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MONTREAL – GNSO PDP3.0 small team  
Monday, November 4, 2019 – 13:30 to 15:00 EDT  
ICANN66 | Montréal, Canada

UNIDENTIFIED MALE: This is the GNSO PDP 3.0 in Room 513-D, on Monday, November 4<sup>th</sup>, 2019, at 13:00 to 15:00.

ARIEL LIANG: This is ... hello? This is Ariel. We're two minutes past the starting time, so I guess we could start momentarily.

Okay, now I'm going to start now.

RAFIK DAMMAK: Let's start and hope that the rest of the team members will join us. Did the recording start?

ARIEL LIANG: Yes.

RAFIK DAMMAK: Okay. Thanks, all, for joining this working session for the PDP 3.0 Implementation Team. Our plan is to use this session to continue the work in the package for improvement. We have two documents that we are working on. According to the plan, we gave them the update during the GNSO working session yesterday and, prior to that, we tried to finalize those improvements during the Montreal meeting so we can

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afterwards, post-Montreal-meeting, work on Package #5: improvement.

You can see this agenda. I'll introduce it quickly. There is the other. I think it's Package #5 (improvement), not Package #3. Then we'll start the discussion about the improvement of Recommendation 17 regarding the resource reporting. We have an initial discussion based on the paper prepared by Berry because we had a discussion about the scoping and what we are supposed to do. So it will be our initial discussion or the kick-off here in a way that we can work on the improvement post-Montreal.

If there is no objection to the agenda, let's start with Agenda Item #2. This is about Improvement #9 regarding the clarification to the complaint process in the GNSO Working Group. That's about, in the operating procedure, Section 3.7 and 3.6. The effort was led by Flip, and we had a super small team to help to create this draft. It went through several iterations. This is the latest version. We have also a small comment and change. So we are attempting to finalize today, hopefully.

Who's going to lead here the discussion? Flip?

FLIP PETILLION: Yeah. Happy to.

RAFIK DAMMAK: Thanks.

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ARIEL LIANG: If it's okay, I'm happy to work the small team through this document and what are the last set of changes.

RAFIK DAMMAK: Okay.

ARIEL LIANG: Basically, if you look at the content table, Section #8, that's basically where we're proposing new text to the working group guidelines to reflect all the ideas that we have proposed in Section 1 to 7 in this document. So, basically, it's summarizing everything and then putting them in the language that looks like working group guidelines. So, perhaps for efficiency in moving this forward, we can jointly look at this proposed text. It's a little bit lengthy, but hopefully we can do it quickly. Then we can go back to the other part of this document because Flip has some suggestions in terms of terminology and some ideas. So we can look at that later. I also put the link to the document in the chat and you can find it on the wiki page as well. So that's Page 25.

Basically, the first part of this section is to summarize the main ideas that we want to reflect in the proposed new language in the working group guidelines. If you look at the bullet points, I would just quickly read through them. First is to rename the section to Complaint Process and use "complaint challenge conflict" instead of "appeal." Flip has a suggestion of not using "disputes" (this word). So that's pending the

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small team’s agreement on that. We can also make that revision after the session today.

The next bullet point is an [issue]. It does not deal with disputes or disagreements with regard to consensus designation by working group leadership. So that’s just to clarify that 3.7 doesn’t deal with that matter and that’s covered in 3.6. We also want to clarify that in the working group guideline.

The third point is that Section 3.7 complaints should not stop the ongoing work in the working group. Then we have clear language to reflect this point.

Another important point is to make it explicit that any litigation-minded behavior or approach should be avoided in this process.

Actually, there’s quite a few bullet points. Maybe we don’t need to read through all of them. Basically, these are a reminder for everyone to remember what was discussed in the previous sections. Then, when we revise the language, we reflect all these bullet points here.

The next section, as you can see with the text in the boxes, is the suggested new language in the working group guidelines. I’m wondering. Flip, do you want staff to read the language, or do you think we can just read the language on your own screen? Or try to summarize it? Whatever method.

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FLIP PETILLION: I think a summary would be sufficient. Maybe it's a good moment here to say why I would suggest to delete every reference to "dispute," all over the text, actually, where appropriate. I think the more we would add the word "dispute" the more we would recognize made by somebody who was part of the working group is actually raising a dispute, and that's not the case. That person may actually have another view or may disagree. That's why I opted for the word "disagreement" instead of "dispute." I just wanted to not make things bigger than they in reality are or not give them more attention than they actually deserve. That's the idea behind that change all over the document.

ANNE AIKMAN-SCALESE: Hi, Flip. Just a real quick question. If this area of disagreement, this section, doesn't deal with consensus designations, what types of disagreements does it deal with? What's covered other than consensus designations?

FLIP PETILLION: There are three situations that are covered: somebody who is under the opinion that it is not sufficiently heard, the situation where somebody is actually questioning a decision, and ... the third ... Ariel, help me, please. Thank you.

ARIEL LIANG: Thanks. The third one is someone who believes somebody is not doing their job in the working group. That could include working with

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leadership, liaison members, staff members. That’s covered in Section 2.2 of the working group guidelines. So three grounds.

ANNE AIKMAN-SCALESE: Okay. Thanks a lot. Sorry, I just haven’t been watching.

ARIEL LIANG: Thanks, Flip. Just a quick question about the word “disagreement.” Do you think that also covers the third group if somebody believes someone is not doing their job? Is “disagreement” the right word for that?

FLIP PETILLION: I would propose to use the same language, just to have the text as clear and simple as possible and not to add complexity where it’s not needed. So I personally would be of the view that that language is okay.

HEATHER FORREST: Thanks. I think I agree with Flip here, while I think we could do a bit of wordsmithing around the true definition of “disagreement.” I think, Flip, the point that you make about not making something out to be more than it is should drive this. So I think we tone down and deal with a potential ... not 100% understood on the third ground – the risk. Let’s take that risk on for the benefit of not making this out to be any more than it is. Thanks.

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ARIEL LIANG:

Thanks very much, Flip and Heather, for the inputs. We can make that universal change from “dispute” to “disagreement” after the meeting. So thank you for that point.

Maybe I can just walk through this section and provide some summary of the content here. You’re welcome to read the details of the text on your own after the meeting. Basically, the first section is to make clear that Section 3.7 should not be a litigation kind of process. Basically the first paragraph is trying to drive that point. Then the people involving the process should abide by ICANN’s expected standards of behavior and not introduce a litigation-minded behavior or approach to the process.

The second paragraph is to make clear that Section 3.7 does not deal with consensus designation by the working group leadership. So we have a sentence at the end to say this is [inaudible] by Section 3.6.

The third paragraph is to also drive the point that Section 3.7 should be treated as a last resort to resolve a disagreement and that other preventative measures should take place before actually a complaint is filed so as to make sure people know not to do that at the outset when someone disagreement happens.

