

**ICANN
Transcription
Standing Committee on Improvements Implementation meeting
Tuesday 28 January 2014 at 20:00 UTC**

Note: The following is the output of transcribing from an audio recording of Standing Committee on Improvements Implementation meeting on the Tuesday 14 January 2014 at 20:00 UTC.

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<http://audio.icann.org/gns0/gns0-sci-20140128-en.mp3>

Attendees:

Ronald Andruff – Commercial and Business Users Constituency – Primary – Chair
Angie Graves - Commercial and Business Users Constituency – Alternate
Amr Elsadr – NCUC Alternate
Anne Aikman Scalse - Intellectual Property Constituency - Primary
Jennifer Wolfe – NCA primary
Marie-Laure Lemineur – NPOC Alternative
Wolf-Ulrich Knoblen - ISPCP
Greg Shatan – IPC - Alternate
Avri Doria – Non Commercial SG – Primary – Vice-Chair
Jennifer Standiford – RrSG Primary -

Apologies:

Cintra Sooknanan – Vice Chair – NPOC Primary

ICANN Staff:

Julie Hedlund
Mary Wong
Nathalie Peregrine

Coordinator: Thank you, everyone. I just need to inform all parties that today's conference is being recorded. If you have any objections you may disconnect your line at this time. And you may begin.

Nathalie Peregrine: Thank you very much, (Laurie). Good morning, good afternoon, good evening everybody. This is the SCI call on the 28th of January, 2014. On the call today we have Ron Andruff, Angie Graves, Jennifer Wolfe, Wolf-Knoben, Anne Aikman-Scalese and Amr Elsadr.

We have no received apology for today. I apologize, I have forgotten Marie-Laure Lemineur who's also joined the call. And I was saying no apology received for today. And from staff we have Julie Hedlund, Mary Wong, and myself, Nathalie Peregrine.

I'd like to remind you all to please state your names before speaking for transcription purposes. Thank you very much and over to you, Ron.

Ron Andruff: Thank you, Nathalie. Just for the record I would note Cintra will be joining late. She had sent a message and I'm not sure if that got captured or not but she'll be joining shortly. And I see Amr on the list is dialing in now so all good.

So now that the roll call has been taken the next item on the agenda is the Statements of Interest and the question is has anyone had any changes to their SOI since we last met? Hearing none we'll move on then to the next item on the agenda and...

Julie Hedlund: I'm sorry, Ron. This is Julie Hedlund. Amr has raised his hand.

Ron Andruff: Oh I'm sorry. Thank you, Julie. Thank you, Amr. Please go ahead.

Amr Elsadr: Thanks, Ron. Thanks, Julie. This is Amr. I don't have a change to my SOI but I did think that now would be a good time to tell you all that the NCUC Executive Committee has just appointed a new alternate to the Standing Committee and I guess I will send an email to the list. And I thought I should let maybe Julie know. Julie, are you the right person to notify if a new appointment has been made to the committee?

Julie Hedlund: Yeah, that's fine. That would be great because then I can go ahead and coordinate with the Secretariat to make sure that, you know, we get the person on to the list and, you know, get the person added to the wiki and so on.

Amr Elsadr: All right thanks.

Ron Andruff: Thanks, Amr. Can you share their name at this point or?

Amr Elsadr: Yeah, it's David Cake who is also a councilor representing the NCSG.

Ron Andruff: Oh. Very good. Yeah, I know David as well. Excellent. Great so look forward to seeing David, pardon me, joining us then in the next meeting. Thank you for that - sharing that.

All right then I was moving on to agenda Item Number 3 which was the approval of the agenda that we have on the right hand side of the screen. Does anyone have anything they'd like to add or any other business that they'd like to make note of before we get started? All right, hearing none we'll accept that as the approval of the agenda. And that moves us to Agenda Item Number 4.

And this is a new piece of work. It's a review of the GNSO Working Group Guidelines consensus level. And Julie, I assume is sharing - I think, Julie, you're in control of the screen or perhaps Nathalie - is sharing with us the information - the background information on this topic.

Having said that I'm wondering if there are any councilors - I don't see on the Adobe Connect that we have anyone from - oh Jen Wolfe - I wonder, Jen, could you shed a little light on this topic if you were present when this was discussed at Council?

Jennifer Wolfe: I'm sorry. I'm not following. What - when was this discussed at Council?

Ron Andruff: We're talking about Agenda Item Number 4. It's review of the GNSO Working Group Guidelines.

Jennifer Wolfe: Yeah...

((Crosstalk))

Jennifer Wolfe: ...blanking on when that was last discussed at Council. I know we've been talking about some general improvements to the PDP process but I don't recall - Julie or Mary - Mary, you're on the line, do you recall when that was discussed?

Ron Andruff: I see Mary's hand is up. Please, Mary, go ahead.

Mary Wong: Yeah, hi Ron. Hi, Jen. Thanks very much. Actually, Ron, I was going to suggest that maybe we postpone this item for a little bit. I don't know if Thomas is planning to join the call but I know that Greg Shatan is planning to join the call.

