
ICANN Transcription

Extraordinary GNSO Council Meeting on Outstanding SubPro Related Work

Monday, 05 June 2023 at 20:00 UTC

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

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

List of attendees:

Nominating Committee Appointee (NCA): – **Non-Voting** – Anne Aikman Scalese

Contracted Parties House

Registrar Stakeholder Group: Antonia Chu(absent), Greg DiBiase, Theo Geurts (apologies)

gTLD Registries Stakeholder Group: Nacho Amadoz, Kurt Pritz , Sebastien Ducos

Nominating Committee Appointee (NCA): Desiree Zeljka Miloshevic Evans

Non-Contracted Parties House

Commercial Stakeholder Group (CSG): Marie Pattullo, Mark Datysgeld, Osvaldo Novoa (apologies), Thomas Rickert, John McElwaine, Susan Payne

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

Non-Commercial Stakeholder Group (NCSG): Stephanie Perrin, Bruna Martins dos Santos (absent), Wisdom Donkor, Tomslin Samme-Nlar, Farell Folly, Manju Chen

Nominating Committee Appointee (NCA): Paul McGrady

GNSO Council Liaisons/Observers :

Justine Chew : ALAC Liaison

Jeff Neuman: GNSO liaison to the GAC

Everton Rodrigues: ccNSO observer (first meeting)

Guests:

Avri Doria – ICANN Board

Becky Burr – ICANN Board

ICANN Staff:

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

Marika Konings - Vice President, Policy Development Support

Mary Wong - Vice President, Strategic Policy Management

Steve Chan - Senior Director, Policy Development Support & GNSO Relations

Julie Hedlund - Policy Development Support Director (GNSO)

Berry Cobb - Senior Program Manager, Policy Development Support

Emily Barabas - Policy Development Support Senior Manager (GNSO) (apologies)

Ariel Liang - Policy Development Support Senior Specialist (GNSO)

Caitlin Tubergen - Policy Development Support Director (GNSO)

Terri Agnew - Policy Operations Specialist (GNSO)

Devan Reed - Secretariat Operations Coordinator

TERRI AGNEW: Good morning, good afternoon, and good evening, and welcome to the extraordinary GNSO Council meeting on Monday the 5th of June 2023. Would you please acknowledge your name as I call it? Thank you. Antonia Chu? I don't see where Antonia has joined. Nacho Amadoz?

NACHO AMADOZ: Present.

TERRI AGNEW: Kurt Pritz?

KURT PRITZ: I'm here. Thanks.

TERRI AGNEW: You are welcome. Sebastien Ducos?

SEBASTIEN DUCOS: I'm here.

TERRI AGNEW: Theo Geurts sent his apologies. Greg DiBiase?

GREG DIBIASE: I'm here.

TERRI AGNEW: Desiree Miloshevic?

DESIREE MILOSHEVIC: I'm here. Thank you.

TERRI AGNEW: Marie Pattullo?

MARIE PATTULLO: Yeah. Thanks, Terri.

TERRI AGNEW: You are welcome. Mark Datysgeld? I do see where Mark has joined, but I don't see where he has audio yet. So Mark is on the visual portion. John McElwaine?

JOHN MCELWAINE: I'm here.

TERRI AGNEW: Susan Payne?

SUSAN PAYNE: Here. Thanks.

TERRI AGNEW: Osvaldo Novoa. I do believe Osvaldo is still on vacation. Thomas Rickert. And Thomas, you're muted, but I do know you were speaking a few moments ago, so I do know you're on.

THOMAS RICKERT: I'm present, Terri.

TERRI AGNEW: Perfect. Thank you. Paul McGrady?

PAUL MCGRADY: Here.

TERRI AGNEW: Wisdom Donkor? I don't see where Wisdom has joined yet. Stephanie Perrin?

STEPHANIE PERRIN: Present. Thanks, Terri.

TERRI AGNEW: You are welcome. Manju Chen?

MANJU CHEN: Here. Thank you, Terri.

TERRI AGNEW: You are welcome. Farell Folly. I don't see where Farell has joined yet. Bruna Martins? I don't see where Bruna has joined yet. Tomslin Samme-Nlar?

TOMSLIN SAMME-NLAR: Present.

TERRI AGNEW: Anne Aikman Scalese? I don't see where Anne has joined yet. Jeffrey Neuman?

JEFF NEUMAN: I'm present. Thank you.

TERRI AGNEW: You are welcome. Justine Chew? I don't see where Justine has joined yet. Everton Rodrigues.

EVERTON RODRIGUES: Present. Thank you.

TERRI AGNEW:

You are welcome. And Everton is our new liaison with ccNSO. So welcome, Everton. We have a pleasure of having you join. Our guests today will be Avri Doria and Becky Burr from the ICANN Board. We do have GNSO support staff on as well, Steve Chan, Marika Konings, Mary Wong, Julie Hedlund, Caitlin Tubergen, Ariel Liang, Devan Reed and myself, Terri Agnew.

May I please remind everyone here to state your name before speaking as this call is being recorded.

As a reminder, we are in a Zoom webinar room. Councilors are panelists and can activate their microphones and participate in the chat once they have set their chat to everyone to be able to read the exchanges.

A warm welcome to attendees on the call who are silent observers, meaning they do not have access to their microphones nor the chat.

As a reminder, those who take part in ICANN multi-stakeholder processes are to comply with the expected standards of behavior.

With this, I'll turn it back over to the GNSO chair, Sebastien Ducos. Please begin.

SEBASTIEN DUCOS:

Thank you, Terri, and good morning, good afternoon, and good evening, And possibly even good late night for some of you. This is an extraordinary council meeting where we're going to focus and spend most of the time on SubPro. And we will have that discussion directed by Paul McGrady for the most part. So it's

going to be one of those council meetings where you're not going to hear much of me, which is probably for the best. So now that we've done the roll call and the updates to the statements of interest—I wasn't paying attention. I hope that we did. Or just in case, does anybody have to give any updates of their statements of interest? And I'll quickly look at the room to see if I see any hands. No, we're good there. Thank you.

Item 1.3. Does anybody have anything to add to our agenda? I note that in AOB, we added two items on request. One item to talk about the SPIRT, which is Anne Aikman-Scalese, who is, I believe, acting as one of our liaisons to the IRT. And the second one is a comment from Thomas Rickert. We will see this at the end of our session. So I see no other hands raised. So we will consider the agenda as adopted. Great. Thank you very much.

We also posted the minutes from our last two meetings. They're not all the latest in the sense that [inaudible]. And we've already mentioned it in our previous council meeting, I believe. Anyway, the minutes are there. Also always there for you guys to review. When I say this, maybe not every time, I go through them with a fine tooth comb. I know others do too. But it's important to make sure that whatever you said you meant is correctly reflected and keep us honest, please.

With this, I'll go quickly. I won't say much. On the project list, again, I hope that you diligently keep track of it. I don't know who added those convenient links to it, but it's a great idea. And we should keep on doing this in the footer, I mean.

With this, and without further ado, hoping that he is ready, we will open the discussion on SubPro. This is why we're all here. And I would like to give the mic to Paul, who can not only lead us through the exercise, but also run the queue and so on and so forth. So Paul, if you need any assistance, but otherwise it's all in your hands.

PAUL MCGRADY:

All right. Thank you, Seb. This is Paul McGrady for the record. I am outside until it starts raining and then I may have to run inside. But I'm hoping to make it all the way through. I think that staff very kindly put together some slides for us. And so I think we'll go through those. I will be watching the queue. So if there's any questions on any of these slides as they come up, I think it probably makes sense to handle it that way. And the good news is the project's moving along. And so a lot of this you may find to be very familiar because there were some changes since last we spoke, but not an enormous amount. So hopefully we are able to move through them quickly. So Terri, if you're running the slides, if you can help me get to the next one.

All right. So we kept working after we had our call with the ICANN board. I saw that many of you were on that call, not just small team members. So I really appreciate everybody showing up for those. We have essentially boiled down what are being called landing spots. I first heard that term in a little update that John McElwaine was giving and have decided that that was likely going to stick. And it seems to have. So we are calling them landing spots.

The five options that we see are potential clarification statement. It seemed that some of the issues could be resolved with the board by council providing some additional information. Another potential outcome, and this is probably the most complicated, well, second most complicated one, I should be careful, would be for the board to non-adopt a recommendation, but send it back to council. And then council has a couple of options in front of it about what to do. But one of those options would be for council to put together a supplemental recommendation that would address the board's concern with the working group's recommendations. And through that process, hopefully get that recommendation on its way to adoption and ultimately implementation.

The third option is just a confirmation from council, which hopefully the board agrees with that the issue can be addressed as part of implementation. There were several issues like that that would just seem like essentially they're working themselves out and they'll go on their way to implementation.

