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ICANN Transcription

GNSO Council Meeting

Thursday, 17 December 2020 at 12:00 UTC

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List of attendees:

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

Contracted Parties House

Registrar Stakeholder Group: Pam Little, Greg Dibiase, Kristian Ørmen

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

Nominating Committee Appointee (NCA): Tom Dale

Non-Contracted Parties House

Commercial Stakeholder Group (CSG): Marie Pattullo, Mark Datysgeld, Philippe Fouquart, Osvaldo Novoa, John McElwaine, Flip Petillion

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

Nominating Committee Appointee (NCA): Carlton Samuels

GNSO Council Liaisons/Observers :

Cheryl Langdon-Orr– ALAC Liaison

Jeff Neuman– GNSO liaison to the GAC

Maarten Simon – ccNSO observer

ICANN Staff

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

Marika Konings – Senior Advisor, Special Projects (apologies)

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

Julie Hedlund – Policy Director

Steve Chan – Senior Director

Berry Cobb – Policy Consultant

Emily Barabas – Policy Manager

Ariel Liang – Policy Senior Specialist

Caitlin Tubergen – Policy Director

Nathalie Peregrine – Manager, Operations Support

Terri Agnew - Operations Support - GNSO Lead Administrator

NATHALIE PEREGRINE: Good morning, good afternoon, good evening, everyone. Welcome to the GNSO council meeting on the 17th of December 2020. Would you please acknowledge your name when I call it? Thank you ever so much. Pam Little.

PAM LITTLE: Here.

NATHALIE PEREGRINE: Thank you. Maxim Alzoba. I don't see Maxim in the Zoom room. Sebastien Ducos.

SEBASTIEN DUCOS: Here, Nathalie.

NATHALIE PEREGRINE: Thank you. Kurt Pritz.

KURT PRITZ: Here.

NATHALIE PEREGRINE: Greg DiBiase.

GREG DIBIASE: Here.

NATHALIE PEREGRINE: Kristian Ørmen.

KRISTIAN ØRMEN: Yes.

NATHALIE PEREGRINE: Tom Dale.

TOM DALE: Here.

NATHALIE PEREGRINE: Marie Pattullo.

MARIE PATTULLO: Here. Thanks, Nathalie.

NATHALIE PEREGRINE: Thank you. Mark Datysgeld. I don't see Mark in the Zoom room yet. John McElwaine.

JOHN MCELWAINE: I'm here.

NATHALIE PEREGRINE: Flip Petillion.

FLIP PETILLION: Here. Thanks, Nathalie.

NATHALIE PEREGRINE: Thank you, Flip. Philippe Fouquart.

PHILIPPE FOUQUART: Present. Thank you.

NATHALIE PEREGRINE: Thank you. Osvaldo Novoa.

OSVALDO NOVOA: Here. Thank you.

NATHALIE PEREGRINE: Wonderful. Wisdom Donkor. I don't see Wisdom in the Zoom room. Stephanie Perrin. I don't see Stephanie either. Farell Folly.

FARELL FOLLY: Here.

NATHALIE PEREGRINE: Thank you. Tomslin Samme-Nlar.

TOMSLIN SAMME-NLAR: Here.

NATHALIE PEREGRINE: Tatiana Tropina.

TATIANA TROPINA: Present.

NATHALIE PEREGRINE: Juan Rojas.

JUAN MANUEL ROJAS: Here. Good morning, everyone.

NATHALIE PEREGRINE: Good morning. Thank you. Carlton Samuels.

CARLTON SAMUELS: Here. Thank you.

NATHALIE PEREGRINE: Thank you. Olga Cavalli.

OLGA CAVALLI: Present, Nathalie. Good morning.

NATHALIE PEREGRINE: Thank you, Olga. Jeffrey Neuman.

JEFFREY NEUMAN: I'm here. Thank you.

NATHALIE PEREGRINE: Wonderful. Cheryl Langdon-Orr.

CHERYL LANGDON-ORR: Here. Thanks, Nathalie.

NATHALIE PEREGRINE: Thank you, Cheryl. Maarten Simon.

MAARTEN SIMON: Here.

NATHALIE PEREGRINE: Thank you. And Maarten has notified that he will be having to drop off the council call a little earlier. So thank you for telling us, Maarten.

From staff, we have David Olive, Steve Chan, Julie Hedlund, Berry Cobb, Caitlin Tubergen, Mary Wong, Emily Barabas, Ariel Liang, Terri Agnew and myself, Nathalie Peregrine.

I'd like to remind everyone here to remember to state your name before speaking as this call is being recorded. I'd like to remind you also we're in a Zoom webinar room. Councilors are promoted

to panelists. You can activate your mics, participate in the chat as per usual. Remember, please, to set your chat to panelists and attendees instead of the default panelists only for all to be able to read the exchanges.

A warm welcome to observers on the call. You may follow the council meeting. You are silent observers, you therefore cannot activate your microphones or type in the chat.

As a reminder, those who take part in the ICANN multi-stakeholder process are to comply with the expected standards of behavior. Thank you. Philippe, it's over to you.

PHILIPPE FOUQUART: Thank you, Nathalie, and good morning, good afternoon, good evening, everyone, and welcome to this council call, and last call of the year, our December council call. I'd like to go to our agenda and just ask whether there are any updates to the statements of interest.

Okay. Seeing no hands, moving on to 1.3. Any comments, additions to the agenda? Can we have the concurrence of the meeting that we can use this as a basis for this meeting? I would just add that as an AOB, and if time allows, we may want to have a chat about the letter from the Board regarding recommendation 12, which was something that was already subject to an exchange of correspondence with the Board, recommendation 12 of the EPDP phase one, if we have time.

1.4, any comments on the minutes? Okay, seeing none, moving on, let's go to item two. We'll have a review of our action item list

and project list as well as the radar, and for this, I'll turn to Berry. Berry, would you like to help us go through this, please?

BERRY COBB: Thank you, Philippe. As with typical fashion now, we'll send out the next version of these work products alongside with the agenda ten days in advance of the meeting, basically just kind of restating what was included in the e-mail, is that moving forward, there will be links to the work products out to the Wiki for the program management tool, as well as the ADR, the project list and the action items. The rationale for doing so is so that we can better track the traffic to access these particular tools. And that's already working as designed. We have seen an increase in access to these work products.

In terms of key project changes for the period, as noted, basically, the transfer policy issue report is due in near time. So it's expected that in January, the council may consider about launching the PDP for the transfer policy review. Next, we have additional work still moving forward about the IDN charter drafting team. And as noted, they've met at least once in December, I think maybe twice and so that work is progressing towards launching that EPDP.

As noted on the agenda, we have chair appointments for the phase 2A EPDP as well as the IGO curative rights work track. That's part of the consent agenda. From an SCBO perspective, as noted, they completed the council's comments that were submitted as part of the PTI IANA FY22 draft operating plan and budget. And it is expected today that ICANN Org will open the public comment for ICANN's FYI22 draft operating plan and

budget by which the SCBO will start to review those materials and prepare a draft of comments for it.

There's, as I noted that the IRP IOT, it was listed as a kind of a project on the projects list, it has been removed, because it wasn't really a project necessarily in control by the Council. And any forward activities around that will be handled either through the action items work product, or I believe it's still being considered about the SSC handling some next steps in that regard.

And then in terms of the action decision radar portion of that, some of which I've included, just wanted to highlight that the subsequent procedures final report was expected to be delivered here, but it's looking like there's a change in the timeline for delivery of that, which is, I believe, part of the AOB. And we're also awaiting the delivery of the wave 1.5 report as it relates to the IRTs that are on hold right now for PPSAI and translation and transliteration. So I think that kind of covers the main highlights. And happy to take any questions if you have any. Thank you.

PHILIPPE FOUQUART: Thank you, Berry. Any questions on the updates, action items and project list? Okay, seeing no hands, thank you, Berry. Let's move on to item three. That's our consent agenda. You will see that your approval is sought on a number of different items. We won't go through them in detail. I think those details have been circulated on the list. And I think it's fair that we take questions at this point. Olga.