And the reason why I'm suggesting this is because it wasn't actually like a Council agenda action item but it was something that came out of the IGO/INGO Working Group which Thomas chaired which Greg was a member of.

So while I can give the background...

Ron Andruff: Right.

Mary Wong: ...and explain it, it might be better to wait to see if either of them will come to the call today.

Ron Andruff: I see Greg Shatan is going to join at some point on the list here. So that's great. Thank you, Mary. I think that's a very good idea. Let's have the people who were present and were discussing it at the time. So we'll - let's leave that one then. And, pardon me, we'll come back to that when we see Greg has joined or others have joined that can shed some light on that.

So that moves us then to the Item Number 5 which is the possible inclusion of waiver exception in the GNSO Operating Procedures. And right now we're looking at some information on the screen about this topic. I see Anne Aikman-Scalese has put her hand up so, Anne, please take the floor and then Marie-Laure, you'll follow.

Anne Aikman-Scalese: Yes, thank you. This is Anne Aikman-Scalese with the IPC. And I guess I was going to comment that I think, again, both Greg Shatan and Thomas are quite involved in this issue as well so I don't know if we should again, postpone for a short time if they're both going to be on the call or, in to the words, Mary's suggestion may be equally applicable to this topic.

Ron Andruff: Well, we do have Marie-Laure who was party to that work. And she has some comments there so why don't we go to Marie-Laure first and then we'll see how your thoughts are. Please...

Anne Aikman-Scalese: Okay.

Ron Andruff: ...go ahead, Marie-Laure. Thank you.

Marie-Laure Lemineur: Thank you. Can you hear me?

Ron Andruff: Yes we can. Thank you.

Marie-Laure Lemineur: Okay. Thank you. This is Marie-Laure speaking. Actually - I was actually going to suggest exactly the same as Anne did and Mary did is wait for Greg because - not that - I can start. The thing is that we've been working

with Greg over the last two days and he had - he added some meat to what we did previously with Mikey and Thomas. So I don't know whether, you know, we can skip Item Number 5 and go to Number 6? And if the same is going to happen or I shall start. But I would prefer - I would like to wait for him if it's possible. If not I can, you know, start speaking but...

Ron Andruff: Certainly. Well, we find ourselves in a tricky situation because in fact on the next item, voting by email, it was Avri and Thomas as well so...

Marie-Laure Lemineur: Oh boy.

Ron Andruff: ...and so he was very active in that part too. But I'm seeing that, when it comes to the item on consensus levels Mary would like to kind of lead on that. But on the email voting, unfortunately, I think we have to wait because we don't have Avri with us any longer and Thomas is not on.

So I guess let's go with Mary's suggestion we go to the Working Group Guidelines consensus levels because Amr can also add to that (unintelligible). And that we can come back and circle around when those others join.

So with that, Mary, may I turn to you and let you start and then we'll get Amr in the mix.

Mary Wong: Thanks, Ron. And, Amr, I'm happy to at any time since you're on the Council. Perhaps what I could do is start with the background since I was staff support or together with Berry Cobb for the IGO/INGO Working Group, which as I've mentioned, Thomas chaired.

Essentially and, you know, if you were looking at the first page of the document that the current Working Group Guidelines specifies various different levels of consensus ranging from full consensus to divergence. And it - thank you, Julie - and you see that here the levels are defined.

And where we have at working groups that had to do various consensus calls all of these different levels have been reflected in the report including minority views that may be expressed during the working group deliberations. And I see that Greg is joining me so I'm sure that Greg, you should correct me if I get any of this stuff wrong. But I'm talking about what happened in the IGO/INGO Working Group.

The one level of consensus that the working group referred back to the GNSO Council, which caused the Council to then refer it to the SCI without further discussion at the Council because it was thought to be an SCI issue, is what amount of divergence. And you see here that it's referred to as "no consensus."

What the working group found was that in their particular case it wasn't so much a divergence of viewpoints or no consensus because of a plethora of viewpoints. For example, in this document it says, "There's no strong support for one position but many different points of view."

In the working group there wasn't strong support for a proposal that was supposed to be a recommendation. But there were not many different points of view. In fact there was one point of view that was shared by most of the working group members against that position.

And so going through the different levels the working group found that there really wasn't any particular language or level that described the position which really, frankly, ultimately was referred to as consensus against because it's, in effect, if you go up to the consensus bullet point it says a position where only a small minority disagree but most agree.

That's what happened in the working group but it wasn't consensus for, it was consensus against. And going to stop here and see if Amr or Greg would like to add to the background and perhaps lead off the discussion.

Ron Andruff: Thank you very much, Mary. Amr? Greg? Who wants to take a kick at the can here in furthering this dialogue? Greg, please go ahead.

Greg Shatan: Sure. I think just to add to what Mary said - and I came in on the middle so apologies if I'm redundant. The reason this really came up at all was that we were dealing with a matrix of many possible recommendations because of the complexity and number of issues we were dealing with.

I think if we had been dealing with only, you know, one or two potential recommendations we would have had the time in the group to basically flip the language and make it consensus for the opposite of what we had a consensus against.

