
ICANN Transcription

Council Committee for Overseeing and Implementing Continuous Improvement

Wednesday, 02 August 2023 at 12:00 UTC

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TERRI AGNEW:

Good morning, good afternoon and good evening and welcome to the Council Committee for Overseeing and Implementing Continuous Improvement Call, taking place on Wednesday the 2nd of August 2023 at 12:00 UTC. We do have listed apologies from Marie Pattullo, Julie Hedlund and Juan Manuel Rojas.

Statements of interest must be kept up to date. If anyone has any updates to share, please raise your hand or speak up now. Seeing or hearing no one, if you do need assistance, please email the GNSO Secretariat. All documentation and information can be found on the wiki space. Recordings will be posted on the public wiki space shortly after the end of the call. Please remember to state your name before speaking. As a reminder, those who take part in ICANN multi-stakeholder process are to comply with the expected standards of behavior. With this, I'll turn it back over to Manju Chen. Please begin.

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.

MANJU CHEN: Hello, everyone. As you can see, our agenda today is pretty short. It's pretty self-explanatory. And I welcome everybody to this call. Thank you again to come to this call during your very precious summertime. And you don't need to know this, but there's a typhoon coming to Taiwan tomorrow, and I hope everything will be all right. And I guess I did my welcome, and we can just move into agenda item number two, which is to review the version one and version two of the exemption language.

So here we have the two versions of the exemption language. I guess we'll just go by order. We'll call on those who have filled in the positions. And I think we've all read, probably some of us haven't had time to read through the positions. So I guess it will be good if we can have those people kind of explain why they filled in their position like this. So we'll start with the Registrar Stakeholder Group. Antonia, could you please?

ANTONIA CHU: Yes, thank you, Manju. This is Antonia speaking. I've already shared these two versions with the RrSG members, and after discussion, our members just don't think that these two versions are good enough for unanimous approval. So I have filled in our position in the Google Doc with the proper rationale, and the key issue we are concerned about is still about the transparency principle. Yes, that's everything from me for now.

MANJU CHEN: Thank you, Antonia. So shall we move on to registry?

SEBASTIEN DUCOS: Yeah, I'm here. So same thing here. So just to put a bit of context, we had these discussions in DC, and there was already a lot of to and fro. There was, for the whole month of July, back, forth, I tried to, in our last call, advocate. What I had heard, but clearly was not acceptable to anyone in the group because it was strongly pushed back on the second version. But technically, the first version is not acceptable either. I'm trying to find the text again, but it's basically the first part. If you're participating in a group, you need to disclose who you are representing, and that's that. There's no workaround around it. The idea is full disclosure.

So one thing that, and I put it in my comment too, one thing that the registries were keen on also expressing is that this is the one thing in the whole Sol working group work that they're pushing back on. The rest they were very happy with and do want to see all the rest of the recommendations implemented. And I put that also in the bottom of the page. So on this, it's a no either way. But on the rest, it's an absolute 100% yes. Thanks.

MANJU CHEN: Thank you, Seb. We will move on to IPC. Susan, please.

SUSAN PAYNE: Thanks. And apologies, I literally only just put this in the document, so you may not have had time to see it. But I don't think there's anything really new here. Indicated a willingness to live with both. But as I've put on option two, we don't see that as a preference. We think option one better reflects sort of what the SOI is seeking to achieve, which is kind of giving people an

understanding of where someone is coming from and why they're arguing what they're arguing. So of the two options, we think option one, or is it A, I can't remember, the first one is preferable. But willing to live with both of them.

With regard to the option one, there is some additional comment in there that I put in, which reflects what is in the statement that the IPC gave to the SOI recommendations. So none of that is new. But just reiterating the concern that any definition of representative shouldn't be one that would be interpreted as meaning that a whole client base had to be disclosed. And so based on that definition that's being used here, we're not interpreting it that way and certainly wouldn't expect to have to disclose the whole client base of a lawyer.