OLGA CAVALLI: Thank you, Philippe. Good morning from Argentina to everyone. One clarification about EPDP phase two. I did volunteer for that role as liaison, but I have been reviewing time commitment to the role and what has to be done, and I won't be able to commit such amount of time and dedication in the next month. So, apologies for not understanding that at the beginning. I would like to withdraw my volunteering for that role.

PHILIPPE FOUQUART: Thank you, Olga. So that will be duly noted in the minutes. As to the other TBDs for that matter, we'll keep that and try and fill those positions by end of January. I think overall, we're in good shape, but just bear in mind that we'll still have some volunteers needed. Any other comment before we go to the votes? Hopefully all of these were subject to an announcement on the list or discussions for that matter.

Okay, so let's go to the vote now.

NATHALIE PEREGRINE: Thanks, Philippe. We'll just start the vote on the consent agenda item. Would anyone like to abstain from this motion? Please say "aye." Hearing no one, would anyone like to vote against this motion? Please say "aye." Would all those in favor of the motion please say "aye?"

UNIDENTIFED MALE: Aye.

UNIDENTIFED MALE: Aye.

UNIDENTIFED FEMALE: Aye.

NATHALIE PEREGRINE: Wonderful. Thanks both. With no abstention, no objection, the motion passes. I'll also note for the record, as I forgot to mention at the start, all voting councilors are present on the call. Thank you. Over to you, Philippe.

PHILIPPE FOUQUART: Thank you, Nathalie, and welcome to our new councilor. So let's now move on to item four. That's our vote on affirming the intent of phase one recommendation 7. Just as a bit of background, but you're all, I think, familiar with the overall background, if not the latest developments. So we've had some significant discussions for the last six months now following the difficulty of the IRT in finding a common agreement on how recommendation 7 should be interpreted in the context of the thick WHOIS transition policy.

We had an exchange with the Board on this, and there was as concern from the Board that this implementation of recommendation 7 might overturn the thick WHOIS transition policy and with ... I'll cut it short. You have the background with the agenda. We've worked significantly on this. There were some proposal made by our liaison, Sebastien, and [those of you who

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were at council] a significant update at that point. No common ground could be found. And we had some feedback from the Board that it was really up to us to figure out a way forward on the policy side of things, and this is the proposal that you have on the table as the result of the work of the small team.

With this, I'd like to turn to Pam to help us go through the proposal or proposals, and we'll discuss a way forward. Pam, would you like to help us with this?

PAM LITTLE: Thank you, Philippe. Yes. Hi everyone. As you may have seen— or I hope you have seen the motion I submitted. Before we look at the motion, if I may, I just want to maybe take you through a few slides that I have prepared which would hopefully give you a better sense of what this motion is about and the rationale and thinking behind this motion. Ariel, thank you very much. Can you just go to the next slide, please?

So what this motion is seeking to do is two things. The motion is about providing GNSO council input on the intent of recommendation 7 in the EPDP phase one final report, and it seeks to do two things. One is that recommendation 7 should be implemented as written and as intended by the EPDP phase one, and the second thing is that thick WHOIS transition policy was modified, and if there is a conflict, recommendation 7 should prevail.

So the methodology I tried to apply in coming up with these two proposals really is very much based on the history, the

background, the context, the purpose of the EPDP, the deliberations that took place during EPDP phase one, and the PDP recommendations and the final report as a whole.

And I have the extract here that was from the EPDP's phase one meeting. And I'm trying to show this to demonstrate to you that whatever that is actually set out in the motion, I try to find a source for that statement or that determination to the extent possible. And this extract, I would just quickly read it out, and you can obviously go back and check the records for yourself.

It says—and I think we all also agreed that— the impact of these recommendations need to be translated [or override] any existing policy that may no longer apply, in the light of these recommendations not taking away the ability from council to undertake additional policy work on some of these issues, should they consider that desirable. I have quoted this to support the second bullet point, what the intention is for recommendation 7. Next slide, please.

So I will also go through, in the next few slides, what recommendation 7 is about, how did we get here, where are we in the policy and implementation life cycle, and roles and responsibilities of various parties at this juncture of trying to resolve this issue. Next slide, please.

So this is recommendation 7 in the final report. There's a text and a chart accompanying the text. The text, I'll just read out so we all know what we're talking about.

The EPDP team recommends that the specifically identified data elements under transmission of registration data from registrar to registry, as illustrated in the aggregate data element workbooks, must be transferred from registrar to registry, provided an appropriate legal basis exists and data processing agreement is in place. [In the aggregate, these] data elements are and then that's the chart next to it.

Obviously, you can see the chart, but the concept or this reference to data element books in recommendation 7 is critical, because you really need to go and read the data element workbooks, which is crucial in the way that the EPDP team approach the whole GDPR compliance and how data will be processed in discharging this charter duty. So I would now go to the next slide just to show you what the difference is between recommendation 7 and thick WHOIS policy. And the thick WHOIS policy really is in the inverted comma to cover actually two consensus policy coming out of the thick WHOIS PDP back in 2013 or '14.

So recommendation 7, in essence, we read the text of the recommendation, but what does it mean? It actually means transfer of registrant contact information is optional, depending on whether the registry operator in question determines it has an appropriate legal basis to require the data or data elements from the registrar, and the data processing agreement is in place.

While the thick WHOIS policy actually has a different requirement. It just basically mandates transfer of registrant contact information from registrar to registry. So that transfer and all the data pertaining to registrant contact information is actually mandatory,

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needs to be transferred. It doesn't go down to the level of detail like the EPDP phase one. Next slide, please.

So this is what I mean, the detail or the approach, the EPDP team's approach. You can see they developed these very detailed data element workbooks in that the EPDP team actually going through a very methodical exercise figuring out all the ICANN purpose, all the processing activity, and the corresponding data elements for that processing activity. And that's all set out in the Annex D to the EPDP final report. The text I extracted there is at page 30 of the EPDP phase one final report.

But all the data elements workbooks are actually set out in—I think it was page 95 to page 147, so a big chunk of that report contains all those different data element workbooks for each purpose, and that's how they approach the issue of data processing and data elements, versus the approach of thick and thin debate or dichotomy, if you like, because that thick WHOIS policy basically just a binary, whether you're a thin registry or a thick registry, and it's all or nothing in terms of registrant contact information.

And again, I quoted this chat in the Adobe Connect where one of the participants said during that final stage of EPDP team call, someone said, "Forget about thick/thin, we are creating something new." I think they were referring to this approach of a sort of each data element has to have a purpose, have a legal basis to be processed by the data controller or data processor. Next slide, please.

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So, how did we get here? This is just very quickly, in 2013 we had the thick WHOIS PDP final report resulting in those thick WHOIS-related consensus policy. Then we had a temporary specification in May 2018 and the council chartered the EPDP in July 2018. Next slide, please.

So then in February 2019, the EPDP team delivered their phase one final report to the council. The council adopted all the recommendations in that phase one final report in March, and the Board approved all those recommendations in May. Next slide, please.

However, in March 2020, this year, we received a letter from the board raising some concerns or issues, and here you can read for yourself. Basically, the Board said because there is no clear statement in the EPDP final report, then the requirements under the existing consensus policy stand.

And then the Board goes on to say if a policy recommendation is unclear as to its intended impact on existing ICANN consensus policy, this may be a basis to conclude that its adoption would not be in the best interest of ICANN community or ICANN Org pursuant to ... In such case, the bylaw provides for council and Board discussion and potential supplemental recommendation from the council.

I personally am quite puzzled and still puzzled by this comment from the Board here, because to me, that second part of that quote is only applicable to a recommendation that has not been adopted by the Board. So for the Board to make that statement, I just feel like there seemed to be a disconnect about where we are

in terms of the policy and implementation life cycle. Next slide, please.

