

ICANN Transcription
GNSO Council webinar for a Q&A on Curative Rights
Tuesday 09 October 2018 at 1200 UTC

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<https://audio.icann.org/gnso/gnso-igo-ingo-crp-access-09oct18-en.mp3>

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Woman: The recording has started.

Nathalie Peregrine: Thank you, (Nancy). Good morning, good afternoon, good evening, everybody. Welcome to the IGO INGO Curative Rights Q&A Webinar on Tuesday, the 9th of October, 2018.

As a reminder, this is a Webinar for council members and board members only. Recordings will be posted on the GNSO Web site and circulated on the mailing list.

An audiocast is available for community members details of which can be found in the top right-hand (unintelligible). Please remember to state your names for recording purposes and to keep your microphones on mute (unintelligible) background noise. Thank you, and over to you, Heather Forrest.

Heather Forrest: Many thanks, Nathalie, and thank you to everyone for joining us today. Thank you also to Avri for joining us from the board.

This is an opportunity for us to get together and talk about the final report on the IGO INGO access to curative rights PDP final report and the recommendations that it contains.

We have had this on our agenda and still I and received the final report with thanks. That was an outcome that was in line with our thinking in the strategic planning session. We were hoping that this group could wind up its work.

And we have some questions here for today and, as I - and I have control of the slides so we'll make sure that I do a decent job of this. Our agenda today should be on the AC pod to front of you.

I would like us to start just by focusing our thinking - by having a look at the actual recommendations that the PDP working group has presented in its final report.

We've also articulated on the slides that we have here the level of consensus that attaches to each one of those recommendations. You'll notice there are several recommendations.

And then, Donna, Rafik and I, in planning this session- and Donna and Rafik are on, and have asked me to lead but they will jump then as soon as they feel appropriate.

And we believe that the approach that we took last month in our council meeting in dealing with the reconvened Red Cross PDP recommendations, that specifically the three questions that appeared in the council agenda then guided our discussion on that motion.

We believe that those would be a useful guide for our discussion today. So, hence, you'll see those three here summarized as PDP charter process questions and GAC advice.

So we'd like to open the discussion in a more full some and proper (unintelligible) way than a 15 or 20 minute agenda spot in a normal council agenda meeting will allow.

That will hopefully enable us to make a determination as to what the next step should be, whether this goes on to the next council agenda, whether there's something further that's required.

And before we get started in looking at the slides, I'd like to make a very special thank you to Mary Wong. So Mary and (Arial) and (Barry) have supported this PDP and done an excellent job.

You'll note, when we see the timeline, that this has been going on for quite some time. Mary has taken the lead in helping leadership put together these slides and has done an excellent job of it.

I think this captures a full some record of this PDP and where we are. And that was precisely our intention, Donna, Rafik and myself, in having this Webinar, get us all on to level set, same page before we decide what our next steps should be.

So, a particular thanks to Mary for helping with the slides. Any questions or concerns before we get started? If not, I'd like to turn us to the recommendations of this PDP working (group). I'll pause for hands.

All right. So we have a few slides here that summarize the recommendations that this PDP working group has reached and the designation of consensus that attaches to each one.

Now, you'll notice there are multiple recommendations. Recommendation number one, which has full consent this deals with IGOs and recommends no substantive changes to the UDRS, the UDRP or URS to be made and no specific new dispute resolution procedures to be created.

And then for IGOs, no specific new dispute resolution procedures to be created. Again, full consensus on that one.

Recommendation number two has consensus and it deals with an IGO seeking recommendation three UDRP and URS.

So each one of the subsequent recommendations after recommendation number one builds on the fact that recommendation number one directs that the sorts of complaints and challenges be funneled then through the existing dispute resolution mechanisms that are already available. And those to take the form of the UDRP and the URS.

Recommendation three - actually I should say there's commentary in relation to recommendation two as to how that standing is demonstrated, a particular treaty, intellectual property treaty called the (Paris) Convention and a particular provision of that convention Article (6) is provided as a basis for a standing to bring a claim under the UDRP.

It goes on to say an IGO may consider this to be an option where it does not have a registered trademark or a service marking in its name and/or acronym but believes it has certain unregistered trademark or service mark rights.

That deals with the fact that those two procedures are based in trademarks UDRP and the URS. You know, Mary's made some very helpful comments here in the chat as well to put some finer points on these recommendations.

