

>>STEPHANE VAN GELDER: Okay. Welcome back.
So we will start again.
We are up to item 6 on our GNSO Council agenda for today.
This item is on Red Cross and Olympic Committee names.

A drafting team has been working on a set of recommendations to determine how to handle the possible protection of these names under the new gTLD program.

A motion is before us. It was made by Jeff Neuman, seconded by Zahid Jamil. And before going any further, I will ask Jeff to read the motion, and I have also been asked that if you can, after you have spoken, please turn off your microphone. Don't forget to do that.

Thank you.

>>JEFF NEUMAN: Okay. You want the whole entire motion read? Yes?

Just to clarify.

Yes. Okay.

>>STEPHANE VAN GELDER: Yeah. It's not that long, is it?

>>JEFF NEUMAN: All right. This is the motion to recommend to the Board a solution to protect certain Red Cross/Red Crescent RCRC and International Olympic Committee names, IOC, names at the top level in new gTLDs.

Whereas the Board resolution 2011.06.20.01 authorized the President and CEO to implement the new gTLD program which includes incorporation of text concerning protection for specific requested Red Cross and IOC names for the top level only during the initial application round, until the GNSO and GAC develop policy advice based on the global public interest.

Whereas the IOC/RC drafting team established by the GNSO Council has considered a number of different options with respect to protections of both the IOC and the RCRC terms at the top level and has proposed a solution to modify the ICANN staff's implementation of the Board's resolution as reflected in the Applicant Guidebook dated January 12th, 2012.

Whereas, the IOC/RC drafting team has collaborated with the Governmental Advisory Committee, (GAC) during its deliberations in an attempt to identify a solution that addresses GAC concerns.

Whereas, this proposed solution was posted for public comment on March 2nd, 2012, on an expedited basis as a matter of urgency in order to enable the Board to consider its adoption for the first round of new gTLD applications, which is scheduled to close on April 12th, 2012.

Here is three new whereas clauses we put in.

Whereas, the GNSO is mindful that implementation of the Board's resolution is needed to be available before the end of the application window.

Whereas, the GNSO intends that these recommendations be solely limited to the IOC and RCRC.

Whereas, the GNSO recognizes that there might be a policy impact of the protection for the IOC/RCRC for future rounds and at the second level.

And, whereas, therefore, the IOC/RC drafting team recommends that the GNSO Council adopt this proposed solution as a recommendation for Board consideration and adoption at its meeting in Costa Rica for the application period for the first round of new gTLD applications.

Now, therefore, be it resolved that the GNSO Council adopts the IOC/RC drafting team's three recommendations as described in its proposal for the protection of the IOC and RCRC names at the top level as provided in, and there's a link.

Namely, recommendation 1, treat the terms set forth in section 2.2.1.2.3 as modified reserved names, meaning the modified reserved names are available as gTLD strings to the International Olympic Committee, International Red Cross and Red Crescent movement, and the respective components as applicable.

B), applied for gTLD strings, other than those applied for by the IOC or the RCRC, are reviewed during the string similarity review to determine whether they are similar to these modified reserved names. An application for a gTLD string that is identified as confusingly similar to a modified reserved name will not pass this initial review.

C), if an application fails to pass initial string similarity review, 1, and the applied for TLD identically matches any of the modified reserved names (e.g., Olympic or .RedCross), it cannot be registered by anyone other than the IOC or the RCRC as applicable.

Subpart 2, if the applied for TLD is not identical to any of the modified reserved names but fails initial string similarity review with one of the modified reserved names, the applicant may attempt to override the string similarity failure by, 1, seeking a letter of non-objection from the IOC or the RCRC as applicable, or, 2, if it cannot obtain a letter of nonobjection, the applicant must, a), claim to have a legitimate interest in the string and demonstrate the basis for this claim, and, b), explain why it believes that the new TLD is not confusingly similar to one of the protected strings and makes evident that it does not refer to any of the IOC, RCRC or Olympic or Red Cross or Red Crescent activity. 3, a determination in favor of the applicant under the above provision 2.2 above would not preclude the IOC, RCRC or other interested parties from bringing a legal rights objection or otherwise contesting the determination.

4, the existence of a TLD that has received a letter of nonobjection by the IOC or RCRC pursuant to 2.1 or has been approved pursuant to 2.2, shall not shall not preclude the IOC or RCRC from obtaining one of the applicable modified reserved names in any round of the new gTLD applications.

Recommendation 2. Protect the IOC/RCRC terms in multiple languages.

The GAC has proposed that the IOC and RCRC names should be protected in multiple languages, all translations of the listed names in languages used on the Internet. The lists of protected names that the IOC and RCRC have provided are illustrative and representative, not exhaustive.

The drafting team recommends that at the top level for this initial round, the list of names and languages currently provided in section 2.2.3 of the Applicant Guidebook are sufficient.

In addition, the drafting team also notes that even in the unlikely event that a third party applies for an IOC or RCRC term in a language that was not contained on a list, the IOC or RCRC, as applicable, may still file an applicable objection as set forth in the Applicant Guidebook.

Recommendation 3. Protection should apply for all future rounds but may be reviewed after the first round. In its proposal, the GAC has recommended that the protections for the IOC and RCRC

should not just apply during the first round of new gTLDs but should be a permanent protection afforded for all subsequent rounds.

Although the drafting team has not spent a lot of time discussing this subject, it does agree with the notion that it is making this recommendation as one intended to apply in all future rounds, but also recognizes that permanently granting protection to the IOC and the RCRC may have policy implications that may require more work and consultation so that protections may be reviewed.

Resolved that the GNSO submits this proposed solution for the Board consideration and adoption at its March 16th, 2012 meeting in Costa Rica as a recommended solution to implement Board resolution 2011.06.20.01 for implementation in the first round of new gTLD applications.

That wasn't that long.

>>STEPHANE VAN GELDER: Thank you, Jeff. That was my ploy to put everyone to sleep and avoid discussion. I don't know if that's going to work.

Let's open it up for comments. And I see Rafik first, Rafik, Zahid, Jeff, Mason, is that Lanre, Thomas, Yoav, Mary, Bill -- Why don't we just do the whole council? Joy, David, and anyone in the room, obviously. Alan. Joy, I've got you.

>> May I point out we have ten minutes for this item, according to the schedule.

>> By the way, I already raised my hand in the Adobe.

>>STEPHANE VAN GELDER: Good for you.

So Rafik first.

>>RAFIK DAMMAK: Thanks, Mr. Chairman.

I would like to make a request.

I would like to defer this motion. And for that, I want also to read the statement on behalf of the NCSG.

>>STEPHANE VAN GELDER: Please go ahead.

>>RAFIK DAMMAK: Thanks.

NCSG finds it's impossible to bypass ICANN's bottom-up policy development process in this way at the time when the multistakeholder process on the Internet are being challenged, and this proposal is both questionable on the merits and contrary to ICANN's processes.

Therefore, the NCSG has no option at this stage but to defer the vote at least until the public comment period is closed.

Here are the reasons for our deferral.

One of the most parts of the ICANN process is the public comment period which allows public engagement and permits those affected by policies to explain their views.

Public comments constitute a quintessential part of the ICANN ecosystem. How can ICANN depend on public comments when they make a decision before all have been received?

The council should not hold a vote in something as important as the (indiscernible) creation of new form of reserved names, especially ones that singles out some international organization for special consideration while injuring others without full comment.

The critical importance of public comments was recognized by our colleague, Mr. Steve Metalitz, chair of the IPC, in a recent comment. Mr. Metalitz said in trying to make the decision before the public comment period has closed, ICANN has failed to fulfill its pledge in the Affirmation of Commitments to employ the specific consultation procedures that provide detailed explanation of the basis for decision, including how comments have influenced the development of policy consideration, and to continue the access and improve the processes by which ICANN's receives public input, including adequate explanation of decision taken and the rationale thereof.

We could not agree more with this statement with our fellow stakeholder groups, the IPC.

The community should take the necessary time to hear all the views on this issuing and examine other proposals such as those from Portugal earlier this week as well as the proposal from the not-for-profit operation constituency that are intended to create more fair and less arbitrary standard for reserved names. The NCSG policy committee believes that is a critical policy issue and needs the full guidance of the public comments before it can properly decide how to vote and thus requests deferral on this vote.

Thanks.

>>STEPHANE VAN GELDER: Thank you, Rafik. So we have the practice of honoring such requests, and we will obviously do so in this case.

And as Chair, obviously --

>>JEFF NEUMAN: Can I have a point of order?