Then I think this paragraph is to actually provide some additional guidance on the complaint process by linking to another related document – oh, sorry. Actually, this is to mention that, in the working group guideline text, we’re going to link to this current document to provide additional guidance. So that’s the introduction section.

PAM LITTLE:

Thank you, Ariel. I just have a question about the paragraph above that you just read out about Section 3.7 as a last resort. Do we mean within the GNSO structure as a last resort or within the ICANN structure? Because I think, later on in the document, it actually brings in the ombudsman. So I'm just not clear whether we are intending to say, "Hey, if someone is aggrieved ..."

Just to also clarify Anne's question, maybe it would be helpful ... This process is mainly designed to deal with behavioral issues. So that's why it's really a bit flawed. It's not like 3.6. It's about consensus designation. This is about someone's behavior, that some feels aggrieved or someone is complaining about others' behavior.

Back to my question, when we refer to last resort, are we actually expecting the complainant to have gone to the ombudsman before they invoke this process or not? Thanks.

RAFIK DAMMAK:

Thanks, Pam. I understand this more in the context of the working group that whoever will make a complaint will try to resolve the issue for going to that escalation and using 3.7. But, based on your comment, maybe we need some clarification to avoid any confusion because, yes, as you mentioned, there is the possibility. We cannot stop someone going to the ombudsman. But I think this is more in the spirit of avoiding the litigation and so on. We want people to trigger such a process really

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as a last resort if they think that they are still maybe unhappy with the situation or something like that.

ANNE AIKMAN-SCALESE: Do you think there's any danger that, if you use the word "last resort," people will think that they should go to the ombudsman first and they might justify going to the ombudsman rather than following the internal GNSO process? And which do you prefer? I would think that you'd want the GNSO process followed before an ombudsman process, but that's just a guess.

No? You don't care? Heather doesn't care.

HEATHER FORREST: Anne has invoked my name. Anne, from my perspective on this, having lived through one of these, I think ... Remember, the initiation of this is done by the individual who's aggrieved. I think you need to give them the freedom to do what they want to do. I think the ombudsman's office is generally set up for interpersonal disputes, not necessarily GDPR related, and other things. As former council leadership, to the extent that someone had a personal grievance, we normally sent them to the ombudsman of a complaints office. If there's something PDP-specific, which is one the ops procedures step in, this 3.7 gives a mechanism for resolving it, but it certainly doesn't foreclose them going to the ombudsman.

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ANNE AIKMAN-SCALESE:           Okay. Thanks, Heather.

MARIE PATTULLO:               Thanks. If I remember correctly, Heather, as well, Herb’s office (the ombudsman’s office) can only really look at things that are expected standards of behavior and/or harassment policy breaches. So some of these behavioral potential problems wouldn’t necessarily be something he could actually deal with anyway, if that makes sense.

ANNE AIKMAN-SCALESE:       I’m sorry. Just coming back quickly, I think the word “behavior” – 3.7 is designed to address behaviors – is what ... I’m not in any way vested in the outcome, by the way. I’m just questioning if 3.7 is about behavior and the ombudsman ... If what Heather is saying is, “Hey, the person is free to go wherever, whenever they want to,” that’s also fine, I think.

MARIE PATTULLO:               The whole idea is to make it as easy possible. Hopefully, we won’t have to use this. We hope we’re never going to get there again. We don’t really want to go there again.

RAFIK DAMMAK:                I think, to understand the background and context for why we even started talking about improving this section[,] it was triggered and experienced by Heather. It’s not a procedure that is used that much and we find out the issue is that we need more guidance. As my understanding, it’s not really about behavior. It’s really that you have a

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member of the team who wants to challenge a decision of something.  
So they can use this process.

Heather, you wanted to add something, or ...

Okay. [inaudible], do you want to add a comment?

UNIDENTIFIED SPEAKER: [inaudible]

RAFIK DAMMAK: Yeah. Let's continue. So, based on your comment, you are fine with the  
current wording, or ...

[PAM LITTLE]: I just thinking the wording of "last resort" could add confusion rather  
than clarity. Basically, we want to encourage the complainant to  
resolve this matter informally with the party that he or she has the issue  
with before actually invoking this process. That's what I think the  
language should reflect, rather than say "the last resort," because it  
could be read as excluding other possible avenues. I think that's my  
view.

RAFIK DAMMAK: Okay, I understand that maybe "the last resort" will have the opposite  
effect that we want. So what kind of language can we propose? Maybe  
to be more explicit that we want the working group members to try to  
resolve informally? Something like that?

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[PAM LITTLE]:                    Yeah.

RAFIK DAMMAK:                Yes, Ariel?

ARIEL LIANG:                    Perhaps my suggestion would be deleting the first part of this paragraph because in the second sentence we're saying that members and leaders of the working groups and the council should all do their part to prevent escalation of the disagreement. So maybe we can expand on that, using "preventive measures" or something like that, and not even mention the "last resort" terminology.

[PAM LITTLE]:                    Okay. Why don't I volunteer to work on some language? Then we can send it to the group for consideration. Basically it'll be along the lines of what I just said: the parties are encouraged to resolve the differences or disagreement before resorting to this mechanism. Does that make sense? Would that work?

FLIP PETILLION:                Yes. I would suggest some language from the International Court of Justice. I think it's Article 37. It's asking member states to consult, [concert], negotiate, and then – and only then – pass to the next step. So if you could use that spirit, that would be nice.

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UNIDENTIFIED FEMALE: [inaudible]

[FLIP PETILLION]: Thank you.

UNIDENTIFIED MALE: Thank you.

RAFIK DAMMAK: So – Heather? One sec, please. Just to be sure, we have some language proposed by Flip. You wanted still to work on the language or just retake what Flip proposed and work around it?

[PAM LITTLE]: I think we can work with Flip. Together the three of us will work on the language.

RAFIK DAMMAK: Okay. I know, Heather. Sorry for the interruption.

HEATHER FORREST: Thanks, Rafik. I wanted to say for the record that I think the document that you have represents a pretty good compromise. One of the biggest concerns that was raised about 3.7 in the report from those who experienced it last year was the lack of guidance. But I think, at the same time, this team has cut the right balance between two little

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guidance and too much guidance because, if we make it too prescriptive, I think we get boxed into a corner and it becomes this ... I think another twin aim was to bring down any suggestion of litigiousness, that this isn't meant to be about a litigation. So [perhaps] what we see in this document is [inaudible] the language right down and try to make it much more plain English and less insightful of [all dukes up]. So I commend the team on what I think is a pretty good attempt. Thanks.

RAFIK DAMMAK:

Thanks, Heather. So we got an action item on this one. Please continue, Ariel.

