ICANN

Moderator: Nathalie Peregrine
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3:15 pm CT

Rafik Dammak: Let's start the recording and we move quickly with the - our agenda today. Yes, yes, this is herding cats. So for today what we are trying to achieve is that we have several motions for the GNSO public meeting and also we have maybe just kind of to go quickly with the - through the - what we want to discuss with the ICANN board on Tuesday if we have enough time.

But also we have the high level interest topic session tomorrow and we are supposed to be there with three representatives, one from NCSG, one from NPOC and NCSG and - just to get some feedback, what we want to say there.

But let's go first through the motion. I think we have four and I hope that you are accessing - ready to - either to be connect or to the link for the motion.

Okay. I think the first one is about to extend the GNSO liaison term - extend term of the GNSO liaison to the GAC. Well, so - okay. So you're agreeing to what - yes for the...

Male: I'm agreeing to - yes.

Rafik Dammak: Are you paying attention guys?

Male: Do you agree? (Unintelligible) how you're voting tomorrow.

Male: (Unintelligible).

Rafik Dammak: Okay. So you are going to vote yes for the motion about extending the term to the GAC liaison?

Male: Yes.

Rafik Dammak: Okay, that's good. The second motion is about GNSO policy and implementation working group final report and recommendation. It was - the motion was made by (Amar) and second by (Stephanie). So I guess we will vote against this maybe.

Yes...

Female: Do you want an explanation of this?

Rafik Dammak: No, I mean if you have any concerns or - I mean did you get any friendly amendment or something because it can happen in that time. So what you...

Female: I don't think we're anticipating any amendments. (Amar) made the motion and (Amar), (Avri), and I have been sitting on this committee. I have been absent lately because it's pretty demanding every week. But it's a very sensible process and it will help I think make that distinction between implementation and policy.

(Amar), do you want to speak to it a bit?

(Amar): Sure. I do think it's a good working group final report. I think it's really to clarify some of the ambiguities in the relationship between the GNSO and staff and the board in terms of policy development, implementation of that policy. So yes, I would go for it and vote yes.

Rafik Dammak: I think - (Carlos), you want to say something?

(Carlos): Yes, I have a question, (Amar). Do you think - I mean we're stretched for resources. We're stretched for volunteers. Do you think these ideas of the implementation committees is feasible without additional resources? I have a big worry there. I mean there is a part of the GNSO that is being paid full time to be there.

And the rest is on a voluntary basis. I think that the implementation - implementation teams or committees goes one step too far unless you request the necessary resources for having the people and having the resources for that.

I mean what we are addressing in a symptom of lack of resources because the policies don't come out clear enough so we're going to fix them in the second found.

What I worry is if the implementation teams will be representative and well-staffed and supported so they can do their job. I have serious worries because that reminds me of the time and discussion about the GAC secretariat. Thank you.

Rafik Dammak: Thanks, (Carlos).

(Amar):   Yes, I can speak to that concern. Yes, that's a very reasonable concern, (Carlos), but I am personally not that worried. On one hand, having been on one implementation review team I can - I think I can safely say that it's not very time demanding, not like working groups are.

You basically kind of just get updates from GDD staff on how they're implementing the policy and you just really intervene if something's going wrong. Not much is required from IRT members. Calls are usually monthly, not weekly if you even monthly call. Sometimes you'll skip a few calls if implementation is moving a bit slowly.

But on the other hand, I think having implementation review teams is - will actually relieve community members from a lot of the burden because it's really common that you have problems coming up because of staff's interpretation of policy and how they implement it and then you've got mistakes and all these fumbles and see what's going on right now with how staff are trying to push some RPMs on legacy gTLD registry contracts.

So I think actually having implementation review teams as a standard following any PDP is something that will help the community in saving time and saving efforts and sort of getting things right the first time around instead of circling back on to mistakes made. Thanks.

(Carlos):   I fully agree with you, my question was if we have enough resources to make them representative. I fully agree with the purpose of the policy. I have serious doubts that a small team depending on the inputs from the GDD will be representative and independent in their opinion. Thank you.

Female: Please state your name (unintelligible) purposes.

(Amar): Yes, okay, sorry, this is (Amar) again. Yes, IRTs are usually staffed by the same members of the working groups who decide that they would like to continue on IRTs.

In this working group's final report and the recommendations it also says that if the working group members or the IRT members or GDD staff feel that they need a certain level of expertise that is missing from the existing team then that expertise could be recruited from elsewhere.

But in general if there is a problem in representativeness on the IRT then you probably already had that problem on the actual working groups. So not having the IRTs because of that issue will not really solve anything, not that I can see at least. Thanks.

Rafik Dammak: Okay, thanks, (Amar), for this. Any other further comment or question? Yes, (Stephanie)?

(Stephanie Perin): I think - this is, for the record (Stephanie Perin). I think (Carlos) is raising a really important point. We - somehow we have to find some time to discuss who's going to sit on all of these PDPs because there is a ton of work coming at us and it can't be done by all the same people.

So we need to find new resources to sit on the PDPs that are coming. So it's a bigger problem than just this. This should hopefully help us. Thanks.

Rafik Dammak: Okay, thanks, (Stephanie). It's always the challenge to find enough people to get involved. Any further comments?

(Rudy): (Rudy) for the transcript. I agree with (Stephanie) and (Carlos) but I think that the - what concerns me the most is having enough people on the working groups - implementation is a stage where I think the time consuming is less than in the working groups.