>>STEPHANE VAN GELDER: Can I just finish my sentence?

>>JEFF NEUMAN: Yes, but I would like to raise a point of order after that.

>>STEPHANE VAN GELDER: As chair, I have unusual position, obviously, so I have no position on what you just said.

I would just note that the deferral request is intended to give people time to consider motions. The statement that you have just read is a statement against the motion itself. I think as a procedural point, it may be interesting for the council as we continue to work on these deferrals -- I am not talking about this specific instance, for us to try to look at this procedure in more detail. Because it's not written in our bylaws, and it really is difficult for me, as chair, to know how to work on these things. And when we have cases like this, obviously I will certainly shy away from doing anything out of the ordinary but it does put me in a difficult position as chair.

So perhaps the council can help me in looking at that in the future so that we can put that in our procedures.

Thank you very much, Rafik.

Jeff, you have a point of order? And then I will go to the queue.

>>JEFF NEUMAN: Yes. While the deferral is a courtesy that we have extended, there is no -- nothing in the bylaws or rules of operation that specifically allows for it. That being the case, I would ask that we call for a vote of the council to see if we would like to override the deferral, which I think should be added to the rules of operation. And since we're not dealing with an existing rule that's documented, I think we should call for a vote of the council to see whether the council would like to override that.

>>STEPHANE VAN GELDER: Well, my own personal view is we have always honored deferrals, and I don't see why we shouldn't today. And at times, deferrals have not been popular with some parties, and they probably wouldn't have wanted to have some, and that hasn't been reason enough for us not to honor them.

I would find it very difficult to have a vote to reject something that we have always allowed everybody else to have.

Jeff, can I ask if you would allow this, that as we consider your point, I start the discussion, hear some other views, and then go back to your suggestion. Would that be palatable?

>>JEFF NEUMAN: Absolutely, yes.

And just keep -- That wasn't my spot on the queue, so just when you get back to me.

>>STEPHANE VAN GELDER: I have you in the queue. You are number 57.

[Laughter]

>>STEPHANE VAN GELDER: So Zahid.

>>ZAHID JAMIL: Thank you.

So I might be as long as the statement was just now, but let me give it a shot.

First of all, I think that maybe changing our precedent or our custom to basically honor this sort of deferral may be problematic; however, I must agree with you that the usual reason given for such deferrals is because somebody needs time to consider it. Obviously, the statement made earlier means that it's not a question of considering it amongst the constituency. It's a question of having a position on it.

It is really disappointing that this has happened and I must say I was one of the first people who was greatly concerned by the list we recently saw that came from the RCRC. However, as the negotiations over the weekend have taken place, I must say I was one who got a lot of confidence if the way the negotiations in the working group were moving ahead. I also found there was a great spirit of compromise on all sides, eggs specially the affected sides which is the IOC and the RCRC.

Now, I come from a developing country and I come from a country where we have seen great calamities in the last few years, such as the earthquake and the floods that hit Pakistan. And it is a

shame that we will be looking at a position in the new gTLD process where it's possible that the protections that, such as organizations who get money through donations, especially like the Red Cross, and who are not-for-profit where there is a huge issue of cybercrime and phishing and spamming and all these sort of things, it may become an obstacle.

So the harm that is caused the users and donors is paramount in my mind because eventually it does impact people like me in countries like where I come from where there are such devastating impacts of national calamities. The money that these people are giving to these organizations may be going someplace else.

So having said that, I just want to say that from a practical perspective, two, three, operational points.

One, this is the first time we have had a working group, if I am not mistaken, with the GAC. And I'm disappointed to see that we haven't -- we don't have the GAC here. They don't have any notice of this deferral. They don't know what's going on. And I know from at least one GAC member from South Asia who says, well, in his words, "Isn't this a violation of natural justice principle that at least we should have been told this was going to happen?"

I don't know; I don't want to comment on the merits of that statement, but I can tell you that the GAC would not be happy with this.

Let's also remember that the second level is a really deep, main issue here that we are going to have to deal with going forward with the new gTLD process.

But I also wanted to say, leaving this discussion aside, and I don't know what's going to happen with the vote to override the deferral but let me just say this. If that doesn't happen, for instance, I would be in support of the chair -- and this is a request I am making -- to have an expedited meeting of the Council as soon as is possible under the bylaws and definitely before the 1st of April. Because we have a practical problem. The deadline of the 1st of April for the new gTLD process is going to close. And we should not let this deferral in fact become a de facto denial of this protection to the users and to the applicant.

So I would strongly request the chair to try to have a meeting as soon as possible. I know the public comment period is about to close, but let's have a meeting before the 1st, and at least the council would have done whatever it can do to send something or, depending on how the vote goes, to the Board and then the Board can decide what to do. But it should be before the 1st of April.

Thank you for the time you have given me.

>>STEPHANE VAN GELDER: Thank you, Zahid.

Jeff.

>>JEFF NEUMAN: Thank you, Stephane.

The GAC sent us this proposal in September.

We worked as a drafting team incredibly hard and I think incredibly well.

As Zahid said, this is the very first time that the GAC has participated in close collaboration with a working group. We responded to a GAC request. For us to not be able to vote today is a failure. It's a failure of the system under the guise of claiming you want more public comment.

It's a convenient excuse, but in the end, it's a failure. And nothing more, nothing less.

This is a slap in the face to the governments that have asked us to decide.

You have already, as shown in your statement, you already know how you are going to vote. It's clear the vote is going to be no. So why don't you stand behind your vote and vote now and vote no. That is what you really should be doing.

And I want everyone to remember today, which is March 14th, 2012, because this is the day that everyone is going to remember as the downfall of the current GNSO Council as we know it and the policy process as we know it.

Mark my words. It will happen.

The GAC has asked us to act, and we have failed to do so.

And I concur with Zahid that if we can't override this and we have to go to another meeting, the rules of operation provide for a 14-day notice period for a meeting. So today is the 14th. I ask for a meeting on March 28th where everyone come prepared to vote; that we prepare the Board for the motion, and prepare them to act.

This, to me, is what we need to do, and it's irresponsible for us to do otherwise.

>>STEPHANE VAN GELDER: Mason is next.

>>MASON COLE: Thank you, Stephane.

I just have a brief statement to read from the registrar stakeholder group.

Although the registrar stakeholder group intends to vote in favor of this motion, we recognize the effort to protect the marks of the IOC and the Red Cross originated with the Board. The request from the Board to alter the bottom-up policy developed by the GNSO Council with regard to the new gTLD program constitutes, in our view, a circumvention of the bottom-up policy development process that is at the core of both the GNSO and of ICANN.

The GNSO Council should expect the bottom-up PDP to be honored and adhered to by the community in the future.

Thank you.

>>STEPHANE VAN GELDER: Thank you, Mason. I have Lanre next.

>>LANRE AJAYI: Thank you. I think a major challenge the motion seems to be having is the perception that it is giving more protection to Red Cross and IOC.

I have a different understanding of the motion. I don't really think it's giving more protection but, rather, modifying the staff's implementation of the Board's direction.

The Board, with the present implementation, the IOC and Red Cross are not able to apply at this first round. And I think that should not be the case.

If the motion gives opportunity to IOC and Red Cross to apply in the first round, just like every other string that is not even protected, why should that be a problem?

If the motion is give an opportunity for the IOC and Red Cross strings to undergo string similarity review, just like any other strings that are not even protected, why should that be a problem?

So my suggestion is that if we are able to solve some of the issues around the due process and all the rest, some suggestions that we made, so those issues around due process, I think the motion should be supported.

Thank you.

>>STEPHANE VAN GELDER: Thank you. Thomas.

>>THOMAS RICKERT: Thank you, Stephane. Being a member of the drafting team, first of all I would like to applaud the GAC, IOC and RCRC on their effective collaboration.

What might appear as a minor issue since the protection is already given for the IOC and RCRC in the current version of the guidebook, this kicked off a debate about a variety of issues. I would like to highlight a few points that may help to put this discussion into perspective.

Remember, the Board authorized the president and CEO to implement, in bold characters, the new gTLD program. It also made resolution that the two organizations named above should get special protection. Staff amended the AGB to reflect this.

As Lanre said, this implementation was flawed. In the light of this, we are now dealing with and talking about an implementation detail.

The work needs to be finished before the end of the application window. I think this is a matter of urgency that we are all aware of.

As a councillor, I now have to make the choice between allowing a flawed implementation to remain in the AGB or to fix it.

