
ICANN Transcription

GNSO Council Meeting

Thursday, 14 April 2022 at 13:00 UTC

Note: 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.

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Zoom Recording: <https://icann.zoom.us/rec/share/ahdK-5D8jNXo6jvokJ9BGQ4rg6FkZCggMsJqTSH0LNRMGK1CWaAy38wDG1mMiW30.Xs9FFdMA3M6ZfLAY?startTime=1649941279000>

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page <http://gns0.icann.org/en/group-activities/calendar>

List of attendees:

Nominating Committee Appointee (NCA): – **Non-Voting** – Olga Cavalli

Contracted Parties House

Registrar Stakeholder Group: Antonia Chu, Greg Dibiase, Theo Geurts

gTLD Registries Stakeholder Group: Maxim Alzoba, Kurt Pritz, Sebastien Ducos

Nominating Committee Appointee (NCA): Desiree Zeljka Miloshevic Evan

Non-Contracted Parties House

Commercial Stakeholder Group (CSG): Marie Pattullo (apologies sent, proxy to Mark Datysgeld), Mark Datysgeld, Philippe Fouquart, Thomas Rickert, John McElwaine, Flip Petillion

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

Non-Commercial Stakeholder Group (NCSG): Juan Manuel Rojas, Stephanie Perrin, Manju Chen, Wisdom Donkor, Tomslin Samme-Nlar, Farell Folly

Nominating Committee Appointee (NCA): Paul McGrady

GNSO Council Liaisons/Observers :

Justine Chew : ALAC Liaison

Jeff Neuman: GNSO liaison to the GAC

Maarten Simon: ccNSO observer

Guest:

Chris Disspain – EPDP Specific Curative Rights Protections IGOs chair

ICANN Staff

David Olive - Senior Vice President, Policy Development Support and Managing Manager, ICANN Regional

Marika Konings - Vice President, Policy Development Support

Mary Wong - Vice President, Strategic Community Operations, Planning and Engagement

Julie Hedlund - Policy Development Support Director

Steve Chan - Senior Director

Berry Cobb - Senior Program Manager, Policy Development Support

Emily Barabas - Policy Senior Manager

Ariel Liang - Policy Senior Specialist

Caitlin Tubergen - Policy Director

Nathalie Peregrine - Manager, Operations Support

Terri Agnew - Policy Operations Specialist (GNSO)

NATHALIE PEREGRINE: Good morning, good afternoon, good evening, everybody. Welcome to the GNSO Council meeting on the 14th of April 2022. Would you please acknowledge your name when I call it? Thank you ever so much. Antonia Chu.

ANTONIA CHU: Present.

NATHALIE PEREGRINE: Maxim Alzoba. I don't see Maxim in the Zoom yet. Kurt Pritz. We'll circle back to Kurt. Sebastien Ducos.

SEBASTIEN DUCOS: I'm present, Nathalie.

NATHALIE PEREGRINE: Greg DiBiase.

GREG DIBIASE: Here.

NATHALIE PEREGRINE: Theo Geurts.

THEO GEURTS: I'm here.

NATHALIE PEREGRINE: Desiree Miloshevic.

DESIREE MILOSHEVIC: I'm here.

NATHALIE PEREGRINE: Thank you. Marie Pattullo has sent her apologies and has assigned her proxy to Mark Datysgeld. Mark Datysgeld.

MARK DATYSGELD: Present.

NATHALIE PEREGRINE: John McElwaine.

JOHN MCELWAINE: I'm here.

NATHALIE PEREGRINE: Thank you. Flip Petillion.

FLIP PETILLION: Present.

NATHALIE PEREGRINE: Philippe Fouquart.

PHILIPPE FOUQUART: Here. Thank you.

NATHALIE PEREGRINE: Thank you. Thomas Rickert.

THOMAS RICKERT: Present.

NATHALIE PEREGRINE: Paul McGrady.

PAUL MCGRADY: Here.

NATHALIE PEREGRINE: Wisdom Donkor.

WISDOM DONKOR: Present.

NATHALIE PEREGRINE: Stephanie Perrin. I don't see Stephanie in the Zoom room yet. Farell Folly.

FARELL FOLLY: Present.

NATHALIE PEREGRINE: Manju Chen.

MANJU CHEN: Here. Thanks, Nathalie.

NATHALIE PEREGRINE: Thank you, Manju. Juan Manuel Rojas. Juan, you might be muted on your end. As we can see you on mute in the Zoom room, I note for the record that you're in the Zoom room with us. Tomslin Samme-Nlar.

TOMSLIN SAMME-NLAR: Present, Nathalie. Thank you.

NATHALIE PEREGRINE: Thank you. Olga Cavalli.

OLGA CAVALLI: Present, Nathalie. Thank you very much.

NATHALIE PEREGRINE: Thank you. Jeffrey Neuman.

JEFFREY NEUMAN: Present. Thank you.

NATHALIE PEREGRINE: Thank you. Justine Chew.

JUSTINE CHEW: Present. Thank you, Nathalie.

NATHALIE PEREGRINE: Thank you. Maarten Simon. Maarten has just joined the Zoom room. Thank you. And Maxim and Kurt have also just joined.

Guest speakers today, we'll have Chris Disspain speaking to agenda item five, and from the GNSO support staff, we have David Olive, Steve Chan, Marika Konings, Julie Hedlund, Berry Cobb, Mary Wong, Caitlin Tubergen, Emily Barabas, Ariel Liang, Terri Agnew and myself, Nathalie Peregrine.

I'd like to remind everyone to remember to state your names before speaking as this call is being recorded. We are in a Zoom webinar room. Councilors as panelists can therefore activate their

microphones and participate in the chat once they have set their chats to “everyone“ for all to be able to read the exchanges and for them to be captured by the recording.

A warm welcome to attendees on the call who are silent observers, meaning that they do not have access to their microphones but do have access to the chat. Please note that private chats are only possible among panelists in the Zoom webinar format, so any message sent by a panelist or a standard attendee to another standard attendee will also be seen by the session’s hosts, cohosts and other panelists.

As a reminder, those who take part in the ICANN multi-stakeholder process are to comply with the expected standards of behavior.

Thank you very much, and Philippe, it’s over to you.

PHILIPPE FOUQUART: Thank you, Nathalie. Good morning, good afternoon, good evening, everyone. This is Philippe Fouquart speaking here from Normandy, France, it's 3:00 in the afternoon here, a very comfortable time zone for once. I suspect it's quite uncomfortable for some of you in the West Coast and the Pacific. So thanks for being with us.

We've got quite a full agenda today. That's not unusual in terms of distribution between the conclusions of the PDP work with the approved recommendations, or yet to be approved recommendations I should say, on the curative rights protection of IGOs that we will hear in a moment, as well as the follow ups on

the approved recommendations this time on the updates from the small teams. So this is a rough overview of our agenda.

So I think we can move on with our 1.2 with the updates to the Statements of Interest. Anyone? Seeing no hands, any change to the agenda that you'd like to see?

Thank you. We'll just note as usual the minutes from the previous meetings with the February and March ones, you've got the pointers on the agenda. And then move swiftly to item two, and our usual review of the project and action list. And I'll just note Berry's email in my notes. That's April 6, that you will have in your mailboxes, and I'll turn to Berry for that update.

BERRY COBB:

Thank you, Philippe. For today's update, we're going to just quickly review through the action decision radar. As noted in that email, it's been updated to reflect the actions and or decisions that will take the Council through the month of October, which, of course, in September is the annual general meeting.

The first thing I want to draw your attention to is the unplanned section. For the longest time, we've had the topic of DNS abuse there because it's unclear what future work may be placed on the GNSO. Of course a small team is now active reviewing through that topic, as well as another small team is formed in responding to the Board's letter with respect to modifying gTLD consensus policies. And that work is progressing, the closed generics topic and the additional guidance for SubPro topics that's starting to form.

For a while I questioned the efficacy of this unplanned section of the action decision radar. But now, I think it's starting to produce value to start to demonstrate the amount of work or activity that is ahead of not only the Council, but the whole GNSO. Because it's likely that each one of these outcomes that are produced from these efforts will spawn additional work that we've never planned for. I'm not really sure how we navigate around this in terms of capacity and workload management. But at least it's a mechanism that starts to draw our attention to it.

Moving down to the zero to one month range marker. As noted, the small team is doing its work with respect to responding to the ODA and the ICANN Board, which I believe is part of an agenda topic today, as well as the EPDP on curative rights for the IGOs, also an agenda topic for today. And likely that the Council will consider the group's final report at its next meeting. And of course, as you all know, there's already intense planning underway with respect to ICANN 74.

