

**ICANN
Transcription
Call to discuss George's appeal under section 3.7 of the GNSO WG guidelines
Thursday, 18 January 2018 at 17:00 UTC**

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<https://icann.box.com/shared/static/ecnlbr2vjvn5dagdsjby27xga9xearqws.mp3>

Adobe Connect recording: <https://participate.icann.org/p5c4g36epaf/>

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

Operator: Recording has started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening and welcome to the discussion of George's appeal under section 3.7 of the gNSO Working Group guidelines taking place on Thursday the 18 of January 2018. On the call today we have George Kirikos, Petter Rindforth, Phil Corwin, Paul Tattersfield and Paul Keating. From staff we have Mary Wong, Steve Chan, Herb Waye and myself Terri Agnew.

I would like to remind all to please state your name before speaking for transcription purpose and to please keep your phones and microphones on mute when not speaking to avoid any background noise. With this I'll turn it back over to Mary Wong. Please begin.

Mary Wong: Thank you very much Terri. For the record this is Mary from staff and it is not my or staff's intention to lead or manage this discussion unless we're requested. But by way of introduction this is the second call that is taking place amongst the parties concerned with this particular appeal.

And I believe where we left off last week was that for this week we would attempt to see if this call can succeed in reaching resolution of the matter

under appeal. We have a submission from George and we have a response to that submission from Phil and Petter that was submitted and sent by the agreed deadline of Tuesday.

So on that note Phil and Petter I believe that the latest emails indicated that the way to proceed here will be for George to open and for you and Petter to then comment and respond. And I assume that both the comment opening and response will be based on the documents that were submitted. George did you have a suggestion or a question?

George Kirikos: George Kirikos here for the transcript. Yes I just want to suggest that we dispense reviewing the documents. We assume that everybody's already read them. We can assume that, you know, I disagree with their letter of this week and obviously disagree with my letter of last week.

And so the most productive way forward is to try to focus on discussing solutions and resolution rather than rearguing the points that were made in the document – documents. And so it would be helpful to have the documents on the Wiki as well as probably the working group guidelines document.

Those are the three I guess main documents. And everything else is linked to in the respective PDFs. So if I can go first I'd be happy to – oh and we should then reserve discussions later if we don't succeed to talk about process going forward. But we should not just, you know, talk about the procedural aspects now because, you know, we risk getting bogged down like we did last week and ruining the call.

So I think we should just go straight to solutions. So is that acceptable to everyone?

Mary Wong: Thank you George. And just to confirm that we do have both documents available for display here. And I believe that at the conclusion of the call last

week there was general agreement too that if resolution is not reached on the call today that to conclude the call today there will be a discussion and hopefully agreement on the next steps including procedural steps.

I see that Petter and Phil are agreeing with the proposed approach George in Adobe Connect chat so I will just turn this over to you to open. Thank you. And I'll bring your document up if you need.

George Kirikos: George Kirikos again for the transcript. Thank you. So yes we all have seen the respective arguments and so there's no point in trying to argue back and forth what we've already discussed in writing so let's try to focus on solutions.

Reading both documents carefully I think one way forward is to talk about what's on Page 17 of the Working Group guidelines. It says the chartering organization work with staff might consider the use of a professional facilitator in circumstances to help a chair ensure neutrality and promote consensus or to provide other capabilities and expertise.

So looking at areas where we agree disagree that's not an area that the co-chairs really addressed in the – in their document.

So it might be an area of common interest where – or and so it might be a solution going forward because, you know, we waste lots of time going through processes with the gNSO Council, et cetera. But a professional facilitator who's focused on gaining consensus might be in the best interest of everybody because from my perspective I'd like to see this IGO PDP end with consensus. That was the goal from the start. I don't want to see a divided group where everybody's having, you know, multiple minority reports and so on. That is also contested at gNSO Council and is also contested at the ICANN board level, is contested by the GAC.

So the strongest solution is try to reach consensus. And so bringing in somebody who's a professional who's focused on promoting consensus

seems to be something worth discussing, worth exploring. And as I said, it wasn't really addressed in the document of this week.

And so it might be an area that is worth exploring. This was actually in my document the – in the remedies it was kind of a footnote to Remedy 1C, the second sentence. And I never really talked about it at length but I'd like to give them a chance to maybe think it over and discuss why that – whether that's acceptable.

And if that obviously fails, you know, be back to talking about polls. But I think it'd be worth giving that a chance. Thanks.

Mary Wong: Thanks very much George. By pausing I assume that yes, we can call on Phil or Petter. And I see Phil you've raised your hand so please go ahead Phil.

Phil Corwin: Yes thank you. Can you hear me okay?

Petter Rindforth: Yes.

Phil Corwin: Okay.

Mary Wong: Yes we can.

Phil Corwin: Yes Phil for the record. I've got one question for staff and two for George. The question for staff is whether this use of professional facilitator has been employed before and whether the ombudsman has been used in that role or some outside party? I'm just a little concerned that going this way might introduce further delay in finding a facilitator.

For George I would ask his formal written proposal from last week had three requests of which the use of professional facilitator was 1/2 of the third request. Would this if we employed a professional facilitator would George be

withdrawing at this time his first two requests regarding basically leaving it to the facilitator to work out the issue of the anonymity of the poll?

And his second request was withdrawal of the prior poll which I would just say I don't know how we un-ring the bell. And that prior poll is really operationally null and void. Anyway as that was taken at a time when we had three policy options before us and it appears to me that we will probably have six before us, that we have six before us at this time. So question to staff and question to George and I'm listening intently to the answers.

Mary Wong: Thank you Phil. This is Mary. I can respond from staff but I see that Petter and Paul Keating have their hands up. So before I respond and call on George to respond may I ask Petter and Paul Keating if you have questions or additions on this particular point? And it looks perhaps that Petter you want to follow-up on Phil's questions?

Petter Rindforth: Thanks Petter here. I just noted also from the chat room from George that he said we actually employed a facilitator early in the PDP. I think what you mean is the full day face to face meeting at ICANN 52 in Singapore back in was it February 13, 2015. And I'm not sure that I would call that the same. It was indeed a neutral chair of that meeting to lead us during the discussion so including well some – we had some topics.

