ICANN73 | Virtual Community Forum – GNSO: NCSG Policy Committee
Tuesday, March 8, 2022 – 12:30 to 14:00 AST

ANDREA GLANDON:

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TOMSLIN SAMME-NLAR: Thank you, Andrea. Welcome to what would normally be our monthly policy call. But this is one that we're having during the ICANN 73 session. So normally we would have this before the GNSO Council meetings so that we can have a walk through the Council agenda before the Councilors meet at the GNSO Council meeting.

So for today, we will have a walkthrough of that agenda before we go into some other discussion items during the call. So we'll move straight to agenda item number two, which is the Council agenda walkthrough. And if I can please request here Andrea to please put up the Council agenda.

Thank you. The Council agenda doesn't seem like it's packed. But there are quite some items that we'll be having some heated debate on. But before I come to those, the consent agenda just has two items, the first being the reappointment of Becky Burr. That's for the ICANN Board Seat 13 from the Contracted Parties House. That will be put forward to the Council to approve.

And then there is a motion, and I had shared this in our mailing list, a motion to extend the GNSO framework for continuous improvement pilot project. I think the Council calls that the CCOICI if I'm not mistaken, to add the implementation of specific Work Stream 2 items that relate to the Council specifically. And that that motion will also be looked into and voted, will be on the consent agenda during the Council meeting as well. I'll pause the to see if any questions on the consent agenda or before I move on to item number four.

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KATHY KLEIMAN:	Tomslin, I have a question.
TOMSLIN SAMME-NLAR:	Yes, please.
KATHY KLEIMAN:	Becky Burr has been on the Board for a long time. I assume it's all kosher. But has anybody checked term limits?
TOMSLIN SAMME-NLAR:	Has anybody done what? Sorry.
KATHY KLEIMAN:	Term limits, how long you can be on—
TOMSLIN SAMME-NLAR:	Term limits. No, I haven't checked.
KATHY KLEIMAN:	I assume someone has. And she's a great Board member. But she's been there a long time.
FARZANEH BADII:	I think the term limit is nine years. Maybe I'm making things up. So I don't think that Becky—I think this is her last term. Probably. Maybe not. I don't know. I know that for the NomCom appointees, they have like a term limit of three three-year terms.

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KATHY KLEIMAN: Okay. Great. Thank you.

TOMSLIN SAMME-NLAR: Right. Three terms, nine years, Jim says in the chart. So I'm guessing she's on her third term now. Well, I think the Contracted Parties House really like her.

KATHY KLEIMAN: [Definitely. we like her too.]

TOMSLIN SAMME-NLAR: All right. Moving on to item number four. So, I think the NomCom has initiated application for a Council nonvoting seat appointee. And they will be reaching out to the Council to walk us through how that process will go. And we also gave them an updated job description, I think late last year or early this year, can't remember exactly when. But yeah. They will be reaching out to the Council on this agenda item regarding those Council positions.

On item number six, I see Farzi is asking if we solved the underrepresentation issue in NomCom. Did we, Raoul?

RAOUL PLOMMER: Yeah, I don't think that situation has changed in any way. They basically just kicked down the can for the whole ICANN to be sort of renewing their bylaws before that will change.

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TOMSLIN SAMME-NLAR: Yeah, that's what I thought. I hadn't heard anything on that. Bruna, do you want to respond to Farzi's question on the letter we wrote to the Board? Bruna is not there yet. Hopefully she'll come back and respond to that in chat.

We'll move on to item number six. While this this has a title of update on the SubPro and indeed there will be an update on the SubPro ODP, but I did request that time is put for a discussion on this item for those proposals the ODP liaison was putting forward to the Council regarding using—dealing with additional SubPro elements which the SubPro report asks or has indicated in the implementation guidance that an IRT be used, like the applicant support program.

And the ODP team sent some questions to the Council asking if the Council really intends to use an IRT for those considering that they were not directly sort of implementation and not something that they traditionally would use IRTs for. And there is a proposal floating around now that we could use some sort of cross community group for that, and I have shared that on the list as well asking for any comments. I think we might have to discuss this a little bit as well today, because this is up for discussion on Wednesday as well under this item. We might need to—personally I'd like to want to know how NCSG feels about using another group outside the IRT as recommended in the report for such elements. So that will be discussed under this item. Pause there to see if there are any questions or concerns on this. Yes, please, Kathy.

KATHY KLEIMAN: Okay, I'm having a little trouble reading what's here, but—so ICANN staff is asking for input from—let me just check if I understand. There's a million things to implement in the subsequent procedures, working group and report mean literally dozens and dozens and dozens of recommendations for the new gTLD round. Oh, Andrea, thank you. And if you can make the text a little bigger, that would be great. But I can see the whole screen now.