And I think what we have to look forward and how to - we're going to solve having enough resources available for the PDPs that are going to come because that's going to be big work. And we don't see that many new volunteers popping up to join. I think we need to find a way to get people convinced that it's not lost time.

Rafik Dammak: Thanks, (Rudy). Okay. It's (unintelligible) speaking. If there is no further comment and I think there is support for this motion I think - still think the council will vote yes on Wednesday. Okay. Seeing no objection here.

The next motion, next motion, next motion. So it's the motion to request preliminary issue report and (unintelligible) subsequent rounds. It was made by (Brad Frost) but it was seconded by Avri and I think, Avri, you're in that - I'm not sure how to call that group but new gTLD sub second round.

So can you just tell us more about this motion and what's supposed to...

Avri Doria: Sure, Avri Doria speaking. Okay, this was - no, this was not a working group. It was more - what did we call it? A discussion group and we talked for a year. And what we did, I think it was already discussed in that GNSO meeting. But briefly what we did was a fairly diverse group of people basically talked about all the things that were problematic or needed some rework or were of concern or didn't actually happen in the new gTLD program, all things that needed to be talked about . Not necessarily fixed as (Brett) said, they really did try very hard to get us to be neutral about, you know, we need to talk

about developing economy applications. We need to talk about this. We need to talk about that as opposed to we really messed up in that last application.

So this basically was collecting all the issues together with - as little as possible either normative or judgmental and say, here's a whole set of issues, staff now please go and create an issues report on - for us on a new gTLD PDP on - should we change it, should we fix it, is going along with the last one fine? If it's not going along with the last one then, you know, what do we need to change, what do we need to fix, what do we need to do?

This is somewhat mixed up and the whole issue of do we need to have the AOC and other reviews of the old gTLD program and the root zone stress test or, you know, the reports done first? Can we do this first? What comes first? So there's some of those issues and they may come out in the issues report.

There's a strong chance there's - anyway, I was watching the GNSO council meetings so that there's a certain amount of difference of opinion on whether it's time to start an issues report or whether it's time to do some more reviewing first or, you know, what have you. So I think the discussion will be interesting in that respect.

But you know, and that's probably stuff we may want to talk about, we may not on whether - my bet - and no one has said anything to me but my bet is somebody will put this off until the next meeting. I don't know but, you know, that automatic - I'm not suggesting we do it. Obviously I seconded it. I think that getting the issues report started is not a bad idea. I think getting them all - having staff do that. We may find that it takes them longer than a normal issues report. We may find - you know, after do the review of the initial issues report that there's more to be said, more to be thought about. And we may find at the end that going into a PDP it's not time yet and it will be a time to

do one of those, okay, we've got the issues report but let's wait until A, B, D is done before we actually start another PDP.

So that's - but that basically - that discussion group in terms of let's scour everything and find all the issues we can discussion group has completed its work. And its final act is to suggest an issues report to deal with those issues. Thanks.

Rafik Dammak: Thanks, Avri. Okay, any question or comments here? Don't be shy. And checking those on the Adobe Connect. No? Okay. So Avri, I just have a question, is the report coming from that group include - I mean and you think about the applicant support?

Avri Doria: Yes, basically it's not in a report. What's coming out of there is a brief report of what we did and where it needs to go. But yes, the applicant issue - applicant support issue is mentioned in the list of topics. Now when we get the issues report it will be up to us to check and make sure that it is indeed discussed adequately as an issue.

                  This is not discussing it as an issue but it is if you go to the - I think it's an XML file that's part of this developing economies and applicant support does fit in there as something that needs to be further discussed and reviewed.

Rafik Dammak: Okay, thanks.

Avri Doria: And incidentally - this is Avri Doria again, incidentally so does my favorite topic of how to deal with communities.

Rafik Dammak: Yes, so I think you are talking about giving priority to communities for the second round.

Avri Doria: That would not be in this. It would just be how do we deal with communities? Should we deal with communities? It would not be recommendation that would be something that would come later if it came at all.

Rafik Dammak: Okay.

Avri Doria: And I know that NCSG is divided on the notion of communities, that's why I brought it up. But as I say, it doesn't recommend we should do communities, it just says we need to talk about the issue of communities.

Rafik Dammak: Thanks, Avri. I think you shared the document in the mailing list. People should read it and have a thought and when the process starts to issue a report I think we will have a long discussion about this. Any comment, guys, question? I like this silence. Okay, I guess that you are voting yes for this motion in Wednesday meeting.

The next motion, it's about - okay, this - the next motion is about the adoption of GNSO translation and transliteration of contact information PDP working group final report recommendation. The motion was made by (Amar) and seconded by (Dave).

And I think we have two NCSG co-chair and the working group so I assume that we are going to vote yes for this motion but if there is any question or comment you have please go ahead. Yes, (Rudy)?

(Rudy):   (Rudy) for the transcript. As we discovered yesterday there was an issue with one word in the recommendation four to be more precise, the word verified was an issue as in the RAA talking about validated.

So we worked on - with the co-chairs on having an approval of changing the word verified by validated as it's standing in the RAAs. And we have a full consensus now of the working group on changing that word. So there will be no issue with recommendation four.

Rafik Dammak: Thanks, (Rudy). (Amar), are you still here? Yes. Yes, please go ahead.

