Transcription ICANN61 San Juan
GNSO Working Session Part 4
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(Heather):   So this is our joint meeting of the review of all Rights Protection Mechanisms in all GTLDs and Subsequent Procedures PDP as policy development processes. We have before us before us a timeline that appears to reveal both of those PDPs.

Let's just - before we jump right in, let's just review our agenda, what was published to the PDP co-chairs was in this 45-minute session an opportunity first to discuss a consolidated timeline.

By way of reminder to everyone, it's currently sitting on the GNSO Council's action items that these two groups were asked to prepare a timeline that merges their two efforts, so that these can be seen and in a more detailed fashion, I guess, than we ordinarily have been requesting by way of timelines. This action item was a direct output from the council's - the strategic planning session in January.

So we have notionally 15 minutes for that, followed by 15 minutes to discuss the linkages between these two PDPs. We've been referring to this in sort of oblique ways, but it's opportune to talk very specifically about those points of

intersection and then open the floor to raise questions, comments, concerns in relation to the PDP.

So with that, we can turn it over to the co-chairs. It matters not to us which of you would like to take a first go at talking about the timeline. So over to you.

Jeff Neuman: Okay. Thanks. Jeff Neuman and Cheryl Langdon-Orr with the - Co-chairs of the Subsequent Procedures PDP. Thank you for this opportunity. I think this is an important session, so I'm hoping that there's lots of councilors here paying attention because it's not only - we're not only going to be talking about our timelines but really talking about what's next and what you're going to have in front of you over the several months and up to a year and beyond. And there's a lot of work for you all once we do complete our parts. And so there's some decisions that I think that are going to need to be made.

So what you see on the slide up here at the top is the Subsequent Procedures PDP and at the bottom is the Rights Protection Mechanisms PDP. I'll address the top part and then I'll let Kathy and Phil address the bottom part. And then we'll go to the next slide.

But - so what you see up here is the plan is to have an initial report in April to go out for comment from Subsequent Procedures for work tracks 1 through 4. The plan then is to get those comments back, hopefully in time to discuss those comments in - at ICANN 62 in Panama and then come out with a final report by the end of the year. So that's what you see on that combined work track - sorry, work track 5, to add that in, although they are a little bit behind for initial report because they are singularly focused on one issue though lots of sub-issues.

The goal is for that initial report to be released in quarter three and then if all goes well, to - after the public complete period - try to merge that into the final - the same final report as work tracks 1 through 4. So that is our goal. That's what we're working towards.

I'll turn it over quickly to Kathy and Phil just for the overall part of RPM.

Phil Corwin: Thank you, Jeff. Phil Corwin. Because discussing a timeline, I just want to - there's a big gap between now and the first deadline. To bring you up on what's going in the working group, we're moving forward quite efficiently and constructively on URS, which we're addressing now, while we - because there's a data survey that's gone out for an RFP for outside assistance, a request that was approved by council late last year.

And that data survey relating to trademark clearinghouse and sunrise registrations will be back - we expect delivery of the data collected in July. And we'll start dealing with that.

So we have been quite clear as co-chairs that we're hoping and pushing hard to finish up on URS before receipt of that data survey back so we don't have to revisit, we just are done with it. And I think there's a good chance, based on where we are, that we can be done with it.

We've broken into different subteams on practitioners, providers and documents, which are nearing completion of their work, which gives us all April, May and June and into the first half of July to wrap up on URS, not for a consensus call but to know what's going on, how the providers are doing, what the practitioners are experiencing, if it's being done in a manner consistent with the guidelines and the procedures and all of that. And there'll be time for people to raise policy issues, not for decision but for that.

So that's between now and July. Then we get the data survey back on the other two big pieces. And we're projecting putting out an initial report early in 2019 though this is - with the help of staff, this is a conservative timeline. We don't want to have to revise it again and push anything back.

So I think there may be some possibility that we can put out their initial report - for the - for public comment before the end of 2018. Then we take the comments on that. And then we plan to deliver our final report after consensus call about mid-2019.

On the dependencies, the main dependency is that many members of the community and I think probably the board as well would like both working groups to finish before a new round is launched. But I don't know of any issues where we're waiting for decisions by the Sub Pro group to inform our group or vice versa.

Really the only issue that's come up that in any way implicates Sub Pros and we'll see what happens when we get back to sunrise registrations, we have heard concerns from trademark owners that many times when they go to make a sunrise registration of their mark, they find that it's a very high premium price. But we don't have jurisdiction over pricing issues. That's in Sub Pro. And I - personally, I'd frankly be surprised if Sub Pro made any change to the initial decision not to have any pricing controls on the TLD program.

So I'll stop there. We've been coordinating. We have quarterly calls. I'm sometimes able to participate in Sub Pro meetings. I know Jeff and other members are able to participate in our meetings. So we're aware of what's going on in both groups and keeping each other informed.

And so far as I know about the projected launch track for a subsequent round, if we make our delivery date of the final report of mid-2019, that will have no delaying effect on a second round so far as I'm aware. So I'll stop there and we can proceed.

(Heather):   So we have a queue forming. (Donna). (Jessler), I see your hand. No? No, all right. And (Donna) and Paul and we'll leave the queue open if you'd like to join in Adobe.

(Donna):   Phil, just the comment, if you finalize the report in July 2019 that in your mind that has no consequence for the Sub Pro, could you just explain a little bit why you think that's the case, why that timing isn't problematic?

Phil Corwin: Well, I'm not aware. I don't think my co- - of any decision we're making where Sub Pro is waiting for us to make a decision or a policy recommendation to finalize their report. Likewise, I don't know of any issues they're considering although it's not as relevant because they're projecting finished earlier than us if work track 5 works out in that way.

                  But I don't - even if - there's just nothing they're considering other than the slight linkage between premium pricing and sunrise registration right where they're considering something that we need to take into consideration in our work. They're really on pretty much two separate tracks joined together primarily of being both related to potential policy changes prior to a second round.

Jeff Neuman: Can I ask that you hold that question because we have some slides that address, I think, I hope, what you're thinking about? And then just let us get through that and then if you still have a question, by all means.

