, legal protection of, yes, GNSO Chair for example.

Because if not, then most probably the letter from yesterday means nothing, I mean, the letter about standing behind and crying out - thanks.

Keith Drazek: Okay thanks, Maxim. So I think that's a good question relevant to other discussions that we'll have this afternoon. So maybe we can come back to that one. But I think again, this is - it's a good question. This is specific I think to the Auction Proceeds. It may also be specific to other parts of ICANN's funding. It's not clear to me where that line is drawn and we probably ought to have a separate conversation about that. But noted, and we'll come back to that one.

Erika Mann: Keith, maybe just one point to add, and Marika, maybe we can send these slides, the slides and the related background information from Legal and in particular from Legal but from the Board to you as well. So we had an exchange a little bit about this topic and it came crystallized in relation to the question from some community members, can a certain - can communities particularly participate in certain projects. So we are still looking into this question and indirectly it relates to the topic Maxim raised to some degree.

But there is an exchange with Legal which I believe would be good for you to see and for the GNSO good to see. And I believe even one or two of the Board answers which we received relates to the question as well.

Keith Drazek: Yes. Thanks, Erika. And thanks, Maxim. And I don't want to get too far forward over my skis here, and I'm not a lawyer, but I think Maxim, and like I said, we'll talk about this more a bit later, is that if ICANN were to provide legal support in a certain instance that was - where the GNSO Chair was implicated for example, my sense is they would be providing that support in a sense for protection of the structure of our process of the multistakeholder community and basically as the role as opposed to the individual.

But that's, you know, that's - again, I'm probably getting too far ahead of myself. So let's have a further conversation. Erika, thank you for the offer of forwarding that to us as it relates to this and other discussions.

Okay. Elsa, thank you.

Elsa Saade: Thanks, Keith. Elsa for the record. I'm just wondering, given that the Board is currently in discussion about the evolving of the multistakeholder model or just evaluating how it's been going on, I'm wondering how this process will intersect with that?

And if the implementation phase or the decision on the deliberations will be affected by the discussions that the Board are having currently with the evolving of the ICANN model going forward in terms of policy development especially that those four mechanisms all of them have different ways of implementation but all of them will be affected by the outcomes of the deliberation of the Board. So I was just wondering if this is taken into consideration or not? I don't know if this made sense but...

Erika Mann: Not really. We haven't looked into it. I mean, there's overlap with regard to some discussion, one in particular on this is the point where the Board I

believe is pretty clear about the fact that any fiduciary duties will have to correspond to the oversight of the Board which means in reality that if the organization would run out of funding the Board can decide any time to use the auction proceeds money for reallocation of other kind of budgetary constraints.

So that's an issue which is not falling into our scope to evaluate, but this is a - something the community will have to probably discuss. It's definitely not part of our evaluation process. Now the community members discussed it in our group but it's not something we have to decide; it's a much bigger issue which falls outside - totally outside of our group.

Ching Chiao: Just very quickly, I think the observation that personally that I have and I think most of the group members in the group will agree is that the Board liaisons serve the role at this point is to simply offer I mean, the legal and fiduciary, I mean, advices and also making sure that the COI, the conflict of interest and also there will be an independent review mechanism in place. So I think the focus is falls within those three items.

For the items for the new structures of the Board or in any other concerns raised in this particular question, I think so the liaison is still there so I think we will have then if they will have, you know, some guidance and advice. But personally I don't see them to tell us which mechanism fits to a kind of unknown or new directions so but I think the communication is there so.

Keith Drazek: Okay thanks, Ching. And thanks, Elsa, for the question. Would anybody else like to get in queue at this point? So yes, Ariel.

Ariel Liang: And this is Ariel Liang from staff. There is a remote comment from Jose Alberto Barrueto Rodriguez. He's a New gTLD PDP Working Group member. It's a comment, "As Anne Aikman-Scalese, IPC I have the - I have seen doubts, doesn't ICANN have a separate legal fees reserve fund? Don't need to access auction funds for that."

Keith Drazek: Okay thanks, Ariel. And thanks to Jose Alberto for the comment and Anne also. I think as it relates to - if this is in reference to the point Maxim made earlier, I think there is coming out of the New gTLD Program a litigation fund or a legal reserve fund. And again, I think we may be mixing a little bit of apples and oranges here on the question. But I think there is still a question about - that we will get to later about indemnification of community participants in the course of their duties in supporting ICANN's community and multistakeholder model.

So we will get to that. And I think just to be clear, what we're talking about here as it relates to the Auction Proceeds CCWG and the mechanisms that are being considered is that, you know, that these are supposed to be done as is noted on the slide before us, that it's not - there should be no private benefit derived from the allocation of these and that's one of the core principles. So I think that's fairly clear and understood and I think it's certainly a welcome question for clarification.

Okay, Paul, I see you're typing in chat. Feel free to jump in if you'd like, if anybody else would. We have about eight minutes left in this session, in this part if anybody else would like to speak? If not, all right well let me then take the opportunity, Erika and Ching, thank you very much for your leadership on this and for bringing this excellent summary and update to us. And as I said, reminder to everybody, get with your communities and your colleagues to make sure that we're engaged in this at this critical time. Thank you.

