

Transcription ICANN Buenos Aires Standing Committee on Improvements Implementation WG Saturday 20 June 2015

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Anne Aikman -Scalese: Good morning everyone. Welcome to ICANN 53 Buenos Aires.
How do you pronounce that correctly? Who's the really good in Spanish around here?

Sorry, I have this new chrome book which I haven't learned how to mute yet.
There we go - okay, good.

So this is the early morning SCI meeting previous to the GNSO Council meetings. And thank you to everyone for being here so early. I think we have a fairly short meeting this morning. But I'll go ahead and ask staff - I assume we are recording? Or have we started the recording yet? Okay, great. Thank you.

If I could ask staff to conduct the roll call, and then we'll proceed with the agenda. Oh, this is Anne Aikman-Scalese, SCI chair.

Good morning Mary.

So let's see, Julie, are you going to do the roll call? Who...

Julie Hedlund: (Unintelligible).

Anne Aikman-Scalese: That would be great. Let's start with (Rudy) and well - okay, I will start. I'm here, Anne Aikman-Scalese, SCI chair from the ITC. And then let's head around the table, starting with (Rudy). Thank you.

(Rudy Vanchnick):(Rudy Vanchnick), NPOK.

Wolf-Ulrich Knoben: Good morning, Wolf-Ulrich Knoben, ISPCP.

Mary Wong: Mary Wong, ICANN staff.

Julie Hedlund: Julie Hedlund, ICANN staff.

Lars Hoffman: Lars Hoffman, ICANN staff as well.

Avri Doria: Avri Doria, NCSG.

David Cake: David Cake, NCUC.

Anne Aikman-Scalese: Great. Thank you everyone. And has anyone called in? Or we have no calls? No calls. Okay, thank you.

So I think Julie was working on posting an agenda.

Julie Hedlund: Yes, I am. This is Julie Hedlund. It's in the Adobe Connect Room.

Anne Aikman-Scalese: Very good. Are there any updates to statements of interest? Okay. Seeing none, we can move on to the next item which I'm very happy to report that (Rudy Vanchnick) has volunteered to step into the vice chair position.

I'm personally very thankful for this. One of the reasons is I had one of those airplane snafus and almost didn't get here. And I thought wow, if I had a vice chair that person could take over the responsibilities today. So I'm very happy that (Rudy) has volunteered. And I think in terms of nomination, I will go ahead and nominate (Rudy) - if I could get a second.

I have two seconds. I have seconds from Avri and seconds from Wolf-Ulrich. And so anyone objects, please show your objection now. Seeing none, congratulations (Rudy), and thank you very much. You're now the vice chair - appreciate it. As mentioned, I will be running any drafts and issues by the vice chair before posting them to the list. So I do really appreciate your help and point of view in that. Thank you.

Next item, SCI membership and representation - I'd like to ask Julie to summarize where we are with respect to members. I think we do have primary members appointed for each of our constituency groups. I'm not sure where we are on alternates.

Julie Hedlund: Thank you Anne. This is Julie Hedlund. So we are - I'll just run down from the start of the list of members. For the registrar stakeholder group we do have a primary member - that's (Jennifer Standarfort). We do not have an alternate member.

Registry stakeholder group is Ken Stubbs and Ray Fassett. So we have full representation there. The business constituency is Angie Graves. Alternate member is TBD. ISP is Wolf-Ulrich Knoblen and (Azaldo Nevora). And so we have full representation there.

Intellectual property constituency is Anne Aikman-Scalese and (Marie Schulman). Non-commercial stakeholder group is Avri Doria and (Stephane Melan). So those two groups are fully represented, as is the non-commercial user constituency with (Amar Elsidor) and David Cake.

For the nominee committee appointee, we have a TBD for the primary member and Thomas Rickert for the alternate. And for the not for profit organizations constituency we have (Rudy Vanchnick) for the primary member, and the alternate member is TBD.

So just to summarize, we need alternate members from the registrar stakeholder group, the business constituency and the not for profit organizations constituency. And we are missing a primary member for the nominating committee appointee.

Anne Aikman-Scalese: Thank you. Does anyone here have anything to report with respect to your members regarding alternates or - I think we're set on primary, but thank you. Go ahead (Rudy).

(Rudy Vanchnick):(Rudy) for the transcript. For NPOK we are ending the elections for our constituency end of next week. And we will then be able to appoint the alternate member. And there will be no difficulty to get someone.

Anne Aikman-Scalese: Great. Thank you (Rudy). I guess we do not have any registrar or registry or NomCom participants in the room or on the phone today? Is that correct? So I may mention that later in terms of trying to get more full participation. I do appreciate that everyone in the community is quite busy right now with - primarily with IANA transition issues. So again I do appreciate your time.

So moving on to the next item, - yes Avri.

Avri Doria: Thanks - Avri speaking. The only point I'd like to make on that is it would strike me as difficult for us to make any decisions without the other house in the room at all. So I just wanted to point that out. And I'll certainly point that out at the meeting later as well as you pointing that out.