So this is what I'm trying to show you. This is the diagram I took from the GNSO policy development process. We're not at the point where the Board actually said, no, this recommendation is not in the interest of ICANN, therefore rejected the recommendation. It is actually a recommendation approved by the Board. Next slide, please.

So you'll see in this slide, if the policy recommendation is approved by the next thing that needs to happen is for the Board to direct ICANN Org to implement the policy recommendations. So that comment about a consultation or supplemental recommendation from the council, to me, is not consistent with where we are in this life cycle and especially with regard to a policy recommendation that has been approved by the Board. Next slide, please.

I'll be very quick. This was what I talked about earlier, about the EPDP team's approach. They mapped out all the purpose and all the processing activities. So in terms of transferring purpose 1B and transfer of data from registrar to registry, I highlighted this language here to demonstrate why I think that ... what recommendation 7 actually means, because I think there are some different views about what it actually means. So here is what I took for myself to inform what it actually intended to mean.

So here you can see the text say registry may direct a registrar to provide a limited dataset where such a registry operator due to varying business model and legal interpretations of obligations

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require an alternate dataset to fulfill, in their subjective evaluation, the specific policies, terms and conditions. So this is the way I took to arrive at the conclusion what recommendation 7 means. It is really intended to mean for the registry operator in question to determine whether they have a purpose, have a legitimate legal basis to require the data from the registrar. Next slide, please.

So this is just going to show you how they plot out all the data elements. The legend, or the O-CP actually I think refers to optional for contracted party, and R denotes required. Then for example O-RNH denotes optional for registered name holder. So this is their methodology.

Obviously, I trust you have read the final report and you're familiar with these tables, because I think they need to be read in conjunction with the recommendation 7 itself to fully understand what the intent of recommendation 7 is. Next slide, please.

Here, I want to talk a little bit about the role of ICANN Board. As I said earlier, we are where we are where the Board actually has approved a policy recommendation, and that is what the ICANN bylaw says what the role is for the Board, which is to give authorization or direction to ICANN staff to implement the EPDP recommendations. So that's the role of the Board. Next slide, please.

And this is the role for us, the council. And that's why we are here, what we're doing with recommendation 7. This is the consensus policy implementation framework. Under III, roles and responsibilities, it clearly says once the policy are adopted by the Board, the GNSO council serve as a resource for staff to have

question about the background or intent of the policy recommendation during its implementation. The GNSO council may continue to provide input on the implementation of a policy. For example, if council believes that the implementation is inconsistent with the policy recommendation. I think the word "recommendation" is missing here. But you get the idea. It is based on this provision here that the council is seeking to provide this GNSO council input to the IRT. Next slide, please.

This is just to reiterate the role of the Implementation Review Team. And again, the review team is there to ensure the implementation conforms to the intent of the policy recommendation. It is not a forum for opening or revisiting policy discussions. So I hope that is very clear to everybody and to the folks on the review team. Next slide, please. Nearly there.

So this is the article 16 or section 16 of GNSO policy development process manual, part of our operating procedure. So 16 reads approve GNSO council policies that have been adopted by the ICANN Board and have been implemented by ICANN staff may only be amended by the initiation of a new PDP on the issue.

Why this one is relevant in our consideration and discussion is because in the motion, you will see that we—or I as the one who made the motion—is treating the EPDP as this new PDP required to amend the existing thick WHOIS policy, and we consider that is so that the requirements under this section 16 is considered met, therefore to make sure it is consistent with the requirements under the PDP manual.

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I think that's actually it. That's the last slide. Thanks, Ariel. With that, maybe, could we just have a look at the motion? So Philippe, could I ask whether you would like me to read the motion or open for discussion at this point? I'm not sure.

PHILIPPE FOUQUART: Thank you, Pam. I think it's fair that we open the floor for discussions. And thanks for the background. I think it's clear, both on the rationale for the motion as well as the contents of that motion that's been around for some weeks now.

But I'd like to hear from the floor on this. And for those of you who may not have been in the loop, there's been some discussions on the text of this motion off list, and I appreciate that this has not been shared. And I'd like to open the floor for comments or questions on this before we take a vote on this. Marie, I think you were first, and then John.

MARIE PATTULLO: Many thanks, Philippe. As a beginning, thank you so much to Pam for that detailed overview, the walkthrough. Always so useful. I'm going to be quite brief. On behalf of the BC, given what happened yesterday, we would like to request a deferral. What I mean by what happened yesterday is that the European Commission came out with a proposal for a revised directive—it's called the NIS 2 directive. Its full title is Directive on Security of Network and Information Systems.

And for those of you that have had a chance to look at that—huge thanks to Steve for sending that around to the council list. It was

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really helpful—it's the directive—assuming it passes through the council and parliament which is the legislative process here in the EU—the directive will provide the legal basis for WHOIS.

If you have a look at Article 23—which I don't expect you all to have in front of you, but quoting just part of it, TLD registries and the entities providing domain name registration services for the TLD should establish policies and procedures to collect and maintain accurate and complete registration data.

Article 23 is quite long, quite detailed, and as is usual, for any proposal that comes out on European law, it starts with an explanatory memorandum that sets the background, where WHOIS is specifically mentioned by name. In the recitals, so the part before the operative clauses in the directive, it also goes into this in more detail.

So Philippe, given all of that, though it was only published yesterday, it is going to have an effect on the legal basis, which of course is the main thing that we're trying to deal with here. It will of course also have an effect on our upcoming work on accountability and on 2A, because it does also mention the legal versus private aspects.

And having said all of that, if we don't vote today, it's not actually going to hold up the IRT. We know that. There are so many issues that are still being debated at great length in the IRT. For example, the delivery of the full data processing agreement drafts. There's also all the issues around terminology and definitions. So it won't hold anything up. There's no rush to get this motion through. And in particular, because of what happened yesterday, I think we all

need to have a chance to really read that directive. Thanks, Philippe.

PHILIPPE FOUQUART: Thank you, Mary. And for those of you who might not have paid attention to the council list —which you should have—it was posted yesterday evening, just a few hours ago. And it's a proposal that will be of the directive to be translated on domestic law. And it's a proposal subject to a vote. Now, discussions have concluded, and it's a proposed directive subject to legislative process in the EU.

So I think John, you're next.

JOHN MCELWAINE: Thanks. Yeah, I just wanted to support that request for deferral. I agree that the EC's announcement yesterday certainly directly has bearing upon this. In addition, as a small team member that was working with Pam on drafting the motion initially, I felt like we were, as a small team, coming together on something that could be basically unanimously supported. And it was only really because of a call that leadership had with Göran and the Board that the motion took a sudden turn and was completely redrafted the day before motions were due. So we had less than 24 hours. And although I think Pam and you, Philippe, know that I've been working diligently on trying to offer some amendments, just due to the holidays, pandemic somewhat, and time differences, we've been unable to do that. So I do think that there's more work that can be done to bring us to a hopefully closer point on this.

I'd say that—and we made the point before, I really do think this is a very important procedural issue to get right, because we do have one EPDP reversing or modifying to the point of effective reversal a previously enacted consensus policy. So I do believe that we need to get this right.

We also then have the European directive that is directly on point and that we could use some time to continue to work on this process. There's nothing that—I understand this is not holding up the IRT's work. They're still working on other issues. We've given it this much. Let's continue to work on getting this right. Thanks.

PHILIPPE FOUQUART: Thank you, John. Moving on with the queue, I have a couple of comments, but for those councilors listening, I think the question before us is—so the initial question is deferral, as you can understand. And I think you need to appreciate on one hand that it's been quite a while that we've been working on this, that there have been several attempts to address the issue, all of which have failed, and on the other hand, what are the latest developments? Are there any degrees of freedom between now and January in terms of making progress? If there isn't, then it's the one hand that would have it, and then there would be no point in deferring a vote on this. But if there is indeed some degree of freedom, it's worthwhile expending some effort on this. So it's also up to the group to figure out which way we want to go.

