

**ICANN  
Transcription ICANN Barcelona  
GNSO – NCSG Policy Committee Meeting  
Monday 22 October 2018 at 1030 CEST**

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Rafik Dammak: Okay, thanks everyone for coming to (unintelligible) stakeholder group policy committee session. So we have decision usually in every ICANN meeting in a way that to discuss some policy topics that's covered during the ICANN meeting but also to prepare for the council public meeting since we have several agenda items. This is sort of replacing our monthly policy call. So as you can see in the screen or in Adobe Connect, the agenda is quite simple, but it will be (unintelligible). So we'll try to cover first the public - the (unintelligible) public meeting agenda and then in term of policy discussion, we will start with (unintelligible) the EPDP and the unified access model. And then go to give some updates about the public comments. Several of them going on.

So let's not waste time. Just have 90 minutes to cover so many things. And we go directly with GNSO agenda, GNSO Council agenda. Okay for this meeting, we have several motion to vote. Some of them are quite straightforward, but other need more discussion and at least to people can

vote. The council can vote with better understanding what we are approving or rejecting. Okay, can we make it more of just important.

Woman: (Unintelligible).

Rafik Dammak: Yes, okay because if we jump directly to the, okay I will read. So usually there in the beginning there is the consent agenda. I don't think there is anything of concern there. And we don't need discussion. So the first one is to confirm you, the GNSO Council is onto the gap. I think that's quite straightforward. And the second the recommendation report of ICANN board regarding the (unintelligible) of the final report from the (unintelligible) working group across names policy development process working group. We already approved the recommendation. This is to send them to the board.

The next, I mean the first substantive item and motion to vote is the confirmation of standing committee on ICANN budget and operation charter. So as just (unintelligible) we have this committee that started last year. In a way that the council delegated to this committee to focus on ICANN budget and operation. And this is quite important. After then, (unintelligible) since we have to get in vote more in this planning process. And from our side, I think we have few councilor in support for that, but which is more important? That we have (unintelligible) as the chair of this standing committee so probably he can give some briefing about what's going on there and what's the report is about. And if there was any recommendation to make any amendments to the charter.

So the motion is about to confirm this for, I think, for one more year. Yes, Ayden please go ahead.

Ayden Ferdeline: Thanks for that, Rafik. Hi everyone, it's (unintelligible) for the record. And what Rafik said there is completely correct. This has been a standing committee that the NCHG has chaired over the past year. It has been successful, and it has allowed us to produce for public comment on behalf of

the GNSO Council that have allowed us to highlight areas of concern and work for both the noncontracted parties' house and the contracted parties' house. So it's been a very useful forum. We've had a direct link to the finance department who's been highly responsive to questions that we've had about the budget. And so the recommendation in this motion is for the standing committee to continue and to become a permanent one. It is currently what you could call a pilot project. And so my recommendation would be that we continue to participate.

And we may also when the call for - we will need to renew the membership of the standing committee if the motion passes. And if that happens, we may want to appoint subject matter expert. So at the moment as Rafik said, our participation on the standing committee has not been as great as other stakeholder groups have been able to. And that has been because they have also had subject matter experts whereas we've just had GNSO councilors.

So something that internally we might want to think about is are there any subject matter experts that would like to join us on behalf of the NCSG in the standing committee? It has - it is not a huge time commitment. It is roughly one hour per month; however, we've been able to make some really great progress over the year on full comments that have resulted in the saving crop for instance. There has been real power in working with other parts of the GNSO to emphasize areas where we all have the same position.

So my recommendation would be that we support this motion.

Rafik Dammak: Okay, thanks Ayden. So if there is any question or comment? I have one comment from, okay, Stephanie. I can assume. But one comment before. About the subject matter expert, I can understand about the reason, it just was personally was worried about participation of some. Because when there was the imbalance, they had a lot of influence. So we need to, I mean it cannot be fixed by the structure of the composition because we - I think for decision makers the counsel, they will have - at the end, the vote or the

decision. But that should be, kind of, fixed at least by having more participation from councilor or other.

Ayden Ferdeline: If I may just respond to that quickly. I agree. I think that the council is the final check and balance. And so no comment that the standing committee produces is adopted until the council itself has reviewed it ultimately. In terms of participation of subject matter experts, some other stakeholder groups have had many subject matter experts because there is no limit to how many you can appoint to the standing committee. We've appointed zero. Whereas others have had a steady stream of active participation particularly from the business constituency.

But I think it's been useful to have their involvement as well. And I think that the best solution there is simply that we appoint our own subject matter experts rather than eliminate them entirely because often they have been able to bring in a lot of institutional memory that has otherwise been missing from documents that we've reviewed. Thanks.

Rafik Dammak: Thanks. I was not suggested to (unintelligible), but just we have to fix that by more balance, participation - active participation. Stephanie?

Stephanie Perrin: Just to say I'd like to join the committee and to ask for a little clarification on what you mean by subject matter experts. Does that mean people with financial and audit background or what?

Ayden Ferdeline: Thanks Stephanie. Ayden Ferdeline for the record. And good question. So the charter does not define what a subject matter is. It simply says that they're appointed by their relevant stakeholder group or constituency. And so that would be an internal decision for us as to who we think would be the right background to have. It would make sense to me that they would have a finance background. But at the same time, other participants at the moment in the standing committee do not have finance backgrounds, but they do have a long history of involvement in ICANN processes and so they've been able

to remind us of how things used to be. Or they have other expertise. So that could be something that we define ourselves. And we will be very glad to have you on as, I think.

Rafik Dammak: Yes, Stephanie is in the committee.

Woman: Can I - (unintelligible). Stephanie going to be the chair for NCSG at the end of (unintelligible), right? I - so I think she should join us not many committees around NCSG chair position is itself overwhelming.

Stephanie Perrin: Just a quick response. Stephanie Perrin for the record. I get that, but the one with the money is the one we want to have a look at.

Rafik Dammak: Okay, thanks but just another - Stephanie I think you are a member already from the council. So it can switch right from the subject matter. Yes, but we can appoint you as subject matter expert, so. And as said, there is no limitation. Okay, I assume will vote yes for this one. I'll do it myself. The report, there is nothing concerning. The committee could submit comment in several budget related. Public consultation is good because before the council had a lot of problem to submit on time.