And then final part here, moving down to the one to three month range marker, just looking ahead. So as you're aware, there's an active public comment open with respect to the RPMs phase two, the UDRP review. I believe it closes in the next week or so, whereby staff will produce the public comment report and pass the results back to the Council and then make a determination about next steps for potentially forming a charter drafting team and whether to launch that effort is around the corner assuming that the Council does adopt the EPDP on curative rights protections for IGOs, and we of course have the recommendations report to the Board that the Council will have to consider.

The next one is really just informational. But the Transfer Policy Review working group is still on target to deliver its initial report for public comment towards the end of June. No action or decision by the Council. But it is a significant milestone worthy of paying attention to because immediately after that, that group will begin its deliberations on the Phase 1B topics that will all coalesce into a final report with a targeted delivery in 2023.

A few months out ahead of us, probably towards the end of June-July timeframe, all of our required activities with respect to our operations program will start to kick in. Specifically here, we'll be starting the process about obtaining expressions of interest for one of the GNSO members to be represented on the Customer Standing Committee, of course, will be concluding ICANN 74, and possibly the Council having to responded to the GAC advice. It's anticipated that the CSC effectiveness review will conclude its work, I believe in June. And that, of course, is delivered to the Board. But it's also delivered to the GNSO and other SO/ACs as appropriate to consider the results of that review.

And then the final item that I'll just talk about within this marker is the Council probably around July is when we'll initiate this. But the Council need to consider whether or not to request a policy status report on the review of the expiration consensus policies that have been in effect for a while.

Just to conclude on the action decision radar, the remaining items, as I noted, are all of those that are required to get the Council and the GNSO through the Annual General Meeting. You'll see most of these are in regards to operations-related-type activities. And it is a significant portion of our work there.

So now let's turn over to the project list. And really, the only thing I want to draw the Council's attention to is just the summary page, specifically to draw attention to the registration data accuracy scoping team. If you've been tracking the project packages over the couple of months, the group has been signaling that they were behind schedule on accomplishing some of its assignments.

It was only after the motion and documents deadline that the leadership team decided to downgrade this particular project. So there's no action right now for the Council with respect to this, but likely in May, we'll want to focus a little bit of attention with regards to this scoping team.

In general, there's kind of three components that are going on here. One is the scoping team is behind that schedule for all four assignments, but specifically right now, pretty severely behind schedule in regards to assignments one and two. Something that was unknown to us or an occurrence that is outstanding, you'll recall that the ICANN Board and Org are working on collaborating with the European Commission and the data protection boards to seek additional information about bulk access to registration data, specifically tied to the ARS.

In the meantime, the scoping team is working on part of assignment two to flesh out additional details regarding possible data sources that don't involve processing personal data. And even with those, that is still behind schedule.

And I think either way, given the absence of data, it's very likely that this group will need to be paused to go acquire data, performance studies, whatever those exact items may be, to be

better informed before it can complete assignments three and four. So like I said, this is really just a signal to the Council and we'll probably be discussing this in May. And one final comment I'll make here is the status was downgraded to behind schedule and the health is labeled as in trouble.

Having thought about it, that really should be reversed. The status should be red, that we are going to miss our originally planned target dates, and that the health would really be a yellow condition and at risk. But the intent here was just to give an indicator to the Council that there's probably some attention that needs to be given to this. That's all I have. Thank you, Philippe, I'll turn it back to you.

PHILIPPE FOUQUART:

Okay. All right. Any questions or comments for Berry? I can see no hands, but just to add a couple of notes. Just to let you know that staff and leadership are working on a paper that will try to spell out the various dimensions of the work on the modifying consensus policy paper on one hand, a separate track on the dialogue with GDS, possibly, and the dialogue that we will have with some Board members before the SPS, trying to articulate those various streams. And we'll share that as soon as we can.

And the second comment is more of a reference to the AOB that we have today. In terms of timeline, you will remember that the CCOICI has worked on the Working Group self-assessment, but for timing reasons, it will not be put to public comment anytime soon. But it's likely that we can use this for the self-assessment of the curative rights protection of IGOs since it's hopefully due to

conclude soon. So please have a look, if you can, on the AOB item on this. There's a timing and procedural issue on this.

So with this, I think we can move on to not quite the next item because we have nothing under consent today. We'll then move on swiftly to Item four in our discussion, an update from small team on the SSAD. As you would remember, we received a letter from the Board before the publication of the ODA in January with some questions and concerns from the Board relative to the implementation of the SSAD and notably on the financial sustainability of that.

So we formed a small team to review those questions as well as the ODA. And this small team is going in the direction of recommending the development of a proof of concept prior to actually answering the Board's questions. The goal of this discussion is very much to make the broader Council aware of those developments, the expected remit of that proof of concept and see whether in principle Council would support that approach and how we might go back to the Board initially with that approach.

And I would also acknowledge that some of you would have noticed, I don't know if Steve's email made it to the list, I don't think it did. Steve Crocker's email, because he probably didn't have posting rights. But last night on that topic, Steve shared his skepticism on that concept of [a light] SSAD. I just wanted to acknowledge that.

So with that, thank you, Flip. I wasn't sure if it was an individual list. I don't know how to describe that. But it exploded sort of the

Council list. So with this, Sebastien, I'd like to hand over to you if you would lead us through the progress of the small team. Thank you.

SEBASTIEN DUCOS:

Thank you, Philippe, and thank you for the introduction. You covered everything. Just joking. So you would have seen the report that we submitted, I believe on the 4th, anyway, ahead of this meeting. So again, the small team was tasked with four main. One of them was to review the ODA and verify that it accurately covered the recommendations and correctly interpreted them, the recommendation of the EPDP.

The small team found that in fact there was a number of inaccuracies, there was a number of things that have been misinterpreted. But all in all, most of it was due to the fact that the ODP team, in order to form a view of what the end product would look like in order to be able to evaluate risks and costs, essentially had taken a few decisions that turned out not to be the decision of the [ODP] team. But as long as these decisions were just taken in order to be able to make some assumption of evaluations, it was deemed okay.

The team decided or asked for those to be recorded to make sure that these misinterpretations wouldn't be carried over to the future IRT and be corrected by then. But nothing that we found was material enough to throw the conclusions or the findings presented in the ODA, in short.

Were there overlooked aspects in the ODA? I think that there was full agreement in the team that the ODA was presenting a lot of information. But particularly with regards to the financial, the astronomical cost around it, we're finding that there was probably not enough information in the ODA to have a clear-cut decision and thus, started looking at an alternative possibilities.

So task three of the small team was to share views on the Board's concerns, and this refers to, as Philippe said, specifically to the letter that we received shortly before the publication of the ODA end of January. And in that letter, again, the Board's concerns were towards the enormity of the cost and was envisioning already then reducing the SSAD ambitions to look at a—I don't want to say simplified because none of it is simple, but a tool that would reduce its set of options and offers and features.

And in this regard, the team indeed thought that it will be wise for the Board to pause any decision on the SSAD today and to go into a phase that we first referred to as a pilot or now more of a proof of concept, but essentially have a dramatically simplified—and again, none of this is simple, but simplified version of the SSAD and to pilot this for up to two years in six-month increments with a review every six months in order to test a number of hypotheses, principally around usage, not to say just traffic but who, how and what sort of outcome would be supported through that usage in order to be able to better estimate what is required and how to deliver it.

The report goes into more details for the proof of concept. I'm more than happy to field questions if you have any. But I don't think that I need to go through all the details of it.

To maybe the last question that was given to the ODA, to share any aspect that could help the Board take decisions on this. So apart from the fact that the small team would ask the Board to pause any final decision on the SSAD, we did share with the Board, not in its entirety but through its GDPR caucus, which is the members of the Board that are particularly alert of all the these problems and aware of the situation.

So we shared this proof of concept with them. I think it was, at least insofar as has been developed today, it was well received. And we shared that also with the ODP team and tasked them—preemptively, knowing that that a green light will have to come out of this discussion today, but we tasked them with evaluating—in light of all the everything we found out from ODA, reevaluating the solution that we are describing in our proof of concept, and put both a price tag and a timeline.

At the time we submitted the report, we hadn't had the answer from the ODP team, from Eleeza Agopian, but we received it shortly after. It was shared too, I believe. The suggestion from Eleeza is that the ODP team have a month, month and a half to review their assumption in the light of what we described for the proof of concept and have prior to our June meeting, prior to ICANN and our June meeting, a response to us.