The fourth bullet, this is sort of an abbreviated thing. It says bylaw changes. We've not come to the conclusion that there needs to be bylaw changes, but rather what we're doing is exploring whether or not a bylaws change is required in order to resolve the issue. These tend to have to do with issues around the PICS and RVCs, as you guys know. And so that's really stated more directly here than where we really are, but it does involve looking into the bylaws issues. And then last option is modifications of the recommendations themselves using what's known as a section 16 process, which is fairly complicated.

So that's sort of the various potential landing spots. We expect the board to give us additional input soon, hopefully by ICANN 77. But again, we continue to do what we can while we're waiting for that. Ultimately, we can't finalize recommendations on how to proceed until after we get the board input. But by identifying the potential landing spots, that at least allows us to work with staff to begin the potential timeline and planning for next steps.

So that's kind of where we are. This slide basically stands for the notion that we continue to keep swimming, and we will adapt as we learn more from the board. And that's where we ended up. Any questions on this slide before we move on? Okay, great. Let's do that then.

This is slide five. It's our transition slide. It's a lovely shade of yellow. Here we go. So the board would like—this is from the board resolution—an implementation plan no later than August 1. And it has four deliverables. Those are a plan and timeline agreed upon by the board and council for consideration and resolution of all the outputs contained in section B of the scorecard. That's what we were just talking about, and we're working towards getting on the same page as the board and vice versa. A working methodology and implementation review team work plan and timeline is agreed upon by ICANN Org and the GNSO Council, the GNSO Council project plan and timeline for any policy work or an alternative path on how to handle closed generics for the next round of new gTLDs. That's a separate process. And I don't know if John or somebody else will like to speak to where we are on that. And then a project plan related to the IDNs EPDP working group, all related to how these will affect the next applicant

guidebook. And I know that we've had several updates from Donna recently in regards to those. So I think the council is pretty much up to speed on that. That seems to me less fuzzy than issues related to the closed generics, which I think are still very much evolving. And I'm not part of that team, so I'm not the expert on that for this call.

So those are the four deliverables, and we're careening towards August 1, which is why the small team for SubPro keeps swimming, even though not everything has been defined and not everything's perfect yet. All right, any questions on this slide? All right, we'll move on to the next one.

So this, to a certain extent, is a bit of repetition, except for the big blue box at the bottom. And so the potential avenues for resolution, those are what we call landing spots. We've talked about clarification statement, board non-adoption, with another follow-on council process to send back some sort of amended resolution. Confirmation of the issue can be addressed as part of implementation. Exploring the potential of fundamental bylaws change, if that's necessary. And then potential modifications or recommendations through a more complex process.

So as we consider each of these, let's talk about what they would entail. So for things that can be landing spot issues that can be addressed during implementation, these essentially all fall to the board, right? So if the board agrees with us and thinks the issue can be resolved during implementation, then the board confirms that. The board then adopts the recommendation, and the recommendation is then transmitted to Org for implementation. And ultimately, that goes on its merry way to the IRT. This is my

favorite one because it is the most straightforward. So any questions on this one?

Okay, we're going to move on then. In the case of a clarifying statement, sort of the what, the whom, and the timing. So sometimes these clarifying statements are confirmation that the clarifying statement would address the board concerns. That clarification or confirmation of the clarification statement would have to come from the board to us. In terms of the timing, that's to a certain extent up to the board. But the sooner we get them the clarifying statement, the sooner we'll get the confirmation. So again, the reason why we keep moving instead of stopping and waiting for the board.

In terms of developing of the clarifying statement, that will be, we think, up to the SubPro small team to do. Ultimately, I don't know what TBC means, but I think it must mean blessing by council. Ultimately, whatever the SubPro small team does in terms of developing the clarifying statement—maybe to be considered by council. Let's just make it up. TBC. Put them in the chat.

That'll take us three to four meetings of small team time. And ultimately, they will come to council to be looked over. So again, SubPro small team not making any decisions, just picking up a pen and doing some work. In terms of clarification statement, the next thing, council confirmation of the clarifying statement. And after it's considered by Council, that would go most likely on a consent agenda for a council vote. And then those, of course, as we all know, because we get the monthly emails from staff, have to come 10 days in advance of the GNSO council meeting. So

again, we always have to look at the next council meeting minus 10.

Then, if the council votes on it, it'll be transmitted to ultimately to the board through the GNSO secretariat. And that takes a week at the most, then the board will love it and hopefully adopt the recommendation with the clarification statement, they'll make reference to that in the motion. And then transmittal of recommendation to ICANN Org for implementation. Again, the board does that, it goes to the Org and the Org then works with the IRT team to begin implementation. So that's the workflow for clarifying statements.

All right. Modification of recommendations through a section 16 process. And again, I'm not the world's expert on section 16. So if anybody has any murky questions about that, we'll draft Steve or somebody else. But the process is ICANN board confirms that they are not able to accept the recommendation in its current form. The council then confirms that the modification of their recommendation is the preferred path. Then the council does a development process for proposed modifications. At that point, there's a consultation with the SubPro PDP on proposed not modifications. And section 16, by the way, is sort of heavy process compared to other processes that are out there that I think we're going to talk about.

Then the modification is posted for public comment. That takes 30 days. And then the public comments are reviewed. Any modifications or changes to the recommendations will be made at that time. Council votes on the adopted modifications. It's transmitted as modified, and then the board considers it and if

they like it, then they vote to adopt it and send it on its way to Org and to IRT. All right. Any questions on this on this one? Thomas says that's very option is the one we should try to avoid. I think that is true. This is the most complex one, without a doubt. Okay, we are moving on.

So there is an option of board non adoption. And so this, I called this rejection the other day and I got a talking to, so I won't do that again. The board doesn't reject the recommendation, they just don't adopt it. And the board submits a statement, reasons why they can't do it. Council reviews the statement. We have discussions with the ICANN board to just talk about the statement.

Then Council has the ability—and this is different than the section 16. This is more streamlined. Council can then decide whether to develop a supplemental recommendation, which means that if there is a way to address the board concern, I think while staying true to the spirit of the underlying recommendation, that's kind of what we're thinking about. If yes, Council will then do that. It's a Council function. And then we would, as a Council, adopt the supplemental recommendation or not, but if we do, then it's transmitted through the secretariat, and then it goes to the board and the board considers the supplemental recommendation. If they like it, great, they vote for it, it goes on to ICANN Org and then into the IRT.

All right, any questions on this one? Stephanie, I see your comment about non adoption, a rose by any other name. I agree with you but I want to be true to the language. Non adoption.

All right, let's move on. This one, it really should be exploring whether or not a fundamental bylaws change is necessary. And if so, what would that process look like? And if so, what happens if we start that process and the community doesn't ultimately decide to do it? But that's way too much stuff to put in the headline. I think that's why staff abbreviated it. The small team doesn't want to give the impression to the broader Council that there's been a decision to do a fundamental bylaws change. That question is very much an open question. And in fact, everything the Council said to this point seems to be indicating that we don't think that's necessary.

But let's assume for a moment that we come to the conclusion that a fundamental bylaws change is necessary. There's a drafting of the bylaws proposal, then the board resolution would have to pass to initiate the amendment process. There'll be a 42-day public comment period, 14-day comment summary period. There's board action. Then that would take—it says approximately a month. Sometimes these things go further. There'll be a notice to the empowered community within seven days of the board action. And then the empowered community approval action community forum. That's within 30 days of the notice and at the next scheduled ICANN public meeting. And then empowered community consideration of the approved action, 21 more days, and then delivery of decision on approval. But that's within 24 hours of completion of the consideration period.

So this one, it's not fulsome, because the things on the right show the time periods and as you can see they're significant, but there would be an enormous amount of work leading up to the drafting of a bylaws proposal to try to make it narrowly tailored to do

whatever it is that we think it needs to do that the bylaws don't do now. And so this process could be quite long. And not on the chart is what happens if Council and the board decide a bylaws change is necessary and then the community says no, then what.

And so there's a lot of fuzziness around this particular issue. And as I said, I don't mean to beat the dead horse but it's not at all certain that a bylaws change is necessary and that is still being discussed and you guys will hear more about that I'm sure. So I'm going to ask if there's any questions on this particular slide. Oh, there's a hand, Kurt, go ahead.

KURT PRITZ:

Hi, thanks very much. So, is one of the tasks of this small team to determine whether the only way to implement one of the recommendations in the SubPro final report is through a bylaw change? In other words, there's no other way to do it so we must? So is that one of the determinations? It might be preliminary determination, but is that one of the determinations that the small team is going to make?

PAUL MCGRADY:

So Kurt I'll ask staff to jump in and tell me if I'm wrong. I think that the very short simple answer that is not a determination but some sort of recommendation from the small team to Council about whether or not the small team thinks that PICs and RVCs are enforceable with the bylaws as written, along with some detailed rationale about why we do or don't, and what we think the next step should be.

Ultimately, then that will go to Council, I think there'll be a big discussion about that, probably with Avri and Becky, along with us, and then a decision on whether or not to do it will evolve from there. But yeah, step one is Council hearing from the small team what it thinks. We're nobody. We're just the people who wanted to pick up the pen to help write it. And so just because a small team thinks one thing or the other thing, that's not binding on Council.

