

**ICANN
Transcription ICANN64 Kobe
GNSO Council Wrap-Up
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Keith Drazek: Welcome to the GNSO Council Wrap Up session for Kobe. If I could just ensure that the recording it started. It looks like it is. Thank you very much. So yes, thank you. So welcome, everybody. This is Keith Drazek. Welcome to the GNSO Council Wrap Up session here in Kobe, Japan, ICANN 64.

The topics for our wrap up session are on the screen and in Adobe Connect before you. I'll just run through those briefly and then we can get right to business. We have one hour for meeting and there's quite a bit to discuss so let's get right to it. And if anybody has questions or comments please put your hand up in Adobe and we'll build a queue.

So first is we'll discuss an approach - the approach and volunteers for our review of the GAC communiqué and any further follow up that we would like to send to the Board. The next will be a discussion of letters that were exchanged recently just prior to the beginning of ICANN 64 between ICANN's general counsel and essentially a letter that was sent to us as Council regarding the enforceability of ICANN's Expected Standards of Behavior and the disciplinary situation in the RPM PDP Working Group.

Next we'll discuss the Curative Rights final report, that's the IGO INGO Curative Rights final report that is still on our agenda and with an eye towards trying to bring that to a vote ideally at our next meeting, if not in April, then in May. We'll discuss next steps there.

Next item is the request for volunteers to draft the Council letter regarding improvements to the legislation tracker. This was something that we discussed in our earlier session this week basically providing some feedback and guidance from a Council perspective to ICANN Org in the development of the legislation tracker and reporting that they're doing right now. Essentially this was taking it to the next level of granularity and detail and better understanding the possible impacts of the various legislation under development on GNSO policy making.

Next will be planning for ICANN 65, any input that the Council leadership should consider as it prepares the agenda. I'll just note that Pam is not currently with us in this session because she's covering our interests with the SO/AC leader group gathering to start planning for ICANN 65 so she's there, she'll report back to us on those discussions, but this agenda item is really for us to have any, you know, sort of conversation for us as the leadership as we head into ICANN 65.

Next will be a discussion of the need for a Council liaison to the EPDP Implementation Review Team for Phase 1 and then any other business. Is there anything that we should carve out as a separate agenda item or can we cover everything under any other business? Okay. Thank you.

So with that let's kick it off with discussing the approach and volunteers for the review of the GAC communiqué. And the first word there, "approach," is a reference to conversations that have been going on around trying to sort of formalize or have a predictable, you know, process or group identified for the GAC communiqué responses as we move forward. After every meeting we

sort of say, who would like to volunteer, a bunch of people put up their hands and there's really no sort of coordinator or obvious lead for that effort.

And I think what we've seen over time is that it essentially, you know, falls to one person to develop a draft and, you know, there's little feedback and response. And I'll take some responsibility for that myself as well in times that I volunteered, so I think we just need to have a - looking ahead a little bit more of a formal process. So I'd like to have some conversation about that.

It seems to me that, you know, looking ahead it would be helpful to have our liaison to the GAC as the coordinator for that effort on a predictable basis but that it is not only the responsibility of our liaison to do the drafting and that we really do need people if they put up their hands to volunteer for the effort to really engage in helping to draft and do it in a timely manner so that - such that the Council can review and all of that. So Julf, maybe I could turn to you for your thoughts on that and then open it up for a discussion.

Julf Helsingius: Thanks, Keith. Julf Helsingius for the record. I totally agree that's probably a liaison to the GAC and naturally I want to coordinate it; that doesn't mean that I actually sort of write the stuff. I'm really hoping we get some people who can help with the actual text but I'm more than happy to coordinate it.

Keith Drazek: Okay. Thanks, Julf. And is there anything specifically, while we're talking about process, is there anything specific as we move into the call for volunteers in the GAC communiqué that you're aware of that you'd like to share with the Council, any particular issues of concern or note that we should be aware of?

Julf Helsingius: I still haven't seen the final copy but from what I've been following in the drafting there's nothing really surprising or controversial, it's kind of same old same old, so no big surprises.

Keith Drazek: Great. Thanks, Julf. So with that Julf, if everybody agrees, will help coordinate this effort now and moving forward in his role as liaison but now I'd like to ask for some volunteers to help do the drafting and to come up with the response. So I have Michele and Paul. Anyone else? Okay, Philippe. Very good. That's a good core group and obviously if there's anything that you need from any of the other councilors in terms of input, feel free to reach out further. So Marika, thank you.

Marika Konings: Yes, thanks Keith. This is Marika. So per the standing practice staff will put the GAC communiqué in the template. I think for the previous one we did in the form of a Google Doc, is that helpful again to facilitate collaboration? I see people nodding so we'll take that approach.

Keith Drazek: Excellent, thank you very much, Marika. Yes, Tatiana.

Tatiana Tropina: Thanks. Tatiana Tropina. Can I also volunteer?

Keith Drazek: Of course.

Tatiana Tropina: Thanks.

Keith Drazek: The more the merrier. Very good. Okay so we've got Michele, Philippe, Paul and Tatiana working with Julf. Very good, thank you. Let's move on then. Next item on the agenda is basically an update from me to the Council on the exchange of letters that took place. And I'm just going to provide a little bit of background and context here on the issue. I'm not intending to get into a lot of detail on the disciplinary situation but this is an update broadly on the issue and the topic.

So I think as folks were called back in Barcelona at the - during our Council meeting and during the public forum, Göran sort of flagged or highlighted the fact that there'd been some challenging going on in the RPM PDP Working Group with regard to some - a conflict between a couple of working group

members and then some threats of potential litigation and allegations of bias and conflict of interest of the chairs in terms of their ability to fairly deal with the situation within the group.

And so the co-chairs in Barcelona came to us during our Council meeting and asked us under the circumstances to, you know, take on the issue of the disciplinary matter and questions around the enforceability of the Expected Standards of Behavior in ICANN's processes.

Following - and again as I noted, Göran, during the public forum, flagged this as an issue and indicated that ICANN was engaging and he was going to be directing ICANN Legal to get involved and to review the situation and that this was a matter of significant concern to ICANN as it relates to the ability of the multistakeholder process to engage and people to volunteer and participate in the processes under, you know, possible thread of litigation.