(Heather):   Thanks, Jeff. This is (Heather). So perhaps what I'll do - I notice that what we've effectively done is merge the discussion on timeline and intersection points. And perhaps that's driven by a bit the graphic that we see here. And Jeff has additional information to present.

                  We have Paul and Rubens in the queue. Paul, Rubens, to you. What's best? Do you want to let them finish their information that they have? Paul says no. Rubens says he's out. So Paul, over to you.

Paul McGrady: Thanks. Paul McGrady for the record. This just has to do with contingencies on the RPM timeline. I think that there are many more contingencies than

have been discussed, for example the effects on GDPR, the ultimate - whose model that's adopted. There are elements of the URS that have to do with being able to see patterns of bad faith registration and other things that without any information on how tiered access is going to work, on whether or not new whois will be searchable in any way. There's simply no way to know whether or not the current elements of URS are fit for purpose.

And so I do think the GDPR is a major contingency on whether or not we will be able to finalize the work on URS prior to the launch of the next round. And just wanted to say, since we said there weren't any, I think that's a big one.

(Heather): Rubens has opted to hold his question until after the presentation of additional information. Keith, what would you like to do?

Keith Drazek: Thanks, Heather. I'd just ask a couple of questions on this slide. And if it's dealt with later in Jeff's comments, I'm happy to take the answer later. Looking at the current slide, it looks like we've got a final report expected to be delivered on what was said the new - full new GTLD Sub Pro output that happens before work track 5 final report. So it looks to be that there's two separate final reports.

And I'm just wondering from a council level and a procedural level, how would we deal with that? It's one thing if we end up with two final reports but I assume that we would essentially combine those as a council discussion before forwarding anything to the board, right? So I'm - just wanted a little bit of clarification on that.

And then my second question relates to work track 4, specifically around the topic that was brought up earlier by the board noting the ESAC studies on name collisions and wondering whether this proposed - I mean, whether this timing for work track 4 accommodates or recognizes or anticipates output or input from those ESAC studies or not. Thanks.

Jeff Neuman: Yes, sorry. Thanks. Jeff Neuman. I think on the first - I'll take the first one. It's a choice - so ultimately, yes, our goal is to have them merged into one report. Ultimately we may be presenting two different final reports to the council. I think it is for the council to determine whether it can submit that to the board in two different tranches.

I think the issues may be disparate enough and not reliant on each other to actually submit in two different tranches, if you will, to the board, especially if - as we go into the next slide and we talk about overall timeline of the next round. That's up to the council. I think it can be done, but it's up to you all.

On the second issue, on name collision, I will - I think we need to figure out by the end of this week - you know, I know they proposed a timeline. So it's - at this point it's still kind of up in the air as to what's going on with that. I think you'll find views expressed this week and probably at that session that may put a little bit better or more light on it, but I think it's a little premature to kind of put that into the equation at this point.

It is a subject in work track 4 and they are - and they have addressed it. And it will be mentioned in the initial report. So I think at this point, we should probably just park that for now and hopefully have more clarity by the end of the week or in subsequent weeks.

(Heather):   Thanks, Jeff. Susan, is now an opportune time for your question or would you like to wait until after they?

Susan Payne: Thank you. This is - yes. Hi, Susan Payne for the record. I just wanted to raise some maybe some questions or comments on the timeline for the RPMs working group. I hear what Phil has said about it being conservative. I'm not sure that, as a member of that working group, that I really agree that it's conservative. So I'd really like to understand how you envisage the work going forward.

Given the fact that the working group now has been working for two years and we haven't reached the conclusion on the work on any topic and haven't dispensed or completed the work on anything, and given the way that the working group operates and, you know, it's a very challenging working group to get that disparate group of people to conclude a discussion on any topic or reach any kinds of conclusions on any topic, every discussion and debate and question that we consider takes significantly longer than perhaps anyone anticipates it would take...

And so for - just as an example of an area of concern that I have, you're talking about the RFP that's currently out. I mean, I know that the RFP has gone out. It closed in the beginning of March and so a number of - hopefully a number of companies will have bid to do that work.

But it would - seems to me that it almost is inevitable that the working group will have to work with whoever is appointed to help them craft the questions that they actually need to craft. I know there's been a Data sub that has been very working very hard to try and give additional guidance. But it's been very clear that in a number of cases we've said the survey provider will have to do X and we'll hope that they'll give us some recommendations on how best to ask this question.

But I think it's inevitable there's going to be some back and forth between the working group and the RFP provider in finalizing whatever questions go out to the wider community to conduct that work. And then of course that work will have to be conducted. And I - it's a huge list of topics that are being covered. And so it seems to me that it will take some months to do and then to collect the results, which will then be fed back into us.

And it - and I'm afraid it just seems to me, sort of sitting here now, that the idea that we would get those results back from that survey provider in about July and that by the end of the year we would have finished our discussion on that -- and, let's face it, that's just the data, that's not then the discussion on

the policy recommendations that we're going to make -- that we would have an initial report by the end of the year just doesn't seem terribly realistic to me.

And so I just - I guess it's a question for you, whether you genuinely think this is realistic or whether this is what you think the council wants to hear because it doesn't seem realistic to me, as a member of that working group.

(Heather):   Thanks, Susan, very much. Phil? Kathy?

Phil Corwin: Yes, let me speak and see if Kathy has some additional words. Susan, we really want to stick to this timeline. And I'd welcome - I know you're one of the most consistent and dedicated and hard-working members of the working group and of the subteams we have.

As you noted, we have many, many difficult issues. There was not data and we have to collect data to make data-based policy decisions. So I'd welcome your thoughts on how we can keep to this timeline.

We've already moved the meetings from 60 minutes a week to 90 minutes a week. We've split up in subteams on various issues to - since we have such a large working group, to use those forces more effectively. I guess we could start setting deadlines, saying we must make these decisions by then, which I think… So and I do think there's good reason to believe we can complete the URS work by this summer based on how we're going so far. I'll stop there.

I can just state that personally I want to stick to this timeline. I'm not just saying this because I think council wants to hear it because we don't want to come back again and again saying we have to push things back. We want to get this done.