And so there are questions. I wonder if we should create some kind of— I mean, a lot of these questions will affect our community, the way the interpretation is done, the way the questions, the answers could impact of course helping global south communities apply, could help what assistance they get, but also just the basic rules and making sure that noncommercial applicants can apply easily for new gTLDs. Tomslin, is there a process by which we can kind of sit and get together and create our own committee maybe to help you and the other GNSO Councilors?

TOMSLIN SAMME-NLAR: To answer your question, Kathy, absolutely. That will be really helpful because this is something I've also asked the Councilors if we need someone who can, one, monitor this specific ODP and two, I had actually thought of requesting for help from you. And you say a committee. We can definitely—I will be very happy to have such a committee to help us, because there have been two sets of questions that have come through already.

And in the second set of question, they're asking if we need alternative implementation vehicles for certain elements which are not clearly

policy, they're not clear policy in the recommendation. And definitely, those are areas where we need some help in understanding the intention behind SubPro, because I've been the former chair being there. And being the liaison, he's proposing a lot of things, but we need to get some background from our perspective as to whether those will meet our principles or not and whether those are things we should support or not or make sense to us. So it is definitely going to be helpful.

KATHY KLEIMAN: Can I suggest—I'd love to know what other people think. So I was on the Subsequent Procedures Policy Development Process Working Group and it took a lot of time. So I'm happy to help. But this isn't an area for new members to really dive into, I think. This is an area for older members who haven't been active. This is a great area for people to go into, because we're about to open up not just one new round of new gTLDs, but the concept is that we're going to open up ongoing rounds of new gTLD, and the rules we create now will probably govern those.

As you've noted, Jeff Neuman, who is now the liaison to this development team, is a former co-chair of the Subsequent Procedures Working Group. And I don't know, I think it's time for some new ideas, some new voices. Anyone in our stakeholder group who gets involved in this issue will become—and helps to plan the policy. And as you said, things that aren't really policy, but they're details that have to be worked out of a process that could have dozens or hundreds or even thousands of applications coming through it now and in the future. Anyone in our community, in our stakeholder group who gets involved

is going to become the expert resource in their community and hopefully other communities as well. This is a perfect starting point for people to get involved and learn something new.

So Tomslin, what I was going to say is not just to listen to the old experts out there, but we need new experts. And so I'd be happy to work with others who are interested to bring old voices and new voices together so that we can create a group working on this now and going forward, because this issue is now going to be with us forever. We're not stopping for a decade again for new rounds, they'll be coming up fast. Thank you.

TOMSLIN SAMME-NLAR: Thank you, Kathy. Absolutely. It's spilling over everywhere. In the IDN PDP, it's the same. Jeff Neuman is a member there. And again, the SubPro aspects are very prominent in there as well. So it's all over everything, currently. And that's why I think the idea of having that committee will be very helpful so that there'll be more people with the knowledge, both new and old, and they'll use that in other policy discussions that are all related to the new round of gTLDs. That will be helpful. I think we'll take that as an action item to follow up with that committee. Thanks.

I think we can move to the next item, number seven, where I don't know if everyone has—okay, before I move on, I see Farzi's hand up. Please take it away.

FARZANEH BADII: I was just wondering if—so the issue I raised, I don't know if we'd like got to that agenda item about the Board asking—so Maarten the Board chair sent a letter to the GNSO Council and asked to sit down with GAC to discuss the closed generics and to discuss closed generics and then come up with a framework and then come up with another PDP.

And I think that we need to discuss this and we need to like warn the GNSO Council as well about how we are giving the Board—the GAC a much more pronounced role than an advisory role. And it is very concerning. First of all, they reopen issues, then they also like—it's okay to get involved. They can get involved with PDPs. But not only they get involved with PDPs, they also want to reopen issue and then come up and talk about how we can solve the issue and come up with a framework, and then create another PDP to reinstate the framework.

This is what is going to happen. And we have seen this. We need to—and this is one issue that I want to raise. And the overarching issue that we need to pay attention to, especially in the SubPro, in the new gTLD round, is that the Board has to comply with the bylaws. It is not that the Board should be nice to GAC or like—they have to comply with the bylaws.

And on a few occasions, in the past round of applications, the independent review panel ruled that the Board hadn't completely complied with the bylaws, and this is what we need to prevent. And I think that the GNSO Council has a really critical role here to prevent that by not giving into including GAC and by also like asking the Board about

their rationale and how they actually follow the bylaws in their conduct when it comes to these new gTLD applications.

So I'd be interested—I went on a lot. I'd be interested in our GNSO Councilors' opinion about this issue. Do you think that it's concerning how the Board is trying to kind of like say, "No, you need to work with GAC, reopen this issue, and then come up with a PDP?" And also, I think that the GNSO Councilors, perhaps they should also put it on their agenda to look at how the Board is following their own the ICANN bylaws.