Erika Mann: Keith, can we thank Marika, Joke and the whole team as well? They're doing excellent work and it's really hard to do this work without them.

Keith Drazek: Okay. Thanks, Erika and Ching. Absolutely. As always, kudos to staff for all of the incredible work and support and it's not like anything else has been going on now, right? So yes, obviously an extremely busy time and this is an important one to bring, you know, to the finish line. And Erika, as you said, if

we can accomplish that by Marrakesh in the summer then I think that would be an excellent outcome.

Okay, with that let's then transition to our prep for meetings with the Board, the ccNSO and the GAC. We actually have our GAC session this afternoon so this is an important one for us to focus on certainly so let us then move right into it.

So these are the GNSO questions that were posed to the Board. And this is something that we - and I want everybody's engagement and input on this so let's make sure that we're fully prepared. So the first question, I'll just run through them, what are the ICANN Board's lessons learned from GDPR, the temporary specification and the EPDP Phase 1 experience?

So I think there's three components obviously to this question. One is GDPR, and the impact of GDPR on ICANN's processes, on the existing policies and the expectations of folks who rely on ICANN's policy making. I think there's a recognition across the community that ICANN as an organization and as a community we were generally, not saying everybody missed it, but generally late to the game in reacting or preparing for the GDPR that, you know, came into effect last year.

And so I think there's a lesson learned there. And I think actually, speaking personally, that ICANN Org in the work that Göran and Theresa under the guidance of the Board, have actually recognized that and are taking steps today to better anticipate and understand the legislative, you know, and regulatory implications around the world to try to avoid having another situation that we experienced with GDPR where we were reacting sort of far too late.

That's not to say that the whole program is fully in place, but it is one of the things that I've seen over the last, you know, 12 months that ICANN is taking

much more seriously. So I think that's something that we may hear from them but definitely a question worth asking.

On the temporary specification, I think as we all know the temporary specification is what the Board imposed back on May 25 or just thereabouts, of 2018, which triggered the 12-month period within which the EPDP had to conclude and deliver a consensus policy to replace that temp spec. First time it's ever been used so I think it's a reasonable question about you know, was that successful, was it the best approach, are there lessons to be learned there?

And then ultimately we have the EPDP Phase 1 experience, we now have a consensus policy recommendation. Obviously incredible work of the EPDP Working Group and staff to deliver an outcome in a very, very short and compressed period of time. Again, asking the Board for, you know, do they, from a Board perspective, from a governance perspective, have any lessons learned or reactions or observations about that?

So that's my setup. Anybody else want to get in on that? Any thoughts on this one as it relates to engaging with the Board and trying to have a real dialogue? Okay, Paul.

Paul McGrady: So this is Paul McGrady for the record. First of all I wanted to say it sounded like the EPDP Phase 1 experience was the latest exhibit at Disney or something, you know, it just sounds like it should be. I think we should be ready for this question to be flipped on us, right, because sometimes that's what happens, right? We have some what were their lessons learned and then they say, you know, they give us a couple things and they say, and then what did you learn? So I think that I don't know how we'd react to that but I think we need to be ready to talk about that. Thanks.

Keith Drazek: Thanks, Paul. And I think that's a good point. I expect that, you know, and ideally this would become a dialogue rather than just a question and answer

going, you know, sort of one way. Yes, I think at this point we as a Council, if we're speaking as a Council, you know, I don't think we have specific answers to this. I think we are definitely interested in lessons learned. I know that there's engagement with Kurt as the Phase 1 chair to, you know, develop some documentation and a history and understanding of lessons learned from that experience.

And so your point is a good one. I would hope that we could all of us avoid getting into any sort of recriminations about the EPDP Phase 1 experience. And obviously we as a Council have some work to do to develop our own lessons learned about that in terms of, you know, the construct of the group, the fact that it was limited in membership and all the things that we built into the charter for the first time, right, where we hadn't really done that before.

I think, you know, that's probably a message I'd like to send is that we as Council are taking seriously our PDP 3.0 implementation. We will learn lessons from the EPDP Phase 1, you know, and that we're committed to taking those on board and, you know, and really digging into it a little bit. Paul, go ahead.

Paul McGrady: Thanks. Paul McGrady again. I do think that there are some things that are high level things, right? So the first one is what are lessons learned from GDPR? So we had this big law come down the pike. Everybody knew it was coming. We still let ourselves be backed up against the wall timing-wise on it, right? Which led to what some people viewed was a very hasty temporary specification that didn't take into account everybody's needs, which then set directly into a very hasty Phase 1 and it left some people feeling like their needs weren't met, whatever.

But that's sort of that one example. But in the meantime, I don't know if you guys have had this experience, but I have not, I've not heard any briefing from whoever is responsible in ICANN Org to be - whoever is looking down the road at the next piece of global legislation that's going to have some

effect, right? We don't get those briefings here. We don't really know what the laws are until they are passed and they don't come into effect when ICANN gets itself together, does that make sense?