ARIEL LIANG:

The next session is about: when somebody submits a complaint, what information needs to be included? So it's basically the criteria for the complaint submission. The first criteria, basically, is to spell out what ground this complaint arose from. We listed the language from the working group guidelines, the three grounds: someone believes his or her contribution has been systematically ignored or discounted. The second is about that this person wishes to appeal a decision of the working group or the GNSO Council that charters the working group. So, in our original language of the working guideline, it says the CEO or chartering organization, but perhaps we can just spell it out because we're talking about the GNSO working groups, anyway. So we'll just say GNSO Council. The third ground is that someone believes that someone is not performing their role according to Section 2.2 of the working

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group guidelines. So that concerns working group leadership, liaisons, members, staff, etc. So the first is to spell out what grounds this complaint is based on.

The second paragraph basically says, if this problem or circumstance that gives rise to the complaint has been public knowledge for two months, then this process needs to be initiated. You probably recall we had this debate on whether somebody who raised a complaint needs to get support from another working group member, but this seems like an awkward situation. If it's a personal issue, why do you need support from another? But if it's public knowledge, maybe that warrants escalating to this complaint process. So we tried to reflect this point here.

The third point is about that the complaint must contain details and specific description of the facts of the disagreement with supporting and explanatory materials and rationale. That's to say you can't just submit something barebones. You have to provide evidence to that.

Following that, we also want to drive the point that it doesn't mean you have to submit a novel, like a long document. It needs to be within the limits of word limits and be concise and succinct. This is the limit, I think: a 1,000 word limit. That's a point that the small team discussed before, so I captured it here. If we want to change that pending the small team's input, we can do that. But I think 1,000 words seems reasonable.

Following that, that paragraph is to prevent a rapid succession of a complaints being submitted in the same working group or other

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working groups because that happened in then past and we don't want to make this be an opportunity for somebody to just abuse the process. So basically the circumstance that gives rise to the complaint can only happen once per calendar year, not another.

Perhaps I can just go through this section and then we can take questions. Following that paragraph, it's basically saying the working group leadership will make the initial assessment on whether the complaint has met the criteria set forth above. But, if the complainant disagrees with the assessment, then the liaison will step in to reassess. But the liaison will consult with the council leadership to see whether the complaint has set all the criteria. If it doesn't, then the complainant will be given a reasonable amount of time to resubmit a complainant. But, if the complainant doesn't do that, then the process will automatically bet terminated. So, basically, that's the whole section.

ANNE AIKMAN-SCALESE:

Just a question about the language about submitting another complaint. The prohibition applies where the same complainant has previously submitted another complaint? The complaint about those circumstances have previously been filed by anyone because the language says another complaint already filed during the same calendar year in any GNSO working group. Does that mean by the same complainant? Because it could also be similar circumstances or the same circumstances but a different complainant. I don't know that you would want to bar a different complainant.

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MARIE PATULLLO: I don't think we are, Anne, because the complainant ... So it wouldn't prevent me making a complaint if you had already made one. It's just that, if I've already made one in Group A, then I shouldn't also be making one in Group B, C, and D. That's my [recall] of it.

ANNE AIKMAN-SCALESE: Right. I would suggest you say that you say another complainant already filed by the same complainant during the same calendar year. I'm coming to it cold, but I don't think it's that clear.

ARIEL LIANG: Actually, this is a good question raised. I think the [orange 9-10] is the, "The same complainant shouldn't submit another complaint that contains exactly the same circumstance." But maybe we can leave the language as is for interpretation because it seems like it could become another potential problem if another complainant also filed a complaint. That's the exactly the same situation. It just seems duplicative. So I'm not very sure at this point whether we want to make it explicit that it's regarding the same complainant. I think that the point we're trying to drive here is that the circumstances that gave rise to another complaint is already filed in the same calendar year. If that already happened, then another new complaint shouldn't be submitted. So we're trying to drive that point. I don't know whether that helped anything here.

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**RAFIK DAMMAK:** Thanks, Ariel. I'm not a native speaker, but reading this is more like we don't want a complainant to make the same complaint in several working groups because of the same circumstances. For example, "I don't like this working group chair, and I will make a complainant," and another group [is] involved. So that's my reading or interpretation of this one. It seems quite specific here, but I'm not sure it really raises more confusion.

**ANNE AIKMAN-SCALESE:** I'm sorry. I have to leave and I'm not leaving because people rejected my comment. But I do think it'd be much clearer to the public in general if you said, "By the same complainant." Thanks. I have a phone call.

**RAFIK DAMMAK:** Thank. Yes, John?

**JOHN:** While we're wordsmithing this little paragraph, I think that "during the same calendar year" probably should be "during a one-year period" because that means, if it were a complaint in December, then they could file the same thing just a few weeks later.

**FLIP PETILLION:** I would like to recall that, during our lengthy discussions, we actually said that we could cover a lot of details and additional text. We wanted to avoid that. So I'm sure intellectually we can bring up a lot of points, but where is that going to get us? That's it.

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RAFIK DAMMAK: Okay. Pam, you want to comment?

PAM LITTLE: Actually, I have no issue with Anne’s suggestion, but if that’s how we’re going to deal with it, we just change, at the beginning of the sentence, and say, “A complainant blah, blah, blah, already filed by the same agreement.” But I do agree with John about the rationale for the same calendar year. Maybe we should just say, “Filed by same complainant and then complaint is still pending.” If there’s a pending complaint, rather than setting the time limit, it means there’s an open complaint and they shouldn’t be filing the same complaint.

RAFIK DAMMAK: Thanks, Pam. That looks like an acceptable suggestion. Let me double check here. Any further comment on this paragraph?

PAM LITTLE: By the way, I just want to add a comment. Rafik is feeling suffocated by being surrounded by lawyers, so can we avoid wordsmithing a bit?

RAFIK DAMMAK: No, I’m okay. So just checking. Are there any other concerns here or any suggestions for amendment?

Okay. Ariel, there’s still something you want to present?

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ARIEL LIANG: I'm finished.

RAFIK DAMMAK: You have finished, but for the rest of the document?

ARIEL LIANG: Just [inaudible]

RAFIK DAMMAK: Yes. Okay, please go.

ARIEL LIANG: Thanks, everyone, for the input. We will revise that, incorporating everyone's suggestions. It's very helpful.

The next section is to spell out who will be involved in the process and what their roles are. Basically, we have several categories of people that would be involved. One category are the people from the GNSO Council, and then one category is the staff members from ICANN org. The third one is the ombudsman. Basically, for the council we have three subsets, sections, of members. The council leadership is the first one. The liaison to the working group is the second one. The third one is the Ad Hoc Complaint Committee that consists of current and former GNSO councilors.

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Basically, the following section is to provide some additional clarification of what their jobs are in a complaint process. Basically, for the council leadership, the point we tried to emphasize is that they act as one collegial body in the complaint process. The council chair needs two council vice-chairs on all decisions. So that's the first point.