I consider it one of my duties as a councillor to do what I can to make the AGB as good and transparent as possible. It's the only way for ICANN to live up to everybody's expectation to be inclusive at the global level.

Having said that, I do see policy implications for the second round and for the second level since there is no decision on this already.

To ensure that this has been taken care of and that the due process is followed, I will submit a motion requesting the initiation of a PDP on this subject in time before the next GNSO Council meeting.

By doing so, we can ensure that the policy implications are taken care of and our processes are followed.

May I remind you that this project is considered by the GAC as the first opportunity for a new collaborative approach. We should not make that fail and get our work done in time.

Now, what does that mean for the councillors? The answer may be yes or no. I prefer it to be yes for the reasons I just mentioned.

Now, I've heard, and we now have it on the table, that there is a request for deferral. The matter has been discussed over months in great detail. There were numerous telephone conferences, hundreds of e-mails, face-to-face meetings and thus there was sufficient time for consideration of the matter.

In my view, there is no reason for deferral.

We have been talking about setting bad precedents a lot in the context of this discussion. I think it would be an extremely bad precedent if a request for deferral was instrumentalized as part of a delay tactic.

Thank you.

>>STEPHANE VAN GELDER: Thomas, I'm not clear what you said about the motion part. Can you say that again? Because you said you were -- you wanted to introduce a motion....

>>THOMAS RICKERT: On time before the next GNSO Council meeting.

Not now.

>>STEPHANE VAN GELDER: Okay. Thank you.

>>THOMAS RICKERT: Just so everybody knows we're not going to leave this twisting in the wind. But, you know, PDP request is going to be kicked off.

>>STEPHANE VAN GELDER: Thank you very much.

Yoav.

>>YOAV KEREN: As Mason already said, the main view that (indiscernible) and the registrars was the process, this has been done.

At the same time, in the past couple of days, we have been receiving maybe assurances, different members of the GAC, that this is a very unique case and that we're not going to see other requests following.

That for me personally and for others in our stakeholder group was enough in order to decide voting in favor of this motion.

Saying that, I think that -- I must say that I really agree with what Jeff just said. I think it will be very wrong for us as a GNSO Council -- now, it doesn't matter where -- for which stakeholder group you are coming, not to vote.

Whatever we would vote, whether we are in favor or not, whatever the results are, we should vote because as I see it, the use -- this is -- as you said, Stephane, this is a custom. This is not in our bylaws. And using a custom in order to practically make something just -- be I don't want to say a

harsh word but kill the motion, okay? That's practically what's going to happen because if we don't vote now it doesn't mean anything, if we don't vote before the application period ends.

So I really urge Rafik to ask not to defer to take that away. Or maybe we should vote on this as Jeff asked. I don't think that this is -- as Stephane stressed, this deferral is used for people to get more information. There was enough time. Clearly, in the past few days everyone had discussions very, very thorough discussions on it. So I think we should try and have our vote today and show the community that the GNSO can act. I joined the GNSO just recently. And I've been involved in this community for about 11 years. One of the things that bothered me a lot is that things here just took too long. It's about time that, when we need to act, we act. Otherwise, our entire structure is going to fail. All of us that sit on this table need to understand that. It's a very important point that we are in time.

>>STEPHANE VAN GELDER: Thank you, Yoav. Mary.

>>MARY WONG: Thank you, chair. I'd like to explain a couple of things. I think, first of all, this was a very difficult discussion and decision within the NCSG. Our lists are open. Some of you have seen some of the postings, and there were some very strong views.

The request to defer was not a unanimous decision of the policy council. But in our charter we operate through consensus, and there was consensus.

On the view that we are doing this in an attempt to delay until things are moot, I don't know that I can persuade all of you that that is not true. But I'm going to try.

I would urge you to read our statement and the reasons we gave. One is the process reason about respecting our own rules for public comment.

The other -- and here's where the time question comes in again. There was a proposal proposed by our newest constituency, the NPOC, that suggests considering generic criteria that would apply to perhaps more than two international organizations. And it may then be that, by the end of that discussion process, we come back to where we are, that the IOC and the Red Cross are indeed in a special category. I have not seen in the last two days anything to indicate that adequate discussion of this suggestion was undertaken by the community. And so, on the delay point and on the timing, I do think that the requests for deferral was made on a principle basis and not as a tactic.

Then, in response to my colleague Zahid's comments, I think one response -- and there may be others by people at the mic -- might be that, in fact, the two organizations are already protected. They are so well-protected that some of the fears and dangers that you outline could not possibly occur in the first round. And on the point that the GAC is not going to be happy with us, I think that then is an opportunity for us to engage in dialogue with the GAC. I think we could not do worse than subvert our own processes in order to do what the GAC wants us to do.

>>STEPHANE VAN GELDER: Thank you, Mary. Now, we have some people standing. And they've been standing for a while. So I will ask -- Bill, you are in the queue. But, if you are so willing, I will go to some of the people standing so that they don't have to stand for too long. And then I will continue the queue. Is that okay? So Avri.

>>AVRI DORIA: Avri Doria. Thank you, Stephane. A couple points I wanted to make. First, I wanted to reiterate that I do not believe that this deferral request is made contrary to the motion. It's specifically about the motion. How can people vote on a motion? How can they understand how to vote on a motion, if they haven't seen the public comments, if they don't know what the public actually thinks about that? You say you've been talking for a long time, and you have. Among yourselves. It is just now time for the rest of the community to start participating in that conversation. Many of the issues, obviously, need further discussion. Things have come in, things have come up over the last three days. I know that my mind has been opened to various aspects of this that I didn't know. I expect that, if they are forced to vote today -- and I really do hope that you don't do that -- that you would get abstentions as opposed to nos for the most part because they do not know how to vote. I think it's very good that several of the council members said that this is not about protection. It isn't about protection. It's about having gotten, perhaps, more than what you asked for when you asked for special protection and wanting a modification on that special protection that gives you an exemption from the protection that you asked for.

I think, in terms of the IOC, the special clauses that you put in there -- and perhaps the Red Cross. I don't know -- the special clauses that you put in there about how to handle similarity, how do we know that that's not a licensing agreement? How do we know that some when somebody applies for something, it's not? Is there any discussion on that,? Has that been documented. I think there's some real problems on that. I think the that changes that you're asking be made to the applicant guidebook, at this point with only four weeks left, are so substantial. Because who knows who can now apply for it that wasn't even considering applying for it? But, if you're not asking for the board to restart the clock on the application period, how can you make such a substantive change to an applicant guidebook? This is really a very large change. Because, if I'm someone who has a name that is possibly similar, you know, I couldn't have applied for it before. Now I can consider it. And, to make such a change at such a late -- you know, we've seen discussions of the little town of Olympia in Greece. How can you not have allowed them to apply by making such a late change?

So I think the board defined a new class of reserved names. That is problematic. To have the GNSO Council now, without any policy discussion, without a complete public review, decide to not only endorse that new class of reserve names but actually amplify the policies related to that new class of reserve names is extremely problematic.

I do want to agree with one thing Jeff said. If you go ahead with this now, if you go ahead with abrogating the listening to the public and talking about their views, to quickly vote, you, indeed, will bring about what you're afraid you will bring about. Thank you.

[Applause]

>>STEPHANE VAN GELDER: Thank you, Avri, I'll go one councillor, one from the floor. Bill was next.

>>BILL DRAKE: Well, this conversation has gotten so interesting, it's hard to decide which angle to pick at. Let me start by responding to a couple things colleagues have said.

On the notion of overturning a deferral request, Jeff, I find that absolutely astonishing. In my time on the council there have been so many deferrals in cases where I wouldn't have wanted there to have been a deferral but it was simply accepted that this is what colleagues accept is settable

amongst us all, so I just never pressed the point. I never would have imagined that I could say, well, I don't like this. This annoys me. So I'm going to demand that we get a vote together and try and penalize, perhaps, a minority group that's standing alone for some principle, in their mind. That's, to me, a strange practice. And if that's how we're going to go about conducting ourselves, this is, indeed, the end of the council, as you say. I hope that we don't do that. I hope we stick to the kinds of collegiality and bottom-up principles and ways of operating that we always have.

Secondly, with regard to what Zahid said, I mean, I do not believe it is the case that the Red Cross is not going to be able to save lives because of this deferral. And I -- I, again, would hope that the rhetoric not get so far beyond the reality of what we're actually talking about here.