We're operating on two different timeframes. And so I think one of the big lessons learned from - under Number 1 is I would love to know what's coming down the pike next, right? What other major jurisdictions are kicking around potential laws right now or probably even passed those laws that will affect what we're doing here. We're just - we're blind to the future, right? So we're always in reactive mode.

I've not seen a single briefing around here about California's new privacy law. How does that affect what we're doing? That's a pretty big state, right, in the US and will affect US commerce at least because everybody falls in line behind California. There have got to be other countries that have, you know, big changes to their, you know, legislation. So I think for me one of the big takeaways of the experience is that we should be working on our temporary specifications, you know, a year before it happens, not, you know, the day of if that makes sense. Thanks.

Keith Drazek: Thanks, Paul. I think those are excellent points. I would just follow up to say that if we're doing our job properly, all of us and with ICANN engaging properly as you've described, we would like to avoid any further temporary specifications, right, but I think your points are all well made and excellent and I think that would be a great conversation to have with the Board.

As I said, I know that ICANN has undertaken the effort to try to better understand and forecast and predict and, you know, anticipate what's coming, but I hear what you're saying is that we're not getting the benefit of what they've identified, there's not the sort of the interaction of that effort with our planning and advance work or advance notice as it relates to policy development, right? So I think that's a really strong point.

I've got a queue building. Amr and welcome, you're here this week on behalf of Martin, correct, as proxy?

Amr Elsadr: That is correct. I'm a temporary alternate for Martin this week so I'm crashing the party. Thanks for having me.

Keith Drazek: So go right ahead. Thank you.

Amr Elsadr: This is Amr for the record. I'm going to agree with Paul that, you know, we need to prepare for these issues at a - in a more reasonable way and - but I will disagree in saying that, you know, some of us have been trying to point out that these are issues that are going to come up and we've been trying to point it out for years, probably over a decade.

But on the other hand, when discussing this with the Board and I don't want to sound self-congratulatory or anything, but there is a nice spin to this. We might have been put in the position where we needed to deal with this legislation or this regulation in a very tight timeframe, but the fact that we had a process in place well in advance of, you know, having to deal with it to me suggests that the GNSO has reached a level of maturity which is something we should be very pleased with.

We didn't know we would need to use an EPDP a few years ago when the GNSO Policy and Implementation Working Group proposed this process be created, and added to the Operating Procedures but we did have it in place. So that's a really good thing. I think this is something we should point out to the ICANN Board.

On the other hand, in terms of lessons learned, this might be more internal to the GNSO and might be less relevant to the ICANN Board but when using the different processes, you know, because we've always used traditional GNSO PDPs, now we have a few other ones, we have the EPDP, we have the

GNSO guidance process as well, we have the GNSO input process, these are all different processes at our disposal.

The GNSO Council needs to be very aware of the different conditions under which these processes are used and their limitations and applicability as well. As a member of the EPDP team I think that the GNSO Council could have done a bit of a better job in terms of making sure that the EPDP team stuck to its scope because that's one of the crucial factors and use of an EPDP. EPDPs are meant to address very narrowly defined topics that have been previously scoped and that is why the issue phasing - the issue scoping phase is skipped in this process as opposed to a traditional PDP.

So it worked out I think relatively quite well but it is a lesson that I believe that we have learned as a community in the GNSO and something to keep an eye on moving forward. Thank you.

Keith Drazek: Okay. Thanks, Amr. Okay so I have Michele and then Elsa and Maxim and then we need to move on from this topic because we've got several others to discuss including our other plans. Thank you. Michele.

Michele Neylon: Thanks, Keith. So I think in many respects Question 1 and Question 3 could actually be collapsed into one question, I mean, based on the conversations we've been having here because ultimately the entire thing around the GDPR and temp spec tie back into ICANN's inherent ability to shove its head in the sand and do a very good impression of an ostrich, and then when it does come up it's a bit too late, I mean, no matter what kind of ostrich you're looking at, anybody with their ass in the air is not going to come out looking particularly well.

So, you know, this - we do have an inherent issue and I think this is where Paul McGrady and I actually agree for once, which is rare and should be celebrated and so have a little parade. There is, you know, some of us are getting some of the information from various trade associations and other

organizations who are tracking some of the legislation coming down the pipeline in various jurisdictions. But ICANN has, for many years, seemed to be completely unwilling to take any of these things seriously.

And what we saw with GDPR was many people thinking that they could negotiate it, it's a law, you don't get to negotiate it when it's, you know, it's passed, it's done; you need to deal with it. And I think that's the problem. And there is now this, I suppose what - kind of a document that's produced by ICANN staff which gives you a list of legislation but it doesn't give you any context and I think I've seen some of the comments from other councilors in the chat, I mean, it's not helpful.