And I think in the comment to the SOI recommendations report, the IPC had also suggested that we thought that where there's the suggestion that if you can't disclose, you disclose the kind of the type of client you have and the nature of their involvement, we thought it would be better caveated with the words, to the extent that it is consistent with professional obligations, because some of our members felt that there were some circumstances where even a kind of anonymized explanation of who your client is, if you gave too much information might serve to identify them. And so obviously in meeting that, it would have to be any sort of disclosure that was given would have to be in compliance with professional obligations, whether that language is in there or not. But obviously this probably is all going to be moot, but yes, that's the IPC's position that we can live with either of those two options. Thanks.

MANJU CHEN: Thank you, Susan, and thank you for the explanation. For BC, Marie has told us in the last meeting that she's not going to be here, and she also has sent in the IPC's position. They're okay with both versions. So I guess we can move on to ISP. Thomas, please.

THOMAS RICKERT: Yeah, thanks very much. And I've actually added one little component to my response that I forgot last night. I've also given the fellow ISPCP members an opportunity to chime in if they want to, but this pretty much reflects what we discussed when we spoke about this topic last time.

So option two, I think, is out of question because that basically gives us nothing. You know, if there's actually a hired gun participating in a policy development process, driving the agenda of an individual entity, and that person can just then participate more or less unnoticed by just being a private individual, that doesn't help in any shape or form.

For version one, we didn't simply want to reject this, but suggest that we should maybe consider amending the proposal with two things. One would be that the fact that the individual can't disclose whom they represent beyond this general it's a potential applicant type thing, that they should say so at the beginning of every meeting so that the participants know that interventions made or contributions submitted by such individual must always be seen

through the lens of that person potentially driving the agenda of an unknown entity.

And also, I'd like to bring back on the table the exclusion from the participation in the consensus call, because I guess in that combination, I think it would actually give us something. Just before you ask, you might consider this uncomfortable for the working group member, and it should be, you know. So the general rule in the ICANN community is that you disclose who you work for and what your interests are. So there's nothing bad about having interests. You should just say what interests these are, and if there are professional rules preventing you from saying who you represent, I mean, that's a thing that can be controlled by the entity that doesn't want to be known. You know, I always have the opportunity as a client to release my representative from professional secrecy and allow for them to say who they are. And if they are not willing to do so for whatever reason, strategic or otherwise, then their representatives need to accept the sacrifice of these limitations that are outlined. Thank you.

MANJU CHEN:

Thank you, Thomas. I think for the current language, although we don't have it on the screen in the report, we do have the one that they should be excluded from participation in the consensus call, but we do not have that, the language that they are supposed to reveal in the beginning of the meeting. So while we go through other positions, I think we can ask those who are not able to live with current language, maybe you can think about whether these added caveats would be okay for you guys. And we will go back to it after we have everybody express their positions. So we only

have NCSG instead of NPOC and NCUC because I think NPOC and NCUC has the same position as NCSG on this one. And I guess I'll have Wisdom to kind of say it for us, what NCSG's position is on this. Wisdom, please.

WISDOM DONKOR: Thank you very much, Manju. Yes, with discussion with my colleague Juan and the community. So we think version one is fine with us and that goes with all the community that falls under NCSG and that is NPOC and NCUC. So we are much more comfortable with version one and not version two.

MANJU CHEN: Thank you, Wisdom. So last but not least, we have the NomCom appointee. I believe we have Desiree on the call. Desiree, do you want to chime in to express what you think about this?

DESIREE MILOSHEVIC: Thank you, Manju. Yeah, this is Desiree for the record. I've been in touch with the other NomCom appointee as well, Paul McGrady, and we discussed this together. I think our position and view is that it's a little bit early in the stage. So far, we believe that our working group, CCOICI, was not able to come up to consensus, but let's not preclude that we won't come to consensus. So we would be in favor of waiting to see what comes out of CCOICI and then pass it back to the Council to see if there's any additional ways of finding balance and of finding a way if the CCOICI does not manage to do so. So it's not a shame if we don't

get to the consensus, we should report the recommendations so that we note exactly what we agree to.

