

**Standing Committee on GNSO Improvements Implementation (SCI)
TRANSCRIPTION**

Thursday 30 August 2012 at 19:00 UTC

Note: The following is the output of transcribing from an audio recording of the Standing Committee on GNSO Improvements Implementation on 30 August 2012, at 19:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting but should not be treated as an authoritative record. The audio is also available at:

<http://audio.icann.org/gnso/gnso-sci-20120830-en.mp3>

on page:

<http://gns0.icann.org/calendar/#aug>

Attendees

Avri Doria – Non Commercial SG – Primary
Ray Fassett - Registry Stakeholder Group - Primary
J. Scott Evans - Intellectual Property Constituency – Primary
Anne Aikman-Scalese – IPC Alternate
Ron Andruff - Commercial and Business Users Constituency - Primary
Wolf-Ulrich Knochen – ISPCP – Primary

Apology:

Mary Wong – Non-Commercial Users Constituency - Primary
Jonathan Robinson – Registry Stakeholder Group - Alternate
James Bladel - Registrar Stakeholder Group (RrSG) - Alternate
Angie Graves - Commercial and Business Users Constituency – Alternate

Staff:

Julie Hedlund
Marika Konings
Berry Cobb
Glen de Saint Géry

Coordinator: The call is now being recorded. If you have any objections you may disconnect. Thank you.

Glen de Saint Géry: Thank you very much. Good morning, good afternoon, good evening everyone. This the SCI call on the 30th of August. And on the line we have Avri Doria, Wolf-Ulrich Knoben, Ron Andruff, Ray Fassett, Anne Aikman-Scalese. And for staff - and J. Scott Evans has just joined. And for staff we have Julie Hedlund, Marika Konings and myself, Glen de Saint Géry.

We have apologies from Mary Wong. And as far as I know there are no other apologies. So before I hand over to Wolf-Ulrich Knoben may I just ask you all please to say your name before you speak for the transcription purposes. Thank you very much and over to you Wolf-Ulrich.

Wolf-Ulrich Knoben: Thank you very much, Glen. And good afternoon, good evening, hello to everybody. So let's go through the agenda right now. So we have first the statement of interest and I would like to ask if anybody has something to disclose with regards to the statement of interest. I hear none...

Avri Doria: Well actually this is Avri. And I should probably mention in a group like this that I'm now also an observer in the Registry Stakeholder Group.

Wolf-Ulrich Knoben: Okay good. That's noted. Thank you. Then the - I have sent out an approval prepared by myself and Avri and to the agenda for the - and then I'm asking for approval; is there any comment on the agenda? Thank you, nothing.

So then let's start with the agenda. At first we have the point of the consent agenda which we have several times talked about. And we

had in the past a public comment on what we have recommended with regards to the modifications of the GNSO Operating Procedures.

The public comment period has been finished. There was an evaluation done by staff of the public comments. To my knowledge there was just one comment from the Registry giving support to that.

And this period is now closed and we should talk about and the follow up of this right now. Julie, am I right? So may I ask you if it's - what is the status of all that?

Julie Hedlund: Hello, Wolf-Ulrich. It's Julie Hedlund for the record. Yes, the public comment period closed - the reply period closed on the 20th of August. There was one comment received. It was from the Registry Stakeholder Group and it was in favor of the proposed changes to the Operating Procedures.

I prepared a very brief analysis of that one comment and posted that to the SCI list for review. And so that's the current status.

Wolf-Ulrich Knoben: Thank you very much, Julie. So right now it seems to be that there is consensus in this group about this consent agenda and there's agreement on that. So what we should do I think is we should inform the Council and ask for the - for that what we have provided for that.

That means we - I'm going well to give the Council some - a report about that - a report about what we have discussed and then putting forward SCI recommendation.

The question is in which form we should do that. Is that normally done in form of a motion that we have to get approval by the Council from? I see Marika.

Marika Konings: This is Marika. Yes, I think it would be the appropriate way to go to - have it in the form of a motion. I did note that I think Stéphane has put it on the consent agenda as an item foreseeing that, you know, this might be coming. So I think it's - at least already there but I guess, you know, it could still be taken back.

Although I think Stéphane's approach has been so far that only items that didn't have a motion could be on the consent agenda. But it's interesting to see now that of course the new provision foresees that any motion can be there unless it's not a policy or PDP-related vote. So we might need to talk on the chair's call how to handle that one.

Wolf-Ulrich Knoben: Okay. But you mean for the next meeting on the 13th of September?

Marika Konings: Yes, yes, correct. And I'm happy to prepare a draft motion if you like.