I mean, we're all time-poor and giving - get contextualizing some of this and just kind of saying, okay this is where we think this could have an impact, this is where it definitely will have an impact is a hell of a lot more helpful than here's a list of 20 pieces of legislation, each one is going to be 150 pages long, you're going to need a law degree and be able to speak 15 languages to actually parse this, but here, good luck.

I think they need to do a better job on that. And I mean, ICANN has a - has Global Stakeholder Engagement teams, it has the - for those us on the contracted party side we have GDD staff. You know, I'm not getting anything from GDD saying hey, are you aware of X or Y or Z, that never happens. I am getting that from Eco, I'm getting that from Internet Infrastructure Coalition, I'm getting that from some other places but that's coming - that's not specific to what we do and I think that is a problem and I think that does need to be addressed.

Keith Drazek: Thanks, Michele. And I think, again, you make some good points. I think it's probably not the role of GDD in this particular instance, it's probably Government Engagement, or I'm not even sure where that group falls. But I hear what you're saying but so I think you're right. I think that ICANN Board and Org have recognized that this is an issue that the GDPR experience is

one to be avoided in the future and that they've started the process of tabulating and accounting for the various pieces of legislation and regulation that could be impactful to ICANN and to the policy work.

I don't think they've yet taken it to that next level or that next level of detail that we would need as a Council to be able to in an informed way sort of start to identify in advance where there maybe impacts on the policy work that we either have done, are doing or need to do. Right? So I think that's great feedback that we could provide to basically say, you know, good, you're starting this work but it needs to be more granular and more, you know, and there needs to be better interaction or interrelation between the policy development bodies and what they're understanding and learning.

So, you know, in this conversation I think, you know, lessons learned are important but they're important for what happens next, right, so I think it's a matter of saying look, this is where we fell down but let's focus on the future and try to figure out how we can improve the situation rather than just going you know, through a, you know, a critique of what didn't get done right the first time, in other words, let's take it to that next level of conversation.

But Michele, I think your point is right that 1 and 3 are very much related and perhaps we can combine those. Okay so Elsa, you're next, Erika, Maxim and then we need to move on.

Elsa Saade: Thanks, Keith. I just wanted to point out that in our strategic planning in LA we did mention the impact of new legislation on policy work. And we mentioned the Global Legislative and Regulatory Development Report that ICANN publishes and I think Martin and I pointed out in the list that there are some gaps in that document and the way that it's organized is not entirely clear in the sense or all-encompassing.

And we did mention that there is a possibility that we as the Cross Community Engagement Group on Internet Governance to help out in

mapping future laws that we should be taking into account, so I'm just pointing it out so that we wouldn't need to reinvent the wheel, we did mention that in the SPS and this could be helpful in terms of our conversation with the CCEG going forward.

And I'd love to know more about development of the Global Legislative and Regulatory Development Report that ICANN publishes, going forward if we can help with any legal documents, providing them from our respective regions, I'd be very willing to help, just pointing it out. Thanks.

Keith Drazek: Thanks very much, Elsa. And this is I guess making me think that perhaps a small group of Council members could come together and develop some comments back to the Government Engagement Team on this report and on where we see gaps or where we see the need for better engagement and better information. So we can, you know, put that as a possible action item but I'm thinking that maybe a small group of interested councilors could, you know, take the action to engage on that. I don't think there's a timeline for that; this is an ongoing effort, you know, and to engage with them to tell them what we need as a Council and as a policy making body would probably be helpful.

So I've got Erika and then Maxim. Go ahead.

Erika Mann: It's Erika. Thank you, Keith. We discussed it - this topic at our retreat and I believe it is not really complicated because ICANN has a very global international team and so and they of course I'm pretty sure they already provide to some degree some information. Now they might, maybe there's a need that they receive support from outside counsel to really have a good understanding about the legal implication or certain legal implication about certain laws.

But it's not so complicated actually to get this done. I believe what the - what you as the chair and the co-chairs will have to do you will have to find an

agreement with ICANN so that the information is passed onto the GNSO ideally as quickly as possible because there must be somewhere, a pipeline issue because already it's strange that we don't receive this information, it shouldn't be just information circulated to the Board but should be information sent to the GNSO as well.

The second topic I promise to send you the update concerning copyright. I still have it in my draft box so you will receive it. The law will be voted in end of March and I have - there is no immediate implication on the domain ecosystem.

There are some indirect implications and so as soon as I finalize, I will send it on to you and then I believe it will be important maybe to evaluate it, not this meeting but maybe at one of our next meeting and to get an understanding from the different communities if they come to the conclusion that there's an immediate effect, which I don't believe it is. And the long term effect it is, but there may be, you know, some business who will argue against my understanding.

Keith Drazek: Okay. Thanks, Erika, very helpful. And I do recall the detailed discussion we had at the SPS in LA on this topic and this is a good opportunity for us to remind ourselves that there's some work that needs to be done there and engaging with ICANN. Maxim, finally, to you.

Maxim Alzoba: Maxim Alzoba for the record. Could we just and some example which is coming fast, it's going to be a disaster for contracted parties and it's called e-evidence because what's required by the law is regarded to be treason in some countries. Yes, with quite bad consequences.