Now this requires two gates. The first one is for this Council to agree with then plan today or following today, in order for us to give our green light at Council level as the ODP team is ICANN staff, it's not for us to direct their work.

And so I have already been in touch with the Board through Becky Burr in order to make sure that once we give the green light, they are able also to give the green light and invite Eleeza and her team to proceed with this.

I'm not quite sure what the timelines are there. I have reached out to Becky but haven't had the answer yet. I think it's fair to say that the Board are fully aware of our work. Once again we've had several meetings with them and they know exactly where we're at.

So I'm not exactly sure of timeline mainly for formal reasons, but in principle, there might be some formality and we may need for them to meet in order to cover those, but in principle, this has been pre-agreed in our previous discussions.

Now, following the discussion today, and again with your green light, this step of informing the Board and asking Eleeza Agopian to go ahead with the work that you propose to deliver, I would like also to get back to the Board formulating an answer that is very much—well, first of all that is mainly the report that I shared with you with just an introduction letter and essentially it answers all their questions and covers the topics. so I would like to have a green light from this Council to obtain that.

Now, as Philippe , I think that Steve actually wrote in his email that he had everybody's email, but two councilors, and I'm thinking Mark Datysgeld and I can't remember who else, maybe you, Justine, I can't remember exactly who else was mentioned.

JUSTINE CHEW: Antonia.

SEBASTIEN DUCOS: Oh, sorry. Okay. Essentially, Steve has raised during the small team his concerns several times on several occasions, both verbally and in writing. They have been taken on board and we did hear them. I appreciate the outreach and I appreciate his concern his concerned that are probably very valid.

In all honesty and impartiality as the—not the chair but the person that sort of shepherded this discussion, I believe that these questions have been heard, have been discussed by the small team who decided to move forward with it.

I want to also acknowledge a second letter that was sent not to the Council, but that was sent to the small team in two separate iterations from Michael Palage who also believes that the direction that we are suggesting is not the right one.

He's maybe more interested because he has, in his view, a solution that we should look at, which I personally haven't discarded, but the small team in general acknowledged the letter but did not decide to pursue it at this stage.

One doesn't impede the other. We can ask Eleeza and the ODP team to still look at what the impact, the financial and time impact would be on this proof of concept. And at the same time, in the next month and a half, have discussions with other parties, Michael Palage or somebody else, on solutions that may already exist and we may want to look into also. All and any of these directions I'm willing to spend time on and report to this Council

once we found more information. And this closes my comments, and I'm happy to take any questions.

PHILIPPE FOUQUART: Thank you., Sebastien. I wouldn't say congratulations, but appreciation of this, taking on Board this really difficult task of not cherry picking but trying to find a balance and sorting out the priorities of an all embracing approach and via this simple exercise, try and find a way that will not defeat the initial purpose of [that apparatus.] I think it's always a challenge, especially when we have financial constraints on top of that. And I understand that that's the main reason for the exercise. Any questions for Sebastien or on the report that was the initial report that was shared 10 days ago? Manju.

MANJU CHEN: Thank you. I have one question. So I noticed that there's this proof of concept in the preliminary report to the Council. But then I also saw another document, which is titled, the SSAD light concept note. I'm wondering—because they look kind of similar, but then kind of different too. So I'm wondering what are the relations between these two papers. Is one from staff and one from the group, or this like concept is a first step of building this proof of concept? Thank you.

SEBASTIEN DUCOS: So thank you, Manju, for your question. The group found it difficult to put a name tag on this proof of concept. I've mentioned pilot and proof of concept, the SSAD light was the sort of the name, the

working name that staff used. Essentially, that SSAD light is Eleeza Agopian's answer to our request to look into that proof of concept. So they're exactly the same thing. It's just a question of label.

But so we present it to staff what our idea was for proof of concept. And that was their answer, their preliminary answer. That SSAD light obviously is not designed, it is just right now the skeleton of the design work that we would possibly greenlight today. I hope that answers your question. I see Tomslin in the queue next.

TOMSLIN SAMME-NLAR: Thanks, Sebastien. I have two questions. The first is a question on who is going to pay for the light, the proof of concept? And the second is procedural. I wasn't sure, because I heard you mention that you expecting green light from Council. So I wasn't sure if that's in the form of voting today or how it's going to be. Thanks.

SEBASTIEN DUCOS: Thank you, Tomslin. So the first question, who is going to pay? Obviously, we would need to see first the ODA team's estimation. But in principle, the Board has agreed to at the very least look. They don't want to preapprove obviously before seeing a price tag but in principle, they would cover that.

This is not to say that at some point, the proof of concept might not introduce a payment gateway. This is still under discussion. We may—I've described the iterative piloting phase, six months, after six months, we would review possibility that maybe not in the

immediate first phase, but in a subsequent phase, we turn on a payment gateway, not so much to recover the costs of the exercise, but to also test what sort of traffic and activity would happen if there was a paid element. The simple answer is the Board, ICANN Org, will finance this exercise at this stage.

Your second question is a question of procedure. So no, there's no vote today because it's only preliminary. I'm just asking the Council to be able to continue with this exercise. The last Council meeting, we had sort of envisioned to have everything finished by now in terms of response.

All I have to present today is the report that I've submitted and suggesting to send that back to the Board as a response to that letter, which is the first step to our team work. And the second one is sort of a green light for us to continue proceeding with this proof of concept, at least in the study of it. I hope that answers your question. And I see the next hand is Theo's.

THEO GEURTS:

Thanks. So normally a proof of concept is a useful thing to have. But I'm starting to wonder if it's a very useful tool to have here. I mean, when we created the SSAD we tried to cover as many bases as humanly possible. And now we are going to strip it down to some bare functional tool to get some data.

And getting the data—don't get me wrong, that's a good idea. In hindsight, in retrospect, maybe we should have done that in much earlier phase of designing the SSAD as a team back then. But I do

wonder how do you organize getting participants to use the proof of concept? So that is question one. How do you get participants?

What I do notice from the paper/report is it doesn't seem to factor in if a disclosure request was successful in giving back data or not. I think that would be a good metric also, because we are always discussing the possibility that the SSAD might not give any actual results back to requesters. So I think that those are two main important questions for me right now. Thanks.

SEBASTIEN DUCOS:

Thank you. Both very good questions that were discussed in our deliberations. So how to get the participants, there is a chicken and an egg problem here, which is in order to rally interest and rally people and make sure it's mainly that they don't test it once and get discouraged forever, we understand that we were going to be able to rally more people around this as its success happens.

Now, success, depending obviously in the views of different people, may differ. And by success, I don't mean that somebody who is going to ask a request for information obtains it all the time. But success, I think, within the group, it's fair to say is what you sort of hinted and described, which is somebody makes a request and receives an answer, a positive answer with the data if the request is properly formulated and all the elements needed to disclose the data are provided, or an answer that says no, basically, we cannot give you the data because ... and whatever element of response needs to be there, but that the full circle is completed, that the requester has an answer, and preferably an answer that would help him or her reformulate the request in a

way that would find some positive outcome or more positive outcome.

So it is important indeed that the proof of concept first works with the participants that it has and gathers the data that it can. We fully understand that that may not represent the full spectrum of the market, particularly in a first stage. But we will analyze the data for the traffic that we obtain, and know that it's not 100% of the market potential.

Now, just for full reference, and I'm not doing it with the ODA in front of me so I want to be careful about the quotes that I get. But the marketing around this, so the market awareness, I think was quoted at \$350,000. I don't expect the pilot to put that sort of money on the table in order to rally the industry to start using it massively and then say, "Yes, we've got a full extent of the market." We will analyze the data that we receive with the usage that we receive and promote it as it goes to make sure that we touch a significant portion of it.

Your second question is looking at results as much as [inaudible]. Yes, of course, the idea is to have this proof of concept cover the full circle of requests, analysis and response. It's not, at this stage, clear that the actual data response or the personal information will be shared through the system, but the type of response that was given and if it was positive or negative, if it was negative, what answer was is all to be tracked in this proof of concept. I hope that answers your question. And I see Kurt and I have no idea what time I've used. So if somebody needs to stop me, please do. Kurt.

KURT PRITZ:É

Thanks, Sebastien. Thanks to everyone on the small team that worked on this. It's a concrete result. First, I was glad that Tomslin asked his question. If you can clarify for me, Seb, when you're talking about the green light, are you—I think I heard two different things. One is to continue working on developing the prototype, or is it to send the report on to the Board for the Board to take next steps? So what's the green light?

