

**ICANN**

**Moderator: Maryam Bakoshi**  
**July 19, 2016**  
**10:00 am CT**

Coordinator: Recordings have started.

Maryam Bakoshi: Thank you very much. Good morning, good afternoon, good evening. This is the NCSG Open Policy Meeting on Tuesday 19 July 2016. On the call today we have Tapani Tarvainen, Joan Kerr, Rafik Dammak, Marilia Maciel, Klaus Stoll, Ayden Férdeline, Wisdom Donkor, Carlos Raúl Gutierrez, Robin Gross, and Ines Hfaiedh. We have apologies from Ed Morris. And from staff we have myself, Maryam Bakoshi.

I'd like to remind all participants to please state your name before speaking for transcription purposes. Thank you very much. Over to you Tapani.

Tapani Tarvainen: Thank you, Maryam. For the record this is Tapani Tarvainen speaking. I trust you have seen our agenda, which is rather short, on the paper, but it refers to the council agenda for Thursday, which is the bulk of our items today. And then we'll look at the public comments.

And without further ado, let's look at the council agenda. Maryam, can you please play it, yes? Thank you. The first substantive item there is that approval

of primary and secondary liaison candidates for the Customer Standing Committee. Do any of our councilors present want to comment on this? Is there anything we want to say? Nobody?

Carlos Raúl Gutierrez: Sorry, Tapani, I am just coming back from my vacation and I haven't looked at the agenda yet. Probably I will be able to comment later.

Tapani Tarvainen: Okay thank you, Carlos. I can just review briefly what's going on there. There's a package of proposals that was developed by the community in relation to the stewardship transition. It calls for (unintelligible) oversight and the of course the final conversation is liaisons. And here we have a selection committee, whereas David Cake unfortunately isn't present. So I guess we won't have anything to say here at this point. If David joins us later or somebody wants - remembers something worth commenting, we can come back to this.

Let's look at the next one: council vote and the approval of implementation mechanisms. Okay I don't see the recommendations through 2014 GNSO organizational review. Would any of our councilors comment - care to comment on this? Anybody else? This is something that is likely to have a major impact on us, so it should be something we - I'm not sure actually. I don't know what this vote is here at the moment. I haven't been given any detail, I should hope - okay, Marilia, you have the floor. Please go ahead.

Marilia Maciel: Thank you, Tapani. This is Marilia speaking and excuse me for my voice. Like you, I also have a bad cold. Actually on this agenda item, we will be discussing how we are going to proceed with the suggestions that came from that report that we discussed many times that suggested improvements of GNSO structure. And the report was very controversial. After some discussion, the report was shot down and the proposal that happened to move

forward were put in a hierarchy with regards to which ones would be implemented first. And now we are in the phase of creating a working group that will look into the implementation of the recommendations.

There was some discussion in the last council meeting with regard of what should we do next. Should we take into consideration that we have another discussion in the SCI on implementation of recommendations, of improving the GNSO that just finished taking advantage of the structure of the SCI, or should we create another working group. And there was some discussion on the list. So what we have is that the charter is now in front of us and we need to discuss if the charter is okay.

I think that's - the mandate is clear. However, the discussion will be inside the working group once it is created with - and the conditions will be discussed there. But I think that it's still on the table, the issue of the working group or how we should relate to all the discussions related to GNSO improvement that has been happening elsewhere and how one thing relates to the other. I don't know if anyone has any other information or wants to provide something in that.

Tapani Tarvainen: Yes thank you, Marilia. Would you have - do we have a position on this? It's just at the point of what's being discussed, but where do we stand? Is there some position we want to push here?

Marilia Maciel: What we have discussed thus far, Tapani, during our BC meeting was that the composition of the SCI was not very good in our favor in the sense that the group was created a long time ago. There were some people that were very involved but are not involved anymore and the level of - in the last meeting was not very high. And since, as you said, this would be a key issue for the

future of the GNSO, maybe it would be a good idea to announce a call for volunteers.

This was something that we discussed in our last GNSO meeting. We had a long discussion with regards to how the composition of this working group should be. I think that we indeed managed to make a point that the working group should be composed of members that reflects the composition of the GNSO, so no stakeholder group of the GNSO should be left in a weaker or unbalanced position. We don't know big the group will be, but I think that we managed to make this point come across. The group should be balanced though.

I think that overall our position and I think that the way that is going to move forward in terms of the discussion is that another working group separate would be created for that. And I think that's probably a good thing with the additions that we made in our last GNSO meeting with regards to the charter and the composition that should be balanced and just like the GNSO.

Tapani Tarvainen: Okay thank you, Marilia. So it looks like we will be needing new volunteers soon again, which is not exactly surprising. So I just hope everybody keeps that in mind if you are interested in this or able to put your - some workload into this. It may be important. Anybody else? Marilia, your hand is still up. You want to continue? Is that an old hand? Okay. Any other comments here? No. Okay, so everybody keep this in mind and be prepared for a call of volunteers.

Let's move on. The next item is the response to the GAC communiqué from ICANN 56. Anybody like to comment on this? I see that more people are joining us. That's good. So do we have a position or is there anything we want to - do we know how - do our councilors know how to vote on this GAC

communiqué? Any comments. Marilia, I hate to push on you but you're the only one of our NCSG councilors present. You have anything? Anybody? Okay.

Sounds like we don't have - okay, somebody's speaking. No? So what did the communiqué say? Let's see if I can open it up somewhere. Okay. Okay you're uploading that communiqué, Maryam, I take it? That's good. Okay let's take a few minutes to review this so those who haven't seen it will have time to really (unintelligible), which includes me.

Okay I see Kathy's asking what is the material in PPSAI in the communiqué? The GAC highlighted public policy concern raised by the PPSAI Working Group recommendation, notably that law enforcement inclusion of a provision authorizing requests for information from privacy and proxy service providers for confidentiality as required and permitted by local laws.