Keith Drazek: Yes...

((Crosstalk))

Keith Drazek: ...thanks, Maxim. So yes e-evidence, yes the ones that Erika has also referenced, I mean, I think there are several examples. I think it's worth using as an example that there are, you know, there are potential regulations coming or regulations that are coming that could be a problem. But I don't want to get too deep into the discussions of the specific examples because we'll have limited time. It's worth noting them I think and worth flagging them and putting it on record that we are aware of them and we need to be engaging on these questions but let's try to not get too far down into the weeds of each example.

And then I want to make sure that we don't miss Question Number 2 for the Board here, which is a corollary to Number 1, how can those lessons learned be applied to the Phase 2 work on the Standardized System for Access or Disclosure, whichever we're going to call it.

And so I think this comment - this is a question from us to the Board, I think we're also as a GNSO Council and the EPDP Working Group itself, are going through this right now in terms of identifying how to scope and to develop a work plan and timeline and all of that for Phase 2. And I think there will be some lessons learned there along the way of the coming weeks and you know, and the next month.

But I think this is a question that we've posed to the Board. It'll be interesting to see what they might have to say. I think we may hear, assuming Göran is with us in that session, that he's got some concerns about, you know, sort of the legality or the whether a Uniform Access Model will ever be compliant but I think from my perspective it's the work of the EPDP and the GNSO Council to, you know, put our best foot forward in terms of a recommendation or at least a framework that you know, that might generate some reaction to that.

Would anybody else like to speak on Number 2? Michele, I saw your card go up and Tatiana.

Michele Neylon: Thanks. Yes, just I'm not comfortable with access, I prefer disclosure. I think it's very important if you're looking at GDPR properly you need to be looking at it from a - as a data subject or into set of rules and legislation and this access concept is predicated on a reality that doesn't exist.

Keith Drazek: Thanks, Michele. My initial reaction to that, from my position here is that it's reality because it's in the charter of the EPDP Working Group, that's the language that we put in the charter of the group. So a standardized system for access to nonpublic registration data is in there. I understand that there's a discussion about disclosure and that disclosure would be the more appropriate term, and perhaps that's further guidance that the Council can give to the EPDP Working Group, but the reason that language is on the screen is that was essentially what was in the charter.

Michele Neylon: That's fine, I'm just going on the record with that, making it clear. But from my perspective disclosure is more accurate.

Keith Drazek: Thank you, Michele. Noted. Okay, Tatiana and then we need to move on.

Tatiana Tropina: Actually hi. Tatiana Tropina for the record. That's what I was going to say. Can we just get the terminology, well, okay, maybe not right but at least access/disclosure or at least mention that we can change it because I understand that this is in the charter but just by repeating wrong things we continue broadcasting the wrong message. You know, what I mean, Keith. Even when you read this question you said, access/disclosure. Thank you.

Keith Drazek: Indeed. I said it and I have no problem with including the slash disclosure to indicate that there's ongoing discussion of that but for the record, that's the language that was in the charter and that's why it's there. So and we've noted, Tatiana, hold one, we as a Council agreed that we were not going to reopen the charter but the Council might provide further guidance to the working group and I think that's an opportunity where we may have to do that.

Okay. All right so we need to move on now. And I will warn everybody if we go over the next 15 minutes it'll eat into our coffee break so anyway, next item on the agenda is the joint ccNSO Council meeting agenda. And we have a couple of topics here, one would be joint prospective projects, so CSC Effectiveness Review final report, synchronizing decision making and next steps, harmonizing confusingly similar review or sorry, similarity review, and CCWG Auction Proceeds next steps.

So, Erika, and there's the point right there where we can engage with the ccNSO on the auction proceeds engagement question. And then hot topics and updates, comments on ICANN's 2021, '25 strat plan, FY'20 operating plan and budget, do we have any common concerns? The screen is not reading - there's something a little blocked there, selecting IFRT membership, how to move the IANA functions review forward.

So again, this point 2b is the topic where the ccNSO asked for essentially agreement from the rest of the community and the appointing groups to allow them to appoint three ccNSO members to the IANA functions review because they couldn't find, as required under the bylaws, a non-ccNSO ccTLD manager to do that.

The requirements in the bylaws say there should be a total of three - sorry, three ccTLD manager, two of which are ccNSO members and one of which is not a ccNSO member. And they've basically beat the bushes and have been unable to find a non-ccNSO ccTLD manager to volunteer for this.

And I know that NCSG has expressed some concern. The - and not officially yet as I understand but that the NCSG has some concern about this. So this will be a topic of discussion today. My understanding, from a conversation with Katrina, is that the ccNSO recognizes that this is a problem for them moving forward. And the way that she described it is this a problem basically of their own success.

In other words, there have been so many ccTLD managers that have joined the ccNSO that there's a very, very small pool of non-ccNSO participants, and those registries don't participate in ICANN or don't want to put somebody forward for this type of a responsibility. So the ccNSO is going forward to propose bylaw changes, that's going to happen.