Wolf-Ulrich Knoben: Okay that would be great. So we have - Julie has already prepared some background - for background then. If you could incorporate that to the draft motion that would be helpful.

Marika Konings: This is Marika. Yes, definitely. And I think as well what is on the screen now that Julie prepared is the report of public comments. So if there are no further comments or edits to that we can also go ahead and post that report and close the forum officially.

Wolf-Ulrich Knoben: Okay.

Julie Hedlund: I think - this is Julie - though - I think what's on the screen now that I look at it is actually the - that was the original announcement. The analysis reported is a different document. I can go ahead and try to put that on the screen.

Or what we could do is I did post that to the list. It is really exceedingly brief. There is no complexity involved in analyzing that one comment because really all the report says is there was a comment received and this is in brief what it said. And it was in support of that, you know, those changes.

So if there are no objections from the SCI that analysis can go ahead and be posted to the - online and then that will effectively close the whole forum. And, I mean, it will be archived.

Wolf-Ulrich Knoben: Yes, that would be helpful. But, I mean, in case it does have a motion on that in the next consent meeting that it would be helpful though to have a draft motion which makes reference to what we have done, what, you know, and that is written already in your short background and discussion paper you sent out last time - remember after last meeting you provided some background information on that. I think that could be incorporated in the draft motion and then we forward that to the Council and that can also explain something if there are questions.

Julie Hedlund: Right. This is Julie. I'll work with Marika on that and make sure that all the information is in place.

Wolf-Ulrich Knoben: Okay. See also one is agreeing to that. Thank you. Is there any question about that process or any - something open? No. Okay thank you.

Then the same is - the next item we have on the agenda is then the voting - it is the same, okay, under the same item with regard to the voting results. So we have - I think we could also add the voting results table and provide that to the Council. And they - okay let me see, the update of the voting results table and as required and there is consensus on that. And that is what we can refer to in the Council meeting as well.

Marika.

Marika Konings: Yeah, this is Marika. I think what we can do as part of the motion provide them with - like we put out for public comment the redline version of the Operating Procedures so they can see, indeed, the changes that were made in relation to the consent agenda as well as the voting thresholds on the voting table.

And then have, you know, the clean version is then the one they approve. And once that gets done that will then get posted as well on the GNSO Website.

Wolf-Ulrich Knoben: Okay. Great. Thank you. Okay then it seems to be that we have two of these points already done. And then we have - the next point on the agenda is proxy voting procedure where we had also a - a recommendation to the Council.

And this is what I'm - no that is what Julie provided some background information with regards to our discussion we had on that. And our recommendation not to change the proxy notification procedures in the Operating Rules rather than to request staff for making this little change in the rules with regards to the notification which should be sent in parallel to the GNSO Council and to the Secretariat in parallel. So that's what we are on.

And this is what we need to provide for the Council as well to get acceptance from our recommendation. So I wonder whether this should be included as well in the - in that motion we are talking about then, if that is possible? Or if - well I would say because we have an agreement we could incorporate that. And - okay as many is raising their hands and saying yes so let's do that.

And I'm asking Julie and Marika now to take care about that, well, to incorporate that in the motion. Is that okay? Marika and Julie?

Marika Konings: This is Marika. Yes, that's okay. The only thing there we need to - have to word because I think basically the recommendation is to make no changes. But I think we can just cover that in one of the sub items.

Wolf-Ulrich Knoben: Yes. Okay. Good then let's go to the next point. Deferral of motions which is still under discussion. Just to wrap up from the last time so we came out on the last meeting asking Ron for just making suggestions. And Ron came back with a - two versions of suggestions. One is let's wait and see, let me say, for another year. And let's monitor and the Council and what's going on with regards to requests for deferral. And then after that time decide.

And the other one was let - it change right now. That means - and set a limit on the number of deferrals. And it just involves, well, one limit - set a limit of one deferral which would be allowed and put that item of deferral to the agenda and to a, let me say priority place, of the agenda of the next Council session.

So that's where we are. And we have a - let me say a kind of voting or a kind of opinion (rating) on they list with some support to the first suggestion. And there was support or was - well it was support for the second suggestion as well. And there was disagreement and there was amendments. So we have many facets of - and we have many things to discuss about that.

May I open that for discussion right now? And I see Ron. Please, Ron.

Ron Andruff: Thank you, Chairman. I think you just described that situation very clearly and I appreciate it, thank you. I just wanted to comment that everything that we've done today has moved through this program very beautifully. We've looked at consent agenda, we've looked at proxy voting, we've looked at other elements. And now we're on deferral of motions. And mostly we've had a very light touch and it's been great to see it.