Two, the PPSAI's definition of law enforcement: authority as governed by the jurisdiction of a privacy or proxy service provider might imply that service providers need only respond to law enforcement's request from within their jurisdiction while many investigations are cross border. And three, that privacy and proxy services should not be available for domains actively engaged in the collection of money or a good or service.

And because these GAC comments were not reflected in the PPSAI (unintelligible) report the GAC advice to the ICANN board to allow sufficient for GAC consideration and discussion of these issues at ICANN 56. That was the rationale. And then they concluded here that the discussions highlighted that most of the concerns might be addressed in the implementation phase, specifically law enforcement disclosure framework that could detail the

appropriate authorization and confidentiality requirements for law enforcement requests linked to an ongoing investigation.

Such a disclosure framework would also possibly address process for PP service providers to respond to requests from jurisdictions other than their own. And de-accreditation - I am hearing some really bad echoes. Somebody has a mic on. And I was looking at the de-accreditation process that will provide the means to revoke the accreditation of providers harboring actors indicating defective, unfair, or fraudulent contact and are not responding to repeated requests. So that was the PPSAI point that I can see in the GAC communiqué.

Okay, Kathy, you're online if you want to speak. Go ahead.

Kathy Kleiman: I'm on the telephone line now. Hi, everybody. Can I ask a question first and then I'll give some background on this? What - how does the GNSO Council respond to a GAC communiqué? What is the type of response we can give, especially when we disagree with the GAC recommendation, in fact the GAC doesn't agree with its own recommendation? And I'll go into details in a second, but how - what is it the GNSO Council can do and what is it our GNSO Council representatives can do? What kind of guidance are you looking for? And then I'll help phrase that. So a question to our councilors.

Tapani Tarvainen: This one I would like to pick one of our councilors. Carlos, your hand is up. You want to comment on this or do you have something else? Otherwise I'll pick Marilia again, as the policy committee chair if you want to comment.

Carlos Raúl Gutierrez: No, I can comment to this one. This is Carlos for the record.  
Kathy, good morning. You know, this is part of the whole process of having a better communication with the GAC. The GAC advice to the board is GAC

advice to the board. It is not to the GNSO. So when we started looking at the GAC communiqué, it's not to give an answer to the GAC necessarily, it's to give feedback to the board and inform the board if the issue is hot or not hot or if we're dealing with the issue at the level of the GNSO or how far is the progress being made at the GNSO level.

So the idea, the general idea is that the GNSO analyzes what the GAC is saying and give comments reviewed to the board. So they have our position or our information to react to the GAC advice. I don't know if that's clear. The problem has been that let's see, volunteers who have dealt with these issues have been few and far between each other, because the issues tend to be very technical.

For example if I remember well, the last time there was a lot of privacy and proxy services. And of course that's Stephanie Perrin's domain, so she was the one who drafted some comments basically. And the GNSO Council is thankful for anybody who comments on the GAC advice, but the idea is not to get into a discussion with the GAC. The idea is to inform, to make everybody aware what the GAC is telling the board and in necessary or if useful or we want to put a bomb in this issue and so on, then our comments, the GNSO Council's comments to the GAC advice are - can be very useful.

So it's a good idea if there is an issue that you're interested in and you want to give some feedback, and then the council will take it at its face value and discuss it if they all agree then. But it goes to the board. Thank you. I don't know if that answers your question, but it's just the general framework that the communication flows easily between all groups and wouldn't wait for the last minute until the bomb is about to explode.

Kathy Kleiman: Carlos, that's really, really helpful. And then the other question I would ask, and maybe Marilia or you can answer, is what's our timeframe? Is this something that GNSO Council writes together and does this have to be written like this week?

Carlos Raúl Gutierrez: Yes. Basically, yes, because as you know the board has to answer to the GAC normally before the next meeting. So we have quite a tight schedule. We have to, within a month more or less, to get together so that's the next call. The next call is on Thursday. And if we have something to say, it's very useful to have it in the agenda for next Thursday and push it forward. Because if we wait two months, then it's old news probably. The board has by then taken a position or sent something to the GAC and then it loses tactical value, let's say.

Kathy Kleiman: Okay, so Thursday the 21st. So the 21st is the meeting?

Carlos Raúl Gutierrez: Right. The call - the next call of the council is next Thursday.

Kathy Kleiman: Thursday, okay. Tapani, what order would you like? Should I start launching into substantive issues or should we wait for Marilia?

Carlos Raúl Gutierrez: I think it is good to hear from Marilia and Stephanie. I'm sure they will add a lot, Kathy, if you (unintelligible).

Tapani Tarvainen: Yes, perhaps we'd like to have a short comment from Marilia and Stephanie first as Kathy's going to have a - summarize everything they speak and go through (unintelligible), is that okay? Kathy, would you prefer that?

Kathy Kleiman: That sounds great. Thanks, Tapani.



Tapani Tarvainen: Okay. Marilia, go ahead.

Marilia Maciel: Thank you, Tapani. Well actually I think that I may steer the discussion to another direction so, Kathy, do you want to go with your substantive question if you're still going to talk about the previous topic?

Kathy Kleiman: Sure. I attended almost all of the GAC meetings -- in fact all of them on proxy privacy -- and talked with the people afterwards. What we have is the GAC second guessing the recommendations on proxy privacy and second guessing them in three major ways.

Law enforcement - the Public Safety Working Group basically wrote the GAC's responses on this, and the Public Safety Working Group told the proxy privacy group that it wanted requests for confidentiality if three things: confidentiality if proxy privacy providers at their discretion want to be able to tell their customer if someone's looking for information about that and law enforcement wants confidentiality, that may be legitimate under national law, in which case obviously the registrars would - or the proxy -- I'll just call them providers but we know we mean proxy privacy providers.