Policy guidance, following recommendation two. Recommendation three, likewise, has consensus. ICANN shall create an issue policy guidance outlining the various procedural filing options available to IGOs.

And then advising IGOs and NGOs in the first instance, and prior to filing a UDRP or URS complaint, to contact the registrar of record. So that's how to go about filing the UDRP and further input on that policy guidance.

Recommendation four, again, consensus. There's no support within the working group a recommendation to provide subsidies to any party to use the UDRP or URS.

Sorry – subsidize – sorry, to provide subsidies to any party to use the UDRP or URS it deals with the funding of those claims, how they would be brought.

And recommendation five, which also has consensus, where losing registrant challenges the initial UDRP, URS decision, so that after the process is carried out and a decision is rendered, when the losing registrant challenges by filing suit in a national court of mutual jurisdiction and the IGO that succeeds in asserting jurisdictional immunity in that court, the decision rendered against her registrant shall be set aside.

An important point to note there, so these are very - obviously very specific recommendations that rely very heavily on the legal advice. We'll be can that legal advice as we move through the slides.

The point to know here in relation to recommendation five, as you'll see at the bottom of the slide, is that there were two minority statements filed against recommendation number five with the third minority statement filed providing a member's views on a number of issues.

Mary has made some points here in the chat as well about recommendation number five. Now, I think it's important to start off with those

recommendations, one through five, because they all deal directly with this idea of whether and IGO or an INGO or both require a new (unintelligible) mechanism.

Or whether the existing UDRP and URS will satisfy their requirements. With that in mind, if we turn to the first question that we have before us, and this is exactly the question that we used to start off our discussion of the reconvened Red Cross PDP.

The question is, does the Council believe that the PDP has addressed the issues that it was chartered to address? In this instance, we should ask what questions or topics was the working group chartered to consider?

Did it consider those charter questions and topics and it'd do so in a legitimate way? Now with that, we have the charter set out here in Slide 6, relevant portions of the charter.

And you'll notice that the PDP working group charter, which was subsequently amended, to provide the GNSO council with policy recommendations regarding whether to amend the UDRP and URS to allow access to and use of these mechanisms by RGOs and IGOs.

And if so, in what respects? Or whether a separate (unintelligible) dispute resolution procedure at the second level modeled on the UDRP, PDRP, and URS takes into account particular needs and specific circumstances of IGOs and IGOs should be developed.

So, in the first instance, (vote) to amend. In the second instance, whether to develop a separate procedure. You'll see there, as well, on Slide 6, a number of other questions that arose from the issue report dealing with related matters.

With this, I'd like to turn the floor open to comments, questions, concerns in relation to this question - has the PDP followed its charter? Has the PDP carried out the work that it was chartered to do?

Does anyone have any questions or concerns in relation to this? Now, mind you, of course, we've only looked at the recommendations of the PDP working group's final report.

We've had the final report before council since July? It raises some challenging issues partly because of its lengthy timeframe with PDP. Partly because it's also the subject of GAC advice.

I will get to the GAC advice question a bit later on. But in the first instance, if we had (unintelligible) to determining whether this PDP has done what was chartered to do, then that will take our conversation in a slightly different direction.

As you'll note, Mary's given the link to the full charter including a subsequent amendments in the chat. I don't see any hands. And I don't know that we have anyone just on the audio. If we do, please, by all means, feel free to speak up.

Is there anyone who believes, on the basis of this information, or who has concerns on the basis of the information that you've seen here, that this PDP has strayed from its charter?

All right, so I don't see any hands there. And we haven't had any specific questions on this point. And Donna's typing in the chat. Do I understand from silence that we don't have any concerns about this PDP having carried out the work that it's chartered to do?

So Donna has typed into the chat. Thank you, Donna. I believe it has done what it was chartered to do. Does anyone disagree with Donna's statement? Multiple attendees are typing. That's great.

Okay, (Pam), Rafik, thank you very much. So I don't hear any objections then. Excellent. And Mary notes that it may be that it's recommendation five where we have more discussion, and I think that that's correct.

I agree. I believe on the basis of what we've seen here and having read through the final report quite carefully, it appears to me that this is not the PDP that has deviated from its charter, that it has tackled the questions that it was chartered to tackle.

And it's perhaps - if there are any concerns here, that have been raised to this point, it's not around whether they asked the right questions but, rather, the answers that were achieved to those questions.

So, I will - unless I hear any final objections, I think we can safely move on to the next question and focus our time potentially on the more challenging issues.

