

Transcription ICANN Dublin
GNSO session Saturday 17 October 2015
Standing Committee on GNSO Improvements Implementation

Note: The following is the output of transcribing from an audio. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

On page: <http://gns0.icann.org/en/group-activities/calendar#oct>

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page

Jonathan: All right, so next session is an update and report back from the standing committee on GNSO improvements. Those of you - most of you will know that this is a committee that's been instituted originally on the back of the last set of GNSO reforms or revisions and we elected at some point to retain the standing committee to deal with prospective improvements to GNSO processes on an ongoing basis. The current chair of that group is Anne Aikman-Scalese and Anne is here - welcome, Anne, to...

Anne Aikman-Scalese: Good morning.

Jonathan: And I know the SEI has met this morning and so we can hear from you right away. So over to you.

Anne Aikman-Scalese: Okay, thank you very much Jonathan. This is Anne Aikman-Scalese from the IPC and chair of the - current chair of the standing committee on improvements implementation. We have a very short report for you this morning so hopefully we can try to make up some time.

And the first item that we concluded was a request from GNSO council to compare the interaction of the 10-day waiver rule on submission of motion with the resubmission of motion rule, which was revised last year. So the question was whether or not a 10-day advance notice of motion waiver rule could apply to a resubmitted motion. We discussed difference scenarios at length noting that this was more of a hypothetical question than something that had occurred, you know, as a problem within council.

There were those who thought that we might as well allow the waiver to apply because of the fact that any GNSO councilor could object and stop the motion from going forward and there were those who thought that, with respect to a resubmitted motion that the waiver should really never apply to that situation. In the end the consensus that was developed within SEI was, first of all, that the operating procedures currently do not permit the application of the waiver rule to a resubmitted motion.

And so we'd like to clarify our opinion on that to you and that has been confirmed by staff as well as they feel that that's the best interpretation of the operating procedures. And then beyond that we actually concluded that we would not recommend any action at this time in part because no problem has arisen thus far and if in the future you see a particular problem that arises please let us know.

We'd be happy to work on this again, but for the moment we just want to clarify that we believe that the 10 day waiver rule does not apply to a resubmitted motion. So I don't know if there are any questions on that or if I should proceed. (James), yes?

(James): Hi, just a quick question because I remembered this when it was kicked off with this question. And I apologize that I'm not immediately making the connection with the different citations of the sections of the operating rules. Can you walk us through what - how this works? So there's a motion, the motion is withdrawn, the motion is resubmitted. We have a 10 day rule there. We can waive that rule. Can you just kind of take one sentence to walk through the sequence quickly? Or, you know, if I'm the only one that's maybe needing a refresher on this then I'll stand down, but...

Anne Aikman-Scalese: And you mean with respect to the resubmission of a motion itself as the refresher?

(James): The sequence of events that caused the problem that we're trying to solve.

Anne Aikman-Scalese: Well, okay. And maybe (Mary) and or (Julie) can also help with this by pulling up the sections possibly. The theoretical question arose in the context of a change in the operating procedures with respect to resubmission of motions and so it was determined that a rule was needed for resubmitted motions that if a motion comes back to council that is essentially the same motion previously submitted. That there should be certain conditions that would apply in order for that motion to be considered and that otherwise it's not legitimately resubmitted.

So definitions were worked out in connection with resubmitted motions and certain advanced notice was required and there had to be stated rationale for the resubmission of the same motion if in fact was the same motion. And there were more particularly here advanced requirements with respect to resubmitted motions and I believe those run in the same time frame as the advanced notice for submitting a motion to council, which would be the 10 day advanced submission for resubmitted motion.

Now, for motions that are not defined as resubmitted motions there is in fact that 10 day advanced rule, but we also have another rule in place which is that through a unanimous agreement of council that there can be a waiver of that 10 day advanced notice for the motion because there have been situations where it was felt that it was not really necessary or that there was unanimous agreement, such as proving reports that everyone was in agreement. That report needs to be approved and sent on in order to be efficient in our operation as council.

So the waiver rule, obviously a reason for that - and then the theoretical question became if you have a resubmitted motion should that 10 day waiver rule apply in the case of resubmission of a motion?