Having said that, I'll turn to Tania.

TATIANA TROPINA: Thank you very much, Philippe, and thank you very much to Marie and John for their comments. So, I must admit that I am a bit confused as to what we're discussing here. What exactly is the reason for deferral? While I'm not trying to argue that deferral will have its own merit if we're talking about the possibilities to find a way out of this impasse by working on this directive and agreeing how to go forward without bringing us to yet another deadlock where on the same call, we're at the same place where we are. This is, I believe, for the GNSO council chair to decide whether to grant this.

As to the EU NIS 2 directive proposal, I do believe that it will have effect on registries and registrars because it proposes to impose the requirement on the accuracy of data they collect. However, may I remind you that the last directive, the first NIS directive, took three years to negotiate? It went through the European Parliament which voted down half of it. It went then to trilogue on the EU level. It went forth and back. So I don't know how controversial some of the provisions of NIS directive are. I'm not talking about the provision of WHOIS, but I'm pretty sure that there would be provisions in it where states would disagree. So I do expect trilogue, I do expect lobbying in the European Parliament, and I do not believe this is going to be solved in any nearest future and certainly to take another one and a half years for the EU member states to transpose it to their legislation.

So the point here is that if this request is going to be based on the NIS directive, I do not believe that we should grant it, because first of all, it's not a law, it's just a proposal. It will take quite a number of years to transpose it to the EU member states. And also, we

are talking a bit globally here, not only about the EU. So I understand that it will have influence on what is going on, but we don't know the final text of it. Thank you.

PHILIPPE FOUQUART: Thank you, Tania. Yes, I think the point that was made was essentially the last point, that there's an element of risk, and bearing in mind the legislative process with these sort of things. I'm also familiar with the process as well as the translation domestically where the text might significantly differ from the original proposal.

Now, looking at the actual text, this, as you would guess, would not be translated literally—certainly not in my country—since very few countries actually now speak English in the EU. But I would expect, for what it's worth, that should this move forward, it'll be quite faithful to what we have as a proposal since those are elements that are quite already included in the national regulatory environment or framework.

With this, Maxim, you're next.

MAXIM ALZOBA: First of all, I must underline that it's not a law, it's not even a directive. It's just a draft. It has unknown edits in the future. We can't stop all policy development to wait for this to become a law. And also, yes, it's a good idea to track, but no, it's not relevant to deferral of the motion, given that there's no chance this is going to be even a law by January. So I think we shouldn't defer the motion. Thanks.

PHILIPPE FOUQUART: Kristian, you're next on the list. Thank you, Maxim.

KRISTIAN ØRMEN: Thank you. So if I understand currently, recommendation 7 says that we can transfer data if there's a legal basis for it. So recommendation 7 is not changed by the directive or not. If the directive says we have to do it, we have a legal basis for it, and that's fine with recommendation 7. If we don't have the directive, maybe we don't have the legal basis for it and that's still okay with the recommendation 7. So this directive won't change anything at all for recommendation 7. Thank you.

PHILIPPE FOUQUART: Thank you, Kristian. So we'll delve into substance [I suppose, just for a moment,] that's okay. John, on this point, I guess.

JOHN MCELWAINE: Very quickly. With all due respect, Kristian, that understanding of recommendation 7 is missing something I tried to highlight. It was covered in slide five. The reason why recommendation 7 overturns thick WHOIS consensus policy is because it makes it optional for data elements to be transferred and no longer mandatory. So it does not have anything to do with whether there is [inaudible] nothing to do, there is an additional element of it being consistent with legal grounds. But that's the main crux, is that it takes something that was mandatory and makes it optional.

PHILIPPE FOUQUART: Thank you, John. Kristian, is that an old hand, or do you want to follow up? Thanks, Kristian. Jeff.

JEFFREY NEWMAN: Yes. Hi. Just a clarification question so I can be able to explain this to others. John mentioned that this deferral request was result of both of the directive and the late changes. I didn't see the late changes on the list, so can we just clarify what those late changes were sop that we can explain that? Thanks.

PHILIPPE FOUQUART: Thank you, Jeff, and thanks for the question. I alluded to it, and I think John did as well. Maybe Pam or John, you would like to further elaborate on what happened in the background, off list, since those potential changes to the motion have not been discussed. So that would be useful. Not only for GAC, for that matter. Pam.

PAM LITTLE: Thanks, Philippe. Jeffrey, sorry, I sort of went blank. It's getting very late where I am. So yes, I think when John referred to the [sudden change,] let me explain, we previously had a draft motion for discussion within the council small team, as well as discussion at the council level prior to this current version you are looking at or we are looking at. Even though I agree with John, this new version was only submitted in a very short period of time after the

small team convened its last meeting—I think we had the last meeting on the 5th of December. I don't quite remember.

But the substance of those two versions, although they look so different, but in substance, the major difference between the two versions is the previous version, the earlier version actually contemplated the council initiating EPDP on the thick WHOIS policy while this current version doesn't do that as a result of our conversation with ICANN Board. as Philippe alluded to earlier, the Board gave us a signal or a message we feel we should take advantage of.

The Board is basically saying if you can clarify the intent and make the statement clear from the council, then you don't need to initiate another PDP process. And we thought we've already got enough on our plate, if we can do away with another process, we should do that, we should take advantage of that. And that's why this new version actually did not contemplate and it's trying to make a logical and coherent argument to say why the existing thick WHOIS policy was modified by recommendation 7 and why Article 16 of PDP manual was met before it's actually consistent with what the council mandated the EPDP team to do, and they did what they were asked by the council to do. therefore, everything is above Board and consistent with the GNSO operating procedures. I guess that's what I would hope John would agree.

In terms of John's—BC's proposed amendments, as those amendments have not been shared by the council, I really don't know how to treat them, and the Contracted Party House obviously looked into those amendments but we didn't feel those

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amendments would help clarify the intent of the EPDP. And we were also given very short time, only within a few hours this morning my time we could do that. So it wasn't really enough time for us to be able to say, yes, this is what our counter-proposed amendment to your proposed amendment.

So we then took the position, this is the original motion we'll be considering at this meeting right now. So that's where things are from my perspective. Thanks, Philippe.

PHILIPPE FOUQUART: Thank you, Pam. So I'll turn to John now to follow up, I guess.

JOHN MCELWAINE: Yes. Everything that Pam said is accurate. The main concern that is highlighted by the EC announcement is that clearly, the transfer of data elements from registrar to registry is going to be looked at, and we ought not to make it optional. So this is really, as I've been—again, I thought slide five did a great job with it. By making any transfer of data elements optional, we have eviscerated thick WHOIS.

Pam and I were very collab—I mean, Pam's been great to work with. We have been putting together—and I think we're pretty closely aligned—some language that would kind of thread this needle. So my whole point all along—and people will know—from the initial draft of the motion until Pam's latest draft was that—and I think we all were onboard—we needed to harmonize these two policies. We needed to harmonize Recommendation 7 with Thick WHOIS, and that ought to be the goal. That should be the stated

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purpose of the GNSO council, is that we shouldn't be willy nilly overturning consensus policy, we should try to harmonize them when possible.

Unfortunately, I think the way this motion's currently drafted does not do that. But I think that there is the opportunity to do that. We just were unable—and Pam's right, because of time constraints, I think, to do that. Add on top of that the EC directive. I think that we ought to take another 30 days to see if we can put something together that everybody can agree with. Thanks.

PHILIPPE FOUQUART: Thank you, John. What I'd like to do is we have another ten minutes—or just about—to conclude on this, if we don't want to eat up our agenda time. What I'd like councilors to think for the deferral question, I would like to hear from—so I'm hearing a lot from those directly involved in the motion, both what we have on the screen but also what was going on in background. I think the question before us is essentially, are we ready to take a vote on this? That's the essential question.

And the question is also, for those who were not part of those discussions—and I'll come on to that in a moment, but I would just urge those that were not part of this to share their views on this. So Kurt, you have your hand up.