And I should ask one more thing. It's not up anymore, but phase 2 of our work in NOFX, the new TLD subsequent round, that's the UDRP review, that

will be its own undertaking, but it has no effect on states for a subsequent round. Kathy, you have anything to add?

Kathy Kleiman: Yes. Kathy Kleiman. So as Phil said, and as you know, Susan, we've gone to 90-minute meetings, we have multiple subteams, both for your URS data gathering and TMCH, trademark clearinghouse, data gathering. The data will be coming back in, and that's what's wonderful. And at some point we'll have to make decisions. And with that data coming in for both the URS and the TMCH, we'll have what we have to do to start really working on making those final decisions. So I am also optimistic about the schedule. Thanks.

(Heather): So we have a queue. Rubens, I want to circle back to you. Are you still happy to hold your question or would you like to put it in here? Okay, let - before you do that, we have Lori and we have (Martin). (Philippe)? No, all right. Rubens, Lori, (Martin). Thank you.

Lori Schulman: Hi. Rubens, sorry.

Rubens Kuhl: On the question of whether Subsequent Procedures could look into the sunrise price issue, to the best of my knowledge of the picket fence, neither Subsequent Procedures or the GNSO could look into the question. But if predatory pricing somewhat related to anything trademark controls, that could possibly be addressed through the trademark dispute resolution protocol. One of the RPMs that RPM group already visited and found food for purpose. So I don't see that question being able to be answered by GNSO or needing a different answer that is already procedure for dealing with systematic trademark infringement so.

Phil Corwin: Could I just?

Jeff Neuman: (Unintelligible).

Phil Corwin: Okay.

Jeff Neuman: I think Phil was shorthanding an issue, calling it pricing. It's - we are in work
                  track 2 looking at the issue of whether -- how do I put it in a different way --
                  whether there are measures being introduced by certain registries that were
                  aimed at circumventing the rights protection mechanisms by use of things like
                  reserve names lists.

                  So it's not - we're not looking at pricing. We are looking at some forms of
                  complaints that were received on circumventing the RPM process. So I just -
                  Phil was saying it in shorthand. I just wanted to be clear. We're not looking at
                  pricing.

Phil Corwin: Yes, and to quickly respond, Rubens, you may be correct that neither working
                  group has any authority to make recommendations on pricing.

                  I did want to note that the term used, predatory pricing, is not one that I used.
                  I was simply reporting that some members of the working group have told us
                  that when they've gone to get - register - use their sunrise registration right to
                  register names they put in the trademark clearinghouse that are synonymous
                  with their marks, they have either been unable to do so because they've been
                  put on a reserve list or have been unwilling to do so because of a pricing level
                  that they felt was - that they'd just decide we'd rather just watch at this TLD
                  and bring a curative rights action if there's mischief rather than spending that
                  much money. So I was just trying to identify something we found that may or
                  may not be in the jurisdiction of the other working group.

(Heather):   Thanks, Rubens. Thanks, Phil. Lori, before you take the mic, let's say - I
                  know we have a number of slides that are sitting behind this one. Let's do
                  Lori and (Martin) and that's fine. No worries, Martin. And then we'll let them
                  advance a bit further in the slides before we interject again, so I'll cut the
                  queue with those two for now.

Lori Schulman: Lori Schulman for the record. I have three points I'd like to raise. The first point is I tend to agree with Susan about the ambitious timeline for the survey. Having - I am representative of an organization, INTA, that was criticized for a survey for a low response rate that was done for another review team.

And one of the fundamental issues that we faced was rushing, that we did a survey in order to comport with an ICANN timeline. And in fact, because of the complexity of the questions and a whole bunch of survey design issues, while we think we got data that may be helpful, in fact yes we wish there was a higher response rate.

So I think from a - for a reality check, having gone through this once before and now being on the Data subteam again for this group that I think July is not a reasonable deadline. And I just want to put that in the record. I know we can discuss this at the RPM level, but I do want the council to hear this concern as well.

Secondarily, while I do agree with Kathy's co-chair report that the issue of having a charter where we essentially had to clarify and rewrite over all of it has slowed this work down to a glacial pace, one that is actually exhausting. And there's a lot of burnout on this, and I include myself in that. As many of you know, I was sick for four months, all right? And part of this issue is the amount of time it takes to do this particular work group minimally is five hours a week, and we all have day jobs, folks, even me.

Secondly though, I am extremely concerned about something Phil mentioned about capture because some of the actors that have captured IGO, INGO are now in the RPM working group. And I believe that what has happened at IGO, INGO is a harbinger of what could happen at RPMs. So I think there's an urgency to some of the problems that were identified this morning in terms of solutions.

And I don't agree that all is going well on the RPM group. I really don't. There's a lot of contention. There's this constant churn. When we were going over the questions in the subgroups last spring, and I'm… I apologize to the council for not mentioning this in June. I was hoping that, you know, there would be some resolution, but I honestly don't see it happening. And now we've lost a co-chair, so I'm even a little more frightened.

But I was on a subteam that was responsible for drafting questions for the survey for the sunrise period. Twice in that time, work product that I thought was completed and ready to go to the full group was changed. Why it was changed has always been an issue of contention, whether it was at the direction of staff, whether at the direction of leadership, whether it was for ease of use. But the bottom line was work was changed twice.

So I put weeks and weeks of effort in leading a group to have my final product changed without any understanding of why or the procedures behind it. So it makes a disincentive to do that kind of work and to put in that kind of effort.

And it's actually going to be four comments. I have a solution to one of these issues. I think immediately, I would recommend that the GNSO appoint a parliamentarian to this working group and maybe others, that there's one person there who is responsible for procedures and understanding when there's a difference between a consensus vote on a policy versus maybe having somebody on phone calls making a vote on how we're going to proceed on the next call. I think there's a big difference in decision-making at different levels, and there are many in the work group, including myself, who don't understand when and why decisions are made. And I think having a parliamentarian could be super, super helpful.

And of course, my fourth thought, I just - it's out of my head. If I think of it again, I'll comment. But there's real problems here. And I don't want them glossed over. It's too important. The work is too important.

