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## ICANN Transcription

### GNSO Council & ICANN Board Discussion on the SSAD

**Monday, 22 February 2021 at 19:00 UTC**

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NATHALIE PEREGRINE: Good morning, good afternoon, and good evening, everybody. Welcome to the ICANN Board and GNSO Council SSAD discussion call on Monday, 22nd of February 2021.

Please note that all ICANN Board Members and GNSO Council members are panelists and have, therefore, access to their microphones under the chat option. Panelists will need to set their chat option to “all panelists and attendees” for the content to be captured by the recording and visible to all during the call. Panelists who would like to raise a question, please raise your hand to speak. You can find the “raise hand” option on the bottom toolbar.

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process are to comply with the Expected Standards of Behavior. And with this, I'll turn it over to Maarten Botterman. Please begin.

MAARTEN BOTTERMAN: Okay. Thank you for that. Thank you, everybody. Please allow me to grab what I was looking for. Basically, I would really want to welcome the GNSO for this unique opportunity to discuss how we're going to deal with this process of the SSAD—how we're going to establish this. And for that, this is the first opportunity to meet and informally discuss the suggestions that you raised and the plans for the Operational Design Phase and the scope and timing. This Operational Design Phase is intended to help us to exactly understand what we are about to build and how we can build it. And as we all know, the implementation comes after the policy and needs to make sense.

We foresee a second consultation just prior to the end or just after the finalization of the ODP. And we really appreciate the opportunity to go into this constructively, together. So intent is to have an open line of communication. Intent is not to take over the GNSO's responsibility, which is to make the policy. That is yours and we're here to support you in that and also to make sure that the policy, once we can adopt it, indeed is that.

We also don't foresee very much direct input from the community on the ODP. At the same time, the ODP is also a way to make very transparent the process of collecting the input and the better understanding of the issues as they are. And of course, we're always listening to input. But the drafting of the scoping document itself is an operational exercise. It falls on the responsibility of ICANN Org.

So as I noted in the response to your letter, end of last week, Philippe, we really look forward to dive in together and engage in this way, starting with the discussion tonight. So very welcome to this one and look forward to go into the discussion.

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PHILIPPE FOUQUART: Thank you, Maarten. Hi, everyone, and thanks for your warm welcome. I'm sure all councilors welcome the dialog that we're going to have. I think this will be challenging, both on form and substance, I'd say. Everyone appreciates that the SSAD is a major output of the EPDP Phase 2 so that's more on the substance. And we'll be discussing that.

But it's also, I think, certainly the first time that we foolproof the ODP approach. So I think beyond the substance, I think some of the things that have been identified in our correspondence are not totally related or it could certainly be extended to other PDPs where an ODP would be applied. So I think this is going to be a really interesting question that we'll be dealing with. So I'm sure everyone is looking forward to that.

I don't know how much we want to go into the background. I notice that on point two, we had an overview of our request. Maybe I can very quickly summarize where we came from. Some of the elements that you saw in the original letter that Council sent emerged from the minority statements that were issued during the approval of the final report. So This is where that was coming from. And in that respect, we requested a consultation with you.

Further to that, you will remember that Council produced a more substantial letter, where we tried and went into more details of what we expected the ODP to address. Those were—I'm not going to go into the full list—but things like the expected costs and resources versus the benefits, the time to market, the business risks, etc. and liability. All of these things were, in the Council's view, part of the ODP that would be applied to the SSAD.

And also, I think it's, as I said at the very beginning that beyond the SSAD would be the remit of an ODP. So we certainly need to think in terms of not only this one but future PDPs. So in our view, that Operational Design Phase would cover things like cost estimate, project plan, and timing of the effort. So again, I'm not going to go into the list but that letter covered all the aspects that we initially saw the ODP to be covering.

Your recent letter was well-received. We note that there are a number of things that, in these aspects, are not easily covered. But to cut it very short, I think the element that raised a few

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eyebrows, I think it's fair to say, is the fact that in the Board's view ... And I think it's probably better to quote the text. My apologies if I do only just that—that the ODP's not intended to determine whether the concepts of the SSAD account for the cost and effort required to implement the proposed system, as in your view—in the Board's view—that question was addressed by the GNSO and it had been addressed when Council approved the recommendation and forwarded it to the Board.