KURT PRITZ: Well, I was part of this, so I'll defer to anybody whose hand is raised. My comments somewhat reflect what's already been said, but a deferral in order to arrive at a stronger agreement across the

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council that recommendation 7 must be implemented as written, and that is that elements that are identified in recommendation 7 as optional for being transferred, i.e. that the registrar must provide a legal basis for the transfer. If we're in agreement across the board that the reason for the deferral is to arrive at language that directs the implementation of that, then that's reasonable.

If the reason for the deferral is the NIS directive, well, that's certainly not going to be solved in a month. We're two and a half years after the implementation or enforcement of the GDPR and two and a half years later, we're still trying to give clear rules to registries and registrars who have been operating without that, without any policy affecting how they transfer data for all that time. So it's really our responsibility to provide that.

And deferring this motion absolutely affects the work of the IRT where people that were operating to a timeline were forestalled by the reopening of issues that were not willy nilly, but exhaustively discussed at the EPDP at the time of that. So for me, a deferral would be okay if we're committed to finding the right wording that will implement recommendation 7 as written.

And as a final word, the thick WHOIS policy clearly anticipated how privacy laws might affect its implementation. So the thick WHOIS transition policy is really the implementation of the thick WHOIS policy, and the thick WHOIS policy said these implementations might be changed due to laws. So the actions of the EPDP in creating recommendation 7, and the rest of the recommendations, are in concert with that. Thank you.

PHILIPPE FOUQUART: Thank you, Kurt. And I'd like to keep the floor open. So the question is deferral. I understand that we have some rough guidance from 2012 on deferral. I'll cut it very short, it's the chair's discretion. And my conception of this is—and bearing in mind that the general practice is [to grant it.] the spirit of this, I think, is whether people are ready to vote today or think they would need more time to consider this, or that there is, as I said, some degree of freedom—and I think that's what you said, Kurt—moving forward with the initial work that was taking place in the background.

So what I'm getting at is that so far, with the exception of I think one intervention, and I think they've all been useful because they all provide some background as to this. But what I'd like to know is also to hear from other councilors that have not been involved in those [offline discussions.] And I appreciate that they've been really recent.

Obviously, and since that is, as I understand it, the chair's discretion, that is no surprise to me, that those, the proponent of the motion, would like to have a vote, and the opponents would like to have a deferral. That sort of makes sense.

And we discussed the deferral within the leadership team prior to the publication of the announcement on a proposed directive. But still—and I just shared my personal preference not to defer given the background that I said earlier, given the fact that we've been working on this for quite some time, given that there've been a number of different proposals made to no avail. So that is, for what it's worth, and that was my general preference.

But chair's discretion is not win. What I'd like to hear is that for those of you who ... if we have to take a vote, that will need to be an [enlightened] vote, and I'd like to hear from others as well as to whether they're ready to do it or whether they are ready to do it or whether they are opposed to taking a vote today or whether they have a preference. So I'd like to just ask the question, especially to those who were not part of those discussions or may not have a direct interest in [inaudible] who are requested to have an opinion on this to share their views and say whether they would support or need a deferral to further consider the proposed motion and the potential amendments to it. Are there any views on this?

Absent of which, I think it would be fair to consider that with the exception of those who intervene already—and as I said, it's no real surprise, I would say, what their positions are, but I do want to make sure that if we take a vote, we know everyone is aware of and has sufficient information for that vote. Maxim.

MAXIM ALZOBA: As I understand, John seconded the motion of Pam. And if John wishes to withdraw his second, I'm happy to second the motion. Thank you.

PHILIPPE FOUQUART: Thank you, Maxim. That wasn't quite the question, but thanks for this. Any views on this? If there's no view, it means that everyone is perfectly informed of the ins and outs of the motion and is ready to take a vote. I want to make sure that my understanding is correct.

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John.

JOHN MCELWAINE: To Jeff's point, I will propose an amendment if we're going to go to a vote. I still think we ought to do a deferral, but we'll propose an amendment if we're going to go that way.

PHILIPPE FOUQUART: Thank you, John. Any other views on this? So I understand that the background information is sufficient for people to take a vote on this. Is that correct? Are there any common practice on deferral, or a track record? Pam.

PAM LITTLE: Thanks, Philippe. I think really, what I'm hearing from John and Marie is they still want a deferral and they would like more time to see if we can work together to come up with a motion that we all can support. And also, what I'm hearing from Kurt is we really want to have the commitment from all councilors that if a deferral is granted, that we would kind of commit to working towards sort of affirming the intent of recommendation 7 as the goal for our January meeting.

So, do we actually have that common understanding? Because I'm actually a bit torn, and I feel like given it's a tradition that usually the request for deferral is granted, and if our colleauges feel they really need more time to work through some of the issues, it seems harsh not to grant such a deferral. So really, I

would encourage everyone to sort of speak up and share your thoughts on this deferral request.

PHILIPPE FOUQUART: Thank you, Pam. And thanks for rephrasing what I said. And as you can tell, I'm really hesitant going for a vote now, for the reason you just mentioned, because there was a hope that we can vote as one on this, even if the result is not perfect. And that's why I'm hesitating on this. As a way forward, as an alternative, I think what you mentioned, Pam, and Kurt, with the understanding that the intent of recommendation 7 would be maintained and the text would be maintained as is—and I think that's what you're saying— would anyone be opposed to granting that deferral, bearing in mind that it's been common practice within the GNSO to do so?

I'm sort of insisting—so I'll just share the—I know Osvaldo has shared his views in the chat. I'll do the same with my ISPCP hat. So we had a call this morning, and whilst we appreciate the background discussions, I think given the timing, given the external events overnight which allegedly could be interpreted one way or another—that's not really the point. The point being that, are 30 days going to make a difference anyway?

People, at least from the ISPCP's perspective, would support deferral. Tania, and Stephanie.

TATIANA TROPINA: Thank you, Philippe. For me, of course, I was [against] the deferral based on what happened yesterday with NIS 2. I just wanted clarification. If this deferral will be granted, will the small

team work towards the conclusion, or will we find ourselves in the same situation? But I also wanted to say that we're a bit of a hostage concerning this deferral, because if we're going to vote for the motion right now, and here would be amendments proposed, so we would have to consider the amendments to possibly vote for the amendments, then vote for the amended or not amended motion. So, how much time do we have for this from the timing perspective, if I may ask?

PHILIPPE FOUQUART: Yeah. Certainly. That's a fair question. And I think given the agenda items that we have, I'll take it upon me to defer some of the agenda items that are discussions at a later stage, bearing in mind that for January and February, we'll have a couple of other things on our plate. But still, I think that's important, given the nature of the issue that we spend some time on this. If we need to eat the major part of the other discussion items, I think that's fair enough. But thanks for the clarification as to what your view would be now on the deferral. Stephanie.

STEPHANIE PERRIN: Thank you. Tatiana has been quite eloquent on why deferring for such a draft directive is, in my words, not hers, foolish. I'd just like to point out that at any given moment, Congress could receive a draft bill, because there are many crazy draft bills that get tabled in congress, that would impact the key players in these legacy thin registries but would also have an impact on how our carefully worded recommendation 7 would be interpreted by the relevant players.

We cannot start holding things up for draft law. It's procedurally nuts. I'd just like to point this out. Even while the thick WHOIS was being finalized, we knew that there were draft regulations, that GDPR was coming through, and the draft regulation changes were not reflected in the legal advice that was given to the thick WHOIS PDP. And so we've had it essentially in limbo.

We cannot continue that limbo forever. That's point number one. And point number two is I don't think anybody's pointed out what in the draft directive actually conflicts with what has been accepted in recommendation 7. So I don't see it, and I'm fairly used to reading European data protection regulations and directives. So if we are going to stall on this, somebody had better come up with the meat here as to why we're doing it, other than just we need to read it. Thank you.