At this point that would probably be the only thing at the moment that I would point out is that I don't see how we can do much unless they start participating.

Anne Aikman-Scalese: Yes, Avri, I think that's an excellent point. I'm very happy that you're willing to take up that topic with GNSO Council. And I may just mention so that, you know, our membership situation. And then after I finish my short report, would very appreciate if you would raise that topic. Thank you.

Of course I should note that since the SCI does work by full consensus, there would never be a situation where we would make a decision without including the folks who have not been active participants because we would send out for consensus call. But it's as Avri points out really difficult to make sure we have a true consensus without that participation.

So moving on to Item #5, this is our first task undertaken. It was assigned by GNSO Council, and that is the issue of whether or not the 10 day waiver rule should apply to a resubmitted motion. We had a phone call on this a couple of weeks ago, and we took a straw poll in the room. And generally there was favorable response to this idea, and that Council would be glad to have something done on this. And so - good morning (Laurie) - so (Laurie Schilman) joins from IPC.

So I think at this point looking around the room, the only person I see who was not on the call last time is David I think. Is that correct David? And could I get a comment from you regarding this topic generally - any comments, questions?

I think everyone else is in the room had pretty much responded favorably the notion of having a - the 10 day waiver rule apply to resubmitted motions.

David: I have no dissent from the consensus. I'm happy with that.

Anne Aikman-Scalese: Okay. Great. Thank you. So I think at this point then we can move on to consideration of some language associated with that. Julie had sent around to the list language that Mary had previously drafted. And I'd like to ask that that language be posted in the Adobe Connect Room so that we can take a look at it.

Julie Hedlund: Thank You Anne. I'll take care of that.

Anne Aikman-Scalese: And so the general principle that we're discussing here is if a motion is properly resubmitted under the resubmission of motion rule which Council approved last year on recommendation from SCI. Shall we clarify within the operating procedures that that resubmitted motion can be the subject of a unanimous waiver to be considered by Council if it meets all the other conditions for the 10 day waiver rule?

Now what that would mean is it still has to be submitted at least 24 hours before the Council meeting. And it also has to be submitted with a request for consideration as to why it would be - there would be two elements in terms of explaining why you want the 10 day waiver rule to apply.

The resubmitted motion rule requires an explanation as to why the resubmitted motion should be allowed to be considered. And the request for consideration is a request for a consideration of the waiver of the time requirement. So if everyone could please take a minute to read the language that's in Adobe Connect.

I think that's probably not the proposed change yet. I'm thinking about the language that Mary drafted. Is that - that is it?

Julie Hedlund: Excuse me Anne, this is Julie Hedlund. So the language that's been proposed is the language that's in brackets. So if you look at that first paragraph and at the end of - if you look at the paragraph - the end of the paragraph and the bracketed language. And then what's below is just for

reference is the language out of the operating procedures of Section 3.3.2 and Section 4.3.3 further down.

Anne Aikman-Scalese: Okay, great. Thank you Julie. So the bracketed language is the change. And that language says resubmitted motions made pursuant to Section 4.3.3 of these operating procedures after the submission deadline must meet these requirements in addition to those detailed in Section 4.3.3 in order to be eligible for consideration by the GNSO Council under this Section 3.3.2.

So a comment was made on the list by Avri that although this is very legally precise language, it may not be all that readable or understandable. I think Avri was pointing out that she had to read it three or four times to actually understand what, you know, what was being said.

I'm not proposing that we would redraft this provision in this particular meeting. But I do tend to agree that we might be able to express this in slightly more readable terms. And I personally - I'll recognize Avri.

Avri Doria: Thanks. Avri speaking - this time I remembered. Yes. I want to talk on the language thing. But I also - I'm being really very, very slow this morning. And so I'm trying to make sure I understand what we're doing.

First of all, yes, in terms of the language I guess as soon as I got to words like pursuant to and then having to go look for things, it was - all of a sudden I was in legal land and okay, I'm used to going there even as a non-lawyer. But it just - it makes it more difficult. So that's why I was thinking perhaps we have to find a more, you know, human way to explain things.

But the other thing I wanted to come back to that I didn't get my hand up in time, and even though I said I have no objection to this is I'm just wondering about the whole timing with the notion of these resubmitted motions and the explanation having been done by a certain time. Does the resubmission

change that we're making change the time on which they have to have provided the proper?

And that's partly where I started getting confused and going back and forth because it says that you have to meet these things. And the rules for it say you have to have met them by the proper time to submit a motion. But now we're saying the proper time to submit this motion may be that later deadline.

And that's where I got myself sort of stuck in a loop since the - what it is pursuant to contains a condition that this clause does not modify. And that's why I kept going back and forth basically not knowing whether we had actually solved the problem, even though before - and I think my comment during the last meeting had sort of been an indolent gee, I don't know.

And then I spent some time working on it and found out that I was rightly confused. And I put it down to my not being a lawyer and being somewhat slow at times, but it got me confused.