One was sexually based and one on just (unintelligible) suggestions regarding possible mechanics of for (IDO) filing. But I think that was more of tryout to conclude some basic initial questions for the work in a working group, not to have some basic neutral chair. Thanks.

Mary Wong: Thank you Petter. This is Mary from staff. So to follow-up on that question from Phil and your information George's comments in the chat, yes this group did use a – well we attempted to use a professional facilitator. I believe actually our initial facilitator feel sick on the eve of our meeting. In the – at the Singapore meeting that was not for the specific purpose that we are

concerned with in terms of an appeal as I think both of you have pointed out. So in that context facilitators have been used within the gNSO for different purposes, ours earlier on on this PDP.

More recently in the subsequent procedures PDP a professional facilitator was used in I believe it might have been Johannesburg to try to derive at some kind of consensus for the work on geographical names. Earlier on another PDP Working Group used a community facilitator with knowledge of a specific subject matter to assist with finding various options through to conclusion.

So it is not a new concept to the gNSO. It has involved professional or community facilitators. But to my knowledge none of this has been within the context or for the purposes of resolving a 3.7 appeal.

And I don't know if in addition to those or in other context the ICANN ombudsman has been asked to intervene or to assist a resolution in the gNSO matter. Perhaps Herb if you're able to speak or to type you could let us know if at this point if you have knowledge about that. Herb do you want to go ahead?

Herb Wayne: Yes thank you. Do you see my audio okay?

Mary Wong: Yes we can.

Herb Wayne: Okay good. Yes to my knowledge the office has never been used in the – this type of a situation. And very likely the reason is because there is a – if we look at the core issue of the ability to use a – an anonymous poll we are looking at an issue that would – much more appropriate to address to the ICANN legal or some form of determination of what the actual policy means.

So to inject or interject at this stage prior to a decision being made would be possibly a little bit inappropriate because then the ombudsman would

become part of the decision-making process of a leadership or a working group and to work as a facilitator towards reaching some sort of mediated decision between the two parties on moving forward. I see it much more as a – an a potentially a legal opinion that's required rather than a facilitation.

We know where both sides stand right here and we on an audit, you know, as far as a determination of transparency and many of those other issues and the use of the tool is something that would be have to be determined by the organization.

And then it could be determined afterwards by the ombudsman and whether the use of the tool was done in a fair way or whether it disadvantaged participants in the process. I know that's very nebulous but I hope it helps a little bit in whether it would be appropriate for me to intervene at this point in the decision making process that would result in an action.

Mary Wong: Thank you for that input Herb. And I note that in the chat Paul Tattersfield has asked two questions. I'll take the second one first whether there has been a 3.7 appeal before.

To the recollection of the current staff of supporting the gNSO we don't believe there has been an appeal. We are fairly certain that there has not been an appeal under the specific language of 3.7. And so I hope that answers that question.

In relation to your other question (Paul) about whether the purpose matters that is probably a discussion point for the folks on this call noting that in the section cited by George the mention is of a professional facilitator in certain circumstances for a number of purposes, one to help neutrality of the chair, alternatively to promote consensus or to provide other capabilities and expertise.

If this group would agree to go that route that would probably take the form of a request to the chartering organization which would be the gNSO Council. I see that Paul Keating you have your hand up. Is it on this particular point of usage of a facilitator?

Paul Keating: This is Paul Keating for the record. No it wasn't. It was trying to see – it's – skip through this and kind of – yes I would like a little bit more understanding about my chairs are rather consistent with having an anonymous poll personally. And it's not my opinion, George's opinion. Personally it's the anonymity of polling process and (security) issue range problem lack of transparency. And that is primarily (unintelligible). I'm active in other working groups polling regularly but they are always transparent. Everybody can see the results of them (unintelligible).

So I – it seems to me the focus of this really is like to kind of try and get it out of creating more procedure, getting into a discussion of the substantive issues. I'd very much like to hear the rationale for why an anonymous poll is required here. I didn't see that in your written statement, see any evidence (unintelligible). That's my suggestion moving forward, moving the call forward because we're running through time quickly her (unintelligible) time.

And I particularly will (unintelligible) something George says. I want this working group to conclude and I minimize (unintelligible) possible delay the process of having the working group get back to work. (Unintelligible). Thank you.

Mary Wong: Thank you Paul.

Paul Keating: I'm sorry, let me ask one – let me add one other thing so it doesn't just go out there like a Hail Mary. I guess first I'm going to ask George if that's okay if that question gets (unintelligible) and better. And then secondly if it is I'd like better (unintelligible) answer it. Thank you.

Mary Wong: Thanks Paul. And I'll note that Phil did have a question for George. So I would suggest that perhaps we hold your question Paul except to the extent that it may relate to what George may be saying shortly. So we have a question from Phil to George.

And I see George you raise your hand. It may also be to respond to Paul. But Paul also had a question for you George and so I'm going to turn it over to you George but just to note that I seem to have slipped into a role of at least managing the queue so I hope that's all right with everyone. If you'd like a different person or a different way of managing this call please just let me know. And so over to...

((Crosstalk))

Mary Wong: ...you George. Thank you.

((Crosstalk))

George Kirikos: George...

Mary Wong: Over to you George.

George Kirikos: Yes, George Kirikos for the transcript, thank you. Yes I'm fine with Mary handling the queue. The – I'll answer Paul Keating's question first. I think we should defer it because I thought we were making some progress with Phil and Petter earlier so I just want to try and build on that.

They had asked about what would happen if that facilitator was introduced. And I don't think necessarily needs to be Herb doing it. It would just be kind of the same first time we had face to face in Singapore.

Somebody who's focused on promoting consensus it allows the co-chairs to not be worried about arguing for their proposals because they'd be just as

individual members for the purposes of discussing consensus. And so to that extent it actually frees them up in terms of their ability to talk about the options that they prefer to talk about the options that they prefer.

And with regards to what would happen to the appeal I would think that the appeal would be on hold allow the facilitation process to happen. It could be, you know, it could be like a Doodle poll try to get the maximum participation like we'd had back when this PDP was young. This was I guess 2014, 2015, find a doodle poll, you know, blot out a few hours, have people try to, you know, put in the work and see what happens.

And if it's an abysmal failure then I guess the co-chairs will then say, you know, we want an honest poll and then we go back to this procedure and co-chair of the council and so on. But at least I think we'd have given it a fair shot in a transparent manner because everybody would agree that this is – that the facilitation process would still be within the standard working group guidelines. And I think that that's a possible way for.