TOMSLIN SAMME-NLAR: Thanks, Farzi. Can I request—and if you don't mind, because we have an agenda item just after this one to discuss that specific item you raise right now, is it okay if we discuss it then?

FARZANEH BADII: Oh. You should have told me. [inaudible]. Fine. Sorry. Yes.

TOMSLIN SAMME-NLAR: All right. Thank you. I think we have 30 minutes about the closed generics today to discuss about that. Thanks for moving to that item. So if it's okay, we can continue with the Council agenda, then we'll get back to that.

So for item seven, DNS abuse small team, I was just beginning to say the Council small team that was stood up to reach out to communities, and they've sent out a couple of letters last week asking communities where

they see policy can be used to mitigate DNS abuse within the confines of ICANN bylaws.

And so on this agenda item, the small team will be given an update. But we don't expect much because the small team has only met twice. They've just started their work. So we don't expect that there'll be much to report on other than that they've sent letters. But that's what the agenda item is for. Kathy.

KATHY KLEIMAN: Do we have anybody on the small team of the GNSO Council, Tomslin?

TOMSLIN SAMME-NLAR: Yes, we do have—I'm sorry, my memory escapes me now. I'm forgetting the name of my fellow Councilor now who is on the team, but—yes, Wisdom. That's it. Yes, Wisdom is on the small team, Kathy.

KATHY KLEIMAN: Okay, great. I don't know if he wants to write an update from time to time. But this is one that I'm looking forward to talking about at the membership meeting later this week. We should watch DNS abuse. And I've seen his co-chair Paul McGrady who's of course an intellectual property attorney, I like Paul a lot, but DNS abuse, there are groups in this community that have tried to push it much further than it should be for a long time. And I think we have to watch this closely. So I'm glad he's there. And if he can write summaries, maybe some of us can help.

TOMSLIN SAMME-NLAR: Thanks, Kathy. I'm taking that as an action item as well, which I'll discuss with Wisdom, because I don't think I see him on this call. And yes, you're right. It's something we have to watch. And there is also— ell, the team is not meant to make any specific recommendations or take any specific direction other than just to gather what the community thinks or defines as a problem statement for DNS abuse, which the GNSO Council can develop policy on and pass that to the Council to take a look at. Yes, please, Kathy.

KATHY KLEIMAN: History may be useful that DNS abuse sounds so innocent. For some, it is content regulation, they are pushing us to enter content regulation beyond the bylaws. We spent a long time, years, trying to define DNS abuse to be what's narrowly within ICANN's mandate, spam, botnets, DDoS, similar types of things. Every decision in ICANN is fraught with what's policy, what's not, what's content, what's infrastructure. So this one is not easy. But you already know that. Thank you.

TOMSLIN SAMME-NLAR: Thanks. And we've made Bruna promise to give us some time during the NCSG call to talk to you and talk about DNS abuse. We can absolutely take this even further during the NCSG call. Farzi, I see your hand is still up. I've been ignoring it. I hope it's not a new one.

FARZANEH BADII: It is actually a new hand and I'm going to be short, just one minute. I can see that this small team colleagues are—one of them is from the

Business Constituency, the other one was a long-term Intellectual Property Constituency and I think now he's a NomCom appointee.

So considering this, we were worried about DNS abuse to become a Council issue. But there has been like a push for two years that the Contracted Parties House gave in, and now we are making it a Council issue. And we should be very, very, very careful about how we are going to go about whether there's going to be a PDP or not and keep it very limited and defined, otherwise it's going to get out of hand.

Also another point that I wanted to make, I saw that those questions, as well as being sent to the communities inside of ICANN, like ALAC and others, they were sent to DNS Abuse Institute for some reason, and I don't know why we think that we should go to outside stakeholders. I mean, DNS Abuse Institute is not like a registry or registrar. And I think that this would set a bad precedent. I think that we should correct that and not later on for coming up with like PDPs or deciding whether we should have a policy development process about something to go outside and ask outside stakeholders to weigh in. Thanks.

TOMSLIN SAMME-NLAR: Thanks, noted, and I wish Wisdom was here to take those notes, but I'll note those comments and I'll let Wisdom know.

Moving on to item number eight, which is the dialogue with the ICANN's GDS department. It's a dialog to understand where GDS is at with current work they're doing, implementation work and other things like EPDP phase one. But the GDS is also interested in speaking with the

Council regarding the future, how we can effectively work, how the Council and GDS can effectively work in the future as well and be more efficient. So this item will cover that. I'll pause that to see if there are any questions or comments.