But having the committee help is a lot. But just maybe it's discussion for later on is how many committees we want, because for now we have two. And it seems to be getting more task from the council to those committees. And so we need to think about the impact in the future because that, kind of, delegate the responsibility of the councilor in terms of managing all processes. But in the same time a way to bring more expertise, because it's not just for councilor but open for any appointed members for stakeholder group and constituency.

Okay, no other comment, question? So I guess we can move to the next one. Which is to vote on the GNSO policy development process 3.0. Okay, as a background, so the GNSO Council had at the beginning of this year, the first

strategical planning session or meeting. And at that time, we discussed about how we can make - I mean there was a lot of concern about the PDPs in term of efficiency effectiveness, but they are taking too long. And they're not delivering in time and so on.

And also there was a staff paper from the staff or ICANN perspective about what they are perceiving as an issue or problem and PDP. So that was the start to have a discussion in GNSO Council level. And from there, we organized and (unintelligible) during the usual GNSO working session, we, kind of, changed the format to have a community discussion and to get input based on that. And we had the first report in May. It was put for or April, I think. April or May put from stakeholder groups and constituency. But unfortunately, it can at the time when everything was about the EPDP. So we had to extend twice the deadline for getting submission.

Several groups omitted their input on what was recommended in the phase first page. And the Council, (unintelligible) was responsible of the report with the support from the staff and we tried to add the input from the - what we get. And also organize a webinar with the Council in September to see (unintelligible) the level of support for the different recommendations. So from the 17 recommendations, 14 has principal support. But it doesn't end there. It's just we have this recommendation. It's quite high level that they explore different area.

In fact also they are leveraging existing mechanisms that we have in GNSO operating procedure or working group deadlines. So for this time we'll approve the recommendation. And start to task for having an implementation plan. Usually the implementation can be tricky. And so we have to pay more attention to that.

I know that I heard several comments about the report. There are also some concerns. But I mean maybe I am biased here because I participated in that report. I'm to going to say that I'm happy with everything, but in general I think

achieve what is aimed for in term of improving. I mean they're not radical changes, but it's more - should be seen as a continuous improvement process. And it will start new phases that we have as a council to investigate how we can improve the PDPs and to make them more effective and efficient.

There is a lot of pressure. We have to get that in our (unintelligible) a lot of pressure and complaints and you could see then from the question coming from the board about should the model evolve and so on. So we cannot be just on defensive like the counsel for us in the (Unintelligible). And need to think how we can improve, but also (unintelligible) that the changes impact us in future.

Okay. so yes, Martin.

Martin Silva Valent: Martin (unintelligible) for the record. I have a question Rafik for you. Once this (unintelligible) are passed, how is implementation of these recommendations? Like do they directly go to the already functions PDP? Because some of them are very not radical, but they really change the dynamics and that's a good thing. We're looking for that, but (unintelligible). How do we get there? Like once we ask the Council to approve this text was the next step on how that becomes an actual change in the working groups.

Rafik Dammak: Okay. When we discuss recommendation, I think we saw that some of them are, kind of, really - can be low hanging fruit. That we can make them quickly. And in fact, the EPDP team is, kind of, experiment because we are tied some what was discussed in those recommendation, not exactly, but some of those recommendation like think about the composition and membership.

So we are experimenting, and we will see how it works. Myself, I'm, kind of, cautious here because I don't think we have the (unintelligible) to fix all problem But we need to experiment. It will depend really about the implementation plan. So it's hard to say how it will happen, because for each

recommendation there are - I mean it depends. For example some there are existing things like they are already used in other space for like about the (unintelligible) reporting and the resource reporting. So that existed now for like the EPDP and can be applied for other PDPs without problem.

Other need much more work in term of implementation. Because they need, kind of, maybe new framework or something like that. Asking about to do a review of leadership and so on. That need to be really worked on into detail. So it depends. So I think there is some that can be applied quickly and other need a lot of work. No different, oh, sorry.

Man: Hold on, when you say that it is a lot work. It means we need to pass, for instance some low hanging fruits Working groups will just implement it and so on. Or like the EDPD, when we launch the next working group, we'll implement recommendations.

Rafik Dammak: So for example, the one about the composition on how the, let's say, what kind of form that PDP can take That exist already in working group guidelines. I mean there is no what kind of model we have to follow. Now we are following working group model that in fact if you read the guidelines, let's say, you can have a drafting team. You can have taskforce and so on and so on. So there is no restriction there. But the recommendation saying that when we do the (unintelligible), for a new PDP, we have to think about that.

That's what also I think happened with the EDPD. We spend a lot of time for (unintelligible) compared to previous report. For other report we usually, kind of, delegate that to drafting team and it come back to the council. But for the, I mean if you check several recommendations really about the (unintelligible) phase and try and think about the budgeting resource from the beginning. Think about which is the best model to follow, maybe not the working group model. And also to think about the scope. I think that what we saw in many PDPs, the scope is too large. It is not realistic. So some they are pushing that



you should have like maybe chunks small scope and many phases. So you can deliver and now have like working groups running for four or five years and maybe more.

So it's really - I think the recommendation is just asking - it's pushing the council to pay more attention in term of initiating the PDPs. Sorry Stephanie. Just go ahead.

Stephanie Perrin: Stephanie Perrin for the record. I was just basically going to focus on that point because I'm afraid I haven't gone over the latest versions of that 3.0 discussion. Was pleased with what we came up with. It seemed to be moving forward, but I don't know the details. And I am concerned that our voice could be curtailed in any, you know, there's definitely a desire to have a firm tight hand time driven on the PDPs. And in my experience, we lose when things are time driven because we usually are in a minority position. So we get, you know, okay fine. We've heard you. Done. Move on. You know, that's certainly what's happened in the RDS review team which is not a PDP but we have to consider all of our structures at the same time. Because what works for PDP also should be considered, I think, in the review teams and then cross community working groups, you know. Like they're all policy development processes.

So I'm deeply concerned about that. And I'm deeply concerned about a total failure to curtail bad behavior. We saw it in the RDS. We even had the ombudsman on. Didn't do a darn bit of good. You know, you could use the wrong word like snowflake and get yourself into deep trouble. But you could filibuster and try and talk about how to get the GDPR repealed with impunity, you know. Like hello, that's out of scope.