All right, that brings us to the process questions. As the working group followed due process? And what were the process issues, if any, that were encountered by the working group?

And what we have in the next slide is a timeline and you'll see that this is a PDP that has been around for some time. It was chartered in June of 2014. The group went on to start up its work in the latter half of 2014.

There was early input sought from the SO, ACs, SGs and Cs and you see there, there's a list of the bodies within ICANN that responded to that request for input.

A very significant source of delay for this PDP was the seeking of external legal advice on the question of jurisdictional immunity under international law which is the topic that is addressed by recommendation number five.

The question of jurisdictional immunity took quite some time, both in selecting the legal expert and in ensuring that the question asked of the legal expert was appropriate and then receiving that advice back.

So you can see that that did actually take up a fair bit of time and it stalled the PDP's work during that period. The group resumed in the latter half of 2016 what's that advice was received and published an initial report roughly six months later in January of 2017.

There were 46 public comments. You see them listed there, a selection of those comments.

After the public comments were received and reviewed, in the latter part of 2017, and this was in the run-up to the AGM last year in Abu Dhabi, the co-chairs at the time, Petter Rindforth and Phil Corwin – Phil Corwin has since resigned from the chairing of this PDP - it made a preliminary assessment of consensus levels on the recommendations that were (unintelligible) by that initial report.

And there was a process challenge raised formally in December of 2017 on the mechanism by which the co-chairs sought to assess consensus. That process challenge was raised under Section 3.7 of the GNSO working group guidelines which we have discussed in a number of points along the way this year.

Three-point-seven deals with a member of a PDP working group's challenge to a decision taken by, or action taken by, a chair of a PDP. That Section 3.7 was a process that led to Susan Kawaguchi and myself becoming involved in the resolution of the challenge.

The working group guidelines say, at Section 3.7, that the initial process that happens, step one, and Mary's very helpfully linked to that process - step one in 3.7 is that the grade working group member attempts to resolve the complaint or concern with the chair or co-chairs.

That took place in, I believe it was, January of 2018 and was unsuccessful. And the process goes on to say, and 3.7, step two, is a referral to the GNSO chair and/or his or her delegates.

And in consultation with Susan Kawaguchi, who was very ably serving as the council liaison to this PDP, and having just come off of discussions in January, the strategic planning session, about the role of the council liaison and that person's particular role in resolving disputes, Susan and I took on the 3.7 challenge together.

And worked with the affected parties and it led to a further process of Susan reaching out individually or in groups to the working group members to ensure that their concerns were - had an opportunity to be raised and documented, as we understood that that was the primary concern that gave rise to the procedural challenge in the first place.

The 3.7 was some group members felt they had not had an opportunity to be heard. That process took some time and the consultations that Susan facilitated were largely centered around Puerto Rico earlier this year in March 2018.

At the same time, remember, in the intervening period, we had our strategic planning session, took a look at the scary spreadsheets and made a note that it was our desire that this PDP should wind up its work by midyear, which seemed entirely feasible given that the initial reports have been published in January of 2017, more than a year before at that stage.

So, we were working towards that aim. And council leadership kept in close contact with Susan and with the co-chairs of the PDP. Regretfully, Phil Corwin decided to step down from sharing the PDP.

But we worked very closely with Phil and Petter while Phil was in the chair and then Petter afterwards, leading to or culminating in the council resolution in June requesting that the PDP wind up its work.

We had been helpful in the January session that the group would be able to present its final report in June and that wasn't yet possible due to further difficulties in assessing consensus.

In July, the final report was (lodged) to council and council of acknowledged receipt of that document. I might, for second here, turn to Mary and say, Mary, is there anything in particular in this timeline that you think would be helpful to know by way of additional context?

Mary Wong: Hi, Heather Forrest, and everyone. This is Mary from staff. At the moment, I don't think so. I think you did cover the various milestones and challenges very well. And hopefully the slide does encapsulate the overall (cadence) of the PDP.

So perhaps, if anyone has questions, I would be happy to answer them along with (Steve) who supported the group, too.

Heather Forrest: Thanks, Mary, very much. That's very helpful. Does anyone have any questions? Now, Mary has shepherded this PDP through since the beginning. Does anyone have any questions for Mary or I about the process?

All right, I don't see any hands. You'll note the note that's there on the far right of the slide, and of course, we'll come back to this we get to the next steps at the end of the discussion today.