And I was criticized. I have taken an enormous amount of abuse on my list for trying to contribute in ways that I have felt best and healthy for the team. And that has to stop.

(Heather): Thanks, Lori. (Martin).

Martin: Hello, (Martin) for the record. To answer - or to comment over what Lori said, I actually in the (unintelligible) in my report of the RPM, I did mention that maybe the lack of consistency when it came to the results of this group could harm the incentives of leadership. So I didn't mention by name. I did mention the case.

When we were talking all the dynamics and creating subgroups as a way of working and improvement, I did mention that if we were going to create subgroups then we did have to respect the outcomes because I remember the case. So it is something that is still around. Luckily, the memory is there and because I was also in the subgroup originally with Lori.

And the - but other than that, I do want to leave a more positive message that in all the working groups that I've seen, participated, observed or that I watched to this day, I've seen that RPMs actually is very productive, at least it seems that it's a group of people who are actually committed to moving it forward.

We might keep some deadlocks from one time or another in a specific basis, like do we not - that are not or should be that be like that or that or maybe we miss one call, debating something that we didn't hope - that we didn't expect to debate.

But in general terms, it feels like it's a group that wants to move forward, that we do not have yet that level of dysfunctionality where things just go dead.

On the contrary, if things have arrived to deadlock, it's because they are very active and they are proposing actual opinions in their own interests, which is the idea of having the debates of multiple callers.

So in that positive message, I think the deadline is okay. I think we can fulfill it. I don't want to disregard all the other comments. I think they are valid, they are true. I am not going to contest them. But I want to leave also a positive message, that I think the deadline is possible. And I think the working group is more functional than maybe these critiques by itself show. Thanks.

(Heather):   Thanks, (Martin). So Jeff, Cheryl, Kathy, Phil, I understand we have a few more slides. I'm - can we let you turn back to that please?

Jeff Neuman: Thanks.

Kathy Kleiman: This is Kathy. Will we get a chance to respond at some point? Okay. It doesn't have to be now but later. Thanks.

Jeff Neuman: Okay, thank you. Sorry, this is Jeff Neuman. So to continue on with this slide that's up there and the reason why - one of the reasons why we wanted to make the council as aware of this is okay, so what happens after, at least from Subsequent Procedures, what happens after we deliver our final report?

GNSO Council has a lot of things to take up at that point. And so if we are successful in meeting our timeline, that would mean that the council would be faced with the recommendations in the first quarter of 2019.

And you'll see the title of the slide is The Best Case because I'm going to assume things that may not have been true in the past but could be true in the future, which is that - let's say the council gets it, the recommendations, and they find that the work was done properly by the working group and there's no substantial deferrals. Then in theory the council could approve

those recommendations by the end of the first quarter in 2019, at which time in theory it would go to the board.

The board would then institute a public comment period that they have to do, which is at least 42 days I think. And so of course, taking those public comment period, considering the comments, you're still looking at probably Q3 of 2019 would be the earliest they'd be in a position to vote in favor of it. If that were to happen, in theory you could have an applicant guidebook published for public comment in 2020, ultimately with a submission in 2021.

That looks far out, but it - but to many it looks pretty quick because there's a lot of things that need to happen. I want to say for the record that even if we hit the 2021 date, that's still a decade after the launch of the last round, which is crazy. Right? Let's just let that sink in a minute. Right? Everyone was - between 2005 and 2012, if you're thinking about the community which thought seven years was long, you know, we're already talking about best possible case, a decade.

So what it means is that when the council gets the recommendations, the council is going to need to act. It's going to need to act efficiently. It's going to need to start potentially -- and this is for (Heather) and others on the council -- potentially create an implementation team while the board is considering the recommendations. That is an option that is available, in order to try to…

Again, the policy of the GNSO, which has not changed, is that there will be additional GTLDs that are introduced in a predictable, reliable manner. That policy has not changed. I don't see the recommendations changing that from our work that we've done so far. And therefore, the council should be working on how do we get to the next round of new GTLDs.

And what that may mean is that there may be a differential between getting our reports and the final report of the RPMs. The council may need to be in a position to recommend through the board that you start implementation work

even before you get what the RPMs is able to submit. So there's a lot of things that may need to be done in stages, but these are the decisions that are going to be on your plate very - well pretty soon. And it's - now is the time to start thinking about it.

And to relate it to the question that's in the chat from Keith, which is on the budgeting process, now is the time to start work on implementation. I don't mean that you need to announce to the world that we're launching it, you know, on a definitive date. I don't mean that, you know, you have to now start getting evaluators all set up.

But you need to start the preparation work. In - for the 2012 round, they started the prep work and the budgeting in 2007, albeit they believed the process was going to start in 2009, right, towards the end of 2009. So there was about a two and a half year time. The board recognized that they needed at least two and a half to three years to prepare for the implantation of the next round.

That time period is now, in fiscal year 2019. In fact, it's a little bit past. So that's why it's so important. And that's why we, at least for Subsequent Procedures, appreciate the comment from the council to the board that you really need to start devoting resources to it. So this is absolutely related to the budget, absolutely related to your comments and something that we need the council to keep an eye on to make sure that there's budgeting.

The next slide I think is - I think Phil kind of went over it in one of the responses, which was the phase one. I don't know if there was anything else you wanted to say on that slide. No? Okay.

So the other question - oh, I'm -

Phil Corwin: Could we get - okay, there it is. Leave it there for ten seconds. Thank you. Yes, that's more detail out of what we've rejected before. So I have no further comment on that.

Jeff Neuman: Sorry, just - we'll just try to get to the end of this and then absolutely questions. Go to the next slide. One of the questions we were asked was what are the dependencies of the two groups and to identify those.

So this is what's in the RPM charter right now, which is that we as two groups maintain a close relationship, which we - as Phil said, we are and we definitely coordinate and talk month - every month or two months. We could make that more often but we do coordinate.

And we have community liaisons as required by the charter. That is - well the - that's - I'm sorry, that's Robin Gross and Susan - sorry, yes, Susan Payne, are those liaisons that make sure that the groups know about what's going on in the respective groups.