The question is now, what do we do about this review team? Because until such time the bylaws are changed, which is going to take time, we're unable to seat the full review team. And so the question is, if the NCSG were to not object, then they could seat the review team with three ccNSO members and we could kick off the review team in a timely manner. All while the bylaws changes are going through the process.

So Rafik, your hand is up. Feel free to jump in on this. But I just want to flag this as a topic that, you know, they've sent us a letter, they sent - or have communicated to the appointing bodies and I don't think they feel like they've received a formal reply and anyway, go ahead, Rafik, over to you.

Rafik Dammak: Okay. Thanks, Keith. This is Rafik speaking. Just to clarify, I mean, it was not intended to make the life miserable for the ccNSO here. So it was I think in our meeting in LA last time when we discussed and that time I think the understanding that everyone that expected it just will be a response from the Council but I think what agreed is that because the letter sent, I'm not sure, it was from GDD or the ccNSO to all the appointing organization to the IFR to respond about that.

So we consulted our members quickly on the list and because the deadline I sent a kind of note to the staff saying that we think that we have a problem here because the real issue is not about ccNSO, this particular is really about following what the bylaws says after all the effort that was put during the IANA transition.

That said, so if we have this proposal like from the ccNSO with regard to amending the bylaws we know that it will take time and that will go through the empowered community process. We can consult quickly our members just to, you know, because we were asked to do something and we need to explain why we think that maybe it's better because of, I mean, to - just to change and go with that as an exception.

Just also we need always to be careful to not set the precedent because the - it seems in the last times even after we spent that much time working on the bylaws when we have a problem we think, okay let's take, you know, kind of waiver or something, you know, just to not make things difficult. But we need to be careful with that. So we will come back to our members and hope we can get an answer quickly and to not block further the effort from sitting and starting its work.

Keith Drazek: Okay. Thanks very much, Rafik. And that's really helpful, you know, further clarification and context. So I think at the end of the day I think we would all agree that respect for the bylaws is paramount and is critical. And I think the ccNSO recognizes that as well and that's why they're going through and pursuing planning to effect the change to make sure that they don't end up in this situation where they are - can't find a member that would follow or meet with the bylaw requirements.

And particularly in effect, there are instances where you might need a special review or an urgent review to take place and then it becomes even more compounded as a problem because they simply can't find the right volunteer and therefore a review team can't be seated.

So I think if there's a recognition that they recognize this is an issue, they're going through the bylaw change process, they're committed to doing that, but we're in this bind because of the review team, is there an opportunity for us - for you all and for the rest of the appointing groups to say, we understand the problem, we understand you're going through the change, and in this case

we're not going to object to the seating of three ccNSO members so we can get this review team moving so I think that's really that it boils down to.

So Arsene and then Amr.

Arsene Tungali: Hi. Arsene Tungali for the record. I think I remember during the LA meeting Michele, I think you offered to speak to some ccTLDs in Europe about this review team, like joining the review team or whatever. I would love to hear what happened. What is successful or not?

Michele Neylon: Short answer, Michele for the record, no. Crickets, no response, no reaction, no interest so no, it went nowhere unfortunately. So that's why you didn't hear anything further from me is because it was a big fat failure.

Keith Drazek: Okay. Thanks, Arsene. Michele, great memory. Amr.

Amr Elsadr: Thanks, Keith. Yes, this is Amr. Like Rafik said, I don't think the NCSG is trying to be obstructionist on this and we very much sympathize with the unusual circumstances the ccNSO finds itself in.

From a practical perspective, is there a deadline by which you need to get a response from the NCSG on this or not because I think we would need to go back to our membership and just, you know, get some sort of consensus and relay a lot of the discussion that's been going on here there and come back with a response so this could be on the Council list or maybe during the closing session or beyond so if we have some sort of understanding of a timeframe by which you really need an answer from us this, that would be helpful. Thanks.

Keith Drazek: Okay thanks, Amr. Great question. And I'm going to turn to staff perhaps for some help on the answer to that question in terms of timing. So Mary, I don't know if you want to jump in on this one or if anybody else...

Mary Wong: This is Mary from staff. And I don't have it handy, there are some dates but my understanding is that this is practically overdue in many ways because of the way the IFRT's timing is supposed to be. And I understand that as some discussions with the NCSG that have either begun or should be beginning. So the idea and the answer is really to get this resolved in as much as possible as quickly as possible.

Keith Drazek: Okay thanks, Mary. So, Amr, I think the answer to your question then is that there's no hard deadline as it relates to a particular date within which, you know, there's an expected resolution but it's past due essentially I guess. And I think part of the challenge, and you may hear this from Katrina today, is that, you know, she's heard that the NCSG may have concerns but there hasn't been formal communication so the communications loop hasn't been closed, right?

So, you know, if, you know, not putting words into your mouth but if the answer is, you know, you're having ongoing discussions and you're considering it and you're going to continue to work with your community, that signals to them that it's not decided and there may be an opportunity, you know, to resolve this, you know, in a way that they'd like to see. I don't know, that's up to you all how you communicate it but it'll come up. Rafik.