Anne Aikman-Scalese: Great. Thank you Avri. Let me see if I can - I want to restate to see if I completely understand your question. And it's something that occurred to me at the end of the last call in terms of how the explanation for a resubmitted motion - the interaction between - the interplay between that and the 10 day waiver rule because the 10 day waiver rule - it only requires 24 hours' notice in order to apply it.

But with the resubmitted motion, my understanding is that there is still a 10 day advance requirement. So that explanation would come 10 days before the resubmitted motion. Is that correct Mary?

Mary Wong: Sorry Anne, I was trying to sort of pass through everything.

Anne Aikman-Scalese: Well I guess my question is without the 10 day waiver rule in connection with resubmitted motion, the explanation as to why you're resubmitting a motion would require a 10 day advance explanation.

Mary Wong: That's right because the thinking I think at the time when we were talking about the resubmission procedure, the point was brought up that if a motion didn't make it you could basically resubmit it at any time before the next Council meeting. It could be 28 days before.

But yes, the explanation itself would still have to come. And the explanation itself didn't have to come at the same time, but would have to fulfill the 10 day rule.

Anne Aikman-Scalese: Right. And so...

Avri Doria: One other thing...

Anne Aikman-Scalese: Go ahead Avri.

Avri Doria: Is it a motion before that excuse - I mean reason has been done? In other words do you have a full motion before you have actually submitted the reasons? Or can they be one atomic unit?

And that's where I started getting very confused because if you have to do the explanation before it becomes a motion, or is the explanation part of a motion? And it's just...

Anne Aikman-Scalese: Go ahead Mary.

Mary Wong: Avri, I think that's a great question. And I think the assumption - it's not stated in what's now in the operating procedures that was voted on. The assumption is that it would be a motion once it's resubmitted. But it would not be a motion

that would be eligible for voting on at the next meeting without the explanation.

In other words it would not be a fully formed motion. It would be a motion, but not an eligible motion. Does that make sense?

Avri Doria: And if I could continue to debate this, does the resubmission rule only apply to well-formed motions? Or does it apply also to partially formed motions? You ask me to think logically at 7, 8 o'clock in the morning. This is...

Mary Wong: I would say that when I refer to fully formed motions, it basically means the motion would be crafted or have language - whatever it is. It's just something that the Council would not be permitted no matter how beautifully crafted or how perfect or how full the language of the motion is, that Council would not be permitted to vote on it if there wasn't an explanation at some point.

Avri Doria: What I meant by well-formed was the logical expression well formed - that it has - something has to have all its pieces. I didn't mean that it was beautiful.

Anne Aikman-Scalèse: Okay. I'm going to recognize (Rudy) and then (Stephanie). Hold on. Thanks everyone, it's a good discussion. (Rudy)?

(Rudy Vanchnick):(Rudy) for the transcript. I understand that when a motion is resubmitted, is the requirement that there is a full explanation why this resubmitted? This is the point where discussing them and that's where I understand that there is a timing that is 10 days before the Council meeting takes place.

That means that the motion itself - the resubmission should be done at least 11 days before the Council if we point to the text here. That's correct because we have the 24 hours before, but you need 10 days before the Council for explanation. Is that correct? Or am I wrong?

Anne Aikman-Scalese: Well (Rudy), I think you're raising a point if I may comment that I was trying to hit on at the end of our last call which is the interaction between these two timeframes. I believe that what had been discussed previously was the notion that that explanation could come 24 hours in advance, and if you will the 10 day waiver rule would trump the resubmission rule. And you would only have to give 10 days' advance notice.

And that's why I was asking about the language being clear on that point. But I think what's clear here is that we need more discussion on that point as to whether folks believe that a 24 hour in advance explanation of why you are resubmitting a motion is an adequate amount of time for providing that explanation for a resubmitted motion.

Now I may be raising something that is not an issue for anyone, but it is something that, you know, we do want to be absolutely clear on. And so I would like to recognize (Stephanie). She's had her hand up for a long time.

(Stephanie Perran): Yes, (Stephanie Perran) for the record. And I'm trying to log in. So I apologize for not being able to cursor back and forth and look at the preceding preamble. But I'd just like to more or less second what Avri was saying - that a little plain language would help here because - and I know there's a lot of stuff to go through.

But there's a chunk on what a motion is. And a motion can be this, this and this, and is comprised of the following parts, right, the motion and then the - as Avri said, the excuse for it being late. And then there's the timing session, right?

So the timing section I think speaks to what (Rudy) was just speaking about. If we just kind of almost bulleted that, it would be easier for my addled brain at this hour with only one cup of coffee. And I think probably would benefit us overall. So can we do that?

Anne Aikman-Scalese: Sorry, go ahead Mary.

Mary Wong: I just wanted to point out that that's probably right. And this is one of the problems with this issue that it starts to get complicated. And when you look at the language you kind of go whoa. But I think for purposes of the record and for others who might be listening or reading this proceeding after we finish it who may not be following, I think it's important to recall that the only language we're considering is the square bracketed part on - which is a single sentence.

So if it is not that part but on top of it, the way that it's already laid out in Section 3 and Section 4 is complicated. Then that's a bigger scope and task than this group has been asked to do. So I just wanted to make clear for the record that everything else but the square bracketed portion is already in the operating procedures.