If you go to the next slide, in our charter, in the Subsequent Procedures charter, it says that our job is not to recommend anything that's directly related to RPMs and that we avoid duplication or conflicting work, which I think we have.

And that if there are recommendations that come out of the RPM group that have an impact on what we do in the Subsequent Procedures that we consider those and incorporate those. What we're going to be in a situation or could be in a situation of is that the recommendations don't come out of the RPM group until we've already delivered our initial and potentially final report.

So the council may need - and the working group, Sub Pro working group, may say to the council at some point, look, here's our final report with everything we have until now but we want to reserve the right to reconstitute if there are additional things that come out of RPM that we may need to

consider. And there may not be. But if there are, we would probably tell the council at that point that look, this has an effect, let us get reconstituted for the consideration of this one or two issues.

Go on to the next slide. I think that might be it so. Yes, so. Sorry. Thanks.

(Heather): I'm sorry, Jeff. I'm very busy dying. Is that all for your slides, Jeff? We wanted to make sure that we got through the slides. Good. All right, excellent.

Let's open the floor back up for questions. So as I've noted in the chat, we are over time. It's very clear that we have more to discuss here. So we'll take a queue now, but this is not - anyone we don't get to today we'll come back to. So I have Phil, Kathy, Paul - Phil, Kathy and Paul and the microphone. So let's start with Phil, please.

Phil Corwin: Yes, a couple of real quick remarks. One, is there anything council wants to suggest or in any way implement vis-à-vis our working group to have a greater comfort level and to help assure that we stay on this timeline? I welcome that consideration and whatever you decide.

In regard to - I would say, you know, I've seen really dysfunctional working groups. I don't - this one is by no means perfect, but I don't think it's in dire straits. I think it's getting better and not worse in terms of working together.

I would say in regard - and I want to say right here for the record that if any member of the working group feels that any other member has attacked them personally or ascribed bad motives to them or is deliberately delaying or obstructing our work, they should bring it to the chairs and we will take appropriate action. I'm committed to that.

So far as impact on the timeline, of course the applicant guidebook has to consider any changes that we might recommend on the RPM. So let me say this, and it relates also to some issues we've had in the working group. Back

last year, when things frankly were more fraught within the working group, there was greater tension at one point, I gave a little speech to the working group, which I think had some salutary effect, which was to the point that let's get real. We're not going to be recommending radical changes to these RPMs. Radical changes will not get consensus.

That speaks a little bit to Paul's point. I think the concern with this working group is not capture because it's simply too diverse for any work - and there's too many participants for any one group to seize control. It's more that given the high level consensus needed for policy recommendations to get through council, a relatively small minority could block that. That's bad in a way.

But it's also good in a way because it means that anything we do agree on for policy recommendations is going to be incremental in nature. It's going to adjust the RPMs around the edges not eliminate them, not create new ones, not make radical changes in them. And I think that will minimize the impact on the applicant guidebook when we deliver our final report. I'll stop there. Thank you.

Kathy Kleiman: This is Kathy. And I want to echo Phil's call to the council, and I want to add some more details to it. You gave us a huge mandate. You gave us many, many questions in the charter. There are many proposals now coming from the working group, proposals for review, for change, for expansion, for deletion. Whatever we do to try to limit debate comes back to us, that we're stopping something.

So my question to you is what are co-chairs empowered to do? What do you want us to do to stay on this timeline? It's very - as you saw, we have very active members. They want to be very involved in every decision, every discussion. That takes time. What do you want us to do? Thank you.

(Heather):   Thanks, Kathy. All valid points and we'll try and sweep them up now but in a more substantive way take them up. so I have - I'm - the microphone, Paul and then Keith and we'll close the queue there. So please.

Woman 1:   Thank you, (Heather). With regard to the Subsequent Procedures PDP timeline, thank you very much, Jeff and Cheryl at taking as stab at creating what you had called the best case scenario for the implementation of the policy recommendations. Being the person that will be ultimately responsible for the implementation of those recommendations, I have quite a bit of interest in this timeline of course.

And I guess from my perspective right now, I would say that is not do-able. I guess it ultimately depends on the number of changes that are going to be coming out of the PDP recommendations.

You know, I know that there are some very substantive recommendations that are under discussions right now, for example single IDNs. You know, that could create a bunch of work there. The RSP approval program, you know, what the criteria are going to be. The abuse mechanism. You know, those are very substantive topics right there.

So depending on what the recommendations coming out of the PDP would be, I think that would ultimately determine how long the implementation timeline would take because we have to recognize that it's not just ICANN org but it's a lot of the communities' work too to help sort of flesh out what are the criteria for a new abuse mechanism, how is that going to work, right? So this is not work that, you know, ICNAN org can - ICANN org will do certainly a lot of the work itself, you know, but that's also in consultation with the community as well. And we have to be cognizant of that, given, you know, just the earlier discussions with the board about a number of reviews that are going on and the strain that's being put on various parts of the community.

The second point I want to make is with regards to the six-month timeline between when the board approves the applicant guidebook and to when the application submission window is expected to open. That's approximately the amount of time that we had for the 2012 round. And, you know, to be honest with you, having been through that, you know, six months was not a long enough period of time.

And I think our preference ideally is to have at least twelve months' period between when the board approves the final AGB, which would give us essentially the final requirements for us to complete any system work that needs to be done, any finalization of processes and procedures, etcetera. And then on top of that, also to make sure that we, you know, do the necessary outreach and communications around a program as well.

You know, so ideally I think we want to see at least a 12-month period between when the board approves the applicant guidebook and when the - and opening of the application window. Thank you.

(Heather): Thanks very much. Paul.

Paul McGrady: Thank you. Just a couple of things. First of all, on the timeline, it - we don't seem to have a point in there for RPM implementation. I take Jeff's point about us doing what we can to be ready to implement.

But we may be presupposing that all the implementation will be done as part of developing the final version of the guidebook but there - it's entirely possible that something like the URS could be adopted for legacy TLDs and that would be a standalone consensus policy that would not be wrapped into the new applicant guidebook per se.