If there's confidentiality under national law, then obviously the providers can't disclose. But if there's a phishing expedition going on, then, you know, maybe the providers might want to disclose that there's something going on. So we wanted to work with the national law but not necessarily promise confidentiality, and that's consistent with existing law.

The second thing - by the way I'm on the page - I'm on Page 8, rationale because we can't talk about the recommendation of the GAC until you talk about what their comments were to the proxy privacy, so I'm just going to go through all three. The second one is the PPSAI's definition of national

enforcement is governed by the jurisdiction of the proxy or privacy provider might imply that service providers need only to respond to law enforcement requests from within their jurisdiction.

And what the GAC wants us to do is respond - they want providers to respond to requests from law enforcement that are outside their jurisdiction. I took aside the U.S. FBI and Federal Trade Commission and I said, "You know that means you're asking .org to respond to criminal requests from China that are anti-democratic because it's a violation of Chinese law to have some of the pro-democracy websites that .org hosts all the time."

And they said, "Yes we know." And they know they can't order that. So what's illegal - no one's worked out the problem of what's illegal in one country is not illegal in another country, and this is a huge problem for registries and registrars. So number two falls. You can't do it. You cannot order registrars and registries to respond to something that's not illegal in their jurisdiction or to answer to Saudi or Iranian law enforcement. Nobody - there's no precedent for this in the world. Interpol doesn't even require this.

Interpol has a very narrow set of things it responds to, which does not include morality issues, ethical issues, religious issues, political issues, or military issues. We - they're asking that all providers respond to all law enforcement anywhere in the world. That's just not right.

And then the last thing is they wanted everything that takes money to not have proxy privacy. And the fact is that many in the United States - actually all over the world, not NGOs, civil society, political groups, minority groups, gay groups take donations, they take money. And we got 20,000 comments that said you cannot force a battered women's shelter to reveal their existence just because they're taking money.

The fact is when you take aside individual GAC members, who are very strident on this, they understand. They didn't understand the nuances; they do now. So the big thing is here is if you go back up a page, if you go back up to Page 7, when you look at 2.3, sorry, 2.8.3, privacy and proxy accreditation issues. The GAC advises the ICANN board that if the board resolves to adopt the PPSAI recommendations, it should direct the Implementation Review Team to ensure that the GAC concerns are effectively addressed in the implementation phase to the greatest extent possible.

I think if I were to write - you know, if we could write comments to the board, I would let them - I would remind them that we had 20,000 comments, more than any public comment period has ever gotten to a working group. And we did carefully consider the law enforcement request from the GAC, through the GAC, but there was overriding considerations on the other side and that you cannot, you cannot use your implementation review team to change the rules that the working group has drafted and that the GNSO Council has accepted and that the board accepted. You can't do it.

You can, you know, maybe there are nuances. Obviously there are nuances you can work out, but you can't change the fundamental rule. And so that's what I wanted to share is that substantively the GAC is asking for things that are heavily, heavily nuanced. They seem cut and dry. Every commercial - anyone who takes money should not have a proxy privacy, but when you look at it, when you actually look at it, these are very, very subtle, difficult, nuanced issues, and I can't tell you how many months and years we looked at this and we evaluated it and then a massive amount of public comments came in.

So thanks for the time. Sorry for talking so long.

Tapani Tarvainen: Okay thank you, Kathy. Marilia, you're next in queue. You want (unintelligible).

Marilia Maciel: Sure. Thank you, Tapani, and thank you, Kathy, for exploring the issues regarding the PPSAI. My first point is related to the instrument itself. I think that Carlos gave a very comprehensive explanation of how the responses from the GNSO to the GAC communiqué work. I think that it's a great idea. If I'm not mistaken, this has been proposed by Bruce Tonkin in a meeting regarding the development of GNSO councilors in an attempt to improve communication between the GNSO and the GAC and the board and I think that it is a very good instrument that maybe we have not made use of to the full potential possible.

Because usually there is one person that volunteers to write the comment on the GAC communiqué. And as you can see, the communiqué covers very different topics and it's very hard for one person to be on top of everything. This person tends to be burdened, overburdened when they're writing the response. So usually it's not one of us that volunteers, although Stephanie has volunteered in the past.

So if we believe that this particular communiqué has issues that are very important to us and you want to volunteer, I think that one of the things that we need to do is to form a taskforce together with the council that volunteers for us to be able to cover the topics that are important to us.

Besides what Kathy has already mentioned, I think that two other things to take into account is the comment that the GAC presents on IGOs. They seem to be not yet satisfied with the back and forth regarding this issue with the GNSO and they are asking the board to intervene and to do something to

resolve the stalemate. I don't know exactly what they are asking the board to do. And maybe this is something that we need to keep an eye on. I don't understand necessarily what the GAC wants the board to do in this particular situation. Maybe other people have a more in depth insights about what the GAC is thinking about here as a potential solution.

And the other thing is the first comment that they present on the new gTLD phase. I think that one thing - two things are interesting. One of them I think that maybe we are in agreement with the GAC when they say, you know, that there is nothing that prevents a new phase from taking place, but proceed with caution. The idea that new phases can be launched, new rounds can be launched without completing the necessary work that needs to be done to us as the previous round, and I think that is a common concern that we have with them.

However they also have a concern that maybe it's not in the public interest and public safety and public security and stability concerns would not be necessarily answered and covered if a new round is launched without the necessary answers. So again, they are invoking the idea of the public interest as - in whatever way they want to invoke it. And I know that the working group on public safety started to develop discussions on other issues, such as the role of ICANN to protect (unintelligible).