We made very clear in our statement what our concerns were. Okay? The text for this thing has been evolving and evolving. People have had many different versions. Maybe the people who have been interior to the process all know what every little iteration and change is about. But I can tell you that, in the broader community that we interact with, I don't think you could find that a lot of people in the NCSG have been able to make sense of each turn and twist of the text. But I can tell you that they've been consistent in the discussions on our list serve of their basic view of what was going on here is and that has not been favorable in any way, shape, or form. We do have an obligation to have a proper public comment period. That's an integral part of the process. If we have obligations under the AoC for accountability and transparency, we're supposed to take on board community inputs. To say, oh, this is just irrelevant now, it's inconvenient, just get it out of the way and do so with a kind of level of -- I don't want to say demagoguery, but a level of discourse that sort of implies that public comment is just a screening for delaying rhetoric, public comment is a really valuable important thing. And there has not been a completed public comment period here. Sorry. And Steve Metalitz in his comments for the IPC made precisely that point, which we repeated and agreed with in our text. The last thing, as Mary pointed out, we have a new constituency in NCSG that is still trying to get its head around what all this stuff is. And they have come out with a very interesting proposal which resonates in some ways with what some governments and the GAC have proposed for taking a broader look at these things. But they haven't had a chance to go back to their people and really take a second look now and say there's the final text. Here's where we are.

So we've been given a lot of noise or harassment, I think almost, about whether NPOC was getting a proper right to voice its concerns. So we're saying, people from NCSG, that, yes, we want our colleagues in NPOC to have a full chance to reflect on these things. They haven't yet. So we're not playing games. We're simply saying this has to be done in the proper way that gives everybody a chance, just like the people who have been inside to the process, to get their views on the table and have those considered. I think that's what the ICANN model is supposed to be about.

>>STEPHANE VAN GELDER: Thanks, Bill. You said two things which I must comment on.

Sorry, one thing and maybe two comments.

I think, you know, as a registry representative, I have no -- registrar -- sorry. Try not to get that wrong again.

>>CHUCK GOMES: You haven't paid your dues yet for the registries.

>>STEPHANE VAN GELDER: It's called a slip of the tongue, guys.

>> Identity crisis.

>>STEPHANE VAN GELDER: So I have no control over the vote, and you've heard in a statement how the registrars plan to vote. As chair, however, I have control over one thing, and that is the fairness of our processes. And I do agree with you that something that we've always allowed in the past for everyone else should not be overruled here in this instance. So I do not understand or agree with a call for a vote to overturn the request for a deferral we've always honored for every other issue that we've had. As chair, if that is the only choice or determination that I'm able to make, I would make that that's unfair -- I would determine that it's unfair to ask for a special case in this deferral just because some of us may not like the deferral itself. I agree with that as a process issue.

One of the things I can also do as chair is allow this discussion to continue. At times, when there's been deferral requests at the start of a motion, we have stopped discussion on that motion. I have chosen this time to continue -- and I will continue the discussion, as you can see. There's a queue of councillors and a queue of community members that want to continue discussing this. I am hopeful that this is a discussion and that some of us, if we are able to convince each other, may evolve that discussion and may evolve those positions.

So I just want to make that clear. I don't -- the only thing that I really want to do as chair is to make sure that we remain fair in our processes and don't have special cases when there are results that we don't like.

Can I go to Chuck?

>>CHUCK GOMES: Sure. This is Chuck Gomes. I was the registry stakeholder group representing on the drafting team, but I'm speaking here in my personal capacity. A couple general observations, first of all.

This is the most interesting council meeting we've had in a long time.

Secondly, regardless of the points of disagreement, I think people, especially those of us out here, should notice that this has been a very professional, very healthy discussion.

Regardless of what side you might be on the argument -- and so I compliment that I think it shows the maturity of the GNSO Council and some -- and so we need to appreciate that. Now, to the point. I am not going to give counter points for the various things that are said. You guys are doing that just fine.

But I have a question for the NCSG and then a general comment with regard to Rafik's statement that he read. The question is, in your statement, Rafik -- and then Bill referred to it later in comments -- the, you said that you wanted to wait until the end of the comment period. And, as you know, the structure of comment periods right now, according to procedures, is 21 days comments and 21 days reply, which, obviously, would put us way beyond. 21 days is an issue in itself. But 42 days would put us way beyond the end of the application window.

So my question is -- and I'll let Stephane decide how he wants to handle that -- is, when you said that, that you wanted to wait until the end of the comment period, do you mean all 42 days? Or

would it be acceptable to do it with the 21-day comment in this case? And I don't necessarily expect the NCSG without consultation to answer that. But I do have that question. Because that could affect a possible solution to the issue. Because I personally believe that it is a time-sensitive issue because of the close of the application period. That's my belief.

Secondly, a comment. And this is with regard to what Rafik said about the Brazil comments from the GAC that the drafting team did, actually -- they didn't necessarily talk about his. But, if I understand the Brazil rep's comments and what Wolfgang has been bringing up in the GNSO -- he even did it over weekend -- the suggestion was to use more generic language rather than identifying two specific organizations. I, for one, support that. And I think that is a reasonable way to go. And I brought that up in the drafting team. What we decided in the drafting team this week is, because of the time sensitivity, it would be difficult to draft that language, our opinion, in the short time that we had but that, when we come back, if the motion eventually passes, and review this -- and I'm sure it will be reviewed -- after the first round, I would personally advocate for that kind of approach where you define the criteria that the Red Cross and the IOC met. And the GAC outlined that pretty well. That is a better way to go. I agree with you on that. It was a time issue why the drafting team didn't try do to that, because that meeting occurred on Monday. So my comment on that. So I just throw those things out. I hope they're helpful in terms of reaching a resolution. Again, I'm pleased with the dialogue that's going on.

[Applause]

>>STEPHANE VAN GELDER: Thank you, Chuck. Joy?

>>JOY LIDDICOAT: Thank you, Stephane. And I just want to begin my comments by saying that I have gone on the record thanking the chair and the others on the drafting team in which I participated for this spirit of cooperation that has been amongst the drafting team members. I think that there are aspects of the motion that's come before the council, again, I've been on record as saying -- which I think are workable. But I have -- we have also indicated that there have been ongoing negotiations right up until literally last night with amended motions. And so that's -- that's to, I suppose, demonstrate the willingness of drafting team members to work very, very hard -- and we have worked hard -- to respond to the GAC request and the spirit with which -- well, perhaps in the spirit with which there (indiscernible) have been changes. But, certainly, within the spirit of what we feel our responsibility was. So I think that's the first point I wish to make.

I wish to say also that this request for deferral, as Mary has outlined, has not been taken lightly. It is one that was subject to a vigorous discussion within the NCSG. And I thank our NCSG for the vigorousness of that discussion. We're holding public office, and we need to be accountable and transparent for our actions.

I have actually gone to the public comments and read all of them. There are 15 at least. Some are opposed in principle to the motion. Others make specific comments on the detail of the motion. I feel, in light of the fact that the public comment period remains open and that comments continue to come in, that there is a strong element of due process here. And while the motion -- while the request for deferral may be painful for other reasons; nonetheless, violating some of those fundamental principles causes more significant concern for me.

In relation to Zahid's comments about the operational ability of the Red Cross function, in New Zealand, too, we've had major earthquakes, significant disasters with major loss of life that Red Cross has participated in. I don't consider -- I don't accept, although I'm open to more discussion, the argument that failure to make this decision will affect their ability to do so in the good work that they're doing.

I listened carefully to the discussion that the GNSO Council had with the GAC on Sunday. I was particularly concerned by the statements from Portugal raising the question of discrimination in this case for the protection of two names only. And my understanding is that I think the GAC would support an open PDP in relation to the second round in, certainly, the second level.

But I think we need to be aware, of course, that there are divergent views among GAC members. And that, while I understand that Jeff and others feel very strongly about this, and -- I would also say that I feel strongly that we must honor the public comment period. And I do not regard this as a failure. I think the GNSO Council has been extremely responsive. And I think we need to be willing to stand by our processes. Having said that, if there are sensible suggestions for a way forward that will deal with the concerns, then, obviously, as council members, we should be open to listening to what those might be.

>>STEPHANE VAN GELDER: Thank you. Can I ask, in the interest of time, that we make sure that we don't make comments that are redundant with what's been said already. Just make comments that add something new to the discussion, if possible. Thank you. Milton.