I'm sure councilors will elaborate on this but I think this particular point may be something where there's some nuance, I would say, in terms of views. But I hope that sets the scene. And I don't know how you want to proceed, Maarten. But I thought it useful for me to just flag that particular point because I think that that's where ... I wouldn't call that a disconnect but the appreciation may be somewhat different. Thank you, Maarten.

MAARTEN BOTTERMAN: Yeah. Thanks, Philippe, for that. And thankful for recognizing there's two things. One is SSAD and the other is this potentially beautiful instrument that's called ODP that may help ICANN as a whole toward the future. Both, we'd like to develop. For the policy, it's hugely for SSAD policy issue. But for ODP, that's an instrument for which the Organization will bear the burden of giving us the answers that we want, both you and us. Göran, maybe you can come in to explain how that relates—the role of the ODP versus the role of the GNSO, for instance.

GÖRAN MARBY: Thank you. I'd love to. I'm going to say a couple of things that everybody knows, just to establish the same language and why the Board answers this way, and maybe coming to how we can deal with this. The GNSO Council are the ones who recommend the Board to make a policy. And the Board then looks at that policy. And if the Board has a problem with that policy by a two thirds majority, it goes back to the GNSO. The Board cannot make policy by

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itself. And the Board takes responsibilities for its own actions and its own decisions. But the GNSO is the policy making body of ICANN for the multistakeholder model.

And I think that's where, when we talk ... So the ODP is about preparing the Board for a decision. You said that you wanted to have a conversation with the Board about the cost of things. What is lacking is that the GNSO Council, I would say ... And I'm not criticizing anyone. I'm just saying what are your thoughts about the cost-benefits? Because it's actually something that we've, from a policy-making process, probably, at one point, would end up with the GNSO Council.

The other thing that's come up, how the Board's going to handle the minority statements. And we say that that is something that we believe, according to the multistakeholder model, should be handled by the GNSO because you're responsible for that kind of decision making.

So in practice, what we're dealing with now is we have a couple of unknowns with us. That's not part of the ODP process because it's always been like, "We don't want to let the ODP go into policy." The question about policy should be interactive—should belong to the multistakeholder model and the GNSO. So I think that if it raised any eyebrows that the Board realizes the importance of the GNSO Council, that's okay. But let's instead have a conversation how the GNSO would like to have this information before it—and what would it do with it?

Let's say if we've come up with a cost. If cost is the central thing we're talking about, that it costs \$8 million or \$10 million, is that something the GNSO Council would like to take back and make a numbers adjustment about? Or can the GNSO Council give a guidance, saying, "If it costs more than \$15 million, we don't want to do it anymore?"

I think instead of having endless debates about things, let's figure out a way how to solve it and how to work with it so the GNSO Council feels like they have the right amount of information for making decisions because the Board and the ICANN Org is not tasked to make policies in that sense. I hope that answers a little bit of your questions, when it comes to the different roles.

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MAARTEN BOTTERMAN: Philippe, was that useful for you?

PHILIPPE FOUQUART: Thanks. I think it's a useful start. And we obviously welcome the dialog. I think the expectation was that, moving forward, the financial elements that were taken into account during the PDP would be—and there was, as far as I can remember but those who were directly involved in the PDP could correct me if I'm wrong. But that was a rule of thumb, pretty much, and rough estimates. And I think there was also a hope that, moving forward, those would be further refined.

But I personally take your point, Göran, that figures are one thing and we need to understand what we would be making of them, if you see what I mean. How much is too much, for instance? What will we do with these elements? So that's a point well made. But I think there was also a recognition that the pros and cons would be assessed, given that the implementation during the PDP was not something that was clear enough as guidance for those involved. And that would be, probably, clarified during the consultation of the Board.

I don't know how you want to proceed, Maarten, but I'll—

GÖRAN MARBY: May I make another comment? When the GNSO Council decided that this policy is a recommendation to the Board, our job is to make it happen. And if we find problems, we always have to go back to the GNSO Council. That's the rule.