(Amar):   Yes, I am. Thanks, Rafik. Yes, I just wanted to briefly bring up what (Rudy) brought up and that - yes, that we did use the word verify in one of the recommendations and if you look at the RAA - the 2013 RAA on verifications done for email addresses, validation is done for the rest of the complex information.

So there was a concern about creating new policies that may change the RAA as a result of the wording of that recommendation. So we did change it to validate instead of verify. And like (Rudy) said, the working group has sort of given its full consensus blessing to this change.

I expect a friendly amendment to be suggested by (Volker) prior to - on this motion, which is okay. I think the amendment is just basically going to say that there was a change done to the - to recommendation four of - in the final report.

So it shouldn't be really a problem, I just think it would be a good idea to give my fellow councilors a heads up it's going to come. Thanks. Yes, I would vote in favor of this motion. Not just because we had two NCSG co-chairs but because it's a good policy or actually it's recommending that there would be no policy so that's good. Thanks.

Rafik Dammak: Okay, thanks, (Amar). And yes, I just want to highlight here that we have really - many NCSG members in this working group. I think it's one of the most working group with the majority of people from NCSG. Okay.

(Amar):   Yes, this was great and I would like to point out that the chief recommendation in this final report has not achieved full consensus. And the IETF is submitting a minority statement, which is - as far as I can tell a rare occurrence in GNSO PDP working groups. So yea.

Rafik Dammak: Okay, thanks, (Amar). I guess we are going to vote yes for this but if there is any question or further comment? Okay. So we can move to the next motion.

It's about the adoption of the final translation proposal of the (unintelligible) community working group and naming related to functions, the CWG stewardship. Okay, maybe Avri as our representative in the CWG so maybe you can give us some briefing or update here?

Avri Doria: Sure, Avri Doria speaking yet again. Okay, I mean we've been talking incessantly about the CWG proposal. This is the CWG proposal. It took longer than the other proposals. It's finally ready to be passed to the ICG and it seems like about time that we do pass it on to them so that we can see how it mixes and matches with everything else.

While there seem to be some issues about some stuff that's kind of drafted in some of the annexes, by and large there have not been as far as I can tell any major contentious issues in the meat of the proposal. It seems to have general support. Have not heard - and I have been, you know, talking to the NCSG periodically. We've had a couple webinars along the way, more than willing to answer questions pretty much any time I can.

And I'm suggesting that we vote yes to pass it on to the ICG. It's about time we move forward and deal with whatever issues come up to be dealt with. So I say go for it.

Rafik Dammak: Okay, thanks, Avri. And we have our representative to ICG, (Milton) wants to speak.

(Milton): Yes, I think there is a major problem with the current CWG draft. Avri mentioned something sitting in the appendix and that thing is having to do with the trademark and domain name for IANA, the IANA trademark and the IANA.org domain.

I think the clear direction of the policies we supported were that we wanted IANA to be considered - the IANA functions operator to be considered a separable service provided to ICANN based on contract.

And for reasons that are not entirely clear to me Greg Shatan the intellectual property chair slipped into this draft the idea that PTI should control the trademark and the domain for IANA, which makes absolutely no sense from our policy standpoint.

We wanted to separate IANA from ICANN and have it be this separate service contracted for the - it's also inconsistent with what the numbers people and the protocols people proposed.

The numbers people wanted the intellectual property to be placed in the IETF trust. And so now we're having a pretty important debate because this could hold up - this incompatibility should hold up the progress of the CWG proposal through the ICG because we cannot pass along a proposal that is incompatible.

Now unfortunately Avri and I don't see eye to eye on this issue and I think that's something we should resolve here and get this straight because it - you know, I've sent a couple of messages to the list of people appealing to their opinions about this and we haven't really hashed it out and gotten much of a response there.

Instead we've been arguing with each other on the list. So I think it'd be a very simple thing for us to just say we support what the (CRIS) team of the numbers propos. And I don't understand why anybody doesn't support that given our perspective on the overall transition.

Avri Doria: Okay, this is Avri. And yes, I do disagree. I actually disagree with Greg also but first of all there's a couple of issues here. First, I do not think we should hold this up to take this thing back into discussion. I think that would be a mistake because we've got to get it to the ICG.

The ICG chair has already told us that, you know, they perceive a problem and would like us to talk about it some more and so I think the CWG is going to talk about it some more. This is also not a critical part of the proposal. This is something that is just in a draft of what the contract MOU might end up looking like. It is not in any sense a fixed part of the plan.

Now in terms of my view on it, I also don't agree that ICANN per say should keep it but neither do I think it should go to the IETF trust. First of all, the IETF trust as wonderful as the IETF is is only got a fiduciary responsibility to the IETF.

It doesn't have it to the whole Internet. It doesn't have it to the other operational communities. I've been talking to various people and my own

view is that this is part of the assets of the PTI and that what we really need to do as we work this out and just like the equipment, just like the software, just like the books that this is something that is attached to the IANA function and the IANA function operator and is an asset that moves if ever we do do the separation and it would be an issue for the IANA function review and for the separation cross community working group.

And so I think that - I don't understand how anybody could possibly think that it should go to the IETF when really it's obvious that it belongs with the PTI, with the IANA function. So it's just - it just makes no sense to me that you would have an IANA function that wouldn't have the ability to use the name IANA and would have to rely on the IETF.