So and we see, of course, with the behavior of one of the GAC members recently that is slowing down the EDPD, even if you bring in outside facilitators, they should be able to deal with this and stop this. There should be a clock on this. There should be something. So the paralysis is not so

much at a policy level in terms of not making consensus. We can't run an effective meeting. This is a public management in the public service of Canada 101 Course, how to run an effective meeting. And we're not doing it.

So I think maybe we should strike a little committee and have a look at this if we have any volunteers. Because we need to refine that part of that report. Thanks.

Rafik Dammak: Okay, thanks Stephanie. Thank you for clarification. We don't hear about the PDP. (Unintelligible) team it's not - we cannot decide for that. That's for the reviewers with the center operating procedure and that will be under - I mean put by confrontation by the MMSI in the future. I don't know for the growth community working group, we have already built framework. But I don't have - I have a feeling that we won't have any cross community working group for any time soon.

So with regard to the issues described, I don't think we need real committees or (unintelligible) more. The problem I can give a perspective from the Council (unintelligible) because some problem happen to the PDP. It come to us and we spend a lot of time there. And that's why we had the - for example decision yesterday at the council think about the RPM. One problem is that we have some existing procedure. But they are not applied. So trying to create more, it's not going to help.

And that's why one thing we are discussing about the role of liaison and leadership, the working group leadership. We want them to be much more proactive and paying attention to that and make decision. So we can discuss if we need more. But it's - we can create many mechanism, but we need the people to apply them. so my feeling is that they're not all the time applied and so you have the situation like the case you are talking about, without naming a person. I think we have the existing mechanism to deal with it. But nobody want to do it. That's the issue.

Stephanie Perrin: That's what I said, Rafik. I'm just follow up. .That's what I'm saying. I mean we're not running effective meetings because the people who are appointed to do the job aren't doing their job.

Rafik Dammak: That's why we are exploring if you can see is about people need more training We need to review the working group leadership and so on. So I know that's maybe not answer the issue directly, but we are trying to see what's the best option. With regard to what you are suggesting it can be a second phase because this is not just one stop here. We are think about more - think about the next phase because we have several input recommendation that needs more work and so it will continue. So if we think we should work on this, we can submit so we can work it on the second phase.

Elsa Saade: Elsa here. What's the timeframe for that, what you're talking about right now? Like the review for that? You were just telling Stephanie that next steps could be applied so when do you think there would be a review of those things or next steps?

Rafik Dammak: It depends, I think on the implementation plan. I mean I don't think we discussed the review. Okay, yes I see Farzaneh and Amr. Yes Farzaneh.

Farzaneh Badil: Thank you, Rafik. Farzaneh speaking. So I think we as you mentioned, we do have the (unintelligible) in place. But people and the leaders do not invoke them and I don't think training what adding anything is the problem is that they don't involve them because they don't use the mechanisms to remove someone how is disruptive because there's a lot of liability involved as well. They might be accused of being unfair and, but I think we have gotten to a point that the leaders have to take action. Because it's sometimes they violate the standard of behavior and you just don't have standard of behavior just to look good. You need to enforce the standard of behavior. And if someone violates it, then I think the leaders have to take action. The problem is that they don't.

So I think we need - also I really like this three time warning and then just removing people from if they keep filing and if after like three time warning, they can - they should just go. And I have heard but then also we have like due process problem. Because if you don't have like a process that the leader can just say we are going to use this and we are going to talk to you, and then if you continue, we will remove you. So there should be like minimum due process involved as well.

The - because this is what I want to say. I also wanted to say what I'm saying is that all that's controversial because we have had committees that the chair did not like a member doing certain things. And the member was just criticizing but also, kind of, halted their operation. But based on valid point, but the chair managed to remove him and ask the - another group to appoint someone else. And we did not hear about this and the community did not hear about this. But we should be also careful.

So balancing is difficult, but I think we need to have - we need to have more forceful leaders.

Rafik Dammak: Okay, yes thanks. I mean in fact it depends. Some removal was applied in some working group. That's why. It's not about really just training. I think the issue we are describing was in term many recommendations. What we are expecting from chairs. The role changes a lot compared to previous PDP in term of what is expected, in term of the workload and so on. So we have to think how we'll get the right chairs or leadership in those working groups depend the model we follow.

Yes Amr Go ahead.

Amr Elsadr: Just wanted to follow on something Elsa mentioned a little earlier regarding the review of the recommendations in the report. My understanding is that the motion directs staff to implement the recommendations and the report

and it also directs staff to report to the council on the implementation based on implementation. We had discussed a possible amendment to the motion. Perhaps a fourth result clause to either ask for a review of the implementation of this report maybe within a year's time. Or possible on a continuous basis so I just wanted to flag, and I would be happy to work with one of our councilors since Rafik submitted this motion, I think it would be appropriate for another one of our councilors, not Rafik to propose the amendment to this motion in the form of a fourth resolve clause.

Another thing I just wanted to get clarification on, in implementing the recommendations of this report, there will be no changes to the GNSO operating procedures or the PDP manuals, is that correct? Because if there are, I would find that to be problematic.

Rafik Dammak: Okay, thanks Amr. To be honest, I don't recall if there is any suggestion to change. Maybe for the one regarding the section 3.7 is more about clarification, but not necessarily to change anything in the working group guidelines. Also the same for the designation for the consensus. It's more really about having better explanation or helping - explaining the procedure, because we - what we have is sometimes not necessarily - not enough clear or detail. But I don't recall we have any changes in the guidelines. But maybe in the implementation. It depends the implementation plan. So yes, we should pay attention to the -

Amr Elsadr: Could you also possibly seek clarification on that either from the council in general or from staff support whether they foresee or whether they - and maybe also note that if during the implementation, it is discovered that any operating procedures required to be changed that this be specifically flagged. I think that needs to go through a different process than just the staff report that is approved by council.

Rafik Dammak: This will be overseen by the council leadership, so.

Amr Elsadr: And on the issue of the amendment to the motion, I think it would be best to get that in as soon as possible and not wait until the actual council meeting. So if - I would be happy to work with any one of our councilors except for Rafik. Just because he submitted the motion, not because I don't to work with him. Just to, you know, perhaps send it to the list at some time today so that counselors from other stakeholder groups and constituencies have an opportunity to see it raise questions if they do in a timely as manner as possible before the counsel meeting. Thank you.