So what would ordinarily happen, of course, is that a PDP final report would go to the GNSO council. Council would ordinarily, let's say, in the usual course of events, table the final report, take some time to consider it.

And then, at its next council meeting, put it forward for a vote. Now, this has not happened for this PDP largely because of questions around this timeline, why it took so long and what impact that may have had on the recommendations that resulted from it.

So, I don't see any hands here so I suspect, then, that it is the third question that we have on our agenda today that's likewise - that's likely to be the one that will generate the most discussion.

So, unless anyone has any objections, I'm going to advance to the next slide and take us further on into our discussion questions. Mary, please.

Mary Wong: Thanks, Heather Forrest, and sorry for jumping in late-ish. But I just wanted to follow up on the last point that you made because this PDP has gone on for a while for reasons that you've outlined, Heather Forrest.

And I know that we do have some council members on the (council now) who were not in the council before it is presumably did not follow that (issue) closely.

So, if I may be permitted to say from a staff perspective, there are a few concerns and questions that have been raised, and I think it's important to note that they're not of the same concern.

Now, clearly, when you get to the GAC advice portion, there's some discussion they can be had there. But to the staff, it's equally important to consider what actually happened within the PDP and if that has a bearing on the council's deliberations and decision process and so forth. Thank you.

Heather Forrest: Thanks, Mary. That's very helpful. And (Marie) has put a very timely comment in the chat. (Marie), I think that's probably exactly where our discussion goes.

Do we think the balance of one member's concerns on the one hand, and the rest of the working group, on the other, unless the timeline for the community is something that we need to address in PDP 3.0?

It is the case, (Marie), that, both Phil and Petter, with their - you can say with their chair hats on, with their experience in the 3.7 procedure in this PDP and the procedural challenges that this PDP has faced, each of them submitted comments to our PDP process actually a form of their minority reports.

So they had very directly commented on some of the gaps that they encountered in our GNSO working group procedures. And I think that's been very, very helpful.

Those gaps that they've identified are not things necessarily that we discussed in our PDP 3.0 Webinar because they actually follow and are the classification, if you like, of other recommendations or additional recommendations.

And there things that Donna, Rafik and I will recommend that the council takes up as it continues the PDP 3.0 discussions. So they certainly have not been lost. They've been captured, documented, and I like to think that the council, in 2018/19 will come back with them.

I know (Keith) is typing and we'll just capture. So (Keith) says thanks, Mary. I think your (dynamics) is a reasonable consideration for council in assessing the policy recommendations of the process by which they are reached.

And I agree with (Keith)'s assessment, particularly insofar as the working group guidelines and, indeed, the bylaws make clear that we have to designate our consensus level for each of these recommendations.

And I appreciate Mary having set that up very specifically in relation to each of those five recommendations. And, (Keith), thanks for your additional comment in the chat.

Let's move on. I don't see any hands up in relation to the timeline. Let's move on to the area of these questions, the third of these questions that have just generated the most discussion over this time.

And I believe this is largely what explains the different paths that this PDP has taken to now, that it wasn't simply tabled and put to a vote straightaway. And as Mary says, Donna, Rafik and I are very conscious that there new members of the council, or relatively new members of the council, who may not have the full history our understanding of this PDP given that it dates back quite a few years, four years now.

So we thought it would be helpful, let's say, to give that fuller picture of the GAC advice. And specifically, in answering the question, did the working group address GAC advice on this topic, again, exactly the question that we asked two weeks ago in the council meeting and dealing with the Red Cross recommendations.

So the GAC advice that was received on this PBP is captured here in Slide 11. You'll notice that there's advice from the November 2017 Abu Dhabi communique and the June 2017 Johannesburg communique which - both of which make reference to much earlier advice that pre-dates the launch of the 2012 new gTLD program that went to specific requests for IGOs and INGOs in relation to protections in that round.

And this is an issue of - let's say it's no mistake that the GAC first had issued a long-standing advice. This has been around for some time. And Mary notes it's just an excerpt from the most relevant in recent GAC advice.

It's been a consistent theme of GAC advice on this topic dating back to 2012 or 2013, so a very long history here. You'll note here that the GAC has provided advice and essentially says it remains open to working with the GNSO to try to find a mutually agreeable solution to the issue.

The GAC also recalls the (values) of open (and transparency) and inclusion and representativeness and (posts) integrity. They respectfully (share) in ICANN's bylaws and the GNSO's operating procedures.