KURT PRITZ:

So if I could continue. So that's the preliminary determination, if the answer to that is that the recommendation cannot be implemented without a bylaw change, then the next decision is we're either going to drop the recommendation or modify the recommendation, or we're going to recommend that there be a bylaw change, right?

PAUL MCGRADY:

Yeah, I mean I suppose ultimately that we know the council could just claw the recommendation back, it can do that prior to a board vote I understand. The other option is that the board could not adopt it and ask us to do a supplemental recommendation. That path is there. It's not what we're thinking about for these particular things, but the board could do that and then Council could do a supplemental recommendation, or the board could say okay, Council, we hear you and we're going to start the bylaws drafting process. But again, that's all board discretion.

KURT PRITZ: I understand, I just think we should get to like yes or no on those specific recommendations, what we think, so we can understand the next steps because if we can't implement the recommendation without a bylaws change, then the recommendation itself probably becomes moot or a bylaw change is undertaken. And then if we try to undertake a bylaw change and the community decides not to, then again the recommendation is just moot. So I think we should answer the first question as soon as possible.

PAUL MCGRADY: Yeah, thanks Kurt. Yeah, for sure. I think that that is step one. All right, we have a queue. I knew this would be a fun one. We have Susan and then Steve.

SUSAN PAYNE: Thank you. So, it's possible we could spend some more time in the small team on this and probably we do need to, but aren't we ultimately just going to need to get outside counsel advice on this? Because it seems to me that the ICANN board is being advised, we assume, by ICANN legal, and there's at least a question in their mind about whether this is enforceable or not. And it seems to me that it doesn't really matter what GNSO council says. I'm just not convinced that's going to carry any weight. It's about the interpretation of the bylaws. Isn't this something that requires sort of impartial expertise to opine on?

PAUL MCGRADY: Thanks, Susan. If I can respond to that before we move on to Steve. You know, I get the sense that the board itself is not at all

of one mind on whether or not a bylaws change is necessary and that they indeed want to hear from council on this. And especially if ultimately, we believe that these PICs and RVCs are enforceable without a bylaws change, they'd like to hear the rationale behind that. And so I can't say that outside counsel will never be asked that question. But I don't think that we're there yet. I think that there is genuine interest from the board on what the council has to say. And Becky or Avri, I welcome you to jump in the queue if you want to address that. If you don't want to address that, that's fine, too. All right, we have Steve and then Becky, but I'm gonna do that queue chair discretion and call on the board member first. Sorry, Steve. Go ahead, Becky.

BECKY BURR:

Thanks, Sam. I just wanted to follow up on your comments on the bylaws amendment. I think what we really want to understand from the council is to the extent the council is in a position to assess it, give us an assessment of the likelihood that we would actually be able to successfully get a bylaws amendment through. I will just say the bottom line is that we can talk to outside counsel till we're blue in the face. The bylaws were written to try to address this, but the language that we were able to get through is ambiguous and could be subject to a challenge. And so if we could get a bylaws amendment and remove the challenges, eliminate the likelihood of challenge, that would be terrific. But if we attempted bylaws change and were not able to get it, that would have very serious consequences in terms of our ability to enforce these PICs.

So I think it's incumbent on us to come to you with some draft language and we're working on that. But I think the bottom line is it would be incredibly helpful for us to have the Council's sense of whether or not we would be able to get a narrowly tailored bylaws amendment through that allowed ICANN to enforce registry voluntary commitments even where they have content related implications.

PAUL MCGRADY: Thank you, Becky. That's helpful. Jeff, please go ahead.

JEFF NEUMAN: I would like for us to move on because I think what you'll see from the small team is just the next step being more of a socialization process of seeing whether an amendment to the bylaws like the one suggested by Becky, really, ICANN has the right to enforce PICs/RVCs that are in registry agreements, even if those PICs, RVCs in and of themselves would not fall under ICANN's mission. That's what we're talking about. And I think the next step is just socializing within all of our groups to see if we would support an amendment like that, as sort of a belt and suspenders approach, because some believe that it's already allowed under the bylaws. Some may not believe that and to just put it to rest. It's just a simple amendment doing that.

If, however, it's not accepted—I know Kurt said it would then just make the recommendations moot, we would be unwinding a lot of recommendations. And in my mind, unwinding those

recommendations would be a much bigger task than actually getting the bylaw amendment in place. Much bigger. Thanks.

PAUL MCGRADY:

Thanks Jeff. Appreciate that. Yeah, there definitely are some significant issues wrapped up in this. So for example, community-based application has restrictions on who can join it and what they can talk about, I guess. And so something like that that's been around for a long time would be at risk, among other things, coming out of the SubPro work. So it is a very serious issue, no doubt. We have Kurt and Avri, then Becky then Stephanie.

KURT PRITZ:

So, thanks very much. If we're uncertain as to whether the PICs are enforceable now or whether there would be successful challenges to the enforcement of a PIC, I think we should try to settle that as soon as possible. And again, there's a preliminary question, right? If there's no bylaw change, will ICANN attempt to enforce a PIC? So if there's a challenge to the PIC, will ICANN legal challenge that? And if the answer is yes, then we can move ahead. And if the answer is no, then we need a bylaw change. And we should see if that bylaw change would be passed.

So, again, there's a preliminary question. It's either, is a bylaw change necessary in order to include the PIC in the contract, or second, the preliminary question is, will ICANN attempt to enforce the PICs that are in the contract or not? And we can determine the—can we not determine the answer to that by asking? I think we need to get certainty for applicants about the effectiveness of

PICs and how they're writing. That's an important part of the application process.

PAUL MCGRADY: Thanks, Kurt. All right, Avri, you're up. Go ahead.

AVRI DORIA: Thanks. Yeah, in addition to what Becky brought up about the socialization, I think was the word that that Jeff applied to it, of socializing the notion of a bylaws change, I think part of what I was looking for and what others were looking for is there seems to have been a certainty among at least some within the PDP that approved this, that this could be done under the current bylaws as they stand. Obviously, things will be challenged. Most anything is going to be challenged sooner or later. I think whichever way we go on this, there are challenges. What the what the board is kind of saying is for PICs and RVCs to work, they have to be enforceable. So can you show in some way from the certainty that was had while these things—And I think some of it is in the explanations you provided that, indeed, these things can be enforced. And here's how it could be done. And then that basically is the determinant in some sense of, do you need a bylaws change or not? If the answer is no, they can be. If the answer is, well, sort of, but if there was a bylaw that tweaked this, then for sure they could be, then we kind of know what kind of bylaws change is needed.

So there's a bunch of different ways of looking at this. But the way I'm suggesting that the board is looking at it is, do we have

something enforceable? If we don't, then it won't serve the purpose that we think the PDP wanted. Therefore, how do we make it enforceable? Can it be done without a bylaws change or do we need one? And that's, I think, where we're at. So we're definitely genuinely interested in a comment from the GNSO council that says, of course, this can be done without a bylaws change. Here's how, here's why. Thanks.

PAUL MCGRADY: Thanks, Avri. All right. We have Stephanie, then Becky and then Tomslin.

STEPHANIE PERRIN: And I do apologize. A, I'm not a lawyer and B, I haven't hung in for three years of wrangling on this topic. So I'm probably asking extremely obvious questions. But it does seem to me that this is a very subtle matter engaging, of course, issues of free speech that NCSG cares very deeply about. And someone has stated in the small team, our discussions about this matter that ICANN and the registries can put what they like in their contracts and it's enforceable. It doesn't have to be within ICANN's remit or scope.

Now, I can accept that I may be misstating that. So please don't take that literally as the exact statement that has been made. I can understand that if you're doing doctor and the applicant says, don't worry, we will ensure that only legally recognized doctors, i.e. recognized by the appropriate regulatory authority in the appropriate jurisdiction, will be able to get a name on this, I presume that's a voluntary commitment. And that is one that I

would think that ICANN, because it is not a nation state passing laws, could accept and not worry about enforcement, because it's not up to them to enforce it. It's up to them to report it.

Now, it's totally different where we talk about content. And I just don't understand how you could move into the zone of content where a judgment will be made that has not been made under any other law and claim that you can enforce it. Because the moment you go to enforce it, you are making a, what I would call a regulatory judgment in your multi-stakeholder model form of regulation. And you're up for a challenge, are you not? And you're up for lawsuit. [inaudible] certainly be there suing, I'm sure, in the NCSG.

So I know we'd like to have exhausted this topic. But if I'm not understanding this correctly, please, can you elucidate? Thank you. In other words, you can't ask for a bylaws change to regulate content.

PAUL MCGRADY: Thanks, Stephanie. All right. Next up is Becky.