Anne Aikman-Scalese: That's a good point Mary. And I'd like to ask a question in terms of that draft language. The question I have is specifically for Mary - specifically for Mary. So and here's the question.

As drafted - and I agree, you know, it's legally succinct - do you believe that the explanation for the resubmitted motion could be submitted as late as 24 hours prior to the Council meeting, applying the language as drafted here - as proposed?

Mary Wong: Yes.

Anne Aikman-Scalese: Yes, okay. Thank you. And so the substantive question that they feel that Avri and others are raising is, is it correct - is it desirable that a waiver might be applied 24 hours before the meeting as long as there's unanimous consent by the councilors? Because do keep in mind - and correct me if I'm wrong Mary - in applying the 10 day waiver rule, if any

councilor objects to that waiver, then the motion will not be considered at that Council meeting. Is that correct?

Mary Wong: Yes.

Anne Aikman-Scalese: So the check and balance on this as proposed is that yes, in fact a motion could be resubmitted. The explanation could be resubmitted 24 hours in advance of Council meeting, but it would actually require unanimous consent by the councilors in order for that to occur. So (Stephanie), I'll recognize you on that point. Does anyone with to comment on that? Yay or nay? Good idea, bad idea?

Okay. I'll try to clarify the issue again that if the 10 waiver rule applies using language similar to that that is proposed but rewriting it for readability, then the explanation that accompanies and that is required to accompany a resubmitted motion would not have to come until 24 hours in advance of the Council meeting.

So right now on a resubmitted motion, in order to comply with that rule the explanation would have to come 10 days in advance of the Council meeting. But applying the 10 day waiver rule, the explanation could come 24 hours in advance of the GNSO Council meeting, but keeping in mind that any councilor essentially has a veto power over that request for consideration because it must be unanimous in order for the 10 day waiver rule to apply.

So the question is whether that's acceptable, desirable. And if we get to the point of saying - I think we recommend one way or another. Either SCI says no, you should never be able to resubmit a motion on 245 - and provide your explanation on 24 hours advance notice. Or we say yes, it's acceptable to receive the explanation on 24 hours advance notice because there's a veto power. Any councilor can stop that.

(Amar), can you come in? Are you on the phone? No?

Mary Wong: He's put some comments in the Chat. And I don't know if you...

((Crosstalk))

Anne Aikman-Scalese: He's not able to dial in? So yes, go ahead Mary. Can you help us with (Amar)'s comments?

Mary Wong: So I'd probably have to scroll up a little bit.

Anne Aikman-Scalese: Actually it did - on the technical side first of all let me mention that (Amar) is saying that the operator didn't answer when he tried to call in. If we could get some technical help with that - thank you.

Mary Wong: I think (Amar) and Avri were trying to clarify the position or the points that were made a little bit earlier. But I think - and (Amar), please type in the Chat if I mischaracterize anything. But his point right now is that the issue as you've pointed out Anne, is quite straight forward. And the solution may well be as well.

I think the solution he's proposing, one solution is a combination of the two approaches. But I don't know that there's been any more detail. (Amar), if you have any further suggestion please let us know.

Anne Aikman-Scalese: Hopefully we can get (Amar) in. We could get a dial out to him possibly. I think that yes the issue is straight forward as to timing. But I don't honestly understand what a combination would be or how that would work - a combination of the two timeframes. Anybody else? (Rudy)?

(Rudy Vanchnick):(Rudy) for the transcript. I don't want to make it more complicated. But in practical terms, up to 24 hours before the meeting giving explanation about a motion, is that reasonable? Is that doable? You still need the time to read the explanation as a councilor - to be able to bring your vote because you have to

consult also your community. So 24 hours seems to me quite difficult timing. I don't want to make it more complex, but I'm just thinking in practical terms.

Anne Aikman-Scalese: Okay. Thank you (Rudy). Avri?

Avri Doria: Actually it seems to me that there's really two possible solutions, and they both may be explanatory. One of them is to say that the explanation is indeed part of a motion, and reword the other part where we've got the motion and say the motion has to be recrafted to include the explanation. And then the whole motion goes through as a single unit and it's operating by the same rule.

The other thing is in the clause that we're adding about resubmission of motions, to add and its explanation. And so you're saying the motion and its explanation. Or if we want to be explicit about it to say the motion but its explanation still has to come.

So in other words we have several ways of solving it, either by bundling the explanation in the motion of a resubmission, or in being explicit about whether the rule waiver includes the explanation or not. And then if we take - so we make a decision, and then take (Rudy)'s consideration into account. Is 24 hours enough when you don't have 10 days?

In other words is that enough time for the explanation even if it's enough time for the motion? If it isn't, then we put in a clause that says, you know, that the motion can come just before, but the explanation can take longer, you know, has to be there 10 days before.

And then people spend 10 days talking about whether it may or may not be resubmitted and so on. So you can imagine a scenario where someone at the last minute says I really want to resubmit it and I've got everything in line to resubmit it. They resubmit the - they give the explanation but there's a couple people that aren't comfortable with it. So you spend time talking about it.