Rafik Dammak: Okay sorry. I'll say so we, okay because I did it, I communicated to Trang, she was the - she's from GDD, to communicate to her to say that that's what I think is our position. What happened is that she asked about the formal letter that it can be shared with other but the position was clear. So for now this problem is not sending of the formal letter to say we're not happy, we will come back to our members just to clarify the situation and try to get the support so we should not prevent this from starting.

So I just don't want like - it seems like we are putting the blame here on us and seems to me the understanding what's going on, just want to clarify what happened. And we can - hopefully we can communicate as soon as possible.

Keith Drazek: Okay. Thanks, Rafik, that's helpful. So I think we need to move on here, but to be clear this really isn't a Council issue because the requirement was for the, you know, the appointing organizations for the IFR to, you know, basically agree or not agree. But because we're meeting with the ccNSO it's likely to come up so that's why we brought it up here.

Okay, so let's move on then. Progress - so 2c, progress on the Emoji Study Group, sorry, go back one slide, thank you. Preliminary results and status of the EPDP. So those are the list of possible topics. You know, we can probably do some of this on the fly but is there anything in particular here anybody would like to address now as it relates to our engagement with the ccNSO Council? Okay, seeing none, don't think there's any hands in chat. All right, let's move on. Thank you.

Okay, questions to the GAC. And there's a little bit of a cutout on the screen again. Okay so give me a second here. So the four questions that we posed to the GAC, and I sent an email to the Council list yesterday basically, you know, basically updating everybody on the engagement that we had as the Council leadership with GAC leadership and some interested parties from the GAC on the IGO INGO Curative Rights Protection issue. Everybody's favorite, right?

So much of our engagement with the GAC is going to be focused on this topic. And the update that we provided, as I said in my email, and you can go back and refer to it before our afternoon session, probably very important that you do, that we as the Council are still considering a range of options as it relates to the IGO INGO CRP final report.

I enumerated those options as we've discussed here over the last several months including the option that we, the Council leadership, put forward back in December, which was potentially to approve four of the recommendations and then refer Recommendation Number 5 to the RPM PDP Working Group

in Phase 2 and then I'll just add a caveat, or perhaps its own group, you know, its own standalone group. So there's a number of variations or variables that we might have there.

Noting that we are still considering the possibility of not approving Recommendation Number 5 in that final report, the question then is what then? Right? You know, what comes next? And so the four questions that we have posed to the GAC, and they've had this now for over a week as the questions, and I know from having a conversation with Manal that they've been discussing it, that this is something they're taking very seriously, is would interested parties, among GAC members, be willing and available to participate in a new targeted PDP or a subgroup of the RPM PDP Working Group focused on IGO INGO CRP policy?

Because as we know, for a variety of reasons, the IGOs and INGOs did not participate directly as members or as, you know, active participants in the IGO INGO PDP Working Group. That was in part because the Board, during that process, inserted itself, created this small group, you know, concept and basically I think gave hope to the IGOs and INGOs that they would have a better result through that small group that active participation in the PDP. Okay, just a little bit of a historical context.

So the question is would interested parties among GAC members, including the IGOs and INGOs, be willing to engage if we were to reject Recommendation Number 5 and recharter it somehow? So the second question is, does the GAC have views on the efficacy of the recent experiences in the EPDP and the SubPro Work Track 5 and whether those might be suitable structures for considering the topic of IGO curative right protections moving forward?

Third is, does the GAC see the RPM PDP Working Group as a potentially suitable venue to resolve these policy issues during its Phase 2 work on the UDRP? Right, which is the subject of Recommendation Number 5. And

recognizing the procedural challenges facing the GNSO Council, are there any other forward-looking suggestions the GAC would like to suggest us towards a reasonable solution of the outstanding issue?

So the reason these questions have been crafted the way they are is that we are looking for feedback from the GAC as to what might be a path forward procedurally if we were to, sorry, reject Recommendation Number 5. Okay, would they participate? Do they have a view on whether any of the recent experiences of GAC involvement in PDPs could be a suitable structure? Do they think the RPM Working Group is the right place for it?

And recognizing the procedural challenge, do they have any forward looking suggestions? And the key here is we want to avoid in this conversation with the GAC today, this afternoon, going back and rehashing all the old complaints that we've heard many times over, understandably so, right, IGOs and INGOs are not happy, there's GAC Advice in contradiction of all five of the recommendations that are in that final report. But we wanted to frame this in such a way that we are trying to find the least bad path forward on this final report and what to do with these five recommendations.

And we legitimately want the GAC's input and views on that path forward, okay. So that's just setting the scene for the conversation. I think we have a commitment from Manal and the GAC leadership and the interested parties to actually try to make this a constructive discussion, forward-looking. And they're taking these questions seriously, I know they've been discussing it. So that's essentially our questions to the GAC.

So let me pause there, anybody want to jump in? You know, Mary, feel free if you want to jump in on this to add anything. No? Okay. Elsa, thank you.

