ICANN Dakar Meeting
Policy Development Process Presentation- TRANSCRIPTION
Saturday 22d October 2011 at 16:00 local

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Mary Wong: Thank you and we'll first start with a short presentation from Jeff who's been leading this effort and I should also add here that the team that was working on it worked long and hard. There were a lot of public comments that they took under consideration and there's a bunch of recommendations that the whole GNSO community should pay attention to if you haven't already. So with that, Jeff.

Jeff: Thanks Mary and I think it's definitely been an interesting process and as Mary said, we've had a lot of public comment periods on this. We are now on the final report. We have a proposed final and there were several (Conner trades). There was a (Conner trade) on the draft report. There's a (Conner trade) on the proposed final and we actually had a (Conner trade) on the final report. So, you know, just to kind of remind everyone what the projection was this came out of the whole restructuring effort. You know, we're responsible for developing a new GNSO policy that (unintelligible) that incorporates a working group approach and makes it more effective and responsive to ICANN policy development needs. And so, our primary tasks were to develop appropriate principles, rules and procedures applicable to the new TDP.

Sorry, here. I thought someone was calling me. A (unintelligible) transition plan. Marika.

So this we can kind of just skip this slide except for the last point. It talks about that - the last two points - that the final report has 49 recommendations in it. There's a new Annex A. Annex A for those of you guys who aren't familiar is the attachment to the by-laws which defines the GNSO PDP process. So, the hope is that once we send this to the board, they will then approve it as they've approved other by-law changes and that it will become the new PDP.

We've also done a PDP manual which is to provide further detail for those are either just joining the council or in the council that want more explanation of the policies and rules and procedures that we are now implementing. Move on.

So, high level - and this is very similar to the previous presentation that we've done at the last couple of ICANN meetings. So just a reminder we've broken it down to stages. And we can just go on to the next slide.

What we have in here in the recommendations is you're seeing subsequent slides. The things that are in the red are the things that have changed since the proposed final report and that was due to comments we got from the registry stake holder group. We got comments from the INTA. I believe we got comments from the ALAC as well, I think, or maybe just from Alan. And then of course we had a lot of discussions on the PDP work team on things that may have just come up. As a result of discussion, there were some new items that were discussed that just came up as a result of just things that were going on within the council at that time.

So, some of the recommendations just clarified what we already do, what we tried out. Some recommended completely new approach. We wanted to make some changes reflective in the by-laws which are perceived to be less

flexible than those changes in the GNSO Rules of Procedure. So we moved some of the items that we want to be more flexible into that Rules of Procedures as opposed to keeping them in the by-laws. So, you can go on to the next one.

So, I'm going to highlight the things that are different. In the issue report page, we've clarified - in the by-laws now it says that the ICANN manager or the staff manager will provide an opinion on whether it can scope or not and will work on the issue report. The real truth is that the reality is it's a team effort on ICANN's staff role and so, it's really not just one person generally that writes it. But it's the policy group, the legal group, it's others, you know, the registrar liaisons that may help us out with the registry liaisons depending on what the issue is. So, we've clarified that it's really for ICANN staff to give an opinion as opposed to staff manager.

And we've also included a mechanism we've had recently although not formal PDP's by any means but certain issues that have been referred to the council by the board and for those, in some of those cases we have no clue what some of them actually meant. It would've helped to have some explanation by the board at a sooner rate than we did for (unintelligible) for consumer trust. I think we were throwing emotion I think in December at the annual meeting last year and it wasn't until February or March that we actually understood - thanks to (Bruce) - what they were asking for. And so, we put in here a mechanism where the council can consult with the board or with it's liaison or whoever it delegates so we can get some more clarity on issues that it refers to the council.

And remember, there's an absolute right for the board - again, they haven't done this yet - but there's an absolute right that they could actually forego any kind of GNSO vote and require the GNSO to do a PDP on a specific topic. So, they haven't yet done that. But if the GNSO - if the board wants us to do a PDP on something, we have to do it. We can't really vote and say no, we don't want to do it. So, this kind of mechanism is in here so that we can

consult with them to understand at least what they would like. Steve's got a question -- Steve.

Steve: Thank you. The resolution we discussed this morning on consumer trust competition and choice was pursuant to a board resolution. They didn't ask for a PDP. Instead it just said, "We'd like advice from all four ACSO's." Does what you worked on here incorporate that notion of when they ask for advice what are we compelled to do?

Jeff: So this work team was only on the PDP formerly. If there are things that people like in this report - that they would like to, you know, have a general practice or recommend to the board this be done. I mean, we had talked about that extension in our PDP group. We would certainly recommend to the council to consider some of these practices for all working groups or for any situation or any time the board asks for advice. I'll give you one example but unfortunately that's kind of in our mandate to - can you go on to the next slide.