But because we had a matrix with maybe 40 different possibilities in it it really just wasn't possible under the circumstances we were dealing with to easily just flip to the opposite. And therefore while we really wanted to express a consensus against we - there was no language available to us to do it. And none of the other - none of the existing levels of consensus provided us with an accurate description of what our - what the sentiments of the group were. Thank you.

Ron Andruff: Thanks, Greg. Anne, please go ahead.

Anne Aikman-Scalese: Thanks, Ron. This is Anne with IPC. I have a question that really goes to what Greg was just talking about because when you just read these consensus levels as written it looks as though the use of the word "recommendation" means, you know, a recommendation that's being made by the working group itself.

And so in light of how that is written it almost seems to me that if there's a recommendation by the working group itself that is against then that's a consensus against. And so that - in other words, the working group's

recommendation, as that term is used here in the guidelines, it looks as though the working group would be able to put in writing the working group has developed a consensus recommendation against, you know, the following things in the chart.

And so probably because I didn't participate in this particular one I'm having trouble understanding what would prevent the working group from simply saying the working group recommends, by consensus, or unanimous consensus or whatever, against adopting X, Y and Z in the chart.

Greg Shatan: Well here's the reason why that doesn't work. This is Greg again. What we were dealing with was a chart of recommendations. And that was out for a consensus call. And, sure, if we had another couple of months we could have developed an addition, you know, changed the wording of the recommendation or come up with a recommendation about a recommendation.

But in the sense we had a recommendation that was phrased, you know, in the positive and which basically everyone - almost everyone was against. But it wasn't that they were - it wasn't the recommendation that they were - we weren't recommending that we were against it; it was a recommendation which had a consensus in opposition to it. So we...

Anne Aikman-Scalese: Yeah, I'm sorry but it seems to me to be the same thing.

Greg Shatan: No it's not.

((Crosstalk))

Anne Aikman-Scalese: If the working group's recommendation is against the recommendations and the working group has the consensus recommendation to that effect.

Greg Shatan: No it didn't because that wasn't what - what was on the consensus recommendations that were sent out for consensus call was a recommendation in favor. And what we were trying to do was to avoid a whole second consensus call. If we could have done a second consensus call on - to put out a new recommendation or to change the existing recommendation.

But what we wanted to do was to express the consensus of the group, which was not merely that we were - that there was a minority view. There was essentially a majority view but it wasn't in opposition to a consensus, it was an opposition to a minority view in favor.

Ron Andruff: My, my, my. This is Ron.

Anne Aikman-Scalese: Yeah, I'm very...

((Crosstalk))

Ron Andruff: I feel like I need a scorecard. It's a really trick one. Mary, I see your hand is up, perhaps you can shed some light on this and then I'll come back to you, Amr. Mary.

Mary Wong: Well I'm not sure - I'll try to follow Greg because I want to thank him for explaining why this particular issue - I guess was particularly complicated because it was a particularly complex (unintelligible) and in a rather - well it wasn't the working group that was controversial but it was, let's just say, a very lively group with a lot of lively discussions.

So it may well be, you know, before I get to my comment, that this is a relatively simple fix. It may well be, for example, that this group, the SCI, could simply what ends it that to the extent that there is consensus against, well to that then you have to phrase your recommendation in the negative and make sure that is the case.

Or, for example, the group can add another footnote to the one or more of the bullet points here to say consensus against is perfectly acceptable as long as the context is clear. I'm not suggesting any of those things, I'm just saying that's certainly one way this group can come out.

Fortunately, I guess, we don't - not all our working groups really get into that many recommendations and the complexities. But one added point I will add is that for this particular group, as Greg will recall this, the sensitivities were such that that particular proposal - actually I'm using the word "proposal" because ultimately there was the discussion as to whether the recommendation was even appropriate since there was no consensus for it and it was changed to proposal.

So it is a fairly complicated origin. But I suppose the question for this group is in situations like this what is the working group guideline document - what does it tell the group to do? And it may be that the consensus against could be something that's added or it could be some sort of advice from the SCI and maybe something very simple that in the future working groups should just be careful about how they phrase their recommendations.

But I do think that we may come across these situations again in some controversial complex or complicated issues and discussions. And so it seems like the Council is raising it now so that, A, there is awareness of the issue and, B, at least there's some discussion amongst the appropriate group like the SCI to see whether or not you want to do something about it.

So your choice might be no, it's fine, it's clear enough just make it clear there is consensus against, that's okay. Or you may want to propose additional language or you may want to propose additional levels. So the background I guess is relevant to that extent.

Ron Andruff: Thank you, Mary. Amr.

Amr Elsadr: Thanks, Ron. This is Amr. To be very frank, I think I agree with Anne. And Mary also touched upon this point of just really how you word the recommendations of - coming out of a working group.

So to have a recommendation that the majority of the working group does not approve - or the majority of the working group are - have a consensus against it's - it just strikes me as a bit strange that this would be a recommendation coming out of the working group.

Because effectively the working group could just recommend the opposite of what that recommendation is and have a consensus for. So another example is just recommending not adopting a certain policy as opposed to recommending adopting one.