And, again, there was, you know, there were differing thoughts on that because some felt well if, in fact, anyone can block that by saying I as a councilor don't agree that the waiver applies then there's no real harm theoretically, but then there were others who felt that if the motion is being

resubmitted it's already, you know, there are a lot of questions being raised about the exact same motion being resubmitted and therefore the waiver rule should not apply because it's not a situation where folks should be able to proceed without consulting their constituencies and so there was a lot of back and forth on that and yet no concrete examples of where something had become a problem or wasn't particularly a problem and so we decided we didn't really want to pass on that in a vacuum. I hope that's helpful and I think either (Amar) or Avri could also shed additional light on that explanation if you would require something further.

Jonathan: (Unintelligible), (James). Are you happy with that? I mean (unintelligible) the 10 day deadline with various conditions, but (Amar) you wouldn't to say something?

(Amar): Thanks Jonathan - thanks Anne. It's (Amar), I'll try to be real quick. You can see the sections on the slide of the operating procedures where these two issues are addressed, but (SCI) actually did not work on these together. First, I believe we first worked on the resubmission of motions and then when that project was done we started working on the 10-day waiver rule. But the thing is in the section on the resubmission of motions there is a sort of a - sort of a standing rule that there - that the 10 day rule does apply. When the (SCI) was working on this we did discuss at length how - and whether we should apply the 10 day waiver rule to resubmitted motions as well as Anne said we thought it would be harmless because there is a possibility for a single councilor to sort of block that.

So it's - there was no real risk in having it applied, but then there was also a practical issue of amending two parts of the operating procedure at the same time and whether those should be done as two separate projects with two separate comment periods. We thought it wasn't really worth the hassle and it might have been very confusing to folks to sort of like (unintelligible) two parts of the operating procedures and thinking about them together (unintelligible) between the public comment period.

So we did kind of decide to just let it stand the way it is and then have this explanation provided. But I do recall I believe the motion to adopt the SCI recommendations on the 10 day waiver rule was at the last Singapore meeting and we did sort of include this clarification in that motion saying that this rule does not apply to resubmitted motions. And so I guess this is just follow up to that to help clarify it further. Thanks.

Anne Aikman-Scalese: Thank you, (Amar). I do think the most important (unintelligible0 - yes, (Mary)? Go ahead.

(Mary): Thanks Anne. Just one clarification from staff - going back to (James)'s question. When we we're speaking of a resubmitted motion in this instance it only applies to those motions that had been voted upon, but that were resubmitted. So it doesn't apply to the motions that were withdrawn or differed or tabled or anything like that. So we're talking about a very specific instance with all the rules that Anne described.

Jonathan: Avri?

Avri Doria: Hi, Avri speaking. And just one thing I wanted to add to the logic of this, which possibly came out, but I may have missed it. Is a motion that's already been defeated once - the resubmission - the 10-day waiver is for something that's an emergency that needs to get done and we only discovered just recently that we needed to do it. That condition wouldn't apply to a motion that's already been defeated.

Jonathan: Thanks, back to you Anne.

Anne Aikman-Scalese: Yes, I think actually the most important thing to be taken from this slide is the clarification that the waiver does not apply and so just for posterity that, you know, it's (unintelligible) the 10 day waiver does not apply if a problem comes up where anyone thinks, well, it should then send it back to us. Thank you and next slide.

The second - if it's okay to move on? You think? Okay, thank you. The other assignment that SCI received from council related to the practice with respect to friendly amendments to motions and one thing that has been noted is that the operating procedures for council are not documented in this regard. There's a historical practice, but it's not really written out in the operating procedures. So (unintelligible) the two part task and the first part of the task is for us to document the existing procedures.

So what we have done by way of a letter (unintelligible) council that hopefully (unintelligible) to (unintelligible) meeting is existing - a description of the existing practice with respect to amendments to motions and (unintelligible) thank Mary Wong for writing up the initial draft based on her experience (unintelligible) council. We then had council members on the SCI weigh-in with respect to that draft and adding provisions that they thought were reflective of the existing practice.

So what we decided as a group on SCI is that we didn't need for council to respond to that draft of the existing procedures in order to permit us to move forward with any other work either in connection with our (unintelligible) with any operating procedures (unintelligible) council and or (unintelligible) about whether or not any of those procedures are recommended to be amended and then codified.

So we have sent two councils for your consideration documentation of what we believe to be the existing procedures and would like for you to consider whether or not that draft is accurate and come back to SCI so that we can continue in the second part of our work. Are there any questions regarding the friendly amendments procedure? I think you'll recall that friendly amendments did come up in Argentina in Buenos Aires and a procedure was followed there and I think we're hopeful that what we've written up is accurate and, if not, please let us know.