Seeing none, I think that's all on the Council agenda for Wednesday, and thereafter, it should be an open microphones. If there are no other questions, we can go back to our agenda.

As that's coming up, Farzi, I think that the small team, just to respond to your question about why they made the exception, I'm not exactly sure too, but the small team made that call so I think I'll have to go to listen to the small team's meeting recordings to know exactly.

And we'll also check, I think the other option is to check with Wisdom on how they came up with that list of participants. I know that they wanted to expand. I'm still talking about your question, Farzi, talking to your question regarding choosing the DNS Abuse Institute to reach out to. And I was saying that I remember recalling that they wanted to reach out to more. And they chose to limit the list. But why they chose the Institute? I'm not too sure.

All right. Getting back to our agenda. Our third agenda item is the discussion on the SubPro closed generics. And like we've just quickly touched on it, the ICANN Board, as far as they mentioned earlier, ICANN Board had sent a letter to GNSO Council and GAC to sit together to come up with some framework and to find a way forward. I don't know if— there is no decision whether what comes out of that will be an EPDP that will run with it or not.

But there's a paper that the Council is still expecting that's meant to give some guidance from the Board regarding what that will be. But we thought there were concerns which Farzi raised on the list. And we thought it would be helpful if we have some sort of background on this item. And Kathy kindly offered to help us give us that background knowledge. And so with that, I'll pass it on to Kathy to introduce the closed generics topics. Thanks, Kathy.

KATHY KLEIMAN: Tomslin, thanks. Can I encourage people to come on to video? It's much easier to talk to a room of people than a room of blank screens. So if you want to, I'd really appreciate it. And closed generics. Oh my gosh, the saga of closed generics is a long one. I created some quick and dirty slides to kind of share with you some of the history on this and what a closed generic is. And then of course, we will reach Farzi's awesome question and important, critical issue, which is, how can we throw a policy issue directly to GNSO Council and GAC, neither of whom are empowered with policymaking authority?

This will take about 10 minutes, and I am forced to have to turn on my power. So I'm going to turn off my video for just a second, because it looks like my power plug is not in because otherwise I'll crash. And then I'm going to share some slides.

I was on vacation on all of this past yesterday. So thanks again to Tomslin. I'm sharing my screen. And we'll do a little bit of background on closed generics. So we're going to look at the just briefly what are

closed generics, A brief history of closed generics at ICANN and what's before us now.

So what are closed generics? And in order to think about closed generics, we actually have to review what everyone in the room knows. But a quick overview of ICANN's hierarchy of registries, registrars and registrants, because it's kind of a critical piece of the puzzle.

So traditionally, in ICANN, registries do not sell directly to registrants. If you want to domain name, registrants go to registrars, and it's registrars that are the customers of gTLD registries. So registrants go to registrars. If a domain name is available, they can purchase it. The registrars have the agreements with both ICANN but also with each registry that they work with. And that allows them to put the domain names into the detail the databases, and of course, the registries maintain these gTLD databases and are responsible for the security and stability of the routing system that involves their top-level domain.

Most gTLDs are and have always been open in that any registrar can register any available domain name in them. And you know, them, .com, .org, .net, .XYZ, .horse, all open. If there's a domain name available, you can register it.

But there were some exceptions. So we created some exceptions when we started creating top level domains like .CPA, and I forget is it .lawyer or .attorney, but it's the same thing, that there are some that are limited to being required to show the credentialing.

But .CPA is supposed to be open to all CPAs around the world. .attorney, ditto. Also, community gTLDs, as we know and as we advocated so strongly for over the years, should be limited to those who meet the community definition in order to get a domain name.

But closed gTLDs are the exception, not the rule. And let me tell you why. Because so few people talk about it. In a closed TLD, the registry owns all of the domain names in the TLD. They're literally listed as the registrant for each and every domain name in that TLD.

We did not—and I speak for myself and the group that I worked extensively with both in NCUC and NCSG. We did not even conceive of this possibility when entering the first round. Except for one, there was a niggling thing in the back of our head. We just thought it's going to be like everything else. Registrants, go to registrars, go to registries. That's how we're opening up new gTLDs.

But there was one middling thing in the back of our heads about brands, because how can you force IBM if they have .IBM to sell a domain name to anybody who wants it? Ditto for .Sony. So once you have your corporate name, your brand name, can you really force that to be open?

Well, we were all willing to create an exception for that. But then out of the blue on that day, for anyone who remembers that, there was one day, reveal day when people submitted their applications and there were 2000 of them for new gTLDs. There were close to 2000, about 1900.

When they submitted them, they were still secret unless you put out a press release or told somebody what you're applying for. We didn't know. There was one day, it was reveal day where we saw all the new gTLDs. And we saw that ICANN created a website to show us who applied for them.