BECKY BURR: So let me just say, I don't think that there's a question, Kurt's question about whether ICANN would enforce or not. ICANN would attempt to enforce. The issue is, would an enforcement be challenged? The answer to that is almost certainly yes. And the consequences of losing that challenge could be quite significant. The consequences of going for an amendment and not getting that pass would have the same sort of significance. It would be in

some sense a statement about the community's views on it. We've just heard what Stephanie had to say. And it is that the concern here is that we have a whole bunch of different varieties of potential applicants who may need to rely on registry voluntary commitments in order to get past early warning or GAC consensus advice or the like. And what kind of new gTLD program will we be able to have if we are not confident that we will be able to enforce it? So there's not a question about whether there's a will to enforce it. There's simply a question about what would happen if it was challenged and how that would affect all of the other applications that had come in with registry voluntary commitments and how that would affect applicants down the road as we get into steady state. So I just want to be clear in response to Kurt. ICANN will attempt to enforce. That's not the issue, but that's not what we're worried about.

PAUL MCGRADY:

Thanks, Becky. All right. We have two more folks in the queue and I think we should call it there just so that we are sure to get all the way through the materials. We have Tomslin and then Jeff and then well, Kurt raised his hand. So we'll hear a third time from Kurt and we'll call the queue there. Tomslin, go ahead.

TOMSLIN SAMME-NLAR:

Thanks, Paul. So based on Avri's earlier comment, I was going to ask if we the council know whose responsibility it could be to make that determination if the recommendations as written are enforceable within the bylaws. But Becky just made a comment that made me wonder whether that question is still applicable.

Am I understanding then that we don't have to make that determination whether it's enforceable? We do know it can be enforceable, but we were only worried about the challenge that will come out of that? Thanks.

PAUL MCGRADY: Thanks, Tomslin. All right, Jeff and then Kurt.

JEFF NEUMAN: I'll try to be quick. And Stephanie raised an issue. I think what we need to do is we need to separate the issues of judgment from enforcement. What I mean to say is nobody's saying that ICANN should act as a judge or jury over a content-based issue or any other issue like on the doctor case that Stephanie said.

To the extent that RVCs and PICs and singulars and plurals and modifying applications to address early warnings or modifying applications to address objections. there's a ton of things that rely on it. Each of those are going to need and will need to obviously in the implementation. The registry needs to agree as to the appropriate party that can make the judgment as to whether it is acting in accordance with the contract or not.

If that judgment is made by a third party, not by ICANN and that, and the registry agrees to be bound by that third party that makes the judgment, then it's ICANN that is basically doing the, quote, enforcement by saying, okay, well, this outside party said you violated your agreement. Now we have the right to take the appropriate contractual remedy, right?

So we're not saying ICANN is now going to be a content regulator. We are saying that ICANN has the right to enforce its agreements. And I think this requires a much longer discussion, but it's very similar to your example, Stephanie, of the doctor situation and others.

Whether it's a regulatory body that makes that content based judgment, or it's a third party that a registry agrees can make that judgment, it's not ICANN making the judgment, but just implementing the contract. Thanks.

TERRI AGNEW:

And Paul, if you're speaking, you are muted. So perhaps we'll go ahead and move over to Kurt with his hand raised and we'll try to get Paul back. Kurt.

KURT PRITZ:

I think that if we have PICs in the contract and ICANN enforces them, and Becky, that was a good answer, and then they're challenged and ICANN loses that, the result of that is that ICANN can't act on the GAC advice really. It shouldn't have acted on the GAC advice in the first place, right? The GAC in their early warnings is asking ICANN to take an action outside its remit by putting a PIC, a condition into the contract that's outside of ICANN's bylaws. So I don't know. So I'm still back to we should try to make this call, whether the bylaws require modification or not in order to accommodate PICs. And if we determine that the bylaw is required and the bylaw does not change, then at the end of the day—I hate that expression—the GAC advice could not be

followed. And so the GAC's asking the board to do something it can't. I don't know. But I also think there's more than one way to solve that contract. You know, the registry could put the PIC in its registrant agreements and say we're only going to let medical doctors join this. So registries could still comply, have a form of following GAC early warnings by implementing a PIC that's in the agreement between the registrant and not part of the ICANN contract. Anyway, sorry, I'll let go.

PAUL MCGRADY:

Yeah, thanks, Kurt. Appreciate it. You know, your comments, highlight how important this is, especially in relationship to what the board does with GAC advice. I've not been part of the closed generics discussion, but to the extent the outputs look anything like the GAC advice, that would require registries to serve a public interest goal, which would require some speech to be compelled. That is content related, I suppose. And so, yeah, this is really super serious and important. I agree with you, Kurt. And I agree with what Avri was trying to encourage us to do, which is let's hash out whether or not we think the current bylaws can handle PICs and RVCs. And if so, let's explain why. And if not, then let's start talking about a bylaws process. But I definitely think we owe it to ourselves to not presuppose anything and take a good look at the bylaws and try to come up with some thoughts on that, because the working group did look at this extensively and came to the conclusion, I think, that PICs and RVCs are within the scope of the bylaws or else the recommendations wouldn't have been made in the first place. So, all right, Thomas, take us home on this topic.

THOMAS RICKERT: I have one question for you, Paul, actually. We heard that the board is looking for some guidance from the GNSO Council on what things can or can't be done. So is your team trying to write something up to that effect? And if so, I have a thought that I'd like to share on this, and that is looking at UDRP and URS, particularly URS, which is clearly crossing the thin line of content, so I think that we have precedent in ICANN where we have a policy that is adopted where we have contracts that require contracted parties to implement decisions that are not taken by ICANN, but by a third-party dispute resolution provider. So I think that maybe looking at that and trying to model something based on that could be a way forward because that could probably be a way of sparing ICANN the duty of getting into any conflicts with its bylaws and yet allowing for registries that want to create certain boundaries to have that properly enforced, decided upon by an independent third party. And it would also offer an opportunity for ICANN to call rogue registries that are not willing to take action and enforce their own terms and conditions to call them to order. Thanks.

PAUL MCGRADY: Thanks Thomas. And yes, that's part of what we will be doing, is looking at the substantive part, but also doing what Becky wants us to do, which is socializing among our own constituencies and the other advisory committees and supporting organizations about how are they bearish or bullish on a bylaws change actually happening in the event that we have to do that. So yes, lots of work ahead.

All right. Well, that was healthy. Let's keep going though. So looking at past experience, I don't want to get too much in the weeds, but this slide talks about how long things have taken in the past. So the IGO and NGO requires section 16 work, 650 days, non-adoption, 1017 days. ICANN bylaws change, 64 days. And then I think an additional 83 days. And that doesn't include the amendment prep time.

So none of these are super quick. Some of them seem really slow. And which landing spot we ultimately land in can be affected by our thinking about timing and other things. We obviously would not like to hold the program any longer than it needs to be because it's already been years and years and years since the last round closed. All right. Let's move on to the next one.

This one, I really don't feel super prepared to address. But I'll do it because I can read a slide. But if anybody, John or anybody else wants to jump in here, it looks like we're being told that the closed generic EPDP timeline, and this again presupposes that an EPDP is necessary, which we haven't determined yet as a council because we don't actually have the output yet from the discussions between GAC and GSO. But if we do need one, it could be upwards of 96 weeks, which is not nothing. And there is, hanging over this, the underlying question of whatever comes out of the closed generic discussion, if it relies on a PIC or RVC, then this is sort of also wrapped up in to that other discussion. So the closed generic timeline is significant. Any questions on this one? Susan, go ahead.

SUSAN PAYNE:

Yeah, thanks. So I'm not sure if it's really a question or if it's more of a comment, but I guess my question is, where does this timeline come from? And I'm reluctant for us to have a slide that sets out this timeline that we haven't discussed and that it somehow sort of takes on a sort of life of its own and becomes sort of unchallengeable because we didn't challenge it now. But I've got to say that 96 weeks to spend more time talking about closed generics is just simply unacceptable. And as council, we have to do better than that. We have to set, if we put this into an EPDP, we have to do something and ensure that that piece of work is significantly quicker than that. And that includes things like the chartering, 12 weeks is ridiculous. And the call for volunteers, again, 12 weeks is ridiculous. We just have to do better.

PAUL MCGRADY:

Thanks, Susan. Yeah, Steve raised his hand, I think, to answer the question of where did the timeline come from? I do want to point out that Kurt Pritz said in the chat—and again, I'm being a little less neutral here because this really isn't my bailiwick. This is somebody else's. But Kurt says that he's not convinced that an EPDP is necessary. And before we make a decision, we should hear other options. I agree with that entirely. I think that we should not presuppose, first of all, that a framework even is going to get done, because that's been going on for a while and it's not finalized. But secondly, even if it gets done, that an EPDP is necessary in order to implement whatever comes out of that process. And I do think we need to talk about it and not just make presuppositions and agree to 96 weeks without challenging some

of this. And Justine's agreed with what Susan had to say. Steve, with that, go ahead.