Now, that piece of advice raises concerns for me as to whether the GAC believed that it had been duly included in the PDP process. And you'll note that the June 2017 GAC advice goes on to express concern that a GNSO working group had indicated that it may deliver recommendations which substantially differ from GAC advice.

And they called on the ICANN board essentially to insure that our recommendations, coming out of the council, adequately reflect input and expertise provided by the IGOs.

Now, in preparing a final report, the co-chairs were repeatedly made aware of the GAC advice that had been received at each of the various junctures in the life of this PDP and it is obviously a normal step of PDP work that PDP leadership would ensure that all relevant parties were consulted.

I'll open the floor here to questions or concerns around this question around GAC advice received. And it may be that we're not able to answer questions on the spot, but we have a list of questions, things that we want to go back and refer to the PDP working group. So Rubens has asked, is Recommendation 5 the only one with minority statements. And Rubens, as I understand it, it is the case that Recommendation 5 is the only one with minority statements. There's a sole member of the group that provides comments on other aspects of the PDP's work, but in terms of a minority statement, yes.

And the slides have just advanced without me, but that's okay. Donna, over to you.

Donna Austin: Hi, Heather. Donna Austin for the record. So on the issue of GAC advice, I think Mary put this in chat. We also need to acknowledge that there was a small group proposal that was being developed at the same time that this PDP was doing substantive work. And the small group proposal was an effort between primarily board members, members of the GAC, which were IGO and INGO reps. And I think ICANN staff were also involved. So that created some significant challenges for this PDP working group in trying to get those GAC members to actively participate in the PDP working group.

And I think you might - some of you might recall that, you know, in the exchanges that the Council had with Phil and Petter in updates during ICANN meetings, Phil and Petter told us on each of those occasions that they had gone out of their way to try to get GAC involvement. They had a number of presentations that they made to the GAC during ICANN meetings to talk about the GAC advice and how it was being dealt with in PDP working groups.

So I think based on the reporting that we had from Phil and Petter during the course of this PDP, certainly, in my mind, I was of the view that Petter and Phil were doing what they could to address the GAC advice. And that being said, I think I also recognized, and I think we had a number of conversations with the board around this and that it was unlikely that the recommendations from this PDP working group would be consistent with GAC advice.

So I think certainly in my mind, I was always conscious that we were headed down a path where the result would be that the GAC advice would remain inconsistent, sorry, the final recommendations from this report would remain inconsistent with GAC advice at the end of the day. So I don't necessarily think that there are any surprises in that regard. Thanks, Heather.

Heather Forrest: Thanks, Donna. That's extremely helpful context and a bit too much to capture, as you say, in the timeline, but very helpful in terms of the overall picture here. As Donna has said, Phil and Petter expressed various concerns along the way about the difficulty of full participation of the GAC in the PDP. And this is something that's not unique to this PDP. It's of course very difficult if impossible for the GAC to represent itself as the GAC through any one individual member. Of course, it's the case that we say repeatedly that community members from any SO or AC, including the GAC, are very, very welcome to participate in our work and nevertheless, Phil and Petter have quite frequently expressed a certain degree of frustration or concern and would make attempts to reach out to stakeholders that they thought might be missing from the discussions. And that I suppose brings up all sorts of questions about how we better integrate participation of interested GAC members, if not the GAC as a whole, into this work.

So Keith had asked was the small group dynamic a potential process concern. Keith, would you mind elaborating on your question just so we understand it fully?

Keith Drazek: Sure. Thank you, Heather. Just a sound check. Can you hear me?

Heather Forrest: We can, Keith. Thank you.

Keith Drazek: Great. Thanks. So it's really just an open question about as we're assessing the questions that we've laid out here for the Council to consider, it was the fact that a small group was pulled together essentially by the Board with GAC members, relevant GAC members and some staff, to work in a parallel track. And I think Marie's comment just above mine goes to the same point. Is that a process, a potential process concern that the Council should or could be considering as we assess what to do with this recommendation. But I'm not advocating that. It's sort of just a question whether that's - for Mary or for others as to whether this ought to be something we should be concerned about or not. And I'm really fine with either answer.

Heather Forrest: Thanks, Keith, very much. That's helpful. Mary, do you have any thoughts on that? Mary has got her hand up. Mary, over to you please.