Oh my gosh, generic words by the dozens and dozens were applied for as closed gTLDs. So just as an example—it's just a handful— .blog, .cloud, .search, .app, .mobile, .book. .book sent reverberations around the world. .cars, .flowers, .beauty, .hair, .makeup, .jewelry, all applied for as closed gTLDs. The registry would own all of the domain names.

And look at who the registries are. These are organizations, corporations that actually have an enormous vested interest in that business or industry. So .mobile, DBS and Amazon both applied for .mobile as closed generics. And there's a whole industry of mobile wireless out there that would later go on to object to this as a closed gTLD. Book publishers, independent book publishers around the world would later write to ICANN about .book being closed.

So we were shocked. And objections began to come in, NGOs, nonprofits, academics. And so here's one objection that came in from Parminder, who many of us have worked with, and it was .beauty. L'Oreal applied for .beauty as a closed generic. And he wrote this incredible editorial op ed piece, "Beauty lies in the domain of the highest bidder."

And he said, "How can you close this off to all the small beauty organizations that are in India that want to get involved? They have

beauty salons, they offer beauty services and beauty products, and they want a domain name in .beauty. We thought we had the right to be in there. How could you close it just to the registry?"

And so Michele Neylon, who as you know is a registrar with Blacknight, he and I actually wrote this together, but can't put too many names on these things. So five reasons why clothes generic new gTLD should be opposed. And this is CircleID. And I'm going to make these available so everyone can read it. But just in a nutshell, the Internet thrives with freedom of choice and openness. Dozens of applications to ICANN for new gTLDs as of 2012 seek to completely segregate and close off common words for use by one company rather than let it be used for the entire industry.

And then I love the way he wrote generic words belong to all people , .cloud, .beauty, .book, .blog, .search, .security should be open to all with appropriate interests and industries. And then talks about number four, closed generic TLDs lead to unfair closures and improper restrictions and that we created a closed and limited exception number five just for these brands, but not for higher classes of goods and services.

And then now I'm an academic, I've been an academic for last three years, but this was ten years ago, and they came to tell us—these are academics who specialize in trademark law. And they came in to tell us that in the real world, you're not allowed to register a generic word in its generic context, because that would unfairly allow the monopolization of a common word for business or industry and deprive

other competitors of using the ordinary dictionary word for their service. It's completely unfair, especially to newcomers coming into an industry.

So we heard from lots of people, and then the ICANN Board held—they actually held a proceeding, got comments from all over the world, particularly about .book, dozens and dozens. At the time, I don't think we'd ever gotten more comments. And they were almost all opposing.

And so the ICANN Board banned closed generics in the first round. And the GAC said we could adopt closed generics if they serve a public interest goal. But what does that mean? And so Subsequent Procedures working group—I'm going to call it GNSO's new gTLD working group. But we spent months, months and months trying to figure this out.

And in the final report, it says the working group was not able to agree on policy advice concerning exclusive generic TLDs, which is closed generics. And we just couldn't figure out a good way to know what is the public interest, who decides, how do you appeal, what goes on? And then just the danger of these closed generics if we get them wrong, to the communities in which the business and industries around the world which these gTLDs represent.

So now we get to this letter that came in two days ago, from Maarten Botterman, our chair, to Manal and to Philippe asking, as Farzi already told us, asking the GAC and GNSO Council to come up with policy recommendations on the question of how to handle closed generic gTLD applications.

Existing provisions. Somebody says—he says that the gTLD applicant guidebook intended for them to be implicitly allowed. That is completely—that is debated till the end of time. Most of us did not think—many of us did not think that was allowed at all.

And so after the program launched, the GAC issued advice on the matter advising that for strings representing generic terms, exclusive registry access should serve a public interest goal. And please know the subsequent procedures working group and those of us individually who were members pleaded with the GAC for any direction on this.

During the working group, we actually asked them for advice. What did they mean? Define it. But that doesn't mean we go to them for policy, we wanted them to come into the subsequent procedures working group. There was a PDP established, we spent four years on this.

So what we have is the GAC has since reiterated its device, it hasn't changed what it said, we still don't know what it means. And so here are the last two paragraphs in the letter. "In view of the need for clarity on this issue for the next gTLD application around, the Board invites—" And this is extraordinary—"the GNSO Council and the GAC to explore a mutually agreeable way forward."

Guys, this is something we've been stuck in the muck, in the mire with for ten years. I don't know, to our GNSO Council members, to our NCSG GNSO Council members, good luck. I don't know if it's right to do it. But I also know it's an almost impossible, intractable issue.

And then the idea that you're going to feed it back into a policy development process when we were told for four years, remember, I was co-chair of the rights protection mechanism working group we were told that ICANN wants to roll out new gTLDs and we had to do our work fast.