I believe also that I'm leaning towards either acceptance of version one with the caveat, what Thomas just expressed, and no acceptance because of the obvious reasons, not having anyone participate with a hidden agenda or trying to avoid conflict of interest. And it would be good to have transparency to further build trust and to enhance diversity, to know the backgrounds and affiliations of all participants.

So what I'm saying is, in short, we'd like to see how this discussion develops further on before we say exactly we are against both versions one and two. We might be leaning towards version one. Thank you.

MANJU CHEN:

Thank you, Desiree. So I guess, um, what Thomas proposed, I believe, I personally, I have memories of we discussing this, but as I said, the first part, which is people should, the person who's chosen not to disclose should always say it again in the beginning of every working group meetings, was not put into the report. And since registries and registrars are the two main groups that are against the current version one language, I guess I'll get a quick reaction from both of you, whether you think it's worth bringing back to your group and have another round of discussion. I see, Seb, your hand's up.

SEBASTIEN DUCOS: I mean this in the least possible conflicting way. But no. It's been discussed, and I don't think it's worth wasting anybody's time and creating false hopes. It'll be a no. Pre-emptively, I've actually discussed the different flavors of it and it was a no. A clear no. I want to note also, and I did put it in my notes, that it has been discussed and it is the way that is seriously being envisioned here, that on this very particular topic, because in the view of many within the Registry Stakeholder Group, we're walking—by not complying with full transparency, we're walking away from bylaws and that sort of thing. There is serious talks about taking it outside of the GNSO to the wider community, to the board and to the wider community.

Again, they wanted me to make sure that I fully passed on the fact that the rest of the work of the working group and all the improvements were appreciated and very much welcome. But on this one, we're not going to find a solution by adding a word or two or by changing a reference or by having people stating before or after a meeting or anything like that. The end of the game here is transparency. End of story. Thanks.

MANJU CHEN: Thank you, Sebastien. I see Antonia saying the chat is saying for registrars. So I guess with this disagreement in mind, we can move to the second discussion, which is the third agenda item of our today's agenda, which is now with no consensus of this part of the report, what do we think we should move forward with this report?

So registry and registrars are supporting option C, changing the exemption language to what is currently requested in the SOI and recommend to council that all other changes are implemented. The exemption language remains as it was not possible to agree or changes to it. Seb.

SEBASTIEN DUCOS: Yeah, sorry. So again, what I've just said, adopt everything else. This we leave as is because we don't have any consensus. And once all that is locked, we will probably ask for that to be looked into in another instance. That's the plan. So it's by no means saying the previous version of the exemption was perfect and we love it, but in lack of consensus on progress on it, we'd rather keep what was and discuss it somewhere else. Thanks.

MANJU CHEN: Thank you, Seb. And I see IPC support option A and C. Susan, please.

SUSAN PAYNE: Yeah, hi there. So I will say that I think option C is the right path and that is what I recommended to my colleagues in the IPC. I didn't get enormous response from the membership, but to the extent that I got response, I got some agreeing with me on option C and some saying they thought option A was the way forward. And option A being basically kind of throwing out all of the recommendations because we haven't reached agreement on this.

I've got to be honest, I'm just not convinced that my colleagues who think that that is the right way forward appreciate what the implication is of that and the fact that there actually were some really good recommendations that got support from everyone. And so my own personal view is that it should be C, but I have to report that some of my colleagues thought A was the right way forward.

MANJU CHEN:

Thank you, Susan. Do we have Marier indicating in her email whether they are supporting any of the options? I'm sorry, I'm relying on Marika to remind me of this. Yeah, I think she only indicated they're okay with both versions of the exemption language. And can we scroll down, please, a little bit so we see ISP's ... supports in case of... So I guess we are leaning heavily towards option C. And NCSG has not filled in this part, but I mean, I guess we can talk it out here. So if they have any opinions on options, they can say it now. So I'm relying on Wisdom, who is representing NCSG on the committee. If you have any opinion on this, please, now is the time.

