

Co-Chairs' Summary, Statement, and Proposed Next Steps (January 31, 2018)

The second call between George Kirikos and we co-chairs, Philip Corwin and Petter Rindforth, to discuss George's appeal under Section 3.7 of the GNSO Working Group Guidelines was held on Thursday 18 January 2018. The call recording and transcript, as well as the written documents accompanying the discussion (as published to this mailing list) can be found here: <https://community.icann.org/x/iAS8B>. Paul Keating and Paul Tattersfield were also on the call as Working Group members who supported George's appeal, as was ICANN Ombudsman Herb Wayne in an observer capacity. The co-chairs appreciate the constructive tone and approach of all those on the call.

George suggested that a facilitator be used to assist in the WG's final process; we co-chairs took this under advisement and the potential role of the facilitator was further discussed, including whether one would be employed to help address procedural and/or substantive issues, and at what stage of the process a facilitator should be employed. **Agreement was reached on the call to solicit feedback from all Working Group members on whether or not you support the use of a facilitator to assist the Working Group move forward.** Everyone on the call agreed that the Working Group should proceed with its work and deliver a final report and recommendations as quickly as possible.

During the call we co-chairs offered to withdraw our proposal for an anonymous poll if there can be a clear understanding within the WG that it is not proper for any member to use another's poll response as a basis for personal criticism on the WG email or on social media, or to mischaracterize the effect of any of the recommendations or options. The co-chairs continue to believe that a poll of the WG is necessary to assist us in proposing consensus levels and thereby initiate the consensus call process recommended in section 3.6 of the GNSO Working Group Guidelines, as well as address any potential allegations of WG "capture". **Therefore, we also solicit feedback from WG members as to whether such a poll is acceptable if all results are public and transparent.**

The WG's full membership currently has six options for addressing Recommendation Three under discussion. There were some views on the call that the language of these options needs further clarification, and that it might be possible for the current six options to be reduced to a smaller, agreed upon number. Regardless of whether a facilitator is employed, the WG can either reconvene to discuss clarification and possible consolidation prior to the initiation of the consensus call process, or can undertake such effort during the remainder of the process. **The co-chairs therefore solicit feedback from WG members whether they wish to schedule another call in the very near future, prior to other steps, to discuss such clarification and possible consolidation.**

Staff has noted that should the WG support the use of a facilitator (likely a community member familiar with the GNSO procedures and with PDP experience), there will be a need to also agree on ground rules, including the scope of the facilitator's responsibilities. In addition, the GNSO Council as the Chartering Organization for this Working Group will need to sign off on the proposal as only Council can authorize the use of a facilitator. All of this will somewhat affect our timeline but is not insurmountable; our understanding is that Council can quickly approve a request for a community facilitator via email without the need for consideration at a Council meeting.

Subsequent discussions between the co-chairs and staff indicate that we can probably secure a community-based facilitator with background in IGO issues and/or WG procedures to moderate a WG meeting at ICANN 61 in San Juan. The WG currently has a 90-minute session scheduled at that meeting; while a longer facilitated session would be desirable, if that is not obtainable we can utilize WG calls and

email exchanges prior to San Juan to ensure that the facilitated session is as focused and productive as possible.

As a result of the agreements reached on the Thursday call, staff informed the GNSO Council Chair and Council liaison to this PDP that there was no current need for the Council to discuss the request for guidance made in the co-chairs' letter of December 2017 at the Council's 30 January 2018 meeting. We also believe that George has placed his appeal on hold while these matters are further discussed within the WG.

The co-chairs therefore propose the following way forward to lay the groundwork for a facilitated session at ICANN61:

- Determine whether WG members wish to hold another call to attempt to further clarify and consolidate the existing six options for resolution of Recommendation Three.
- Immediately after such call (or just immediately, if it is not supported) prepare and distribute a public and transparent poll of WG members to support their primary choice among Recommendation Three options; and their support/opposition and additional comments for the remaining options, as well as the other three Recommendations, with poll results to be tabulated and distributed as soon as feasible during February. At that time the co-chairs will "make an evaluation of the [consensus level] designation and publish it for the group to review" to initiate the consensus call process through the method recommended in Section 3.6 of the Guidelines [<https://gns0.icann.org/en/council/annex-1-gns0-wg-guidelines-01sep16-en.pdf>].
- Resume WG calls to discuss the poll results, co-chairs' estimated designations, and move toward final consensus positions while preparing for the facilitated session.
- Hold a facilitated WG session at ICANN 61.

The co-chairs believe that this proposal represents a reasonable compromise between their responsibilities and views and those of other WG members, and hope it will prove acceptable. Now that we are no longer proposing an anonymous poll, and have accepted George's proposal for a facilitated session, we hope he will withdraw his section 3.7 appeal as such withdrawal is likely required to have sufficient time for the necessary preparation for a facilitated session in San Juan.

Request to the Working Group:

In addition to any general comments on our proposed path forward, the co-chairs request that WG members respond to this list by **Monday, February 5th, 23:59 UTC on the following matters –**

- Whether or not you support the use of a facilitator to assist in the completion of this WG's task;
- If you support the use of a facilitator, do you support that facilitator being a community mediator who is not a member of this Working Group but who is familiar with the GNSO's rules and ideally has experience with a GNSO PDP (e.g. a former GNSO Council chair, PDP Working Group chair or Council member)? (We note that staff has informed us that obtaining a third party, non-community facilitator would introduce cost and selection issues that would likely prevent such a session in San Juan.)
- Do you support or object to co-chairs' use of a public and transparent poll to assist us in determining consensus levels for Recommendations 1,2, and 4, and for the options for Recommendation 3, so that we may initiate the consensus call process in a broadly informed manner?

- Do you wish to hold another call to attempt to clarify or consolidate the recommendation Three options prior to distribution of the call?

Thank you for your prompt attention and responses.

Philip Corwin and Petter Rindforth