And so the list of the issues that the GAC working group on public safety is dealing with just grows. So maybe this is something that we definitely need to keep an eye. I know that some of us went to that meeting with them. I think that this is not - had the opportunity to fully debrief from that meeting but maybe we should take the opportunity to do that (unintelligible) the issues that they have been discussing and are concerned about. Thanks, Tapani.

Tapani Tarvainen: Thank you, Marilia. Then Stephanie has been waiting to speak. Stephanie, please go ahead.

Stephanie Perrin: Thanks very much. Stephanie Perrin for the record. Obviously I agree with the points that Kathy raised. I attended a meeting of basically the public safety group, and Bruce Tonkin was there. The intellectual property group had written requesting action on something and unfortunately Bruce said we will look at this in the implementation of the procedure. And I'm sorry I don't remember all the details of this, but I certainly remembered that.

Again, in this - the compromise that was reached when the GAC was reacting to the fact that the PPSAI had not met their demands is well we'll see about it in the implementation committee. Now this risks, in my view, undoing all that excellent work that was done in the committee that Chuck and a couple of others co-chaired on the difference between implementation and policy. And they lost on the policy in the working group. We cannot fix it in the implementation.

So we're not going to change the policy and stop. That was a primary decision that groups, whether or not they were using - they were accepting financial transactions, they would still be entitled to use proxy services. So I'm very concerned about this. However, our allies managed to get in there the words "to the extent possible." So my reading of to the extent possible, taking the board-approved recommendations from the policy implementation working group, is that it isn't possible. End of statement.

So strategically then, I wonder whether it is a good idea to raise the whole issue prominently, because in the implementation committee we can say not possible, this is a policy issue that was decided. So I throw that out to you as a possibility. I know the Canadians, because I spoke to my guy, argued for it. I

know that Graeme Bunton, who is the co-chair of the Privacy Proxy Working Group has ceased with this issue. I think even Steve Metalitz recognizes that they lost that and they can't very well come around and try and cobble it together in the implementation part. So I'll just put that on the table.

The other part of that piece of the GAC recommendations insisting that the de-accreditation process provides the means to revoke the accreditation of providers harboring actors engaged in deceptive, unfair, or fraudulent conduct or repeatedly not responding to LEA requests, some of our best registrars are not responding to LEA requests because some of those LEA requests are coming in utterly spuriously.

And as Kathy pointed out, if it isn't legal in your territory, you're not going to grant the request, and you don't have to. So I'm quite worried about that particular clause because the threat of ICANN enforcement coming along subject to a framework to be developed in the implementation committee and de-accrediting a registrar that offers privacy proxy services, that's a real threat. So they may be forced to knuckle under.

Bear in mind that at the moment, while there's pressure brought on them, there's no accreditation process so nobody can actually force a registrar to do this. So I just wanted to make those points. Strategically the way of responding to this is it's not that clear because we don't want to draw out this engagement with the GAC if we can cut it off in the implementation committee. We also don't want to have the results of the implementation committee annulled at the last minute.

So I think we need to figure out our strategy here and discuss it with the registrars and come up with something that works. I did volunteer to draft that communiqué one time and of course my expertise lies in certain areas, not in

others. So this whole IGO/INGO stuff leaves me completely blank. So I was a dismal drafter of that thing. We need a working team to do this, because nobody's got the expertise in everything. So we'll have an opportunity to discuss this but I think we can rest assured that the registrars are equally exercised about some of the things on the PPSAI. Thanks.

Tapani Tarvainen: Thank you, Stephanie. Kathy, you want to continue?

Kathy Kleiman: Yes, just very, very briefly. And thanks to everybody for listening to this issue for so long. I of course agree with Stephanie and I'm going - this does have to be done delicately. That's a really good point. I think the idea that we have to kind of fight it out Trump style is not right, and if I gave that impression, I didn't mean to.

We - I'll write something but I - and maybe it would be useful just to kind of inform the board of what anyone who's been following the issue knows, but of course everybody's - there's so many issues we don't know who's following, that we got, you know, 20,000 public comments, and I'll put this all in, that we of course listened to the GAC comments, even though they came in two months late, and that we weighed everything very, very carefully and that there are substantive issue - you know, I'll go through it. But there are some substantive issues about the points that they raise. Obviously implementation can't change the rules, but there may be ways to make it easier for law enforcement.

And one thing -- and I'll just share with you -- one thing is law enforcement can provide more information to the providers if it is the law enforcement from outside. It's what they're doing now. It's the law enforcement from outside. So if it's a U.S. registrar and it's the U.K. that's trying to communicate, sometimes the registrar will respond or the provider will



respond because the U.K.'s made a really good case for why they need the information. So more information may help.

So I think Stephanie's right. I think everyone's sense is right that we should be informative and very polite and just - but, you know, clear that these are really good rules fought over for a long time. Thanks.

Tapani Tarvainen: Okay. Thank you, Kathy. Anybody else want to talk about this PPSAI or the GAC communiqué in general or otherwise? I don't see any yet. Okay Kathy, your hand is still up. Please go ahead. Okay. Now since I see that David Cake has joined, as well as Amr, let's move back to the first council agenda item we skipped earlier, approve of all primary and secondary liaison candidates for the Customer Standing Committee where David Cake was one of the committee members. David, would you like to give us a very brief overview of what's going on there? Do we have to be concerned about this?

David Cake: Sure. Can people hear me? Can people hear me?

Tapani Tarvainen: We can hear you.

David Cake: Can you hear me? Can you hear me? Okay. So you can hear me. Okay thank you. Look, I'm on the committee for the CSC liaison, the selection committee. I don't think we do need to worry about this. We were expecting there to be at least a couple of candidates for this position. There's currently only one. It's (James). He will be approved as the GNSO candidate for that position I should think. I mean the committee is all in favor of him. It just needs to go through the council. I don't anticipate there'll be any problems.