For the council liaison, the point we want to drive here is that, first, the council liaison needs to be involved in the process from the very beginning. When a complaint is submitted, the council liaison needs to be notified immediately. Then the council has two specific jobs. One is the status reporting of the process to the council. The second job is facilitation of the resolution of the disagreement in consultation with the working group leadership and the council leadership.

As you recall, if a working group has several co-chairs or a leadership team and if they have a disagreement on how to resolve this situation, then the council liaison will have a crucial role to facilitate their resolution of that and perhaps step in and try to handle the relevant part of the complaint process. So that's the point we want to emphasize here.

The third part of the council category is the Ad Hoc Complaint Committee. Their job is to provide a balanced view and inputs to facilitate the resolution of this issue. We don't really have a very specific purpose for how to select the members. Basically, the council leadership and liaison and also the working group leadership will decide who to invite to join the Ad Hoc Complaint Committee so as to provide another body to provide them inputs so they don't ... And the

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working group leadership won't fill their handling of the whole complaint by themselves.

Following the council category, the second category is the ICANN org staff resources. We want to emphasize that their role is an advisory role during a complaint process versus the decision-making role for the council members. The staff member that we have spelled out in this section is ICANN Legal, the Complaint Officer, and the conflict resolution staff. Actually she's in the room with us right now. So basically we have provided some – it's Melissa [Allgood] right here. So basically we tried to clarify what kind of advice they could provide. For Legal, basically they can interpret the ICANN bylaws and suggest appropriate actions in accordance with the bylaws. For the Complaints Officer, they will assist in handling complaints concerning the performance issue of the support staff. So that's basically the third ground for the complaint. For the conflict resolution staff, her job is being the neutral dispute resolver in case there's deadlock or an impasse in the working group. So these are valuable resources to help the council to resolve the issue.

Another paragraph we tried to clarify is that the working group leadership in consultation with the council leadership and liaison can consider when to use the ICANN org resources [for] the particularities of each complaint situation. So they have that decision-making power here.

Lastly is the third category, which is the ombudsman. We know that it's already an established dispute resolution mechanism in ICANN, but it

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should remain separate from the Section 3.7 complaint process. But, at the same time, again, if the working group leadership, in consultation with the council leadership and the council liaison, thinks it's beneficial to involve the ombudsman early on in the process, they have that flexibility there, too.

Another important point is, if the disagreement cannot be resolved by 3.7 at the council leadership level, then the ombudsman will be the final escalation step here. So it's the second sentence in this paragraph.

So that's this section about who should be involved in the process.

MARIE PATTULLO:

Could you scroll back up, please, Ariel? Thank you. When we were talking about "The liaison shall do this, the chair shall do that," the obvious thing – I'm pretty sure we dealt with this, but I can't remember where it is in the document – is, what if the complaint is about the liaison? So what if the person we've put front and center is the one that the person is complaining about? Do we need to specify or am I being too much of a lawyer? Or some kind of general catch-all footnote on Page 857 that the council leadership will act like decent human beings and connect their brains? I think this is something that we might need to at least put somewhere in the documents. Thanks.

RAFIK DAMMAK:

Thanks very much, Marie, for raising that point. I think maybe we could provide some kind of umbrella paragraph, like, "If any of the members concerned in this paragraph is basically a party of this disagreement,

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then what other mechanism can come into place?” So I think the Ad Hoc Complaint Committee was probably created just to foresee that possibility. So maybe another member in the Ad Hoc Committee or the council leadership can step in to handle it.

Flip?

FLIP PETILLION:

We could, in the very beginning where we speak about the role of the liaison regarding this process, add language like, “except in the case of conflict of interest,” and then, “the liaison will [inaudible],” at the right place somewhere up in ... But I wouldn’t change it in this part of the text, personally.

But I would also to remind actually that this result, this text, as been discussed and is actually compromised. There are still paragraphs here that, as a lawyer, I would like not to see or to have seen written in another way. But that is a personal opinion, and that does not mean that I cannot live with the text as it is there. It’s a compromise.

RAFIK DAMMAK:

Thanks, Flip. I think this is an acceptable solution. At the end, we are not working on a legal document. We are hoping to give more guidance to this process.

Ariel, please go ahead.

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ARIEL LIANG:

Thanks, everyone, again. In the next section, we try to emphasize that the involvement of external counsel is strongly discouraged by the GNSO, and the parties involved in the complaint processing need to represent themselves. All the correspondence or communications in the proceeding will only go to the party involved in the complaint process. So that's what we want to emphasize here.

Seeing nodding from Marie and no comments, I guess we can move on to the next part, which is about the actual procedure itself. If you recall, when we discussed this part, we have two versions of the procedure. One is the light version. The other is the detailed version. The agreement is we only provide the light version to provide a broad stroke of how this process looks like in general. Then the detailed procedure is more like an example. Maybe they can follow it or they can adjust some of the elements to suit each complaint.

In general, how it works is, first, the working group members involved in the complaint shall always first discuss the matter with the working group leadership, but then also the leadership will consult with the liaison and the complaint committee in the discussion and may be able to invite resources to participate in this stage of the complaint process. That includes ICANN org, the ombudsman, etc. So that's the first step of the procedure.

The second step is that, if the matter cannot be resolved at the working group leadership level, then any party involved in the disagreement may bring a complaint to the attention of the GNSO Council leadership. Then the council leadership shall attempt to resolve the matter in

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consultation with the liaison, the complaint committee, the working group leadership, and other resources deemed appropriate by the council leadership. So that's the second step.

The third step is, if the matter still cannot be resolved to the satisfaction of the parties involved in the complaint at the council leadership level, then any of the party may lodge the issue with the ombudsman. That's the final escalation. Then the ombudsman shall attempt to resolve the matter in the manner of his or her own choosing.

Basically that's the three steps of the complaint procedure.

The next paragraph is to say that, at all stages of the complaint process, the decision-making party – basically, the working group leadership, the council leadership, the liaison to the working group, and the complaint committee – have the discretion to define the specific procedure they want to follow in making their decision. So we don't want to be too prescriptive here.

The next paragraph is to say that we didn't want to specify how much time each process should take place and how quickly each decision needs to be made. So anything involved with the timing we're saying is a reasonable period of time, and then we don't really specify what's the maximum time period that defines the reasonable period of time in all cases.

Lastly, the last paragraph is to provide a detailed example for how a process can look like. That's basically Section 5.2 of the implementation document. Again, all the decision-making parties have

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the flexibility to modify and adapt the process flow based on their own particular situation.

So that's basically that section.

RAFIK DAMMAK: Thanks, Ariel. Just checking because we need some time check for the rest of the agenda. So we are seeing there are some paragraphs left?