We did it as fast as we could, but I can't believe we're going to go into another PDP. Personally I think we should just stay with what the Board did in the first round, no closed generics. But if we're going to do it, is this the right way? Should ICANN Org be drafting a framing paper? Should the GNSO Council and GAC be coming up with a framework and then putting in a PDP? I've never seen this process in ICANN, but it's a tough issue so I wanted to give you some background. I hope it was a little bit helpful. Thank you.

TOMSLIN SAMME-NLAR: Thank you Kathy. And that was very helpful. Yeah, let's talk about the issues. And I think I want to pass it on to Farzi now.

FARZANEH BADII: I just think that like Kathy covered the issues, this is regardless of whatever position NCSG wants to have on closed generics. What I'm raising is a process issue. As Kathy put it forward, this process is just made up, like go to GAC and GNSO and GAC come up with a framework to discuss a policy issue that was being discussed and was an issue for four years in a PDP. And they didn't do anything about it. And now they're like coming up, they have—I wanted to use the word

"fabricated," but they're coming up with—construct this process that is just unknown. I don't know if we have ever done this, to come up with a framework and reopen the issue.

As I mentioned, also, yesterday, in our Board meeting, this is regardless of whatever decision they want to take on closed generics, but GAC, as Kathy puts it really well, GAC is not—they should have gotten involved in the PDP. They had the opportunity to do that. And we don't go to GAC. GAC should come to us and say this is the issue. And now after we have done everything and we have discussed everything, now the Board invites GAC again. And this totally goes against the advisory nature of GAC. It sets policy itself, at least it sets the scene for coming up with policy positions that are aligned with what GAC thinks. And this is where we are going. And we don't see this only in this PDP, we see that over and over. GAC advice is like given undue attention, way more than what the bylaws say.

And by the way, just one point I wanted to raise is that GAC in its communiques, they have to talk about what international law they are talking about, what public policy they're talking about, why they're raising these issues. This should not be based on the emotions and the personal opinion of the GAC members. What they object to and what policy, what advice they give, it has to be based on public policy issues and international law, and they don't do that.

And so our answer here should be that, okay, so closed generics, does GAC have a position based on public policy and international law that we have to discuss here that we haven't discussed? How do we go about

it? Not that the Board comes and says "Oh, let's just discuss." No, that is totally a made-up process. We need to base our decisions and the way forward based on the bylaws, what the ICANN bylaws say. Thank you.

TOMSLIN SAMME-NLAR: Thank you, Farzi. The floor is open. Bruna.

BRUNA SANTOS: Just to put it on the record, something I put in the chat, and also something we spoke with the Board yesterday. It just feels like a very— as everyone was saying, very weird dynamics. And the way this was posed to the GNSO Council yesterday or this morning, I don't know anymore, but like, how you all should be on the same page. And this has to be a commonly agreed solution. It not only bypasses the policymaking processes within the GNSO kind of promotes GAC advise to some sort of a binding kind of relation or debate within the GNSO when they're still not members.

I don't think that there's an immediate way out this, and that's why I probably was asking all of you from the Council a little bit too much. And I was a little bothered by that. But just to add up to this strange dynamics, because I don't really think that that we're going to arrive in a commonly agreeable solution about this, that's rather hard. And it just feels to me as if the Board is delegating the debate that they were going to have about the advice from the GAC after the GNSO process was concluded. So this is just like too confusing and frustrating to start with. So yeah, thank you.

TOMSLIN SAMME-NLAR: Thanks, Bruna. Stephanie.

STEPHANIE PERRIN: I'll try and be brief. I really think that these are critical issues and I agree with what Farzi said and what Bruna said, and I've been trying to grapple with some of these procedures that are coming upon us. The ODP, for instance, nobody can argue that we need to examine the facts and the risk analysis and the cost-benefit behind the proposed SSAD for instance, or the implementation of the RPMs. But it's the way it's being done. It smells like policy laundry to me. I coined that phrase way, way back in the early 90s because different organizations were bringing things to the OECD because they couldn't get them past their own Congress. Oops, I mean their own democratic procedures.

So this is what's happening here, in my view, but it's a very complex issue and I think we need a committee to work on a fulsome comment on this, because we can't be against proper research and we can't be against the GNSO having authority over matters related to policy. We don't want the GNSO to give up policy, but we're seeing the PDP process undermined.

Now this is not new. These procedures merely put proper dress and proper uniform on what's been going on for the past—since the inception of ICANN. It was in the articles of commitment. It was in—Well, I've only really studied what they were doing on privacy, they didn't even grant—with all the work that Milton and Kathy and all the early

runners were doing on getting data protection supervisors into ICANN and everything. They just ignored it because they could get away with it. So there wasn't even a PDP on privacy. There was research on accuracy. That's how they dealt with privacy.