And finally you've gotten to the point at day four where people say yes, it makes sense. We agree to the resubmission. And then you put in the motion. So I could see going - the only thing is being explicit and getting rid of the word pursuant.

Anne Aikman-Scalese: Excuse me, so Avri, do you consider it likely that someone would resubmit a motion, I guess that those two things would operate separately - that they'd both - they can't really resubmit a motion under 10 days without asking for application of the 10 day waiver rule unless we apply some completely different rule like five days.

I mean if they resubmit a motion and they follow the resubmission of motions rule, it would - they'd come together, the explanation and the 10 day advance. (Amar), go ahead.

(Amar Elsidor): Thanks Anne. Can you hear me?

Anne Aikman-Scalese: Absolutely.

(Amar Elsidor): Oh, I can hear me.

Anne Aikman-Scalese: So come in and clarify all this for us, will you?

(Amar Elsidor): No, I don't think I'll be able to clarify it. But I'd like to give my perspective. When I said earlier a combination of both prerequisites in the Chat, what I meant was the prerequisites - the individual prerequisites for submission of or resubmission of motions which are I believe in Section 3.3.2 of the operating procedures as well as the prerequisites for the 10 day waiver - the waiver to the 10 day rule. And that's for the section for the (unintelligible) and the operating procedures in 4.3.3.

I guess what I - the point I was trying to make is that if a resubmitted motion is being submitted past the 10 day deadline, then also satisfying the prerequisites of that should create no problem because then you would need no objection from any councilor. And I'd just like to remind folks that what we're trying to do here is to give the GNSO Council the flexibility it needs to handle questions or projects that are put before it, and in trying to do that sort of just make sure that the rules in the operating procedures aren't too difficult to adhere to.

In my perspective I guess I would think that a resubmitted motion that is being submitted past or resubmitted past the 10 day deadline would receive no objection from councilors only if it had been previously discussed to the satisfaction of everyone on the GNSO Council. And so it would be - there could be a situation where there wouldn't be any objection to the resubmitted motion being resubmitted past the 10 day deadline.

So I'm thinking that the reason we're going through this whole project on the SCI is just to make sure that in the event that something like this does happen, that the GNSO Council is not caught up on a technicality and say oh we'd like this resubmitted motion to be addressed in this Council meeting, but we can't because there's a rule that prevents it. So I guess that's what I understand. Thanks.

Anne Aikman-Scalese: Thank you (Amar). So if I could restate that, your point of view is if we provide that 10 day waiver can apply in its entirety to a resubmitted motion, that that just gives Council a tool. It gives them flexibility. And that even if the explanation only comes 24 hours before the Council meeting, the insurance against that being problematic is that any one councilor may essentially veto that consideration of the resubmitted motion. Is that correct?

(Amar Elsidor): Yes, that is correct Anne. Any one councilor could veto the waiver to the 10 day rule.

Anne Aikman-Scalese: So knowing that, Avri and others, (Rudy) - Wolf-Ulrich hasn't weighed in I don't think. What's the thinking on whether that 24 hours is sufficient for an explanation if it's subject to that veto power? Any one councilor can stop the motion from going forward. Go ahead Avri.

Avri Doria: Avri speaking again. Now this is a motion that we've already voted down, right? We're resubmitting it because we voted against it. So there's obviously some work to be done in terms - and a resubmitted motion is an unchanged motion.

So not only was it voted down, but it hasn't been changed since the last time it was voted down. So it's not really a matter of having fully discussed it because we fully discussed it before we voted it down. So it's a matter of having convinced people that they were wrong to have voted it down.

Now waiving the 10 day rule actually makes less and less sense to me on that. And it seems like at this point having thought about it for a while, I'm sort of going - moving from ambivalent to thinking that this is a bad idea. And that if you're going to resubmit a motion that's been voted down, and you're not going to change that motion at all, then you had ought to do it at least 10 days beforehand and not try to slip it through at the last minute so that somebody has to veto it to stop it.

So I actually think I've changed my vote after the consideration, now that I understand what we're talking about.

Anne Aikman-Scalese: Well yes, that's why we're here to have a full discussion. And sometimes that's easier to have in the room than it is on the phone, isn't it? So I'll recognize (Amar). Oh excuse me, I'm sorry. Actually David had raised his hand even before (Amar) did in the Chat. So go ahead David.

David Cake: To put that the historical perspective which sort of eventually led us down discussing the whole question of resubmission in this detail, in the one case

where resubmission - we had a resubmitted motion in the last few years. The argument by the person who resubmitting it was that they didn't need to convince anyone else to change their opinion on the vote - they had merely voted themselves incorrectly due to misunderstanding of other rules.

So if they don't intent to actually discuss the motion, really bring it to a vote again because they made a mistake, that might be a different case to the one you are talking about where they, you know, they don't intend to have another debate. They merely want to have another vote because they themselves feel that they did the wrong thing which is a...

Anne Aikman-Scalese: Well I'll...

David Cake: ...curious case, but let's hope it's not repeated.