What I'm probably looking at is that because of how we do things now ... I see Kurt says, "Nope." I don't know what he says nope to. But if the GNSO Council would like to have a say in if this is worth it, let's work out a way to do that. But also, be prepared to make decisions about it. It cannot be the Board who makes ... It's always going to go back to the GNSO Council anyway. So why don't we figure out a way of doing that instead of having a discussion who is going to do what because it's always something that the ...

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If the GNSO Council makes a recommendation about a policy because you think it's going to be implemented, taking into account the things that you want to take into account. I think we agree on that principle. I hope we do, anyway, because you're the GNSO. I'm actually defending the role of the GNSO.

MAARTEN BOTTERMAN: You've been very clear in the policy expression and also in your follow-up letter. So that helps us to move forward to a next step, which is not about blindly doing things but about getting more transparent. What is really behind it? And we'd love to keep an open dialog about that to make sure that we're on-target together. But I see Pam has her hand up.

PAM LITTLE: Thanks, Maarten. But I see Kurt said he has his hand up before me. So, Kurt, would you like to speak first? And I'll come after that. Thank you.

KURT PRITZ: Sure. But I'd rather hear what you had to say first. First of all, my "nope" was supposed to be a private message. So it wasn't to anybody here. So my comment to this is that as you know, the consensus building process is difficult and the SSAD model that was developed probably did not meet any one stakeholder group's hopes or expectations, and at the end, wound up being a compromise as consensus decisions so often are.

So my takeaway from listening to some of the meetings and reading the reports is that when the team finished, it looked at what it created or proposed and said, "Well, now that we've done this, is this worth it?" So it's just not how much it costs. But the EPDP Team put certain things into the final report that it should be self-sustaining. So the cost-benefit or feasibility analysis should necessarily include costs, which include startup costs and ongoing costs. But also, what's the expected demand for this and what's the market willing to bear to pay for this.

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So I think if the decision is thrown back to the Council, the sort of information we'd want to know is, given where we are, do we think this model, as designed by the EPDP Team, will that work for the participants that want to use it, to the extent that the model, the way it's designed, will sustain itself? And we can also provide—understanding that there's a cost but there's a range of costs. How much risk is there? So we think this is going to cost \$9 million. But does it cost \$9 million plus or minus \$8 million or plus or minus \$1 million. And what are the risks of failure of it not coming to fruition?

And also, there's ways to ameliorate risks. Maybe there could be, I think it was suggested, a phased implementation. So it might be phased, meaning after each step, we look at the costs and estimates and see if they've wildly changed, or the utility has wildly changed. Or the introduction of some simple and cheap services first. That might drum up demand, then, and point us in the better direction.

So the long and short of it is, I don't think determining the costs or a cost level would be particularly helpful. But the cost versus the utility and the cost versus the demand—that sort of analysis. Thanks.

GÖRAN MARBY: May I make a comment?

MAARTEN BOTTERMAN: Sure, if you want to react to this.

GÖRAN MARBY: Kurt, 100% I do agree with you and also with some of the comments in the chat. I have no disagreement. The problem is who makes the decisions. And this is where it becomes complicated because in a way, we haven't done this before. No one in the world has done an SSAD. And I happen to believe that when it comes to the benefit of something, depending

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on cost, for me—and I'm sorry if I'm stubborn—that's an ingrained part of the actual policy making process itself. And therefore, the GNSO Council is the place to do that.

We'll be happy to provide information and work with it and do surveys. This is outside the ODP, to do surveys about how many people's going to use it to support the GNSO Council in its decision-making process. But from a multistakeholder model ... This is me. I'm talking for myself, rather than the Board. It will put the Board in a very strange position if the Board second guesses, in a way, so fundamentally a policy coming from the multistakeholder model for the GNSO.

I would presume that that's not part of the ODP. ODP is to prepare the Board for a decision. If the GNSO would like to engage and ask questions to ICANN Org through the Board about specific things that may alter your decision, or enhance your decision, or not change the decision, we are, of course, 100% ready to help you with that. So don't take that it's not part of the ODP as a thing that we would never support the GNSO Council in those things. It's just that I believe, stubbornly, about the importance of the bottom-up process.