Jonathan: Comments - questions? Okay, so I mean this is in one sense - and no disrespect to the group, of course, it's rather tedious work. It's very

procedural and it's very detailed, but of course it's the procedures in which rely and there's a trust that which the council manages to operate is on the basis of having a trust in the procedures and this is a good example where we've developed a trust in an established practice, but, you know, that's - it's easy for those kinds of things to go wrong. So it's very useful to have this kind of work chewed over, thought through carefully and then brought back. So please have a look at the informal practice and then we'll - we can essentially sign off on the fact that that is how we understand it to be and then return it to the SCI there for further deliberation and recommendation. Volker?

Volker Greimann: Thank you, Volker Greimann speaking for the record. Just one concern that I have with the current informal practice is that essentially it can be abused - it hasn't been so far, but it could be abused for turning a motion on its head within the - with circumventing the motion deadline - i.e. changing the content of the motion totally by having the maker of the motion and the second of the motion accept something as friendly, which normally would be something that should be voted upon and therefore reduce the amount of time that deliberation of the executive groups and (unintelligible) committees would have. So that's something that I would like to urge that would be looked at when this process is looked at.

Jonathan: Go ahead Anne and then (David).

Anne Aikman-Scalese: Thank you. We will certainly make note. That's a very material consideration and we will absolutely have full discussion on that point. Thank you Volker.

Jonathan: (David) and then (unintelligible).

(David): Just say in - this is one of the reasons why in practice you always - that the chair always has some authority to disallow something as not falling within the rules. The chair can always - the chair can rule that the rules are being abused and not allow it in the case of where they see (unintelligible) is clearly

changing the intent significantly enough to - so that other rules - we do - the chair does have authority even though you seldom use it with big stick (John).

Jonathan: It's worth clarifying. On what basis do you think the chair has that authority? Because I mean I think that the key point is that it's always valuable to rely on procedures. So I'm just wondering where - on what basis you think there would be that authority to - because I can see an extreme example of what Volker is talking about. It would be very uncomfortable, but someone could submit a blank motion and then a few days later put some content in there and providing everyone was friendly about it. Did you - so just thinking about where that authority is derived. Is there a specific point in the operating procedures or - okay.

Man: (Unintelligible) rules.

Jonathan: Any other comments or questions on this? I'm authority - did I mess you up?

(Amet): Yes, thanks (unintelligible) another short comment on this - something that I hoped the SCI will consider. I know there have been opinions voiced on the lack of desire to sort of formalize the practice of friendly amendments, but I do believe friendly amendments have been slightly problematic in the past. I can think of at least two instances when friendly amendments were submitted either during the council meeting or within a number of hours before them and they've been controversial and they've made it difficult for some counselors to react to that based on the fact that they haven't had an opportunity to discuss the amendments with their constituencies or stakeholder groups. I remember this was the case with sort of the GSO council's interpretation of the charter for the (unintelligible) working group on (unintelligible) governance.

There was also the submission of the motion to requesting issues report on the subsequent round of (unintelligible). There were friendly amendments offered both of these motions either during the meeting or within a matter of hours before it and it has been problematic so I would personally be in favor

of sort of codifying or having formal - a formal process for introducing friendly amendments and possibly discussing a deadline for submission of those as part of the process. So thanks.

Jonathan: Thanks (Amet). Avri?

Avri Doria: Avri speaking. First of all, I just wanted to remind people that friendly amendments are one of those things that are considered absurd by Robert's rules and it goes - basically once you make a motion it's no longer yours. It actually belongs the council, not to the person that made it. But beyond that in terms of what (Amer) just said there's really no material difference between making a friendly amendment that is accepted or making a formal amendment that has to be voted on and you still don't have time to go back to your constituency to check it.

So what - if one was going to deal with the problem that you brought up- and by the way, this is what goes on in SCI all the time. So think about that as you volunteer for it. So basically you would have to make a rule about amendments that said when an amendment was made did it have to have time to go back to a consistency and it gets even more complicated. The council has to be able to deal with that in some way. But there's really no difference between a friendly amendment and a formal amendment in terms of the no time aspect. Thanks.

Jonathan: Do you want to respond Anne if we can to (David)?

Anne Aikman-Scalese: Yes, I think there's probably among SCI members - I hope I'm not speaking too boldly for the group - a sentiment that it would be appropriate to document whatever procedures are arrived at and put them in the operating procedures from the standpoint of objectivity and making things easier for the chair as well in terms of how things should proceed.