There's so many elements within ICANN right now that are being defined by policy and procedures and things to do around the new TLD program that affect all of the constituencies, we've got GNSO review coming up shortly. There's a lot of things where policy and development is underway. So I think the fact that we have managed a light touch is admirable.

And I just want to put my vote in here. I see there was a vote was not the right word - really these are expressions of interest or expressions of support for either one. And I just wanted to mention that I also supported the light touch approach to look one year from now and see if this is not - if this has been abused. Have staff come back to us and demonstrate that.

I think we (unintelligible) that just to the level we have and people are aware of the issue I think most people would be loathe to try to exploit the situation and use a deferral of motions for a negative way.

So I would like to see this thing come through one year from now where staff says well, we looked at it again and again there were very deferrals and these are the reasons. And we go oh wow, that's good. We actually figured out policy and then we implemented that policy in a way that we can be very proud of.

So I'm hoping that we go the light touch route. But I'm happy to support the second route where we would set a limit. I strongly believe one is plenty. And the deferral shows up immediately in the next meeting, I think that really hinders the issue. But I would hope we go light touch on this. Thank you very much.

Wolf-Ulrich Knoben: Thanks, Ron. Avri next please.

Avri Doria: Yes, thank you. Avri Doria. Yeah, in terms of myself and discussions within NCSG the only reason that I didn't go in favor of a light touch is that I'm not even sure that we need to plan on putting it on the table already for next year. I think if it becomes an issue again it's easy enough for the Council to raise it.

We come back, we say, you know, recommend staying with status quo, you know, if it starts to bother people because they don't think it's working right then ask again and not put an automatic timer on it. That's pretty much the only reason I didn't go on a light touch.

Definitely against 2, definitely against the notion of there being one and only one because just like having many can be an abuse knowing that someone is limited to one can also be abuse. And so I think that if we're not going with a light touch, if we're not expecting a collegial G-Council to behave itself and only do it when it's necessary and such then I think we need a much more complicated set of rules that deal with reasons for deferral and allow for multiples.

So - and that's pretty much where, you know, NCSG stands on this at the moment. I think one of the reasons we have gotten through is because when we have found that we have, you know, different objections like in the proxy voting someone basically just sort of drops back and sort of says okay let's live with what we've got essentially.

So I think in this case with many disparate views of how it should be done, you know, the best option we have is to live with it. And if it doesn't work then review it again when asked. Thanks.

Wolf-Ulrich Knoben: Thanks, Avri. Let me just ask for clarification - a question - regarding your discussion coming from the NCSG. You mentioned, if I understand, well, you would - you would be in favor with the status quo. On the one hand status quo means (unintelligible) we have at the time being so that's my understanding.

But on the other hand you would be in favor for more than one deferral - or let me say it the other way around - would be against the option of having only one...

Avri Doria: Yes.

Wolf-Ulrich Knoblen: ...one deferral. If - so how - how does that fit together? So my question is there is a priority of 1 or 2 or...

Avri Doria: At the moment, for example, the status quo is not specific about whether it can be done just once.

Wolf-Ulrich Knoblen: Okay.

Avri Doria: And therefore there isn't a strict block to one.

Wolf-Ulrich Knoblen: Yes.

Avri Doria: Obviously every time you do it the pressure on you from the G-Council to have a really good reason is already naturally there. Now Ron has said he wanted to limit it to one to ensure no stonewalling. And I agree with that.

But, for example, if the reason for deferring at one is that more information is required and that information does not show up another form of stonewalling perhaps. And, you know, you know that I don't have to give you the information that's been asked for because you can't defer again based on missing information.

So that's sort of the opposite case that allows for abuse. It's a different form of stonewalling, you know. So basically that's why I - and I believe NCSG we've talked about it - is very against a hard limit of just one.

Wolf-Ulrich Knoben: Okay.

Avri Doria: But very much - doesn't even necessarily believe in an automatic one and would argue that if there is a set of rules then there's - probably should even be a rule for the first one and just the eight days wasn't enough for us to get a comment - isn't a good enough rule and therefore we need to be - really think about why and not. I would prefer to just leave status quo. Thanks.

Wolf-Ulrich Knoben: Okay thanks, yeah, thank you. J. Scott please.

J. Scott Evans: Well I think my problem is - I don't have a problem with the status quo except for the fact that there's no ability when there are exigent circumstances to change that or at least that's what Stéphane said in Costa Rica was he had to grant it and even if a majority of people felt like granting a deferral of a motion would clog up the entire process due to time constraints he had to grant it.

And so the problem I have is there's no flexibility in the status quo for when circumstances dictate that perhaps granting a deferral is not in the best interest of the Council to get the issue resolved. So I don't have a problem with a light touch approach. But the problem is there is no way for anyone to say no under the current process.