ARIEL LIANG: Just two.

RAFIK DAMMAK: So let's cover them since I don't see anyone in the queue.

ARIEL LIANG: Just to wrap this up, the second-to-last section is about abuse of the complaint process. Basically, we're saying that, if there's abuse – someone abused the process – then this person is subject to a five-year bar from utilizing the 3.7 complaint process.

Then we also provided two bullet points on what abuse means. One bullet point is presented materials primarily for improper purpose, including but not limited to harassment, causing unnecessary delay, or needlessly increasing the workload of the working group leadership and/or the GNSO Council. The second bullet point is about presenting materials that contain a deliberate and material falsehood. So these

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are the two factors that can explain what abuse means, but this is not exhaustive.

Then we also say that the body that will make that determination of what is an abusive complaint is the complaint committee. But the complaint committee will consult with the working group leadership and the GNSO Council to define whether this is an abusive complaint.

Pam?

PAM LITTLE:

Hi, everybody. I'm just wondering whether everyone has thought about this five-year ban, whether it's too harsh. It seems to me a bit too long. What do folks think?

HEATHER FORREST:

We have a pretty dodgy history with this kind of thing in the GNSO. We have some people who have been removed from policy development permanently. So I wouldn't say that we go on that precedent. But I think you raise a valid question, Pam, but I offer the history, just by way of background.

PAM LITTLE:

Okay. But, if I may, Heather, we are talking about barring the person from using the complaint process, not removing someone from the right to participate in a working group. I think they're two different scenarios. Thanks.

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HEATEHR FORREST: Thanks, Pam. Fair enough. That’s an appropriate distinction to make. I think, if I think about that, what I would say is back to the early discussion with Anne Aikman-Scalese. There are other mechanisms that someone can use to raise a concern, so I’m not sure if it bars them in a five-year period from raising any complaint within the ICANN environment. But I a PDP-specific complaint I think is a valid point. So how do we strike the balance? If we think about the purpose here, rather than let the form drive the function, let’s go the other way around. The purpose needs to be that we need to discourage someone from vexatious complaints. How do we do that?

Back to Rafik.

RAFIK DAMMAK: Thanks. I understand Pam’s comment. Maybe five years is quite long. So the understanding here is to prevent any abuse. I guess that most of the cases would happen within the same working group. We don’t want [to be] disturbing members. So maybe we prevent barring them from using this until the end of the PDP working group or something like that, in this case. Or not. Maybe it’s just a one-year bar. I think it’s quite long. Something like that. Or maybe we can give some flexibility.

ARIEL LIANG: Sounds good. I will think about that and try to revise the language to – Marie?

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MARIE PATTULLO: Just say, “Up to five years.” That leaves it completely at the discretion of whoever is in charge.

ARIEL LIANG: Thanks, Marie. That’s brilliant. Thank you, all the lawyers in the room who had the great idea of rewording this. That’s very helpful.

The very end of the document is about the termination of the complaint process. We’re trying to make the point that 3.7 is not mutually exclusive and does not impact any other conflict resolution mechanisms that may be available to working group members. So the issue is already resolved at any point of the proceeding, then the complaint process should be deemed terminated. So that’s the paragraph here.

So that’s the end of this section.

RAFIK DAMMAK: Thanks, Ariel. This is the end. Let’s check if there are any comments or concerns. We went through this language. We have some action items to make specific changes. So we have that. When we can get that for the team for a quick review—

UNIDENTIFIED FEMALE: [inaudible]

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RAFIK DAMMAK: Huh? ASAP? Okay.

UNIDENTIFIED FEMALE: [Two weeks].

RAFIK DAMMAK: Okay. So we have these action items because still our objective really is to finalize this. I think we are in the right direction for now.

Any further comments or questions?

Yes, Ariel?

ARIEL LIANG: I think there are two more points from Flip. I just want to make sure people remember that. The first point is we need to probably check the other related improvements. One is the liaison document. The other is the working group leadership document. If there's specific job duties mentioned in this complaint process, maybe we need to reference to this document at least. So basically it's just linking these related improvements together.

Also, Flip has a second point. I think it's on Page 12 of the document. Let me just quickly scroll up here. It's about an external legal counsel point. If you look at this paragraph on the screen: "If one party insists on legal representation, the GNSO Council, in consultation with org and the ombudsman, should consider whether there are ways, if any, to provide assistance to the other parties involving the proceeding to

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ensure a level playing field.” So I think that’s the idea originally from Flip, but then Heather and I had some comments on the document. We think, if it’s not really possible to provide that resource and then we leave this paragraph here, would that give people false hope or something like that? So maybe we should just delete this paragraph?

Flip has another suggested language in a comment. It says, “If one party insists on legal representation, other parties may seek assistance in the proceeding to have a level playing field.” So I just want to bring that to the attention of the small team about this particular paragraph.

HEATHER FORREST:

Thanks, Rafik and Ariel. For the benefit of the rest of the small team, can we take two minutes to discuss this? Because I think one of the big pieces of feedback that got pumped into the PDP 3.0 process, particularly around 3.7, was that that was just so not within the spirit of the operating procedures. It wasn’t even anticipated that somebody would lawyer up, so, when it happened, it took everyone by surprise and we scrambled and didn’t know what to do. Suddenly it became very litigious and we all started to worry about personal liability.

What can we do? I think I was leaning towards deleting this paragraph, but I don’t know that deleting the paragraph gets us any better off than where we are now. How can we do that? How can we more actively discourage lawyering up? To the language that Ariel has in here, the highlighted language, I’m afraid that that just slides a little bit over into encouraging or at least enabling.

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FLIP PETILLION: I do understand your concern, and I would tend toward deleting the entire paragraph. But then I think we also need to delete the paragraph where we discourage representation and where we encourage people to stand – what was it? – to make their own representation because that other paragraph would have the same effect and would actually come down to incenting people to seek legal representative. That is precisely what we want to avoid. So I would plead for deleting the two paragraphs.

UNIDENTIFIED MALE: Thanks, Flip. I tend to agree. I’m reading this again. I would rather not refer to legal representation at all. Now, I take your point or, are we better off now? Probably not. But is there a way to tackle that anyway? If somebody wants to hire a lawyer, they will, I think. Is there anything we can do about it? So I’m leaning towards deleting this.

MARIE PATTULLO: Can we turn it into a positive somehow? “For the avoidance of doubt, we encourage all the parties to ...,” deleting both of the paragraphs, but replacing would just – you don’t think that would help?

HEATHER FORREST: I’m going to communicate an idea from Berry. Hah! It’s not mine but I love it. What is bringing in counsel invalidates or terminates the 3.7?

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UNIDENTIFIED FEMALE: Ooh.

HEATHER FORREST: That we can do –no. John says no. Why?