Mary Wong: Thanks, Heather and Keith, Mary from staff again. So I'll try to be clear but I'll try to also not give - not go further than what I should. But because it is for the Council to decide the actual answer to Keith's questions as to whether or not there's a potential process concern that should be taken into account by the Council. But if it will help in that determination than Keith, what I would say is a couple of things.

One is that besides the fact that, as Donna has said, and as Marie has also followed up with, besides the fact that the small group worked on the parallel track, that certainly concerns the members of the working group. But the working group also considered and discussed the substance that was offered by the small group proposal after it was forward to the group from the Board by way of the Council.

So the actual substance of the small group proposal very closely paralleled what was GAC advice essentially. So I think it is important to note that the group did discuss what was in the proposal quite aside from how the proposal came to be. But it may also be useful for the Council to know, and Heather, I know that you, Donna, and Rafik have been careful not to basically blur things here with outstanding matters from the prior IGO PDP. But at this point, if I may, I'd like to just note that because there are outstanding matters from the prior IGO INGO PDP and those concerned the IGO acronyms that the small group work was not actually something that focused exclusively on curative rights.

It wasn't something that - it wasn't a group that was formed to directly address or to provide recommendations exclusively for this PDP. It was formed in the context of the outstanding recommendations from the prior PDP. But because the view of the IGOs and the GAC was that in order for IGOs to

have meaningful overall protections. That would include some kind of notice mechanism before someone registers a domain name, for example. That's kind of what the community has started to call the preventative side of protections. But in order for there to be meaningful preventative protection, there ought also to be meaningful curative protections. And that is where, when, and how the small group work dovetailed with what was happening in this PDP.

So I hope that is clear and that's helpful. Thank you.

Heather Forrest: Thanks, Mary. Indeed it is. Donna?

Donna Austin: Thanks, Heather. Donna Austin, and thanks Mary for that rather detailed information. I think Keith's original question, folks that will have been on the Council through the lifecycle of this PDP will understand that it took a number of conversations with the Board to make them understand that what was being discussed in the small group proposal was creating challenges for the PDP working group itself, particularly as it related to participation within the GAC.

But I think it took three or four conversations with the Board before they finally understood that the small group proposal was creating some challenges. We did have a facilitated dialogue with Bruce Tonkin. I can't remember when that meeting was but we touched on some of the things that Mary was talking about and I think we actually reached agreement that in - that there was one small element of the small group proposal that could move forward and I think that was related to the - actually, I'm not going to say what it was because I can't quite remember. But we did have that facilitated dialogue so that did discuss some of these issues as well during that time.

But to Mary's point, I think the small group - what the outcome of the small group proposal was actually considered by this PDP working group. So while it was a distraction and it was unfortunate that there was a miscommunication

that the Board didn't necessarily understand the challenges that it was providing for this PDP working group, probably in terms of participation, was one element of it. But the distraction that it was actually creating. Because I remember Phil saying on many occasions that because the working group didn't know what was going on with that small group and what they were talking about that it was creating challenges for the PDP working group.

But I think at the end of the day, because this PDP working group, I think there was GAC advice at one point, or a direction from the Board that the small group proposal be considered as part of this work, I think that did happen. So I think the fact that it was able to be discussed and considered by the PDP working group actually probably closes off that while it was a distraction, I think it didn't ultimately have an unfortunate - the wrong effect or, I'm sorry, I'm looking for the right words, but they're not with me at the moment. But I don't - to Keith's question, I don't - I can't actually say what it is anymore, but I don't think that was a process concern at the end of the day. Because PDP working group could actually consider the outcome of that small group proposal. Thanks, Heather.

Heather Forrest: Thanks, Donna. I think that's very helpful and it's also the case that Mary has noted in the chat that the proposal that resulted from those small group meetings was actually sent to the GNSO in time before the initial report was finalized for public comment. The GAC then went on to comment during the public comment period as well and you might recall from that earlier timeline. And perhaps if you'll permit me, I'll page back to that for our reference. You can see here that early input was also received from the GAC and from IGO representatives in December of 2014. So there's clear documentation here both of that early input stage and the initial report stage of input having been specifically received from those groups.

I understand and I say this with a certain degree of hesitation, but I am one of the greatest champions I think within the GNSO in terms of our face-to-face meetings with the GAC in pushing very hard for their participation in in our

PDPs. I understand that said, and I'm probably a hard liner on this, I understand that they do have challenges in representing themselves as the GAC and so on, and the need therefore to work as individual members.