WISDOM DONKOR:

Yes, Manju, we did discuss this, but we're not settled on which option to go for now. So I think what I'm going to do now is to follow up with my colleague, Tomslin, and then we can both look at it and I'll come back and go with an option.

MANJU CHEN: Okay, thank you, Wisdom. For the NomCom appointee, it's option B. If CCOICI cannot find consensus, provide this report back to the GNSO Council. So I think this is kind of like also option C. What I'm actually not clear about is... So option C is with the full report, do we carve out the exemption language, or do we include the exemption language? So under the exemption language, we clearly stated that this has not reached consensus in the CCOICI, so this is not a recommendation. Or what do you guys think is a better way to do this? Susan?

SUSAN PAYNE: So I think what I envisaged, and what I guess I would prefer, is that we go back with the recommendations that... I mean, that we obviously provide the whole SOI report, I guess, but we identify the recommendations that there is consensus on. And then we identify what we recommend in relation to this particular issue where there's non-consensus, and that would be reverting back what the status quo says.

And so the Council can see what was being proposed and what we haven't been able to agree on, but we tell them what we think what we're... Therefore, what our solution is, kind of thing. I don't see it as that different, really, to option B, except that I do think... Personally, I think that this group should... I kind of feel like this group should be at the end of the discussion, just because I can't see... Like, if we couldn't reach agreement on this in the SOI Task Force, and we couldn't reach agreement on it here in the CCOICI, and we're all members of Council, and we've all consulted with our groups and our co-councilors. So what more could possibly come out from taking it to the full Council that we wouldn't have already

fleshed out and discussed in this group? Because we already asked our co-counselors what they're not going to give a different response to whatever we've been instructed by our communities already. So that's the only kind of difference I see between option B and option C, is just... I feel like option B kind of seems to suggest to me that we give the whole problem to Council and say, here you go, now you start talking about this, and I just can't see how there's any different outcome going to come from that than we've had here. Thanks.

MANJU CHEN: Thank you, Susan. Marika?

MARIKA KONINGS: Yeah, thanks, Manju. I was actually having the same question on how the group would like to see kind of the option C approach reflected in the report. My suggestion would be to maybe create a separate annex of part of the document where we would kind of outline the conversation. And I think to a certain degree, we have that language already in, I think, currently in the introduction of the report. And of course, we have kind of the version one, which we can kind of show as part of that annex this is what the group discussed and did not reach agreement on.

But I would suggest that in the actual recommendations, kind of reverting back where we now have the exemption language is reverting back to what is currently in the SOI, so that from a Council adoption perspective, assuming there will be Council support, to go ahead with all the other recommendations, that it

kind of shows what it would look like. We just have for that specific question, the current language, and I think it has, I think the private or—I think that's also kind of spelled out so that you from an, again, adoption perspective, you can say, look, everything that is in this section of the report is adopted by Council and will get implemented. But at the same time, we have documented in the annex, the conversation about this. So if someone wants to go back to that or better understand what the difficulties were, and again, I think also if any of the groups here would like to add to that or provide more explanation, I think that may then also be the place to do it. But that might be a way if indeed option C is the preferred path to do that. And of course, I'm happy to kind of give it a go at kind of making those changes so you can all then have a look at and see if that aligns with how you would like to see, on the one hand, reflected the recommendations that the group is comfortable moving forward with, but also documenting where the group did disagree. Because it sounds like it is a conversation that will likely come back at some level or somewhere in the community. So it may still be helpful to have the different positions and conversations documented.

MANJU CHEN:

Yes, thank you, Marika. I think what you're saying is, so in the recommendations, we don't have the exemption language, we just revert back to the usual one, and then we have the whole annex explaining the whole deliberations of the exemption language. I support this. And can I see people probably in chat or whatever to show whether you're okay with this? I mean, of course, it'd be easier for us all to see it in text and we can decide whether we like

it. And I'm sure it's going to be really quick after the meeting, Marika and all of this wonderful staff, they will be providing the text really quick and we can all just jump in and see what they're like and how we can kind of make clearer our positions if we need to in the annex. Does anybody oppose this approach, this next step? I'm seeing no rejection, objection in the chat. So I guess we will go for this approach. And I guess the question is now, do we know when is the submission, like document submission deadline for next council meeting like this month? Anybody knows? Marika? It's the 14th. Do you guys think it's enough time? Do you think we can make the deadline and probably we can add this to the council meeting this month? That's my next question after we've decided the approach. Marika, please.