Rafik Dammak: Okay, just clarified some procedural matter. Okay so I think we should vote yes for this one. It's not because I'm involved, but at least from the council perspective we are starting this process and it's important to show that we are taking the lead. Because there is the context I think you heard like the many times the chair of the board and also from the (unintelligible) about how maybe we should evolve the model and so on. So it's better as GNSO, we take the lead and handle our own improvement and to not have that imposed by anyone. So is the starting and also it's this will be with incoming council probably a matter for discussion the next strategical meeting to see how we can do that. And also maybe any other area for improvement. So, yes Amr.

Amr Elsadr: Yes, sorry one last comment on this and since recommended we vote in favor of this motion. I've on a number of occasions voiced concerns with moving away from the GNSO working group model to any other model in terms of policy development. But I don't think it's a bad idea to give this report and it's recommendations a chance. I think it would be worthwhile to explore it. And to actually go through it in practice before judging it. I'm especially interested in seeing if any other model apart from the working group might be helpful in promoting noncommercial representation and policy development.

For those of us who have been involved in GNSO PDP working groups, you know, noncommercial representation is minimal on those groups. And we're very often vastly outnumbered in terms of representation by other groups.

Different models might help us address this issue. We've already seen on the EPDP team that noncommercial representation is vastly enhanced compared to other PDP efforts.

So let's keep an open mind about this and see where it takes us over the next year or so. And let's just see what happens.

Rafik Dammak: Thanks Amr. I wanted to maybe highlight something and from the EPDP experience. The charging phase matters a lot. If you want to set a PDP for success. We have to spend a lot of time on that effort to be careful about what we put in scope. Also know the idea is to discuss what should be the model we will follow. So it will happen at that time. And that's why the counselor from NCHE have to pay attention. To be careful about that and follow closely those discussions. For the EPDP it was the council as a whole, but usually it's drafting team working on the charter. So you would need dues from the council I think also for directing. It can be outside the council to pay attention what's going there and to be careful about the details. So your last comment Amr.

Amr Elsadr: Yes thanks, just following up on this because you opened up a whole new thread of discussion here. But yes, our councilors should also be able to leverage our existing membership, you know, when they're involved in drafting teams to draft these PDP working group charters or PDP task for charters, whatever they may be. There's nothing that says that they can't share what's happening on council with the rest of the membership and we can develop our internal teams within noncommercial stakeholder group to assist in that regard. So that's fine. I don't think that's much of a problem.

Rafik Dammak: What I'm saying is we have to pay more attention. Yes.

Woman: Just one small observation that I had last time when I was alternating for (unintelligible). And it's about the EPDP and it's specifically about scope. I think the main reason why access was put in there and we didn't really have

a huge say in it is because a specific group was a penholder. Being penholder has a lot of leverage. And I think we should step up in terms of being penholders when we come to drafting charters or whatever it is in the future. So yes, I just wanted to put it out there.

I think (Keith) was one of the main penholders for the scope of EPDP and we didn't have much (unintelligible) in terms of refuting having access in that charter. So I think in the future if we were to be the penholders, we would have more authority in terms of getting the language we want into the charters just a small observation.

Rafik Dammak: Yes, thanks. Stephanie please be short because I - we need to move to the next item but yes, please go ahead.

Stephanie Perrin: Stephanie Perrin for the record. Just responding to Elsa. Yes, that was a very interesting exercise in terms of how we nearly got disenfranchised. That's a ladylike word. And I was on that small group and we had to fight hard. And in fact, we had to haul out the (unintelligible) and have a little chat.

Woman: I wrote that blog.

Stephanie Perrin: I know, but the only reason that Keith entertained our complaints was because Milton called him up and had a conversation. So that shouldn't happen. That's a failure in the PDP process. It's a pretty good example of what we're dealing with right now and why we really need to pay attention to implementation of that report. Because if we're not careful we're just going to be swept under the rug here, you know. So and I also wanted to put up my hand because I'll volunteer to do that amendment if you'd like Amr. You draft it, I'll put it in. How about that? Does that sound good? Amendment, I'd be happy to work with you on that amendment. Thank you. You're drafting it.

Rafik Dammak: Okay, good division of labor here. Let's move to the next agenda item which is about the termination of the next generation (unintelligible) director service.



RDS to replace with policy development process. Okay that doesn't happen often. I'm not sure if it's the first time or did it happen before? But this about terminating a PDP. And I think it's really based to the chance and the context in the last month.

So I'm not sure how much to say here, but we have I think several of (unintelligible) member involved in that working group. And I think Stephanie, or the council is onto that working group and you submitted the motion on the behalf of the leadership of the working group leadership. So yes, I mean here it's not about discussing to vote here. So now I think the vote is quite straightforward, but it's maybe more about the lesson learned about this experience and why we reached that level that we had to terminate PDP. Stephanie want to?

Stephanie Perrin: Yes, on this one I keep saying we need a full postmortem on why RDS failed because I'd like to go after the problem. I mean we had a good leadership structure there where there was one best chairs ICANN has had in my opinion, Chuck Gomes. And we had the group of co-chairs that were representing the different stakeholder broad groups. And we still wound up unable to deal with the disruptive behavior that carried on, nor to follow any kind of an agenda. And we had one of the best contractors that I've dealt with in the five yeas I've been at ICANN, (Lisa Fifer) who basically knows it all on WHOIS and we had (Marika). I mean it stuns me that we had so many good competent people, but we weren't able to stop absolutely disruptive behavior that wouldn't happen in a normal industry setting or a government setting. It wouldn't happen. Let me tell you. You wouldn't put up with that. They'd be gone.

And anyway, some irony that I'm throwing that thing off, but we don't have a decent postmortem on what went wrong in my opinion. Leadership apparently came up with a postmortem, but we haven't discussed it fully. And we haven't aired it with the wounded RDS warriors, many of whom aren't coming back after that experience. So we've lost good people who were engaged at that

point. And that's terrible, you know. So and the ones you really don't want to deal with never give up because it doesn't seem to bother them.

Man: (Unintelligible).

Stephanie Perrin: Well, I thought you'd just warn me not to start new committees. Yes. Well I don't know. I think it would be worthwhile doing, particularly in the context of the 3.0 review of how we function. And you know, but I don't have time, you know. Right now we're in the thick of fighting EPDP and I don't really think I can drop off that one because that's a big problem and we've got a whole bunch of issues we have to fight right now, thanks.