And so following the ICANN 63 meeting in Barcelona, I had a conversation in early November with ICANN Legal. I spoke with John Jeffrey and Sam Eisner, David Olive, and basically had a conversation about, you know, what ICANN's intentions were.

And at that point they indicated that they were going to be reaching out to the parties involved in this, particularly the co-chairs, to get a better understanding of the situation and that they were taking this very seriously and that they expected to be taking some action and engagement on the issue in terms of, you know, the review and the positioning around enforceability of the expected standards of behavior, questions around co-chair indemnity or protection from litigation personally under the ICANN processes.

And so I followed up several times, I had a couple of conversations including one with Göran a few months ago, you know, I guess maybe six weeks ago, leading into this where they kept indicating to me that action was imminent

and conversations were taking place. And all of that culminated in an exchange of letters and a delivery of letters to us as Council from ICANN Legal on the topic just leading into ICANN 64, here in Kobe.

The one that I want to focus on primarily is the letter from John Jeffrey to me as Council Chair underscoring the view of ICANN Legal that co-chairs in the PDP process have both the latitude and the obligation to enforce the Expected Standards of Behavior, and that if the co-chairs or leadership of a PDP, or the Council, were to take that action within - take such action within the construct or the confines of, you know, sort of the process laid out for PDPs and, you know, the ICANN process broadly, that ICANN would, quote, stand behind us.

And that basically the message is that the Expected Standards of Behavior are enforceable and that we as Council and PDP leadership are expected to enforce them, and if we do that ICANN Org will stand behind us. And so I will refer you all to the substance of that letter. If you haven't read it yet I strongly encourage you to do so because it - essentially says that, you know, we have some obligations and, you know, that we need to make sure that in terms of managing the process and making sure that it's effective and efficient that Expected Standards of Behavior are to be obeyed and enforced.

So following that, or at the same time, a letter was sent from ICANN Legal, ICANN general counsel, to one of the participants in the RPM PDP Working Group. And I will simply refer you all to the exchange of letters, there's actually two; there's one that went from ICANN Legal to the working group member, and there is a response from the working group member's counsel to ICANN Legal.

I'm not going to get into the details and the substance of that exchange, I'm just flagging this for you all. Please read those letters as we, you know, deal with the situation in the RPM PDP Working Group.

But essentially ICANN Legal's view is that there were violations of the Expected Standards of Behavior in the group on multiple parties' behalf, so not only the member that is the subject of the exchange of letters but on multiple parties, and that essentially the view of ICANN at this stage is we're now on notice, everybody is now on notice that that is not to be tolerated in the future.

And so I think, you know, the Council and the cochairs of the working group at this stage we have not had substantive discussion about, you know, what we should do about the past or if there's anything to be done about the past behavior, but there's a clear signal being sent that moving forward that will not be tolerated. And I think that we as Council need to be prepared for instances where that might be a challenge for us or might be something that we have to deal with and that we need to be prepared to do so.

Again, the role and responsibility for enforcing is primarily with the co-chairs or the chairs or leadership of PDPs or implementation teams or whatever. But as Council and as the managers of the process that could, at some point, be escalated to us for engagement or involvement. So let me pause there, see if anybody has questions, comments, further thoughts on this particular topic?

Okay I see Elsa and I'll make sure I'm checking Adobe as well. Go ahead, Elsa.

Elsa Saade: Thanks, Keith. I'm just wondering if there's a timeframe for us to actually set a deadline to make a decision on this or to at least start some kind of preemptive work. Thanks.

Keith Drazek: Okay. Thanks, Elsa. The answer is no on this one because it's not clear that there's any actual action for us to take at this point. I think there is an existing 3.7 that's pending that needs to be dealt with so it's something that we need to work through; it's a good question. I guess that's something that needs to be resolved. And maybe I'll turn to staff to see if they can help me clarify the

answer to that question in terms of next steps, obligations, deadlines for dealing with any pending actions that are out there in terms of a 3.7.

Mary Wong: Thanks, Keith and Elsa. This is Mary from staff. You're correct, Keith, from the staff perspective there is no imminent action or decision expected of the Council at this time. Of course depending on any further discussions with the RPM chairs and any other developments and updates, that may change, but at this time there's no expected action or decision.

Elsa Saade: Just if I may, Keith? It's just because it's actually hindering the process of - it's hindering a PDP basically. It's not being - it's not happening in parallel to really effective work, it's happening and it's hindering that effective work; it's hindering the amount of effectiveness that - it's something that we should be really careful about and we should deal with as soon as possible, be preemptive and be proactive when it comes to that. Thanks.

Keith Drazek: Thanks very much, Elsa. I agree that there are some concerns there. And I think my hope, and this is aspirational, but my hope is that with this exchange of communications and the notice having been provided by ICANN Legal and our acknowledgement of that here, and at some point perhaps there's a response from Council to ICANN Legal, you know, from me back to John Jeffrey, acknowledging this and setting out that we agree in a sense.

And obviously that's something that we would share with Council before sending, that that's a notice that will be effective in, you know, eliminating the ongoing concern or the, you know, you know, the challenges that the group is facing because of this particular situation. So I fully acknowledge that this has been, for the last four months, a distraction at least for the group, and that I hope that that will no longer be the case moving forward.

If, frankly, if it continues to be a problem then I think the co-chairs will, you know, have the opportunity and the obligation to act and that we as Council will need to be prepared to back them up on that if needed.

Okay, anybody else would like to get in on this one? Okay, I see Ayden, go ahead.

Ayden Férdeline: Thanks, Keith. This is Ayden. And I don't want to comment on the substance of the letters themselves, but one issue that I would like to flag, and that I would like to put on the record, was the timing of the response because it struck me as something of a Friday night news dump that four months elapsed between when this - these concerns were initially raised when we had the discussion in Barcelona, we had follow up action at our strategic planning session in January, and then the response was received from ICANN's general counsel the day before this meeting arose.