Now if the IETF decides at some point that it wants to break away we'll have to discuss, you know, how the name goes. But for it say we're mad at the PTI and we're leaving and we're taking the IANA name with us and there's nothing you can do about it would be a problem. So transferring it to the IETF trust makes absolutely no sense to me. Thanks.

Rafik Dammak: Thanks, Avri. I think we have a queue now. I think - yes, yes, go ahead. We have Klaus and (Milton) and (James). Yes, Klaus.

Klaus Stoll: If such a proposal is made it sounds to me like a little bit is a Trojan horse function involved with it knowing that - okay, what I'm trying to say is...

Female: Please state your name for transcript purposes.

Klaus Stoll: Klaus Stoll, NPOC and CSG. When such a program - I understand both your positions fairly well and to be absolutely honest I still haven't made up my mind which one is the right one.

But (Milton), for me, the position of Avri sounds very much - I'll just say that rationale and I understand what your item is. And I - on the ones that I can get but I also can see that the tactic of Avri and the reality of Avri actually will work.

Is that not something that - in that case, both of you are right. And we should just know that the issue is there and but that the tactic of Avri is the one to go for, that's my resolution proposal.

Rafik Dammak: (Milton)?

Male: (Milton), can you just explain more clearly what the risk of going forward with this now is, why it can't be fixed post hoc and so on?

(Milton): Well, I think if we do vote to support the CWG proposal as is that we should vote to support it but say we don't like this part of it. We think that you should go with the (CRIS) proposal.

Now let me just explain, I just don't get how this is not understood. PTI is not the IANA. PTI is an IANA functions operator.

It is designated as such by ICANN and by IETF and by the numbers people, all three of them have to choose to make PTI the IANA functions operator, Klaus, so that's what's wrong with Avri's position is that she's saying the name and the domain of IANA Should be owned by a specific IANA functions operator.

Now tell me how you get from that to a separable function? This is why the address people are adamant about this. They want separability. They went to

the mats for it. They went before Congress about it. They faced down ICANN legal about it because they want to be able to say if we don't like how you're doing IANA we change providers.

Now if one particular - it's like saying, you know, if we contracted with somebody to do NCSG's bookkeeping it's like saying that we should give them the trademark for NCSG, that's what we're saying here. It makes no sense.

Now what is her problem with IETF? First of all, the IANA is an IETF thing, okay. It's what do you need an IANA for. It's the coordinating point of the registries which are created by what? By IETF standards and protocols. So IETF creates the number space with its standards. IETF creates a domain name space with its standards.

And IETF creates protocols registries, which have, you know, the need to have some kind of IANA functions operator to actually put things in the registries in a coordinated way. So it seems to be appropriate for the IETF but I'm not 100% hardcore in that issue.

If there's a better place to put it, fine. But what we know is that the PTI or ICANN are not the right place to put it. She said about the fiduciary duty, ICANN doesn't have a fiduciary duty to all three communities. But PTI is one functions operator.

It's not the perpetual monopoly. It's just the one that we happen to have chose at this time, that's the model, that's what we thought we were working for. And if we don't do that we've undercut - I mean separability is already weak in this CWG proposal because of the resistance we've got from ICANN. If we

don't take the trademarks and the domain out of the picture I don't know what we have.

It can be fixed later but we have now what we're for. If we're saying, you know - if we pass the CWG proposal and say, yes, we support it but fix this later in the right way, that's fine. If we don't - if we say it could be okay as it is then it's not fine.

Male: Can we (unintelligible)?

(Milton): Addressing it is not enough. It's going to be addressed. It has to be addressed.

Rafik Dammak: Okay, thanks.

Male: A couple things, you don't have your mic on and there are other people.

Rafik Dammak: Okay, guys. Let's come back to the queue. We have (James) and (unintelligible).

Male: My apologies.

Rafik Dammak: And please stop doing this, okay. (James)?

(James): (James) (unintelligible). So I disagree and agree with both Avri and (Milton). So - no I don't agree with Greg either actually, no. So PTI is a contractor essentially. I've never in my life - and I've run a lot of contracts, ever seen a trademark given to a contractor instead of licensed.

You license your trademark to your contractor, you never give it to them. That doesn't make business sense, looking at it purely from a business point of view.

I disagree. I don't think the IETF is the right place. My slightly vague understanding of trademark law is that the trademark must exist with the person who is using the trademark, which will be ICANN. There may be some way around that that I think we should look into.

I think we should have independent legal advice on this because at the moment we have Greg legal advice. Greg - I'm sure he's a great lawyer but there's no independence in that position. And that is essentially the only legal position that we've had at the moment.

Greg has said certain things about how trademarks work and how trademark law in the US works but we've had no independent assessment about the correctness of that. We've had a number of people, like myself and others who are not lawyers, say yes and no to what - I guess that.

So I don't think we have a sound legal position for what we can do. I think that has to be the first step. We have to work at what we can do because we might be able to assess whether the IETF trust is able to do it. That might be a possibility. But at the same time it might not be because at the moment we're in conflict over what we actually can and can't do with it.

But to Avri's position, I could never see a trademark being handed over to a contractor. And it would also basically scope any possibility of separation. You could then separate the technical registry but the IANA as we know it would still sit with PTI even if the functions were moved away because you can't force them to give up a trademark when you're moving away.