Rafik Dammak: Okay, thanks Stephanie. Yes, oh, think probably there is respond to that. But my understanding that leadership may be perfect similar to a while ago. But maybe he can - the working group leadership, they prepared lesson learned while ago. So probably (David) can provide more details.

Man: Yes, that's what I was going to say. The leadership did prepare a postmortem. It had, you know, input from both the staff and the volunteer members of the leadership team. I think we did a reasonably thorough job and I'm, kind of. I have no idea why it hasn't been shared more openly. I don't know why it hasn't been.

Stephanie Perrin: Where is it? Can we see it?

Man: I can send it to you. The - I don't, but I don't know why it hasn't been sort of released more generally to the council. I would think it would be an important bit of input to the whole PDP3 discussion. And we did - I mean we considered a lot of the whether or not some of the ideas that have been put into the PDP3 were tried in that working group. And we, you know, talked about whether or not they were worthwhile and things like our experiences with, you know, legal advice and things like that.

There were some things that we thought, I think worked well and should be more widely discussed. I think the multi-stakeholder leadership team worked quite well in that when we did have troublesome people we, you know, we for a start we were able to send someone from their own stakeholder group to try and talk them down. And when the chair did have to step in and say something, they could do it without accusation and bias because they would say it would be backed by the whole leadership team.

So yes, I think there were valuable things in there. I have no idea why it's not been shared. I'd be happy to share it with you personally and I think I'll ask the leadership team to - why it hasn't been shared more widely. And surprises me.

Man: Who was it shared to, the postmortem?

Rafik Dammak: The council leadership, but I think we discussed to share it with the council. I have no idea why it was overlooked. But maybe that won't be enough. Feeling Stephanie if you are suggesting they should go beyond just the leadership and the staff. So it's, kind of, maybe retrospective lesson learned, postmortem or to be more accurate group therapy. To learn more what's happened and to get more input. So I'm not sure how we can maybe include that. (Unintelligible) or organize this maybe in more structured way so we can use the input. But yes Stephanie, go ahead.

Stephanie Perrin: Stephanie Perrin for the record. I have single handedly brought up the need for a postmortem. I'm sure ten times on council, on the EPDP, on the small group when we were drafting the charter. I'm saying we don't draft a charter until we do a postmortem on the last time. We'll repeat. I mean ten is probably an understatement. Nobody has addressed it. If you guys did a postmortem, and nobody even had the courtesy to respond to a volunteer and say we've done a postmortem. We will share it eventually or not.

Rafik Dammak: Stephanie, I didn't do any postmortem. We didn't do a postmortem. They did. So you have to ask them. You know what I mean? Don't say -

Stephanie Perrin: I was not directing that at specifically at you.

Rafik Dammak: Just to be clarified, because -

Stephanie Perrin: But leadership knew what was going on. You know, leadership of council and leadership of the PDP. This is not transparency. And it's not bottom up. Stakeholders -

Rafik Dammak: Stephanie, (unintelligible). I'm not - I have no idea why you're not involved. You should ask your working group leadership. That's - you are -

Stephanie Perrin: It's really odd I wasn't invited to any of the leadership meetings as a liaison.

Rafik Dammak: Sorry, you should ask them. I have no idea. I cannot respond to that. Yes, Farzaneh.

Farzaneh Badil: Yes, Farzaneh speaking. Sorry. I just wanted to say. I really wanted to discuss a couple of things about the recent event that emerged during this meeting. So if we can, yes. Thanks.

Rafik Dammak: Okay no, but just to clarify. We were not involved. That's the leadership. I have no idea why you were not involved. Why they didn't involve the rest, but I can't respond to that. When it was shared because we asked them when we can share this to the council. So that's why maybe it was overlooked. I can't take the heat why we didn't share in time for the council, but it was (unintelligible) to share with the council in particular for this situation. I mean we have no reason to keep it. I mean it's important to share it just for clarification.

Okay, I guess we will vote yes for this one. But anyway, I mean it just too long time and so many involved in this. But what we can do for now. Next agenda item is about the (unintelligible) access to (unintelligible) protective mechanism. That's another PDP with raising many issues. To get this PDP working group deliver its report, it needed the liaison involvement and also support from the council leadership. And they delivered their recommendation. It takes them like four or five years.

However we have a GAC advice and the GAC, I mean for several times, also in their communique. Because they are not happy with the recommendation and they think their input was not included and yesterday they send letter to the council. I think you could read it. They weren't happy that they thought that they could have discussion (unintelligible) with the council to work on this issue before we make any decision. And they suggested to make a defer.

So we thought that maybe it will be a topic for yesterday's GNSO GAC meeting. However, as you know, we couldn't have really a discussion about that for many reason. Anyway, so for the council, for now, we have to make a decision. We, kind of, tried to defer making decision for a while since the reception of the report in end of July. But we cannot do that anymore really. So we need to make a decision.

There are option that will be disused like maybe in particular the recommendation Number 5 to, kind of, carving it out and either to send it to the RPM or to send it back to the working group itself. But once issue is we don't know really what all the concern is, the specific concerns from the GAC or to be more accurate from the (IGU) and INGO that they are sending letters to the board. What are their specific concerns with the recommendations? So we are in a situation that we don't know what's the best option. Because from the council perspective we deal with a process. We need to check if the working group did what this and this is called from the charter. Did they follow the process and so on?

And basically it did. There was some issues in that working group, but I don't think they're necessarily impacted the whole process. There was an issue of that low participation. There was an issue that the cochair where challenged by one or several members of the working group about using the pooling and that takes time. There was a lot of issue, but in general it delivered at the end as it's expected. So to be honest, I have no idea what's beset option.

One easy way is to just we approve and send this to the board to deal it with the GAC if they aren't happy. They can do as they did for the Red Cross and they reconvened the working group. But it's not really good. I mean the best option because of how that working group is composed. We have no participation from NCAG for information.

So yes, so it's really open for discussion. I mean for me, just send it to the board. Let's handle that. Let them handle that. Yes?

Man:

Yes, just wanted to point out that this PDP working group was chartered over four years ago. And the reason it's taken so long to get work wrapped up is because of GAC objection to the consensus recommendations of the working group members and so this working group - this PDP has been involved for over two year so far because of the GAC. And because of this prolonged delay in its work. That was a big factor. And a lot of members dropping out of it in which is - why again, you know, when you mentioned that there weren't very many active participants there. A lot of them dropped out. This thing's been dragging on forever.