SEBASTIEN DUCOS:

It is both. So is it okay for us to send the report that I shared with you to the Board in form of a response to that letter, and accompanied with a request for them to invite the ODP team to proceed with the analysis on the proof of concept? The financial and timeline and resource analysis on the perfect concept.

KURT PRITZ:

So my comment or opinion is that we could send the report on to the Board. But I would make it as an example of how a proof of concept might occur. I think for an up to a two-year investment and a substantial financial investment and an investment in volunteers and ICANN staff, I think the goals of the proof of concept could be honed some, that for this investment of two years, we get more results.

So let me give a couple examples. One is when Philippe made his introduction to this, he talked about the financial feasibility of SSAD, but my reading of the report is that financial sustainability is excluded from the proof of concept.

And I think this is one of the key pieces of information for which we're looking because that's a requirement of policy recommendations. And that financial feasibility is one, what's the uptake? What's the potential revenue stream for SSAD? And two is, what's it really cost?

So when the costs were published, there was some dismay and [inaudible] of teeth. But there was also some skepticism that it would cost this much. So I think one example is the proof of concept could confirm both those, that the subsection of tests that are being implemented costs what ICANN says they're gonna cost. Then we would feel comfortable about that. And two is that the uptake of the proof of concept modified by the fact that it doesn't cost money or the publicity campaign is not the same or something. Still, there's some extrapolation about uptake, because I think that's the most important question before us on a higher level.

And I'm not saying this is how you went about creating the report. But when you read it, it seems like you went through all the recommendations and said, "Okay, which ones can we test out in this proof of concept?" And I think, rather, we should be saying, what questions do we want to answer for the proof of concept? And list those rather than list the recommendations that will be approved.

What do we want to show? Aspirationally, we might want to be training up the users. So we might use surveys of users to understand what makes it effective and what doesn't. From a contracted party standpoint, I'd like to train up users that they fill out all the information required in a request. And is SSAD a better

avenue for that than working with registries and registrars individually?

So my I'm sorry for talking so long. But the bottom line is if we want to send a letter to the Board that says "pause the work, we want to develop this proof of concept," this where we are so far, but I'd like to see either the small team or, as we once talked about, broader Council, talk about what we want to get out of this. And for the two-year investment, I think this small team or someone needs a little more time to make sure the proof of concept is properly scoped. Thanks. Sorry for taking so much time.

SEBASTIEN DUCOS:

It's all right. I'll answer quickly that the conversation [is not] closed. So what I'm asking is for a green light to go ahead and then go on my merry way. Our meeting in June will definitely be the next gate on this topic. At that point, we will have an estimation from the ODP team of how much a proof of concept will cost and how long it would take to develop it.

I intend very much indeed to continue this conversation with the small team to refine what we're looking for and where we're going with this. I see hands going up and down. Did you want to say something in closing, Kurt? And then afterwards, I think that I need to give it back.

KURT PRITZ:

Yeah, thanks very much. So, as so often happens in ICANN things—that was a really good answer. And thank you for making

it. I think that sending the report as written will not be interpreted that way. And so I would be for modifying the report in a way that said, after a very short period of time, here's what we've developed as far as the goals of the proof of concept. But we think a greater investment in time is necessary to make sure we get what we're after here.

SEBASTIEN DUCOS: understood and appreciated. Tomslin, I see your hand, and then afterwards, I'll close it.

TOMSLIN SAMME-NLAR: It's a quick one. Sorry. So I'm just not sure how we intend to determine the green light on this. And that's why I raised my hand. And secondly, it's just to understand the consequence of the green light, whether it means—if we send a letter to the Board saying, let the investigation proceed, are we effectively saying, “Go ahead with the proof of concept?” Or we will be able to come back and make that decision? So those are the things that are just going through my mind.

SEBASTIEN DUCOS: This is very much the latter. I have no idea how much that proof of concept is going to cost. If it's in the millions of dollars, I certainly [won't] take this 10-minute conversation as a green light to go and spend it. So no, it's very much the latter, we are still on a fact finding mission.

Again, we started this endeavor saying that we would have a report final today. We don't. I need more time, we need more time to continue evaluating this. But this is not a green light to go run with it, it's very much a request for more time to find more information.

In the meantime, I need to report to the Board, I need to get back to the Board, I'd like to be able to send the report as is. If we need to encapsulate it with an accompanying letter to say that it's still very much work in progress—In any case, I know that they're aware of it, because they were part of that discussion with us in the small team and they know exactly how far we've gone in development. So I'm happy to add that as a caveat in the accompanying letter.

If that is the last question—I'm very sorry for those that participated in the chat. But I'm absolutely unable to follow both. So I'll have a look at it later. And happy to answer any further questions on the list if they come. With this, Philippe, giving you back the mic.

PHILIPPE FOUQUART:

Thank you, Sebastien. Thanks, everyone. So as a way forward—and in principle, I certainly agree that even though as you said, there are a number of Board members, the GDPR caucus is actually a large number of Board members who are involved in this, so it'd be good that if only for the record, we provide some visibility on the progress on this and maybe share the enclosing letter where we can certainly capture some of the elements of this discussion, including the fact that hopefully, that proof of concept

may shed some light on the overall and ultimate costs associated with that. I think that that was a point well made by Kurt and the small team will take all those inputs on board moving forward.

Thanks Sebastien. We're slightly behind schedule, but I think we'll manage. And moving on with our agenda, we're now on item five, and it's our discussion on the overview of the findings, the conclusions of the EPDP on curative rights protections for IGOs and their final report.

The goal of this discussion here is, as it is now customary, we have a discussion on the conclusions of the PDP with an overview of the recommendations prior to actually voting on the final report, and that is planned for next month.

To that end, I will just point to the agenda that we have on the screen where you will find the draft motion that is being shared. As it stands, it's quite straightforward. But just want to make sure that you have that with you for next month. The final report was published in early April.

More on the substance, I will also note that the five recommendations found full consensus within the working group. So that would appear to draw a line under an issue that's been almost as old as ICANN, which, in and of itself, would be quite an achievement.

So there we are. So for this update, I think we have Chris Disspain with us today. Over to you, Chris, for that update.

CHRIS DISSPAIN:

Thanks, Philippe. Not quite as old as ICANN, but almost as old as ICANN. Hello everybody. Thank you very much for having me at the GNSO Council meeting, I'm delighted to be here and to be able to talk briefly to the recommendations of the specific curative rights protections for IGOs final report, which as we've said, are full consensus recommendations.

I propose to give you an overview. Obviously, the key is to read the report, there's a lot of detail, a lot of context, a lot of explanation in the report. The recommendations, if you just read the lines, obviously you need to read the rest.

So if we could just briefly go to the next slide, which is the timeline. I don't propose to go through that, we all know where we are. But this is useful information for those interested. The next slide, please.

Now this slide sets out a flowchart and the recommendations, I want to just address those briefly because those headings are not particularly conducive to an understanding. They're very simply headings. So let me explain the five recommendations in simple terms.

The first recommendation contains two elements. The first is a definition of what is an IGO because if you're going to say that there's a thing for IGO complaints, you need to decide what an IGO is. And that definition was put together by a small group of the PDP including IGOs and people from other constituencies in ICANN and came to a mutual agreement as to how it should be defined.

The second element of the first recommendation, it sets out what an IGO needs to demonstrate in order to be able to use the UDRP. And that detail is in that recommendation, which has to do with demonstrating that their identifier is used in a certain way.

The second recommendation is I think the key recommendation and it's a little bold to simply say exemption from submission to mutual jurisdiction. In essence, it comprises the following elements. The first is that the IGO should be exempt from the requirement to choose a jurisdiction that is used for going to court.

We all know the reasons for this if you don't, I apologize, but the details are in the report. It's the crux of the issue, because the IGOs say that they can't be bound by mutual jurisdiction, they have exemptions and rights.

So the first point of that the first recommendation is that they should be exempt from that. However, that exemption is replaced by a notice which is required to be sent to the registrant by the UDRP or URS provider, which includes the following information. And this is the key, really, to the recommendations.

First piece of information is to tell the registrant that it's an IGO complainant and that the registrant does have the right to challenge a UDRP decision should they lose in court if they wish to do so. But if they do so, it's entirely possible that the IGO complainant may assert its privileges and immunities. And then in asserting its privileges and immunities, it's possible that the court may decline to hear the merits of the case on the basis of those privileges and immunities.