             The initiation of PDP - everything pretty much remains the same. Before we started this work, and it would be a surprise to many that charters were not required for working groups. Now it's in the working groups guidelines anyway. It's now required. It's part of the PDP or will be as soon as we vote. We've been doing that any way but that's one of the things for initiating PDP. We put in a mechanism for the GNSO council to talk to the advisory communities if there's - remember, there's also - unlike the board - there is a right for an advisory committees to ask for an Issue Report from staff but they can not require that a PDP is done, right.

             So, there were some discussions within the group and we have a recommendation that if, for any reason, the council decides not to initiate a PDP on a subject that an advisory committee has asked for an Issue Report there is a mechanism in there to liaise with that group and have a discussion

on why there was a case or what can be done to rectify that situation so that there's some kind of mechanism that we put into place.

For clarification of what In-scope means. We talked about this at the last meeting that In-scope doesn't mean what some initially we thought it meant. It does not mean In-scope of the ICANN contracts but it means what's in scope within the GNSO and ICANN overall. So, that was an important distinction that's now been documented. You can go on to the next one.

Working Group - I think we didn't really - none of the recommendations here changed from what we had in there. We talked about the minimum public comment periods. We talked about having mandatory outputs of only being the initial and final report but there's recommendations as to other outputs there can be from working groups. And something that was never in there, was a way to terminate a PDP prior to the delivery of the final report if for whatever reason, it's lack of participation, there's lack of interest to whatever the reason is. We now have a mechanism to terminate a PDP. Wait - go to the next one.

Here there were some changes. I think they're relatively minor but important clarification changes. We added some cautionary language on how to treat working group recommendations. Right, there was a lot of discussion within the group of, if the working group delivers a report of - like this one -- 49 recommendations. Can the council take those recommendations by recommendation, approve some of them, but not approve all them? We talked about the fact that working groups should provide guidance to the council as to which ones were considered. I'll use the tapestry example which was to be considered as a tapestry of recommendations as opposed to, you know, it really wouldn't be a good idea to take recommendation 20 and not take recommendation 25. So, we added some language in there about the council should really - the council does have the right to do that. We're not taking that right away from the council. We're just saying you should be

cautious or careful before doing that and really heed the advice of the working group.

We also added a - it did say in there that we (unintelligible) an existing practice when someone asks for - a council member asks for a deferral of an issue. We generally honor that request in the initial document and it said, if a voting member of the council asks for a deferral, we went back and said that really didn't make sense. Any council member can ask for the deferral and we went into rationale as why it's the case.

And then we wanted to - the registries made some very strong comments that, you know, a lot of cases now we're getting a final report - eight days. The only requirement if you deliver a final report with a motion to the council eight days before the council votes on it - which obviously if that happened every time, that would not be sufficient time for the council to review everything in the final report. So we make it clear that if that happens, any council member can request a deferral and with the deferral and the eight days it should be enough time hopefully to consider the issue.

We talked - and this is important in light of the discussion we had earlier on UDRP. We basically talk about how every policy development process should have a review on the outcomes and there should also be a separate type of review on the PDP itself. And so, we talked about those reviews and that could be done in theory by the (unintelligible) SIT. I forgot what that stands for now - the SIC group that we set up. And we also talked about working groups doing their own self assessments, right.

So, I heard a comment earlier on that said that they believe all working groups are captured or some of them are. I also heard a comment that people in working groups are rude to others. You know, that's the type of thing that really I'm hearing for the first time. And you know, I think that's kind of something that should be included in working groups' assessment. If people have that view, they should make that known. They should make it

known at the time either to the chair unless it's the chair being the one that's rude then they should make a note to the council liaison. And if both of those are being the rude one, then to the council on whole as a general to the leadership. But this one calls for working groups' assessments which I think is a good practice.

There are other issues that we address in the final report which include, as we talked about what should be in the by-laws and what should be in the manual. We have the new Annex-A which again is the - will hopefully assuming the board agrees to it - will be put in the by-laws. And the transition - what we talked about is for all - this will be applicable to all requests for issue reports and PDP's initiated after approval and implementation. So, once the board approves it and it is implemented, it will apply to all requests for issue reports and everything ongoing.

For ongoing - for things that are already in place for PDP's many of the changes - like I said are being done anyway and to the extent it's feasible to implement them in existing PDP's - the recommendation is to implement them if the council decides that makes sense.

We're going to consider at the meeting on Wednesday. If adopted, the board will consider it and usually what the board does is have another public comment period. So, it's not that strategies that we are going to open to the public comment period, it's that we're envisioning the board doing what it usually does which is initiate a comment period. So it's not us who will do it. So I think that slide's a little bit - it's misstated there. It should say that usually the board will open up a public comment period.

So, Marilyn's looking at me with a very confused face. So, is there a question there?

Marilyn Cade: Maybe, maybe not. Marilyn speaking. Way, way back at the beginning of your presentation you said, I think or maybe not, that if the board asks us - asks the council - to do a PDP they couldn't say no. Is that actually what you said?

Jeff: Yes. If the board sends a request to the council saying you must - saying we would like to see a PDP on a specific subject, there is no discretion to the council to say no we don't want to.