So we shouldn't be surprised. However, this is getting quite sophisticated. And we will have to get more sophisticated. We can't just say no, for instance, to the ODPs. I'm on that small team that's examining that ODP. We can't say no. We can talk about timing. But there may be times when we just say no, and this is what's been going on in my head. I never write these days, but I should.

The European data protection supervisor came out with a really good—in my view—statement on Pegasus. And he just said no. He said we must stop doing research on this kind of technology because it is fundamentally in violation of human rights. You can't come up with a framework to do this right. Forget it. Just stop right now.

And I think that that paper is what I would like to write on these procedures. Some of them, we have to stop right now. And it sounds like the closed generics is a stop right now situation. But this will take a bit of work. And we haven't written anything I think this philosophical in a while.

Yes, absolutely. Farzi, the DNS abuse discussion is the same thing. And I think that I commend the registrars for getting out there and setting up the Institute for Graeme, going and doing this. And they seem to be working together well. We need to pull our act together and have I think a think piece that crosses all these different subject areas, because I

don't know about you guys, I admit it freely. I can't possibly cram into my brain a thoughtful analysis on more than one topic at once. I just can't. So I think that's enough out of me.

TOMSLIN SAMME-NLAR: Thanks, Stephanie. So what I'm hearing is, because I think, even though this is not on the Council agenda, because obviously the Council agenda was out before this came up, I think this might come under AOB. And if it comes or if it's pushed to be discussed in the April meeting, I think what could be helpful then is we could actually come up with a statement here and say no, that's our position and that's it. So we can write something that the Councilors can, if necessary, read out to the Council and say this is it, that's where we stand and it's what it is. I don't know what other Councilors think about it. And I'm looking at other Councilors on the call to see if—so I'm seeing in the chat that it's a good idea.

Stephanie, yes, what I was suggesting is that we write a statement which we can read in the Council meeting when this comes up. And we don't have to wait for it to come up, we can insert it into the agenda. If there's no time in the March meeting—because I suspect it will come under AOB but there will be no time left on the AOB to have a substantial discussion that day. So we can insert it in the April meeting. And we read the statement we'd have written on this item on our on it as well. That was what I was suggesting while you were on the phone. I was wondering if that's a good idea. Farzi, sorry, I was just reading Farzi's comment that she thinks it's a good idea to discuss—

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FARZANEH BADII: Sorry. So we are talking about the closed generics and Maarten's letter, right?

TOMSLIN SAMME-NLAR: Yes.

FARZANEH BADII: Writing a statement about it. I totally support that. And I think we should say a big no to that. For the DNS abuse, we need to talk internally because we had a conversation so we can discuss that on Thursday. But definitely, I support that statement that we can read during the Council meeting in April.

TOMSLIN SAMME-NLAR: Thanks. Stephanie.

STEPHANIE PERRIN: Just to say that I think we need to distinguish quite clearly between the policy issues which we need to discuss and the procedural issues which we need to discuss, and try to get them separate. It's going to be tough.

TOMSLIN SAMME-NLAR: Okay. Thanks. Kathy.

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KATHY KLEIMAN:

Thanks, Tomslin. Thanks, everyone, for this discussion. It sounds like we're united on the procedural issues and real concerned for it. Let me just play devil's advocate for a moment. There are a lot of people, companies who want closed generics. There's a really good business case for monopolizing the generic word of your business or industry.

What do we do? I mean, procedurally we can object to this process, but someone wants this question answered. And obviously it includes key members on the ICANN Board want this question answered before we go into the next round, which is what types of closed generics could be allowed. Because the letter is phrased to allow some closed generics to come through. You're not allowed to bar them the way we did in the first round. That's [inaudible] that is the implicit understanding of the letter.

So at some point, I think we have to work with the issue of what happens when a policy issue is unresolved in a PDP. And what do we do about this one? Because somebody is pushing this one through before the next round opens. Thanks.

TOMSLIN SAMME-NLAR:

Thanks, Kathy. So with regards to the policy issue that you mentioned, do I understand correctly that the decision to stop it from going on in the previous round wasn't a policy decision, right? It was a Board decision. And I have the feeling that the Board wants a policy position on this but don't want to say how they feel about it. And I have heard— and Jeff also mentioned this in the GAC meeting yesterday that the SubPro wanted more guidance from the Board regarding this issue so

that the policy group, discussion group working a way for but the Board didn't come forward with any guidance. So I don't know if that's your understanding as well. And if that's the case, does that therefore mean PDP is a way forward with this? Yeah, I don't know. Let me know what you think.