And thirdly, that the respondent can at any time, either now or in the future, even after having gone to court and having had the court refused to hear the merits of the case, agree to go to binding arbitration. And then there were a bunch of things in the following recommendations, three, four and five that deal with that arbitration.

So in essence, registrar is not losing their right to go to court, but there is recognition that the IGOs can claim immunities. And if they do so, there is a solution provided if they are successful in claiming those immunities. There is a solution provided as to how you would then reach a conclusion on that, and that is arbitration.

So then recommendation three sets out the details of how arbitration would work. Recommendation four is effectively equivalent in respect to URS proceedings, slightly different because of the logistics involved. And then recommendation five looks at the applicable law for the arbitration proceedings.

And in essence, it says that the applicable law should be reached by mutual agreement. If it can't be reached by mutual agreement, the IGO complainant can elect either the law of the relevant registrar's principal office, or the domain name holder's address as shown in the registration.

So that is obviously very much an overview of the recommendations. And as I said, the detail is provided in the report. If I could have the next slide, please. That's next steps. These are all yours. You've got to consider the recommendations, public comment preceding, Board notification and so on. And you know those better than I do, so I won't go through those.

And then the final slide is a call for questions. Before I go to questions in case I forget at the end, I just want to say a big thank you to everybody who was involved, all of the members of this working group who took a huge amount of effort and time to make this work and to come to a consensus-based set of recommendations.

Everybody worked in a collegial manner. And that's fantastic. Want to call out a special thanks to the staff team, to Mary, Steve, to Berry, to Terri for their tireless efforts in holding all of this together.

And it would also be a little remiss of me not to acknowledge the work of the previous PDP, which was run by Phil Corwin, who did a really great job of starting all of this work. And we built on what they've done. It would have been much harder if they hadn't made some of the efforts and recommendations that they made at the very beginning.

So with that, I'd be very happy to answer any questions that there may be. Berry, your hand is up.

BERRY COBB:

Thank you, Chris. I just wanted to add kind of two pointers for the Council to consider when you're reviewing the report and for May. The first is there is an annex, I think Annex A in the final report that is also important. It outlines some high-level principles with respect to the formation and execution of any kind of arbitration. And they're really kind of tied back to recommendations four and five. But they aren't a recommendation in and of itself but really

more instructions for a future IRT assuming that this was to be adopted by the Council and the Board.

My second point, which is also I think, important for the Council to know, is if we get to an IRT on this, again assuming adoption by the Council and the Board, this is a very complex and very specific topic where it is encouraged that community participation in implementing this particular policy also hopefully will include several of the PDP team members who are very intimate with the details and understand the complexities here. Thank you.

CHRIS DISSPAIN: I'm happy to take any questions if anybody has any.

PHILIPPE FOUQUART: Thank you, Chris. And I see Paul.

PAUL MCGRADY: Thanks. It's not a question for Chris, it's a praise for Chris. I think we would be remiss if somebody didn't speak up and say what a great job Chris did with this PDP as chair. Chris should teach a class on how to chair these sorts of things. Everybody was listened to, we thoroughly explored everything, we kept moving. And in large part because of Chris, this got done. So thank you, Chris. It was a pleasure being on this team with you. And I appreciate your work. And I'm sure that other members of the Council do too.

CHRIS DISSPAIN: That's very kind of you, Paul, thank you very much.

PHILIPPE FOUQUART: Thanks, Paul. And I can only echo what Paul just said. And given the history of this, I think the whole community will appreciate the feat of the exercise and the end results, hopefully, approved next month, by Council. Any other questions? And by the way, noting Mary's comment in the chat, the fact that was quite obvious on the slide that you presented, Chris, the fact that all those recommendations are totally interdependent since they are pretty much sequential.

CHRIS DISSPAIN: Yeah, it would be bonkers to do it any other way, frankly. But yes, they are. And look, if you want me to, if you have any further discussions, Philippe, or if individual members of the Council want to reach out, I'm very happy to chat to anybody about it and provide explanation and answer any questions. I appreciate it's a long report and people are busy. So if I can help in any way, please let me know.

PHILIPPE FOUQUART: Certainly. Thank you, Chris. And I will get back to you not only on the substance, by the way, but also the recipe, possibly the history and as you said, the credits for the past, the lessons learned from the past PDP [would have helped.] So thanks again.

CHRIS DISSPAIN: Thank you.

PHILIPPE FOUQUART: And seeing no hand, no question, we'll close this here. So we'll get back to the final report. Any questions will be raised with Chris offline. Please, again, have a look at the draft motion, which is at this point quite straightforward. And that will be submitted or intends to be submitted to next month's call to approve the recommendations.

So with this, we can move along and go to item six. That's the report from the DNS abuse small team that convened just as recently as last night, my time.

So the small team was convened two months ago, spent some time, as noted during our last call, initially refining their own terms of reference, and then reached out to a number of various structures, including other SO/ACS. Some of the responses are being processed and have only been received recently.

And as we noted last month, I think the intent of this is to understand whether they would consider any policy-related work relevant and on what specific items. And that's the task of the small team at the moment, to review those inputs. I'm not sure we're at the stage where we can—I'll leave it to Mark or Paul to elaborate on those inputs and the specifics of the answers. But the plan is to deliver their initial conclusions by June. So with this introduction, I'll turn to either Mark or Paul. Would you like to introduce the or provide an update on the small team?

MARK DATYSGELD:

Thank you very much, Philippe. I'll try to keep it short in order for us to be able to move on with the agenda. Basically, this group has come a long way in a very short time. It started with a fuzzy idea of where to get. We didn't have an incredibly specific goal set to us in the beginning.

But through the collective work of the councilors involved, I think that we have managed to establish actually a very clear goal on what we want to accomplish. There has been an outreach effort. Most councilors, I think, are very aware of this, that basically, all of the SO/AC groups plus the DNS Abuse Institute, have been involved in this consultation.

And I'm very happy to say that we have had the full attention of these groups, everybody has provided a reply already, or is in the process of providing a reply, which tells me that the community sees value in providing input for the group, which definitely makes our work easier, in the sense that the responses we have gotten so far and the responses that we are getting, for now informally, but that we'll get formally soon seem to indicate that indeed, there was a demand for this type of work, because different communities have developed impressions within their own bubbles and their own DNS abuse subgroups on what should be the next steps on what the community should be trying to accomplish. And in that sense, the GNSO Council taking a proactive step and getting there and gathering their input has been, I think, very welcomed.

So at this point, we are very well structured, we have started having a look at the input in a very tentative manner. We do not yet have the full list of the feedback received. We don't have all

the items yet, so I'll refrain from commenting on substance. But what I'll say is that we have been receiving some very actionable ideas that should have the potential to become something that the GNSO Council would like to shape.

So in the near future, what we're hoping for is that we will be able to deliver I would say not a list of recommendations or anything of the sort, but rather, a guide to GNSO Council of what the community expects, we will evaluate this input previously, ahead of time, shall we say, so that the Council has an easier time carrying out his discussions, and then we can see what we do with that. And at this point, I'll hand over to my co-chair, Paul, so that he can make other considerations on timeline, on where we are, how we intend to deliver this and so on. So thank you, Paul.

PAUL MCGRADY:

Thanks, Mark. I think Mark's done a great job. And I won't waste time saying the same great things again. I will say that I really loved the way that Mark just described the outputs, which are not a list of recommendations, but rather a guide about what kinds of work the Council can encourage and some ideas to think about that are coming directly from our community, instead of being formulated someplace in an isolated tank.

So all good stuff. Thank you to the Council for encouraging this work and giving Mark and the rest of our small team the venue in which to be doing it. So thank you.

PHILIPPE FOUQUART: Thanks, Paul. Thanks, Mark. Any questions or comments on this update on the DNS abuse small team? Okay, seeing no hands, I think we'll move on. I think it's going to be easier for people to provide inputs by the time we get to the crux of it and the potential areas of work. And as you put it, Mark, expectations from the community and beyond from the GNSO. So, so looking forward to the next update on this. Thanks again to you both and to the team for the effort.

Moving on then, we'll now come to item seven. It's our discussion on the closed generics and the update from the small team. And I'll just give the context and hopefully summarize the work of the small team. And we'll get to the discussion.

So in March, as you would remember, the Board invited the GNSO and the GAC to answer, dialogue, to define a commonly agreeable framework on closed generics. So a framing paper was associated with that invitation to sort of outline the potential work methods or various options that we have, that we may have. So we convened a small team to review that invitation from the Board and how we should respond to that invitation.