Having said that, I can see how the language in the guidelines is also sort of inherently associates consensus with a positive outcome which might really sort of - I see Mary's (unintelligible) diverging equates to no consensus.

So my understanding of this case is that this wasn't an issue of divergence. So going over this it wasn't really divergent, it was just that full consensus or consensus, actually, just really associates a majority agreeing with a recommendation whilst a minority disagrees. And this wasn't the case in this working group although the wording of the recommendation could have just - could have really been changed.

I do have some suggested language changes to make that a bit clear at this point. I'll try and cut and paste them into the chat. But honestly I do see things the way Anne does. I think that the wording of the recommendation could be chosen more carefully to express the consensus level in the working group as saying, yes, we recommend that this policy not be adopted as opposed to saying there is a consensus against a recommendation. Thanks.

Ron Andruff: Amr, before I let you go, let me ask a question - just a clarifying point for those of us who were not privy to the whole discussions within that working group.

So that we understand it's clear, this was not an issue of the chartering organization giving an improper mandate or a mandate that brought this about but rather it was actually the working group itself that wrote up something as a recommendation and the recommendation was not for something but rather against something? Am I going down the right path?

Amr Elsadr: No. This is Amr. Yeah, I wasn't on the working group but that is just what I understood from the background document. Greg could probably correct me...

Greg Shatan: Yeah, the recommendations...

Ron Andruff: Greg.

Greg Shatan: ...there were several - maybe several dozen recommendations. They were kind of a matrix of branching variable matrix and they really were very carefully written so it wasn't a matter of care in writing but rather that when we went through the various matrices and there were, you know, several pages of them, you know, by and large there was either, you know, a consensus in favor of those recommendations or the recommendations failed because there was, you know, no consensus or divergence of opinion.

But in a couple of cases what was - came out of the matrix was a strong consensus against a particular potential recommendation. And rather than merely discarding the recommendation and being silent as to the position of the working group on that recommendation we wanted to express opposition.

And the problem with the consensus levels is that they're all optimistic. They're only about how much everyone loves the recommendation. Do they

love it completely? Do they love it a lot? Do most people love it or does everybody have different opinions? But there isn't anything that says we hate this recommendation.

Now, yes, we could have spent an extra month or two doing this and rephrase that particular recommendation, out of the 72 that we had, in the opposite, done a new consensus call and delayed things even further which would have been a policy disaster because this is the IGO/INGO issue where basically the GNSO and the GAC are going to end up in some kind of steel cage match as to who ICANN - the ICANN Board decides to ultimately listen to.

And if we delayed things further we would have been playing to an empty ballroom by the time we finished. So time was of the essence. There's no reason that the consensus levels shouldn't allow for negative consensus, that everything should be in positive numbers. There's no negative numbers allowed. I don't know why. Maybe people have been reading *Candide* or *Pollyanna* too much that nobody's allowed to, you know, nary has heard a discouraging word.

But in this case, you know, a lot of care was taken. And the recommendations flowed in a particular way because of the matrix of considerations. And in this particular case, you know, there were a couple of particular recommendations that really needed to be, you know, on the sense of the group, voted down and not merely just discarded from the recommendation list.

And there's no reason that there shouldn't be a reason to vote against a recommendation with something that is stronger than divergence because there wasn't divergence; there was an agreement but it was an agreement that it was a bad recommendation.

Ron Andruff: Thank you, Greg. That's helpful. And that clarifies that point for me. Anne, please, you've been patient, go ahead.

Anne Aikman-Scalese: Yes thank you very much, Ron. It's Anne. I still feel that when we're describing the problem here that we are confusing two different sets of recommendations. The use of the word "recommendation" in the Working Group Guidelines to me means the recommendation of the working group.

Greg Shatan: Well these were the recommendations of the working group; they were what was out for consensus call. Those were the recommendation that were in front of people and we wanted to vote that recommendation down and indicate that there was a consensus that that recommendation - should be out.

Anne Aikman-Scalese: So the working group made a recommendation that the working group...

Greg Shatan: No it didn't make a recommendation. It didn't make a recommendation. It put a recommendation out for consensus call. A number of the recommendations didn't make it - of the potential recommendations didn't make it because there was no consensus around them.

((Crosstalk))

Anne Aikman-Scalese: And where did those recommendations come from?

Greg Shatan: All the - they were all potential recommendations. They came from within the working group and they were being voted on as to whether they would actually become recommendations of the working group.

Anne Aikman-Scalese: Right.

((Crosstalk))

Anne Aikman-Scalese: And so that's - Greg, if you'll let me finish - where I think the distinction lies that I'm not sure we need a new rule for. Because I think what full consensus means talks about that final recommendation that's made that comes as the result of the working group action. I don't think it means a chart that you're voting on. I think that it speaks about your final action.

Greg Shatan: Well then how would you do a consensus call on that recommendation?

Anne Aikman-Scalese: What you're describing is a situation where there's a consensus against and so the recommendation out of the working group is consensus against.

Greg Shatan: No, the recommendation was what was being considered, the potential recommendation.