Anne Aikman-Scalese: I'll go ahead and make a comment on that since it was an IPC vote I think. And what we're talking about there was not that the person had voted wrongly, but that in the first vote the person had understood that his vote was conflicted out and that he needed to recuse himself. But then after reviewing the rules determined in fact that he was not conflicted out and was able to vote.

So it wasn't oh, I voted wrongly. It was that I wrongly did not vote. So he came back in and resubmitted because he realized that he was allowed to vote. And, you know, I personally do have an appreciation especially for ethical considerations like that that, you know, it is important to get things right in terms of conflicts of interest and whatnot.

I'm not sure. I think that demonstrates the point that some explanations can be quite simple and other explanations could be very complex. So again (Amar), I'll recognize you in the queue now.

(Amar Elsidor): Thanks Anne, this is (Amar). Yes, I think that you and David said most of what I want to say, and to sort of just clarify that the purpose of resubmission of motions and the previous project that the SCI had already gone through. And we did sort of approve the language and eventually the GNSO Council did as well.

So the purpose - there is a purpose in resubmission of motions. And it's not necessarily to just change a vote. But there could be circumstances where it may become necessary. And I think you and David did a pretty good job of summarizing the instance when it became - it sort of came up historically.

And so I'd also just to try to address what Avri's last comment, that any resubmission of motion, the reason why an explanation has to be attached to it is because the Council requesting that a motion be resubmitted really does have to explain why this motion is being resubmitted. And the motion does not change. It's the same motion that was submitted before.

If the motion is substantively changed, then it would be considered a new motion, not a resubmitted one. So if there is a valid reason in the explanation of why a motion needs to be resubmitted, and if this resubmission is done later than the 10 day rule - 10 day deadline, then yes I think it might be helpful in the absence of any dissenting opinion from any councilors that a waiver to the 10 day rule would exist. That's just my personal perspective. I'm willing to discuss this further now on list or on further calls. Thanks.

Anne Aikman-Scalese: Thanks (Amar). So if I could summarize what I think you're saying, your point is that even if a new motion with new information, new explanations can be subject to a 10 day waiver rule, then isn't it also just as logical for a resubmitted motion to be subject to the 10 day waiver rule since that's not likely to involve any more substantive explanation than a brand new motion, and that the check on that is the veto power of any one councilor. Is that correct?

(Amar Elsidor): Yes, I think that pretty much sums up what I'm trying to say. Thanks.

Anne Aikman-Scalese: Mary, may I ask a question with respect before we go on - on the discussion? The language as it exists without any changes - what would be your legal opinion on whether or not under the current language in the operating procedures the 10 day waiver rule may be applied?

Mary Wong: So I hesitate to say that this is my legal opinion because I'm - all kinds of reasons including probably not my function in this role. But I think that if one looks at the procedures as is without the - there's no language, I would think that most people would probably think it's not clear whether or not...

Anne Aikman-Scalese: Okay, very good. Well I guess that's our purpose here. And I think Avri wanted to comment. Go ahead Avri.

Avri Doria: Thank you, Avri again. So anyhow, first of all going back to this waiver rule, this waiver rule is kind of like for emergencies. It's for things that came up between meetings. It's for something came up and there wasn't time to do the 10 days.

Now anything that's already been voted down, there's no emergency. People know about it. People know about it in time. There's absolutely - even if it's just a clarification, but just a clarification to me seems a weak excuse, but okay, it's just a clarification. Or it's, you know, often just a clarification is my arm got twisted after the meeting when all my friends jumped up and down on me and said why did you vote that way? Oh, I didn't understand.

In any case it seems like there should be no reason why if someone wants to resubmit a motion they couldn't do it in time. There is no emergency here. There's the full span of meeting - time between meetings for them to do their job properly, to re-clarify, re-explain, untwist arms, whatever it takes to resubmit it. So I actually - the more we talk about it the less and less purpose

I see for this. So not only am I against it, but I now no longer see a reason for it.

Anne Aikman-Scalese: Okay, thank you Avri. So I gather then that you would be in favor of clarifying language that states - and I guess this would appear in the - I'm not sure exactly where this states resubmission of a motion may not be considered pursuant to the 10 day waiver rule. That's - she's giving me a thumbs up. That's what she would want to happen.

So wow, we have an actual substantive disagreement here. And I think (Amar)'s been the champion of the waiver should apply. Avri is the new champion of waiver should not apply.

Avri Doria: If I can add once I was told that it was straight forward I realized that there was going to be a problem.

Anne Aikman-Scalese: Okay, thank you. So SCI works on full consensus. And so what we need to do is, you know, consider what is our way forward to full consensus when we have opposing viewpoints? And at one point someone suggested a sort of a combination of the two rules. I'm not sure who that was or what the suggested combination was. Avri, is your hand up?

Avri Doria: No, it's not.

Anne Aikman-Scalese: Okay.

Avri Doria: That was an old one.

Anne Aikman-Scalese: Okay, thank you. I don't know. Would folks be, you know, interested in any sort of separate waiver rule for a resubmitted motion? Call it five days, call it a compromise. Any reason to work on any -kind of a combination with respect to when an explanation is due? Avri.