There's still a bit of process to go with the ccNSO but, you know, in the unlikely event that they've decided to get a - they're really, really pushing for a

man from Europe to be their candidate, I don't anticipate there being any issues with that. So we should be fine. And I said (James) will be I think an excellent candidate for that position and, you know, I think a credit to the NCUC and so forth. So yes I'm pleased to say that one's all going quite well.

But I mean obviously I'd prefer to have - I think all of us would prefer for there to be at least two candidates for the position, given that was the process agreed on that we, you know, give a primary and an alternate candidate, but it didn't happen. So, you know, (James) is great. So CSC no, there's nothing to worry about it. It'll go straight through. It should all be fine. Thank you.

Maryam Bakoshi: David? David, we can hardly hear you.

David Cake: Oh I'm really sorry. I don't know what to do about that.

Maryam Bakoshi: Okay. Thank you very much, David.

David Cake: That's why I did ask. Can you hear me better now?

Maryam Bakoshi: Yes, a bit better. Thank you.

David Cake: So was that it?

Tapani Tarvainen: Yes, everything should be fine on that one. Thank you.

Tapani Tarvainen: Okay, any other comments on this? Okay, it sounds like we have everyone reasonably well under control, (a motion) there. We might want to touch briefly on the GNSO organizational review. We talked about that briefly.

Marilia gave us a nice overview of what's going to happen in procedural terms, but not much about - actually, we pulled up that we need volunteers for the working group that's most likely about to come.

By the way, there's a bad echo here. Somebody has their mic on. So if somebody would like to comment still on that GNSO review, and in particular, would like to think of volunteering for possible working group, this would be good time to - or suggest someone or something else we can talk about - more about that. No?

Okay, (let me read) the transcript or listen to Marilia's (unintelligible). Then let's move on. The next item would be council discussion of the next steps of proposed modification in the procedure to WHOIS conflicts with a national law. Does somebody want to lead on this? It kind of reflect somewhat we just talked about (the EPSI). Okay, Stephanie, go ahead.

Stephanie Perrin: Hi. Stephanie Perrin for the record. As you probably know, I sat on the group, tried to write a dissenting opinion that got put in as an appendix and this really referenced.

So did (Chris Wilkinson). In my view, the procedure is utter nonsense and we need to revisit the policy. The policy for the WHOIS conflict with law was separate developed through a PDP.

It was one of the few sort of agreed positions from one of the early WHOIS review team efforts that, indeed, some accommodation needed to be made to accommodate the fact that some registrars were in jurisdictions with national data protection law.

So this - that was the statement of policy and then they came up with this conflict with law procedure. And when we reviewed the procedure over a period of about a year, we weren't allowed to touch the policy.

We were just trying to come up with another trigger that would permit the registrars to get a waiver. And there are two things here at that they need a waiver from.

They need a waiver from the data retention requirements if it is illegal to retain data solely for extraneous purposes in their jurisdiction. And the other one they need a waiver for is the requirement to publish the WHOIS data.

I would say they also need a waiver for the requirement to retain data themselves that is not required for the purpose of issuing a domain name but, no, but that's not in the procedure at the moment.

Anyway, we went through this nonsense and we came up with this report. It still doesn't address the major policy problems so my question is, what is the right time to put a motion to council to have another look at the policy?

We will probably be told that the policy is going to be revised in the WHOIS RDS Who2 process that Kathy and I have already spoken about and that David co-chairs.

But that's going to be a long haul. It'll be four years before we get a new policy. In the meantime, we still have this utter nonsense where the registrars are stuck breaking the law.

So that's my contribution on this. I'm happy to table a motion saying that we get rid of this and allow them to just, on their own accord, not comply or,

rather, comply with data protection law. I suspect that won't get anywhere but it would make a point. Thanks.

Tapani Tarvainen: Thank you, Stephanie. I see that Dave is next in line. Hello, Dave. Please go ahead.

David Cake: Hi. I found where the volume control is. Has that helps?

Tapani Tarvainen: Yes.

Man: Yes, David, you found it.

David Cake: Thank you. Okay, now I think - I don't pick we can do what - I think, my impression when we discussed this issue at council was there was certainly strong (support) from the registrars to change this policy and, you know, I suspect probably we could get the vote - you know, we - I don't know whether we could - but I don't think we could simply do a motion requesting a change.

We would have to use one of our new policy and implementation process is to review it or similar to go back and change data or so forth. It might well be worth talking to the registrars to see if that would be (instant) to sort of start that process.

The IPC would naturally oppose it but it's clear that the registrars think it's absolutely as ridiculous as we do and that even the IPC were not, you know, that excited to defend what seems to be a fairly ridiculous process.

So I don't think - I mean, I think what Stephanie suggested, just maybe a motion is not something we can do. But I think there would be some support for, you know, trying to overturn this pretty ridiculous situation especially as

it's not really clear that it was ever, you know, intended to be quite this absurd in the original PDP. So anyway, I think it's worth thinking about doing something. Thanks.

Tapani Tarvainen: Thank you, Dave. Now I see Kathy is next. Kathy, please go ahead.

Kathy Kleiman: Yes, thanks. Sorry, coming off of mute. Procedurally I'm not sure what we're being asked to do. I wanted to give a quick background. First, this is not the result of the WHOIS review team.

The WHOIS review team would not meet until 2010 it didn't go through PDP because they didn't exist in the early 2000s so this comes out of a taskforce at a time when the intellectual property group designed it or denied data protection laws even applied to domain name registrations.

This is the first policy that I think gives an inkling that it might - the data protection laws actually do apply to domain name registration data. And that was a huge concession at the time, in the early 2000s, culminating in this horrible policy in 2005.