STEVE CHAN:

Thanks, Paul. This is Steve. And I don't know that I actually have a whole lot to add just because I saw Marika put a comment in chat. So where did this draft timeline come from? It came from staff and it's based on our past experience, our reliance on existing documentation like that's included in the policy implementation report. So it's based on a number of factors.

And what we highlighted is the deliberations, the core part of the EPDP is limited to 36 weeks. But there's just a number of different procedural steps that an EPDP requires. And I'll just throw this out there because I know that there's also been another mechanism that's been identified, which is the GGP. And in general, I think pretty much all these steps that you see in here are essentially applicable for a GGP too. It's just the sort of range of outcomes that you can achieve through a GGP are more limited, but you still have a number of the same procedural steps. Thanks.

PAUL MCGRADY:

Thanks, Steve. And I guess one of the questions—and we can't talk about this in too much detail here—is that in the event that any recommendation is not adopted by the board, one option for it is for a supplemental recommendation by the council. And I don't see any reason why this couldn't make its way into whatever supplemental recommendation that we do. So there's all kinds of

path forward that don't have to take two years. All right, Anne, go ahead.

ANNE AIKMAN-SCALESE: Yeah, thanks, Paul. I have very Susan's comments on this chart. But perhaps more importantly, this was nothing that was ever discussed in this SubPro small team regarding the 38 pending issues. And so I see it as a bit off the agenda and feel unprepared to provide input, even though I personally, of course, have previously expressed support for an EPDP on this issue, and I believe it's a policy issue. But I don't think that this slide has much to do with the work of our small team. Thanks.

PAUL MCGRADY: Yeah, thanks, Anne. So this particular extraordinary meeting is not just about the work of the small team, it's about SubPro generally. And so that's why this is in there, because this is part of the SubPro work. And so apologies if that wasn't clear, it's not just about the small team's work. But as we've talked, closed generics and the RVC and PICS issues are all bound up together. So it's tangential to our work. I hope that's helpful. Steve, go ahead.

STEVE CHAN: Thanks, Paul. It's Steve again, and I'm probably going to state the obvious, which is that these are timeline estimates and there's obviously nothing precluding if this work actually gets initiated from all of it taking place and occurring faster than is predicted. There's nothing that prevents that. But in general, the council has encouraged its PDPs and EPDPs and other efforts to put forward

achievable timelines. And so that's the intention in developing this draft timeline is exactly that, to put forward something that's achievable. And then I think we can all be overjoyed if the EPDP, if it is initiated, beats all these timelines. That's the best thing possible. And you'll see in the next slide, which talks about IDNs EPDP, there's hope and expectations, maybe expectations is a stronger word than I'd really like to use, but I hope that that work can also exceed its timeline. So you can see these timelines and hate the numbers, but there's nothing that would stop that group from hopefully trying to do everything in its power to actually beat it. Thanks.

PAUL MCGRADY:

Thanks, Steve. And certainly it's a cautionary tale if there's another way to deal with the closed generics issue that doesn't take this long. It's something that like Kurt reminds us, we should put on our thinking caps about all of that. All right, let's keep going to the next slide.

This one has to do with the IDN EPDP timeline. And this is one that we've gotten quite a bit of briefing on from Donna. So I don't wanna belabor this too much, but as you can see, the current milestone estimates are April of 2025 and October of 2025. And again, I'm not like Donna, I'm not an expert on what is going on with this slide. If we have any questions on this particular thing, we can perhaps ask staff to try to tackle those questions initially.

One of the things that the IDN EPDP phase two work has going for it that the prior slide on closed generics doesn't have is we don't have any idea how the closed generics team will function

and who will chair it. Where this one is safely in Donna's hands, who is known to all of us and is amazing at what she does. So I feel much more confident about this slide than I do the prior one for what that's worth. Any questions on this slide?

All right, great. Let's keep moving. All right, so here's our discussion questions. Apart from the IDN EPDP, none of the other items currently have a timeline and project plan due to dependencies. And this has to do with confirmation from the ICANN board on the proposed landing spots for the SubPro recommendations and a delivery of closed generics framework as we talked about, still not done. And so we say, what is the council able to deliver to the ICANN board by the end of ICANN 77 and what form should this take? And should certain caveats be added in the delivery of the work plan and timelines? And apart from the project and timelines, how can community participation and engagement be facilitated and ensured as it will be key delivering results?

So again, taking the first one, it's my impression that the SubPro small team work should be done, that we should have proposed landing spots for all of these things, which essentially is in addition to the chart that we've been working on and updating as we go. The council should take some action with regard to that, even if it's caveated as saying, we understand we've not heard from the board on this or that issue, we can finish up that work and send it along to the board so that it gives them more clarity about where we're heading.

And I understand that also that staff is working on a draft timeline, again, lots of dependencies, but a draft timeline for the SubPro

small team to complete the work, for example, clarification statements and things like that that need to be done. And we expect that will be being kicked around during ICANN 77 as well. So that's kind of my reaction to bullet point number one.

And then for bullet point number two, I think that one of the big things under this one is just exactly what Becky asked us to do, which is we need to be out socializing the idea of if a bylaws change is necessary, how likely are you, ALAC, how likely are you, constituency, to support that notion? And let's see if we can gather some intel along those lines as well. And that'll be part of what the SubPro small team sends to council.

I'm just going to open a queue on this slide for anybody that would like to say something that might fit under one of these bullet points or just something they wanna say. All right, Greg, please go ahead.

GREG DIBIASE:

So on the socialization point, I guess my main concern there is, as shown by this call, I think we're all trying to understand a complicated topic and there's been different theories. I think we may need at least a template to all be working from or slides or something to be working from the same spot. so our message is consistent, just because I'd be concerned that different people would be describing this issue differently. So I think that's probably something maybe the small team would work on, but maybe that would be helpful because I am concerned about just sending everyone out in a million different directions with their interpretation of what a bylaws change means.

PAUL MCGRADY: Thanks, Greg. I think that's good. And I think that also fits into Kurt's question in the chat. The socialization of a bylaw would require a draft. Would it not? I don't know if it requires a draft of the bylaw, but it probably requires a draft of an issue statement and that Greg was talking about and some basic talking points so that we're all asking the same question because it won't do any good to ask different questions. Yeah. So thank you, Greg. And yes, that's something that the small team will take on as an action item. Steve's hands up. Go ahead, Steve.

STEVE CHAN: Thanks, Paul. I was putting it up in anticipation that there's no other comments than what you just said. So I'll just hold for a moment, I guess, because I wanted to talk about sub-bullet one, the second—the first one under the first bullet. I wish there were a number. That would probably be helpful, but I'll just pause for a moment. -

PAUL MCGRADY: Yeah, Steve, I don't see other hands. So if you can go ahead and give us some more definition around that.

STEVE CHAN: All right. So Marika just flashed to the document I wanted to talk about briefly. There it is. So what staff did late last week, I'll emphasize late last week, and that is my explanation for why it's not been shared with council yet. So what we tried to do is to try to

look forward a little bit and not very far forward because ICANN 77 is almost on top of us, but just to try to put down on paper what a possible set of deliverables for all three of them could look like. And so that's what this doc is attempting to do.

And so what you're going to see is draft work plan and timelines for all three projects. And so Marika's scrolling down to the first one, which is I think the easiest one because there's actually a work plan already in place. And so what we've done here is to try to provide the high-level milestones, the responsible party, and then in this particular case, the timing. It's a little harder to do for other ones, but that is basically the goal for all three work plan and timelines, is to do exactly what this one is conveying. For this particular one, and I think actually all of them, they're going to come with some caveats potentially, and then also explanatory text.

And so this one is more along the lines of explanatory text, and it's in recognition that the November 2025 timeline for delivery of this project is potentially problematic for the implementation of SubPro. And so what the explanatory information here is talking about is the information that Donna shared during the council's meeting where this team is trying to pull in the timeline quite a bit. So that means starting deliberations on phase two now and not waiting for where it's scheduled for December of 2025.

It also means that request for a face-to-face that she made, that gets mentioned here, the four ICANN meetings, that's also included. So baseline is the timeline that you see above in that table. And then also in this case includes explanatory information about hopefully that timeline can be pulled in. So I'm actually

going to ask Marika to skip all the way down to closed generics and we'll come back to the pen and recs at the end 'cause it's the most complicated. Although I see a hand, Susan, do you want to go first or do you want me to run through the rest of the document real quick to provide an overview?

SUSAN PAYNE:

So it was in relation to the IDN slide that you were just showing us. So maybe. And obviously I haven't really seen this. So it might be that what I'm going to ask for is captured somehow anyway. But given that the comments that you just made about the concerns about the timing on this, the request that Donna had made for face-to-face time in order to move the timing along and so on, should we at a minimum not have two timelines, one of which reflects this and one of which reflects the alternative universe in which the funding is made available and the group meets more frequently and so on?