So there wouldn't be any discussion about, you know, the specific topic about the anonymous polls being valid or invalid. There wouldn't be any ruling on that per se. It would just be, you know, suspended pending the outcome of the facilitator. And then if the anonymous poll is reintroduced obviously the same arguments would apply and we'd be back here.

But I think that would be a way forward because it might not be something that the co-chairs even contemplated as an option. Like they seem to feel that their only option was an anonymous poll as the way forward and this provides a new option that they may not have even contemplated. Thank you.

Mary Wong: Thank you George. And noting that Paul had asked a question about the poll as well. So Herb I see that your hand is up. I wonder if we might give the floor first to Petter because a question was asked directly I believe by Paul just a while ago. Petter do you want to go ahead?

Petter Rindforth: Thanks Petter here. But may I start with just a simple question to you George yes or no? Do you agree with me that all working group members should have the possibility to reply to other working group members' comments directed to them and their personal views, yes or no?

George Kirikos: George yes George Kirikos here. 100% I agree. Like...

Petter Rindforth: Yes. Good.

George Kirikos: ...we want maximum input. My...

((Crosstalk))

Petter Rindforth: And then...

George Kirikos: ...answer to that (unintelligible).

Petter Rindforth: ...do you also agree with me that no working group member is allowed to complain criticize privately to others?

George Kirikos: Exactly. I talked about that.

Petter Rindforth: Yes thanks. So just note that I think both George and Paul Keating will have correctly stated in the, I think it was the December 20 email where he referred to the Section 6.2 guidelines about the transparency and openness that all working groups are expected to operate under the principles of transparency and openness which means that mailing lists are publicly archived, meetings are well I said, normally recorded and/or transcribed and statements of interest are required from working group participants and will be publicly available.

And as you all know our mailing list are publicly archived. Meetings are well not just normally but indeed always recorded and transcribed. And of course statement of interest are publicly available and have in fact recently also been updated. I think it was now in December.

But as you also have seen and heard today we have 25 working group members and 17 observers. And during our meetings we are somewhere between six to ten participants. I just checked out the meetings we had at least from last year and it does it mean that the remaining 15 to 20 working group members are not interested or have no voice I don't think so. Is it because the times of our working group meetings are not suitable for some of them?

Well maybe from sometimes or is it because they do not want to risk to be hanged out verbally in social media by an active minority of the working group? I don't know.

But the only thing in this suspect that I'm 100% sure of is that all working group members have the right to make inputs and advices especially in this part two Phil and me as co-chairs so that we can make an open presentation and conclusion to the full working group.

And that is – I mean we are definitely now in the final phase of a work. And now suddenly in the very last minute we have six options instead of three.

As you know the previous I don't know this Paul we had three options. And referring to those there were - one of them was what George has proposed some actually - well in-between option. But now we have six options instead of those three. And it's important to have and you (Paul) to get them indication to Phil and me as co-chairs on the status of support for each of these six proposals.

And I think we have – we also noted that basically those of you working group members that's argues against any changes to be made or even decide to pass on a topic to another working group you are those that are now also continuously present new options in the last minute whereas other working group members are more silent.

And I think the – for us co-chairs it's – I mean we are here to be even if you can take that hat off from time to time and clearly make our personal comments. But we are – we are here to look at the full working group.

And best way to get an input on the status and preference on each proposal I guess again to have an anonymous poll to make sure that each working group members have the possibility to make their comments and to reach out to each of them. And then we'll see what the result will be.

And of course as last time the result on such a poll will of course be public and then hopefully make a suitable base for our full and open working group for a final decision and recommendation.

And I definitely agree with George and all of us that we have (due) for this topic for such a long time and we in our first initial meetings we actually solved as I remember at least all of the other topics and questions. So we have this specific one still. And I want to see some final decision.

And I hope that we can find a majority decision on this specific topic as well so that we can be proud of the work we have done and see that we have done the work within the working group, got some kind of consensus, not pass it on to other working groups saying that well this was too hard for us to decide upon. Thanks.

Mary Wong: Thank you Petter. And before I asked George to respond because Herb had his hand up earlier and has been waiting I assume that's in relation to the

question that we're discussing on anonymous polling given that, that's when he put his hand up. So may I call on Herb and then go to George?

Herb Wayne: Yes thank you Mary. Herb Wayne for the record. If the issues seems to be the anonymous polling and this may not go over very well because my first thing that pops in my mind actually involves an anonymous poll.

But I wonder if this question could be taken back to the working group all members and have them have their either (unintelligible) staff run a poll or their chairs run a poll simply asking whether the community, the working group members would like to respond to the issue anonymously or publicly?

And then your poll which discusses the six options or whether it gets pared down from there whether that poll then can follow the consensus of the entire working group and that might – if that satisfies both the chairs who can turn that (seen) over the group and George who will accept the decision of the group then we can move on to a either an anonymous or an open poll for the question at hand. It just popped into my mind as I was listening to the conversation and thank you for humoring me as I think to while I speak.

Mary Wong: Thank you for that suggestion Herb. And so I would invite everyone on this call to consider that suggestion that Herb has just made, basically an anonymous poll to determine the level of support for using an anonymous poll to determine consensus if I got that right.

And in some way also to take up Paul Tattersfield's point to see how the current six options can be narrowed before a further poll is used -- whatever way, shape or form that poll might be.

So in the queue we have George, then Paul Tattersfield then Paul Keating. George please?

George Kirikos: Okay George Kirikos here. Just to step back a second one thing I did not want to get into is people rearguing the arguments that they made in the documents because I don't think that that's productive way forward. Obviously I'm not interested anonymous polls. They are, you know, we're not going to get a resolution on that here.

We have to try to find alternatives that both sides can agree to and so that's why the facilitation option seemed to be an area where there was common ground and Phil seem to be amenable to that earlier. I don't know if you've had a chance to talk to Petter independently but I thought we were making progress at the beginning of this call and that seemed to be a viable way forward especially given it had been successful previously, not necessarily in the context of trying to reach consensus but trying to be a productive thing for the working group to try to reach consensus.

But to correct one little point that was an aside about six options versus three options and the number of options in the polls we actually had, had six options previously if you recall. And then it was reduced to three options by the chairs unilaterally. And then there was a question about whether an option had been taken out.