But it was the first time an exception was created to the registrar contract with ICANN. And I think that, in itself, was a good thing, the process of beginning to create exceptions.

So data retention only exists - the ability to get the exceptions from the data retention only exists because this lousy policy on WHOIS was created. This has never been used, by the way, guys, because it actually requires - it used to be in violation of international law and you have to be on trial basically for that violation before you can ask for the exception.

I would want to find a way through our counselors to make sure that our ongoing concerns about this horrible 2005 policy are on the record again. I'm not sure I want to revisit the policy.

There are far too many WHOIS things going on right now. But I would just like, you know, if there's a way for Stephanie to summarize or for all of us to summarize kind of the ongoing objection to this insanity, I think that would be great. But I'm not sure there's anything actually we should be doing at this point because we don't want to launch another who is process. Thanks.

Tapani Tarvainen: Thank you, Kathy. Dave, you're having your hand up. Is that an old hand?  
Okay, Stephanie, your next. Please go ahead.

Stephanie Perrin: Yes, Stephanie Perrin for the record I apologize. I think I did say WHOIS review and that's what I meant. I meant that early task force. And let's be clear, it might have been progress at the time and come you know, we had the data protection guys and the Article 29 secretariat in the form of (Diana Alonso) coming to the 2003-2004 meeting.

You know, it's a major effort to get them to recognize the data protection law forbid what was in the contract. Nevertheless, we had all of the registrars writing to ICANN in October of last year saying, "You keep telling us we can use another escrow agent in Iron Mountain and none of us that had our escrow agent approved in Europe."

So there are so many ways this thing doesn't work and we now have the (Shrem)'s decision that ought to be preventing the use of Iron Mountain in the United States as an escrow agent for this personal data.

So I think maybe - I don't see any other motion. I mean, we could right to council but that's just going to be lost in the archives. I think - maybe if they put a motion forward, it's going to be defeated anyway.

So maybe we put - because I don't think the registrars want a new WHOIS process but maybe we need a motion that says we have just gone through an implementation procedure that tries to an active policy that was not developed through PDP.

We need policies that are developed through PDPs. The law has changed. We're now these many ways in violation of data protection law and it is not been shown that this implementation mechanism works.

Therefore, we should throw this out and allow data protection - at least allow registrars to notify ICANN that they're in compliance with data protection law and not doing the following - X, Y and Z.

And it'll probably be defeated but at least that would put our record in the form of a (normal) motion, everything that is wrong with this stupid procedure because I thought we were going to go insane trying to make this report - make this comment repeatedly and nobody is listening. You know, it was crazy making. So anyway, I'm open to suggestions about how to formulate that but I think the motion is required.

Tapani Tarvainen: Thank you, Stephanie. Any other (unintelligible). I must say, I'm kind of surprise when I'm looking at this that is utterly impossible for the European data protection regime point of view that - to do it the way the proposed, but we'll see how it works out.



It will be interesting to actually try to get some European registrar to get the local national data protection commissioner of counsel to rule on that I think. But, any others on the subject? No?

Okay, moving on, the next item is the proposed schedule for ICANN 57 and do we have anything we want to say about that? It seems everybody is happy with whatever ICANN decides about the schedule. No. Okay, Marilia, please go ahead.

Marilia Maciel: Thanks, Tapani. Actually, I'm trying to take a look at the board. It was opened in front of me but I don't see it here open right now. What I remember from my memory is that the - the slightly changed the days of the meeting and the (format).

For instance, (once a day), we'll now be on Sunday. My feeling is that there is not that much space for GNSO discussions in this meeting and I'm trying to open the table without success but I'm sure that you can see a link there.

I don't have particular concerns about that but since it's different from Meeting A, maybe it would be a good idea to take a look at it. It's not - that meeting - you will just come back to the format of Meeting E.

It slightly different so if you have observations to make with regards to how the days have been distributed and so on, that would be a good idea to convey these concerns.

And they are trying to choose one of the PDP's that we have actually in the GNSO right not to give them more time for discussion on day one, and I'm not mistaken.

So we have a views and preferences on that, that would be a good idea as well. I know that the new gTLD subsequent procedure chairs and to the mailing list, a Doodle for us to know - to signal if we would be free to meet on that day or not. But if we had preferences, it would be good to know, so yes, you can see on the screen now.

Tapani Tarvainen: Thank you, Marilia. Any other comments on this?

Marilia Maciel: And just a reminder that there is a questionnaire on Meeting B that has been circulated at least in the GNSO list. So if we have particular concerns, as well, I know that some of us did not answer the questionnaire get, like me.

I intend to respond if we have concerns with regards to how Meeting B took place are things that could be improved. It will be good to capture that on the questionnaire as well.

Tapani Tarvainen: Okay, thank you, Marilia. I have Carlos next in queue. Carlos, please go ahead.

Carlos Raúl Gutierrez: Thank you, Tapani. This is Carlos. Thank you, Marilia. I was very disappointed about the questionnaire. I mean, you can answer it in about five seconds. And I complained loudly about it in the chair of the GNSO counsel did so as well.

So I expect that there will be a deeper discussion in the council to prepare her feedback or at least that's what the exchange I had with James Bladel. So I really recommend - well, I guess at some point, we will ask everybody to give - everybody related to the GNSO to give their feedback, (their comments), et cetera.

There was a very good feedback session. I don't know if everybody could follow it. It's really worthwhile looking at the transcript of the feedback session.

And I'm sure that we will be discussing a more structured feedback from the council over the next few weeks, maybe between this and the next call. Thank you very much.

Tapani Tarvainen: Thank you, Carlos so you will be having a lively discussion about this in the council. Anybody else want to comment? No? Okay, it seems we've covered the (agenda). At this point, let's have a look at the public comments (that are pending).