KATHY KLEIMAN: I think what we're saying is that we don't think a PDP guided by the GAC and GNSO Council is the way forward, because PDPs normally go up for the policy development. But that didn't work in this case, because the policy development group couldn't get it done.

So I don't know, for this and for future issues, how do we solve a problem if it remains unsolved by the PDP? And that's the case here, unfortunately. I don't have the answer to that.

TOMSLIN SAMME-NLAR: Thanks. I'm just pausing to see if anyone like to comment in this. Stephanie.

STEPHANIE PERRIN: That is another issue. You know, we talk about the failure of PDPs to reach consensus. What it really is is a failure of parties to give up on relitigating and receptivity on the part of the organization, ICANN as a whole and the Board in particular, to allow them to relitigate. And that's in my view.

And I think one of the flaws in the whole composition of ICANN as a multi stakeholder model is the lack of independent oversight. We tried to do that through the Board and the Board structure and every organization suffers from this. I don't think it specifically ICANN.

But somehow there needs to be an appeal to another independent authority to look at something and say, "Well, you've argued about this for ten years. You've come up with three quarters of a policy. You cannot just continue fighting about X." And propose a way forward around X, rather than just deferring.

Because, of course, there's been a lot of discussion about how ICANN isn't delivering on time and is a failure. It's not as if these issues ever get—in my experience as an ex-government person—ever get resolved at the international level. I give you, for instance, the cybercrime treaty.

But what ICANN is lacking is honesty and transparency about the impasses and the failure to deal with them. And in that case, I think an independent oversight might be helpful. I have no concept of what that looks like, but I have been thinking about it in the terms of an independent data Board or something. Anyway, thanks.

TOMSLIN SAMME-NLAR: Thank you, Stephanie. I don't see any other hands up on this topic. So I think we have a way forward on this. On the procedural side, we will be working on a statement which we'll read out in the April meeting. And I think I'll create a Google doc on this so that we can work on this together. I don't know if we need to create a committee on this, or we'll

just use a committee. Great. All right. We'll do that. I've noted that as an action item, and we do not have an answer yet for the policy aspect of it, how we should proceed with this at this time. So maybe we'll continue the discussion on that over the weeks coming forward.

All right, we'll move on then to AOB and administrative items, and I don't know if, Bruna, do you have any administrative items? If you do, before you take the mic, I just wanted to mention—Thanks, Andrea. I think Bruna dropped off. There is an open public comment proceeding for the policy status report on the uniform domain name dispute resolution policy.

And I sent that on the list over the weekend. So we still are in need of volunteers to draft that comment on behalf of NCSG. If there's anyone— we're happy and encourage new members or folks who have not engaged in this before to please come join this effort as well. It's a good way to learn and get into the policymaking. So happy to include everyone that's interested to join the effort. Just send me an email or respond back to my email regarding this, and I'll include you on the team for this.

I notice we have about ten minutes left. Yes, the deadline is April 19, Kathy. That's all I had for today. If there was anyone who like to say anything else or a comment, anything. If not, happy to give you about 30 minutes of your time. Kathy, I see your hand up.

KATHY KLEIMAN: Maybe before we leave this last agenda item, it may be worth talking about the uniform dispute resolution policy as it's the first consensus— and I'd be happy to do a larger update if you think it would be useful for the group. But the UDRP, everyone takes for granted now, it is the way that we do domain name disputes. And yet it wasn't taken for granted 20 years ago. It was the first consensus policy of ICANN.

And NCSG didn't exist at the time, but NCUC did. And the moment we signed our charter and then the very next piece of paper we signed because we'd been debating it was an objection to the UDRP as it had been drafted. And we held it up until they made it better.

So in this review process, it would be great if people would be involved, and you're right, it's a great place for new members to come in. And I'm happy to provide—I don't want to lead this one. I've done a lot with UDRP over the years. I'd be happy to help advise and counsel so that the next decade can be led by new members of NCSG on this issue. This is a critical issue. We do not want domain names taken away arbitrarily, because the first thing they're going to go after is freedom of expression, guys. It's just the way it is. We saw it before this was adopted and before we put in protections for it. Thanks.

TOMSLIN SAMME-NLAR: Thank you, Kathy, and thank you for that background information. What I'll do is once I get volunteers, I'll include you for consultation purposes so that they can ask any questions they have regarding it, and that way they'll be able to come up to speed as well. Thanks for the offer.

And that's it. If there are no other hands raised or comments, I'm happy to give you ten minutes back of your day. Thanks so much for coming today. I'll see you at the NCSG meeting and the Council meeting. Thank you.

ANDREA GLANDON: Thank you Tomslin. This concludes today's meeting. You may disconnect, and have a wonderful rest of your day.

[END OF TRANSCRIPTION]

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