Because we are supposed to be trying to—I realized this gives kind of worst case scenario, if you like, to the board, but the board will also be taking whatever we're providing to them and trying to work out what the timeline is for opening an application window. And I get that you've got that text, which is I'm sure very fulsome, but it's much easier to read a table than it is to read all of that text that says, "Ah, but, ah, but, think about this."

So can we at a minimum have two charts even if we couldn't simply have one chart with the best case scenario?

STEVE CHAN:

Thanks, Susan. And I can see if Ariel wants to jump in at some point too, but I'll try with our first response is that the IDNs EPDP, they did not actually adjust their timeline and they're resistant to doing so because Donna and Justine, the leadership team for that group is of the mind that they want to make sure that they have a conservative and achievable timeline. And so for that reason, they've resisted actually trying to adjust the completion date for this project, but they want these caveats noted that they're making their best efforts to try to pull in the timeline.

So the timeline that they agreed to was done without having external pressures from having to deliver things to avoid delaying implementation of SubPro. So primarily the idea is to stick with that timeline and then look for ways nevertheless to try to pull it in. But Ariel's our staff expert and I welcome her comments. Thanks.

ARIEL LIANG:

Thanks, Steve. So for the analysis of the timeline, the group actually did a pretty detailed work estimating how many meetings per charter question it may take to get to a conclusion. So especially for the phase two charter questions, they did that analysis and the end results didn't really change from the initial project plan timeline estimation. That's one factor.

And another factor that they didn't want to change the timeline is because there are still a lot of unknowns for phase one work because the public comment process is ongoing and the team doesn't know exactly how the community is going to react to the draft recommendations. And if some substantial rework is necessary, then they still need to focus on the phase one work,

the finalization of the recommendations. And it's probably not possible for the group to resume the phase two work until November or December this year. So with these considerations, they believe the original timeline estimation is still accurate, but they're doing all the great efforts to speed up the work. I hope that provides some more context.

STEVE CHAN: Thanks very much for that, Ariel. Susan, did you want to come back with anything or okay for now?

SUSAN PAYNE: I'm not sure what I can come back with. It doesn't seem like there's a great deal of enthusiasm for reflecting in a more visual manner, a slightly more optimistic timeline. So, I'm just registering my disagreement with this version.

STEVE CHAN: Okay, thanks. I'll let you all make a determination if you want to do something differently. Like I said, this is our attempt to try to develop at least an outline and framework for what the end products could look like. We want to make sure we don't end up on the ground on Sunday, this upcoming Sunday, and have nothing in mind for what this could look like. So like I said, this is our attempt.

So returning down to closed generics, this is also a pretty easy one. What you'll see here is largely what was in the slide, but included in this one is a set of caveats. And you'll see the word

provisional was highlighted because there is quite a bit of uncertainty in regards to this timeline.

And there's a number of reasons for that. One is it's not a certainty that the framework will be completed. That's number one. Number two is that the contents of that framework remain unknown. And then lastly, the scope of this work is also unknown. So the chartering aspect of this work presumably is going to happen, and that's dependent on the framework being completed and of course the council deciding that it wants to undertake an EPDP. All those things remain unknown, and therefore this is a very much provisional timeline based on the number of uncertainties. So I think that's all I wanted to say there. Any questions on this? But the format should look pretty familiar. It has the major steps and milestones, responsible party, and then a projected timeline.

All right, seeing no questions. Now we get to the one that is the most complicated. This is the set of pending recommendations. And the idea here is—so I'll take one step back. So what makes it difficult here is that this format for a work plan doesn't really allow us to convey parallel work. So one of the things I want to do is develop a visual or a Gantt chart that helps show that the various buckets that Paul had talked about, which could be the provision of a clarifying statement, it could be solved in implementation, it could be a section 16 amendment process, or maybe non-adoption and supplemental recommendation. These things can presumably move in parallel, and this sort of format doesn't reflect that well. So assuming there's no huge objections to what is depicted in these work plans, that is an action for staff, to develop

a visual depiction of what this looks like in parallel path. So with that caveat out of the way.

So what you'll see here is essentially an attempt at trying to provide the various lengths and duration of time for each of the buckets that Paul had talked about. You'll see that sub item A here is about the most simplest path where it can just be addressing implementation. There doesn't really need to be anything from council, presumably. And it seems that in most cases, hopefully the board can just adopt as is and then direct Org to implement.

The other thing I would want to add is that the small team is doing its best to try to predict where the landing spot is for each of these recommendations. That's the phrasing that Paul had suggested is new to his vocabulary, but it's what the small group has adopted. So these are the best guesses of the small team. It's informed of course by the inputs from Becky and Avri, but it's not final. So it's the best guess of where things will end up. And so you'll see in parentheses, those are where we presume some of the recommendations will end up.

So just continue to try to talk through the document. Item B here is the clarifying statement. The hope here is that for each of these recommendations listed in the parentheses, a statement from the council that helps explain their understanding of the recommendations will allow the board to be able to adopt them as is, but with a clarifying statement from the council. And again, you see predictions on timelines, although it does say that they are subject to the—essentially scheduling for the council and board to make sure that all those steps happen.

Okay, for C, these are the recommendations that cannot be adopted as drafted. In this instance, there are two paths at least that could be taken. One is that prior to action by the board, the board indicates that they will not be able to accept as drafted. And the council, and hopefully the board also see a mutual path to where they can be adopted. And then the council can proactively initiate the section 16 process, which allows the council to amend recommendations that are already adopted by the council, but not adopted by the board. And Paul ran through the steps in the slide earlier.

And then C2 here is about the other circumstance that again, Paul described. This is where the board does actually take the formal action of not adopting. And then a board statement is issued to the council. There's dialogue and there is a decision point for the council to determine whether or not it wants to develop supplemental recommendations, or it can potentially allow the non-adoption to stand and not submit a supplemental recommendation. Sorry, there's one last one. It's also the fundamental bylaw change. And that was also definitely discussed just moments ago.

But just to summarize what the intention here is, it's in the presence of uncertainty about where all the recommendations will end up for the 38, the idea is to make sure that we have a structure in place that can accommodate recommendations moving from one bucket to another.

So for certain things like where—actually in particular where the board might not be able to adopt as is, the number of recommendations and also the complexity of the

recommendations will have more of an impact on the timeline. So once we have a better clarity about what is in those respective buckets, and hopefully the reason why, we can have a better sense of how long these various steps will take. But again, the idea was to make sure that we had a structure in place so that as we get clarity, we can sort of plug in the relevant recommendations and try to make a best guess of how long things will take. So that is the intention. It was done on a Friday afternoon, so I can't promise it's the best work I've ever done, but that was the goal. Thanks, and I see Anne in the queue.

ANNE AIKMAN SCALESE: Yeah, thanks. And I would love it if we could get to the 38 recommendations pending status. But my question here, Steve, is, in your agenda for this Sunday, will council be actually briefed regarding the framework in the Sunday meeting? Because otherwise we don't know the closed genetics framework until later in the week when there are two meetings that are open to observers. So are we getting some kind of briefing on Sunday that would help us move forward as to the appropriate tool? Or will we not know the facilitated dialogue framework?

STEVE CHAN: thanks for the question, Anne. I don't believe that's part of the agenda. I don't know if someone like Mary specifically might want to jump in here and speak about this topic. Thanks.

MARY WONG:

I can jump in real quickly. And as Steve said, this is not so much about the agenda for Sunday, but the fact that the dialogue participants are preparing to finalize a draft preliminary framework, which they hope to publish before the end of the week. As you said, Anne, they will have sessions, open sessions during the week at ICANN 77. So if we do publish the, well, share the preliminary framework on time as the group anticipates, then I think it's a matter for the council to see if you want to have any kind of briefing or discussion. And I see John's hand is up, so I will cede the floor to him.

JOHN MCELWAINE:

Thanks. Mary, you really did cover it. I just wasn't sure. On today's call, we had one this morning with a closed generic facilitated dialogue. And at the very end of that call, I raised the issue of sharing the current status of our work product after, in its form after the Wednesday meeting. So for all the councilors out there, we should have something to look at. It may not be done. It could be done, may not be done, but that is going to be on its way. We're very close to finishing up our work. And then everything Mary said about, there'll be two open meetings in DC to go over the framework in some form or fashion, but our meetings will be open. Thanks.

STEVE CHAN:

I'm not sure if it's on me to manage a queue, but I'm happy to do so. Thanks for the comments, Mary and John. Kurt, go ahead.

KURT PRITZH: Thanks very much for that, John. So to be clear, did you say, will the council be able to look at some form of output after the Wednesday meeting, whether it's finished or not? I think, because I think Anne's point is excellent. We're spending a ton of dough to bring everybody in a day early and to not have something because we're waiting for an open meeting a couple of days later, doesn't make sense. So anyway, so let's go back to my first question. Did you say that if it finishes by Wednesday, we'll see it, or we'll see it after Wednesday, regardless of whether it's done or not?