Avri Doria: And one more point, there's really a trivial way around this for anyone. If they change a word in the motion, then it's a new motion.

Anne Aikman-Scalese: Well I'm not sure that's - in terms of the definition of a resubmitted motion, I don't necessarily think that changing a word would do it. My understanding is that that change would have to be, you know, somewhat material in order for it to be - go ahead (Rudy).

(Rudy Vanchnick):(Rudy) for the transcript. Just a question to see if this happened already in the past, how did we handle this? So that at least there is an understanding - for me an understanding of how did we do in the past?

Avri Doria: It's Avri again. I don't believe we had a case where we had a reconsideration when we - I mean, yes, not reconsideration - that's a different group, but a resubmission when we had the 10 day waiver rule in effect. So we haven't had an instance before.

Anne Aikman-Scalese: Right. I think - this is Anne again - that's correct because the resubmission of a motion rule is quite recent. It's something that was passed last year I think, in 2014. So it's more of a theoretical question. But when Council acted on these rules, it became clear that a clarification needed to be adopted as to whether or not the 10 day waiver rule could apply to a resubmitted motion because as Mary pointed out earlier, you know, it just isn't clear in the rules.

So that's why they asked SCI to address this. I think what I'd like to propose at this point in time is perhaps the formation of a sub-team that would include Avri and (Amar) who are, you know, opposed to each other in terms of our approach here. I'll volunteer myself to participate in those calls for further discussion. (Laurie), would you like to volunteer?

(Laurie Schilman):(Unintelligible).

Anne Aikman-Scalese: Oh, your mic is not live (Laurie).

(Laurie Schilman): No. I think it's an interesting point. And I'm kind of amazed and grateful that it's popped out this way. So I'd be happy to try to help mediate if we can get to a place. It might work. I've done it before with other issues. Let's see if I can do it here.

Anne Aikman-Scalese: Wonderful.

(Laurie Schilman): As a mediator, but to be part of a discussion where maybe we find common ground. If we - I mean we have to fundamentally agree about certain things. If we don't, then we're cooked. But if there is some fundamental agreement at a baseline, then that's where we can start from.

Anne Aikman-Scalese: Fantastic (Laurie). I really appreciate that. And I will step off given that, you know, if you're going to volunteer to be involved then that would be great for (Laurie) and Avri and (Amar) to work on the issue. Mary?

Mary Wong: Thanks Laurie. Thanks Anne. Great to have volunteers. I think from the staff perspective we want to get a clarification on what the sub-team would do because it seemed to us that we don't have an SCI position or agreement on which to craft language at all. So it might be...

Anne Aikman-Scalese: Right.

Mary Wong: ...helpful to figure out what the SCI thinks the position should be.

Anne Aikman-Scalese: Well no, the sub-team is not - I mean and maybe this isn't permissible. But I would see the sub-team as tasked not with language but with flushing out issues in the disagreement between the position that the 10 day waiver should apply and the position that it should not apply.

And perhaps come to what we've all come to know as a third alternative - that when you're working out between two positions and no matter how hard lined they are, sometimes through further discussion you can reach, you know, new ideas, new paradigms, new thoughts - creative thoughts to address the situation that would satisfy everyone.

And so the sub0team would be tasked more with a further discussion of the question. Maybe they would informally receive some feedback from councilors on this point, and that that would figure into their deliberations. And they could bring that back to the SCI, particularly the fact that, you know, we're here at the meeting at least two out of three on the sub-team could speak informally with Council members and get some further thoughts and then set up a call after Buenos Aries. Does that make sense?

Woman: I note that (Amar) and Avri have their hands up. I don't know if those are new or old.

Anne Aikman-Scalese: Sure (Amar), go ahead.

(Amar Elsidor): Thanks Anne, this is (Amar). And thank you Mary for making that point. That's kind of the issue I wanted to also touch upon. But I would go a little further and say that I would personally prefer that this discussion not be moved to a sub-team at this time, not until in principle the SCI agrees to the notion of a 10 day rule waiver being applicable to a resubmitted motion.

If the SCI can agree on that broadly in principle, then maybe a sub-team can be formed later to sort of flush out the details. But until we have agreement on the SCI to this point, I think it would be more helpful if this discussion continue with the full committee rather than on a sub-team. But that's just my opinion. Thanks.

Anne Aikman-Scalese: And do you mean it shouldn't move to sub-team until the full SCI agrees on the waiver, even as to the 24 hour aspect of that? Because we may be at a standoff if you take that position.

(Amar Elsidor): No Anne, this is (Amar) again. No, I think just in principle if we have agreement on the committee that a waiver should or could apply to reset motions in principle which I don't believe we have right now. I don't believe we have this agreement right now.

But until we do, I think this discussion could continue with the full SCI rather than on a sub-team. Once there is some agreement on any form of waiver to the 10 day rule being applicable to resubmitted motions, then maybe it could be moved to a sub-team and the details could be flushed out further.