And the explanation that I heard Stéphane say well this has been an informal thing. It's always been granted to everybody. For that reason I'm going to grant it here. So I don't think that's a workable situation.

Woman: ...be off about 1:10 if it's required (unintelligible).

J. Scott Evans: I just don't think that's workable. I don't think that's a solution. I have no problem with there being a very light touch rule that says anyone can ask for a deferral, they can ask for a deferral as many times as they want. But the question is when the majority of the Council says nope, we don't buy it; we're going to vote you down, they should be able to do so. There should be some stop gap or safety mechanism put into place.

Wolf-Ulrich Knohen: Okay. Ron please. Ron, did you raise your hands?

Ron Andruff: Yes, okay there. Sorry, I had to get off mute. I agree with what J. Scott has just said. The concept than the principle of that there should be - a way for the Council to vote something down. My concern is that there's going to be - depending on what the issue is it could be something that really strikes different groups and so you get a log jam again at the Council level.

I think what we want to do is try to, you know, I don't want to be Pollyanna because ICANN is far from, you know, this perfect child. But the fact is that we need to point to the things that work within ICANN as the overall discussion even within the IGF.

So here's something that worked. You know, there was a discussion about we need to have certain policies and a group was put on it. That

group then talked it all through and came up with a - with the policy. It was enshrined in legalese by ICANN Legal department. And then it was implemented.

And when it came back for a review when something came up as not having had a patch on it, did we have to slap a patch on it? No, in fact it works well so we trusted that to make sure that it's at the top of people's minds, that they know they can't abuse it because it's something that's being watched closely now by the community. And we just let it unfold. And in fact a year from now we didn't have that problem again.

I think you can't go down the road and think that you're never going to get a hole in your tire because sooner or later you're going to get a hole in your tire. And so this just happened this year, as you mentioned, J. Scott, we got a hole in our tire and this happened.

The - now let's see if we can go forward and now - without putting a patch on it. Let's just see if it'll solve itself and not, you know, we've brought the right attention to it.

Again the issue is more about people using this thing. I agree with Avri's argument also that it's the stonewalling comment. It's just that at some point someone is going to abuse this. So now it's not being abused but it's being talked about quite significantly within this body and others.

So therefore let's see what happens 12 months from now or whenever this thing raises its ugly head. But in 12 months we'll get a review for sure. But if it raises its head again in 18 months then let's put

something on it with the (SGI) with a serious look at it. Say this has happened twice in a certain period of time; how do we deal with it then.

I would rather go - just go that way because otherwise you're going to have - we're just playing into one scenario or another. So anyway I'll jump off and let Ray take the word. Thank you.

Wolf-Ulrich Knoben: Thanks then, Ron. So we - I would like to defer to Ray because Ray had a different opinion otherwise. He was not satisfied with both of the options so - in this case but maybe he can explain. Again, please, Ray.

Ray Fassett: Yes, that's correct, Wolf. Ray Fassett. Yeah, a lot of help the Registries Stakeholder Group was, right, they didn't like either one. So you saw the opinions that came back. And I think they were valid, very valid opinions.

And - but I'm also now reflecting back on what J. Scott said which is there's no way for the chair to say no. And then that triggered in my mind that as part of the GCOT we actually spent a lot of time discussing the chair position, how potentially a chair could be removed if not acting appropriately because the chair is the one person on the Council - and Avri, you can correct me if I'm wrong because you're more familiar with the Council than I am operationally - is neutral; the chair is the one person that's neutral.

So it just seems to me the - there's already sort of a baked-in intent here in the GNSO Council Operating Procedures for how the chair should behave. And it seems to me logically that the chair should have

the discretion to be able to make a decision not have to default to just no.

Certainly other members of the GNSO Council may have a different motivation besides neutrality which is what we're kind of inferring with stonewalling tactics, etcetera. But at the end of the day the chair doesn't have that luxury. So I think that, you know, maybe an Option C, because as we said the Registries Stakeholder Group anyway didn't prefer Option A or B. Is there an Option C that allows the chair to have that discretion?

And for those more familiar with the Council in terms of actually being on it because I've never been on the GNSO Council but I think J. Scott has, I think Avri has, others have, how do you feel about that kind of an option to give the chair the discretion to be able to make, you know, make that decision.

Obviously I think the chair would look across the room, see where everybody's at and have the - and then have the ability to make a decision on that issue. So I'm going to throw that out for thought.