And so in terms of, you know, how the poll would even be conducted if there was a poll that's obviously something that's up for debate because even the guidelines admit or concede that interpreting polls and the questions that are asked and who frames the issues causes its own problems. So I don't want to have to do that now but I just want to focus on the – sorry, the facilitator proposal to see if that has wings so to speak and not try to have anonymous polls about anonymous polls.

So can we go back to the sorry, the facilitator option and see whether that has, you know, merit from the co-chair's point of view as a way forward? If not, you know, we can talk about other things but I'd like to see if we can get to that because otherwise we're going to be debating the para-documents

and, you know, rehashing all the old arguments and I don't see us coming to terms on this call about that. Thanks.

Mary Wong: Thank you George. So the two options that have been suggested first is the use of a facilitator as was suggested earlier. And secondly Herb's suggestion was to poll the working group as to the level of support for conducting the anonymous poll that the co-chairs had proposed. Shall we go to Paul Tattersfield and then Paul Keating and then come back to the options and perhaps maybe if there are additional possible solutions? Paul?

Paul Tattersfield: Hello. I just like to talk on the polls if that's okay before we get to the facilitator bit. There are 14 participants in the first anonymous poll, 12 excluding the chairs. Seven of those cases have been subjected to the proposals for the anonymous poll at the time.

Two have subsequently said they don't care, just get on with it and three haven't commented. So if a majority or in favor of – oh sorry, if the majority aren't in favor of anonymous poll then surely the working group should just find another way forward and that should be the end of the matter really. Thanks.

Mary Wong: Thank you Paul. Paul Keating?

Paul Keating: Yes this is Paul Keating for the record. I had to get to my mute button. I agree with what Paul just said. I haven't seen and I specifically have asked people by email whether or not they're favoring polling at all let alone anonymous (unintelligible) and they don't care because they don't necessarily want to pull and they don't understand why this argument is causing a delay. So I'm questioning whether there's a majority consensus of the working group have a poll in any event.

And number two is and I understood what Petter said but you have so many members of the working group that are not willing to participate in any call

whether it's a formal consensus call or not. I don't understand how a poll is going to assist us because there's one thing I'm – I object using the poll for purposes of determining what the consensus was.

The poll could help identify consensus which has been discussed at consensus call to see if we – if everybody but, you know, if (unintelligible) but it's not (unintelligible) my mind is a substitution that process.

And I suspect that that desire if you want everybody to participate in the poll to develop a consensus then those people don't show up for the consensus call it's like I mean if a tree fell in the forest and no one was there did it make any sound? It's meaningless what they had to say because they weren't there when it was their time to say something.

So I'm very – I treat polls dubiously. There's a bunch of problems associated with them including what form is the question. The – that said I did clearly hear George and his appeal that he is not interested in the poll whether it's anonymous or not. So I think that we should with my great apologies we should put the discussion of anonymity to the to the poll back on the back burner and (unintelligible) having (unintelligible) resolve these issues within the working group (unintelligible). I apologize (unintelligible) much for getting sidetracked so back to you. Thank you.

Mary Wong: Thanks very much Paul. If I may from the staff side just to get some clarity -- and hopefully it can frame the rest of the discussion -- we understand that there – clearly the opposition is to an anonymous poll.

What I just heard Paul Keating say is possibly also that the folks on this call who oppose an anonymous poll may oppose the use of a poll all together even if it's not anonymous to assist Phil and Petter with determining consensus. Paul Keating if I misheard you I apologize but I thought that's an important point to try to clarify. So if I may ask you to respond and then go to Phil.

Paul Keating: Sure. Sorry that's not what I intended to say if that's what you heard. What I was reacting to was George's earlier comments before Mr. Tattersfield spoke which was that he's not – and if we're going to – he would prefer to discuss the issue of having a facilitator to make a – to come into the working group to assist the working group (unintelligible) consensus on what to do next. And he I thought clearly stated that he wasn't interested.

If the conversation was whether there was a poll or an anonymous poll he didn't see that as a resolution because that wasn't acceptable to him. This is his appeal. I'm in this as a participant to promote his appeal, not my own personal viewpoints.

But this is not my appeal. It's George's. So I think that the proper way is to have George reiterate what he said since we all have - seem to have or several of us seem to have different viewpoints on what he did say and what he meant.

My only point was I don't want to take away from George's (unintelligible) process. I don't want to sidetrack this discussion. So I would like to back to having George - George's position put back on the burner, talk about (unintelligible) to see if that is some – that get the parties involved in the dispute (unintelligible). Thank you.

Mary Wong: Thank you very much for that clarification Paul. And that was actually one of the reasons I thought I should ask the question. Again I apologize that I may have misheard you. I see that Paul Tattersfield concurs with you and defers to George. So we have hands up from Phil and from Petter.

So perhaps we can hear from them and then George as Paul Keating and Paul Tattersfield have said they will defer to you if you would like to, you know, come back after Phil and Petter have gone to either restate what you

said earlier for clarity or to see which option you'd like to continue discussion on that will be helpful. Phil?

Phil Corwin: Yes thank you. Phil for the record. Let me weigh in here. I don't want to be rehashing things that are in the two written statements but quite simply as a co-chair the duty falls on Petter and I at this stage, end stage of the PDP process to start – initiate the consensus call with our estimation of the degree of consensus or not for the various final policy options before the working group.

Now let me say in regard to consolidating them I don't know when I look at the six I'm not sure if any can be combined but I'm not adverse to one more working group call to discuss whether those six options where we left off in December are the final choices before the working group or if people want to add one, pull one back, suggest a way to consolidate one with another. I think that's fine.

But the problem for the co-chairs I think there's some suspicion on the part of some working group members that we want an anonymous poll to steer the working group towards some conclusion that we wanted to come out with. I can state that's not the case. I personally have no idea where the consensus lies or if any consensus lies within this working group for any of the six policy options. I am concerned that we may on the key issue of IGO immunity not have a consensus for any of the six options relating to that.

But Petter and I simply at this point without feedback from the working group we're not in a position to initiate that consensus call process absent some better knowledge of where the individual members stand on these issues.

And let me say we've been very careful to cull the list of working group members. We had staff contact folks I think late fall, early winter. We eliminated some members who said they were no longer really following or interested. We've – I think staff has taken some focused efforts in regard to

statements of interest that weren't current and there's been some further culling.