JOHN MCELWAINE: So I'll just jump in there. Kurt, no, councilors will be provided the framework in its current form after our Wednesday meeting. It may be, and when I say completed, I don't mean finished, but it may be in a point where our initial set of work is done, I don't think so, but there's not gonna be a whole lot more additional changes that would go on. Again, whether it is approved by the group would still be out for debate, but we should have something for us to start planning. So you're going to feel for the level of detail as a Councilor and the level of work and the type of scoping that would need to go on so that we can make these plans. Hopefully that's clear.

STEVE CHAN: Thanks, John, and I will just wrap up my comments on this document and summarize why I wanted to make sure I showed it to everyone. So I'm obviously cognizant of the fact that no one's had a chance to take this away and look at it, but that I did wanna

talk everyone through the document here. We'll share it shortly after this meeting. And again, the intention here was to make sure that we don't show up on that Sunday with nothing in hand.

So I would just encourage folks to not look at it and pick at every number in there, but rather to look at the format, the framework of what it's shaped up to look like and to weigh in on that part of it, to make sure that this looks like it could be reasonable as a final output for the three sets of deliverables that the council owes to the ICANN board. And with that, Paul, I'd love to hand it back to you.

PAUL MCGRADY:

Thanks, Steve. All right. Thanks, Steve. We'll keep going. All right, let's move on to the next slide. We have a couple more things and then I know there's some AOB. I can day 0 preparations, I think this is definitely not me. So I'm going to hand this back to Seb. Thanks, everybody.

SEBASTIEN DUCOS:

Hi, everybody. I'm not sure that was mine either. Steve, you're the one that worked on that agenda. You want to take that?

STEVE CHAN:

Sure, I can. I don't know, based on that conversation just a moment ago, maybe it doesn't change anything. So, sure, I can walk us through it. We have talked about this a few times about how we envisioned it shaping up and obviously based on timing and events since then, it might need to change. But in summary,

the way that it was structured was intended to be there's four different sessions. It's more or less mapped against how the ICANN meetings are scheduled. So we took the same timing allotment for the sessions. So there is four in the day.

I believe the first one was intended to be dedicated to reviewing the work plan and timelines. And then the middle two were envisioned to be used for trying to make substantive progress on the pending recommendations. So I guess by way of example, that could be looking at the clarifying statement that the council could be producing. It could be looking at the potential, I guess, looking pretty far ahead. If it's understood which recommendations would be not approved by the board, then maybe looking at what the supplemental recommendations could be shaping up to look like. And then so that was sessions two and three of the four.

And then the last session was envisioned to be a little bit of a different topic. But looking at the recommendations that the board has already adopted, which is the majority of them, and then trying to get a sense of which of them are likely to be the most complex and maybe even the most contentious during the implementation process. And therefore, which ones have a higher likelihood, I suppose, of being elevated back to the council for decision making in the event that the Org team and the IRT disagree on the implementation versus intent of the SubPro recommendations.

So that was originally envisioned how the four sessions could be used. I had put a comment in that working document, you can see the link there for the session, that it probably at least makes sense to use two of the sessions for reviewing the work plans and timelines and then use two for the substantive work I just

mentioned. And then maybe using maybe dedicated council meeting time or another extraordinary meeting perhaps to go over the recommendations already adopted by the board. So just being timely and conscious about the purpose of the face to face session, and then also what needs to be accomplished in that time frame. So with that, hopefully that made sense. I'm at least from a staff side suggesting two of the four sessions be used for the work plan and timelines and then two of the session to try to make substantive progress against the pending recommendations. So Seb, back to you. Thanks.

SEBASTIEN DUCOS:

Thank you. Any questions on this? I see no particular hands. Again, we will have to, I know it's only days away, but as things are developing on different fronts, we'll have to keep a bit flexible and nimble about this. Leadership will gather on Saturday with all the pieces of the puzzle and figure out and finalize the agenda for the Sunday session.

Can we go back to today's agenda? We had two pieces, but essentially we still have a lot of time on this call. Probably not enough. I see Anne and Paul's exchange here. Probably not enough to go back through the 38 recommendations. Before we go to AOB, was there any other questions on the discussions that we had today? One, two, three. I see none.

Well, then that leaves it to you, Anne, or Anne and Susan, to discuss the SPIRT and come back—I believe this comes out of the IRT discussions last week. Anne, do you want to take this?

ANNE AIKMAN-SCALESE: Sure. Thanks. What I'll do is I'll provide a little bit of background from the final report and then I'm going to pass the baton to Susan to provide more information in detail regarding this standing predictability implementation, implementation review team, which we call SPIRT, all in the spirit of cooperation. But those who have managed to make their way through at least summaries of the final report will know that topic two in the final report deals with predictability and the need for predictability in the next round.

And so the working group did adopt a predictability framework that is a tool for seeking to address issues that may arise after the applicant guidebook is finalized. And so while this issue of how the predictability framework will work in operation is not urgent at this point in time, it's important for us to address one part of that because the IRT needs to hear from council on that. And Susan will explain it further.

But what I wanted to explain is that the SPIRT team is a team that is specified in Annex E to the final report, which is a team that's to be put together to help determine what category, an issue that arises after the AGB is finalized should fit in, whether it's an operational type category or whether it should be raised to the level of council. And so the SPIRT team and how that should be chartered is certainly a matter that concerns council and council should be supervising it. And so it's up to council to develop the charter. So I'll pass the baton to Susan to explain further why we're bringing this to you, to your attention right now. And I certainly, for more information, refer everyone to Appendix E of the final report. Thanks.

SUSAN PAYNE:

Hi everyone. So, yeah, as Anne explained, this is something that came up in the most recent meeting of the SubPro IRT. And one of the tasks that Lars and his team were assuming that that IRT group needs to do was to develop the charter for the SPIRT group. And that caused, there was some sort of discussion on that call about whether that actually really is a task for the IRT to do, or whether the chartering of that SPIRT team is really something that's more appropriately handled by council.

And I think Anne and I certainly both agree. Jeff was also on the IRT call and this is something that he felt quite strongly about. I think there were also others. And really, the question is, well, there are some benefits to having it handled by council, I think. One is that it's a task that can be removed from the heavy workload of the IRT. So that's not a bad thing. And Lars and staff generally have acknowledged that the SPIRT is a community group. And so staff wouldn't charter it themselves, certainly without input from community members. But also the SPIRT is definitely sort of part and parcel of the kind of policy process, which obviously is under the GNSO's management.

And if you look at the actual SubPro recommendations, in complete openness, I would say it's unclear. You can probably argue it both ways if you want to, on whether it was expected that the SPIRT should be chartered by council or should be chartered by the IRT. But there certainly are various parts in the SubPro recommendations that would seem to support, strongly support, what we think is the more appropriate place for this to be handled, which is for the GNSO to organize the chartering of this group. In

particular, there's recommendation 2.1, which talks about the GNSO council having the responsibility for the oversight of the SPIRT. Implementation and guidance 2.4 talks about the SPIRT being subjected to a lean, focused review once it's undertaken enough work. And that review would be supervised by the GNSO council. And then there are various parts in Annex E that talk about references to the applicability of GNSO's operating procedures, the working group guidelines, the use of statements of interest, the GNSO statements of interest, the GNSO standards for reaching consensus. And once this group is chartered and actually operational, if a SPIRT group member has a grievance with how the SPIRT is being led by the chair, the solution is to bring it first to the council liaison, to that group, and ultimately to bring it to the GNSO council chair.

So it seems to firmly fit in the thinking when these recommendations were being developed, the SPIRT group seems to sort of firmly fit within the kind of GNSO's remit. And so we do think that that it's practical and sensible for the chartering to be dealt with by the GNSO council.

And by that, I don't necessarily mean that that it has to be councilors. I think what we were envisaging was that a small team could be put together that might be council members. It might be others. Groups could appoint others if it wasn't a councilor. We probably would want to consider whether we even invited one or more members of the ALAC or GAC to be involved in that charter drafting group if they wish to. Because certainly we know that the GAC have quite a strong interest in the SPIRT itself.

And certainly when talking about this, the chartering of this group coming back to the GNSO rather than sitting within the IRT, we're certainly not intending to suggest that it would be a GNSO only comprised group, the SPIRT. There's a clear expectation that there will be interest from the wider community. And I think the expectation would be that in the chartering, that would be addressed and taken into consideration, so that, for example this isn't a suggestion in order to exclude the GAC from this process, for example. Quite the reverse. But we just feel that there's some significant benefits in this being handled in just the same way as the GNSO would charter a PDP or a GGP or any other of the regular activities.

The reason why we're bringing this to you in AOB and the reason why it's not as yet a sort of formal kind of written presentation is just that Lars was very keen to get a sense of whether council agrees that this is likely to be something handled by council, if possible, before we go into the meetings of the IRT at ICANN 77. And so whilst I don't think anyone would hold us to a decision made sort of in the here and now, if there is any kind of sense that there's strong feeling one way or the other on where this gets handled, that would be really useful information, because if there's a general feeling that people agree that this sounds like something council should be taking responsibility for, then we can tell Lars that and he can kind of take that off his action list.