Wolf-Ulrich Knochen: Okay Ray, then, that's an interesting point you've raised. And so maybe we could think about, in general, at first and then go into detail and think about it in case so a chair would have the discretions or what does it mean and under which conditions and this and that. So what does it mean?

But let's just ask it first and see what are the opinions. I see Avri, yeah. Avri, please.

Avri Doria: Okay yes, thank you. Avri again. I believe the chair already has the discretion. I don't believe we need to do anything. I think that Stéphane made the decision he did that was based on his interpretation of what he could and couldn't do. I think there's nothing in the rules that told him one way or another what he needed to do.

And so I believe that leaving it open, leaving it in the status quo does give - and that's kind of what I mean about G-Council pressure, you know. He made the decision once about deferring once. I don't believe there was even a second deferral; it was a first deferral. And he made a decision in that case that, you know.

And there was some pressure on him to make a different decision. And I think in the future that pressure might prompt a different chair to decide differently because there is nothing, as was kind of indicated by Ray, that forced him to interpret it one way or another.

So, you know, and as I say I think because of the complexity of the Council and because of, you know, accepting the reality that even though sometime it is a collegial body it doesn't always behave that way.

That, you know, if we're going to put rules in then we have to be very specific about the rules so that they are more difficult to game and - but realizing that any time you write a rule you create new opportunities to game. So at this point we may be at the minimum gaming potential and anything we add now raises that potential. Thanks.

Wolf-Ulrich Knochen: Okay thank you, Avri. So if I understand that correctly so you say since there is no - let me - nothing is prescribed in the rules regarding

the behavior of the chair he could take the choice either this way or that way. That's how I understand your interpretation. And Ray's interpretation may be that there is a need of setting a - setting a certain rule regarding the chair's behavior in such a case. Is that what we are discussing here? Ray please.

Ray Fassett: Indirectly I think. I think we have a difference of opinion here and it may be an interpretation. I think Avri is interpreting that no such rule exists that does not allow the chair the discretion to override a deferral. But on the other hand we have a living example of where the chair actually opinioned that he was not able to override that.

Maybe, you know, so I guess it seems to me an interpretation issue here. And is it worthy of the SCI to try to remedy or resolve that interpretation in some manner in the affirmative?

Understanding - now to your point, Wolf, now understanding that, you know, should the chair not use that discretion in the best interest of the Council as a whole, right, in the position of being neutral well then there are other mechanisms within the GNSO Council Operating Procedures for people to bring a complaint or object or what have you in order to bring the chair back in line.

So those are known; those exist and the chair is aware of that. So I think that's part of the cross check - the balance that is meant to exist within the Operating Procedures which then if you look at it the other way seems to indicate that the chair should be allowed that discretion because the chair is the only one, I believe, that is held to that kind of standard or bar. So that's the logic so we have a difference of

interpretation, it seems to me. And then should the SCI solve that interpretation?

Wolf-Ulrich Knochen: Okay. Okay thank you. Anne, please.

Anne Aikman-Scalese: Yes, thank you, Wolf-Ulrich. This is Anne Aikman-Scalese, alternate on the IPC. And I simply have a question I'm trying to learn about the operation of the GNSO. And I wanted to know what would be the source in the governance documents of the chair's authority to override a deferral as Avri was suggesting. I'm just not really quite understanding how the chair would get such a power unless it's somehow in the bylaws or the documents, which I'm not familiar with.

Wolf-Ulrich Knochen: Yes so if I - I see also on the chat some exchange here regarding that and the question is really is - from my personal feeling as well so I would feel, okay, with regard to that a chair would need - so would need something, let me say, where he can refer to why he is doing this and that and why he is taking or thinking about that he has the discretion, well, to overrule in this way or that way.

So that is, for my feeling is needed and that is what I see also J. Scott is pointing to that's saying okay we need a definition - a quite clear definition of that.

So on the other hand so if I correctly understood Avri so - saying okay if there is nothing against or in favor of that discretion, you know, then okay then it's up to the chair, well, to take a choice. So would that be a - for me (unintelligible) would that be an interpretation which could be seen that way and could, let me say, be used by a chair in that way? So I'm not sure about that.

I - personally - I have the feeling, okay, there must be something where the chair could rely on, so, if he takes a decision in that way. But okay I'm open to learn. Ron please. Ron? Are you on mute? Ron, are you still there?

Ron Andruff: I beg your pardon. I beg your pardon.

Wolf-Ulrich Knoben: Yeah.

Ron Andruff: The mute button can be a real pain sometimes, apologies. Are you still there, chair?

Wolf-Ulrich Knoben: Yes, yes, yes, sure.