If CWG went through and we chose to move to a new IANA's function operator and we have an affiliate, which is an independent legal business, you couldn't legally force them to give up that trademark, which they would no own. No court would stand over that.

So you would then lose essentially the trademark to IANA. You could obviously keep the registries and the technical side of it would still work but the public perception if you want to call it, the trademark side would potentially be lost.

Rafik Dammak: Okay, thanks, (James). We have (Stephanie) then (Matt) then Klaus. Yes, (Stephanie). Okay.

(Stephanie Perin): For the transcript it's (Stephanie Perin). Unlike (James), having worked in government I have seen trademark get transferred and it makes a right royal mess you never get yourself out of. So I think it's extremely important that the trademark not be transferred so we're in agreement here. And I think the risk is high.

I'm not informed enough to know who should be holding it and if there were a part to defer because, you know, maybe I agree with Avri if I understood it well enough, maybe I agree with (Milton). All I know is you don't transfer that trademark.

And so that has to be a hard bright line in this deal, whatever this deal is that we're agreeing to. And then the rest of this - maybe you put in a clause that that's subject to further discussion. Is that a workable compromise? Thanks.

Male: Yes, I would support that compromise but I don't - I'm checking now. Is that the only outstanding issue in the appendices? I think there may be other issues as well so I'm - I don't know. I'm just asking. I mean I'm not aware. So anyway, I would support (Stephanie)'s suggestion, yes.

Rafik Dammak: Quickly, yes.

(Stephanie Perin): I think the whole issue of that annex, the whole thing is up for discussion further. It was just a early draft of a document that is going to need far more work and that was just a first draft of that. So - and it's clearly stated in the document that this is just a first draft and needs further work.

Rafik Dammak: Okay. Yes, Klaus?

Klaus Stoll: Just a direct question to (Milton), is there any fundamental objection to this compromise because I don't see - I see your point. You are right. I completely concede to you (unintelligible) you're right.

But for tactical reasons, to move that thing forward, can't we just accept that we have to sort it out in the next step? That's all I'm trying to say. And what I'm asking you honestly is what - is there one reason you can give us to say no we can't move it forward and we can't fix it later?

Avri Doria: My turn again, so - Avri Doria speaking again. I - as I say, I still think it can be transferred with stipulations but I'll stipulate that I don't really know what the hell I'm talking about.

So it makes sense to me for us to - and hopefully someone will help me write it, a short paragraph saying that, you know, we have issues about the license on the trademark and the domain name as currently stated. And we

recommend that the CWG basically, you know, continue talking about it and get some legal advice on it and what have you.

So I think that that is a reasonable thing for us to say given the fact that we don't agree and we don't even know what we're talking about. Except for (Milton), right.

Rafik Dammak: Yes, (Milton), yes.

(Milton):   It's not enough to say we have to talk to - the CWG has to talk to itself. That's part of the problem here. You guys seem to be operating in complete isolation of what the other two communities are doing, all right. So the (CRIS) - the numbers people have said that they want it in the IETF trust.

The IETF has said, okay, we don't care that much but if you want to put it in the IETF trust we'll take it and put it there. CWG is the outlier. CWG doesn't need to just talk to itself. They need to talk to those other two communities, that's my point here.

(Bill):   Excuse me, this is (Bill). You said that this was slipped in by Greg at the last minute. When that happened was there any discussion of why he was doing that?

Avri Doria: Yes, basically what came up was - yes, this is just a draft so we've got something sitting here that we can continue talking about.

I think that if we write something that, you know, (Milton)'s happy with and that we got to talk with everybody - and as long as we're not continuing to say that this is what the IETF wants but rather this is what the IETF - yes, you

want to give it to them, they're willing. But if you watch (unintelligible) on this discussion they're as mixed up about it as we are.

Rafik Dammak: Okay, just trying - yes, (Stephanie).

(Stephanie Perin): I would just like to - (Stephanie Perin) for the record. I would just like to say that the reason - it's bitter experience that I'm firm on the bright line. This really - how can I say this without being liable for something. This really doesn't smell good. And this is exactly how the messes that I've had to work on teams to untangle got perpetrated.

So I think you have to have a bright line. No freaking way - wherever that trademark gets rested or stored or whatever treasure chest you put it in you can't go with a waffling draft at this point because there's a risk that it will stay there. So...

Avri Doria: At the moment it stays - I mean what's in there is not my suggestion that he says is brain dead of it going to PTI. This is Avri Doria that's brain dead. It's not that. It's saying IANA - ICANN has it now, ICANN keeps it because it is ICANN's at the moment. So at the moment what's in there is ICANN's got it, ICANN keeps it.

I was suggesting that maybe it should move to the post transition IANA. I've been told that's brain dead. I'm fine. I've been brain dead before and I always come back. You know, I think transferring it to the IETF trust is also brain dead if we're going to have brain dead stuff. So at the moment the status quo is ICANN keeps it but that's what's in there as draft.

(Stephanie Perin): And as long as we make a bright line box around it and I'm not the lawyer but to make sure that it's crystal clear that this is a serious bone of contention and it goes nowhere until whatever, you know. I'm not the lawyer. I'm...

Avri Doria: Go to the ICG? Because that's deadly. I don't even think (Bill) would want us to not send it to the ICG. (Milton), getting the two guys confused. I apologize. We've already admitted that I'm brain dead so, you know.