((Crosstalk))

Greg Shatan: There was no consensus in favor of it. What I would suggest is that anybody would believe this isn't an issue should read all the transcript of the meetings at which this was discussed and the final report and probably the draft report as well.

((Crosstalk))

Anne Aikman-Scalese: ...ultimately deal with it? What was done?

Greg Shatan: A footnote and a request to the SCI to deal with this so that we wouldn't have to, you know, deal with it ad hoc again. You know, it was a footnote that there was a consensus against but that in the guidelines there's no ability to express a consensus against.

Ron Andruff: Thanks, Greg. I see Mary has her hand up and then that will be followed by Wolf-Ulrich. Mary.

Mary Wong: Ron, I'm happy to cede to Wolf and to go after him.

Ron Andruff: Thank you. Wolf-Ulrich.

Wolf-Ulrich Knoben: Yeah, hi. Thanks. Well just I was following so the discussion is still - I'm really confused - really confused so to understand what was the real problem and how this group could really assist and help in avoiding such situations in the future.

So as we have this Working Group Guidelines with this list of different levels of consensus here so I'm wondering how we can - how we can deal with it in a different way than as - as Mary was pointing out with reference to the point of divergence. So just the question is divergence in this case is that the kind of - is that seen as no consensus or not?

So I would like to point to that point and to focus on that point. Because I think situation like you describe, Greg and others who have worked - were in that working group it is - it may be not avoidable in the future so in such complex cases. So I can't - I cannot think about, you know, what kind of cases could rise. But from my experience you can't avoid such a situation coming up.

And then it's up to, let me say, it's a kind of - of working within that group and working on the group behavior how you can deal with that. So that is not a real, from my point of view, I cannot give you any advice on that. So this is my opinion on that.

So I could only try to talk about and to discuss that point of question is divergence is that a point which we could refer to as no consensus or not.

Thank you.

Ron Andruff: Thank you, Wolf-Ulrich. Mary, please go ahead.

Mary Wong: Thank you, Ron. And thank you, Wolf-Ulrich, for picking up that point because, you know, one thing is - and I know this group knows this very well is that while the origin of a problem is usually why things get sent to the SCI your recommendations, proposals and drafts have to be a more general applicability going forward.

So it seems to, you know, like I said, having been staff support for the working group and having lived with Greg through all the deliberations, discussions and arguments, that if we simply look at this document - the text right here - the problem could be, if not fully summarized, at least for now boiled down to two things.

First is something Greg said that whether or not it is expressly stated here the spirit and suddenly the interpretation of these consensus levels have been sort of in the positive or towards the affirmative. So there is support for, you know, not so much support against.

And so you see this particularly in the divergence bullet point where it says the isn't strong support for a particular position. It doesn't talk about support against.

So it seems to me that going back to the divergence and no consensus point maybe this group could discuss the possibility of expanding or elaborating on the existing consensus levels to include some clarification that where there's strong support against something that there could be designated a particular level and as Greg is suggesting, consensus against.

And I'm seeing what he's saying in the chat. And maybe what I can emphasize here is that - and going back to what you were saying earlier. There wasn't strong support for the particular position but it wasn't that, as a consequence, everybody but one in the working group therefore supported a different position. There simply was strong support against this position.

And the working group felt very strongly and the chair himself, I think - and Thomas can probably explain this better than I can - felt that this was, if not a large gap, at least a gap in the Working Group Guidelines.

So it seems to me that, like I said, two things, one is in terms of the divergence equals no consensus maybe there should be something there that talks about against. But similarly when one talks about consensus in the second bullet point there could be clarification that this could (unintelligible) consensus for as well as consensus against.

So my first point would take into account what Greg is saying that you may have support against but not for anything in opposition to. And the second point hopefully addresses some of what Anne was saying in that it's implicit in the document but why not make it explicit that there can be consensus for and consensus against?

Ron Andruff: Thank you, Mary. I'm watching the chat has members are speaking. And Anne has just noted, you know, if we see the footnote that Greg refers to. I think this would be very helpful for the committee to actually see some background information on this as to what happened. Because I think for a lot of us we still have a lot of questions in our minds as well as Greg and Amr and Mary have explained the situation there's still something there that is not quite catching with me.

And it's probably an easy fix insomuch as if we wanted to just reword or add some amending language to consensus to clarify that might solve the problem. But then again this may be just an anomaly, something that's happened one time is never going to happen again.

And one of the things of the SCI - kind of a standing rule for us is a light touch not to just change things because they've been given to us and we should change them automatically.

So by way of this statement I'm asking staff if you might be able to go back and find this information for us in the transcripts of the footnote that would help clarify it for the rest of the members.

And I'm going to offer - Greg's has his hand up as does Amr - of the last word on this before we move to the next topic. So let's start with Greg please.

Greg Shatan: Thanks. It's Greg Shatan again. I think, you know, first I don't think this will be an isolated incident. It may not be a common instance but I don't think it'll be isolated because I think any time a group has to deal with a complex number of recommendations or recommendations and sub recommendations this has the ability to occur.