JOHN: There's two issues we have going on here: fear of personal liability and then trying to deescalate. I think, if you do that, it's going to increase the fear of personal liability or just being dragged into legal proceedings when somebody lawyers up. That would be my concern there.

Really the only solution is to probably have an agreement that people sign when they join a working group that they're not going to bring litigation as a result, that they're agreeing to this lesser sort of legal proceeding.

FLIP PETILLION: [Paul], I'm actually more and more convinced that deleting is best because we try to be perfect and that's not going to work. And we really want this to be exceptional. If the case ever presents, we will [face them], really. Why try to solve a hypothetical situation?

UNIDENTIFIED FEMALE: [inaudible]

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FLIP PETILLION: Yes, but it was very, very exceptional and we still think that that kind of situation should be avoided and exceptional.

RAFIK DAMMAK: Okay. We have Heather and then you. Heather? Okay. Pam?

PAM LITTLE: I feel a bit uncomfortable barring people from having legal representation, being a lawyer myself. It's almost like it's someone's birthright. You should be able to seek legal representation if you need help.

I believe the circumstances that gave right to that previous case we all feel [inaudible] about because maybe the aggrieved party perceived there was an imbalance of party because the other party was indeed a lawyer. Does that make sense?

Okay.

FLIP PETILLION: But even if that other party is a lawyer and – well, as I said in a previous discussion, according to some jurisdictions, that lawyer would need representation. That lawyer would not be allowed to plead his or her own case.

PAM LITTLE: Okay. Just to conclude, I agree or support the idea of deleting it, but by making it silent, we leave it open that a party, a complainant, may seek

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legal representation. I don't think we should explicitly disallow that. It seems to be against my belief that you should be able to seek legal representation.

RAFIK DAMMAK:

Okay. I'm the non-lawyer here. I understand that even adding or deleting language won't change the situation that might be because I don't think we have that ability to prevent someone from lawyering up. I think the whole idea is we try to discourage, but I think in practice that's not going to work anyway. If we're deleting, let's make things easier and avoid any incentive for people to do that. Maybe that's the best option.

For John's idea, I'm not a lawyer. Possibly we can put that, but it can be questioned anyway. So I'm not the lawyer, but listening to all of you guys, it seems that we don't have really any way to prevent that from happening. So let's not make this text more complicated.

Yes, Heather, please go ahead.

HEATHER FORREST:

Thanks, Rafik. May I ask a clarifying question? Flip, you said you wanted to delete both paragraphs. Are you referring to the paragraph we were looking at before and this one, 3.7.3? Just to be very clear so these guys know what they're supposed to do.

FLIP PETILLION:

Exactly, yes.

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HEATHER FORREST: Okay. I'll say I'm not sure I agree with deleting 3.7.3. Maybe get rid of the word "strongly," but I leave it to you guys.

FLIP PETILLION: Listen, this is also in the CEP (the Cooperative Engagement Process) which precedes the IRPs. In all CEPs, ICANN Legal will ask parties to be present in person. I have done a lot of these. Parties do not necessarily want that. They seek representation with a particular goal. They want to be represented. Period.

Actually, I think that that passage, that that paragraph, regarding the CEP is not a wise paragraph. I wouldn't have put it in, frankly, as a lawyer. So I don't understand why it is there in the first place.

This is similar language. I don't like it. The clients don't like it. It's incenting people to pass from disagreement to proceeding, to litigation. So let's put it out.

RAFIK DAMMAK: Okay. Let's take [Marie] and also do the time check. How much do we have left in this session?

ARIEL LIANG: We have 26 minutes.

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RAFIK DAMMAK: Okay.

MARIE PATTULLO: Thanks. I agree with Heather. Maybe just keep the first sentence if you're concerned about the rest. I understand what you're saying, Pam, but we have no possible right as – we can't prevent somebody going to a lawyer. We can't. what we can say is that, "For this process in 3.7, please don't bring a lawyer." But if they choose to go and hire Baker McKenzie, of course we can't stop them from doing that. But I would like to see wording that says we are trying ... I can give you a completely different example. In the European Union, we're part of a memorandum of understanding with the commission on the specific topic. Everyone who signed the MOU has said, "We will not litigate against the people in this MOU." If you want to litigate, you leave the MOU. That's it. So of course, if somebody isn't determined to hire Flip and do whatever, that's one thing. But I would like to see that we strongly discourage representation. Even just that sentence.

PAM LITTLE: Okay, Marie. Can I just jump in? I actually don't mind this language. What I was saying, supporting Flip's suggestion of deletion, was that the other paragraph. If the party is represented, then we will see whether it's possible to get assistance or something. That to me is superfluous and really maybe counterproductive. Thanks.

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FLIP PETILLION: May proposal then would be to reformulate a little bit this paragraph and to turn it into a positive text. Instead of saying, “strongly discourages,” it’s, “strongly encourages parties not to represent themselves,” like we see here. But “to personally defend their case” or something like that in better English.

UNIDENTIFIED FEMALE: [inaudible]

FLIP PETILLION: Present their case. Present their argumentation.

RAFIK DAMMAK: Okay. So I guess we [inaudible] here to some kind of action item for this text and see where we want to add something.

BERRY COBB: I guess I’ll be the wet blanket. We recognize that we can’t prevent lawyers from every getting involved, so we don’t fix the problem that we set out to do, ultimately. So I guess the additional action then is, what are we going to do if there is another lawyer even in extreme circumstances?

RAFIK DAMMAK: Thanks, Berry. I don’t think we have, at our level, that much we can add in such a case if this happens. So we got this action item to rephrase or reword this. I think we can maybe move to the next agenda item. What

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I can conclude myself is that, if there is a problem, I'm pretty sure I cannot hire a lawyer. So I'm safe here.

Let's move to the next agenda item. We have around 20 minutes., so I guess it will just be an opportunity to maybe present the discussion paper and the question and start from there. Berry? And let's wait to get the document shared.

UNIDENTIFIED FEMALE: [inaudible]

RAFIK DAMMAK: Huh?

UNIDENTIFIED FEMALE: [inaudible]

RAFIK DAMMAK: Oh, [inaudible]. Sorry, Julie. Sorry, Berry.

JULIE HEDLUND: Thank you, everyone. This has been somewhat significantly reworked from the way it was originally conceived after we went back to – this was explained on the last call, so I won't get too far into it – the original intent of the improvement. It related to the objective in those cases where conflict in working groups is preventing progress and/or existing

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conflict mechanisms have been exhausted. The council should have access to independent conflict resolution or mediation experts.

I know when Flip was first putting together some thoughts on this, which has been mostly overtaken by events, we hadn't done any of the work in Improvement #9, where we looked at the various resources that were available for conflict resolution. So we took another look at this and tied it back to the original implementation plan, where the steps were that the council liaison needed to be proactive in identifying potential issues and challenges at an earlier stage that may need mitigation and council attention and the council should consider the establishment of a panel of volunteer mediators that can be called on when appropriate. As described here, we felt that the first step was addressed by Improvement #5 with respect to the roles and responsibilities of the GNSO leadership and liaison.