And this is not the first time that this happened. I think it's actually a very consistent thing now that's happening. In the Barcelona meeting there was an instance where the ICANN Board wrote to the Non Commercial Stakeholder Group the day before the meeting began in what seemed to be targeted action designed to cause embarrassment to our stakeholder group because they knew we would not be in a position to be able to respond in a timely manner to the concerns that were raised.

I also think back to last year just before San Juan and this cookbook that ultimately, you know, fed into the temporary specification was only shared with us when we were traveling to the ICANN meeting. And so I wanted to flag it, this is a concern that I think we are not being given time to review documents in a timely manner before meetings, the publication of these documents seems to be happening in an interesting manner.

And I would certainly like to say that I would like to see these documents published at least a week in advance of meetings particularly when these are not new issues, these are simply issues that have not been responded to or addressed in a prompt manner. Thanks.

Keith Drazek: Okay. Thanks very much, Ayden. And I share your concern. I think certainly in this particular case I was, and have been, frustrated in terms of the lack of action and responsiveness despite being told that action was imminent many, many weeks ago. And so I also find the timing unfortunate and I take your point that there seems to be a bit of a pattern.

I think in this particular case I understand that, you know, there was some outreach and conversations that had to take place to get, you know, the ICANN Legal's department to the point where it was comfortable communicating, but it seems to me that could have been done, you know, quite a bit sooner. So - but I share your concern and perhaps in any acknowledgement we respond, you know, in terms of acknowledging the receipt of the letter regarding the Expected Standards of Behavior that we, you know, sort of make a point that, you know, timing was perhaps a bit unfortunate.

So I've got Darcy and then Paul and then Mary.

Darcy Southwell: Thanks, Keith. Darcy Southwell. I think from a forward-looking perspective, one of the things that the PDP 3.0 sub teams should really do is to look into this and really digest the contents; I'm sure we've all read it, but how we can apply that. There's two or three recommendations that have been approved, that I think, you know, this stance that we need to take need to be incorporated into that so that we can improve the PDP process overall and hopefully avoid getting into some of these scenarios in the future rather than having to deal with them the way we're dealing with them now. Thanks.

Keith Drazek: Thanks, Darcy. Completely agree. Paul and then Mary.

Paul McGrady: So thank you this is Paul. Is this being recorded?

((Crosstalk))

Paul McGrady: Paul McGrady. So Ayden raises a really interesting thing that I think we should give some real thought to advocating for, which is a blackout period before meetings, like a system-wide get the stuff seven days before, 10. I don't want to get into this - I'm not talking about the specific disciplinary issue that we're talking about here, I'm just talking generally.

Is that something that - I've only been around ICANN for like 10 or 12 years, is that something that's ever - I'm looking around the table maybe at people with more tenure, have we ever considered that? Has that ever been talked about? Because it would be fabulous to print out your booklet before you get on the airplane instead of reading it on your phone. Thanks.

Keith Drazek: Thanks, Paul. I think that's a great comment and I agree, you know, a deadline prior to the meeting, blackout period, I think would be very welcome. I believe, and staff will correct me if I'm wrong, that there's a 15-day requirement, advance requirement for any things considered by the Board, right, so there's I think a recognition that there needs to be time to, you know, be able to digest and consider and discuss things that are requiring an action.

But Board actions are not the only actions that take place, right, to your point. And conversations in a face to face setting of Council and of other groups are all very important, right? And to be able to have had the opportunity to consider those, for example, I didn't feel comfortable during either our working session or the Council meeting having a detailed or substantive discussion about this disciplinary situation because none of us had had the chance to read those letters.

Even today I don't want to get into the details of the exchange because we've been busy this week; we haven't had a chance to read the letters. And there's a back and forth between, you know, legal, you know, legal perspectives, you know, Council.

And so had those been posted a week earlier we might have had a more substantive discussion on the topic and been able to, you know, sort of advance the ball a little bit more quickly. So completely agree. I don't know if there's anything further, Mary or Marika, in terms of timing and document deadlines?

Mary Wong: So I raised my hand to follow up on Ayden's comment but I'll also follow up on Paul's comment. So there is a practice and a recommendation that formal documents that are intended for action or even discussion during ICANN meetings should be posted ahead of time, up to 15 days. And as you noted, Keith, the Board does observe that and internally we do have deadlines for that.

It is not necessarily a fixed requirement. I can say that the staff across departments does try really hard where possible. But if this is something that the community feels should be more enforced, should be better observed, then from the staff perspective it should certainly be something that you as the Council or any community member or group want to raise.

And then just to follow up on Ayden's point, not to comment on any of the incidents or any of the letters, but this particular exchange I can say that there was definitely not an intention on the part of ICANN Legal or ICANN Org to post them at a specific time for any particular reason or for any particular targeted purpose. Thank you.

Keith Drazek: Okay. Thanks, Mary. Paul, you want to respond and then I've got Michele in queue.

Paul McGrady: Just briefly. And so thank you, Mary, for that. Paul McGrady again. Thank you for that. And we would have to remember that if we want staff and everybody else to put their pens down on the 15th day, we would have to put our pens down on the 15th day, right? So it sounds good but we would all have to abide by the same rule, right? So that's also something to think about.

But I would hate for us to lose this because I think there's "there" there, you know what I mean? I would like for us to really figure out a way to ponder this and to - and that might go a long way to improving volunteer morale, you know, this feeling of burnout that we all seem to feel. So I don't know what to do with that, Keith, if you think it's worthy of sticking a pin in it and us talking about it at some point I would be very happy about that. Thank you.

Keith Drazek: Great. Thanks very much, Paul. And, you know, that might be something also for a discussion at the SO/AC level because it's probably not unique or specific to, you know, concerns that we might have in the GNSO; that's a topic that I could bring up at the next SO/AC leaders' conversation, you know, that we don't have scheduled now, I don't think, but, you know, it happens on a fairly regular basis.

Okay, Michele, and then we need to move on.