So the goal of this discussion, as I said, is not only to have an update and put everything on board, on the work of the small team, but also help everyone understand the various steps that we have, or that we may have in front of us in this discussion.

Small team members, feel free to interject or comment if the following summary is not precise enough. So let me just try and frame that context and what the task of the small team was in terms of the next steps. I think this, the task of the small team can

be seen as a step forward in that process if we were to choose to move on and accept the invitation. So the task of the small team essentially to say yes or no to the invitation. And we'll come to that in a moment.

If that is agreeable, then we'll get to step two. And the dialogue with the GAC, potentially, slightly broader than that, but initially, that's the invitation and working with them to agree on the scope, and operating principles and procedures, i.e. the working method.

And in this phase, we could also consider things like criteria and elements that the GNSO and the GAC believe are helpful to consider some of the questions that the Board asked, such as the facilitator, for example, just to give an example. You would remember that it was mentioned in the framing paper. And also consider the participation model that we want to apply. For example, whether we want to include the ALAC in that discussion.

So I'd like to frame this into those two steps. Step one being the task of the small team and a gating question for the following steps. So once this is complete—and none of this is substantive. Once this is complete, the substantive work on closed generics and how the findings of the conclusions of SubPro PDP can be taken forward.

So there are four members in the small team who reviewed the letter and the paper and three members considered that this is quite a straightforward question since it was essentially, do you want to talk together? The answers would be yeah, for sure, I'll phrase it very roughly. Pardon me for that.

Now, there were also some concerns expressed. And, notably, I don't want to put you on the spot, Manju, but since the NCSG shared a letter just a couple of hours ago, I think this was also reflected in the small team relative to the nature of the dialogue and the fact that it was envisioned solely with the GAC. I have to say that I haven't read the paper that Bruna shared a couple of hours ago, but I believe that's somewhat the essence of the concern there.

So that was one concern and that potentially, should this work move forward, I think there was some recognition within the small team that it had to be extended somewhat, that it was, for once, too small and the diversity of views within the GNSO may not be sufficiently represented at this point within the small team.

So I hope I'm being faithful to the work of the small team as an update. Small team members, feel free to interject here. Manju, you have your hand up. Please go ahead.

MANJU CHEN:0

Thank you very much. Since my name was mentioned, I guess I'll just go first. So what I brought up in our small team meeting was that I think the [inaudible] question, what the Council leadership tasked to the small team was actually a question that had to be answered by the Council, because it's a question to the Council, whether we want to have the dialogue or not. And the small team was really just not representative enough to answer this question.

And I kind of think that—I hope others agrees with me. In that meeting, we kind of agreed that we can refer the [inaudible]

question back to Council and let Council decide. And then after that, we can talk about what our next steps are. So that's the first point.

And then I might just use this opportunity to further explain why NCSG as a stakeholder group is not very happy. Well, we are opposing this kind of dialogue, in essence. And we have mainly three reasons. One is that we think that GAC has had plenty of opportunities to express their concerns and provide guidance throughout the past nine years. I mean, the only advice that GAC has ever given regarding closed generics was really just it should be aligned with public interest, and it was provided nine years ago in its Beijing communique in 2013.

And after that, even when the SubPro working group was working, five years, four years of hard work, and even though working group members of SubPro have been actively seeking advice from GAC regarding closed generics, what do they mean by public interest, can they give more substantial advice? GAC has remained silent.

So in NCSG we consider GAC's quietness in these past nine years a clear position. They have made themselves clear that they want it to be aligned with public interest, but then they really didn't have any more specific or substantial advice on that.

And secondly, we don't think that closed generics is a GAC specific issue. So in the framing paper provided by the staff, staff have referenced the Red Cross issue as a precedent where we have this facilitated dialogue between the GAC and GNSO. But the two things are not the same in nature, because Red Cross

was essentially—was undoubtably a GAC issue, because IGOs, Red Cross, they could be members of the GAC and GAC has the obligations and responsibilities to protect their interests.

But in closed generics, it's just not the same. I mean, the reason GAC—well, the GAC advice on closed genetics was only that they have to be aligned with public interest. And I think we can all agree that public interest is not a concept that is monopolized by the GAC. I mean, we all have our kind of public interest. And we all want ICANN policies to be aligned with public interest.

And we don't think that GAC has any authority—actually, not any stakeholder group within the ICANN community should enjoy authority or any privilege in deciding how policy recommendations can be aligned with public interests.

And I think one has popped up a few times during our Council discussions, too, which is this kind of proposed dialogue between only GAC and GNSO is really giving GAC a more pronounced role in policymaking than its advisory role as mandated in ICANN bylaw. I mean, we always welcome all the other SOs and ACs to join the policy development process in early stage because that way we can make sure the outcome takes the multi stakeholder perspective into account.

But it is important that we draw the line between policymaking and advisory because if we don't have this clear distinction, then this model is kind of crippled, unbalanced. So that's the mainly three reasons we don't like this proposal of the facilitated dialogue.

But of course, we understand that most generics is kind of different in that there wasn't really an explicit GNSO recommendation in the final report. But we still insist that rather than inventing process and setting the standards, precedents of muddling the balanced multi stakeholder model, we think we should use a more balanced and more multi-stakeholder approach in seeking inputs on this topic.

So NCSG actually, I think we proposed that the GNSO Council can seek community comments and perspective on this issue on how or should we have this dialogue. We have the existing mechanisms to use. We have public comments, we have other kind of ways of receiving comments. So instead of just say yes and have this dialogue where the participants in this dialogue and the mandate, the scope of this dialogue was already dictated by the Board, I think it is really important that we open this option to the community and seek input from the community. Thank you very much.

PHILIPPE FOUQUART: Thank you, Manju. Jeff, you're next.

JEFFREY NEUMAN: Yeah, thanks. So as the GNSO liaison to the GAC, I just wanted to make a couple of comments. So first, I don't think it's fair to say that the GAC hasn't done anything in nine years. While it's true that they have not had additional GAC advice, I do believe that the GAC has actively participated and submitted lots of comments to the SubPro working group when it was doing its work, as well as

to the applicable public comment period. So I don't think it's fair to say that the GAC hasn't done anything in nine years other than pass that one piece of advice.

So I just I want to make that very clear, that the GAC has, during the SubPro, put a very good faith effort into—just like everybody else, trying to find a solution whereby its advice could be implemented. And so I just want to make that point for the record.

I also do want to say that I, like others, am always concerned and about sort of—and I think Manju was sort of getting at this, is where groups, whatever the group is, trying to double dip, right, where they participate in a PDP and then they don't get what they want and they then go to the Board and try to get what they want anyway.

I agree with that. But I don't think that's what we have here. Because in this very unique situation, we have no recommendation from the SubPro working group. So it's kind of in a state of limbo. So we have GAC advice that as I think Paul said on the list, has neither been formally adopted nor formally rejected. That is still in front of the Board. And so the Board ultimately will need to—if there's no recommendation from the community, the GNSO community, then the Board will have to weigh that no recommendation versus the GAC advice and any advice provided by other advisory committees, and public comments.

So putting all of that together, and the very unique nature of this issue, I think, again, probably this is biased, because I am the GNSO liaison to the GAC and by definition, always believe that

more communication with the GAC and the GNSO is always a good thing. I think that all the GNSO Council right now is being asked to do is to sit down and meet with the GAC to try to come up with some sort of rules of the game of whatever this facilitated dialogue will be.

I think, as you probably have seen, the GAC has approved moving forward with this. And I just think it would be very poor form for the GNSO Council to not even approve moving to the next step, which is just to see if we can agree on a set of rules to which we will eventually have the substantive discussion. So I'm happy to answer any questions if you have about the GAC participation. But I'll leave it at that. Thanks.

PHILIPPE FOUQUART: Thank you. Thank you, Jeff. Before I go to Paul and coming back to Manju—and my apologies, I probably should have read the letter. I'm sure that that's discussed there. But I think you said we're opposing this kind of dialogue—and coming back to the way I phrased it as a gating question, are you refusing to talk with the GAC upfront? And are you saying that it cannot—that eventually, in the end, when we come to discussing substance, it cannot start a dialogue because of the Board interest on that topic?

There's a subtlety there, I think. And maybe speaking personally, optic wise, it's always difficult to turn down an invitation. And at this point, it's just that. I should stress that at best, this is an obligation of means rather than results, if you see what I mean. We wouldn't be committing to an agreeable solution. We would be

committing to trying, or we'd be committing to talking with the GAC at that point.