The working group co-chairs have been complaining about this for a very long time. They've tried to address GAC concerns on the PDP working group for years now and have failed to do so. I think as far as the GNSO process is concerned, the GNSO has done everything it can and needs to do. And I agree with Rafik that it should be - the motion should pass, and it should be sent to the board. The GAC's going to challenge this at the board level. There's - I mean we shouldn't be, you know, we shouldn't think this isn't

going to happen. It will certainly happen. And I find this practice to be extremely problematic but, you know, for years again now, the GNSO has been trying to encourage and trying to cooperate with the GAC to get them to participate in policy discussions at earlier phases so that these conflicts and recommendations and advice from the GAC do not occur. But it hasn't been working out as well as we'd hoped. But yes, I think this needs to move on. With apologies to the PDP working group members too.

David Cake: David Cake speaking. Yes, I want to just very strongly agree with what was said. I was involved in the GNSO/GAC coordinating group when I was on council. We tried very hard to prevent pretty much this exact situation. And we worked with GAC leadership to say look, you know, just you know, there are - here are all the different ways you can participate in the PDP. I understand, you know, the GAC can't participate in the same way that many GNSO members do, but they can still respond to reports. They can still send - they can still, you know, respond to when they're asked. They can still just send, you know, input in. There's so many ways they can participate. We ask that we set up special processes for them to get involved early.

And literally the - as far as we can tell, the relevant IGO here just said oh, no that's all a waste of time. We'll just lobby the board and ignore the GNSO PDP people process. Well there's nothing - maybe nothing we can stop them to do it. But as the GNSO we should absolutely respect our own processes that we try the best we could. And you know, really this was - and I think this is also an example of the GNSO doing its job really well. This PDP was not at least at the start, I was involved in the early stages of it. It was not particularly divisive. No one went in with a huge agenda.

We just wanted to solve a problem. They really did a thorough job on, you know, we had good lawyers in the group who did a thorough job on trying to, you know, work out what the problem - what the issues were from first principles. They realized it was behind their capacity. They got experts in. They did everything. You know, you can't - I could find no fault in the way

they approached the problem. It's just the IGO didn't want to have an answer that was - as far as we can tell, they didn't want to have an answer that was actually backed by the law or research. They wanted the answer they decided on. And the best way to do that was to try and bypass the whole process.

The GNSO absolutely should back this report.

Rafik Dammak: Okay any further comment and question on this? Yes Farzaneh.

Farzaneh Badil: Farzaneh speaking. I think the problem is that these groups like IGOs that want to reserve names like based on no legal grounds. One approach is to bypass the process. The other approach is to come and get involved with the process and then say oh, there is legal ground. And, kind of, say that and interpret the laws broadly. And we have seen that some working groups have been made to say there is a legal ground for reserving the - at the event. And I think that's absolutely dangerous.

I would much prefer that and sets really bad precedence for later on. And I would much prefer that we fight them when they bypass the process then coming to the working group and saying oh, there is a legal ground for reserving this bunch of names in -

Man: (Unintelligible).

Farzaneh Badil: I know, but it's like in general, I think the approach could be that, you know, that they can come in and argue that there is legal ground. And put pressure on the working group and we have seen that the working groups give up and just say these are like the legal analysis and there's legal ground for certain thing. So I think that approach is dangerous, and we have to fight them. We have to be very careful in future working groups not to come up with legal arguments that are not - not to make the working group come out with legal arguments that are based, I mean they are not really tested.



Rafik Dammak: Okay. I think we'll see tomorrow in informal meeting for the council what will be proposal. Maybe some amendments and I guess we'll decide then. Maybe things should go. Okay, so let's go for motions. The last agenda item which is EPDP update. Nothing to say there. But just it will be a regular update to the council about the progress of the EPDP and if there is any issue.

I will have to make that because I think what need to be reported if we can make it for the initial report which is supposed to be done just a few days after this ICANN meeting.

Okay so let's go to - move to the next agenda item, not a council agenda item, but our policy meeting. And it's about policy update. And so, I put here the EPDP identified access (unintelligible) for two reasons so because they EPDP. We have (unintelligible) for that one. And we have several of the representatives to the EPDP team, so they can give some updates or if they want to ask for any input and also for (unintelligible) access model because I think you may know already about the letters sent to the board and the response we got.

I think we didn't get for that one, but it's just in term of discussion and there are so many things going on. Okay, any presenter want to share a short briefing about the EPDP team?

Amr Elsadr: Why don't you do it Rafik? You're going to be presenting this to the council, right?

Rafik Dammak: What I do is different from what needs to do. To the council as a reason and not supposed to - I mean to go really on the substance more about the progress and, you know. But thinks for putting my in trouble Amr. Okay, Stephanie please go ahead.

Stephanie Perrin: Briefly, the EPDP is not making the required progress. We are on a tight schedule. There is a lot of work going on outside the EPDP, notably on a unified access model that was not supposed to be within scope until we had answered all the chartered questions. We aren't even addressing the charter questions. Let alone answering them. We have been talking about access nonstop. It is our position as NCSG that access is not a purpose for the collection use and disclosure of personal data in the RDS. That's our position. It is feasible legally for ICANN to take the position based largely, I would say, on the articles of commitment and the intensions of the commerce department and the early arrival of the IPC to lobby the structure of the white paper and the green paper.

It is certainly feasible that ICANN could say that providing access to third parties is one of the purposes of its collection use and disclosure. That doesn't make it right. It doesn't make it defensible in a court under GDPR, but sadly that is how they've been behaving for the last 20 years. So I think they can advance that argument.

Having said that, we are now in a position where they have more or less offered the registrars immunity from liability and stepped forward themselves. We have this game of hearts at least in North America where you try not to get hearts as you pass cards around or the queen of spades. But once you've got a whole stock of them, you go for control. Well it looks like ICANN's going for control. Let's try and get all of them and then you beat everybody in the game, right?

So ICANN is now put itself forward as yes, we can do this. We can handle access. And understandably the registrars like it. They will never get out of all liability under the GDPR, but it would reduce their liability. I think that's fact. And ICANN could find further ways of taking on the liability although they'd be fools to do that because, you know, no end to that. So that's we're sitting right now. And we have to make a decision how we are going to respond to that. Knowing that if the registrars get a good deal they will no longer be

fighting for privacy and cutting off access to WHOIS data. Have a done a fair job?