And I understand the consensus policy, how hard it is to find—that all recommendations are, in a way, compromises and that has an effect. But let's work on the quality work that was actually done to build on that. We are open for it. I think that the Board is open for it. So, I don't disagree with you, Kurt, in any way. It's just that it's not part of the ODP phase because that's a different thing. The ODP is about preparing the Board to make a decision about something that the GNSO Council already has decided. All good, I think.

MAARTEN BOTTERMAN: Yeah. And also, back to the quote from the minority statement. And I've seen it. I just don't remember from which minority it was by heart. I doubt whether this minority statement is also based on a more firm understanding about the implementation than we currently have. So it's really about getting that firm understanding because nobody wants to do something that's unreasonable. So let's see what is reasonable. But, Pam, thanks for your patience.

PAM LITTLE: No problem. Thank you, Maarten. What I was going to say before Kurt's intervention was about how difficult this EPDP Phase 2 was for the Council as well. As Göran said, we in the ICANN community hold this very core to our existence, this bottom-up policy making mechanism. So when the recommendations came to the Council, the Council was really grappling with something that it has never done before. We have a major piece of work from this EPDP and this major undertaking to build this system to replace the WHOIS.

But if we look at those recommendations, we can see this is not a usual PDP. This is a very challenging PDP and some of those recommendations actually did not achieve consensus or full consensus, including this particular topic about financial sustainability of this system yet to be built. That's why the Council really was struggling how to deal with such a challenge in front of us.

And going back to the role of the Council versus the Board, we felt—at least from my perspective and I can't speak for all the councilors. What was in my mind was the Council's role is quite limited. We are the manager of the overall PDP process. But the Board's role is much larger. The Board has ... As you know, in the Bylaws, when you consider something from the Council, you have to take into account much broader issues than the Council, perhaps. For example, you can reject the Council's recommendation on the grounds that it is not in the interest of the community or the Org.

We don't have that mandate in the GNSO Operating Procedures. We look at things in a more narrow way. So I'm not sure whether the discussion so far, whether it is up to the Council or the Board. I personally feel it is really the Board's role to decide. We are saying, yes, the Council's role is to approve or not approve these recommendations from the EPDP. And everything considered, we felt it was the best to approve those recommendations as a package. And I believe that was to respect the intent of the EPDP Phase 2, as well as that was explicitly requested by the team that we consider the whole thing as a package. And that's why all recommendations were approved.

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But we feel this bigger question of whether such a system should be built really needs a conversation. And I feel it is really the Board's role, not the Council's role because the Council doesn't have the information to decide whether everything weighing up, pros and cons and cost and benefit, whether this system should be built. I don't believe that is the Council's call. So I'll pause there and see if there's any reaction or comment to that. Thank you.

MAARTEN BOTTERMAN: Thanks for that, Pamela. Of course you are right, that we do have this broader responsibility—for instance, looking whether things are legal within the Bylaws and if they're reasonable from a governance perspective and from public interest perspective. At the same time, it's not our responsibility to make the policies. That's why, rather than challenging the policy from the outset, it's so important that we get a better grip on what it really means for you to get to implementation. Are the costs excessive? Does it reach its objectives—things like that.

And this is why I'm so happy with the ODP and going together into that, from both, each other's responsibilities, to get a clear view of what this means before we continue to talk in the abstract. So let's see what we can do together. Let's keep very clear that the policy is coming from the GNSO and the role of the Board is to see whether it's reasonable, as well, from a broader perspective, as you expressed so well, I must say.

But in the end, that wouldn't make us to change the policy. We would say, "Well maybe, GNSO, you would reconsider," if from the ODP it turns out that it seems unreasonable. So in that way, I think this is a joint process that can help us to get to a place where we need to be. Does that make sense to you, Philippe?

PHILIPPE FOUQUART: Absolutely. Thanks, Maarten. It does make sense. And I'll follow up later. Thanks.

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MAARTEN BOTTERMAN: Good. Any other questions, suggestions at this point in time?

PHILIPPE FOUQUART: There are a few hands up in the chat. I think I saw Tatiana. I don't know if there was someone else but at least we have Tatiana.

MAARTEN BOTTERMAN: Okay. Yeah. Sorry for not seeing. The chat flies by. So if there's any way you can find the hand up button, that would have the preference. But in the meanwhile, thank you for catching that, Philippe. Tatiana, please.