So I'll pause there and just see if there are any questions or any thoughts. And Tomslin, thanks for your comment in the chat. I don't know if I should manage the queue, should I? Sebastien, you have your hand up.

SEBASTIEN DUCOS: I'll manage myself. No, just the first question. So whilst Lars wanted an answer on our intent, do you have an idea of when that work would need to occur? By when would we need to have— because my impression is that this is further down the line. The work itself is not an emergency. What is maybe urgent for next week indeed is to know if we're ready to take it on board or not. So the timelines, ideas there, given the other things—

SUSAN PAYNE: Yeah, absolutely. So the SPIRT needs to be in place for when the—I may not have the timing absolutely right, but it's a group that will deal with changes that come after the applicant guidebook. So it's obviously something we don't want to leave to the last minute, but we don't need it immediately, because at present, there are other avenues for dealing with the implementation of the existing policy and so on. The idea of this SPIRT group is to address changes that come to light after the AGB is finalized so that there is a path for dealing with kind of the unexpected in the future. So, yes, we would want to have this in place by the time the AGB is getting close to completion. We don't need to have it in place imminently.

SEBASTIEN DUCOS: Yeah, thank you. I just wanted to make sure that it was clear to everybody that again, the sense of urgency on our intent or not to take it on board doesn't reflect the sense of urgency on their having to work.

Thank you very much, both Anne and Susan, for this. Are there any further question on this? And we've seen a few in the chat, but if I see no further hands up, then I'd like to pass the mic on to Thomas, who is going to walk us through the last item of the AOB. Thomas, are you still around? Oh, Anne, I see your hand up. Just go ahead, Anne, quickly, and then we'll pass the mic on to Thomas.

ANNE AIKMAN-SCALESE: Yes, thanks so much, Sebastien. And I do see positive commentary in the chat. I'm hopeful that we can get direction on this for advising SubPro IRT and advising Lars before the next SubPro IRT meeting, which is on June 14th. And so if we could understand what you see as necessary next steps for that, that that would be helpful.

SEBASTIEN DUCOS: And can you remind us when that is?

ANNE AIKMAN-SCALESE: June 14th is, I believe SubPro IRT is not meeting this week because of travel, etc. But I believe SubPro IRT will meet again June 14th. So we'd like to be able to both confirm the co-liaison status as well as hopefully our joint recommendation from Susan and me and others in the chat here who are supporting that GNSO Council will charter the SPIRT.

SEBASTIEN DUCOS: That sounds great. I think everybody's got all the elements in hand and we will come back to you on all that, probably directly from DC, but certainly before the next IRT meeting. Now, Thomas, it's getting late here in Europe, but you're still around. I see you on camera. Go ahead.

THOMAS RICKERT: Thanks very much, Sebastien. Now I've asked for the topic of accuracy to be put on AOB, but I'm sure that we're going to discuss this next week when we all meet in DC. Now, as you will know, NIS2 has a provision on accuracy and I'd like to give you a little bit of context as to why I think this is important.

Article 28, subsection 3 reads, "Member States shall require TLD name registries and the entities providing domain name registration services, those are registrars, resellers and privacy and proxy services, to have policies and procedures, including verification procedures in place to ensure that the databases referred to in paragraph 1 include accurate and complete information. Member States shall require such policies and procedures to be publicly available."

And then there's a corresponding recital, recital number 110, which also speaks to this point. And I'm going to just read one sentence to you or two, and actually it's recital 111. And that speaks to the policies on verification to provide for accurate data. "Those policies and procedures should take into account to the extent possible the standards developed by the multi-stakeholder governance structures at the international level." And that is camouflage language for ICANN.

So, the European lawmakers actually obviously had in mind that if ICANN has something to offer on the topic of accuracy and also on this, you find comparable language on other topics, then that should be taken into account. Now, we do have something on accuracy and validation in the Registrar Accreditation Agreement, as you know, 2013 version. But it is possible that it's not good enough for the European lawmakers.

And I just wanted to plant the idea of a discussion with Councilors, because I do not really know how to best go about with this. You know, time is of essence. There will be only a few months left for us to work on this. The national lawmakers are already in the process of drafting laws to transpose NIS2 to international laws. The coordination group consisting of GAC members has started its work, so the clock is ticking.

I'm not sure, admittedly, whether the GNSO or any policy work is the right place to do this. But I think that at least Councilors should be aware of this topic. We should think of ways to maybe come up with informal ways on what we're doing or what can be done in order to respond to this legal requirement so that we don't miss this opportunity. So it can be in the GNSO, it can be something outside the GNSO, maybe a discussion group between the GNSO and the ccNSO, because this also applies to the CC world and not only the G world.

So this is food for thought. I knew that we would have a few minutes during AOB to discuss this. So I don't expect a full discussion on this today. And maybe all of you say this is nothing for the council to discuss. But I know that many more people than councilors are listening to these meetings. And I just wanted to

make sure that we all seize the opportunity if we want to, to come up with ideas on how we can avoid fragmentation in the marketplace if national lawmakers come up with diverging ideas on what should be done. And also maybe avoid that there is friction between the CC and the G world and avoid an unpleasant user experience for those who want to register domain names and have to undergo different procedures varying from country to country if they want to register domain names. So that's pretty much it. Seb, back over to you.

SEBASTIEN DUCOS: Thank you very much, Thomas, but don't go too far, because I see Stephanie's hand up and she might have a question for you. Stephanie, go ahead.

STEPHANIE PERRIN: Thanks very much. Indeed. A good heads up, Thomas, thank you. A couple of questions. One, has the European Data Protection Board said anything about this? Point two, we do have the Accuracy Committee on hold at the moment. Would reestablishing the Accuracy Committee help in terms of we're working on it kind of remarks to the legislators? In other words, does ICANN have to have a finished product by the time this gets out of the regulatory meat grinder? Or are you anticipating a reg that looks like will harmonize on the basis of what ICANN comes up with? Thanks. Because we haven't got to the point where we understand whether we're doing damage by further authentication methods.

THOMAS RICKERT: All these are excellent points, Stephanie. And I just noticed that I put a typo in my comment. It should read that there's nothing from the EDPB, from the European Data Protection Board on accuracy in the context of Article 28, NIS2. Do they expect a finished work product? I don't know. But I think that knowing how long it takes for ICANN to come up with the policy, the European lawmakers probably are aware of the fact that it's difficult to impossible for ICANN to come up with policy work. But I think that maybe even other deliverables, if you wish, coming out of this community could help. You know, it could maybe be an informal document that registries and registrars undertake to adhere to, or maybe other recommendations that do not undergo the policy development process inside the GNSO.

I think I brought this up because I do know, and thanks for the reminder, that we have the small team on accuracy that's currently paused. And I do not know whether the accuracy small team is the right place to take this discussion further, or whether we need to have it slightly broader or maybe even narrower just for the contracted parties to discuss. But I wanted to get it out there so that all of you can start thinking about this while traveling to D.C. so that we can have a good discussion on this when we meet in person.

SEBASTIEN DUCOS: We have one minute to go and two hands up, one from Paul McGrady and the other from Greg. So, I scared Greg away. Paul, go ahead.

PAUL MCGRADY: Yeah, super quick on this one, which is I'm glad you brought this up, Thomas. I think we do need to talk about it. I know we don't have any time to really have that talk now. But I guess my reaction to it is there already are obligations under the agreements with registrars and registries to comply with the law. Right. And so I don't know what the policy would be. Like we really, really mean it. You should comply with the law. Right.

So that's already out there. And so I do want to talk about it, but I guess I'm kind of skeptical about what role the council has in this. And so I'm looking forward to talking about it more. But we're out of time. Thanks.

SEBASTIEN DUCOS: Okay, Greg, last second. Go ahead.

GREG DIBIASED: Just real quick, I was going to kind of mirror what Paul said, that there are obligations in place. And so kind of my question is you mentioned they may not be good enough, but I'm kind of not sure what that means. It seems somewhat speculative as a basis to start policy development. Or is it that what we have in existence, we should better define? I guess that that's what I'm pondering.

THOMAS RICKERT: Just very quickly, Greg. Excellent points. Maybe we just need to do a better job in explaining what we're already doing and showcasing that what we have in ICANN's requirements is an adequate response to the new requirements in Article 28. But I

think we need to have that discussion and we shouldn't be confronted with the reality that that might be unpleasant for some. You know, so if we all agree that just shedding more light on what's being done is sufficient, that's fine. But we've discussed in Council and elsewhere that it's good to be ahead of the curve and premeditate what outcomes might be. And so I think we should at least put this on the table and have a good discussion about it.

SEBASTIEN DUCOS: Well, thank you very much, definitely, for having put this on our radar. And with this, I think that will conclude today's discussion. Thank you very much, everybody, for being there and participating and see you all in a few days, hopefully in DC. Thank you very much. Thanks.

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