And I don't think there was any group behavior or lack of positive behavior that resulted in this happening. It was really a matter of, you know, dealing with a complex matrix. And, you know, we could have put together a negative matrix and had everybody vote in favor of the ones they were against and against the ones they were in favor of but that would have been silly too.

I think the way to look at this best is that consensus kind of acts as a thermometer on which there are no negative numbers. The lowest you get is kind of freezing and...

((Crosstalk))

Ron Andruff: Yeah.

Greg Shatan: But you don't even get - you don't get to below 32 degrees or whatever, you know, zero Celsius. You don't get below that on the consensus level because everything is about how much the level of positive engagement with a recommendation there is when you put a recommendation in writing out for consensus and ask people whether they are - they support that consensus or

not. And each one either vote yes or no and if everybody votes know what you call that? It's not...

Ron Andruff: Right, exactly.

Greg Shatan: ...you know, if you read what was, you know, on the - in the middle of the page there it's all about how much in favor of everything is. So we need some negative numbers on the thermometer for this type of instance whether it can be - and I don't they could be avoided in all cases. Thank you.

Ron Andruff: Thanks, Greg. Amr, last (unintelligible) topic before we move to the next one. And Amr's put his hand down. I think, unless you would like to come back in, Amr? Oh good.

Amr Elsadr: Oh sorry, I was on mute.

Ron Andruff: All right. Please, go ahead.

((Crosstalk))

Amr Elsadr: This is Amr. I just think it's important to clarify that the situation here is not a situation of divergence in case there is some misunderstanding of that. This is a situation where, as it appears to me that there is consensus on a certain position. This position in this situation is against a recommendation which I still find to be a little strange.

I did come up with some text that might support this sort of scenario where there is a recommendation would consensus against it. However, I have to stress that I'm not really in favor of this sort of thing.

I personally don't see a problem with the consensus levels as they are even - I guess I don't understand the context to a degree that will allow me to appreciate why it was so difficult within this matrix of recommendations to

change the recommendations and sort of turn them around so there's a consensus for these recommendations as opposed to against them.

But if that is a case that we need to understand a little better and have a clearer understanding of the context where it comes from then the text could be changed. However - and I did take a stab at doing that however I still have to stress that I'm not very happy with the idea. Thanks.

Ron Andruff: Thanks, Amr. And that's why I'd like staff to inform us a little bit better with some background details. So let's move along as we're now running out of time. So if we could then - Greg, now that you've joined the call we went past the waiver exception early on because you are not on the call and Marie-Laure was hoping that you would join and that we could have a deeper conversation about this because you've been working on this over the last couple of days.

So I turn it over to you and Marie-Laure or to - or to Greg to take the lead on this one, waiver exception in GNSO Operating Procedures.

Greg Shatan: Well this is Greg. I'm happy to take the lead.

Ron Andruff: Thank you, Greg.

Greg Shatan: You know, I think that, you know, we need to start by discussing it as we have in what circumstances do we need a waiver mechanism? The particular instance in which this came up was after the GNSO Council had adopted a 10 day rule which - that all motions had to be submitted 10 days prior to a meeting which was, you know, put in place in response to an earlier issue with the last-minute motions.

When it was drafted there was no exception procedure drafted for that particular 10-day procedure. And there is no general procedure by which that GNSO Council can waive or suspend its standing rules.

So what we wanted to consider was a methodology for waiving a standing rule in a particular instance which could be limited just to this 10 day rule or it could be a general rule as to how a standing rule of the GNSO Council can be waived. And then we would need to discuss kind of what contours of that would be.

So what we generally discussed was that--and what, you know, often occurs in other deliberative bodies is the concept of unanimous consent allowing the group to waive or suspend for a particular instance a standing rule on a temporary basis. In some other organizational structures a 2/3 vote is sufficient for certain standing rules to be waived.

Ron Andruff: Thank you, Greg. Marie-Laure, you've been giving some thought to this; would you like to add a comment or two?

Marie-Laure Lemineur: Yes. Let me see. There are other aspects that we need to consider and that we discussed with Greg. And one of them is whether we should consider having a waive mechanism that applies only during - that can be used when there are meetings - GNSO Council meetings versus - only - versus having a waiver mechanism that could be also used in between meetings. So we just sort of wanted input from this SCI about that.

And there are also - we discussed with Greg the possibility of having the unanimous of all voting members during the meetings, the councilors, versus unanimity of both councilors who are present. It's a two-way - these are two ways of handling the unanimity rule.

So these are the aspects we need to discuss so I'm guessing we just need to hear from you guys.

Greg Shatan: If I could add...

Ron Andruff: Thank you, Marie.

Greg Shatan: ...one more thing to that?

Ron Andruff: Please, go ahead, Greg.

Greg Shatan: I'm not entirely certain where we are on the point of the GNSO Council voting on anything between its formal meetings or special meetings. I think we were actually just up to the point of possibly allowing email voting during a meeting. I don't think we've created any general rule at the GNSO Council can vote on on anything or, you know, conducts any dispositive business between its meetings unless I'm incorrect.

Marie-Laure Lemineur: If I may add? This is exactly, I mean, I do share this opinion but we might want to hear the opinion of the rest of the members of the committee.