Then we also note the various sections of Improvement #9 that also apply here and that we believe that, with the clarifications of both Improvements 5 and 9, the council liaisons would have a clear understanding of what's expected to form their roles and to help leaders, members, and liaison be accountable and mitigate issues early on.

I'm just going to also call out the edits that Pam has provided. Thank you very much, Pam, for reading through the document. At the end of this paragraph, Pam's revision is to take out "and the regular review process of working with leadership and the newly created comprehensive guidelines addressing complaints made via the 3.7

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complaint process of the working group guidelines.” That is, again, another very important correlation or linkage to this section.

Again, as an overview, what we found in looking at this document is that, with all the work that had been done since we first considered this improvement, we feel that we can harness this work that’s been completed and tie it into this document rather than reinventing the wheel, so to speak.

Onto the next paragraph and additional edits from Pam, we note that, with respect to the second implementation step considering the establishment of a panel of volunteer mediators, the PDP 3.0 small team considered this step and determined that it is unlikely to be feasible due to the difficulty in finding qualified and willing volunteer mediators. In addition, the small team noted it may not be necessary, as ICANN or already has several in-house resources that the GNSO Council may access for conflict resolution and mediation. These include the ombudsman, the complaints officer, the new conflict resolution specialist, and ICANN Legal. In particular, the new position of the conflict resolution specialist was specifically created to address the need for access to a neutral mediator for conflict resolution.

Again, this specialist position was not one that we knew about at the time when we were first looking at this improvement. So we’ve tied it in here. So we’ve noted that consequently the small team suggests not to proceed with the establishment of a panel of mediators. Accordingly, the next step for implementation would be to develop a brief guidance

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that the council should access as the same resources, etc. I won't read that all off here.

So what you see in the next section is actually the guidance piece of this document. This would be the guidance that then would be provided to council leadership. Then the selected resources are listed. These descriptions are largely carried over from Improvement 9 with some minor edits as appropriate to this section. I won't read these all off here. You've seen them already in Improvement 9.

Thank you very much, Pam, for your very helpful edits, and cleaning up the document. Let me pause there and go back and see if we have any questions about the document as laid out here or any suggestions for changes, etc. Thank you, and over to you, Rafik.

RAFIK DAMMAK:

Thanks, Julie. I'll check.

I don't see anyone in the queue but I guess those changes would be also helpful to communicate to the GNSO Council about the rationale for why we choose this direction for this improvement. So I think, for this one, probably it can go for a final call, if there is no objection today and we can agree on the timing to get this done.

JULIE HEDLUND:

Thank you, Rafik. I'll go ahead and incorporate the changes that Pam has provided. We'll send it around for final call. What timing would you like?

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RAFIK DAMMAK: We are missing some people, those who didn't make it to Montreal. and those who had other engagements. So I guess maybe just after this meeting. Maybe next—

UNIDENTIFIED SPEAKER: [inaudible]

RAFIK DAMMAK: Yes.

JULIE HEDLUND: I can make the changes and get them out for final call today, but how long should we give people for the final call?

RAFIK DAMMAK: Let's say at least week until maybe they go back home. So maybe meet next week.

Yes, Ariel?

ARIEL LIANG: Do we want to just do final call for #9 and #15 together because it's a package? So we'd just be consistent. I will try to get this document ASAP and do final call like ...

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RAFIK DAMMAK: I agree. I have no preference. I say this one we can get done any way, but if you want for both, okay. Why not?

Okay, so we got this action item. We have 15 minutes left. We still have one ... How many action items? Two, or ...

UNIDENTIFIED SPEAKER: [inaudible]

RAFIK DAMMAK: Okay. About Improvement #17 is to start the discussion, but I think that needs much more. I'm not sure how many already read that discussion paper.

With regard to the next steps, maybe just to remind people. Yes, Berry? About the next steps after the Montreal meeting.

BERRY COBB: Thank you, Rafik. First, I don't think I sent the discussion paper to the full list. I only sent it to staff and you, just for review first. Nothing top secret in there. I'll clean it up a little bit and I will send it to the list to be shared. It's more really just chicken scratches to organize my thoughts around what needed to be done for Improvement 17, which ultimately concludes that I think we need to do some preliminary work to help inform exactly what the deliverable is there.

Really, I guess another action items or something for you to think about or chew on until we meet the next time is, what is the exact definition

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of resources in the context of our PDPs and working groups? I'm not a certified project manager, but when I hear "resources," that means many things to me. It's people, it's process, it's technology, it's money, it's time, available bandwidth. So I think we need to get some clarity about exactly what that means for us. Then that will hopefully better inform what kind of deliverable we want to do leading up into the strategic planning session because, at the end of the day, while we were just talking resources, this really does feed into this larger conversation and other external forces about resourcing and prioritization and some of those kinds of things. So we just need to spend some time to define what we're really talking about. Thanks.

RAFIK DAMMAK:

Thanks, Berry. Sorry, I think, just before the ICANN meeting, I received so many documents, so I missed that. But, yes, we can send that version to the whole team and we schedule. That's maybe a good way for the transition to discuss about what we do post-Montreal meeting and next steps.

So I guess one is maybe we continue our weekly calls. The topic will be probably one of our agenda items. So this is a reminder of what we presented, an update to the GNSO Council. We sent already the letter asking for input to the GNSO stakeholder group constituency and also the SO and AC. We will get their input, I think, as expected by the 22<sup>nd</sup> of November, but probably – the 27<sup>th</sup> or 22<sup>nd</sup>?

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ARIEL LIANG: The 27<sup>th</sup> is the day of the webinar and the 22<sup>nd</sup> is the deadline for input.

RAFIK DAMMAK: Yeah. But probably we might get, after that ... It's not a strict deadline. Yes, we have also the webinar and we thought that should be not just for the incoming councilors but open to all in the way we can present the improvement. But this is more like a communication and getting input. We still also have to finalize what we have [inaudible] #5 – that's ongoing – and planning for the next phase, like the parking lot items and the charter template revision.

Anything else you want to add?

ARIEL LIANG: Perhaps staff can suggest that we can do a first stab and check the relevant improvements and see what part of the working group charter template needs to be revised. Then we can bring it back to the small team for a discussion.

RAFIK DAMMAK: Yeah, I think that makes sense because what's [there] for #17 we can cover later if needed to make changes.

Yes, Marie. Go ahead.

MARIE PATTULLO: Do we have a time for the webinar, please?

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RAFIK DAMMAK:                      Sorry? Time? Yes.