Elsa Saade: Thanks, Keith. I'm just wondering if these have already been sent to the GAC?

Keith Drazek: Yes.

Elsa Saade: Okay. Because I'm not sure what we're expecting to hear. It would be good to have a preliminary expectation as to what we're going to hear in terms of answers and to know exactly where we want this to go, right, because the GNSO Council knows very much that the GAC is an advisory committee and as much as we respect their input in terms of our policy development processes, we also need to make sure that our footing is going forward very clearly as well. So do we have any expectations or predictions in terms of what we are to be hearing in our meeting with the GAC? Thanks.

Keith Drazek: So, Elsa, thank you. Great question and great points. And I will, again, refer everybody to the email that I sent to the list yesterday, okay. It lays out very clearly that the GNSO Council is considering all of our options, which could include approving everything and forwarding it to the Board and letting the Board figure out what they want to do with it. And no options are off the table.

I basically listed four options: reject everything, approve everything, approve 1 through 4 and reject 5 and then approve 1 through 4 and refer it to either RPM or - so the range of options are listed in the email and I made it very clear in that email that we're still considering everything, no options are off the table and we could still decide to, regardless of what they send back to us, that we're going to approve it. Like we haven't made that decision as a Council.

Having said that, my understanding is that there - from the conversations, and I haven't heard them or seen them but reports that I've heard is that there's actually active engagement among members of the GAC who think that some of this, whether it's a Work Track 5 or, you know, some sort of a targeted focused group would be a better result than basically us forwarding Recommendation Number 5 at this stage, that they would rather at this instance perhaps, and we'll hear from them directly, have further engagement on this topic.

So I think that we will likely hear that there are at least some members of the GAC who would be willing to consider, you know, re-engaging on this issue to try to deliver a better policy outcome from their perspective, right, that's - I'm not saying anything about, you know, sort of the output of the group from my perspective, it's just from their perspective.

So great question, Elsa. I think you're absolutely right that we as the PDP manager at the GNSO for gTLD policy, we have a report that came out of a group and now it's up to us how to figure out what to do with that. But in order to make the best decision for the future we need to have this further engagement with the GAC. And again, everybody, I still plan to have this ready for a vote in April to make a decision on this finally, that's my goal, and this is part of the consultation and engagement process to make sure we're fully informed as we develop that decision.

Okay, let's move on. Amr, I'm sorry, I didn't see your flag, go ahead.

Amr Elsadr: Thanks. This is Amr. Just a quick point on Number 2, and I'd need to check this or maybe ask staff to help because it seems like the GNSO is proposing whether the EPDP - like an EPDP might be suitable, a suitable vehicle to address this or not given the GAC's recent experience and engaging with this kind of process. If I recall correctly the PDP manual is clear on the EPDP not being a suitable process to address previously-discussed policies that have been already dealt with by the GNSO.

So I'm just asking that, you know, maybe staff just either confirm this or correct me on it, and if it is - if I am right then I think it would be a bit tricky for us to propose this if it conflicts with the PDP manual. So just procedural...

((Crosstalk))

Keith Drazek: Yes, thanks very much, Amr. This is Keith. So great point. Yes, we wouldn't want to suggest something that our own procedures would prohibit, so I'll defer to staff on that one. Maybe we can come back to that question, unless they've got it at their fingertips. But, you know, in one instance you could say that the EPDP focused on the temp spec that we just dealt with, dealt with Whois policy, right? We've had plenty of Whois policy-related issues previously but obviously this was specific to a temporary specification. So I hear your point. Marika, go ahead.

Marika Konings: Yes thanks, Keith. This is Marika. Just to read from the EPDP manual, it just talks about it should not be used to reopen a previously explored policy issue only because a constituency or stakeholder group was not satisfied with the outcome, but it doesn't prevent new or additional policy recommendations on an issue that has been previously scoped or discussed. So...

Pam Little: Pam Little speaking. So I have a follow up question for Marika. So in this case, if the Council does not vote on Recommendation 5, would they be considered still for (failed) of that exclusion of using the EPDP or not? Does that make sense? Let's say we don't even vote on Recommendation 5 so that would not be - would that be considered as a - yes.

Marika Konings: It's a good question. I think we would need to look at it a little bit more closely, but my first instinct would say no because it's not an issue you've dealt with and someone's trying to reopen it because you didn't, you know, adopt the recommendation and someone says can we do an EPDP because I didn't like the outcome of it and I want to redo it. But again, we may need to look at it a little bit closer.

Keith Drazek: Okay. Thanks, everybody. So I'm getting notes that we have to break now and so we're already into the coffee break. Thank you for your patience. We'll come back and try to get back into the last few questions related to our engagement with the GAC. So take a break, let's go ahead and stop the

recording and let's be back here in 15 minutes. Oh, Marika, sorry, go ahead.
Five? Do we have visitors?

Marika Konings: Yes, we have our colleagues from Finance already here who are scheduled for 10:30.

Keith Drazek: All right, five minute break, people, sorry.

END