Michele Neylon: Thanks, Keith. Michele for the record. I mean, I hear Paul McGrady's concerns and I do share them, but the flip side is, you know, not only do we have to stop producing documents, but then you could end up in this kind of ridiculous situation where let's say there's a litigation or there's something coming in from a third party, you know, you control that, there is no way to say to a government or whoever, do not send us letters.

I mean, if anything when it comes to the correspondence from external third parties, and I know since Göran has taken over, that has definitely improved a lot. I mean, the - we still do have that kind of struggle where you know a letter is coming or is meant to be coming and then, you know, has it arrived, etcetera, etcetera, etcetera. So I think what might be the ideal would be just maybe to send the message to staff that please avoid sending these kind of substantive documents from X date out from a public meeting because it will cause headaches.

But I wouldn't think - I think we - while it might be a nice idea to have a hard limit on like - I just don't see how we can do that realistically, but maybe you can discuss that further at the SO/AC level.

Keith Drazek: Thanks, Michele. Yes, just to respond, you're right, I mean, we can't control or prevent and there's no way to say, you know, we're not going to accept anything that's sent to us, right? And so it's more of I think a, you know, a target or, you know, something to try to meet. I think to your point let's try to, you know, not have things dumped on us, you know, 24 hours before travel or in flight. So good points.

Okay, let's move on in the interest of time. Oh, I'm sorry, Flip, go ahead.

Flip Petillion: Thank you. This is Flip side. Let's note it as a best practice, frankly, and as a major rule and of course there are exceptions as for any rule.

Keith Drazek: Yes, well put. So okay, thanks. Let's move on. Next item on the agenda is a next steps discussion on our IGO INGO Curative Rights final report. Very briefly, I think we're all familiar with this one, all too familiar because it's been with us for many months. And our target is to have some sort of a resolution of this in the near future.

We have a Council meeting on April 18 where we have an opportunity to vote and if, you know, if that doesn't work then obviously our Council meeting in May. But our goal should certainly be to wrap this thing up as far as next steps, decision making, prior to Marrakesh.

So the action item that Council leadership has, working with staff right now, is to develop some proposed motion language for socialization with Council and so you, as councilors, can socialize it with your various and respective groups.

We, as you all know, coming out of our engagement with the GAC this week, we indicated that we are still considering all options or all options are still on the table. No decisions have been made but there is a range of four options that are there for consideration and discussion.

And just very briefly at a high level it is, you know, potentially approve all of the recommendations, send it to the Board and let them do with it as they will. The other possibility would be to simply reject the recommendations.

A third would be to approve - and this is as the Council leadership proposed back in December - approve the first four acknowledging that technically process was followed in the PDP but carve out Recommendation Number 5, which this the one that is viewed by some as out of scope and others as problematic, and clearly conflicts with GAC Advice and basically either set up a new group to focus on that under PDP 3.0 rules or to refer it to a possibly reconstituted RPM PDP Working Group for its Phase 2 work on UDRP because Recommendation Number 5 specifically makes changes or would make changes to UDRP.

So that's just a high level summary, there's probably some nuance in there that's worth reading and that's one of the reasons we're going to pull together some motion language for everybody's consideration.

What we need to do is to figure out, you know, essentially where people are, where your groups are on this particular topic. We need a sense as to, you know, if there are strong feelings one way or the other prior to finalizing our decision on the motion that has the most support. We may not all agree but at some point we're going to have to figure out the last bad path forward on this one.

And I think, in my view, and this is again just my view is that the proposal put forward by Council leadership in December that basically approves Recommendations 1-4, sends them to the Board, those ones don't change

consensus policy or create new consensus policy, and then basically refer Number 5 to either the RPM PDP Working Group for Phase 2, under either its current charter or possibly an updated charter for - reflecting PDP 3.0, for Phase 2, or to refer it to its own standing group, a new PDP essentially focusing on the issue.

And so I think that, in my view, is the most appropriate path forward recognizing that there's really no good option here. But we will pull together that proposed motion language for each of the four options for everybody to consider. So let me pause there and see if there's any thoughts on that. Paul, go right ahead, thank you.

Paul McGrady: Thanks. Without coming down substantively on one of the options I think there's a variation on one of the options which is instead of sending it to Phase 2 of the RPM PDP, we could simply vote - we could vote them all down or we could vote down Recommendation 5 and just say that nothing in our vote precludes anybody from raising something similar in Phase 2 of the RPM PDP.

In other words, it's not preclusive because there may be some, you know, there may be some way for that particular working group to get at whatever it was that person was - or the group of people who were for that recommendation without it coming out as sideways as it did, right, there may be something there that's worth doing.

Also don't want to do - have a Phase 2 RPM PDP where we've already precluded issues from being raised by people, that's the point of working groups, right? So I mean, the Phase 2 working group could come up with all kinds of great ideas or whacky ideas or whatever, that's what the working group - and then the working group sort of sorts through them, right?

So I don't think we have to necessarily affirmatively send it to Phase 2 of the PDP working group, we can just simply say, you know, we're voting it down

but it's not to preclude whatever that was trying to solve from being talked about again. Does that make sense? Thanks.

Keith Drazek: Okay. Thanks, Paul. I follow your logic. I probably would need to defer to staff and others about sort of the mechanics and how that affects process in terms of voting something down and not doing anything with it, what does that mean procedurally. So your comment is certainly acknowledged and taken on board for, you know, for further consideration. And that's something that we could potentially work into the motion language that we'll be developing as an option or as a proposal.

So if anybody would like to get in queue please use Adobe chat. I've got Marie next.

Marie Pattullo: Thanks, Keith. This is Marie. Although I know we're not talking about the substance, I still feel that the RPM Working Group is not the right place for it to go because it is a really complicated legal issue to do with international jurisdiction of nongovernmental organizations. This is not just relating to RPMs. So I'd be very uncomfortable for it to go there for that and for other reasons.

But you talked also of the possibility of sending 1-4 up to the Board. After our exchange with the GAC on some - was it Sunday - this week, is there a timing issue there that we could consider? Because if we're going to engage with the GAC, and you made it clear to them that we are very willing to do so, and there were a number of people there that made it clear they were willing to do so, so can we try to factor in at least a leadership discussion between you?