MARIKA KONINGS:

Yeah, thanks, Manju. I think from my side, I should be able to share with you an updated version either later today or at the latest tomorrow, of course, depending which time zone you're in. I think for you it will be tomorrow, Manju. So I think that it really depends on how long the group needs and it may also depend on if the group wants to provide more specific statements for inclusion. So maybe a first step could be indeed to get it out and then give everyone potentially a deadline by which they need to flag if additional time is needed.

I think in any case, because I'm assuming that you would first like to kind of introduce this to the council and not immediately line this up for a vote in August, so I think what you could potentially do if the group is comfortable with that kind of shares a draft report by the 14th to allow you to have that conversation with council. If

indeed there's still further statements or input that is to be provided, it can then still be a kind of final version that's then prepared for the September meeting, during which council could then take a vote on the recommendations that are supported by the group. That might be a way to approach it.

MANJU CHEN:

Thank you, Marika. And does anybody object to this approach, or do you think we don't even need to have a preliminary discussion in the August meeting, we can just have the final version of report to the council in September and we vote? So A is, we have a preliminary discussion on council in August, and then we vote on council in September. And B is, I guess we just wait for we have the final version and we just give it to council and we vote on September. Okay, I think people are leaning to option A, which is, we have a preliminary discussion in August, and then we vote in September.

Cool. I guess now we are finishing our agenda, we have confirmed our next steps, both of the content of the report and how we're going to deliver the reports. Marika, please.

MARIKA KONINGS:

Yeah, thanks. So just to confirm, at this stage we're not scheduling a follow up call for the group in case—there's an assumption that if there's any input on the report, that that can be resolved by email. We can share it as a Google Doc that of course allows you to provide any comments and I guess based on the feedback, if a call is needed, we can still schedule that.

I did want to flag as well that, of course, this would, once this gets sent to the council, it will complete the work of the CCOICI, there is still kind of one remaining item which would be kind of the review of the pilot. And I think that's a conversation that we'll probably have after, of course, this is all done, but I just wanted to flag that that is something that we'll work on after this work is completed, but I really wanted to give you a heads up so you can already think about lessons learned, whether this committee is something that should continue in this form or not at all. But I think it's something that we'll be looking at in the next couple of weeks and months.

MANJU CHEN:

Thank you, Marika. I see in the chat Desiree saying, shall we share the draft with the council? Yes, Desiree, I think that's what we are planning to do. Without that, we won't be able to have a preliminary discussion in August. So we will share the draft to the council before the August deadline. And in the meantime, we allow people who—probably if they want to provide more statements or if they want to fine tune the text, they can do it during August and the deadline for council meeting in September. And I also agree with Seb and Desiree that we don't really need another call. I think what's left for us now is really to see how the text looks. And we're just chiming in the Google Doc of how we think it should be modified if any modifications is needed.

So I think we have confirmed every, well not every, but the next two steps. And like Marika has reminded all of us, keep in mind that after this, we will have to review the pilot. So you can start building up your list of improvements we should be having for the

next CCOICI or whatever it is. Do we have any other suggestions, opinions, any other kind of questions, problems you have to raise?

I see no hands. I see no comments in chat. Thank you, Desiree. And thank you, everyone. I guess I'll give you 20 minutes back to your life.

TERRI AGNEW: Thank you, everyone. Once again, the meeting has been adjourned. I will disconnect recordings and all remaining lines. Stay safe, Manju. Good luck.

MANJU CHEN: Thank you.

TERRI AGNEW: You're welcome.

[END OF TRANSCRIPTION]