Ron Andruff: Thank you both very much. Who would like to engage in this discussion? So someone is typing very loudly in all of our ears. Perhaps you can go on mute when you're not - thank you.

So this is Ron speaking. So for my part we are looking here for a way to modify operating procedures that have been functioning for some time. And I'm not sure if this particular operating procedure has been modified at all over the course of the history of the GNSO Council.

But it seems to me that the quote from Jonathan is quite clear, you know, he wasn't empowered to allow the motion to be put on the table even if technically he would have done it. And so this is an issue I think for the chair of the GNSO Council not having that tool in the toolbox.

If I look at our list of members and I pick on Avri quite regularly because she was the chair of the Council for some time I wonder, Avri, could you shed

some light on how important or not having this tool would be as a chairperson of the GNSO? I wonder if Avri's on mute or stepped away.

Wolf-Ulrich, please go ahead.

Wolf-Ulrich Knoblen: Thanks, Ron. So if I understand it correctly so I think...

((Crosstalk))

Wolf-Ulrich Knoblen: Yes, Avri? So...

Greg Shatan: I heard her in the distance.

Avri Doria: (Unintelligible) I'm not really sure all that to find out I'm not really sure what to comment since I really don't have a good idea of what you're all talking about.

Wolf-Ulrich Knoblen: Okay.

Ron Andruff: Okay, Avri, actually we're discussing item number five, waiver exception in operating procedures. And if you're online you can see on the screen in front of us the request. So why don't you have a look at that? And, Wolf-Ulrich, if you go ahead please and then we'll come back to Avri.

Wolf-Ulrich Knoblen: Yes. So I wonder whether we are just discussing two different things. One is the question whether the Council could take decisions which - could move motions between meetings so that is one question raised by Greg. And the other one was the question - whether a motion - there was a reason why this problem came up - whether a motion could be talked or decided on and put to the table after the deadline.

So I think these are different things. So if we are talking about these two things then this is different. The one is the deadline regarding motions to be brought to the table before a meeting. And the other question is are there any

changes, well, for deciding or talking about and deciding about motions between meetings.

So if I recall there was one case in the past that was then done because of any certain time to be - certain deadline. So then it was handled that way that the chair of the Council called for officially a kind of - on very short-term for a meeting for that - for a call for that.

And I don't think all people could participate in that but they had, let me say, at the time representation on the call or they delivered their message to that call in advance so it could be handled, for example, that way. So I think we should distinguish between that both cases (unintelligible) thank you.

Ron Andruff: Thank you, Wolf-Ulrich. Avri, please go ahead.

Avri Doria: Okay. Greg had put himself in the queue before me but I'll go ahead. First of all while I was chair we didn't have this rule, but I consider it a silly rule on needing to get motions in a week, then eight days, then 10 days, then pretty soon who knows how long. So that was never a problem; motions got in.

I personally think that it makes sense for there to be a clear-cut way to find an exception. I mean, in the old days, as it were, we did function much more on trust and much more on collegiality but I don't think that the current construction is quite as - lends itself quite as easily to that notion because of the permanently set opposition that have been set up in the Council as its currently formed.

So I think having a formal procedure that would enable a chair to move ahead on an exceptional basis is not an unreasonable thing to think of and would be useful to a chair. Thanks.

Ron Andruff: Thank you, Avri. That's exactly what I was looking for, some background. Thank you. Greg, please go ahead.

Greg Shatan: And to respond first to Wolf-Ulrich, I think we should put aside any discussion of decision-making between meetings. It wasn't my intent to bring that into this discussion. I didn't bring it up in my original summation of the issue.

Somehow it crept into this discussion maybe even by an editing error because of what specific changes do you propose to address the identified problem in the Adobe chat is answered by the SCI should consider whether and how the Council could vote outside of the meeting and under what circumstances.

I actually think that probably is an answer to a different problem. But I did want to respond to it because Marie-Laure brought it up. But I would like to actually table or get out of, you know, put aside any discussion of voting between meetings and concentrate specifically on the issue of can this rule, or if we want to any other standing rule of the GNSO Council be waived by some form of unanimous consent by the Council.

I think that's really the only question that should be in front of us. And the other issue I think is a frolic in detour that somehow worked its way into the discussion and should work its way out of the discussion from now. Thanks.

Ron Andruff: Thanks Greg. I think it's - unless, Avri, you want to speak again then it would be Anne. Anne, please go ahead.

Anne Aikman-Scalese: Okay thank you Ron. This is Anne with IPC. And I do want to focus on the item that Greg just asked us to focus on in terms of whether councilors present - or voting, I guess, could waive requirements of the operating procedures.

And my big question in relation to all that is the councilors are representatives of constituencies. And in general, you know, various items that they're voting on are matters that have been presented in advance to the constituencies for

feedback and discussion and consideration as to, you know, how a councilor should vote.

If a councilor is to vote to waive one of the operating procedures how does the councilor get the authority or the instant approval of the constituency or of the leadership to waive and operating procedure?