Because I don't want to blindsight them by having a discussion saying we'll talk to them, and then sending it up to the Board anyway, if that made sense. Thank you.

Keith Drazek: Okay, thanks, Marie. I think that's a really good point about communication certainly. I think I mean, the conversation that we had I guess, you know, was about if the Council decided to not approve Recommendation Number 5 in particular, would the GAC and members of the GAC be willing to participate in a process to deal with that issue? Right? And so - and certainly if there's further engagement or conversation in advance of that we should be open to that.

But I guess that's an open question is whether there needs to be some sort of a small team or small group of councilor, you know, Council and interested parties from the GAC prior to making that decision or whether, you know, we make that decision and then they're invited to participate in the process of figuring out what to do with Recommendation Number 5, or the issue more broadly.

And Mary, feel free to jump in on this, you know, anywhere along the way but that's - I think that is an open question. But Marie, I take your point that we don't want to surprise anybody and we want to make sure that, you know, whatever we do is not, you know, not unexpected. We did say, and I made very clear, like I said in both the email and the conversation that, you know, we're still considering all options and no decisions have been made. But I also I believe said we're looking to make a decision pretty quickly including possibly in April on the issue.

Julf. Thank you.

Julf Helsingius: Talking to GAC members I do think they have (unintelligible) we kind of promised to talk to them before we make a final decision, so whatever that decision is.

Keith Drazek: Excellent. Thank you very much, Julf. I think that makes a lot of sense. So thank you, Marie, as well. My laptop locked up. Is there anybody in queue at this point? Paul, is that an old hand? Okay. Okay, Carlos.

Carlos Raúl Gutiérrez: Just for confirmation, this is Carlos for the record. we will discuss this in the next call, correct? I don't remember, you mentioned next or the following but I don't know it was for this issue or for another issue. This we should discuss in April, right?

Keith Drazek: So prior to April and prior to our motion deadline we will share and socialize some draft language for our consideration and for your, you know, taking it to your stakeholder groups and constituencies for input. And then we will have the option, depending on, you know, our email discussion, on those motions on that proposed language as to which direction we're most likely to go. So we will have an opportunity if there's a sense of agreement on the list to vote in April, but, you know, we'll see how that goes and obviously with the communication with the GAC perhaps it'll be May. But I think the expectation is we want to bring this to a conclusion as soon as possible.

Carlos Raúl Gutiérrez: Do we still have a liaison to that process?

((Crosstalk))

Carlos Raúl Gutiérrez: Yes, Darcy. Darcy, thank you.

Keith Drazek: Okay. Elsa, go ahead.

Elsa Saade: Yes, Elsa Saade for the record. I know I sound like a broken record, but I'm really scared of the precedent we're setting right here right now. I understand completely that the process that we're going through or the exercise that we're going through is for us to be able to make a decision that will pass with the Board. And I understand that. But at the same time I'm extremely scared of the amount of leverage we're giving to certain groups that should not get as much leverage as they are getting.

I completely understand that there should be communication, there should be a lot of talking about certain things, but we should understand that our stance should be extremely clear in terms of PDP managers and the fact that there was consensus, whether - if we wanted to shut down the fifth, then why didn't we shut it all down, which is not my suggestion, I'm just saying. So I think we've had enough conversations with certain groups and you certainly have had a lot of conversation with certain groups, Keith.

And I think we should be extremely careful going forward with what kind of precedent we're setting because I can see that we're setting a precedent, it's just how bad it's going to be. And I've said that in (SPS), I said that in the previous Council meeting. If we are to take a step forward let us take it on very clear grounds. Let us put down the reasons as to why we're taking these decisions, put it down in detail. So yes, I'm just the broken record here again. Thanks.

Keith Drazek: Thanks, Elsa. And not a broken record at all. I think, you know, important to continue to air the views so we make an informed decision. And in response to your concern, I agree that it's something we need to be very careful about and cautious about and make decisions based on solid footing and make sure that they are defensible.

I think the argument in this particular case is that, and as has been acknowledged by previous Council leadership and the liaison to this group is that had we been operating under 3.0 at the time, things would have been done differently and the outcome and result may have been different. That's not to say that we're necessarily able to go back and change the recommendations, I don't think that's our role as Council, but in this particular case we have a Recommendation Number 5 that is, at least in the view of some, out of scope for what the group was chartered to do.

And the fact that it impacts another consensus policy that is the subject of imminent or, you know, upcoming PDP work on the UDRP I think there's a

reasonable justification here to say that this would be sort of potentially inappropriate for us to approve at this time.

Elsa Saade: And actually - Elsa Saade for the record again. I'm actually very much looking forward to the leadership's choices to be sent to us before the next Council meeting. And thanks for the reply, Keith, I appreciate it.

Keith Drazek: Thank you very much, Elsa. Absolutely. Rubens, you're next, and then we should move on.

Rubens Kuhl: Rubens Kuhl, Registries. I wonder that if we approved all five recommendations by a percentage that doesn't qualify for consensus policy approval, that could actually have the effect of approving Recommendations 1-4 and not approving Recommendation 5 because it didn't reach the consensus policy threshold. So we could still follow procedure and get that result that seems to be amenable to all constituencies and stakeholder groups in the Council.

Keith Drazek: Thanks, Rubens. And I'll ask Mary or Marika to correct me here if I get this wrong, but to Rubens's point, because Recommendations 1-4 don't create or change consensus policy we would approve them with a majority. But Recommendation Number 5 would change an existing consensus policy and that requires a super majority. Correct? To be sent to the Board as a consensus policy recommendation. So just a little bit of context there for Rubens's point for perhaps further discussion.

Okay, Amr, you're in queue next. Go right ahead and then we do need to move on.

Amr Elsadri: Thanks, Keith. A question on process again. Just this Amr for the record. My understanding is that there is some sort of obligation for the GNSO Council to take some kind of action when recommendations coming out of a PDP working group are presented, so in terms of our recommendation, like

Recommendation 5, my understanding is that the GNSO Council would have to either vote on it or in some cases perhaps send it back to the PDP working group to discuss.