Ron Andruff: Okay I'm sorry, (unintelligible) a second. So the point here is - I agree with what you're saying. This - and the chair does have these types of discretions in terms of chairman's prerogative in all range of matters. I think we're trying to split hairs here.

We all agree that there is an issue and that it came to us because there was no policy. But again we don't have to have a policy to cover every element of ICANN's existence.

The point is it should be something that flows and functions not like the United Nations where there has to be 25 stamps on the page before we can agree that we can go forward and do something and whatever we're going to go do is now no longer important because we've spent all the time getting the requisite 25 stamps.

I think that the principles are all well stated. No one disagrees with anything anyone is saying. But we do know ICANN is an animal and we do know that there are biases whether one wants to agree to say it publicly or not at chair level or at all levels depending on what the affiliation of that individual is or the affiliations of the individuals who make up the Council itself.

So the point here is, you know, we really need to look at this clearly. But I think we're trying to get down into - so deep in the weeds on all the possibilities - there's a million things that could spring out as a result of this.

But Avri said it earlier; we don't need to make yet another policy so hope that that will not cause more problems. There's always a chain reaction when something happens here. A train doesn't stop without all the other cars coming banging in behind it.

So let's just let this train keep going; we don't need to have all of the other cars, you know, smashing up one against the other because of something we've now enshrined. It's not critical. It's not important right now for us to do something because we haven't seen huge abuse. Let's move past it because I think that we're going to be running out of time shortly and I really believe that all the elements we've said are valid.

But we have to do one thing or another. And where we do not come together as a group is we can't agree on how many deferrals there should be and what forms they should be and all of the policies that go around that. But we do all agree that it would be good if this thing were

not to happen regularly and that if we can see it as an anomaly when things do happen.

And then the chairman is going to do what the chairman should do and that is follow his heart. He's got to do the - follow the proper business practices but make his or her own decision in that moment. And then it may be challenged. And let that challenge proceed because that's how we'll work out the wrinkles of this thing.

But putting up more policy right now isn't going to help. So I'm recommending that we agree to defer this - not defer this - allow this deferral of motions to stay and test it and see what the net result is of this for another year and try to move on. Or we can bring it back to the table again for another call but I think that we've been really talking about it for a very long time.

Wolf-Ulrich Knochen: Yes.

Ron Andruff: Thank you. Thank you.

Wolf-Ulrich Knochen: Thanks, Ron. Thanks, Ron. Avri please.

Avri Doria: Yeah. Just stepping back a little bit and making sure that except for when we're talking about in the case of a PDP where I actually do believe this got enshrined in possibility that it was basically a rule was made about - in a PDP and deferral.

The original reason for this deferral - and I believe that I was the one that started this courtesy or at least I certainly took it from before and kept it - is it was a courtesy especially in the day when there was no

eight-day, you know, no eight-day period - requirement for motions before being voted on.

So, I mean, there's a part of me that believes that it's a practice whose time may be gone completely. I don't know that I want to make that decision at the moment either. But its original purpose is now gone.

People have eight days, you know, if that's not enough time well then maybe we need to think about how we do work within our constituencies and stakeholder groups. But if it is the case that there still is a reason for this courtesy to exist - and that's exactly what it was at the beginning; it was a courtesy that we used sometimes and then it was used more and then it became almost automatic.

If there's a reason the Council can just stop doing it. It is not - except on PDPs; on PDPs it is a rule. And in fact in the PDPs they changed the rule because the courtesy was if a constituency or stakeholder group needs - has a reason for deferring and now it's sort of migrated to if an individual has a reason for it. So there's already been a migration in terms of the meaning.

But it is just a practice based on courtesy. It is not, in terms of general motions, in the rules anywhere. And start making rules on it, as I say, I'm willing to get into rule craftsmanship but then I already started talking about things that I feel would need to be in there and one of them would be reasons for doing it and reasons for not allowing it.

And if we're going to start prescribing behavior then I believe we need a full set of reasons. And that's why I really do argue for leaving it as it is which is a practice and a courtesy and that's all.

Wolf-Ulrich Knochen: Okay thank you. So let me try, well, to wrap this up a bit. So I think we have - let me come from, well, the end of that discussion. I think I can hear some kind of agreement on - about or a common opinion about the question whether the chair has a discretion to take a decision or not.

So - and the - well, what we have different opinions on is whether this should be put in stone or not so that was, let me say, just what I took from here. So this is one thing.

The other thing is that we have also an agreement of at least one deferral so that one deferral should be granted without - as a rule at the time being without asking okay why or what is the reason but it's just a question of courtesy.

So the other thing is then what is to be done with a - with the secondary deferral and more. As we have there is no agreement on that or no - or different opinions on that so the question would be for me whether we - how we could put that forward in a light approach or in a first approach.