There are quite a few. I'm not sure how many of these are of interest to us. I'll just call them in (order). Please comment if you have anything to say or think we should.

The first is opposed amendments to place new gTLD registry agreement deadline tomorrow. Somehow (unintelligible) wanted to say something about that, we should have decided about that earlier on. But any comments? No?

Next one is ICANN fellowship program application process review, deadline next week, Friday - no, Wednesday - Thursday. Anybody want to comment on fellowship program? No?

Okay, if you - if I go too fast, just raise your hand and return to something you didn't see on the (comment). (For a draft) PTI articles of incorporation where we have the end of next week, comments on that? No?

Reference label generation rule sets for the second level, anybody wants this - (worth) commenting? No? Okay, PTI governance documents, well, we have a little more than two weeks. (Unintelligible) of interest to anybody. Then draft PTI bylaws - nobody has any interest in PITATs. Okay, Marilia, please go ahead.

Marilia Maciel: No, Tapani, I waited until you read all the public comments on PTI. Well, clearly that is the focus of our agenda in the next month or so and it's an important issue that I see some people following in our community closely.

So I think that maybe what we should take a look at are the three public comments and develop one document that we can use different parts of it so the different comments that we have in front of us.

Not to do three different calls, but to assemble a working team that we work on PTIs and related documents in public comments on the next month. I think that instead of trying to mobilize people three times, that will be a smarter way to get organized for that. I think that it's the major issue for us.

Tapani Tarvainen: Okay, thank you, Marilia. So we should bundle the PTI stuff together and work on that. I see Matthew, you have your hand up.

Matthew Shears: Yes, thanks, Tapani. Can you hear you all right?

Tapani Tarvainen: Yes, we can hear you. Go ahead.

Matthew Shears: Okay. I agree with Marilia. One of the challenges that we have - well, it's not really a challenge but it away I suppose it's a blessing - I'm not quite sure - is that the working group that's involved, so the CWG, it's involved in the PTI

work, this was the implementation oversight task force which is a subset of the CWG, are in a way, working in parallel to these public comment periods.

So issues that we might raise where we were just having a public comment period and there was no work being done in parallel to it are being addressed in the meetings of the CWG.

That doesn't mean that we shouldn't put comments in. It's just that I think that doing it as a group, as Marilia said, probably makes a lot more sense. At the moment, we are discussing a range of issues that are involving outside counsel and also ICANN's legal ranging from how do we accurately and appropriately describe the purpose of post-transition IANA subsidiary to a whole range of other somewhat arcane but important factors.

So that's just to say that some of the issues that we might raise will already have been addressed by the time the public consultation period closes, but I think it would be worthwhile for us.

And I'm happy to start that process to raise a number of issues that are related to the three other consultations and circulate those by the end of the week. That would hope to give us some time, at least some time to consider those issues and possibly add others before the first in line on the 31st. Thanks.

Tapani Tarvainen: Thank you, Matthew. Anybody else on this? So it's unlikely have a plan in our policy committee co-chairs are (on) that so I'll leave it at your capable hands. Any other comments on PTI? No?

Okay, lots of work to be done but no need to discuss it at the moment. Let's look at the remaining public comments in the list. There's public comments

and proposed amendment to dot com registry agreement. That's three weeks or so to go. Any comments? No?

Okay, modifications to GNSO operating procedures relating to motions (stand) to the chair and vice chair elections. That's - okay, Amr, I see your hand up. Please go ahead.

Amr Elsadr: (Unintelligible).

Tapani Tarvainen: We can't hear you, Amr. There's something...

Amr Elsadr: (Unintelligible).

Tapani Tarvainen: It's basically impossible to make that what you're saying, Amr. Your audio is breaking down all the time like chopping three words out of - or letters out of four. Okay, we'll wait for Amr to type his comment. Maybe while waiting, we can let David speak. You had your hand up next. Dave, go ahead.

David Cake: Okay, this was about the vice chair elections. Oh, no, sorry, I wasn't going to talk about the modifications to GNSO procedures. Amr will have to talk about that.

I was going to say, though, this is probably an opportune moment to mention that Amr and I have been asked to talk to the NCPH - or to the CSG about NCPH procedures internally for vice chair and board seats.

I just wanted to say that didn't happen in Helsinki. We sort of planned to but they were all very busy. And I think Marilyn Cade was the person trying to mostly to the organization.

But I did get a chance to sit down with Wolf-Ulrich and have a sort of an initial discussion so will probably be putting something out about that this week, and discuss the sort of issues which is, as we said, essentially that so the vice chair, we're mostly sort of happy with a loose alternation with a sort of proviso that it's, you know, actually realistic but (each) stakeholder group might not necessarily want to stick with the (stick) alternation.

But we both sort of one way to not - to basically make that based here not the person we just like the most from the other stakeholder group. And we talked a bit about selecting the board chair and thinking that we need to start that is some sort of - probably the (way) - the board seat for the house.

And probably the way that - the direction we're leading and that is some sort of house wide sort of expression of interest or nomination process before we sort of get down to the - each, rather than two separate stakeholder group ones, so at the three get some sort of idea of, you know, the feelings the other side has before we charge into an election.

And we - in the NCA is included in a few other reasons. So just let you know, there hasn't been actual progress on that. We'll let you know what we come up with so - but not much. We're still - we've all been a bit busy. Okay, that's - thanks. That's it.

Tapani Tarvainen: Okay, thank you, Dave. Amr, your audio is working? Let's try it anyway. Go ahead.

Amr Elsadr: I hope so. Can you hear me? Well, I can hear my own echo so I hope you guys can hear me as well.

Tapani Tarvainen: We can hear you twice. There's still an echo going on.

Amr Elsadr: Ah, well, when I (play them) all in. I just wanted to say that this public comment period is in response to an SCI project and it started in the aftermath of the last Dublin council chair elections.