>>MILTON MUELLER: Great. Let me try to edit my comments in line with those comments. Actually, I'd like to just begin by congratulating Rafik for what I think is a very courageous stance. We know how invested certain people who are in the drafting team are and how frustrating it is. I've been on the council. I've watched these processes. I know firsthand how frustrating it is to have these kinds of hiccups. But I think the more important issue is the frustration of the larger process by the way the GAC has intervened and by the way we were given this.

And so I'd like to also congratulate Mason and the registrars for their statement which made it clear that this is a process violation, that this is messing up the GNSO process. I can't understand how they get from that statement to the decision to vote for it. But that's something they have to live with. I think it makes it clear that the NCSG is not only one involved with this, that is fundamentally disturbed with this process. And, essentially, deferral is the only rational choice, even knowing that, yes, you may succeed in getting a vote two weeks from now or three weeks from now and you may ram this thing through. But what other way is there to stop the madness and at least allow the public comment period to be completed? And, in that respect, I'd like to address specifically the comments that Councillor Rickert made that we've all discussed this enough, that we've endlessly debated the issues and, therefore, there's no reason for deferral.

My understanding is that I received the final drafting team report yesterday. Okay? And that it was amended over the weekend, that a list of 250 languages was submitted and withdrawn. My understanding is that, in the GAC meeting, Portugal indicated that the GAC does not really, as a whole, support this request. The European Commission said, you know, this kind of happened while we weren't paying attention. There is debate within the GAC about whether this will be a precedent

or not a precedent for other organizations. The GAC doesn't even know what it wants on this. So the idea that we have to go along with them and break our process doesn't hold any water with me. Finally, I'd like to address Zahid's comments, his somewhat emotional comments about floods in Pakistan and the role of the Red Cross. My understanding is that, if this proposal does not pass at all, much less be deferred, that none of the Red Cross names can be used at the top level.

In other words, you're proposing to actually weaken the protection that currently exists by allowing exceptions to it, allowing the Red Cross to license exceptions to it. Whereas, under the current proposal, if nothing happens, no Red Cross names can be registered at the top level. So, please, let's not pretend that this in some way threatens the status of the Red Cross. This is yet another request for special consideration by the Red Cross and the IOC to actually loosen up the protection they asked for the first time in order to allow themselves to license possible other users.

So, again, let's deal with the case on the merits. I think I was very happy to hear the chair say that he was not going to allow a vote to change the rules. And I think you should -- the other councillors outside the NCSG should understand that in some ways we are willing to take the heat for doing the right thing here and -- despite the fact that so many of you weren't. Thank you.

[Applause]

>>STEPHANE VAN GELDER: Thank you. So I will add to my previous requests for no redundancy, not saying -- when I say that, it doesn't mean, by the way, that you were redundant, the last person who spoke. But can you also be concise, please, David.

>>DAVID TAYLOR: I'll try to, Stephane. In two words, I'm uncomfortable and frustrated. I'm uncomfortable with the way this request for a deferral has been made and how it's been used to effectively defeat a motion rather than defer it. And, as we say in England, "That's just not cricket." If we defer, we, as the GNSO Council, have failed to act and respond appropriately to the GAC or what we perceive the GAC is asking us on the time sensitive and crucial matter which we got here because of process.

I'm also uncomfortable with the position we're put in as a council today if we do not allow the deferral. Basically, we're damned if we do and we're damned if we don't.

I'm frustrated with the waste of the community's time that will result. I'm mindful of the potential harm that this causes the Red Cross and IOC as a result of the deadline passing. So, on my side of the IPC, we certainly fully support Zahid with their view of having an expedited meeting, if we can.

Two more points: With regard to the NCU statement that was just read out and which I hadn't heard before, I would like to point out that Steve Metalitz's comments have been taken out of context.

And, secondly, I think we need to not lose the focus here. We are seeking to avoid abuse. That's the main goal of this whole process. It may be ensuring donors and citizens are not defrauded. It may be other things. But that's what our common goal is. So we are now in a difficult position as a council.

And, as I said, we're damned if we do and we're damned if we don't.

>>STEPHANE VAN GELDER: Ken.

>>KEN STUBBS: Yes. My name is Ken Stubbs. And I don't know whether I'd call it a fortune or a misfortune. But I chaired the council through very turbulent times, including the original introduction of TLDs. As I look at what's happened today, you guys have a learning experience here.

Number one, you need to hard code the process. He should not be put in a position where he has the opportunity to make a decision to defer or not. That needs to be put into the process, number one. Number two, no offense taken -- please don't be offended. Your -- to the average person -- and I use that -- your motion for deferral implied the reason being that you were not happy with it. It took elaboration by members of your constituency and your representatives. You guys should have done more homework, gotten together on that, and elaborated in your motion more specifically. That's the point I'm making here. There was more homework that needed to be done before that motion was done. Take it for what it's worth, Bill. But the point I'm making is -- and number 2 -- is this process needs to be coded in. Because, in my opinion, no one should be allowed a deferral because they don't like it. It has to have clear value for a request. And I think that can be put into an operational process as part of the council operations so that there are clear basis and grounds for it that are elaborated in the motion. And, if the motion doesn't stand on its own two feet, then the motion should be refused on that basis. That's my two cents worth. Thanks.

>>STEPHANE VAN GELDER: Thanks, Ken. Alan. I meant Alan, councillor, Alan.

>>ALAN GREENBERG: I didn't think my turn was ever going to come up. I'm personally in an interesting position. I was on the drafting team. I was -- my position was that, although I disagreed strongly with the board action and in line with the registrar statement, the abrogation of the bottom-up process, I felt that, if something is going to be in the guidebook, it should be coherent and go along with the other terms in the guidebook. And, just for the record, that was under the full knowledge and support of the ALAC executive committee. That being said, ALAC, too, feels very strongly that this whole process should never have come about, that we should have done this using the bottom-up multistakeholder model and not unilateral action from the top. Given that that action has been taken, ALAC is happy to see no action at this point from council. My personal position sitting on council, I prefer to have seen that happen as a result of a vote, not deferral. But so be it. But ALAC has drafted a rather extensive statement commenting on both the substance and the process. And they're meeting in parallel with this meeting and probably will be voting on it today. And that will be distributed when it's -- when and if it's available. Thank you.

>>STEPHANE VAN GELDER: Thank you, Alain.

>>STEPHANE VAN GELDER: Thank you.

>>ALAIN BERRANGER: Thank you. This comment is one of clarification because the NPOC proposal was mentioned and many of you may not have seen the NPOC proposal.

First of all, the inclusion of a reference to the NPOC proposal cannot be interpreted in the spirit of my discussions of the last 24 hours by anyone as a reason for deferral.

The statement that was read, actually, under NCSG labeling is actually the NCSG policy committee where only one NPOC member's personal opinion did not represent an official NPOC position. But no surprise there.

The second statement or clarification that I want to make is that the NPOC proposal actually has two parts. Part A, approve the IOC/RC protection, and Part B, use the criteria of international legal personality to develop a generic solution.

So those are the two clarifications I wanted to make.

And I would add that we were wordsmithing until late in the morning and this is said in the full spirit of the joint statement that we made to the board yesterday.

So thank you for allowing me this clarification.

>>STEPHANE VAN GELDER: Thank you very much. Wolf-Ulrich.

>>WOLF-ULRICH KNOBEN: Thank you, Stephane.

I would make comment just briefly on the promise. I am fully in favor in keeping our rules even if they are not written in stone. But I have to add, on the other hand, we should be very careful to avoid any kind of misuse of such rules.

So I wouldn't say it is strongly misuse in that case, but there is something suspicious about that; that if you look back, you had time enough, there was time enough over the weekend to discuss that.

Everybody knows that. And I wonder whether a new opening of that discussion will bring us to a different point, especially the NCSG who is asking for deferral. I wonder if there could be made a statement from the NCSG side, whether there could be -- whether they see a chance at all to -- to find a way to agree to a motion in favor -- in the kind of favor we had in this time.

Thank you very much.

He.

>>STEPHANE VAN GELDER: J. Scott.

>>J. SCOTT EVANS: I am J. Scott Evans from Yahoo!. I am also on the Board of Directors and the Executive Committee from the International Trademark Association and former IPC President, and I was on the drafting team.

I have two comments. One, I don't think public comments were required for this at all much it's an implementation detail. I think Jeff deferred to one of our members to have public comment as a compromise. And I think you've made a huge mistake by saying that every implementation detail that this organization takes to implement something is going to require 42 day process. I think it's a huge mistake and I think you are setting a terrible precedent.