And so we have to be careful that if there is no time for implantation, that presupposes an outcome that the only thing that will be allowed to come out

of the working group are things that fit inside the guidebook. So we - if - when we look at the calendars, let's make sure we're baking in that time.

Secondly, in terms of what - you say tell - you know, the councilors should tell you what you should do. I think that -- and Phil mentioned this -- I think that maybe we're trying to create more time because we think we have more to do when in fact, I don't think we get anything more done in the 90-minute calls that we would in the 60-minute call if we just drove that - if we drove the queue, right, kept people to time, we didn't re-engage in questions that have already been asked and answered, those kinds of things.

So hopefully, out of what comes out of this morning's session, the council will be able to give you guys back some guidance, some real, you know, guidelines, how we're going to do things a little bit differently because I don't think going to, you know, two 90-minute calls or 190-minute calls is going to move the ball forward.

At some point, the co-chairs have to be empowered to say, we've talked about this guys, we're not talking about it again and moving on and not be subject to, you know, accusations and being berated and all that other stuff. You just have to have the power to say, the questions been called and we're not going to revisit it.

Phil Corwin: A real quick comment to Paul. I know you're concerned that you think certain members are filibustering the co-chairs. We're in a delicate position. We have to allow free exchange.

The one thing I don't want to see with this working group based on recent experience is someone or some group of people being told, we're done, we've said enough and then seeing a section 3.7 appeal file that just stops us dead and adds months to the timeline.

So we do need some empowerment and direction from council. Thank you.

(Heather):   Phil, I'm just noting I did say to Jeff that he couldn't respond. So we just need to be careful but we're equitable here. Keith, the last word, please.

Keith Drazek: Thank you, (Heather). Keith Drazek. Just real briefly and we don't have to get into details or get into answers here, but something for us to think about as a council procedurally. If we expect ICANN to be undertaking implementation work prior to the finalization of a policy, I think we need to be cognizant or at least cautious that, you know, as to what role the council has to play in that decision, you know, or is there a role.

I think particularly if there's expenditure associated with it, assuming certain outcomes of a policy development process and getting a head start on implementation work I think raises some questions.

So just looking ahead, I think we need to figure out what role the council has to play in that conversation, how does that group - or how do those recommendations to ICANN staff come to consensus, you know, and do we have a role in blessing whatever comes out of that. So thanks.

(Heather):   Thanks, Keith, very much. So as I said in the chat, it's very clear we have lots to discuss here. And it's not to chill any discussion but we do have to move on. We've eaten 15 minutes from our colleagues talking about IGOs.

So could we stop the recording on this session, please, with sincere thanks to our four PDP co-chairs and turn our attention immediately to an update in relation to IGO matters? Thanks very much. And I note we're on time here. We now have half an hour with our colleagues working on IGO-related matters and then we have some travel time to get to Ballroom B. We're meeting with the GAC at 3:15. Thanks.

Man 2:   Before we start the recording, someone stole my sign. If you return it, no harm will come to you. But I don't have my name tag, thanks.

Jeff Neuman: It's my fault.

(Heather):   So I noticed Jeff was looking a little bit schlinky right at that moment. If our colleagues in the back of the room could tell us when our recording is ready? Thanks, (Natalie,) very much.

                So this is the time and hour, Sunday working session agenda for an update on IGO-related PDP work. This is worded broadly rather intentionally because we have IGOs on the work plan in two different forms. What would be better?

                I know we have some slides on this. (Mary), you've done some work in supporting this effort. And I know that we have - it's actually this group that has requested to speak with use as opposed to the other way around. (Mary), what's best to do that? Is it - Phil, do I turn to you? Who do we turn to here?

Phil Corwin: Report on the ICO CRP? Is that your question?

(Heather):   No, sorry, Phil. So (Mary), might I lean on you just to clarify the purpose of this session? Thanks.

(Mary):   Thank you, (Heather) and Phil. This is (Mary) from staff. The understanding was of this - the purpose of this session was to basically talk about all things IGOs and include a Red Cross update although I don't know if (Thomas) has rejoined us. But as part of that discussion that the - obviously the curative rights PDP that Phil Co-chairs and Petter Rindforth, the other Co-chair, is in the Adobe I believe, that would be part of the discussion.

                So the thought was that since we do have a number of new councilors who were not at the inception of this and since there are multiple work tracks of which the curative rights PDP is the one that's ongoing that it may be helpful if staff gave a brief update or at least a status summary of what those work

tracks are and where they stand and then turn it over to Phil, Petter, (Thomas) and you to have a discussion with the council. Will that work?

(Heather):   That's excellent, (Mary). Thank you very much. And indeed, that's what we have on the slide here. So over to staff then for the update.

(Mary):   Thank you. And it's (Mary) again. So there's a few slides. And actually, can we go back to the other one? There's a few slides that are in the deck and this is all posted. But we thought that we would really be focusing on maybe two or three slides.

And so this particular one in bold shows you all the different types of names and acronyms that the GNSO has been working on for several years. I think as everybody knows, we are actually talking about two PDPs, one of which was completed in 2013, checked by (Thomas), and the other which is ongoing, on curative rights, as I mentioned co-chaired by Phil and Petter.

The completed work however from the 2013 PDP did not all go into implementation, only some were implemented. And that is because the board adopted only some recommendations. The only recommendation coming out of the 2013 PDP that were adopted by the board were the ones that were not inconsistent with GAC advice on the topic.

And the ones that were not inconsistent are the ones in the second bullet point, which is the full names of IGOs and also international non-governmental organizations and some very specific identifiers associated with the Red Cross and the International Olympic Committee.

So it's important to remember that while recommendations from the first PDP were adopted by the board and did move into implementation, they are very specific. So for IGOs, you'll notice that acronyms were not adopted and not part of the implementation. You'll also notice that for Red Cross, it's only

those four identifiers that were approved and implemented, in various languages but we don't have to get into that.

And so what is outstanding, if I may summarize, is - includes the issue of IGO acronyms. That's the third bullet point. Other Red Cross identifiers, basically the national society names of something like 190 Red Cross national societies. There is inconsistency between the GAC advice and GNSO recommendations. And that is the subject of a reconvened PDP working group.