Rafik Dammak: Calm down guys, okay. I think that what (Milton) is asking us is that you don't move to PTI for now and you have to work on the proposal within the CWG. I think (Matt), you want to say something and then (James) and then - yes, yes, Robin.

(James): (James) (unintelligible). I now have three points. I only had one when I put up my hand first. So number one for the record, I believe Avri is a highly intelligent woman. I don't believe you're brain dead at all. I just think we need to make a logical decision on this.

Number two, (Milton)'s now gone. (TV1) is not necessarily the be all and end all. We need to find the appropriate solution, not necessarily just it's (TV1), it has to go there. I don't think that's a good way to move forward on this.

And number three, I don't think this is - I strongly believe this shouldn't be a blocker to the motion being carried by the GNSO. We have a large, large implementation period and review period and everything coming up before. We will get to the point where this has to be a finalized decision. It is an important piece of the pie but it is a very, very, very, very small one.

And it's something that I think the communities can work together with direction from the ICG. It's - you know, going along ever since the start of

this is we were dealing with names. We've come up with a names solution. And if now the ICG has now turned back to us and said, okay, this is something you need to start talking to communities we're happy to do that.

But up until this point we've been extremely focused on staying within our remit within the CWG to only deal with names. And that's been an important thing that we've had to moderate ourselves up to to this point.

So that's why we didn't initially reach out on a number of issues that go across the three communities. But I think that this is an important but minor detail and should in no way stop the motion being carried by the GNSO.

Rafik Dammak: Yes, (Matt)? (Matt)?

(Matthew Shares): Yes, just so that - (Matthew Shares). Just so everybody knows what we're talking about here, this is an annex S draft proposed term sheet as proposed by legal counsel between - and it's proposed term sheet between PTI and ICANN. That would be negotiated at a later date.

So even though I do have a lot of sympathy and understanding for Avri's position this is something that will be negotiated later. I think we can put a note in there and suggest a note in there that this is something that should be worked on further. And I think that's enough at this point in time to move this forward. Thanks.

Rafik Dammak: Thanks, (Matt), to remind that we are discussing about - the report. Yes, Robin?

Robin Gross: Hi, this is Robin Gross for the record. So I feel like this is a very important issue. I mean we've fought for so hard for so long for the right of separability

so we can have some way of being able to keep ICANN in check when they go astray.

And so, you know, we keep seeing that separability concept being whittled back and whittled back and this is actually in my view an extremely significant step backward in that because we're talking about when the trademark itself gets used for other - gets used for if they want to transfer it to somebody else - for somebody else to do this job how will they be able to do that if they've already given it away? They won't have it any more.

It isn't really something that you should do at all under trademark law. Trademark law, you're supposed to license your trademark. You're supposed to control the way in which it's being used. You're not supposed to say somebody else can use my trademark for whatever the heck they want.

You're actually supposed to control that and make sure that it remains true to what it claims to be, which is in this case the legitimate operator. So I think this is an extremely important issue and we cannot backslide on this because it will undermine so much of what we've accomplished so - in this process. Thanks.

Rafik Dammak: Thanks, Robin. And we have also (Amar) in the queue. (Amar)?

(Amar): Yes, thanks, Rafik. Yes, I just wanted to point out - and I agree with (Matt) completely and with (James). I agree with (Matt) assuming that this can be negotiated in the future. But the thing is right now what we're facing a motion on the GNSO council on behalf of the GNSO, which is one of the chartering organizations.

And we can't really negotiate any of the content of the actual proposal. We're either going to vote yes or vote no and that's what we need to come out with an answer to. I mean that's the answer we need to sort of get as a result of this discussion.

So are we being asked to vote no to this motion? If we're being asked to vote yes, we can do that. We can also submit a sort of comment to say that we have a problem with this one thing and needs to be revisited. And assuming that that can be done and that's what (Matt) is saying and that would be great.

But is this sort of a - like a rule that we can't live with? Is this something that we would have to reject the entire proposal because of or not? That's the question we need to answer right now, thanks.

Rafik Dammak: Okay, thanks, (Amar). Yes, we - I guess everyone was expecting - is expecting that we will vote yes - everyone will vote yes for this motion. If you want to make a - some surprise to make the GNSO council meeting quite surprising - quite funny we can just defer the motion to the next.

Yes, no, I'm being more serious here. I guess we will vote but maybe just to make this point and to discuss - I mean to send the letter, whatever, to the CWG to work on this issue. I think we spent quite now enough time here about this and - yes, yes, Avri?

Avri Doria: Thanks, I - I'm accepting that people said that we can vote yes. One of the things we can do is attach a statement to a yes, no, or abstain vote. Sorry, Avri speaking again.

You're very nice not to remind me in time. But you looked at me with that reminding face saying you forgot.

Anyway, so - and then I can basically vote yes but as the member was in there basically say but I've been charged. And then perhaps somebody can help me write a statement that would - please, the intellectual property lawyers among us, that sort of says this issue needs to be dealt with in consultation with proper legal staff and the other operational communities to come out with a la-dee-da-da.

And if somebody can help me write that in language that is acceptable to our lawyers as well as to others then I'll read that statement out as my - you know, my statement when I vote on it and put that in the record.

Rafik Dammak: Thanks, Avri. Who can take the lead for that? Thank you, you will do the drafting? And do you need help?

Avri Doria: I think the whole subject is silly. I think the IPR twist on this is - Avri speaking again, is absurd but I'll do what the group wants me to so, you know. But I would like it to not be written as a pure, you know, we are intellectual property people piece.