PHILIPPE FOUQUART: Thank you, Stephanie. And my apologies if that's wasn't clear, but the rationale for deferral wouldn't be based on the publication of the directive. I think what Pam and others have said is that there would be an interest, a useful approach in sharing the proposed amendments, possibly with other changes as those that have been proposed on the council list, which hasn't been done, there would be an interest in reconvening or maintaining the small team that have worked on this.

So the rationale is not solely based on the publication of a would-be—and I think you articulated it better than I would—regulatory framework which might be amended, not translated as it is intended in foreign languages in that matter, etc. But your point is

MAXIM ALZOBA: I just want to note that if we think that small team will come up with something better, I'm a bit pessimistic, because if you apply formal logic to the text exchanged, I personally see a situation where two sides have different views. Yes, we do exchange text. Yes, we do mix which numbers go to which line. But there is no common, I'd say, reading, and I don't think we will—with the pace we have—it was more than one month, and currently, we have how much? Two weeks, because I remind you, it's a public holiday period. It's almost [over for] United States. And I'm not sure we will see anything substantial. Thank you.

PHILIPPE FOUQUART: Thank you, Maxim. And I think you're right. That's what I tired to say at he very beginning. I think one of the reasons why a lot of us would like to get it over and done with is that we spent a lot of time on this. There are what seem to be entrenched positions, a different reading of that sentence and how that would translate in implementation terms. And the odds are that we know better in a month from now than where we are. The fact of the matter is I don't know. Future will tell us.

But look, what I'd like to propose is, for those of you who worked on the proposed text, to share this on the council list—which hasn't been done, so maybe the discussion that we've just had has been somewhat arcane to those who were not privy to those

discussions. I would ask that the small team reconvene and have a look at that proposal, further consider whether some improved approach—I'm looking for a word, but with the caveat that the intent of recommendation 7 is maintained, and given that there would seem to be the degree of freedom that I was alluding to at the very beginning of this long discussion, I would grant deferral and further discuss that in January. Obviously, there will be no further deferral.

If we end up with the same motion as the one we have today, so be it. We'll have a vote on it. I don't think, for what [relate] to the information that was circulated yesterday—I don't know whether a month indeed will make a difference compared to those 18 or maybe more than this, should that be amended. I don't know, but certainly, just to give a chance to having a common approach within the GNSO on this, I think it's worthwhile spending, even with the festive season, another few weeks on this. I hope this is a reasonable way forward given the interventions that we've had today. I'd like to thank you again for putting so much effort in this.

I know both the CPH and IP, BC are working hard on this, in good faith, in trying to reconcile those entrenched positions, and I just want to give them credit for doing that. And I hope that by the next council, we have a reasonable text as a basis. And if it's the same, so be it. And it's going to be just ... it won't be further deferred.

With this, I'd like to close this agenda item and move on to the next one. So we're now on item five, and it is a briefing on the final report from the review of all rights protection mechanisms, otherwise known as RPMs PDP who was chartered to determine whether the RPMs needed revisions.

As you would remember, there was a request in September, a PCR, a project change request in September. It is customary for council—and we'll see that with SubPro in AOB—to have discussion items before we take a vote on this, which we will, as you could see on the decision radar. So with this, I'd like to turn to John as ... Steve, you had a hand up before we do this.

STEVE CHAN: Thanks, Philippe. Quickly, I just want to note that there has been a webinar scheduled—I don't remember the precise dates. It's in early January. So given that we are substantially over time, I want to say probably 25 minutes over scheduled time, I'm just curious if it might make sense to rely on that webinar instead for the briefing, or if we should plow ahead with this agenda knowing that we won't be able to complete everything in it? Thanks.

PHILIPPE FOUQUART: Thank you. Maybe I'm getting this wrong, but I thought we had something like 10 to 15 minutes lagging behind schedule. But on the substance, yes, we can certainly do that. What I would ask is just for John to have a brief readout of where we are for five minutes or so, and bearing in mind maybe indeed the fact that we have a provisional webinar. And maybe for that webinar, some of the points which were shared on the list as to maybe the need to think this—the [IRT] relative to this at the same point as SubPro's. Those are the two things that I'd like to highlight. Okay. Thanks for the clarification, Steve.

So with this, John, would you like to help us with that item five, please?

JOHN MCELWAINE: Absolutely. Steve, I don't know if you want to put up the slides. Thank you. And I will just cover this very quickly. So if you can go to the first slide there in the recommendation overview, of course, as everybody can see here, there's 35 total recommendations. So if I just spent a minute talking about them all, we would be here way past what we ought to be on the agenda.

So what I think I'm going to do is focus on the layout of the final report and then we'll quickly turn to some of the slides, and I'm also going to talk a little bit about some of the terminology so that it will assist councilors in their review of the final report or their understanding as they hopefully attend that webinar.

First, this was delivered to the council November 24th 2020. Four years' worth of work by the RPM working group. Huge thanks to the co-chairs. They did a great job. As you see in that second bullet point, 34 of the 35 recommendations achieved full consensus. One achieved consensus with a minority statement on it, but that right there just goe4s to show you how the co-chairs really got people together. And staff did a great job of summarizing the discussions and putting it in a way that people were able to digest, talk about, discuss, and was able to ultimately come out with what I think is a really good report.

Let's go to the next slide, please. Okay, so in terms of terminology, the report covered four areas. The uniform rapid

suspension, which is a procedure somewhat like the UDRP for the suspension of domain names. These are only domain names in the new TLDs. There's the trademark clearinghouse that you'll see abbreviated as TMCH throughout the report.

The trademark clearinghouse is basically a database, it's a repository of trademark information, and from the trademark clearinghouse, there's two rights protection mechanisms that come out of it. That is the sunrise process which allows trademark holders with a trademark registration in the trademark clearinghouse to obtain what's called an SMD file—it's a little code that will then allow them to register in the early part to a launch of a new TLD. It also allows them to take advantage of the trademark claims service, which is also offered through the trademark clearinghouse.

So one of the first things you see here on the slide is that there were three categories that you'll see throughout the report. The report is broken down into topics that are the URS, trademark clearinghouse, the sunrise process, trademark claims, trademark post-delegation dispute resolution procedures, and then some additional information that was to be obtained.

Going through it, each one of those sections of rights protection mechanisms had either a maintain status quo, a modify the existing operational procedures or practice, create new policies and procedures, and those three sections are under each, again, of the URS, trademark clearinghouse, sunrise and trademark claims sections. So under each one, you're going to have some recommendations that are numbered.

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So the way that this report is broken down or that these slides are broken down to initially discuss all of the recommendations to maintain a status quo. For instance, in the trademark clearinghouse, that was to maintain the Trademarks +50 rule. I won't go into those details. The exact match, and the scope. In other words, when you get into that trademark clearinghouse section, you'll be able to look at the recommendations and these, again, are ones where the status quo was recommended to remain the same.

Sunrise and trademark claims, again, when you get to those sections, what you see on the slide there are going to be, again, recommendations where the status quo was maintained. Next slide, please.

With respect to modifying existing operational practice, this would be taking what is currently a rule, a policy, and these are suggestions by the working group to modify that received full consensus. So again, you'll see those as recommendations under each of the sections in the report.

A lot of them had to do with GDPR, making some revisions to the policies to deal with its impact, primarily on the WHOIS data fields we could reach, and then just practices such as educating folks about the different benefits and processes, the benefits of the trademark clearinghouse and the processes of the URS, or the sunrise, etc., trademark claims. In particular with trademark claims, there were a number of recommendations that went to making sure it was understandable, that it was translated. So these were just going to be improvements to the already existing operational practice. Next slide, please.

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Then there were a number of recommendations that were to address new policies, new procedures. Some of these, as you see here, were due to GDPR. So again, where there were WHOIS impacts, we identified new policies and procedures that should be put into place. Issues aligning n the URS with some experience people were able to pull from the UDRP. And as you've heard, some educational suggestions and reforms to the way panelists are picked, things like that. Next slide, please.