And of course, I'll leave the curative rights part for the discussion. I think we've had a full update from the co-chairs.

But I did want to make it quite clear, especially for those who haven't been followed the issue that there are several work tracks, that the completed PDP has outstanding recommendations that are undergoing I suppose we could call it a reconciliation process, not adopted by the board, and that there is a specific PDP ongoing on a very specific aspect called curative rights, which is essentially second level dispute resolution procedures like the uniform dispute resolution policy.

So if we can just skip ahead to a couple of slides. And I think I've just explained this. But I hope that you'll look at these slides at your leisure because hopefully they do crystallize and clarify what I've tried to say.

I want to highlight step - well, it's not step but point number six in terms of what is next for the GNSO Council. And as I mentioned that there are the outstanding recommendations that are undergoing the reconciliation process, I think we have a slide somewhere - and actually it's in point four. I'm sorry, no, can you go back to that, (Emily)?

In point four, some of you will recall that there was a dialogue between the GNSO and the GAC that was facilitated by (Bruce) who happens to be sitting

over there in that corner and that that advanced the work a little bit. That resulted in the reconvening of the original PDP to work just on the Red Cross names.

However, the IGO acronyms issue has not been worked on significantly since then in part, in large part perhaps, because of the curative rights PDP. And the understanding and expectation -- and here's where the council might want to think a little bit harder about when this comes down the pike to you -- the understanding and expectation on the staff side is that the board will - intends to only act on those outstanding recommendations more or less as a package of sorts.

So if and when the curative rights PDP completes its work, then by the council's processes, those recommendations come to you. If you approve them, they go up to the board. And if the board approves them, they go into implementation.

So the expectation is that the curative rights PDP gets done and then the board comes back to the IGO acronyms issue. The reason why we say that is because what is problematic about the IGO acronyms issue from the first PDP is what type of protections to give them. Do you go for a limited claims period, like trademarks, like a 90-day claims period? Do you do a permanent reservation? Do you do something else?

And if you do go for a claims period, say of limited duration, that was the original PDP recommendation, but claims only notify the parties that a domain name is registered that matches the IGO's acronym. And so from the IGOs' perspective, the question becomes what are our curative rights options in those cases?

And as a result, it makes sense for the board to wait for the outcome of the curative rights PDP. And that's why I wanted to highlight this point number six.

I said there are other slides. They actually explain in some detail what the recommendations consist of. But I think (Heather), (Donna) and (Rafik), that that's probably enough of an update from us.

(Heather):   (Mary), thanks very much. It might be opportune just as we're looking at this slide to make a point of note here, which is that when we got together in January for the council's strategic planning session, we said that there were two things that we were hoping to try and shift off of our work plate before the middle of the year. And both of those related to these things. One of them was the reconvened Red Cross PDP and the other one was curative rights.

I'll leave curative rights to Phil but provide an update on the Red Cross, which is to say that I continue to serve as liaison to that group so although we don't have (Thomas), I can report back and say that that mid-year goal, if you like, was communicated back to the Red Cross.

What is currently underway is that that finite list of Red Cross society names is being developed by the Red Cross, and they are - they have confirmed that they should be able to communicate that back to ICANN staff I believe it's by the end of April. And (Mary's) nodding so thank you, (Mary). And that puts us in a good zone for achieving - removing that from our agenda by mid-year. So that is indeed very pleasing to hear from a council workload point of view.

With that, Phil, I'll turn to you for points on curative rights. And I would say you've had an opportunity a number of times to raise a few issues about curative rights this morning. If we can focus on the points of key, let's say, timeliness or content or things that you think council most needs to know at this particular junction rather than trying to tell the whole history, which I think will be impossible in a short period of time.

Phil Corwin: Yes. Thank you, (Heather). And Phil for the record. And I didn't intend to revise - review the whole history. I'll just bring you up to date, where things -

what's occurred since Abu Dhabi. In Abu Dhabi we held a meeting of the working group. That meeting came shortly after an anonymous survey of the full working group members conducted by the chairs, which indicated good support, perhaps not consensus work but a significantly high level of support for one potential policy recommendation regarding the central issue for this working group. We have consensus on three other recommendations, but they're really peripheral.

The central issue is what to do about the conflicting rights of domain name registrants to adjudicate a domain dispute based on trademark law in a court of mutual jurisdiction and the claim of international, intergovernmental organizations to have a fair degree of immunity from judicial process. And that would arise in a case where an IGO brought a UDRP or URS that was appealed by the domain registrant. That doesn't happen often.

And is the - really is the IGO permitted to raise an immunity defense in that instance? And what happens if they're successful?

So we - it would appear to be heading - we had three different recommendations on that central issue going into and during Abu Dhabi. We had majority but perhaps not consensus support.

As of that meeting, based on our original poll, then in the meeting just subsequent to Abu Dhabi… And I should mention, we have a group of about 20 members of this working group. IGOs are not members. They made a decision not to participate as members but they have made contributions at various points to our work. Fairly good representation of the broader ICANN community within the fully working group membership.

But the active membership consists of about half a dozen members plus a rotating group of two or three others plus the co-chairs. And that core group of half a dozen is all from one industry sector with a particular economic interest in the outcome of this.

At our subsequent meeting, subsequent to Abu Dhabi, some members of that core group announced that they have previously supported the compromise which had majority support and were now changing their minds. Others indicated that they thought this central issue brought up other overarching issues and should be delegated to the RPM review working group. I would - that's an action I would dread to see happen given the other challenges we have in the RPM group.

And the chairs had staff once again check with the remaining members of the working group to make sure that they were still following the discussion, even if not on the calls, that they wanted to participate in the consensus call, that their SOIs were up to date.

And then we proposed an anonymous poll because of certain conditions within the working group that might have prevented members from being - participating in a poll and being honest in their answers if they were - those answers were public.