So I just wanted to be clear if - are there other options for the GNSO Council for other actions to take in these circumstances, or are those the only two ones? Thank you.

Keith Drazek: Okay thanks, Amr. And again I'll turn to staff to help answer this question with clarity and specificity. But I think there's also the possibility, for example, the previous working group was no longer, you know, available or, you know, the members were not available then we could potentially charter a new group. But let me just stop there before I dig myself too deep a hole. Mary, go ahead.

Mary Wong: Thanks, Keith. I don't think there was a hole. But not to get too much into the details, there certainly is an expectation of timeliness of action of the Council especially on the outcomes of a PDP. If you look at the applicable sections of the PDP Manual, you see that that's there, that's the assumption. There is also language there that suggests certain courses of action that the Council can take. It's couched mostly in language that's more "may" rather than "shall." So your recommended to take certain actions but you're not bound to only take those actions. Thank you.

Keith Drazek: Okay thanks, Mary. And thanks, Amr, for the question. These are all important questions so as we consider our next steps. Elsa, is that an old hand? Okay, thank you. All right let's move on. So action item there just, you know, watch the list for some proposed motion language that is, you know, certainly something that we can continue to discuss, don't consider what you perceive, you know, final in any way, shape or form, but it will present the range of options that we're considering.

Okay next item is a call for volunteers to draft a Council letter regarding improvements to the legislation tracker that ICANN produces. So following our conversation in our planning meeting where we had quite a good and I think substantive discussion about the importance of, you know, advance or early warning considering potential regulation or legislation developing around the world or even in existence today, as it relates to the impact on our ability as Council to manage policy development processes and as for ICANN generally and the GNSO for gTLD policy to do our work.

So I think we acknowledged in our prep session earlier in the week that, you know, that so far the table that they've put together, the spreadsheet is a good start but it needs further, you know, development and evolution and that really the key here is not just to list thing but to, you know, get to the next level of substance and analysis to be able to properly identify you know, where the risks are, where the potential impacts might be.

So with that I'm just going to ask for the call for volunteers, who would like to participate in drafting a letter to ICANN basically calling for and making specific recommendations of what we'd like to see as this thing evolves? So I've got Erika, Tatiana, Ayden, Michele, Philippe and Darcy, and Flip. Okay. Very good. Thank you so much.

I think that's going to be a really important communication to send particularly as ICANN embarks on this prioritization process that Cherine has announced and that, you know, that that Brian Cute is going to be running. I know there's a session coming up shortly on that.

But, you know, the key here is to make sure that incorporated into that is a recognition among the Government Engagement Team of, you know, sort of where the rubber the road as it relates to this topic and it's not just a matter of, you know, sort of coming up with a list. So thanks to all of you for volunteering, look forward to reviewing the draft on that.

Next item on the agenda, planning for ICANN 65. Let's just open this up for conversation, is there any input that you'd like to provide to me and Rafik and Pam as we engage with the SO/AC leaders and also with staff on planning for Marrakesh? Any observations of Kobe, anything that you'd like to see done again or differently?

And I think one of the things we really need to talk about is the development of the cross community slash high interest topics and let's try to get an advance, you know, sort of advance planning on how we as the GNSO Council, you know, or independently with our stakeholder groups and constituencies, you know, let's try to be a little bit more coordinated and, you know, get ahead of the thing.

So I've got Michele. And Rubens, did I miss you earlier or is that a new hand or an old hand? New hand? Okay, so Michele, Rubens, Erika.

Michele Neylon: Thanks, Keith. Michele here. So I think what you're asking isn't so much in relation specifically to the Council meetings but in terms of the meeting in general, is that correct?

Keith Drazek: Thanks, Michele. It could be both.

Michele Neylon: Okay.

Keith Drazek: So certainly anything that we could do differently or might do differently is certainly fair game.

Michele Neylon: Okay that's fine. As far as the Council sessions, it was fine. I have no complaints. The other sessions there's definitely still far too many and I think this is something that really does need to be addressed as a matter of urgency. I gather from speaking to some ICANN staff that they are tracking attendance at all of these sessions so they do have metrics about which sessions are actually popular and which ones aren't.

And maybe it's time to be a little bit more, well, hard core on this and just go right, okay, if there aren't enough people turning up for these sessions, cut them. And maybe that means you change the modus operandi a little bit and you - not so much force but let's just say you get a little bit more strident in pushing people to both register for the meeting as a whole and secondly, to register for the particular sessions that they're going to be.

So taking an example, we all know that unless something weird happens, pretty much everybody sitting at this table will be in Marrakesh and that everybody sitting at this table will be attending all of the GNSO Council-specific sessions, that's kind of what we're here for. Then if you break it down beyond that, you know, members of the IPC will be at the IPC's constituency thing; members of the Registrar Stakeholder Group will be at the Registrar Stakeholder Group-specific sessions, I mean, those are kind of pretty simple and straightforward.

But there's a lot of other sessions that get scheduled and it's not very clear why they're scheduled. And you end up with people in huge rooms at crazy cost and we're, I don't know, I'm trying to think of a decent analogy but like the plenary session room here was used for the Registrars with the Board, actually, sorry with the CPH and the Board. I mean, wow. It was like - I don't know it was a really bizarre experience. I mean, there were like 20 of us in this huge auditorium that takes I don't know how many hundred people. We could easily have done it in a room this size or smaller. So it just seems wasteful.

Keith Drazek: Okay thanks, Michele. Okay I've got Rubens, Elsa and Tatiana and then Erika.

Rubens Kuhl: Rubens Kuhl, Registries. Answering your question, just hold the line on unconflicted sessions because ICANN 65 is a policy forum and policy is what

we do here. So that worked well sometimes in policy forums; that hasn't worked that well in others. So hold the line.