So we've been careful to try to make sure that the people remaining in the working group are really engaged by their own word. But we don't want to say well if you're not actively participating on the email list or the calls we're going to toss you out because frankly that would play into the anticipated potential challenge from IGOs regarding capture of the working group.

So we believe that a poll is the best way to give us that input so we can initiate that process. And we've been clear that everything after that will be completely open. And anybody who wants to discuss – be involved in that discussion of whether or not we've accurately portrayed the consensus level for any particular policy option it would have to be on the record with their name.

So and the reason for that anonymity is that we want to ensure the maximum participation by working group members in the poll and the most candor in their answers. Let me stop here and ask I think it's a threshold question if we're going to go forward. If the proposal for an anonymous poll was withdrawn and we were to have a poll on the record is their objection to the use of a poll?

And let me just say the poll that the chairs feel would be most helpful to them in their role would be a poll -- and I think we've indicated this previously in the calls and in writing -- in which each working group member on the other three recommendations would be asked to indicate whether they support or oppose it or – and if they wish to comment in any way on it.

So for example if – on the one for ICANN funding of, you know, IGO complaint filing there's been a suggestion made that in noting that we have no authority for that we should state that if ICANN were to do that for any IGO

then they should have – be responsible for funding the response as well and I wouldn't have any problem with that position.

So people would be feel free to say anything they want about those three options. And on Recommendation 3 they could say whatever they wanted about the various options -- support, oppose.

But we'd ask them on those six options if we wind up with six to indicate their top priority which wouldn't mean that they couldn't indicate in their comments that another one was their fallback position if the one they most supported wasn't one favored by the group.

So I want to stop here and ask George and the folks supporting his appeal if an anonymity was not at issue would a poll be objectionable the use of a poll by the chairs to try to gauge the consensus levels within the working group so that we could fulfill our responsibility to initiate the consensus call process by proposing consensus levels for the various options.

And I hope Petter will hold his comments so we can get some feedback on what I think is the essential question here.

Mary Wong: Thank you Phil and I'll do the same and ask Petter to hold his remarks because Phil you've made a suggestion and asked a very direct specific question of George who has his hand up. So perhaps let's go to George to respond to your question and we'll come back to Petter.

Petter Rindforth: Perfect okay, Petter here. Yes.

George Kirikos: George Kirikos for the transcript. May I say something?

Mary Wong: Yes please George.

George Kirikos: Thanks, George Kirikos again. Yes time is of the essence here so folks should try - perhaps try not to repeat the arguments that are in the documents. We've all read them I assume. I've already put out my position regarding polls and how they should be rarely used and how there are problems with how the questions in a poll can be framed.

And so can we and momentarily just – I know that that's an option that Phil has proposed and I want to take it seriously but I wanted to see also because I thought we've made a lot of progress at the very beginning of this call with regards to the facilitator. And he had asked me specific questions that I was going to answer favorably.

So I thought if he thought that that was a way forward that avoids the use of polls entirely, it allows those people who haven't had the opportunity to necessarily participate to get in on that facilitated process and get their direct input where we can get to a consensus because the worry about polls is all it does is captures a snapshot of the opinion. It's finality and then people are going to say, you know, is that a vote, you know, it's like how do you react to the poll?

It doesn't really move towards consensus. It just cements existing divisions as I argued which you all read. So can we just step back for a while for the facilitator issue to see whether, you know, if they'll want to ask me questions about how that was received because I thought we were all, you know, we were making great progress and then we got sidetracked on some of these other issues and if that was an acceptable solution that avoids the discussion about polling entirely.

And then, you know, if we wanted to drop the anonymity and create a fair poll that the working group decided upon all the questions that went into a poll, it was transparent, you know, that would probably be – that would conceivably be a viable way forward if the facilitation process failed. But I wanted to get his views on that. So...

Phil Corwin: Yes let - this is Phil. Let me respond briefly because we are deep into the hour and though I'm willing to stay on some extra minutes if we appear close to agreement on something but I want to, you know, my concern – I'm not against a facilitator. I don't want to appear to be negative.

My concern is that I'm sensitive to the many working group members who have expressed consternation over the delay on this procedural matter. I'd like to see this working group wrap up as soon as possible.

I'm just concerned that a facilitator if the facilitator participates and that it will take time to identify a facilitator. And then the facilitator is on a call and if we have the same core group on the call and a significant number of working group members not on the call that we'll kind of wind up in the same place just having burned more time.

So I was hoping to move things along more quickly but let me stop there and hear from my co-chair.

Petter Rindforth: Hi Phil, Petter here. First just a note that the last poll yes I voted of course but I made no comment for myself because I wanted to see the additional comments from the working group members to have it a more neutral and kind of majority view. But yes we have just a few minutes left.

And going back to my initial questions to George I have one possible solution. If – I could agree to withdraw our request of the poll that it be conducted in an anonymous manner if you on the other hand agree not to call out on working group emails and social media individual working group members directly or indirectly for their responses or mischaracterize the policy options before us because I think all comments made directed to working group members they must have also a possibility to reply and comment on that.

So if we can from now on work on that more neutral way then I also think that there is less risk that any of the more silent working group members will be afraid to make their comments identifying the names in a poll.

Mary Wong: Thank you very much to everyone. At this point, you know, just to summarize -- and hopefully I'm not getting it wrong -- and we're talking about the use of a facilitator to help manage the consensus making process going forward from this point.

There is some concern that -- well I shouldn't say concern but that there was -- there's a need pointed out that even if we were to go down this route that care should be taken and steps taken to ensure maximum participation as much as possible and that members of the working group feel comfortable porting forward their views.

There's also been a point made that this may not necessarily preclude the use of a poll as part of that process possibly not to be decided now but as a potential option not to be foreclosed.

And there's a suggestion from George that if we're going to go down the facilitator route someone from the gNSO that's experienced presumably both with the gNSO procedures and PDPs such as an ex-council member or ex-council chair perhaps could be used. So I hope that, that summarizes more or less what George, Phil and Petter have just said.

I can confirm that we can stay on for this call for a while longer if you'd like to continue discussing this option. And I see Paul Keating's typing in the chat but at that point - at this point George I see your hand up. Please go ahead.