So I'm sorry to put you on the spot, Manju. But would you please clarify the nuance between opposing to that kind of dialogue, opposing to discussing with the GAC or opposing to talking altogether on the topic? As I said, step two could actually be agreeing on a broader remit and including ALAC, for instance. And maybe not limiting to the two of us. So, Manju, would you please clarify that for us?

MANJU CHEN:

Of course. Yes. So first, I think we are opposed to having this dialogue in the sense that it's only GAC and GNSO and facilitated by the Board dialogue, because it's an invented process. It's not been any documented process mandated, any kind of operating principles or bylaws within ICANN. So we're against this dialogue in a procedural sense because we have to do things in process we already have. We don't have to invent process to deal with this question, deal with this issue. So we're not opposed to talking about closed generics, but we're opposed to be talking about closed generics in this kind of invented process. I hope that's clear. Thank you.

PHILIPPE FOUQUART:

Thank you, Manju. Well, at least what is clear is that you're opposed to having that dialogue. So you're opposed to having that step. I'm not sure I understand the rationale for that when you refer to the existing procedures. Because basically, the

procedures have been adhered to. We're following the PDP here, the recommendations have been approved. So at least at this point, we're not talking about initiating or following or diverging from an existing procedure. But speaking personally, maybe that's just me. But your concern is noted. Thanks for the clarification. Apologies for jumping the queue. Paul, you're next.

PAUL MCGRADY:

Thanks. And I'm going to avoid getting trapped in the circular conversation that we've already had before on where things sit on the GNSO side. I mean, the PDP is done, right. And the Board said what it said. And we've been invited by our Board, in the spirit of cooperation, to talk to our friends over at the GAC who have indicated that they're prepared to talk to us.

And in the spirit of university and research and open dialogue, I think that we should take that approach and have this dialogue, of course, with our friends over at the GAC, see what they know, see what they're thinking.

I'm a bit puzzled by Manju's criticism of the GAC for not being willing to speak on this topic over the last nine years, but then not being willing to speak with them now. And so I do think a dialogue would be productive.

And I understand Manju's concern about separation of powers and all that stuff. The GAC does this, we do that. I get that. And I'm sympathetic with it. But as Jeff said, this is a very unique situation where the Board wants to bring some closure to a topic

that's plagued the community for years. We need predictability in this space.

And the GNSO have spoken through the PDP process. The GAC has spoken through advice, which has not been taken up or rejected at this point. And there's a dialogue ahead of us. And so I think in the spirit of multistakeholderism in ICANN, it makes complete sense to have this conversation. And I hope that we don't blow this opportunity. I think that would be not only bad form, but I'm going to use the worst word I know, I think it would be a blunder. Thanks, everybody.

PHILIPPE FOUQUART: Thank you, Paul. Kurt.

KURT PRITZ: Thank you. So first, I want to offer to Paul some other bad words he can use that or maybe even worse, but yeah, I think that there's a couple—First of all, I think that Council needs to make this decision in the really short term. Hopefully, at this meeting. The GAC immediately accepted the Board invitation and so even additional delay here casts a bad light on our discussions, I think. So if there is some mechanism for approving having this discussion, I think we should.

I also think from our stakeholder group standpoint, we support the dialogue. I think it's not an open policymaking discussion. I think the Board put guardrails on the discussion, more or less saying so in a universe where we have closed generics, the GAC was concerned about serving the public interest. So what's a way to

satisfy, develop a way to satisfy that requirement and have closed generic? So they're asking us to solve a really specific question that the GAC asked.

And so that's why it's a valuable discussion to have in a small group with the understanding that the results of this will be open for public discussion amongst all stakeholder groups across the ICANN landscape.

And then my last comment—and Manju and I and others share the same frustration, that there were four Councilors in this little group. So we felt a little bit impotent. And I think a real value of this group will be to set up our view of how these meetings should run.

I don't think we should show up at the GAC with a number of us or a subset of us or all of us, and then with no plan for how we'd like to see the meeting run. So I think it's important for a small group to get together and say, what's a way to run this meeting so it's ticketed for success? What's the procedures for the meeting? What are the topics of conversation? How do we get to substantive discussion and answer in the quickest way? And the steps for that are for the Council to come up with its picture of this, then meeting with a small group of the GAC so we all agree on how the meeting's going to run. So when we get to the meeting, finally, maybe a lot of the preliminary questions are addressed. So I think this small group can perform a really valuable service. But I think we need more people in it. Thanks.

PHILIPPE FOUQUART: Thank you, Kurt. And on your last point. So certainly subscribe to the fact that, A, we should probably beef up the small team and B, moving forward, should this be agreeable to Council that there would need to be a consultation of sorts before the meeting with the GAC to make sure that we go there in a consolidated view on the questions at hand. So yes, I think we probably want to work on the procedure, even on our side of things. Thanks for this. Jeff, you're next.

JEFFREY NEUMAN: Yeah, thanks. And so can I just ask for some clarity? I think the only issue in front of the Council right now is whether to meet with the GAC to discuss the rules of engagement for the eventual group that will have a facilitated dialogue on the issue of closed generics. So I just want to make that kind of clear.

The Council is not approving actually going forward with the substantive discussion at this point. But it's only going to approve moving to the next step, which is getting together with the GAC and potentially the ALAC to discuss the rules of engagement. Then my understanding is that we'll come back to the GNSO Council to say, "Okay, are we happy with the rules of engagement? Okay, yes, now we can move to the next step of discussing the substance." I just want to make sure that that's the correct understanding.

PHILIPPE FOUQUART: Thanks, Jeff. I think that's a slightly different phrasing, in all fairness, to what I said earlier in terms of this being a gating question. That's an alternative to that approach in the sense that if it's too difficult for people to say, yes, we have that dialogue upfront if before that, the purpose of this is essentially to have a bilateral meeting with one topic on the agenda, i.e. future common work on closed generics, we generally don't need a vote to do this. And indeed, I think that that might be a way forward, from what I hear from the meeting, appreciating the concerns that have been expressed. But I think that that might be a way forward. So before I go to Tomslin, Jeff, I suppose that's a follow up.

JEFFREY NEUMAN: Yeah. So I just want to be clear that it's a facilitated dialogue, which I keep hearing people refer to as a one-meeting thing. It may be one meeting, but it may be multiple meetings. The term used by the Board was a facilitated dialogue. So it could be several meetings. It could be a group. It could be—I just don't want people thinking that this facilitated dialogue is necessarily just sitting down for one meeting with one topic and then it's done. The term used by the Board was very specific towards a facilitated dialogue, which to me implies that it could be more than one meeting.

PHILIPPE FOUQUART: Certainly, yes. Thank you. Yes, that's not meant to be only one meeting, and hence the coordination that moving forward, we may want to put together, as Kurt noted earlier. But that wouldn't be—

probably not a one bilateral meeting in that sense. Tomslin, you're next.

TOMSLIN SAMME-NLAR: Thanks, Philippe. And I have a question based on what has been discussed so far. We've heard from the NCSG asking for a whole of community approach to this issue. And I've seen on the chat the proposal to include ALAC.

Does that then assume that the group from Council going to this meeting is representative of the GNSO community? Or the other question I have is, will there be an opportunity, if that meeting was to happen, for non-Council members to make up that group, then if an SG or C didn't think that a Council member was their best representative to that meeting? Yeah, that those are the questions I have.

PHILIPPE FOUQUART: Thanks, Tomslin. Given the structure of the small team that we have, which is made up of four Councilors, essentially, and with the idea of extending this a bit as a number of you have noted, I would say that tentatively, the idea would be that that extended small team would be those Councilors, representative model being used would be those who would have that discussion with the Board. I think there was the initial thinking.

And I guess it's a question for the group. But I guess what you're saying is, do we want to extend this to subject experts that sometimes we convene in small teams? I don't know. It's open for the group to decide, but eventually that distribution would be then

representative anyway, it means that we would respect the layout of the Council. Does that answer your question, Tomslin? So it's an open question for the group, whether we want to have subject experts. I guess that was your question, Tomslin, is it?

TOMSLIN SAMME-NLAR: It was. And I see Mary's comment that in the example that was given in the letter, that there were non-Council members. So that's basically the question I had, will we be open to letting subject experts, like you mentioned, from each of the groups to participate in the dialogue?

PHILIPPE FOUQUART: Jeff, you're next and we'll need to wrap up on this.