Rafik Dammak: Okay, yes, (Stephanie)?

(Stephanie Perin):   (Stephanie Perin) for the record. I must say as a GNSO newbie I don't quite understand what good a statement is. It's not like we're sure but you've voted yes. And there's no action required on a statement attached to a yes vote.

It's not like a degradation to a treaty where you have formally degraded from Clause 14C and therefore it's very clear that we signed on except not for Clause 14C. With a GNSO vote does a statement have that power?

Avri Doria: The statement travels with the resolution.

(Stephanie Perin): Yes, but that and a couple of bucks gets you a cup of coffee. I mean what
                   power does it have?

Avri Doria: As a member I have to take it back to the CWG.

(Stephanie Perin): What power does it have though, Avri? That's what I'm asking specifically.
                   How actionable is it?

Rafik Dammak: (Stephanie), just to ask here. So if we don't do the statement are you
                   suggesting that we defer we vote against? Really? Really? I mean...

Avri Doria: Unless there's a directed vote I'm not voting against and we don't do directed
                   votes so that's a real issue.

Rafik Dammak: Yes.

Male: Can I make a...

Rafik Dammak: Yes, please. Just to make a point and I think we have (Carlos) and (Bill). Yes.
                   I said, even as joking, there is an expectation that everyone will vote yes,
                   trying to defer we're voting against this kind of issue. I think won't be really
                   helpful.

                   I think making a statement and going back to the CWG because there is still
                   area for working and as (Matt) reminded just an annex and there will be some
                   implementation period. We can do things. I don't see why you think it's okay
                   to vote against. But anyway, so please, (Carlos). (Carlos) and (Bill), yes.

(Carlos):   Yes, (Carlos) for the record. Just a comment to (Stephanie), the way I understood this is one of the other two groups, I don't know if the numbers or the - also has a different consideration on that issue. So by putting this tag we are sure that when it raises to the next level, to the ICG level, they will come with a proposal so that they find a common solution.

I don't expect this tag to solve everything but that would show that there are three or four different solutions for the intellectual property so the next level will have to sort out - sort out this issue.

We cannot solve it because we are only one-third of the whole equation so it is better it is discussed at the level with the (CRIS) and the names and the other proposals are on the table. Thank you.

Rafik Dammak: Thanks, (Carlos). But just a point, I think many people want to go the next meeting at 6:30 and we just - okay. And we still - we didn't go through other items of the agenda. So it - (Bill), please and then (Matt).

(Bill):   Well, with that proviso I don't have anything to add other than - no, we did make statements. When I was on council we did make statements and the statements don't have some independent legal countervailing force that negates the vote, obviously.

But you can make the statements in a way that says we're voting this way on the assumption that it is understood we mean X, Y, and Z and we intend to raise this again in the following context and we expect others to engage with us and so on.

So that puts it very clearly into the record. And as was suggested when it percolates up to the next level then you'll - others can begin to engage on it.

But I mean if the alternative is to block this whole freaking process then I think, you know, a lot of people are going to want to, A, kill us and, B, kill themselves. And I don't see - I don't see falling on a sword over this in that manner.

Avri Doria: But there really is no issue with an independent - you know, since we're free to vote our conscious, (Stephanie), if your conscious or anyone else that's a council member says to vote no you should vote no and you should put in a statement declaring why you vote no.

I mean for sure, no one should take away your right to vote no if you think that's the right thing to do.

(Matthew Shares): (Matthew Shares), just to say that this is an ongoing debate and very robust discussion on the mailing list that doesn't involve at the moment the chair of the ICG, members from the names, the protocols, and the numbers community. It's not an issue that's obscure.

So everybody realizes that this is an issue that needs to be addressed. So it's not going away. We can still continue to have a discussion but we really do need to move this proposal - this motion forward, thank you.

(Rudy): (Rudy) for the transcript, to make it quite simple because I see that we are ending up in a deadlock, I'm just wondering if the - we agree at one side, we don't agree at the other side.

So it is an unbalanced situation where we cannot make up our mind. I'm just wondering if there is not a way out of it by saying let's vote abstention. Clarify that - guys, we are not agreeing on this. Just a question? I'm just...

Rafik Dammak: I mean, okay. The problem we don't have all I think - yes, (Matt).

(Matthew Shares): I'm sorry, it's (Matthew Shares) again. I just read the last paragraph, a note from (Melissa Cooper) who's the ICG chair, okay. Just to (unintelligible). The ICG has identified this topic, the one we're talking about now, as something that requires coordination between the communities.

The ICG would like to request in completing its proposal the CWG review the proposal from the protocol parameters and numbers communities to determine if it can adopt an approach taken by those communities and if not work together with those communities to reconcile the incompatibilities that have been identified.

So this is very, very clear that this is ongoing work so I think we should just understand that that will be...

Rafik Dammak: Yes, thanks, (Matt). If we want - we need to stand, we have to stand for more - I mean more bigger issue than this for now. And it's - the discussion's still ongoing. If you check the mailing list you will find that people still talking and discussing about this. So I don't see the reason to block - to vote against the motion. Yes, Robin?

Robin Gross: This is Robin for the record. I just want to say I really support what (Matt) just said that that - I think we - most of us are in agreement that it's a problem, that we need to say that it's a problem and we need to draw it out and we have that opportunity to if we do it at this opportunity.