George Kirikos: Yes George Kirikos here. Yes like Phil seemed to have a concern about how long it would take. Like I don't know whether it just goes to -- it's a request to the gNSO Council to, you know, a point do you have to request a facilitator? And they can either, you know, use one of the professionals that they've used

in the past or if that would take too long or is too expensive they can, you know, you somebody from the community who's experience, you know, even somebody that's, you know, retired from ICANN or whatever make a few hundred bucks for a half a day or three hours or whatever.

But the key is to make sure that in advance of that call all the options are presented mutually by the proponent of that so is not necessarily prepared by the co-chairs like it was last time.

You know, Paul Tattersfield can present his, (Zach) can present his, Paul and Petter can present theirs, I can present mine and so on and have them prepare and have people read it before, go in, have people discuss it, discuss what they're in favor of, discuss what they're against, try to come to something that everybody can live with. That's what consensus is all about.

People that can't make it would obviously be consulted afterwards but we would try to pick a time, you know, that everybody can make it. We recall at the first face to face I think we had more than ten people. I can't remember exactly. You know, we can even invite the IGOs although they, you know, might interrupt things.

But we've got people that, you know, want to get the best possible output of this group. And I don't see it happening, you know, using some polls right now anonymous or not. You know, we should try to, you know, forge ahead and, you know, do the work.

So if Phil's main concern about was the time, you know, I would say taking up a couple of weeks maybe to set up. I have no idea. But, you know, obviously but it went to the gNSO Council and things like that. I don't want to get sidetracked by that option. It's going to take a lot longer because, you know, this process has never been used before so we're trailblazers in a bad way perhaps when you think about it that way.

And I don't want to go that way I want to go to that way. I want to go through the fastest way that, you know, gets the results and hopefully people acting in good faith can get there together.

Mary Wong: Thank you very much George. So from the staff side obviously we don't have a preference or a role in this decision but what I can say that hopefully is somewhat helpful is that we have worked with community-based and professional facilitators as we mentioned earlier. And we have been helping with advanced materials.

So things like ground rules, what sorts of materials, what expectations we would have of the participants both before as well as during the facilitation -- all that will need to be laid out. And so while it might not be immediate it is certainly something that can be done. So Phil would you like to respond?

Phil Corwin: Okay Phil here. Let me just follow up on what Petter said a few minutes ago so it's clear what's on the table. You know, if the group wants to go with a facilitator I'm not going to oppose that but I am concerned about the time it's going to take to agree on the facilitator, agree on the purpose of the facilitator.

And then we still may be in a situation where the facilitator's on a working group call with the same rather small group that's less than a majority of the working group on that call and we don't know where the other people stand.

It is the view of the co-chairs that we -- the best way to assist us to accurately propose initial consensus level is to initiate the consensus call process is a poll of the type I described.

If we could get a gentleman's and gentlelady's agreement within the working group that members of the working group -- I don't want to single anybody out -- will not - obviously everything would be on the record but will not go after either of the working group email list or in social media saying so and so

voted to do this bad thing or to give that group undue advantage or something like that that we can keep the description to, you know, so-and-so – it'll be there on the record.

You know, John Doe supported this option and opposed that one and the options are on the table and it's perfectly okay for anyone to say what they think from a policy perspective that's a good or a bad option.

But the thing the co-chairs are concerned about is personalized criticism of the working group members and the fact that it may suppress participation and candor in a poll.

So if we could get that gentleperson's agreement to restrain our comments based on the results of the poll and that a poll is permissible to assist the co-chairs and fulfilling their responsibility and to initiate the process described in Section 3.6.

I think we could go forward at a much more rapid manner and perhaps not need a facilitator. I don't know if people want to think about that and get back within an agreed-upon time period but I'm not opposing the facilitator but I wanted to put that other option on the table.

Mary Wong: Thank you for that Phil. George?

George Kirikos: Yes George Kirikos here. You know, I don't want to get sidetracked by these peripheral issues. Like I thought the facilitator idea was a solid way forward. This stuff about, you know, George says mean things to some people or George uses caustic comments or so on that's all distraction from my point of view.

You know, free speech rights exist. I've not defamed anybody. People might agree or disagree. If there was deformation people have recourse in courts. You know, where all adults here. I'm not acting inappropriately in my view

and I'm very well aware of deformation law in terms of where the line is drawn.

And so transparency exists so that people can be held accountable for their positions. And I've minimized any attacks on people personally. Like I've not tried to say, you know, so-and-so is a murderer or so-and-so is, you know, an evil person – blah, blah, blah.

Where I've addressed comments, you know, whether it's for example to (vent surf) about the price increases for – or the elimination of price controls for .infobiz and org years ago I'm sure those criticisms of him haven't heard his job prospects at Google.

And so, you know, our objective is this requirement that somehow I restrain myself because I'm such an evil person according to some, you know, let's, you know, avoid these personal attacks and try to be professional here.

So in terms of facilitator is it something that everybody thinks can go forward? And, you know, if after that people want to discuss an entirely neutral poll that is fully (unintelligible) and prepared and everybody has input into it before creation, you know, that's something I can get behind.

But, you know, I think we should try the facilitator process because I think it would have a good chance of success and it avoids all this discussion about anonymity and so on. I think Paul Keating's back on. Thanks.

Mary Wong: This is Mary from staff. So what I'm hearing from Phil and George is that, you know, we are still talking about - well we're talking about two possible ways to proceed. Neither is mutually exclusive. It may be a concern over the order as to which to do first.

What Phil was suggesting I believe was that we try collaboratively to work on a proposal that could allow a poll if needed and that would enable full and

open participation from as many as possible but that if that doesn't work the facilitator could be brought in.

What I heard George say it was similar but kind of in reverse. So that – those seem to be the two proposals we have right now. And Paul Keating then raised his hand so let's go to Paul.

Paul Keating: Hi Mary. This is Paul Keating for the record. If those are indeed the two proposals then I think I can take my hand down. What I was primarily reacting to was the issue of commentary and people's expressions of opinion in whatever format they want to take.

From my standpoint I think it – I have never seen any evidence of that nor have I heard anybody that has been complaining. But if there are, there are means of the chairs to deal with those issues right? Maybe you can chastise someone publicly, reprimand them, you know, all kinds of things that are available – tools are available for the chairs to use to use in order to control the quorum inside the group.