TATIANA TROPINA: Thank you very much, Maarten. Thank you very much, Philippe, for catching it. Indeed, for some reason, I don't have a hand raise button. I have no idea. I think my Zoom is actually updated. But whatever. Thank you for catching it.

I just wanted to support what Pam said. Also, let me just start with, I do appreciate what Göran and Maarten are saying there. I do appreciate that you try to engage with the GNSO Council and give us more prominent role in taking this decision.

I'm still not entirely convinced about the duties and responsibilities here because it is hard for me to envisage or imagine that we are going to reject policy because we can reject it for procedural reasons. So the Board has fiduciary duty. The Board has the say, to say whether it's feasible or not. The Board has to make cost-benefit analysis. Not the Board but this is the operational duty, in a way, and fiduciary duty. And they have a policy duty.

And at the end, if it comes the question of the lack of feasibility or lack of cost-effectiveness, I'm still struggling to understand how the GNSO can turn back and say, "Okay. Now, this policy is not implementable." And still, I'm wondering how is it policy issues?

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I want to flag this because I'm personally ready to proceed, because I do believe that if you want to give GNSO a broader and bigger role here, we'll gladly go into this adventure and have our say here. But I just want to flag that perhaps, at the end, it would still be operational and fiduciary and whatever decision and not a policy decision. So I can imagine that we might get back to this conversation a bit later, once we know the costs and once we know the consequences, although I don't oppose going there. I just want to flag that it might turn out to be still not a policy decision. Thank you.

MAARTEN BOTTERMAN: Also, to focus on what we need to get out, rather than what's exactly the role. Please do know the Board fully respects that policies are primarily coming from the community. And that's not what we try to touch. So I saw, in the meanwhile, Kurt. And Jeff said he couldn't raise his hand but I don't know whether that's an attempt to raise a hand as well. But first, Kurt, please share the floor.

KURT PRITZ: Yeah. So I agree very much with what Tatiana just said and also Pam. So I think if we develop some of this, I think we're all in agreement. I think if we develop this information—the costs, the demand, will it be used—I think that'll make, at the end of the day, the decision-making process a lot easier, once we know some more information.

So we're talking about who can make this decision. If we do this analysis, we're likely to find, "Boy. This is going to cost a lost of money and it's not sustainable," or we'll find that there's demand for such a thing and it would provide a lot of benefit. And that would take the difficulty about who's making the decision and how it's made out of the process. So what Tatiana just said about do the analysis and then let's have this conversation about the decision-making process seems to be a good way forward. Thanks.

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MAARTEN BOTTERMAN: Okay. Thanks for agreeing with that. By the way, I just saw the “raise hand” option appear in the bottom of the screen. So it’s apparently easier now, probably for everybody, to find it. Yeah. Thank you for that, Kurt.

Any other questions, suggestions at this moment? Please do take into account that we do have the policy. We do have the letter from the GNSO Council in preparation of the ODP and the scoping of that. Anybody, more questions at this moment? I’m both watching the chat and the hands now. Is there anything else you would like to discuss, Philippe, at this point?

PHILIPPE FOUQUART: Thanks, Maarten. I think we went as far as we could, really. It’s an initial exchange of views. I think we’re not that far. But I think we’ll learn as we move forward. I think, to some extent, Maxim is right. It’s probably not the easiest example to fool-proof the system. But there we are. It’s not as if we a choice. And as I put it as a joke in the chat, not sure SubPro would be any easier. But I’m with you here. Let’s just try and figure out, as we move forward, and the elements put forward.

I think the elements that will be put forward in the framework of the ODP to the Board, we’ll take that on-board as well. It’s not meant to supersede the role of the Board, really. But we’ll use that opportunity to provide our own comments as well, without getting in the way. Certainly not. But we’ll use that to, again, try and improve the process, possibly beyond the SSAD. So bear with us. We’ll take that liberty to intervene when the material is available. Göran mentioned that.