ARIEL LIANG:                      Excellent question, Marie. Actually this was just something I was discussing with Natalie earlier. We're trying to identify a time. Priority is for councilors – to have as many as possible – to attend. Then we also want to consider the wider public and not make it too formidable for others to attend. So we will circle back with the time.

RAFIK DAMMAK:                      Don't worry, Marie. We will make it at a friendly time for us. Any other comments on those next steps if you think we are missing something? I hope that we are all on the same page here. We still have a few calls after Montreal, but I hope that we will finish soon because most of our work is really that we need to deliver and finish in a way that some of that can be used for the SPS meeting in January. So we have two months left, counting the holidays and so on. So maybe we need to schedule the next calls.

ARIEL LIANG:                      The question is, do we want us to do weekly calls? Or biweekly? Or ...

RAFIK DAMMAK:                      I hope you mean biweekly, not just bi. I guess it works. For example, I think, for #15 and 9, we are almost done. We just have those action

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items and we will do as usual the review as the final call in the mailing list and urge everyone to review so we are all on the same page. But I think then mostly we will spend time in #17 so we will have that introduction and we start the discussion. As for other improvements, Berry and myself will work on that and present to the team for review. So biweekly calls would make sense.

I guess we can skip next week, just after Montreal, to give you some holidays, guys.

Anything else, Ariel?

ARIEL LIANG:

Nothing else really. I think just one reminder is for #4, the consensus playbook. That's in progress because the contract is still in progress. So there should be something developed out of that improvement. But it may not meet our timeline because we're involving a vendor to do that work.

RAFIK DAMMAK:

Okay. When you say that one is not going to meet our timeline, it kind of scares me. What is the ETA to get that playbook ready?

STEVE:

It depends on when the agreement gets signed, of course, but I think we're allocating approximately a couple months to get everything done. We'll obviously try to get things done quick in that, but if you recall, the request asked for initial background research. There's

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interviews that need to be conducted, and then of course the review and revision cycle. So we're allocating about two months to do that. Thanks.

RAFIK DAMMAK: Two months. Just to clarify, you're saying it's because of the signing of the agreement. So I can assume the vendor didn't start yet the work?

STEVE: That's correct. It has not started yet.

RAFIK DAMMAK: Okay. So maybe just giving us later on more – I'm not going to see a detailed timeline, but just to have an idea so that we can also communicate to the GNSO Council why that specific improvement maybe will be available later.

STEVE: One of the things I can do right now without even having that agreement signed – the part that's not under dispute is actually the deliverable dates. So I can give you that so you can at least see the t-minus, essentially – about how long we're allocating for each item – so you can see all the deliverables and about how long it takes. But when it gets finished will obviously depends on when it starts, if that helps, if that makes sense.

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RAFIK DAMMAK: That’s quite a philosophical statement you made, but I get it. We know how long it will take but still we don’t know about the start data. Okay, thanks.

We have five minutes left, but I think we are finishing early if there is no AOB or any comments or questions.

Yes, Steve?

STEVE: I was thinking about waiting until the end, but I have this wacky idea for #17. This coincides with some of the discussions around the fact that ABRs are going to be submitted relatively soon again. So I’m wondering if there’s some external expertise that might be needed to do some of this work. So maybe what could come out of 3.0 is actually the recommendation that there be that ABR to address some of this work more holistically about the project management, about the resource planning. We talked briefly about the fact there might be an ABR around this.

RAFIK DAMMAK: Or ABRs.

STEVE: Of course, depending on your guys agreeing. But maybe the PDP 3.0 aspect of it actually gets tied into that and it gets related and that helps meet the requirements for this #17. But it recognizes that the work here

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is more extensive and more involved than maybe what we can all do as a small group. Thanks.

RAFIK DAMMAK: Thanks, Steve. We are just starting a discussion on #17, so maybe it depends on how will progress there. But I get your point about taking the opportunity of the ABRs maybe if we need some external resources, not just for 17 but maybe for other improvements. This probably can be linked to our work when we have to deliver a final report and prepare for SPS. So we need to check the timeline for the ABR. I think they start from the 17<sup>th</sup> of December, and the deadline for submission is in January, as usual.

UNIDENTIFIED MALE: [inaudible]

RAFIK DAMMAK: Okay. Yes, Berry? And, Pam, you want to add something?

PAM LITTLE: [inaudible]

RAFIK DAMMAK: Okay. Berry?

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BERRY COBB: Slightly different topic, so, if you're not done with that, then ... okay ...  
Oh, my God. I just lost my thought.

MARIE PATTULLO: Can I just [get] the timeline and when you're going to send that to us,  
please?

BERRY COBB: In terms of sending it, I'll send it out in a couple of days. It's very short.  
Again, it's just really chicken-scratch kind of stuff. But in terms of reviewing the charter, because I think that it touches on what Steve brought up about bringing in some external resources – as I mentioned, I'm not a certified PMP, but, at the same time, I equally understand how difficult it is to size the amount of effort or to gauge the amount of deliberations on certain policy topics because you have a whole world of unknowns when you're starting these discussions. So it's hard to put a time on it and we fall continuously in the trap of just making it a calendar date focus. True project management is being able to size the text for X number of days. Typically it's a reasonable estimate of getting something done. It works great in making widgets, but it doesn't work as well here. That's why I was curious about bringing in a super PMP guy to get their impression on how we could better organize our work.

But the reason why I brought it up – thank you, Marie, about the timeline; that was the trigger – is, when are we going to have the discussion about all of the changes for our current charter template. As a part of that and some of the work that we've done in EPDP, we've

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taken this building block approach. Within each block, there is a repeatable set of tasks that need to occur, such as day-zero reading and then having a first reading and then a second reading and some sort of agreement about whatever small deliverable is produced out of that building block. Then you take all of the building blocks together to make the report.

So I've got a pretty extensive first draft outline that I eventually would like to share with the group. I think, if we can really take that approach in our chartering stage in all of our work, we may have a better predictable path of being able to size the effort, put a delivery date to it. Dates will always be missed one way or another or they're always challenged, but, in regards to limiting our scope of work so that it is manageable and that we try accomplish things in 12- or 18-month timeframes instead of letting things just roll on for multiple years ...

So I guess the question is, when are we going to get back to reviewing the charter template. Thank you.

RAFIK DAMMAK:

Thanks, Berry. I think that what we discussed before is that staff will start with the first stab for making changes to the charter, but that's just the beginning. We can bring what you are discussing about adding these elements about [shrinking] and how we size the work and [be more specific] to help the teams to do their work and planning.

I think also it will be, to some extent, tied to #17 because it's the whole thing of how we plan how we manage and how we report and monitor.

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Okay, I think we got a lot of action items. Thanks, all, for attending today's meeting. See you soon this week. Thank you. This adjourns the meeting for today.

**[END OF TRANSCRIPTION]**