So I would not want to link these two things together because one is just – you're telling me that I can't say – I can't feel like I can freely speak and I'm not going to really get behind your proposal.

So if indeed it's what Mary described which is either we try to work out a poll and if we can't work out the details of a poll as a working group then we bring in the facilitator. Well what George is saying is to do it in reverse. I need clarification if those are indeed the two things that we're – we are discussing here. Yes.

Mary Wong: Thank you Paul. So perhaps I could ask Phil and George to either correct or to clarify what I tried to summarize so that we're all clear as to the two options/proposals. George you have your hand up.

George Kirikos: Yes George Kirikos here. You know, what I felt was the best path forward was we tried a facilitator because just stepping back a second. The guidelines and my own personal view is that the polls represent kind of a rare occurrence and should, you know, be kind of a last resort.

And so if we tried a facilitator in good faith, tried to get lots of participants involved and somehow even that failed then the co-chairs could say, you know, we tried everything, we worked in good faith but we couldn't get to where we wanted to be.

And so since that consensus doesn't necessarily exist well we might find at that point we know what the consensus is, you know, that there is no consensus or, you know, if we have enough participants that we can, you know, pretty much gauge what the levels of consensus are at that point.

But anyways if that failed then, you know, they could say, "Okay let's use the polls, you know, polls that everybody agree on had, you know, input into creating as the, you know, perhaps final step say before a consensus call is made and then go through it that way and there would be a transparent poll."

But the key is sort of try to make the facilitator process a successful through, you know, participation of the people that don't usually show up and get their input because I don't know who these people are just to be honest.

But, you know, we have 25 people some people have, you know, never come to a meeting or rarely send an email. Why are they on this list? Like did they just show up to, you know, have emails coming into their inbox every day? I have no idea why they're here.

Like they should come and participate, try to form a consensus and, you know, be expected that standard of behavior that we all abide by is that we all work towards that consensus. And if we don't hear their voices I don't know how they're actually trying to do what they're supposed to be doing.

And so just to go back to concluding, you know, I think we try to go for that facilitator first and then I think the working group guidelines, you know, a rare clause is more triggered in that aspect. And then, you know, to avoid the issue of whether transparent or not it should be a transparent poll.

And I agree with what Paul Keating said earlier about, you know, the chairs have the ability to, you know, penalize, or not penalize but reprimand misbehaving members and have not, you know, been penalized for anything so it's just that's really independent of all this. Thanks.

Mary Wong: Thank you George. And if I may from the staff side what Phil said much earlier in the call I believe was that he was open to having another session where the options are described, clearly laid out and discussed.

If I may on the staff side like I said we could look at ways where we can conduct that kind of discussion that may not necessarily be just a 60 minute or 90 minute call.

I don't have any ideas at the moment but, you know, one of the possibilities is instead of going directly to a poll perhaps non-anonymous is to find some way to have an open discussion session which could then lead to a poll in which people had more confidence without precluding the use of a facilitator, you know, at the appropriate point whether earlier or subsequently or because there is no agreement.

So just throwing it out there to try and maybe bridge some of the gaps between the two. But thank you for that clarification George and I think Phil you'd like to clarify as well.

Phil Corwin: Yes Phil for the record. A quick question for George and then I – then I'll give my final comments. I think we should try to wrap this up in the next five minutes. George just so I'm clear what is this if we use the facilitator what is

the facilitator being used for? Toward what end are they working with our working group? And I will say that I think this decision of using a facilitator is since it would affect the entire working group is not one that should be decided on this call but should be put to the working group by email or some other means to get reactions. But could you just clarify what you would see the role and ideal outcome if we use a facilitator?

George Kirikos: George Kirikos here responding. Yes the facilitator is independent. So it kind of lets you and Phil – sorry you Phil and Petter participate as normal members. And the facilitator's main job is to try to reach consensus. So...

Phil Corwin: Yes but consensus on what? That's what I'm not clear on?

George Kirikos: Consensus on the proposed recommendations or the proposed solution, either the existing six options or through brainstorming. You know, I don't how the facilitator would work but, you know, presumably they would want input from all the participants.

They'd want brainstorming, you know, combining various options, trying to bridge the gap to get to a decision. And so it wouldn't be necessarily people just saying, you know, this is my position statement – blah, blah, blah. It's people are trying to work to get that solution. So in advance of that, you know, the, you know, advantages and disadvantages all the options could be prepared by the proponents of each solution.

And, you know, we can get on a call with hopefully a lot of people there, you know, hold a Doodle poll or whatever to get the best times and, you know, really solve this thing. And I actually proposed earlier in the chat room that, you know, we can put this proposed solution to the working group members to see how they feel and I concur with that.

But that's I think would be satisfactory and acceptable to and hopefully they would back that as a way forward because, you know, it's been almost a

month and, you know, nothing's happening. And so hopefully they would see that as a way forward as well because I think everybody wants to get to the right place which is a strong consensus document that the ICANN board ultimately accepts.

Phil Corwin: Okay I'll wrap up here. You know, I think that we're going to have a facilitator I don't think the final language of the options is the real problem here. I think the problem is agree on the procedure for initiating the consensus call. And I think if we're going to use a facilitator that should be either the main focus or one of two focuses for the role and the facilitator.

And George I just – I hope this doesn't inflame things. I didn't refer to you personally in my prior comments but based on your response I do want to get on the record two things. One, that in our written response to you we did cite as one example a tweet you had put out about the - this working group that we thought really misrepresented the – one of the policy options before us.

And I have to say personally the chair's in a very difficult position when they are the subjects of working group member criticism because we're not really – we can't be objective in moving to discipline a working group member when we're the targets.

But I do want to get on the record that the email that you posted to the working group list last Friday regarding your speculations as to what occurred on the call the day before I regarded as a baseless and mean-spirited personal attack on me. So let's get that on the record as one example of where I think you have gone over the line.

But having said that I'm not going to object to a facilitator so long as the facilitator can address both substantive and procedural issues before this working group. But I do think that the full working group should have some say on whether we use a facilitator given that it will add additional time to this process. Thank you.

Mary Wong: Thank you Phil. And before going to George again, you know, staff would like to interject to note that in using a facilitator in this section of the guidelines we seem to be looking at using a facilitator to, you know, “promote consensus.” And we just thought it might be helpful to put on the record that ultimately under the guidelines the chairs of a working group still have the responsibility of initially designating consensus which can be then discussed and debated by the working group and is obviously subject to change as a result.