Ron Andruff: You're bringing up a very good point, Anne. In fact the question really in my mind would be is this something that could even, as you've just rightly said, could even come to the table without the councilor having been given direction from his or her constituency.

So even if we said that the chair would have the authority to have an exception to the rule of the operating procedure under certain circumstances the question is how does that even get there? That was rattling in the back of my mind as well. So I see Greg's hand up and then Jen Wolfe please.

Greg Shatan: I think - this is Greg Shatan. I think it needs to be looked at, you know, procedure and substance need to be somewhat separated here. I don't want to get into, you know, any dichotomies like policy and implementation or else we'll be here forever.

But, I think that voting, especially if we limit it to this particular procedure and not any procedure, which I frankly would suggest that we vote only to have a waiver for this particular procedure and see how it goes before we go on to some broader rule about waiver.

I think the procedural - voting to proceed by a slightly different - by some slightly different procedure than is the general rule, you know, doesn't require, you know, that feedback from the stakeholder group or constituency. And I think that if any councilor feels that they shouldn't waive the rule because they don't have the guidance of their constituency on how to deal

with the substantive motion then they vote against waiver and it's no longer consensus.

But I think that while I'm strongly in favor of looking at councilors as representatives of their constituencies and not as some sort of, you know, council of elders I think that suggesting that even matters of procedure can't be proceeded on without instruction is probably - ties the hands of the group too much.

And I think we have to look at what was - the particular instance here. Again, you know, I realize it's a matter of general applicability that we want to look at but in this case it was a final report that had already been before that Council as a preliminary report. And I think all of the groups had, you know, reviewed the report. And the councilors all felt that they could support the report and didn't need further feedback from their constituents.

Or I think - maybe because it was at a live - it was in Durban they felt that they had access to their constituents and could vote in favor. And I think everyone was willing to vote on substance, was willing to vote on the motion in the room even though it was quote unquote untimely made.

But because the 10 day rule is completely unwaivable the group was unable to vote on it. And rather than - there were some who felt that Jonathan should just take an ad hoc chair's prerogative and waive it without any procedure to waive it but just say let's just ignore it for a while, you know, based on nothing other than kind of good proceeding - and I think actually it was the IPC that said we're not against waiving it though we have no way to waive it and in informal waiver by the chair is not a power the chair has. And Jonathan agreed with that.

So the rule itself can result in some unfortunate circumstances because it is a - it's not necessarily a well-crafted rule and in retrospect it probably should've had a waiver built into it in the first place that would allow the group, if they

felt they could act on the substance of a motion, to be able to consider the motion even if it was made less than 10 days before a meeting. Thank you.

Ron Andruff: Thank you very much Greg. I see we're a minute past the hour. We got started late today and I'm hopeful that everybody can stay on just to finish this topic because we have two more speakers, Jennifer Wolfe is in the list and Amr so Jennifer, please go ahead.

Jennifer Wolfe: Sure. And I'll be very brief because I realized we're at the top of the hour and definitely want to echo Greg's comments. You know, just three very quick points. This is a procedural issue and not a substantive issue. And I think it was in everyone's interest and really the entire GNSO's interest to get that on the table and have it voted on.

And I don't think that there was anybody who would likely disagree with that. So I think we're talking about how do we give the chair some latitude in such circumstances and avoid unnecessary delays to the policymaking process for which the GNSO is often criticized.

And then third, just another point, the councilors - if you've ever sat around the table - and I'm of course the NomComm, the independent nonvoting member. But I sit and talk with everyone during the meetings and they are getting constant feedback through chats and emails etcetera throughout the process. So I don't think that they are cut off from access to their constituency. If such an issue is coming up they could be getting feedback on that.

And I think we just need to have some pragmatism here to how do we get things done more efficiently and that that's part of our role as the SCI is to look for these opportunities to create some greater efficiencies in the process.

Ron Andruff: Well said Jennifer. In fact it's a perfect wrap up statement for what we do here. And I think that's a good way to conclude our discussions for today. We

got started a little bit late today because a number of members had to join a little bit late and so a couple of key people were not on when we were looking at a couple of agenda items that they were to speak to.

So I would just ask on the next call if we can try to get on the call a little bit earlier because I hate to keep people late and also staff often have to jump off of our calls and jump onto another one searches for future.

But with regard to today's meeting thank you all very much for bringing some very important information to light. Lots to consider here on these elements. Clearly we've heard very good arguments as to why a waiver is needed and so I think this is something we need to figure out how to fine tune. The issue of the guidelines and consensus I'd ask staff if they could provide a little bit more background from the actual documents that were presented at that time so we can get into that a little bit deeper next meeting.

And then we'll also pick up the voting by email on our next call. So unless there's any other business that someone would like to bring to the table at this point? Hearing none I will thank everyone very much for getting on the call and for bringing your valuable thoughts. Good to hear from you and look forward to speaking to you again in about two weeks. And hopefully we'll be able to give some consideration to these two critical elements that we discussed today. Thank you very much.

Anne Aikman-Scalese: Thanks, Ron.

((Crosstalk))

Anne Aikman-Scalese: Bye, bye everybody.

Amr Elsadr: Thank you.

END