All of that said, I think when you look at this timeline, it's very difficult, and we take into account the churn that's happened in the GAC over the last, even just the last 12 months. It's very difficult for someone to devote four years of their time. GNSO, GAC, pick your SO, AC here, very difficult for someone to follow an issue over the lifetime and actively participate over the lifetime of a PDP that runs for this kind of duration.

This is of course a general comment that we picked up in PDP 3.0 is how do we deal with this. So I suppose what I'm saying is I'm sensitive to both sides. While I will continue to be our strongest advocate for having participation, as much and as broad participation into the actual PDP itself, and I don't encourage circumventing the PDP, I agree with Donna's assessment that fundamentally that small group report was not a procedural distraction in this case. It had an opportunity to be considered. That seems to be the way that those stakeholders felt best to engage with this group, and ultimately, we can't compel a particular format of engagement, if you like.

So further thoughts on that, let's say, I'll take us back to the relevant question and away from the timeline. But I thought it would be helpful given the timeline documents that GAC input. And Mary has also noted, she's pasted the GAC advice relating to the small group proposal and the working group in the notes pod. So you'll see in the notes a long record there of GAC advice received.

Further thoughts on this point? So ultimately, if we had to sum up in very concise language where the difficulty lies with this PDP is we had PDP recommendations that differ from GAC advice and its longstanding GAC advice. It is a PDP the duration of which the GAC has found and the relative stakeholders, the IGOs and INGOs have found it difficult to participate for a

variety of reasons. The PDP working group has reached consensus on its recommendations but not full consensus on all of its recommendations.

All right, I don't see any questions. I think what we ought to then do is turn to next steps and I'd also like to take us back to the PDP recommendations, as well. The disadvantage of starting with those was they were a bit of context. The advantage of starting with them is they set the context for answering that first question about whether the group followed the charter process. Julf has also noted that the challenges of intercessional participation and it's certainly the case that our work depends entirely on intercessional participation, and we've heard over and over again that it's simply not possible from even other SOs and ACs, not just the GAC, extremely challenging to keep up with our pace. So that's something to bear in mind. I don't say that it resolves any of the questions that we have here, but it is something to bear in mind.

So I'm going to PDP manual. We had some strong statements here, explicit statements about what we are meant to do from a process point of view. We are strongly encouraged to allow sufficient time for stakeholder groups, constituencies, and Council review of the final report prior to a motion being made to formally adopt final report. In my opinion, we had amply satisfied this in the sense of there were questions that were raised and we have fulfilled our due process obligations in ensuring that those have an opportunity to be aired.

It goes on to say in the PDP manual, however, the GNSO Council is also encouraged to take formal action on a final report in a timely manner and preferably no later than the second GNSO Council meeting after the report is presented. Now, the report was presented to us in July. It is now coming up to our October meeting. So although that's not a hard and fast requirement, it is stated as a preference.

Next relevant excerpt from the PDP manual. At the request of any Councilmember for any reason, consideration of the final report may be

postponed for no more than one meeting provided that the Council member details a rationale. As of yet, we have not had that occur. The GNSO Council may, if deemed appropriate, schedule a separate session with the PDP team to discuss the final report and ask any clarifying questions. Primary motivator for the webinar today is to determine if there are any clarifying questions that are needed. We've made a call for that once in the Council meeting back in August, but thought we might use this opportunity to get everyone on the same contextual page and timeline page.

Finally, you'll note on this slide, the GNSO Council is strongly discouraged from modifying recommendations wherever possible. In the event the GNSO Council expresses concerns or proposes changes to the PDP recommendations, it may be more appropriate to pass these concerns or recommendations for changes back to the respective PDP team for input and follow-up.

Now, Susan has raised concerns, Susan Kawaguchi, who is the Council liaison in this PDP and is unfortunately not with us on this call, has raised certain concerns about the fact that this PDP has already been running for such a long period of time. Membership has dwindled over time simply by nature of attrition and the wear of exhaustion. That perhaps referring matters back to the PDP will not resolve the concerns that - or will not necessarily be the most expeditious way of answering any clarifying questions or follow-up on proposed changes to PDP recommendations.

So we have a particular challenge here. We've lost one PDP co-chair to exhaustion. I am fairly certain I can speak for Petter in saying this is an ongoing, pretty difficult task and I'm sure that the PDP members themselves would feel that way as well. So we need to bear that in mind in terms of any referral back.