Whether we could say, okay, let's do it the status quo at the time being with one deferral at the time being. And the discretion of the chair, well, to take any decision about that should take place or should, well, should be granted, right, is seen by us, by our group. And anyway we wouldn't like to put it in stone at the time being but it is seen that the chair can decide upon the question of deferral.

And that we are going to monitor this for another, well, for another time, for at least for one year how it works whether - how the chair is doing with that. If - do we have any problems and what kind of problems we would have in the future.

So this is what - how I see a, well, a first way, well, to look at this. But from maybe I'm totally wrong on that and put it in different - in a wrong way. So let's discuss that. Ron, I see Ron.

Ron Andruff: Chair, I apologize. I have to say I think you're wrong.

Wolf-Ulrich Knoben: I'm wrong. Okay.

Ron Andruff: Here's - no I think that you're correct in the last part; let me put it that way.

Wolf-Ulrich Knoben: Okay.

Ron Andruff: What I'm saying here is that J. Scott, I think, he nailed it with his chat post. Okay, if you want to keep it as-is I think we need to clearly state that the chair has discretion to deny or to put to a vote. So what I think you're - this group on this phone call are saying, in my view, is that status quo remains. However, if someone wants a deferral and makes a motion for a deferral then the chair, based upon the information available to at that time, has two options.

One to say no we're not going to defer that for one reason or another that the chair will then give. Or, two, the chair will say we would like to - so I'm not sure myself, as the chair, I would like to put it to a vote of the

council. Then if that's the case then everything is done and dusted very quickly.

And that's all we're looking for here is the situation where no one can end up postponing or pushing off something indeterminately by using this loophole. So I think this is the key is that leave it for a year but under these conditions. This is what we're putting in place.

We're not enshrining any new policy but we're just giving some guidance to the GNSO Council that the chair now has the discretion to make a decision at that time whether he feels it's correct or incorrect or put it to a vote whether they should give that deferral.

I don't think we're going to see it very often. But at least it puts something in place that everyone on this call, as far as I see it, agree with. So thank you.

Wolf-Ulrich Knoben: Ron, just a last question for that is that are you talking about all - from the first requirement for a deferral or talking about the second...

Ron Andruff: No, from the beginning. The point is none of us can agree here on whether it's 1, 2, 5 or 10 deferrals and neither on the principle for which you get a deferral. What we can say is that when someone comes up and makes the deferral - this is in keeping with my entire argument this whole day and for all the period we've discussed this it is about a light touch. Light touch means we leave it as status quo.

Wolf-Ulrich Knoben: Well...

Ron Andruff: However, we do agree that if there is a circumstance that should arise a chair should have some discretion. I don't disagree with that; I don't think anybody else does. I'll let them speak for themselves.

But the point here is that with that discretion the chair then can make a determination that he sees this and, you know, it walks like a duck, quacks like a duck, it must be a duck and says no just outright because the policies are such that we don't have anything in terms of deferral so he makes an executive decision.

Or his decision is I'm not feeling fully comfortable in making this decision so I'll put it out to the entire GNSO Council to vote. And that's fine, if the Council then all say you know what, we can defer, no problem. I have no problem with that because basically we've got all of the voices are being heard and no stonewalling - happen, everyone agrees. That's the point.

Wolf-Ulrich Knoben: Okay.

Ron Andruff: So I think that's a - I think J. Scott in his few words here nailed it. He's in the queue; I'll let him play it himself.

Wolf-Ulrich Knoben: He is - he's in the queue. And at first Anne and then J. Scott please.

Anne Aikman-Scalese: Yes, Wolf-Ulrich, this is Anne. And I just wanted to express the opinion that I don't think the SCI itself can really determine what are the powers of the chair or not in this situation because the SCI is not an advisory board or doesn't give a legal opinion to the GNSO of what the chair can and cannot do.

I, you know, just from the standpoint of governance I don't see how the SCI can tell the GNSO the powers of the chair we believe are X or Y. And I think, you know, there's been - with respect to the chat there's been a mention that if the chair is not seen as neutral that there's a complaint process that can, you know, complaints can be filed against the chair for not being neutral.

But it does seem to me that what's needed is clear governance that allows the chair not to be afraid of having complaints filed against him because it seems that, you know, that I would certainly - if I put myself in the position of chair - be quite concerned that I was exercising discretion beyond my authority if I were to...

((Crosstalk))

Wolf-Ulrich Knoen: I understand, Anne. So my only question is not that the SCI is a body to empower the chair in any way. But the question is the interpretation of the existing rule at the time being and what is behind that and what could be seen. Now maybe that we need some more advice about that.