Marilyn Cade: I was under the impression that it never had been (unintelligible). I mean that we had - that the council had the ability to respond with a clarification or try to improve it but I didn't think we ever actually had the right when we got a request from an advisory committee or the board - I don't mean to debate that. I was just trying to understand that if you thought that was a change - obviously thinking it was a change?

Jeff: Avri...

Avri Doria: Yes, well, in fact, I think it pretty much remains unchanged. From the board there never was the ability to say no. To others there is an ability to say no with discussion but there is the ability to say no. From an advisory committee it requires a vote of the council. It always has.

Marilyn Cade: I see what you're saying, sorry.

Avri Doria: Whereas the no note would help with the board request. The board request has always been absolute. They never made one but it's...

Jeffrey: So, the change here is that we've put in a process to consult with the board when we need clarifications and other things.

Marilyn Cade: Thank you. I thought I remembered we made some improvements but I was...

Woman: Chuck, you had a question or a comment?

Chuck Gomes: Not a question - I just wanted to refer to the Annex-A and what's been said by Avri and Jeff is correct. For board initiation it says board may initiate the PDP by instructing the GNSO council to begin the process outline in this Annex. And then if you read the next two for the SO's and AC's, that's where the council process kicks in to decide whether to do it or not.

Jeff: And they've never done this by the way. They never just sent something to the council or they never initiated a PDP but we have to account for the eventuality that they may at some point do that.

                 Okay, I don't know if there is another slide. So, here's more information and again, I really hope that the council does approve it at this meeting not because I want this group to finally end but, you know, we've really have had a lot of comment periods. We've had calls every two weeks, if not every week on a lot of occasions for the past over two years. And so there's a lot of work that went in on it. I will say that at times we did not have participation of every constituency or stake holder group.

                 But we certainly have a good core group of people that worked on it and we've tried to get a balance. We certainly considered all the comments that were filed even from those groups that did not necessarily show up. So, I know, I'm certainly proud of the work that the team - the work team has done. I think it does represent a balance - a lot of balance recommendations and think that it's time to move on, get this to the board and if there are any issues, to deal with those as part of the SIC - again, I keep forgetting what it stands for. But that group that we set up that's wolf chairs show, "Please let's vote on it and move forward."

Mary Wong: I'll take a queue starting with Alan.

Alan Greenberg: Thank you. Just a quick comment. When word came down from on high a year or two ago, or whenever it was, that working groups actually had to read

the comments and think about them - not just ask for them and then ignore them - my prediction was that's a nice idea but it's never going to happen, it's too much work. This group actually did review all the comments, debated them, documented it and it's one of the first groups - the other one being one I ran in recent months - that has actually done that. I think we can hold our heads up high that the final result does well incorporate comments from the community on the several rounds we've done and I'm proud to have been a part of it. And I think as a result we have a much better policy than we might have otherwise. Thank you.

Mary Wong: Thank you Alan. Other questions for Jeff or comments.

Jeff: Just to close - I really want to thank ICANN staff especially Marika who just put in such inordinate amount of hours on this and with Margie's assistant as well. They spent so much time on this and I hope I'm not leaving anyone out. You know, it's been hundreds if not thousands of pages and materials to come through and they did a great job in helping out and I think our team did a great job.

Mary Wong: Avri.

Avri Doria: We just finished applauding them but what I wanted to say is that what Alan was talking about in terms of our due diligence wouldn't have been possible without the way that it was laid out for us with here are the questions, here are the things you're talking about, table after table after table. So we, yes, did a lot of work talking about it and the applause is already gone but really what made it possible was the process that they put in for effect for this - this group. So, I'd like to see that process happen again. Even though it's an amazing amount of work for you guys.

Alan Greenberg   It's Alan speaking what she said.

Mary Wong: Thank you Alan and Avri and Jeff. Other questions or comments? Well, we're moving along at a clip. I should just add to respect to the vote that's coming up on this motion for Wednesday that the recommendation is, first of all, for the board to adopt these processes and then there, of course, will be the public comment period prior to that formal adoption. But that would then apply to all issue reports and of course, potential PDP's that get started following formal adoption by the board. But I understand that, and correct me if I'm wrong - I don't have the motion in front of me - that the other part of the motion is that to the extent that we have ongoing PDP's that consideration also be given to adopting some of these processes. Am I right?

Man: To transition them.

Mary Wong: To transition to the new ones.

Alan Greenberg: On a case-by-case basis, I think.

Mary Wong: Right - consideration be given on a case-by-case basis. So, I just wanted to remind folks of that. Anything else? Well, since the real chair is back, I'm going to hand it back over to him. Mr. (unintelligible).

Man: Thank you very much Mary for helping out. So we now have a short break and then at 4:45 we'll talk about the GO regions working group, Rob Hoggarth will be giving us that update. So, let's take a ten minute recess and then rejoin for the GO working group and we'll end as planned.

                That's what I was going to say and we'll end as planned with (BDEC) reserved names topic that we've moved towards. Thanks operator, please disconnect.

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