I think it's worth me focusing a little bit on, one new policy procedure that did actually receive a consensus vote but not full consensus. It's important for the council to know it did not achieve full consensus but not because there was a disagreement in the concept. The concept of this trademark clearinghouse number one was that geographical indications, things like Champagne, shouldn't be part of the trademark clearinghouse.

By doing so, there had to be a definition of wordmarks, and that's where the minority statement occurs. So just keep a look out for that when you get to trademark clearinghouse recommendation number one. The minority statement is not going to the real substance of the recommendation—again, there was consensus—but to a small subpart of that. And that'll help it make more sense.

Some of the other new policies and procedures were to address some of the pricing issues and unusual public interest issues that we saw, for instance with the .feedback and .sucks, and then there was actually one, the only recommendation we have with respect to the post-delegation dispute resolution procedure was a new procedure to allow multiple complaints. Next slide, please.

This one really does speak for itself. One of the biggest challenges we had was accessing data. So one of the report's recommendations is that there's four areas of data collection we'd like to see going on. That's really just going to help the community monitor these programs as they move forward. And then when there is another review, we'll have that data ready and available to look at for any further reviews of these new gTLDs. So pay good attention to that section in the report.

I think with that, I can probably conclude. There's the minority statement in one of the slides. And then why don't we go to the next steps? I think this is almost—I'll just read off of. The next step is the GNSO is going to consider the recommendations in the final report, and then if approved, send them to the ICANN Board. So again, definitely attend the webinar and learn more about it. And by the way, if you have any questions about anything that you've heard here from the webinar, you can e-mail me and I'm happy to try to answer those questions for you.

After that, it's going to be put out for public comment. On the GNSO approved recommendations, then the ICANN Board will consider them, and the final report, and then if the Board adopts them, the Board will direct ICANN Org to begin implementation, and then we will be faced, as a council, with putting together an IRT.

So with that, hopefully I didn't go too long, and I'll turn it back over to Philippe.

PHILIPPE FOUQUART: Thank you, John. I'll just reiterate what you just said in terms of making sure you have your questions ready for the webinar that we'll have on this. We may have a couple of minutes if there are questions on the next steps, especially if that's not clear for some council members, and we'll keep the substantive maybe questions, clarification questions for the webinar.

Okay, seeing no hand, thanks again, John, for the readout on the status of this, and councilors can get ready for the webinar. So as I posted in the chat, would like to carry over the item six to our next call or on the list .we'll see, but probably to our next call for the benefit of time, and essentially to focus on item seven, the AOB, but you would have noticed that there are a number of things under that. so I'll cover 7.1 very quickly. As you would notice, on the list, we had discussions relative to the appointment of the GNSO members to the community representative group for the selection of the IRP standing panel.

There was an expression of interest which was launched. There was a proposal to use the SSC for the selection of those GNSO members, and concurrence from the CS and C leaders. And I'm sure you've been updated on this within your respective groups, and the proposal was adopted. Well, there was no opposition to adopting that on the list. it was essentially for information. I hope that that is quite enough as an information point. To Jeff's question, is it possible—I don't know. I know it's not planned to extend the expression of interest.

I think the timing on this is short. We need to brief the SSC with a briefing paper with a background by the end of the week. I'll turn to

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Steve maybe as to the status of the expressions of interest. Steve, could you help us with this? Or Mary.

STEVE CHAN: Yeah, I think it might be one of my colleauges that might know this issue better. Thanks.

PHILIPPE FOUQUART: Yes. Thanks, Mary. I know that this is a bit awkward. It's a meta layer, if you see what I mean. It's really the appointment of those GNSO members to the group that will select the IRP standing panel. It's obviously not the selection of the IRP standing panel per se. Mary, I'll take you first because I suppose it's to this point. Apologies to Maxim.

MARY WONG: Thank you, Philippe, and apologies to Maxim as well. It is, and to follow up on what you've mentioned and Steve mentioned about the guidance to the SSC, as you noted, there is a rather brief document that has been prepared, and that's been circulated to the stakeholder group and constituency chairs for their sign off. Our expectation is that that will be sent to the SSC in very short order.

What I did also want to say on a related but separate point, Philippe, is that the SSC did cover this item briefly as AOB on its last call, and there was some concern about the time frame, the lack of guidance I as the fact that they don't yet know who the candidate is. We're preparing to send the packet to the SSC. The

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latest is that staff have received a request, I believe from one of the leaders of the SSC, to go back to the stakeholder group and constituency chairs to see if they wish to have a renewed call for expressions of interest so that you can see as a GNSO community—not necessarily as the council—whether there is other interest there to help with representing the GNSO on this community representatives group.

Staff have noted that even if the GNSO stakeholder group and constituency chairs agree, obviously, any extension needs to go back to the full SOAC leadership group. And it's possible that even if you proceed with an extension in the GNSO, you would still need to complete the appointment within the original time frame, which is the end of January.

So what I'll say is that staff will follow up on all of this and we'll keep you all apprised, hopefully as soon as we can.

PHILIPPE FOUQUART: Thank you, Mary. [So to just point,] there might be an avenue for extending EOI, but that would need to be worked out. Thanks, Mary. Maxim?

MAXIM ALZOBA: Actually, we have a situation a bit worse than we see now. As I remember, at least five last situations where someone had to apply for volunteer role, we had situation with only one candidate. It's not selection, it's approval. So we might face a situation where we have one candidate which is on minimum threshold of qualifications, and we will have to approve it because formally, it

will be compliant with EOI. And it's a good sign that either community is not interested in the policy work because of no face-to-face meetings, or combined with the issues of COVID time and the sign that the community is really stretched thin.

It was GAC liaison, then it was [CSC,] it's IRP where we have to have two and we have only one, it was EPDP chair, so it's a bad sign, and we have to think about how to adopt to these new situations. Thanks.

PHILIPPE FOUQUART: Thank you, Maxim. I can only subscribe to what you just said. It's one sign among several that there is—for a number of reasons. And I think GNSO is not specific, ICANN is in fact not specific in having that sort of problem, making sure that volunteers come forward for these sort of positions. And it is an issue that we'll need to address, possibly with the other SOs and ACs.

Jeff, I hope you won't hate me for this. If it's on this point, we're not going to solve it now. I would rather keep some time for SubPro. I'm sure you wouldn't mind that. Thank you, Jeff.

So with this, I'll just close that item and go to 7.2 on the agenda very quickly as well, update from the SO/AC leadership roundtable. Most if not all of our discussions were relative to ICANN 70, and more broadly to the results of the meeting survey and how the lessons learned from the couple of virtual meetings could be applied to a new format, and maybe also to the face-to-face meetings. There's been a paper which was developed by

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staff and there was, as you could see on the list, feedback to the SG and C leaders on this.

I think that there was also some [soundtrack] needed on reading that document which is called recommended strategic changes to future ICANN meetings, and we're working on this with the SG and C leaders, and I think we'll have some, yet again, informal comments provided to staff on this.

So this is just about it for 7.2. I would suggest that we take the EPDP phase one recommendation 7 to the list to make sure that we have some time for 7.3, which is an update on SubPro, the final report. And for this, I'll turn to the liaison, and Flip, you have the floor.

FLIP PETILLION: Hello, Philippe. Hi everybody. Good morning, good afternoon, good evening, night. In the time frame that we have, I'll try to be as brief as possible. You know the original plan was that on the 23rd of this month, the council would receive a final report by the SubPro working group.

The leadership has been, together with staff, working extremely hard for many months and a couple of years—more than a couple of years—but they have been working very hard over the last months. They've met three to four times a week, meetings with the working group members, meetings with the leadership and myself to prepare the next meetings to discuss the status, and that was done really in every single meeting.