Amr Elsadr: Thanks Stephanie. This is Amr if I can add a few points. I think Stephanie's done a great job of, you know, drawing a general picture of the whole environment and ecosystem around this topic. As far as the EPDP itself is concerned, the team is still working on refining the purposes of processing registration data, the legitimate interests involved who the controllers may be because that determines what the purpose and the legal basis is. And it seems like you know, you mentioned we're making very little progress on that. It's we're way behind schedule.

Every time we do seem to reach some form of agreement on a purpose, its relevant processing activities and legal basis and the new revisit it some point just to, you know make sure everything's okay. Something comes up and no, there's a group that's dissenting to what we had previously agreed to. And we have to revisit it and redraft it and it's ongoing loop. My - for some more context, you know, this EPDP is mean to revise a temporary specification to the registry agreement and registrar accreditation agreement. The temporary specification can only be enforceable or last for a year's time and will expire in May. And so the EPDP team is meant to or the EPDP, not - the whole process is meant to be wrapped up by then.

So we were supposed to finalize an initial report and publish it for public comment within a week following this meeting here at ICANN 63. It's looking like that's not going to happen now. It might take a little longer to get done. Rafik had - that's correct, isn't it? I think that it might be a little bit delayed. And the reason why we're supposed to be in a hurry to get this done now because the entire process of an EPDP isn't just about the work that the team is doing. We need to publish this initial report. We need to review the public comments that come in, in order to finalize a final report. And then there's still a whole process involved in the board reviewing the recommendations and adopting them and the board as per the bylaws also need to run a public

comment period. So even after the EPDP team finished its work, there's still quite some time that is required for that whole process to conclude before the temporary specification expires.

Rafik Dammak: Thanks Amr. Yes about initial report, the issue was raised at the leadership team level. So even if we try to extend we have to be careful because as you said that will impact the next steps like the public comment and so on. So if we extend for some time. One consent is that we have the end of year holidays. And so cannot really have that overlapping with the public comment period or when the work - the EPDP team is supposed to review those comments. So the concern is we have that in mind and we discuss about the plan and the leadership level team.

So in term of reporting to the council, I tried to raise that. They say that depends. It really depends how much progress we will make here, but yes, there risk is there. And yes, the next steps we have to go the first public comment and then the final report. And then the approval by the council and to send that to the board and implementation. And then after we - I think the incentives we need to get that. Otherwise we won't start the access model. But maybe as Stephanie explained, that the whole context is just some groups may try to use other channel.

So yes Amr.

Amr Elsadr: I'm just curious because (Kevin Murphy) blogged about this and he said that he report is expected to be released about a month after ICANN 63. I was wondering. Do you have any idea, anyone have any idea where he got this form?

((Crosstalk))

Rafik Dammak: He said one month?

Amr Elsadr: Yes.

Rafik Dammak: We never say that.

Amr Elsadr: Yes, it was the first time I heard of it, but.

Rafik Dammak: I mean it will be really late. It will impact the timeline heavily if it's one month.

Man: I thought there was a workplan that was shared when we were drafting the charter by staff. I think he's going off of that initial document.

Rafik Dammak: Oh, the timeline was adjusted, so. Yes, the final report - the initial report is close by. Meet November, but not one month later after the ICANN 63. That's really late because we start that and the public comment, I think it should be at least 42 days. We cannot make it. No way to make it because we won't have enough time for reviewing the comments and working on the final report and having that submitted to the council in January. We have some miracles, but I'm not sure.

Okay let - I mean any question or comments? We want to hear also from others here if you - it's good at working to ask any question. Now I would like to go topic maybe sometimes it's lot of (unintelligible) on but it's important to ask a question for clarification if you want to understand more. Yes Ayden.

Ayden Ferdeline: Hi, this is Ayden. I was just going to suggest should we talk about the letter than ICANN org, sorry, that the board shared a few days ago on how we should respond to that?

Woman: (Unintelligible).

Rafik Dammak: Yes, I mean we have this as a topic.

Ayden Ferdeline: I was just suggesting because we have 15 minutes left and.

Rafik Dammak: Yes, the rest is for this kind of topic anyway. My first take here is that we don't need to respond right now. I think, and we need to be careful how not going to say it's (unintelligible). It's, kind of, seen confrontational here, but we need to discuss what we really want to achieve with this and I'm just worried that we can - sending many letters has happened before. So but yes, we should discuss what we should do and how we should do. So if there is any suggestion or idea, we can start with. Please no side discussion.

We were talking about the letter. So what should be our next steps?

Farzaneh Badil: Okay, so Farzaneh speaking. I think the letter I have before I say how like to go to the content. I have to read this in better but the response that we got, I believe did not get many of the comments and the points we were trying to get across correctly. And there are a lot of things that we did not say in the letter and we did not mean but they thought that we meant - but that though that we were implying, or we were saying the things we were not really saying.

So our approach first should be that just clarify what we meant by certain things that we said in the letter. For example for access we never said access is not an ICANN mission. We never said that. What we said was that you cannot use WHOIS to do things or facilitate thing that are not in ICANN mission. And if you keep going around and saying maybe I should stop because sometimes this transcript is read by others.

So think we are - I'm not ready now to exactly say what we should say. But our approach yes.

Ayden Ferdeline: Sorry, no I just thought we should, because we only have 10 minutes left. Should we respond? Or maybe we should talk about not the content of the letter but just what our next steps should be.

Farzaneh Badil: Yes, Farzaneh speaking. So yes, so our next session - first of all we have a meeting with the board tomorrow in the morning. And so we should be collegial and nice and also tell them. I'm going to start by saying that, you know, kind of, have like the situation like (unintelligible) and say that we were not saying that you were lying. Because they think that we were in our letter we were saying they are lying about certain aspect of the process. So what we are going to do is that we just started with by being nice and friendly and ask a question. If the board brings up the letter tomorrow, then we need to make some points and I think one of the important points is that we have to clarify certain things and say we did not say these things and we did not mean them in the way you interpreted them.

And I think that's one approach. And after this - after this meeting I think we need to write a letter. But the letter should not be very charged, because I know that we needed to send a strong letter. Because we need ICANN to stop certain things they had been doing. And you know, always talking about access. Because ICANN always talks about access when it comes to privacy, never mentioned the registrant's privacy is very important too. It always talks about access.