- Keith Drazek: Thanks, Rubens. That's a good point. And I do want to also flag that, you know, in the agenda here it does say, is there anything we should be considering as we prepare for our agenda, so if there's anything that you'd like to talk about with regard to our agenda for the Council meeting that's fair game as well. Erika, I'm going to come to you next, I skipped you earlier, and then Tatiana.
- Erika Mann: Thank you, Keith. I'm not super sensitive and I'm not on Adobe so apologies for this. I just want to alert you because I may need your support. We never requested support yet for a longer session for the Auction Proceeds but we'd really like to finalize in Marrakesh the next phase and so there - so far we always got only 90 minutes and this is a little bit limiting our work. So I'm - I still need to have a discussion with our team and with staff about this but I'd just like to alert you so if there's a need I will come certainly to you and to all of the different people here just to ask for support. Thank you.
- Keith Drazek: Thanks, Erika. And to that point so if you're asking for a long session during the week that's one thing. If you're asking for, for example, a daylong face to face at the front end or the back end we need to get that request in 90 days prior, if I'm not mistaken...
- Erika Mann: Correct. And I will talk with staff and we'll do a quick evaluation what people want. But that's what I hear some people might want to have a prior session, but it have to get the confirmation first.
- Keith Drazek: Okay. Thanks, Erika. Thanks for flagging that. And let's make sure that if it is a standalone day or, you know, early or late in the week that we get that request in on time. Elsa and then Tatiana.

Elsa Saade: Thanks, Keith. Elsa Saade for the record. I just wanted to point out that out of three or four new gTLD Subsequent Procedure meetings I was only to attend one. And being the liaison to that working group, Flip and I, it's - I think for the next meetings it would be nice to take that into consideration so that we'd be able to attend and be present at least in the first two meetings so that we can do our job as liaison to the Council. And, yes, I think the next point Tatiana will cover. Thanks.

Tatiana Tropina: Hi. I actually don't know if it's a good idea to bring it here, but maybe Council leadership can provide input to the planning of the next ICANN. I understand that we cannot kill cross community working sessions. But many of them are really not cross community. And speakers and groups who have opposite views in this session are organized by particular groups with particular views must struggle to get actually the session and express their views or any opposition. And it has been like this for the last few years.

And I'm not talking only about GNSO groups, it can be other kind of, you know, stakeholders, other SOs and sorry, ACs and SOs. And I think that I understand that it's impossible to queue them, but can we at least either make it clear who is organizing the session on the schedule and whose views are going to be expressed or make people really transparent and picking up speakers and make these organizers inviting in advance, in advance, people who have opposite views?

Because it's always a struggle sometimes other speakers get into the session at the very last moment not prepared, not being given enough time and I believe that it would be beneficial for the entire community and for us as GNSO. Thanks.

Keith Drazek: Thanks, Tatiana. And I agree. I think, you know, there's two ways to look at cross community sessions. You know, one is obviously, you know, cross community representation on the panel or it could be a topic presented by one that could be of interest to the cross community, right?

So there's a couple of different ways of looking at that. For example, one of the cross community topics or high interest topics recently, not here but in the previous meeting - Michele, I've got you in queue, thanks - that was about, you know, walking the shoes of a new gTLD, or something like that, right? I mean, it was - so clearly on the panel you're going to have people, registries or registrars, who have an experience with new gTLDs.

So does there need to be, you know, other panelists there? Maybe not. But I take your point that it needs to be clear as to who's coordinating the session and - okay, Tatiana, response and then Michele, you want to respond to that...

((Crosstalk))

Keith Drazek: And I have a queue building. Thank you.

Tatiana Tropina: Yes, I believe that let's make it clear from the description as a proposal - from the description or from the title. I don't know, for example, Non Commercial Stakeholder views on whatever. Then everyone will know whose views are there.

Keith Drazek: Yes, thanks, Tatiana. I think that's a fair point. So Michele and then I have queue with Marie and Paul, and then Cheryl.

Michele Neylon: Thanks. Michele for the record. How do I put this diplomatically? I absolutely hate these cross community sessions where you have a rehashing of the same views that we've had time and time and time again. So I mean, there is absolutely nothing to be gained for anybody in having, you know, this dog and pony show where, you know, you're going to have representatives from various different groups and they're just going to be repeating the views that they've expressed on that particular topic for the last I don't know how many years.

Now, you gave a perfect example of the kind of cross community high interest type session that could work, the idea of walking in the shoes of a registry operator, walking in the shoes of an NGO, walking in the shoes of a Fortune 500. I mean, I really don't care but that's something that's different, it's new and maybe we'd actually learn something. But holding a panel on, say, GDPR or new TLDs next rounds, whatever, you're just going to have the same bloody views we've already heard so there's nothing gained from that. It's pointless.

Keith Drazek: Thanks, Michele. And I share the concern about, you know, high interest topic sessions or cross community sessions sort of being a requirement when they should be an option in my view. So maybe that's a conversation that I can have with the SO/AC you know, sort of level about, you know, because it does take up big chunks of time and creates conflicts, although they're supposed to be nonconflicted sessions, but it does take up a chunk of time.

So look, we're at essentially quarter past the hour so we're going to go on a little bit longer, staff has confirmed that we can keep our tech colleagues here a little bit longer. So let's get through the queue and then we need to talk about the last couple - or the last agenda item. So I've got Marie, Paul, Cheryl and Rafik. Thank you.

Marie Pattullo: Thanks, Keith. This is Marie. Complete change of subject, when we are planning for ICANN 65, if there's anybody in leadership or in staff who can please, and I say this please because during the last meeting at Marrakesh you had - you were either on venue or you were 150 miles away, some of which being via a camel track. And I'm not even exaggerating for once; it was a camel track. Now camels are lovely beasties and should be allowed their tracks, please don't misunderstand that.

What was somewhat annoying was that the shuttle buses from the hotels to the venue got you there by latest, from memory, 9:00 am, but wouldn't take

you home again until let's say latest, earliest, 5:00 pm. So there were times when you had a session you needed to be at but you'd forgotten your charger, or you had to take a conference call for your day job. And normally you can nip between because there's a metro or there's a bus. Ain't no bus or metro on a camel track.

So my complete plea is that I know that the shuttle buses - because I could see them were sitting there in the car park at the venue - could they just keep running during the day? Not every 10 minutes, but once an hour or something? If there's any way you can put that plea. Thank you. On behalf of those of us who are beholden to camels.