And what it does is it just sort of spells out procedures to hold the council chair and vice chair elections and in the event that another failed election occurs, that there are new steps that are being recommended to follow to make sure that the council has the opportunity to proceed to a second round of elections in a clear way that is fairly predictable have also not consume too much time and effort and take away time from the council to conduct its normal business.

I think they're very nuanced and very well thought out recommendations. I mean, the modifications to the procedures are very well thought out. And so I'm personally fine with them. But there are a few things that we need to, as a stakeholder group, be aware of.

Because one of the changes that is happening is that they're sort of fixing the schedule for the GNSO council elections depending on when the actual annual general meeting will take place.

And the reason why they're doing this is because another change in the operating procedures is being recommended which is to allow incoming counselors to be eligible for chair elections.

And the reason why I say this is important to the NCSG, because it may require us to rethink our own election timetable in the future in the event that we have an incoming counselor who may be eligible or desirable to hold the position of the council chair.



So this is something that we need to be aware of. Right now, currently, I believe the NCSG completes its elections fairly later than any of the other stakeholder groups and constituencies.

And right - if we continue to hold her elections at the same times we normally do, our incoming counselors won't be appointed in - or elected in time to participate.

So I just wanted to flag this one issue. But apart from that, I think it's a fairly good proposal and I would recommend people who are interested to take a look at this.

I'm the NCUC representative on the SGI and I shared this on the NCUC list a while back. There were a few comments. If anyone has more, please feel free to comment on the forum or reach out to me with questions, either on list or privately. I'm happy to help. Thanks.

Tapani Tarvainen: Thank you, Amr. I might note that we are already pushing her elections about 10 days earlier this year because ICANN (unintelligible) you counselors earlier and I'm not sure if it's essentially early enough for this purpose already but yes, definitely (something) to keep in mind.

Anybody else? No other comments on the (unintelligible) election process. Okay. Okay, there's one more public comment period closing in mid-August - proposed measures for letter to character ASCII labels to avoid confusion with corresponding country codes.

And do we have any interest in this? No? Okay, I see that we have a question about one hour elections and I am already (responding) to that as well. So

the nomination period begins at the beginning of August and elections (meet) August results in the beginning of September. Okay, any other business? That's the end of our formal agenda. Okay, Amr, you have your hand up. Please go ahead.

Amr Elsadr: Thanks, Tapani. This is Amr again. I just wanted to flag one more thing that was out on the agenda. I'm not sure if folks are we're not but there is a call for volunteers that (line) on the 22nd, which is in three days, for our group that will review the GNSO operating procedures to sort of begin to factor in the new post-transition bylaws and, you know, the GNSO's role in the empowered community and so on.

And I was just wondering if there's anyone on top of this. And I plan and volunteering for this group but the request was for GNSO counselors to also nominate or bring volunteers and from there on stakeholder groups and constituencies.

So I think it's important that the NCSG is involved in this and everyone who has an interest to be able to volunteer. So they may need to just flag this on the list and make sure that everyone is aware of this.

We only have three more days for the deadline for volunteers and I would be happy to send an email into the council list with a list of volunteers of people who are interested, assuming there is interest. Thanks.

Tapani Tarvainen: Thank you, Amr. That's a very good point. We do need volunteers for that. I see, Kathy, you have your hand up.

Kathy Kleiman: Hi. Who's going to switch topics so if anybody wanted to volunteer for Amr, let me pause for that.

Tapani Tarvainen: It sounds like we'll have to wait for volunteers on the mailing list, so.

Kathy Kleiman: On the list, okay. I wanted to find out who on this call is the number of the rights protection mechanism working group because we need - we're about to really - it's been a little quiet on the ramp up but we're about to really start diving into some sensitive stuff.

And wanted to know, you know, we should really be kind of pulling together - and also if anybody wants to join the rights protection mechanism working group, we could really use a more people from non-commercial. There are a ton of people from IPC as you can imagine.

So, Tapani, you don't mind, going to ask, everybody, if you're on the rights protection mechanism working group as a member, as kind of an active participant, could you just raise your hand or click check or something?

Tapani Tarvainen: Yes, that is flagged there that you are (unintelligible) raising your hand, please.

Kathy Kleiman: And I know everybody is on pause and probably doing other things, too, but.

Tapani Tarvainen: Okay, I might not that I'm observer, at least, but an active participant.

Kathy Kleiman: Okay.

Tapani Tarvainen: I see Kathy and Robin now. That's all.

Kathy Kleiman: Yes. This is one of the big three working groups - policy development process working groups and we need more people. Just letting you know, Robin and I

are not going to be able to fight enormous amounts of people on the other side to create fair and balanced policies without more people, so it's really cool stuff actually.

It's really fun stuff, I think, for fair use and free speech and free expression and due process. So I call for more people to join - our next meeting is tomorrow at noon and I'll be chairing that. Thanks. Thanks, Tapani.

Tapani Tarvainen: Okay, (once we) have one new volunteer and a couple of inactive members at meeting their (prep) membership here so maybe (they become more active). Any other comments or issues or anything on this or anything else?

Okay, so we'll have to call for volunteers for a couple of more groups. And, of course, Kathy, and Amr, you are most welcome to call for volunteers on your own and on the mailing list as well encouraging people to join.

But any other business or shall we conclude this call? I'll note - okay, one more business, that in 40 minutes or so, there will be another call about the future of CCWG. Robin is (pulling it) so anybody interested in that, I hope you will come back but let's have a half an hour break your before that. Okay, thank you everybody and let's - and you can stop the recording.

Robin Gross: Thanks, Tapani. Great meeting.

Maryam Bakoshi: Thank you all for attending the meeting. Van, you may now stop the recording. Thank you.

END