So we just wanted to make clear that to the extent a facilitator is brought in to promote consensus in this case on the options whether those be six or fewer that ultimately the co-chairs will still need to be the ones designating the consensus and going through these steps in a 3.6.

So it sounds also Phil like what you’re proposing is that we should take this proposal back to the working group and solicit opinions and comments.

The last staff comment I’ll make here and then turn it back to George is that because we’ve worked with several facilitators and using different formats with different purposes what the staff can try to do is also go back and consolidate some information as to, you know, what some of these sessions may have been, how they were run, suggestions for how these kinds of things can be run and so forth.

So thanks for your patience George. Please go ahead.

George Kirikos: Yes George Kirikos just to go on the record about Phil’s comments about my comments on the mailing list. Obviously I disagree with them and we can take that off line and discuss them perhaps personally one on one. But the, you know, I’m pleased that we’re trying to make some progress and, you know, we’ll take it to the mailing list with regards to the facilitator.

A facilitator should focus, you know, just on the policy. The process of ICANN that's entirely separate with regards to procedural issues. You know, they should be focused on getting to the policy recommendations as a consensus. So I hope that that's something that Phil would support.

Mary Wong: Thank you George. And one thing that I forgot to actually mention earlier is that the suggestion of a facilitator the staff thinks that it can be helpful to have someone who is familiar with how the PDP is run.

So going back to an earlier suggestion I think George you may have been the one to make it that it could be a former council member and that could be a former council chair as well so that they're not on the current council and they're not obviously going to be voting on the recommendations out of this working group is something to consider.

And then in respect of next steps from here we take the action item to bring this to the list. And if we may (Steve) and I are going to ask for maybe some time to just go back over the recording to make sure we get it right. And obviously if we do get it wrong ultimately everyone on this call will no doubt let us know.

But in respect of next steps with the 3.7 process itself our assumption is that while we take this to the working group that therefore we are, you know, not proceeding with the next stage at this point of the appeal process, if that's correct George. And I think that may have been an old hand but I saw a hand from Paul Keating. So let me call on Paul and then unless others have concluding remarks we can probably close the call. But Paul please go ahead.

Paul Keating: Yes I just wanted clarification on the process to select the facilitator. And – unless someone has an objection. We already had one facilitator who's somewhat familiar with the working group and the issues that we're dealing with. Maybe we just can agree that that person can serve in that capacity.

I'm not certain everybody's agreeing on it but that seems to be able to shortcut a lengthy process of having to select somebody and be back and forth and whatnot. So Mary could you address how exactly is the facilitator going to be selected now?

And is it possible to shortcut the selection process and invite the prior facilitator that we did use at the meeting – at the face to face meeting assuming that everybody is agreeable to using that person?

Mary Wong: Hi Paul. This is Mary. I'll take a stab at answering that. And I will say that there is no standard process for selecting a facilitator. It sort of goes with the gNSO's modus operandi to have each group determine the best mechanisms within the context and dynamics of that group. So like I said we've used a variety of facilitators community-based and professional.

What I will say if I'm permitted to is that in this particular case the facilitator we used for this was quite a while ago and our group has progressed significantly since.

So for example on questions of immunity and so forth there's a lot of intricacies and group discussions that whoever it is community-based or professional will have to be brought up to speed. So speaking very personally -- and I'm not speaking for (Steve) because I don't know his view on this -- I am not at this point certain that it would save time. It might actually add time to bring someone like that back.

That is one reason why latching on to George's suggestion of an ex-counselor we thought that or at least I thought that an ex-council chair having had to preside over a number of PDP' and situations might be someone to consider.

What we can do and perhaps should do is to include this in the report back to the working group and solicit suggestions and ideas on the type of facilitator and possibly even names.

So that would be my response to you as of today if that's acceptable. But the staff view is that it would be helpful to have someone who is familiar with the gNSO PDP at the very least. So let me then call on George and allow Petter and Phil also the opportunity to make closing comments and then we can probably end this call.

George Kirikos: Yes George Kirikos here. First of all I'd like to thank everybody for making, you know, great progress today. It would have been horrible to have to escalate things to the next level but obviously both sides were prepared for that.

One thing - well I guess to ask briefly is what happens next? Mary you said one action item is to, you know, prepare something, a draft of something that would go to the rest of the working group as to the process within the working group.

I think there's a second action item namely to talk to the gNSO Council rep Susan Kawaguchi or - because she was designated as Heather Forrest's rep on this matter to take the issue of what discretion the chairs have in terms of processes off the agenda for January 30 because that was provisionally added to the January 30 agenda depending on the outcome of this call.

And so now that we've kind of come to our own resolution it should be removed as a topic from the January 30th call. And that, you know, ensures that, you know, I don't have to respond to the document that Phil and Petter produced earlier this week and basically focuses everything within the working group. Is that okay with everybody?

Mary Wong: Thanks for that reminder George. And yes staff will take that as an action item as well. So Phil and Petter I don't know if you have any final comments to make before we close the call. I see agreement from Paul Keating and Paul Tattersfield to George's last statement. So yes two action items. Petter or Phil?

Petter Rindforth: Petter here. I have to read through the suggestions before I comment on that but I agree that it would be nice to have the possibility to come to a conclusion so that we can proceed our work.

And as to the two options although I'm a little bit surprised that I thought all working group members could easily sign up to promise to not attack each other in social media and so but personally as I also noted in the chat room I prefer – I like whatever possibility we have that can take less time so that we can proceed with our final part of the working group because what we have left is one specific question and we need to solve it and it would be very sad if all the work fell down on this. Thanks.

Mary Wong: Thank you very much Petter. Thank you very much everybody for not just being on the call but for participating actively in what sounds to have been a very constructive call. So we have noted the two action items from today.

And so on that note Terri I think we can close this call and I'm sure we will talk to one another again very soon. Thank you all.

Petter Rindforth: Thanks.

Phil Corwin: Bye everyone.

Terri Agnew: Thank you. Once again the meeting has been adjourned. Operator (Jeff) if you could please stop all recordings. To everyone else please remember to disconnect all remaining lines and have a wonderful rest of your day.

END