And one of the members of the working group in that core group filed a section 3.7 appeal under section 3.7 of the working group guidelines, which is rather vague as to process and outcome and simply says that a member who believes that the working group is being conducted in a way violative of the working group guidelines can file such an appeal. And then there's a conferring with the working group chair or co-chairs and then if that's not satisfactory, with the chair of the council and her - and/or her representative.

And the co-chairs scheduled a call with the protesting member. We received a document of many pages in length one hour before that call. At the beginning of that call, I asked the person who had filed the appeal, given that it was a voluminous document and we had just received it an hour before the call, whether we'd have a few additional days to consider it after the conclusion of the call and get back in writing if we had any response, which I

thought would be an easy ask and was in - to the advantage of that person. And the answer was no.

So we spent an hour arguing over whether the chairs would have any ability to respond to that written submission. We got nowhere. We scheduled another call a week later. The appellant proposed a - on the call, the chairs having heard from various work group members, we reiterated that we would take sanctions against any member who engaged in personal attacks or ascribed bad motives to anyone participating in a poll of the group. And we're withdrawing our request that the poll be conducted anonymously.

The appellant asked for a facilitator to be appointed. And we said we thought we should hear from the other working group members, that we would poll them as to use of a facilitator. And we subsequently put out a proposed path forward, which included a public poll and solicited the views of the working group members as to whether we should have a facilitator. Only two working group members responded that, both in the negative. They were against use of a facilitator.

And the appellant said that he was - continued to be opposed to any polling of the work group members, whether it was anonymous or open, at which point, Madame Chair, you inherited the situation. You engaged in a call with the appellant. And I'll wrap up.

And the - as I understand the situation, rather than a working group meeting scheduled for Wednesday, Susan Kawaguchi, sitting her to my right, will be playing a role in her role as liaison from council to the working group to get the sense of the working group members as to where things are at. So I'll stop there.

One last thing to point out, it is - assuming that this core group of half a dozen will be opposed to anything that deals with the central issue of IGO immunity claim and how to deal with that in a judicial context, even if the rest of the

working group favored the policy proposal that we have on the agenda now for the working group that addresses that situation, that would give us only -- I know we don't vote -- but only about two-thirds of the working group for such a resolution and a third opposed. So that probably fails the consensus level of getting something to council. So we're in a difficult situation. Thank you.

(Heather): Thanks, Phil. And I see Petter has his hand up. But I want to clarify a point that you raised. And Paul, you have your hand up as well. Old hand, got you, all right, cool.

So indeed Phil has discussed an issue that we've been working through in the context of section 3.7, which asks the PDP chairs to have a discussion with the party if they have concerns about a PDP and then to speak to the council chair or the chairs delegate.

The purpose of today's session was not to try and get council across that, let's say, the entire background or where we are. But I think we can say that Susan and I working together have determined that the challenge for the PDP now is finding consensus on some very, very difficult issues.

And as I mentioned in my update to the SO/AC chairs and the CEO on Friday, this is an area that is - we were asked, you know, what are the sorts of things that are on your plate that are likely to affect other SOs and ACs, and I identified this as being on the plate as affecting other SOs and ACs.

They - the matter that Phil has described is not a private one. It is known to the working group. But I would like to say that in order to give that process that Susan and I have recommended the very best possible chance to succeed, I'd like to just let that happen, let's say, on Wednesday. Susan will fill the full extent of the liaison role on Wednesday and make herself available to the working group members.

What I would like to say there is that the aim of our proposal is to get the group to - back to, let's say, regular working order in terms of laying all the options on the table for its final recommendations. Again, I'll come back to my earlier comments and say it is very much the council's hope that we can see this PDP to completion in the first half of the year, if that's possible.

Petter, I'm mindful of time. I'm also mindful of the fact that I really don't think it's necessary to say too much more about the section 3.7 action here because there really isn't much more than can be helpfully said at this point. So Petter, can you limit please your comments to specific points that haven't yet been raised that council needs to know in relation to this PDP? Thank you. Petter.

Petter Rindforth: Thanks. Petter here. And thank you. I just wanted to add a couple of comments on what we can see for the future. As you said, Susan will have a meeting on Wednesday with working group members, and we would also - she will also had to reach out to those working group members that cannot participate physically. And then as we proceed, the staff will also reach out to working group members that could not participate in this week's.

And then the next step will be, as we see at the full working group meeting where Phil and I will give time to Susan to summarize together with staff the outcome of these contacts. And we will then further discuss how we can cut down the number of options and…

This is my personal feeling but I think hopefully we'll need not more than one to two further calls after that to finalize the limited number so there are still options in order to have a final open poll on this and then have the final poll with assistance from staff to - while Phil and I summarize the result of the poll and present the final report for the working group to accept.

And I definitely hope, as we now is in fact back on the roads in some way, I definitely personally think that we can finalize it by June at least.

(Heather): Thanks very much, Petter. Let's open the floor. Any questions, comments, concerns in relation to any of the IGO matters that were discussed here? I see none in the room and none in the chat which gives us an extra five minutes to find our way to the GAC room.

We are meeting with them from 3:15 to 4:45. Marika has very helpfully posted around the agenda that GAC and council leadership had come to an agreement on. I will say this that we didn't have time... Ordinarily, the leadership team likes to try and meet with the GAC leadership team in advance to work out the agenda, and we were all just really rather swamped. And I think the GAC wasn't able to coordinate itself across time zones.

So we'll do the very best we can with our agenda and we'll take from any and all who are happy to give it. Marika, yes please.

Marika Konings: This is Marika. Just a note that apparently there is some outdated agenda that's on the actual meeting schedule. I'm just checking with my GAC colleagues and it should be - indeed what I just circulated should be as well what you'll get in front of you in the meeting. But just to allay that, any potential concerns.

(Heather): Thanks very much, Marika. So thanks very much to staff for your support for today's session. Thanks to everyone for hardy contributions. We've done something very different and all the feedback that we've received so far has been very, very positive.

I'm - just as a note, we of course have our council meeting on Wednesday. We are not meeting on Tuesday evening as we might otherwise do because we don't have any motions on the agenda. I'm - so your Tuesday evening has been returned to you. And we'll see you around the hallways but of course see you for Wednesday's council meeting. Thanks very much, everyone.

END