Then with respect to the topic of whether or not an amendment is friendly, we believe that the current practice is that the individual making the motion and

the seconder both have an opportunity to weigh-in as to whether an amendment is friendly or not and one of the biggest questions that is raised regarding that, as has been pointed out here, is whether councilors should be in a position to consult again with their constituencies and stakeholder organizations with respect to whether an amendment is or is not friendly. So we will get into a much deeper discussion of that after receiving confirmation from council that we've accurately reflected the current procedure. Thank you.

Jonathan: (David)?

(David): Yes, when I first arrived as a councilor it was a matter of some surprise to me that we didn't have - that while we have the - a number of rules governing our councilors we didn't have like an agreed on set of standing orders and so on covering, you know, things like points of order and all of that meeting minutia. And I mean I still remain a little surprised and Avri brought up Robert's rules and this is one of the reasons why it sort of surprises me that we've never addressed the question because Robert's rules while widely accepted in the US are somewhat eccentric from a commonwealth point of view and just because it's in Robert's rules it certainly wouldn't be sort of universally agreed on. And sometimes though in fact the way Robert's rules work is directly contrary to the practice of, you know, the rest - like (unintelligible) commonwealth countries. Without getting in to the minutia of what laid on the table means and things like that.

So it may be at some point we should just sort of tighten up - there is that question of whether or not we should agree on some of the details of standing orders, but we've seem to manage quite well enough without them so far. So - and perhaps not having a set of rules and encourage people to use points of order and such tactics is probably better for council debate in the end really. No, I mean I just think it's a question that we've drifted into areas where there is no agreed on standard. There are in fact multiple sort of competing sort of ideas of what customary practice are perhaps when the

sick - sorry, the SCI looks at this. Again, we will maybe bring up some of that in our discussion.

Jonathan: But just to - for the avoidance of (unintelligible) we do have the operating procedures, which provides quite some guidance and we - I would just make one point. I think there's clearly attention between being bound up in rules and points of process and procedure with actually getting things done. And so what - if they - if, for example, there was no objection to an amendment and yet somehow the rules bound us into waiting for the next meeting or something I think that would be an unsatisfactory outcome. Because clearly the objective of the council is to get the work done within a fair and understood set of procedures.

So that's the tension I think the SCI should be thinking about managing rather than - to be very careful about making good rules for the sake of good order, which might appear solid and complete when actually they might get in the way of what was otherwise a more efficient practice of getting the work done. So that's clearly the tension, but I'm sure you'll think about that.

Okay, so did you want to speak further (David)?

(David): Just one - it's also worth - as we codify sets of rules it's also worth remember that sometimes the best rules are to simply let the chair chair the way they want to chair and perhaps the chairs can even have some suggestion on how they - you know, each new chair of the council may be able to make some suggestions on how they wish to run council and when it comes to these sort of very minor level detail, of course, while we stick to the way we handle major motions and so forth.

Jonathan: Discretion can get you into trouble. All right, I think - well said, thanks Anne. Is there anything more you'd like to add?

Anne Aikman-Scalese: Yes, just very briefly it sounds as though this is an area of actual - of great interest to the council so I would hope - as far as procedures are

concerned - and so I'd hope when you consider what has been drafted by SCI as the current procedure that you might also agree on certain of these points that have been raised so that you can provide some additional guidance to SCI with respect to how we should focus our work going forward and the questions that should be considered. We are after all a procedural committee and so if there are two or three major points that you'd like to have made and considered. I've written down these items - that these comments and we certainly will raise them for discussion, but if there are those that you wish to emphasize in connection with our next phase of our work please feel free to do so. It will help us know the boundaries.

And then, finally, our last item is simply to thank Avri Doria for her work as council liaison and Avri will be moving off council and will - you guys will be looking at appointment of a new CSI liaison to the - from liaison to the SCI. And I'm not sure if you'll be doing that in wrap up session or otherwise, but (Rudy) and I - and (Rudy) has been fantastic by the way. Thank you (Rudy) as vice chair for this year. Time when I was not able to chair and he stepped right and hit the ground running and I really appreciate it. And thanks also to Avri, in particular, for all her work with SCI. (Unintelligible) very much.

Jonathan: Okay, great. Thank you all. Thank you Anne. Good work. And so just a reminder that - actually, in many ways these are preparatory and opportunities to discuss key elements of work. I'm pretty sure - if memory serves me correctly - we have this item on our formal agenda at the council meeting. So there will be an opportunity for those of you that are either in the room - in the council or otherwise to - if you want to make further points on this if you had a couple of days to think about it to bring that up in the formal meeting on Wednesday.

Okay, thank you Anne.