Anyone have any thoughts on seeing these pieces of guidance from the GNSO PDP manual or shall I progress to the next set? And I note we have

six minutes remaining. I'm going to say five minutes because the EPDP team will need our audio cast line and our staff and a number of us on the call will need to transition to the EPDP. So perhaps I'll forge ahead.

This will come as no surprise to most but a helpful reminder what happens after the Council votes. So when the Council decides to take a vote, the recommendations that are approved go forward to the ICANN board for their review and action. In this case, we would knowingly be sending forth recommendations that conflict with GAC advice. Under the ICANN bylaws, the Board must provide notice to reasonable opportunities for comment on proposed policies. That would offer an opportunity for effective stakeholders to comment. The Board must request GAC opinion where the policy action affects public policy concerns. We can be fairly sure that that will be triggered in this instance, as we already have GAC advice and the Board must duly take into account any GAC advice timely presented.

Now, there's been a strong argument made by Cherine on behalf of the Board to the extent that the GNSO has anywhere in its procedures any way of considering the conflicts before reaching this stage of formal approval and sending it onto the Board that we are encouraged to do so. At various points along the way, I have emphasized that this is a different situation from the reconvened Red Cross PDP.

The reconvened Red Cross PDP was reopened after it had already been - the recommendations had already been voted on by the GNSO Council. So it was already at this next stage when the facilitated dialogue happened. So this is a different situation. We're coming at this earlier than we are the Red Cross situation. Now, I can fully understand an interest in let's say taking action before we get to a point of having to do what was done for the reconvened Red Cross. That said, you can see from the previous slide that there isn't much in our procedures explicitly that tells us to - how to manage this situation. And that precisely is why we're here.

So I'm mindful of time. Does anyone have any questions that they'd like us to follow-up on, anything they'd like to refer, any documents they'd like to refer to, information they feel that they don't have? Because ultimately, we need to decide whether to put this on the Council agenda and in what form, whether as a discussion item or as a motion for October. Mary, please?

Mary Wong: Thanks, Heather, and Mary from staff again. Apologies that I keep intervening but to follow-up on your point, Heather, to the process point, I think as you, Donna, and Rafik know, there is nothing in the procedures that say you must do X to advise or to address process inconsistencies or problems, et cetera, et cetera. That said, there is nothing to say that the Council cannot or should not explore ways in which it could resolve any concerns that it may have prior to a vote. As you note, at this point in this PDP, this Council is at an earlier stage than it was with the Red Cross when the modifications or facilitated discussions, et cetera, took place after the Council voted.

That said, I think I wanted to recall what I said earlier that the inconsistencies with GAC advice, while potentially a major concern and certainly, this will be a major concern, I imagine, for the Board, is one of several potential areas of discussion and concern for the Council. And this webinar, Heather, you've gone through all of them.

So if I may, and on the staff side, one of the points that has not been mentioned, because it's not so much a question of GAC advice. It certainly is not so much a question of process dynamics, but as has been noted earlier, recommendation 5 is likely to be the most problematic one for a host of reasons. And one of those reasons that hasn't been touched upon is that with recommendation 5, as I said previously, this requires a change to the UDRP and the URS. That's not the problem. The problem actually may be that recommendation changes the status quo for IGOs. So in a sense, it could be seen in a certain situation to make things worse for the IGOs following the conclusion of this PDP than when it started.

So just for fullness of the record, Steve and I thought that we should just mention that as you consider the fullness of the final report. Thank you.

Heather Forrest: Thanks, Mary, and thank you also for reminding me. Whenever I do that, I regret naming the staff that support a particular PDP because I almost always forget all of the staff and Steve has indeed been very, very helpful in this PDP as well.

May I suggest in light of the time, we need to drop for our colleagues to head off to the EPDP. Donna, Rafik, and I will put our heads together and come up with a straw man proposal for next steps. It will truly be a straw man because we haven't heard much in the way of input from you all in terms of temperature taking. So don't be afraid to pick it apart. But have a look out on the Council list for that straw man and we'll carry on from there.

So thanks very much to everyone. If this is the last time we speak before everyone gets on planes, travel safely. We look forward to seeing you in Barcelona. Nathalie, thanks very much for running the back end. Mary, thanks again for the excellent slides and to be continued everyone. Thanks very much. Have a nice day or evening.

Nathalie Peregrine: Thank you all for joining. This concludes today's webinar. Have an excellent rest of your day.

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