But so my personal recollection from the discussion about that I - that I thought, okay, anyway if the rules don't describe and somebody is of the opinion that, okay, because there is nothing in the rule about that so that means that could be seen as, okay, the chair could have this discretion on the one hand. Others are saying no; if the chair would like to have this discretion it must be in the rules in that.

So this is, for me, the question either this or that way. So that's what I would like to find out how to go that. Otherwise so maybe we need

some interpretation on that. But J. Scott - I see J. Scott and Ray and then oh we are going, well, to the end of the session. So and - sorry about that but that must be discussed. And J. Scott, please.

J. Scott Evans: I think I can handle Avri's concern regarding codification because my suggestion is not that we state anything. I think what we would say is our recommendation is that the practice would stay as it is currently and that it be looked at by staff. And if, you know, to be raised at another time if there's abuse or something to that effect.

But in our reasoning we would state that the reason we have left it the same is we believe that there is a safety valve because this is a organic process that developed as a courtesy under the discretion of the chair. Okay?

And that that - there is nothing that prescribes the chair in its - in his or her discretion from denying this type of courtesy. And that can either be done at the chair's own behest or another mechanism, for example, putting it to a vote of the Council.

But not to put that in some sort of rules but to put that in our reasoning to say we believe the safety valve is already there. But I think we need to clearly announce what that safety valve is so that a chair can say well this has been looked at and I'm going to exercise the discretion that everyone - the community has agreed that I have in this instance and I'm going to proceed as X.

So that's - I'm not talking about making a rule; I'm just talking about somehow putting in there a reasoning that - picking up on Avri's point. It's in the discretion; okay well tell them that's the reason we're leaving

it the way it is. Don't have it out there so people assume because I do believe Stéphane believed his hands were tied and he didn't have a discretion to do anything else.

And if we believe it's within his discretion then I think we need to tell the community that's what we think.

Wolf-Ulrich Knohen: Yes.

J. Scott Evans: I don't think it has to be any heavy-handed rule.

Wolf-Ulrich Knohen: Thank you, J. Scott. Well I - what I've seen here right now in the chat is, well, agreement from Ray, from Ron. I think Avri is raising her hand. I would - if that is possible - and I would appreciate if you - could you write down some - in some small sentence, right, what you have said. So - and provide it on the list to us so that we can see that reasoning in written form.

So - and then we have a chance, well, maybe that we can come on - oh, thank you very much - you agree. Thanks very much. Avri.

Avri Doria: Yeah, the only thing I wanted to say is if we stop at this is a courtesy given at the discretion of the chair, period, I can live with that. Once we start going further and saying and she can defer it and she can do a vote or she could then I start to have issues in that we're starting to make rules.

If we say in our reason this is originally a courtesy; this remains a courtesy except in PDPs at the, you know, at the discretion of the chair

and just leave it at that without trying to push the chair one way or another.

Wolf-Ulrich Knochen: Okay. Will be great. So I'm looking forward, well, to J. Scott's writing; that will be helpful I think. So - and then we can exchange further things on the list. But thank you very much. So we have - we are at the end of the meeting already so I would like to talk about some more - how to proceed in the future - we have next the voting thresholds. Marika, what should we take into consideration for that for the next discussion?

Marika Konings: This is Marika. I think we shared the language that we proposed from our side but I don't think there has been any further discussion on the list so I don't know if it's worth sharing that again and asking people for feedback?

Wolf-Ulrich Knochen: Yes. It would be helpful, please, put it again on the list so that we are reminded, well, to do so. That would be helpful so that we can step in, really, for the next time into that.

Then - I have put just to let you know I've asked for a slot in Toronto for a one hour SCI meeting at the beginning of the weekend on Saturday morning from 9:00-10:00. So that is fixed right now and we will see what we can do. As usual we will have a meeting there from 9:00-10:00 unless - so we have less participation.

So if there - anybody not participating or let me know on the list as well who is - I will share that agenda with you. And then you can see and can share with me whether it's feasible for you or not to participate in that.

So last point is next call. What about - let's talk about in two weeks from now we shall have - so we shall have a Council meeting. But that doesn't matter so we could also have a call - SCI call that date. Would that be okay on the 13th of September - 13th would that be.

Let's - so there is no opposition to that. So let's take this date. I'll find out an agenda as well. Okay thank you very much for the day. Lovely discussion on that. I do hope that we will come to an agreement next time on the deferrals. And thank you very much. Good-bye.

Avri Doria: Bye-bye. Thank you.

Wolf-Ulrich Knoben: Thank you.

Marika Konings: Thanks.

END