Next, this is like the third thing that I have dedicated, probably, if I was being paid my hourly rate, about 50 to \$65,000 of my time that a small cadre of people have derailed over process arguments. And I'm on the Nominating Committee now and it's very difficult to go out and recruit business people and executives to give time, the time you have to give to this process while they're on the

GNSO or the ccNSO or on the Board of Directors, to know that all of your good work, your good time is wasted.

So the message you're sending today to the people I'm trying to recruit is, you know what? You're better if you just stay home. You're just better if you stay home and do your day job.

Thank you.

>>STEPHANE VAN GELDER: Thanks.

Rafik.

>>RAFIK DAMMAK: Thanks, Stephane.

I just wanted to make some clarification. I heard many time that it is the first time for GNSO to work with GAC. In fact, it's not, because for the JAS Working Group, we worked with some GAC members, why the GNSO Council didn't act in time to mark the expectation of the GAC on this supporting applicant from developing country.

And just to respond quickly to Zahid. Zahid, I am from country, small country, which has to manage half a million of refugees, and I am living in country which had one of the biggest disaster last year, so I understand about the Red Cross work, but it's not the matter of our discussion.

Thank you.

>>STEPHANE VAN GELDER: Klaus.

>>KLAUS STOLL: Hello. My name is Klaus Stoll. I am an NPOC member and I am speaking here on behalf of myself, nobody else. I want to make that absolutely clear.

And I was in yesterday the NCSG policy meeting, and I spoke there for myself and my opinion. And I'm standing to it, and if you want to know what I said, please go to the transcripts of the tapes.

There was one NPOC number, Alain Berranger talk about, that was me. I just want to make that absolutely clear.

So, second point. I cannot talk about procedure and if procedure has been upheld or not. That's your role. I don't want to comment on that.

I also want to say that I was part in the NPOC drafting committee for NPOC proposal. And I want to come to the substance of the proposal.

The substance of the proposal is very simple; that we are saying there is something wrong when two organizations are named. It gets (indiscernible) where we are talking especially a specific group of organizations.

And what our proposal is trying to do, to move from that specific naming of organization to the protection of a group. And what we are trying to do is not to protect every NGO, everything that's running around. Really, in my own opinion, it should be the U.N. plus nine or ten organization, and that's it.

So, now let's come to the situation here.

I think there are about 100, 150 (indiscernible) in that room, and it's clearly understood that there is time pressure and that there is a need for -- to solve a problem.

I can't understand that we don't find a solution now which basically says let's guarantee or our highest intention is to get a generic solution for the second round because of the time restraints and because of all that happens, we might let a proposal go through for the first round as it is.

I know it's a dirty compromise. I don't like it. But I think it's the best way to live with it.

That still -- and that's the last part of my comment, is very simply that doesn't answer the operational part of your concerns and of the statement. And as I said, this is not for me to comment on.

Thank you very much.

>>STEPHANE VAN GELDER: Thanks.

I'll close the queue on the floor after Marilyn, and I'll go through all the councillors that have requested to speak.

Next is Zahid.

>>ZAHID JAMIL: Thank you.

I just want to agree with the last comment made from the floor, the last comment he made, which is the first level, it's an emergency situation. We have a deadline. We have an immovable object which is the April 1st deadline, and we have an unstoppable force, it seems, which is our policy, sort of, public comment period.

Now, it's a great compromise to say for the TLD level or the first level, we have to have this sort of not necessarily perfect but something that can go through and be useful. And all the concerns that are being talked about can be taken care of at the second level. So let the perfect not be the enemy of the good. And that would be -- And I totally agree with what you said.

Also a couple of clarifications because my name came up quite a lot in many of the comments. First of all, Milton, it wasn't 250 languages. It was maybe not even 50. Probably less than that.

Second, I didn't say that the IOC and the RCRC won't be able to save lives. That's not what I said. I said that there is a threat of fraud, and I am talking about theft. I am talking about, number one, the question of user confusion, and the second being that of being fraudulent. And that's what we are trying to do when we try to build this protection.

And if anybody says well, they will be able to do what they can do. Don't worry about it. The RCRC will be just fine and they will be on their merry way, well, then why are they here? Why have they applied pressure? They are not a profit organization. They are people who are experts at what they do and they know what they are talking about, I would have imagined. They are not a big corporation trying to get a free pass or an exception. So I would take an objection to that sort of a characterization of them.

Secondly, the issues in the NPO, I understand there is a proposal in principle, I am concerned why that wasn't made in the working group sessions in the last few days. And that's why it is such a shock and challenge to all of us saying why didn't you bring this up in the working group? And now we are hearing you want a deferral. That seems a little odd and I think we have heard from many people what they feel about it.

The other issue is a more strategic aspect, a more ICANN general issue. We have been asked to do something, by at least the Board as well as the GAC. We are basically saying guess what? We are thumbing them in the nose and saying, sorry, we won't be able to get it to you, and we are giving an excuse of policy. Because remember, there is the public comment period I talked about and the deadline. And we have to be practical.

The practicality is the deadline is not going to get moved so all this is academic, then, at the end of the day. And that's the issue.

And what else the most strategic aspect? If this is not able to work and people say remember the 14th of March? Here is the issue. When the IGF takes place, I would love to hear all the people there about what they think about the functioning or lack of functioning of the ICANN system.

So it's ours to lose. That's the issue here.

Now, what are the solutions? Having said all that, what are the solutions? One was the PDP that was mentioned. I think that, again, that's not going to be finished in time so it's a good solution but it doesn't mean the time limit, it doesn't meet that, you know, immovable object that we're faced it. But there is an expedited meeting process David mentioned and I mentioned earlier and we can do that. We can satisfy the request of the NCSG that, look, you need to have a public comment period? Then let's have it and see how you vote after that. Let's have a meeting just before the 1st of April. If that's the only solution, let's do it quickly and I think let's get on with the work we need to do instead of looking like an organization that cannot function and be open to a lot of criticism from a lot of people.

Thank you.

>>STEPHANE VAN GELDER: So I have -- Once we have done Marilyn --

[Laughter]

>>MARILYN CADE: Whoa!

>>STEPHANE VAN GELDER: Poor choice of words.

>>MARILYN CADE: Promises, promises.

>>STEPHANE VAN GELDER: Poor choice of words. I apologize. Put that down to me being French.

I then have (listing names.) I would cut it off at Joy, then. And Bill? I will cut off Bill, then, instead of Joy.

Marilyn.

>>MARILYN CADE: Thanks. My name is Marilyn Cade.

I guess the truth is I am rarely done.

I was a councillor for a number of years. Some of you know that; some don't. And I'd like to recollect my experience of having these kind of impasses and divides and tensions from those days, and to offer you a thought from how I am seeing this from here.

I think, in fact, -- I made a statement earlier that the business constituency believes that it is our counselors who should be carrying the positions. I've heard a few people refer to the interaction between the GNSO Council and the GAC as the GNSO.

I think we're trying to avoid it being an interaction between the GNSO and the GAC, because individual interactions with the governments around these topics I think are -- you have asked us to delegate to you, to elect you and to delegate to you the ability to make informed, practical, sustainable gTLD policy. That is what, as I read and I have gone and read the charters of more than my own constituency to see if I understand what your responsibilities are. I think I do.

Here is the problem I see. It is true that our policy development process is not perfect yet. It is true that many activities that are influenced by the policy that you pass, which is high level, turns into implementation details.

I would say as an observer it feels to me and looks to me like some of you feel uncomfortable with what the line is about what gets moved into implementation and what you retain as policy guidance. I respect that you may be uncomfortable with that, but my suggestion to you is to work very hard to find a short-term solution to this problem, approve the ability of these two entities in the framework of they have unique legal protection. Establish a timeline. Maybe it's three years during which time you do a thorough PDP and you evaluate it.

But you are both managers and leaders, not just subjects of a policy development process. This is in a gray area.

You have the ability to show some flexibility. And you have the ability to do it in a way that sets the stage for you continuing to maintain the leadership with the GAC on policy that shows you can work to solve the tough problems. Because they're not over. This one is not a big one compared to where we're going.

And I, as the chair of a constituency, would prefer not to be negotiating with the GAC as my full constituency on gTLD policy issues.

Don't put me in that position.

Every one of these constituencies, I would say, wants you to have that role. But that means you have got to be effective. And that means you may have to make some compromises to get small steps so you can own the larger responsibility.

So one other thought as a councillor. Under the leadership of a very capable chair, we had the ability to suspend a topic, go on and complete and then resume the meeting at a later time.

It's just a thought.

>>STEPHANE VAN GELDER: One that I've had for the last hour. Yoav was next.