JEFFREY NEUMAN: Yeah, really quick. I just want to point everyone to the final report of SubPro and I posted the provision there. The working group—again, this was in the rationale which was unanimously approved, which says that the working group believes that if this issue were to be considered a future policy work, it should involve experts in the areas of competition law, public policy and economics. In addition, it should be performed by those in the community that are not associated with—sorry, I lost myself. Anyway, the important thing is that there is guidance from the final report. I don't think we should just ignore that. And so Philippe, when you say a representative model, I'm not sure that's in line with the recommendation. I have nothing against representative models. But I fear that having a representative model is just going to

encounter the same types of issues that the original working group had, and may not be a productive way to move forward. Thanks.

PHILIPPE FOUQUART: Thanks, Jeff. That was essentially a proposal based on the feedback from the small team, but I appreciate what you said on the report from SubPro. But anyway, Paul, you're next and then we need to wrap up.

PAUL MCGRADY: Thanks. Yeah, interesting stuff over in the chat about disinterested experts and such. But we have to read the language that's there. And the language that's there is talking about future policy work. A conversation between a GNSO small team and a GAC small team presumably, or maybe the whole GAC, who knows, isn't policy work. Policy work is done under the direction of the GNSO Council in a PDP.

And so it's fine that Jeff and Mary have raised this issue of one idea about how policy work might be undertaken in the future. Importantly, it's a rationale, not a recommendation. So it's not binding on the Council to do that in the future in the event policy work is undertaken.

But I do think it's just sort of out of context, because this conversation with the GAC, and frankly, whatever comes out of it, won't be policy work in the traditional sense. There may be follow on policy work, we can go back and look at this and see if this rationale is something that Council wants to consider at the time.

But it doesn't have anything to do with what we're talking about right now. Thanks.

PHILIPPE FOUQUART: Thanks, Paul. Tomslin.

TOMSLIN SAMME-NLAR: Thanks, Philippe. And thanks, Paul, for mentioning that, because it's not policy work. So I don't think the SubPro recommendation should be guiding this. And the GAC letter to—sorry, the Board's letter didn't put any restriction on who should participate.

However, I wasn't talking of subject experts in that sense. My point was to individuals that an SG intends or wants to put in that meeting, who is not necessarily a councilor, which they prefer to be part of that discussion of modalities. That should be possible. So it wasn't necessarily someone who will be discussing policy things.

PHILIPPE FOUQUART: Thank you, Tomslin. I think we need to wrap up on this. Let me just try and make a proposal and see how that goes. Moving forward, I don't think we will need a formal vote to move on with talking under the invitation of the Board. That seems a bit farfetched to me.

Now, noting the concerns that have been expressed on, A, the size of the group that needs to be extended—and we will do that. So my proposal will be to extend the small team with other

Councilors to make sure that the views that are expressed are representative as much as we can of the GNSO community.

On that basis, and coming back to the work methods that Kurt alluded to earlier, that small group can come up with the elements that we need to put forward in that dialogue, including the concerns that have been expressed by the NCSG over the remit of that dialogue and the fact that, should it be agreeable to the group and to Council, this could be extended and to ALAC in particular.

And then on that basis, have that series of meetings, virtually, with our GAC colleagues to proceed with the next steps and the conditions to work—formally, I mean, the formal conditions, not the substance, on that topic of clothes generics. As a work method, will that work? That's at least my proposal, mindful of time here.

And again, coming back to the initial question. And speaking as Chair, I'm always hesitant refusing an invitation to talk. Saying no to this would amount to saying no to discuss anything. I don't see this as a way forward. We can't say no. Just optic wise, it just doesn't look good for us. It doesn't look good for the community. So I think that's something we should do.

And more on the substantive elements. I appreciate the concerns over the precedent. But on this specific issue, leaving aside the precedent, there's nothing to defend. At worst, we'll be revisiting the issue. But if there was something to fight for, against our GAC colleagues, as we do on occasion, we may disagree on some

things, but here, there's not even an agreement on the status quo as was repeated a number of times.

So I think there's always benefit in trying to have that dialogue. And that's hopefully what the small team will do. So we'll try and flesh that out within leadership, those who would be interested in getting on board with the small team in light of the feedback that the existing one gave us, welcome to do that on the list. And we'll try and get that on board for the next steps.

And again, that small team will be in charge of taking those concerns over the remit of that dialogue, including the fact that the interest is broader than just GNSO and GAC. Appreciating the comments from the NCSG.

Okay, mindful of time, and I'm reminded that we've got one minute left, I'd like to move forward. I think we'll be five minutes over or something like that. We'll go quickly to item eight, AOB, update and planning. Nathalie, would you like to give us a brief update on this?

NATHALIE PEREGRINE: Thank you very much, Philippe. So very briefly, and especially as more information will be shared shortly. So all Councilors are funded travelers or at least theoretical funded travelers based on whether they're traveling or not to The Hague. Your stakeholder group and constituency chairs, for those of you who have never attended a face to face meeting in a funded fashion, your chairs will have submitted Councilor names for travel funding.

Obviously, if you are unsure as to whether you are traveling or not, please make that clear to your chairs as these funds are transferable. Please also let the GNSO secretariat know if you are not planning to travel. You don't need to make it on the Council mailing list, it can be done to us, as this will help inform us and also the Meetings team who is trying very hard to understand how many people will be traveling to The Hague in order to accommodate meeting attendance capacity accordingly.

Please also remember to register as soon as you know whether you wish to travel or not to the ICANN 74 website. Compared to virtual settings, the option will now be to confirm whether you will be participating in person or remotely. Again, for the same reasons, it's very important for us to know as soon as possible, so please do so.

And the GNSO draft schedule is posted. The link is on the agenda. And for those of you who have looked at it, you'll see that there are fewer sessions than in previous face to face meetings, because it's not a face to face meeting. It's a hybrid meeting and within the venue, there will be social distancing and other health-related rules to follow.

There are a lot of questions coming in regarding those rules. On the ICANN 74 website, there is a health and safety page which is updated very frequently as information is received. So please make sure to bookmark this page. I'll put it in the chat for you. It's quite a hefty document, but it has to because of the information. So I'm hoping you'll find it helpful.

Regarding the GNSO Council sessions per se, Council will be meeting with the ccNSO and with the GAC. There will be no meeting with the Board given there will be a GNSO Council and Board brainstorming session coming up in May. The priority has been given to PDP/EPDP working group efforts and equally the SG and C meetings.

Council per se will have the Council monthly meeting on Wednesday as usual. There'll also be a Council wrap up on Thursday. For those of you who are new to face to face Council meetings, there will be a GNSO Council dinner held on Monday on day one. Obviously, you'll be receiving a lot more information about that closer to the time. But I'd like to point out that Sebastien Ducos very kindly accepted to help us find a venue for that evening. So thank you very much, Sebastien.

On the eve of the GNSO Council meeting on Wednesday, there will also be a GNSO Council informal prep session, which, as mentioned in the title, informal, a closed gathering. And it should be a nice opportunity for you to mingle further. There will be a lot more information coming your way. As for now, your action items are to register as soon as possible on the ICANN 74 schedule. Thank you very much. Back to you, Philippe.

PHILIPPE FOUQUART:

Thank you, Nathalie, and thanks for the pointers in the chat. So moving swiftly. Yes. Thank you, Marika. Please remember to fill in the survey. That was on the conclusions of the SPS. And we may want to talk about that again during the follow up that we'll have. I think it's by the end of May. So please have a look.

And finally on 8.3, we may want to take that to the list. But as I noted earlier, during this call, the CCOICI, as you will recall, was tasked with reviewing the working group self-assessment. And for this I will just refer to Olga, the chair of the CCOICI, Olga's e-mail of February the 8th.

The self-assessment review is finalized but for reasons relative to the public consultation that is needed to approve that, it hasn't been approved. Now, that said, as you would expect, the curative rights protections for IGOs PDP is approaching closure. So the proposal is to nonetheless use the updated version of the self-assessment.

So presumably that's not going to be an issue. But we want to make sure that the Council is aware of that. We will repeat the question on the list and if you have concerns over this, this being the use of the updated working group assessment procedure as defined by the CCOICI and initiated work, then please present your concerns on the list, say, by the end of next week. We'll make sure that an email gets to the list by tomorrow.

So with this, I think we're five minutes over now. My apologies for this, especially those in the Pacific region. So I think it's time to close now. Thanks, everyone, for the good work, the input, and hope you're all well. Speak to you soon. Goodbye for now. Thank you.

NATHALIE PEREGRINE: Thank you all for joining today's Council meeting. This concludes today's call. Have an excellent rest of your mornings, afternoons, evenings. Take care, everybody. Goodbye.

[END OF TRANSCRIPTION]