So this is our chance to make sure it gets continued to be discussed and debated. So I'm okay with that.

Rafik Dammak: Okay, so we'll have to prepare the statement to be read by Avri and unfortunately I think we don't have time to go through the rest of the agenda and particular about the topics for the board meeting. And...

Female: (Unintelligible).

Rafik Dammak: Hope so but to be sure who is going to speak and so on. Okay, (Matthew), you wanted to add something? No. Yes, (Bill)?

(Bill): On the - so we could probably resolve your issue very quickly. On the board meeting we agreed on the list and we just told the staff three seconds ago that we were going to do Question 4, 5, and if there's time left 1 or 3. I suspect there will not be time left.

So who would like to introduce the question about the public interest commitments? Maybe somebody who does not always speak to the board? What I'm thinking is that, you know, like - we have the public interest commitments and then we have the auctions thing.

And what I'm suggesting is we're trying to change the cycle - well, you might not be the right person. No offense. If we're trying...

Rafik Dammak: (Bill), (Bill).

(Bill): Why not some new faces in asking these questions to the board? The board has - we've got a lot of dense history we're trying to break.

Rafik Dammak: Yes, (Bill), but there is some preparation I think to take the lead so at least if they follow the discussion we have on the mailing list and try to kind of summarize what we discussed to introduce - okay. So yes, (Stephanie)?

(Stephanie Perin): (Stephanie Perin) for the record. I just want to put on the table that the pick is something that some of us are very passionate about. We don't have agreement within our group.

So if you're asking somebody new to step in and make the interventions we must warn them, there be quicksand there, you know. They may not be aware of the strongly held views in the group and they could walk into something.

Male: I really want to just clarify that, I know Rafik wants to go. It is not a bilateral soliloquy between the board members and the person who reads the question, right. The person poses the question and we all get involved in the discussion.

Rafik Dammak: Just say, don't forget but this time we send really ahead of time the questions to the board and they assign it one board member for each question and they ask that I also share the question now we got from them so they are ready.

It just really it will - we don't need kind of lead discussion, just a quick - I mean introduce quickly the topic and go into discussion and everyone can speak. So I mean we are not talking about a common NCG position. It's just more to discuss, to get input from the board. I mean first topic would be about the picks and about auction proceeds. And the third, I think...

Male: It was either the fiduciary responsibility, which was Number 3, or the first one that (Joy) put about broader policy.

Rafik Dammak: And I think (Amar) wants to speak. Yes, (Amar).

(Amar):   Yes, thanks, Rafik, (Amar) again. I just wanted to say since this is a policy
                   committee meeting, before we close the meeting I think it might be a
                   worthwhile idea just to chat about the issue of renewing the (unintelligible)
                   travel, let's just review the agreement again especially since the public
                   commentary closes on that very soon.

                   And I think the (unintelligible) circulated the draft comments to the (PC) list
                   just before the meeting started. So it would be good if we could just talk about
                   that for just a couple minutes, thanks.

Rafik Dammak: Thanks, (Amar), yes. Yes, we have - this is kind of in the other business is
                   about (unintelligible) the comment made by (Ed) and shared with the policy
                   committee.

Male: (Unintelligible).

Rafik Dammak: Eight pm. So it was shared in the policy committee. I don't think I see any
                   objections so maybe changing some wording but...

(Bill):   I supported it, this is (Bill). I supported the slight softening that (Mariella)
                   suggested just to make it a little bit less confrontational. But otherwise I
                   thought it was a very good statement and well done.

Rafik Dammak: Okay, so I - just to - I guess, if we have deadline 8:00 pm so I guess if there is
                   no objection, there is agreement, I can submit or - I mean you can do it at the -
                   on behalf of NCSG. Okay. Any objection? Yes, good. Yes, so we went
                   quickly in the two agenda items. Yes?

(Bill):   Can I nominate somebody to pose one of the questions to the board?

Rafik Dammak: Yes, yes.

(Bill): I nominate (James) and (Farzi) to do this.

(James): No.

(Bill): Come on, (James). You're a big boy, you can read.

(James): No, but (unintelligible) I wouldn't - no.

(Farzi): I'm (Farzi) (unintelligible). I do not ask any question about public interest. I don't know what that is.

(Bill): Okay, what about the auction question?

(Farzi): Yes, I could do that but I have to look at it, okay?

Rafik Dammak: Yes, yes.

(James): One newcomer, one veteran.

(Bill): You don't have to carry the negotiation is my point. You're posing the question.

Rafik Dammak: Yes, it's just really to introduce quickly the topic. We have the questions and what was discussed on the - in the thread. So that's it. I mean you - come on guys. I mean someone volunteer. Okay, so I will answer...

Male: (Unintelligible).

Rafik Dammak: Yes, that's what happen every time I guess but okay. I mean just to help the question and quickly introduce and people just will jump in.

Female: I'm happy to (unintelligible).

Rafik Dammak: Yes.

(James): I'm happy to do it if you think it's beneficial. I'm happy to ask the question, no issue.

Male: (Unintelligible).

Rafik Dammak: yes, okay. Thanks, (Bill). Okay, thanks everyone. I know that you want to see the other show. So thanks for attending and...

Male: (Unintelligible).

Rafik Dammak: Let's adjourn the meeting for today. Please stop the recording.

END