But until that is achieved, I think a discussion involving the full membership of the committee would be more helpful. Thanks.

Anne Aikman-Scalese: Avri.

Avri Doria: Thank you, Avri speaking. A couple of things - first of all I was a little nervous at having been voluntold for this subcommittee, but was willing to go along with it. But I was going to go into it with the notion that what I'm coming - we have to give an answer - yes or no - to the Council. We asked them to ask us this question or they asked us this question. So we need to come back with an answer.

Now my proposal is that we have to put in a phrase saying specifically this rule is not applicable to resubmitted motions - period. And that's so my - I don't know that we have motions in SCI, but my proposal is that that be the language. I am sure that (Amar) has language that is the opposite of that.

So we could back and forth in our little subcommittee. And there's a part of me that loves the irony of two NCSG people - okay, one's NCUC and one's

NCSG - arguing this with an ex-NCSG member as our mediator. There's a beautiful poetry in that that I truly love. So that part of this little committee struck me as a thing of beauty.

But beyond that, you know, (Amar) does make a good point in that he and I are going into this at this point with - one of us is going in with yes, there's the change. And one of us is going into this with no. Now perhaps we can go back and forth, and I can convince him that it's a really bad idea. Or he can convince me that it's a really good idea. But I wouldn't bet on it. And I don't know what a compromise to that would be. There is no maybe position in here.

And one more thing - the idea that we would craft yet another thing that's not the 24 hours but the four day or the six day strikes me as getting even more complicated in rules that every time we touch them get more complicated. And I'm really worried about the legal complications we're getting into with rules and intricate sub-rules and clauses and such.

So I'll do whatever I'm voluntold to do. But, you know...

Anne Aikman-Scalese: That will be the day.

Avri Doria: I didn't say I would do it the way people wanted me to.

Anne Aikman-Scalese: Well, you know, one of the beautiful things about SCI is that we do work on full consensus. And so I don't want to put Avri on the spot and say hey Avri, are you saying that are no circumstances under which you would even consider a waiver for a resubmitted rule, you know, depending on the facts?

But it a way that's kind of where we are in terms of the standoff unless folks are willing to explore are there any conditions under which one might consider applying a waiver to a resubmitted motion. And again because SCI

works based on full consensus, I would like for us to try to find a way to explore that possibility rather than remaining in a standoff.

So Laurie, go ahead please. I'm sorry it's taken me so long to recognize you.

(Laurie Schilman): That's okay. I was just simply in terms of the sub-group, what my thinking was, you know, to have this reversal now in respect to Avri as, you know, in her position as a councilor and just being Avri, that it seems maybe to make sense in my view to have a smaller discussion about this - to mete it out in a way that, you know, if there's a standoff.

I mean there's either an A or B outcome as Avri says to a smaller group talking. But I agree, this group is small enough already that the need for an even smaller group to sub out at this point may not make sense. But that being said, I was simply offering as a point of intellectual interest to help mediate - and that's all I'm saying.

I tend to agree that in this particular group, because we do operate on full consensus, even if you had this subgroup discussion and subgroup outcome, it would still have to be discussed among the group.

Anne Aikman-Scalese: Okay. So I think there's actually no harm in continuing the full discussion in our next call, and trying to determine in the next call whether or not a subgroup is appropriate. I don't want to rush, you know, appointment of a subgroup if there's substantial sentiment against doing that. And I think at this point in time it's going to be most appropriate for us to discuss the topic on our next call after the Buenos Aires meeting.

I certainly would encourage everyone - and I see I'm getting an agree at least from (Amar) on that point. I would encourage everyone to seek some informal input from your GNSO councilors prior to the next call. And if we can try to think creatively about this, certainly is a beautiful thing to me - that SCI works on full consensus. And I do think if there's creative tension, that's good.

There's going to be - I anticipate based on our work in the past that I'm quite confident that we will be able to address this topic thoroughly and with a good, solid recommendation.

So I thank everyone for their attendance. If there's any other business, could you please raise it at this point? (Laurie)?

(Laurie Schilman): I don't know if it falls under any other business. But I just wanted to respond to something Avri said, and her point about keeping language accessible very well taken. As a lawyer, completely understand that.

But at the same time because we're a committee that looks at procedure, I don't know how we get away from being legalistic. It's just an idea I want to throw out there. I mean I believe in accessible language. But if there's a lot of procedures in play, then there's going to most likely be legalistic responses, even if they're not written in a legal way.

Anne Aikman-Scalese: Thanks (Laurie). My comment on that is that I think that when we refer to specific rules, we can use plain language to describe those rules at the same time that we describe those section numbers rather than, you know, requiring a lot of cross referencing between section numbers and - well, what Avri calls the pursuant do. I think that we can do a translation exercise that refers in plain language to what that rule is about, and that that will be very helpful.

So if there are no other comments at this point in time we'll adjourn the meeting and wish everyone a terrific meeting here at Buenos Aries. Please do make certain that you speak with your constituencies and informally with your Council representatives regarding this resubmission of a motion rule.

And thank you. Bye-bye.

END