What I sent around yesterday was a proposed workplan. It's a modified plan compared to the one that you already received and that was announced last week, I think. Actually, the idea is that the GNSO council meeting of January—and that is, I think, the 21st of January—the council would have the final report. So it's the expectation that before the document deadline which is the 11th of January, the consensus designation would be there. and if any, minority reports would also be available before the January meeting. And the plan is to present this for a vote during the February council meeting.

So this is where we are. I have, of course, the advantage of having Cheryl and Jeff here, and Steve and colleauges in the room, so I actually propose that I hand the mic over to them if they want to step in, or if anybody has a question, we will of course address it.

PHILIPPE FOUQUART: Thank you, Flip, for the update, and that's very much in the spirit of anticipating a vote from council. Questions. Tomslin, you have your hand up.

TOMSLIN SAMME-NLAR: Just as a procedural matter, I was wondering why—and [inaudible] but [inaudible] project change request [inaudible].

PHILIPPE FOUQUART: Tomslin, is it just me? You seem to be cutting off. We couldn't hear you.

TOMSLIN SAMME-NLAR: Can you hear me now?

PHILIPPE FOUQUART: Yes, it's better. Could you please repeat?

TOMSLIN SAMME-NLAR: Yes. I was saying that I might have missed it, but I was wondering why a formal change request was not submitted for [inaudible]. I hope you can hear me now.

PHILIPPE FOUQUART: Yes, sort of. I think the question is whether a project change request is necessary for the amendments or proposed timeline that is shown on the screen. And I'll turn to Flip or Jeff since you have the ability to speak on this. I think it's easier if you can intervene directly, Jeff.

JEFFREY NEUMAN: Sure. And Cheryl's here too. We had every intention of finishing and delivering the report on the 23rd, and the working group had that schedule in front of them, but in the last couple weeks, the working group members had asked for some time for consensus designations and for the minority reports. In fact, when they started asking for that, it was after the document deadline. So when we thought about it, we couldn't submit a PCR request to have the council consider, because it was after the document deadline, and by the time the council were to consider the PCR

request in January, it would already be done. So it just didn't ... the PCR request is a useful tool but not in this situation.

PHILIPPE FOUQUART: Thank you, Jeff. And I think it's also in the spirit of what I posted on the list as well as the way forward. The idea is really to try and have a lightweight approach on this, [not only] in terms of formal changes but also in exchanging information. And I hope that that answers your question, Tomslin. Maxim, you're next.

MAXIM ALZOBA: As I remember, during the time of the previous chair of GNSO council, it was more or less clear that no third PCR should be granted to this group. I do understand that if on the scale of few years, one or two months added on the top is almost nothing, but I think this time, it should be more or less realistic timeline, because doing operations management, when I see something slipping a few times into the future, it's, I'd say, some issues with planning. It would be really good to have some realistic planning and to avoid situation where in January, we receive the report five minutes before the council conversations start, and it's not very helpful, I'd say. Maybe it should be planned to be for the February, but it should be the last extension.

If not, maybe some help from the council is required to keep the pace or something. Thank you. And I think it's not the correct way, [inaudible] to happen when the PDP leadership decides what should be. I remind us all GNSO council is the manager of the process, not the PDP leadership. And we shouldn't be just

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informed by one of the [councilors saying that] time is slipping. When the leadership of PDP understands that time is going to slip, it should report to the council. But maybe it's a liaison role.

But I hope this time, we resolve it and we receive the report by the February meeting. I'm not sure it's wise to say that it's going to be January. But there should be no more extensions without consequences. Thank you.

PHILIPPE FOUQUART: Thank you, Maxim. I think, to your point—and that also goes back to Cheryl's observation in the chat. Thanks for that, Cheryl—the idea is not to go past one another in terms of requesting an extension, granting, having that approved by council, going back to and keeping the PDP on hold, etc.

You make a fair point, and it's ... I wouldn't say inevitable at the 11th hour of a PDP that maybe we slipped off for a few weeks, a few days for that matter. But your point is well taken. It's formally ... we should make sure that no extension is even informally granted without proper consideration by council and not by the PDP.

But I think it was just the practicalities of that in this instance, given that we're at the very last stage and people have probably other things [inaudible] filling in templates for requesting extensions. Just being pragmatic. But your point is well taken. Just before we go to Flip, we'll run five minutes over. I hope people wouldn't mind, but I want to take some time to talk about this [inaudible] and that is the main purpose of this AOB item. Flip.

FLIP PETILLION: Thank you, Philippe. And sorry I wasn't mindful of the timing. Just in the defense of leadership, and just to be straightforward, clear, yes, you make a good point, but the mail that I sent around yesterday was exactly to inform the council and the mail expressly mentioned that this is a potential modified workplan that was prepared by the SubPro working group leadership, and you have to understand that this is really a very small time frame we're talking about, and this leadership has been managing this group extremely well, and it is between actually the wish to deliver, to deliver in time as promised, and also to answer questions and requests from very active members in the working group.

So I think you realize it's a very difficult exercise for them to make and to make everybody happy. I just want to put that into the right perspective. Thank you.

PHILIPPE FOUQUART: Thank you, Flip, and we all know that the very last discussions are generally the hardest ones. And then maybe that's just me, but the intent is really not to spend time that would be [much well] spent on discussing those 11th hour comments than exchanging requests or granting requests. But the concern is valid. Kurt, you're next on the queue.

KURT PRITZ: So, as Flip just said, this is just a short period of time, but it's certainly action packed, and there's a lot of important events that

have to take place within this short period of time, and a lot of interests that must be carefully and closely balanced.

So I don't know what we're approving here, but I don't think we should be in the business of approving day by day scheduled where various pressures will arise. So I don't want us to take away the ability to accommodate the GAC if they ask for a couple more days or have the PDP leadership point to the GNSO council and say, "Sorry, we'd like to give you some slack, but GNSO council said no" and where we're removed from the process.

So I'm for—and another opinion is that we're so close to the end that there's really little in corrective action or help we can give to the leadership team, except to say keep going. So I'm for—and Tomslin's comment, I think that one of the purposes of the PCR is that the GNSO can offer help. And again, I think we're so late in the game, I don't know what specific help we could offer. So I'm not sure a PCR is necessary or appropriate, as Jeff said.

So I'm for the council recognizing that the 23rd or 21st December date has slipped and the finalization for the January meeting has slipped, but just to [tell the] PDP team to use their best judgment to finish as quickly as they can but not upset five years of work with some hurried judgments at the end but to use their best judgment to deliver as fast as they can. Thanks.

PHILIPPE FOUQUART: Thank you, Kurt. And that was indeed what I was trying to say, possibly trivially in saying that people within the PDP would better

spend their time in accommodating the latest comments than going to the formality.

Bearing in mind the concern of principle, but I'm sure that it's not open ended. I think that's a valid concern, but at this point, I think the chairs, the co-chairs are well aware of the need for the final report to be considered as quickly as possible.

As to the intent of this is really to keep council informed on the progress and recognize that indeed, the deadline of the 23rd has slipped a bit, we're not going to have that for Christmas. But it's coming soon. And since that was also a request from our GAC colleauges, that's time well spent by the PDP.

With this, I see that there are no further hands. I'm sure that we will have further opportunities to discuss that update, at least on the list. But with this, with five minutes over—my apologies for this—unless we have other items to discuss, I'd like to adjourn the meeting. I'm looking at whether we have hands.

So with this, I'd just like to thank everyone for their participation and their hard work. I know the work on recommendation 7 has been intense over the last few days and hours, literally. So thank you all who have been involved, and thanks to the SubPro PDP leadership for working so hard in making sure they meet our deadlines next year as soon as possible, as we said.

With this, I just want to wish you happy festive season for those of you who celebrate Christmas, and wish to speak to you and meet you as soon as possible next year. With this, I'd like to adjourn the meeting. Thanks very much, and speak to you soon. Bye now.

NATHALIE PEREGRINE: Thank you all for joining today's GNSO council meeting. This is the end of our call. Have an excellent rest of your days, evenings, and stay safe. Thank you very much.

[END OF TRANSCRIPTION]