But I think we’ll get back to you, probably following this call, with a more—I wouldn’t say substantiated but we had an initial exchange of views within Council. We’ll further work on that and follow up with you after this call. The ODP will produce whatever it has to produce and, as I said, we’ll take the liberty not to intervene but to provide our views as we move along. I’m with you. Let’s just be pragmatic and approach that.

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MAARTEN BOTTERMAN: That makes sense. I saw a question in the chat also about a timeline. Göran, as you are raising your hand, maybe some words from you also on the timeline considerations. I know we don't know when things will be ready. But what can you say about it?

GÖRAN MARBY: So we are now, together with the Board Caucus Group, in the preparation mode for the proposal for the Board to do the ODP. And I think that that first version of the ODP will be decided by the Board, when Maarten so decides, which is not going to be long away.

But one word of caution. The ODP charter, if you might call it that, is not a final document. There will be changes during this period. New ideas will come up and maybe some ideas will be looking bad when we look into it. It's a fairly long list. And as I said in the chat, many of the questions that you are asking are actually in the ODP. I would say it's almost a perfect match. We have some additional ones because we are nerdy and have to build it. But in general, they're all the same. The only question we do not have there is that is it good for anyone to make this policy?

But let's go back and discuss who should make that decision. I'm stubborn, as you know. As we said, inside, we are going to share that information also with the GNSO because the GNSO is the policymaking house.

And I don't want to step out of any line or anything by saying that maybe the missing point is that when the PDP is closed, the PDP is closed down. And those people, it's not there. Maybe the GNSO Council should think about that during this ODP phase, that maybe the PDP group should be there for an interaction. I'm just saying. And it's really not that much about the SSAD but also making sure that the fantastic people in SubPro, as you mentioned, Philippe, are there as well and make sure that they have something to do in their lives as well.

We're doing this for the first time. We're doing this—and I know the Board is doing it—for transparency, accountability, and to make it where we have no hidden agenda. We're trying to do something that is fairly complicated in an open and transparent way. Let's work together.

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But that's the timeline. In a couple of weeks, the Board will make its first charter of the ODP but it's not going to be a fixed document. It's going to be publicized. And according to the way we presented the ODP—and thank you for your good comments—we're going to learn from the experience. But I think it's going to be a good learning curve. That's a very short update.

MAARTEN BOTTERMAN: Thanks for that.

GÖRAN MARBY: Marie, the structure of the ODP is a Board decision. So it will be ... That's where it actually happens.

MAARTEN BOTTERMAN: So the emphasis was on doing this together. So for sure, transparency is first and up-front in this. And the ODP is an instrument that we think will serve much more of the complex actions that we're facing in the future. It's the SSAD that we need to get as good as possible. So thank for willing to engage with us. And we look forward to further engagement in the further steps of the ODP, towards implementation of the policy in principle and for all to get a better feel for the scope of what that means. Last word to you, Philippe.

PHILIPPE FOUQUART: I just want to thank for this, Maarten. As I said, as we move forward, we'll move along. And I think there's also need to ... As I said, we'll come back to our SGs and Cs, see what we understood from this conversation, and further get back to you with the remaining questions or the questions that we think are still ambiguous. There's also an element of risk in pretending we agree, when there's still that disconnect. But I think we need to go through this conversation to make sure that we get to a common understanding. So, thanks again.

MAARTEN BOTTERMAN: I 100% agree. Thanks for that. This needs to be clear, not only in my mind, and your mind, and Göran's mind, and Kurt's mind, but in all of our minds. It's good to have a shared understanding. So let's do that via formal exchange, as well. That will help.

So, thanks a lot. Appreciate it. I think this is the way to do things. It's not primarily about who is the boss or does what. It's about doing things together while respecting each other's roles. And that is what we're here for, to do so in a transparent way with the best possible support from the organization to not continue to talk in abstracts but to get as concrete as we can.

So really appreciate your time. And let's celebrate that this one-hour call only takes 45 minutes. So giving you back the rest of your evening, morning, or night, wherever you are. So thanks, Philippe. Thanks, all.

PHILIPPE FOUQUART: Thank you all. Cheers. Bye-bye.

DAVID OLIVE: Bye.

UNIDENTIFIED MALE: Bye.

UNIDENTIFIED MALE: Bye-bye.

TERRI AGNEW: Once again, the meeting has been—

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