So I think we needed a strongly worded letter to send that message. But now we need to respond to the board and to clarify things to the community as well. Because community has seen the board's response and if we do not respond, the community is going to think that we actually meant everything that the board reiterate we meant what the board said we meant. So I think we need to give a response.

So and that's but we need to be nicer. And a little bit more not a little bit more (unintelligible). Now on the mailing list, there are members that said maybe we should do - we should escalate this. Maybe we should write a blog a say this was wrong, or board was wrong. I think we should discuss that, but at the moment because we are also in the process of EPDP we should show people

that we are cooperative. It's better not to escalate it too much. But we should tell the board that to clarify certain aspects.

Rafik Dammak: Okay, that was Farzaneh, the voice of moderation here. Yes.

Elsa Saade: Elsa here. I just one main thing that I think we should talk about is the fact that they said that we based the whole letter on an opinion rather than a fact. I think this just touches upon our legitimacy. And our credibility as NCSG. So it's I think, I personally think it's of high importance for us to at least reply to this. Like we are concerned that your letter is at times based on opinion asserted as fact in the sense to rewrite some of the record of how the ICANN community as whole is responding to data protection laws.

I don't think we are asserting it based on opinion, rather on fact. So if we can actually collect those instances where we have based our opinion on, it would be best before tomorrow. I can help collect whatever facts we can.

Farzaneh Badil: So, Farzaneh speaking. Actually we mentioned a couple of - we actually mentioned when and we linked it. But I just saw that there was like ones that we did not footnote it. But we had footnoted previous paragraph. So there are instances and there are many more instances. ICANN just see in the blog that they publish we can just - you get like two blogs or three blogs recent blogs that you can just extract all the paragraphs that are about access and not about privacy.

Not once in the registrants and I can see that the - I think the registrants report, because they have domain name registrant report. They do not mention that registrants were concerned with privacy in Juarez or their privacy or data protection in Juarez. They say that it's never mentioned that it's privacy. They say that. So registrants had also some concerns about their data in WHOIS. Or something like that, it's not I have to get that report. But it's amazing how they do not look at the issue that is WHOIS as a privacy issue as a data protection issue. But of course ICANN if you are willing to



help then I can just show where we can go and get these reactions and reports and blogs.

Elsa Saade: Sorry, just to clarify. I didn't mean for us to just go on a full fight. It's just to make sure that we're as credible and can be. But of course, I agree with you on the diplomatic stance and being more moderate in our approach. But definitely let's just make sure that we're credible enough. I'll definitely help you Farzaneh.

Rafik Dammak: Thank you. I'm not going to -

Stephanie Perrin: Can I get in here? I want to strongly disagree agree with a prompt response. I think we need to take our time. And do this in a calm, cool and measured way. WE fired that off in a hurry and we got a hurried response back. If I were them, I would regret responding as quickly as they did with the garbage they gave us. We're getting a lot of support from the community surprising support actually and who are saying hey, escalate. You know, from a diplomat telling us to escalate? Check the list. I thought whew.

So I think we should just take the temperature for a couple of days. I mean I want to respond immediately too.

Rafik Dammak: Okay.

Stephanie Perrin: But I do think that we need to refute every single point because they're trying to destroy our credibility. And I'm sorry, none of the letters that go to the board have citations. Why do we have to have citations? Give me a break. They want my dissertation? I'll send it to them. You know, give me a break. Anyway, that's why I'm taking a deep breath. Thank you.

Rafik Dammak: Okay, guys. So yes, I mean I don't think anyone was suggesting we send right now. From the beginning we said let's take time. I mean we don't need a letters' war anyway. But so yes, we will respond. So guys, we will take time

for that. And I see that there are some actions maybe to collect information. But I mean about citations and so on, just, you know, it's, kind of, I think it's just to dodge and so on. I want to take that. But yes, if they want we can send them a whole annex, appendix, whatever so they can review that.

But to be honest, I can understand the tactic. But as I say, it was rushed. I don't think they really thought through that. It, because I don't recall we ever got a quick response like that. I mean so sometimes I'm pretty sure that we didn't get interest for some of the letters. So I'm really surprised.

But anyway, we should go about that and take time and respond. And we can get all the fact they want.

Stephanie Perrin: I would really like for us to research the time it's taken for them to respond to any of our letters over the years. If we could pull that together, that would be so nice. Little table, you know, here's our letters to you over the years, no response, you know?

Rafik Dammak: Yes, Farzaneh?

Farzaneh Badil: Yes, actually this reminds me of a very important letter that we sent them about sexual harassment. And we never got a response about that. And it was like six months ago or something. Yes, in Puerto Rico. So we should mention that maybe I mean I don't want to be - I wanted to be very moderate and friendly tomorrow in our meeting. But I think we should mention that they did not respond to this.

Rafik Dammak: Yes, just let's be about that, but we can mention in a diplomatic way. Yes Stephanie.

Stephanie Perrin: I should perhaps let everybody know before the meeting tomorrow that I did - (Sherin) tackled me, very upset about this letter. I said well I thought maybe if we talk about it, I would tell a joke. I'm just going to say that Farzaneh got

drunk and wrote the letter and I didn't know about it. So he may have shared that. I don't think he took it very humorously but never mind. So it's out there.

Rafik Dammak: I'm not sure also for Farzaneh taking it humorously about that. Anyway I think we reached the time and I see people coming to our room. So let's wrap this. So we will take time and we'll think about. But just before, to have that record and just to respond to Stephanie. Just know Stephanie, this goes to you. So no hard feelings about lessons learned. I doublechecked. It was an action item. And we confirm it with the leadership if we can share that with the council, but it seemed it was overlooked.

But it was always the intention of the council leadership to share because we have no reason to keep it. And we want to use it for the PDP (unintelligible). But for the other, I think it's a nice for discussion why the liaison was not involved in all this discussion. Because we have that at the council level. And one of the things we want the liaison to be involved in all the leadership discussion. Maybe not for the planning, but to be involved there. So yes, that's a matter we can follow up anyway.

Man: Yes, I just looked through my email. That lessons learned document that we did for the RDS, actually if I email the council asked us if they could share it. We said yes, sure you can share it. We just didn't go into share it. So I'm sure that'll happen soon.

Rafik Dammak: And see some (unintelligible) already in room and they will start soon. And we have for councilor we have the GNSO, CCNSO meeting in less than 15 minutes. So thanks all. And that's it for today, not for today, for now. Thank you.

END