>>YOAV KEREN: Yes, Stephane, I wanted to address what you said earlier about fairness.

I totally agree with what you said that we should be fair to each other and in our practices. But at the same time, I think it is unfair to use a deferral motion to defeat another motion, to defeat that motion.

And this is what is being done here.

So it's clear that there is a timing issue; that if the motion is not voted on today, then it's defeated; and that the people are -- that are asking for the deferral are against it.

They have a very firm view on this. They don't need time to decide.

So these are practices that are being used, and that's -- that's not good.

I have nothing else to say.

And --

>>STEPHANE VAN GELDER: Let me --

>>YOAV KEREN: Yeah, I have a question for you.

>>STEPHANE VAN GELDER: Well, let me answer your first question.

>>YOAV KEREN: Okay.

>>STEPHANE VAN GELDER: That's your opinion.

>>YOAV KEREN: Yeah, that's my own personal opinion.

>>STEPHANE VAN GELDER: And my job is not to deal in opinions. I am not allowed to have an opinion on the issue but I am allowed to have an opinion on the fairness of the process. And I have determined that it's not fair to reject a deferral one time because we don't like it and it's accepted another time.

I would not like it if a motion that was made by my group was deferred and -- sorry.

I would not like it if my group asked for a deferral, and that is with overruled because some other group didn't like it.

That is the only point on which I see my capacity as chair as being able to make a decision in this regard.

And as you have seen, we have, all of us had an extensive chance to have our say.

I will ask at the end of the process if Rafik has changed his mind, so he is prepared for that question.

But I will not -- Because in my own personal -- you know, my own personal opinion is very clear, I don't think it's fair to have double standards. That's all.

>>YOAV KEREN: Okay. So I appreciate that. And my follow-up question was, or maybe a part of it, was there any other case similar to this on the council that you remember, that there was a deferral that actually -- had a the meaning of that was defeating the motion?

>>STEPHANE VAN GELDER: You are asking me?

>>YOAV KEREN: Yes.

>>STEPHANE VAN GELDER: Not as far as I know. I am ready to be corrected if that was the case. I don't have the full history of the council going before Marilyn's birthday.

[Laughter]

>>YOAV KEREN: So, again, just my own opinion, we'll probably need to think about it. We need to maybe think about how we deal with deferrals in the future.

>>STEPHANE VAN GELDER: I absolutely agree. I did ask for that earlier on, and I am asking for all of your help in dealing that.

I don't want to be in this position again. But while I'm being put in that position, I feel comfortable enough to be able to determine a leadership decision, if you will, on this specific issue.

Mary.

>>MARY WONG: Thank you, Chair. And I'd like to make a couple of points of clarification and try and deal with a couple of the questions that have been asked.

I think the first clarification I would like to make, that it is not Rafik's statement, although Rafik read it out on behalf of the stakeholder group. It is the stakeholder group statement.

Secondly, I guess, some of the comments that I have heard remember what Thomas Narten said at the meeting that the Board had with the NCSG. If I like it, it's implementation. If I don't like it, it's policy. And we seem to have veered between the two in this discussion.

There also seems to be an assumption that the ultimate vote from all of the NCSG councillors will be no to this motion, which is predicated on an assumption that the motion will not change at the end of the public comment period. I'm not saying it will; I'm not saying it won't. But we have seen the draft change for the last 48 hours. We have also seen new information come in over the weekend, and a question was asked as to whether the NPOC proposal, why was that not put in earlier.

As a new constituency trying to follow the process, they have a drafting team. I don't think it's a fair question to ask, but the fact is that it was sent in a couple of days ago, and some of the confusion around what that means and the need for clarification I think in itself testifies to the lack of discussion among this community of what that means and we are also trying to second guess what the GAC is saying.

So even more, it seems to strengthen the argument that more time is needed; not to defeat the motion. You don't know how we're going to vote.

And finally, I'd like to try to respond to Chuck's question. The truth is that my group has spent so long discussing the motion, the various options to deal with the motion. If you look at our mailing list, there are some people who feel some of the recommendations are more egregious than others. We have not had time to consider the actual question of what the public comment period means. Is it 23rd of March or is it 14th of April?

So I have not had the opportunity to consult with the rest of my council members, much less the whole stakeholder group. But I hear, and I think we all hear some of the questions. I have said before that I don't think I have any hope of persuading some of you that it is not a delaying tactic.

But I would like to propose that you allow us the opportunity to go back to our stakeholder group to discuss the timing issue. And it may well be that we would come back and ask the council to waive the 14-day meeting requirement.

Again, I'm not saying we will, but I am asking that indulgence.

>>STEPHANE VAN GELDER: We've had, I think, an hour's discussion on this. I have five people left in the queue.

I am going to ask for a five-minute recess. I would like, first of all, to have the opportunity to discuss with the two vice chairs, and perhaps you would all like to have the opportunity to talk amongst yourselves about this before we come back and finish the queue. I will honor the queue. So Jeff, Jonathan, Carlos, Joy and Bill in the queue.

Five minutes, please.

(Five-minute break)

>>STEPHANE VAN GELDER: I'd like to restart the meeting, please.

Right. So we're back. I have five people in the queue. But NCSG wished to what? Read a statement? Make a -- make a comment that may change the world.

>>MARY WONG: Well, we hope will change at least some part of this little echo chamber world we know as ICANN land. So in the break, the NCSG leadership team, including the policy council, met. And this is in response to Chuck's question and the concern that some of our colleagues have expressed that we are doing this really just to kill the motion because voting on it after the 14th of April would be totally irrelevant. As we've said before, that was not our intent.

So, in the spirit of living up to our intent, which, like I said, was not that but which we documented earlier and in order to move the discussion forward, we think that there would be a sufficient period of public comment simply by looking at the initial public comment period without the reply period,

meaning that we think there's a sufficient period would have elapsed for public comment if the public comment period were taken just to be the 23rd of March as the final closing date. We say this, however, with a request, which I hesitate to place as a condition. But we would really like a commitment from the council and from the drafting team on this. That, between then and the convening of whatever special council meeting and whenever that is, that the drafting team take a look at all the public comments, in particular, the proposals submitted by the NPOC and commit to reviewing the draft motion with a possible view to reediting or revising it as appropriate.

>>STEPHANE VAN GELDER: Thanks, Mary. I'd like to ask you one more thing. There's a request for us to have an expedited meeting. The bylaws state that we should give 14 days' advance notice. Is that something that you'd be willing to waive?

>>MARY WONG: 14 days, as Jeff said earlier, would bring us to 28th of March. Are you asking if we'd be amenable to having a meeting before the 28th of March?

>>STEPHANE VAN GELDER: So the answer is yes?

>>MARY WONG: I think that the answer would be, if the drafting team believes or whoever would be working on this, that whatever the period is, that it's sufficient for them to have considered all the public comments that were submitted.

>>STEPHANE VAN GELDER: Okay. Jeff?

>>JEFF NEUMAN: Thank you for that, Mary. It's, obviously -- I can't speak for the drafting team. I can only speak as one member of the drafting team. And I think, certainly, I will be reviewing all the comments, and I'm assuming that the drafting team will. But we'll have to convene the drafting team to get a commitment back to you. I can't commit during this meeting. But, certainly, I'm sure they have an interest in doing so.

I just want to make a couple comments. You know, it's interesting listening to the back and forth and how things are spun. And some of the spin is on some of the decisions I've made as the chair of the drafting team.

J. Scott was absolutely correct. The drafting team -- most of the members of the drafting team actually didn't feel like a public comment period was necessary. Because our role, really, was just to provide advice to the council as to how we thought the council should respond to the GAC.

So there were some NCSG members that made very persuasive comments during one of the meetings that said, look, we really need to hear from others on it. And, even if it's an expedited public comment period, and everyone on the drafting team actually agreed that a 12-day public comment period would be sufficient, it turns out, however, that staff on its own decided to -- I shouldn't say on its own, that's not fair. Staff changed the end date of the comment period to be in line with what normally goes on with comment periods. And so that was something we had no control over, even though the drafting team asked for an expedited public comment period. So it would have been done before this meeting had started. So, you know, that's just something I wanted to get on the record.

In addition, I've heard more and more that, look, we need more time because the motion keeps changing. Well, the motion keeps changing because of NCSG requests to change the motion. So I'm almost in a pickle there. There's requests from the NCSG to change the motion, and then they're complaining that there's not enough time to consider the motion. So I think that just needs to be brought out.