Keith Drazek: Thanks, Marie. Noted and I will follow up with staff on, you know, getting that note in - that request. Sure, Rubens, go ahead real quickly because we're running over time.

Rubens Kuhl: Marie, Rubens here. Nick Tomasso told me that since this meeting is smaller he measured that most people will fit within the venue hotel and accommodations, he doubt much need for many more. That needs to be seen but that's what I heard.

Keith Drazek: Okay thanks, Rubens. Paul, thank you for your patience and then Michele, I think that's an old hand. Yes, and then Cheryl. Thanks.

Paul McGrady: Paul McGrady. Two-second comment, I would also love it if we could de-duplicate the schedule a little bit. And I'll use this example and it's probably the wrong one because I think it's everybody's favorite, but I saw the ICANN Finance presentation like four times this week. You know, and after like the fourth - the third time like you really want to poke out your eyes.

And so I'm kind of wondering like if there's content that we're going to get as a Council that we can get from going to our, you know, our own stuff later in

the week, then maybe we could scratch some of that stuff and that might give us more time to dig into substance. Thanks.

Keith Drazek: Thanks, Paul. I think that's a good comment and certainly I think you've described something that is, you know, common across many of our groups. I guess the question would be, for example, in the Finance discussion, is there something valuable to us as Council where we as Council want to engage in conversation as a group with Finance, for example?

But I think that's a really good point about trying to eliminate some of the duplication if necessary. And maybe we as Council can take it upon ourselves going in to - as we develop the agenda is to identify what we think is, you know, high interest or where we think there's less priority. We'll take that on certainly. Cheryl, thank you.

Cheryl Langdon-Orr: Thank you, Keith. Cheryl Langdon-Orr. And I'm taking off my liaison hat here absolutely, but popping on my ATRT 3 hat briefly, and would just like the Council to consider if you would, finding the Accountability and Transparency Review Team the cycle a block of your choosing of time in your place that works for you for us to have an interaction which will be one of our few opportunities to interact with you. It is policy-based.

Our purpose and scope includes just about everything about policy and how GAC and public comment and public interest comes into policy so it is your bread and butter. We'd like to give you a decent blocking of time. So if you'd like to say how much and when and the sooner rather than the later we'll make sure priority is given where it belongs.

Keith Drazek: Thank you, Cheryl. How much and when? All right, we'll definitely take that on so thanks very much. I think anything related to accountability and transparency and the important work of that group is something that we'll want to know and understand. So thank you.

Okay, any other comments? I don't see any other hands at this point. Last item on that agenda then is the need for a Council liaison to the EPDP Implementation Review Team. So obviously Rafik is our liaison to the EPDP Working Group for policy development and going into phase but we need a liaison volunteer for the Implementation Review Team.

So we don't have to make that decision right now but we do need to make a decision on that. Marika, thank you.

Marika Konings: Yes thanks, Keith. This is Marika. Not necessarily a decision now but, you know, as the Council has directed to start informal by already with the - or informally convene the IRT it may be good or it may as well be an opportunity for those thinking about taking up the formal role to sign up for that and already starting getting engaged so that they are up to speed. So just wanted to flag that.

Keith Drazek: Yes thanks, Marika. The point there just to underscore is that the IRT won't be formally formed until such time the Board approves the policy recommendations but we in our motion to kick off Phase 2 also basically said we needed to informally gather the implementation team to begin working on that project. And that's going to be coordinated by Dennis Chang from GDD. Paul, go ahead.

Paul McGrady: Thanks. Paul McGrady. First of all, not it. Secondly, I would really like our colleagues around the table from the Contracted Party House to consider taking this on because one of the things that Council needs to know is implementable at great, you know, at an irritating level, implementable at an expensive level, implementable at an insanely expensive level, and completely not implementable, right?

What we don't want to do is to, you know, find out that what's being kicked around that particular IRT is things that really can't be done or could only be

done super expensively and I think the contracted parties have a better view of how that's going to go down. Thanks.

Keith Drazek: Okay. Thanks, Paul. Michele, go ahead.

Michele Neylon: Thanks. Oh god, the microphone really went for me there. Michele again for the record. I mean, I appreciate that, Paul, that's constructive. I mean, I think the - as the contracted parties we're very, very heavily engaged in the PDP, what we will be implementing I would hope, is things that we believe we can implement.

Obviously when we go through the entire triage of the various bits and pieces there are obviously some things that are, you know, total nonissue, other ones which are going to be more complicated. But I don't believe at this point in time to the best of my knowledge, I'm assuming that I have not been misled by anybody, that anything that we have agreed to is impossible. There are many things that people would like us to do which we think are impossible, which is why we didn't agree to do them, but that's a different conversation entirely. But I think the contracted parties are following that very closely.

I know that both Darcy and myself and Pam are getting very, very regular updates from within the working group team. And I would expect the same to continue when that moves to IRT. Just one thing of course to bear in mind is that IRTs are staff-led, not community-led, so there can at times be certain degrees of like, you know, mismatches and kind of tension and a little bit of, you know, tweaks and sorting it all out. But, you know, thank you, yes. We're fine, I think.

Keith Drazek: Okay thanks, Michele. Thanks, Paul. So we'll take that as an action item to the list. Feel free to express your interest if you'd like to and we'll take that as an action item.

So that was the last I guess itemized topic for our agenda. Is there any other business? Would anybody else like to raise any topic before we wrap up? Okay, don't see any hands so I will take this opportunity to thank you all for your participation this week. I think it's been a good and constructive week. And also to thank our staff colleagues for all of the support and our technical colleagues in the back, thank you all very much for making the trains run on time here. So with that we'll go ahead and wrap up and bring this Kobe meeting from a GNSO Council perspective to a close. Elsa.

Elsa Saade: I'm not entirely sure if this is your first official meeting as chair, is it?

Keith Drazek: So I did chair the wrap up session in Barcelona but this was the first official face to face full meeting, yes.

Elsa Saade: So official congratulations on your first chairing of - first official meeting.

Keith Drazek: Thank you very much, Elsa. And thanks to you all, much appreciated. Okay, we'll conclude the meeting.

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