Finally, I want to offer support for what Ken Stubbs had said at the mic. He said that, you know, we really need to figure out this whole deferral issue. And I agree with that. So I'd like to make a request to the chair, Stephane, like to make a request to the chair -- hold on. I'll wait. That's okay. I'm going to make a request that this motion on what constitutes a deferral, when it's authorized, what it takes to overturn, I'd like to make a request that that issue go immediately to the SCI group for its consideration. So I'm hoping that the councillors will support that.

I do feel like I need to clear up a couple misconceptions that were generated out of the GAC/GNSO Council meeting on Saturday -- on Sunday? Sunday.

Yes, there were a couple statements from a couple governments on what their personal views were on the IOC and RC recommendations. But it's very, very important for everyone to understand there was a GAC consensus statement in support of the protections for the IOC and the RCRC, and only the IOC and the RCRC. That was reiterated a couple times. Yes, there may be a couple that disagreed with that. But you cannot take the statements of the couple that disagreed to override the consensus. It's just like this council. We may come to a decision as a council, even by a consensus. But there may be one or two individuals that disagree. And no one should take the statements of those one or two individuals as speaking for the council.

And the last point is, at every opportunity, the drafting team was encouraged to go back to their stakeholders groups and get comments. And they did. In fact, the NCSG was probably the best at it, because they took it back to their council. I followed their mailing lists. And there were a ton of comments on it. And, actually, those comments were reflected in the work that the drafting team did. It modified a lot of what we did. And it was extremely valuable. And I congratulate them on their ability to get us comments so quickly. So there were comments submitted. And so just wanted to, basically, clear that up and say that the drafting team, I think, did an excellent job. I would be very happy to have the meeting as expeditiously as possible right after the public comment period ends. And I'd hope that we can answer the GAC's request for a decision. Thanks.

>>STEPHANE VAN GELDER: Thanks, Jeff. Let me just read through the queue again. Jonathan, Carlos, Joy and Bill. I will cut it off there. We've had a lot of discussion on this. Apart from Liz, obviously. I can't cut off Liz. But we've had a lot of discussion on this. And I would like to bring this to a close. Jonathan.

>>JONATHAN ROBINSON: Thank you, Stephane, I'll be as brief and to the point as possible. Due process is clearly vital. We've heard some very good arguments today about process. Having heard them, I'll be clear I'm personally not in favor of a deferral today. I think any arguments that we have heard about due process, whether it's for the public comment or the deferral, are potentially undermined if and when they're made at the same time as arguments against the motion. And that, for me, has been a significant concern. If we do defer, we really must have an expedited meeting as soon as we possibly can. And, in particular, we need to be very mindful of the fact that, even if we

do have that expedited meeting and vote in favor of the motion, it may be that the board may well not have time to act on that. And that's a significant concern that I don't think has come up so far in our discussions.

>>STEPHANE VAN GELDER: Thanks, Jonathan. I will give this item another five minutes. Carlos, if you want to take up all that time, no one else will speak. But I will cut it off there. Carlos.

>>CARLOS DIONISIO AGUIRRE: Thank you, Stephane. I have many considerations. But in order to make -- to do short my comments, I only express one of them. When I was in the law school, my professors teach me the sources of law.

When we -- when we haven't rules to regulate some situation, we need to appeal the custom and the uses.

And, in this particular case, we have no rule because the bylaws and the operating principles not regulate this situation.

So we need to apply the uses, the customs. The customs in the GNSO is to honor the deferral motions. Thank you.

>>STEPHANE VAN GELDER: Thank you, Carlos. Joy.

>>JOY LIDDICOAT: Thank you, Stephane. And I want to thank all the councillors for their spirited contributions. I just need to respond to a couple points that have been made, which I think need to go on the record as being incorrect. The first is in relation to whether Zahid's point about whether concerns were raised about in the drafting team.

Let me be very clear that NCSG members participated in the drafting team in the spirit of cooperation and have raised suggestions constructively and asked for a motion, some of which have been taken on board and some of which have not.

And I want to make it clear -- and I've been on record that I think the first recommendation in the motion is a workable motion. But the motion stands and a single motion and not as a split one.

Secondly, we've also made it clear that recommendation went too far in terms of implementation.

And, to add to Jeff's point, the proposal does not keep change because the NCSG kept requesting it to change. It kept changing, because the Red Cross and the IOC couldn't come up with a list of names they wanted protected. And we received 196 languages listed. And, Zahid, you sat on that meeting and said, in my language, this word is not protected under national law. So I just want to be clear that this has been a robust discussion where all participants have had different views. And it's a total mischaracterization to say that NCSG has been disruptive in that process.

I think the third thing is to say that we were -- you know, I don't actually get paid something like \$65,000 that you might get, Jeff. That's not even my annual salary. But it would be true to say that we've worked very, very hard to accommodate finding the motion, working with our group, and that we actually received the final motion last night very, very late. I don't think it's unreasonable to request a deferral to the end of the public comment period. I think that, in the spirit of cooperation, it should take place. And we would be willing to accommodate council processes in order for that to happen.

>>STEPHANE VAN GELDER: Thank you. Bill, you have the last word.

>>BILL DRAKE: But I'm unlikely to get applause. That's very unfortunate. I think should stop with Joy. Oh, thank you. Somebody. My mother's here, ah. One of the themes that emerged which happens in these circumstances is this whole kind of notion of, if we don't do this, this shows that the council is fundamentally broken and dysfunctional. And I have to say that, as a narrative, I find that interesting that it gets trotted out in a situation where -- and I don't want to sound like you were playing the victim -- but where we ask for a deferral about something. But, in fact, in my three and a half years on the council, most of the deferrals and most of the disagreement have not been about NCSG at all but rather it's been disagreements between the private sector players here who actually control the process. And so whether it's been the JAS working group or vertical integration or outreach or whatever else, lots of things drag on for long times. Lots of things don't get decided, and it's not because of NCSG.

So, if suddenly the burden of the dysfunction of GNSO falls entirely on NCSG because we've asked to have a deferral of one vote and we've said even that we only want it deferred for part of the time that one could, that strikes me as just a little bit one-sided. And I think we should be a little bit fairer and recognize that all parties here can avail themselves of the same tools and for the same reasons. And it's legitimate.

Secondly, on the question of, if there's going to be a broader assessment of deferrals, I think that would be great. And, if that's the case, I would suggest that it should be retrospective and we should look at all the instances in which parties have used deferrals, including for strategic purposes. That would be very good. Because I'm sure that we won't come up very much in that story. It will be really interesting to have a look at it.

Finally, the third point on GAC, we're being told all the time now we must do this because of the GAC. We have this new partnership with the GAC. We have to please the GAC.

You know, it has been pointed out that, actually, within the GAC there are several countries that have been lobbied very heavily about this who have pushed this issue. There are other governments that don't care. And then there are other governments who are just confused and don't really know what the thing is.

So, if we're doing this because, you know, of a fear of a uniform GAC disgruntlement with the GNSO, frankly, the GAC has plenty of internal dynamics. And I don't know how uniform that is. And, more importantly, when one thinks of the larger trajectory of GAC GNSO council interaction and all the kinds of views that have been expressed in my time here by people on the council about the difficulty of working with the GAC and how slow they are sometimes, et cetera, et cetera, the notion that somehow now there's this really high standard of performance that's been established by the GAC that we're going to have to suddenly meet, is just really astonishing, quite frankly.

I mean, I just -- I don't know where it possibly could have come from that they are this model of unbelievable organizational efficiency, and we're a bunch of lunatics and idiots if we simply allow the bottom-up democratic process that we tout all the time to actually function and let people have a public comment period to weigh in on a decision. It strikes me as rather odd.

So I don't -- personally, I don't take that GAC argument very seriously. Thank you.

>>STEPHANE VAN GELDER: Thank you.

Liz, do you have a -- something to add?

>>LIZ GASSTER: I do. Very quickly. I'm Liz Gasster, senior policy counselor on the ICANN policy staff. I'd like to just make a couple clarifications about what was said about the staff and the duration of the public comment period. I think at no time did staff say that we could conduct a public comment period for 12 days. The decision to post the public comment period for 21 days is not a discretionary decision that staff has. It's something that was set by the board in the Affirmation of Commitments, and I just want to clarify that. Thank you.

>>STEPHANE VAN GELDER: Thank you, Liz. So let me turn to NCSG and ask if there's any change of mind on your request for a deferral.

>> No.

>>STEPHANE VAN GELDER: Thank you. We will honor that request and move to item 7.