ICANN
Transcription
Thick Whois PDP Working Group meeting
Tuesday 08 October 2013 at 14:00 UTC

Note: The following is the output of transcribing from an audio recording of THICK WHOIS PDP Working Group call on the Tuesday 08 October 2013 at 14:00 UTC. 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. The audio is also available at:

http://audio.icann.org/gnso/gnso-thick-whois-20131008-en.mp3
On page: http://gnso.icann.org/en/calendar/#oct

Attendees:
Amr Elsadr - NCSG
Carolyn Hoover – RySG
Steve Metalitz - IPC
Mikey O'Connor – ISPCP
Marie-Laure Lemineur – NPOC
Roy Balleste – NCUC
Chris George – IPC
Marc Anderson – RySG
Avri Doria – NCSG
Tim Ruiz - RrSG
Alan Greenberg – ALAC
Susan Prosser – RrSG
Don Blumenthal – RySG

Apology : none

ICANN staff:
Marika Konings
Lars Hoffmann
Berry Cobb
Glen de St Gery
Nathalie Peregrine

Nathalie Peregrine: Thank you very much, (Tonya). Good morning, good afternoon, good evening, everyone. This is the Thick Whois Working Group call on the 8th of October, 2013.

On the call today we have Mikey O'Connor, Steve Metalitz, Alan Greenberg, Amr Elsadr, Carolyn Hoover, Avri Doria, Tim Ruiz, Chris George and Marie Laure-Lemineur. We have a tentative apology from Don Blumenthal.

From staff we have Marika Konings, Lars Hoffman, Berry Cobb and myself, Nathalie Peregrine. I'd like to remind you all to please state your names before speaking for transcription purposes. Thank you very much and over to you, Mikey.

Mikey, you're muted.

Mikey O'Connor: God, I was so charming too. I was just talking away. Thanks, Nathalie. Welcome, everybody. I see everybody joining in. Steve, are you successfully on the bridge yet? Why don't you give us an update when...

Steve Metalitz: This is Steve, I've just...

((Crosstalk))

Mikey O'Connor: It looks like the bridge is - so you're in, good. Carolyn's a little jammed up. So we'll sort of take it a little easy at the beginning here while the bridge folks get joined into the call.

The agenda is pretty short. The usual (all) call stuff and then primarily we're going to work on this proposal. And that's about it. Next steps after that. So we'll take a pause and see if anybody wants to change or adjust the agenda and also (unintelligible) changes in their statements of interest and then we'll get going.

Okay. I think - I think we're ready. Everybody's in the bridge. So with that let's carry on. Just to sort of bring people up to the state of play the screen is that Word document that I circulated to the list and then Marika sent again.

And I'm on the second page of it because my thought is that today we'll work on the second half since we already worked on the first half. And then once we're done with the second half we'll head back up to the first half and make sure that everything's copacetic. And, you know, my goal is to see if we can get to a solution today and carry on from there.

So just let me back up a little bit in the (unintelligible). So we've got two chunks; we've got one chunk, the first part, that goes in our actual recommendation recommendation.

And then we have another chunk that we're using the shorthand little R recommendation that goes in Section 7.3 which is to remind everybody the part of the document where we're talking about things that the working group encountered that weren't necessarily quite in scope but that the working group felt like we had a lot of knowledge about and wanted to convey it to the rest of the world.

And where we've sort of gotten to is a variety of proposed pieces of language to put in there. And I just sort of (unintelligible) a representative sample. I'm sure all of you have seen a lot of this on the list and so I won't go through all of the bidding.

But I do want to sort of highlight the fact that it seems to me that there's pretty broad agreement here actually. I think if it - if you have trifocals like me and you sort of dolly back and let this go a little bit out of focus I think what we're saying, and I think we agree, is that privacy issues in general, especially when they have to do with Whois, are an issue that ICANN needs to get to the bottom of.

And that we want to join what I think is a broader chorus across the whole community that says, look, let's get this squared away. The hope is the PDP that falls out of the Expert Working Group will be chartered to take this up. And what we're saying, I think, is hey, Board, make sure that that's true, you know, that we share, again, what I think is a broader feeling across the community that this is important and needs to be addressed.

And so I'm going to end with that little bit of preamble and sort of let the queue build up. I think the one thing that startled me about Avri's latest draft is that we've got the language migration from thin to thick and that, it seems to me, is a little bit out of sequence because presumably by then the migration will either have taken place or be underway.

And so at some point, Avri, I want to circle back around to that. I don't want to put you on the spot now but I wanted to highlight that one. Because that one seemed to be a little bit sticky. But if we sort of set that aside it seems to me that, you know, there's pretty broad agreement here and that I'm more or less comfortable with any of this language. And so from there I'll leave it to the rest of you.

Marika, I saw your hand go up and down. Are you - it's back up. Carry on, Marika.

Marika Konings: Yeah, this is Marika. I didn't want to interrupt your flow of thought but I thought you had finished it, that's why I raised my hand and put it down again.

Just one thing I do want to point out because I know the group is focusing on requesting or recommending that the ICANN Board request an issue report. I just do want to point out that of course as these are not - or at least as my reading of the bylaws - as these are not policy recommendations it is not something we can force upon the Board.

So even if the GNSO Council would adopt this, for example with, you know, super majority, it's not something that then, you know, forces the Board to do it. Because this is a, you know, a process recommendation at least as I read it so just with that caveat.

I think this is a process recommendation where we're recommending the Board to do something. It's not about policy recommendations or consensus policies. So I think that's something to take into account. And I think I've asked this question before, I'm not really sure either why we're asking the Board to do this if we could ask the GNSO Council to actually do this.

Because I think as I've explained before the process or, you know, what staff at least would be doing would be exactly the same. The only difference here is that you don't have the intermediate vote once the issue goes or the issue report is considered for when the PDP needs to be initiated. While if it's a Council request it would need to go through that path. So basically I think those are my two main questions at the moment.

Mikey O'Connor: Thanks, Marika. I'm going to try getting a little bit closer to the microphone and see if that fixes the cutting in and out problem. Can people just give me a little (unintelligible) somehow whether that's better? If it isn't I'll dial in. I'm sorry about that.

((Crosstalk))

Alan Greenberg: You're not cutting in and out but you are sort of lisping or whatever.

Mikey O'Connor: Oh well that's probably just normal.

Alan Greenberg: No, it's the technology.

Mikey O'Connor: Yeah. I'll - once we get the conversation rolling I'll monitor and dial in. But let me kind of respond to Marika and kind of get that underway. It seems to me

that this is the one that we want to convey which is that we feel this is important. We want the Board to pay attention. We want the GNSO to pay attention. That I'm going to go to the queue and monitor while I dial in. And I apologize for the bad sound. Steve, go ahead.

Steve Metalitz: Yeah, this is Steve. I guess I had one question and one comment. Is - this is something that would - any of these texts would go in 7.3? Is that the proposal?

Mikey O'Connor: Yes.

Steve Metalitz: Okay, so we already have a long section in 7.3 about privacy and data protection so presumably it would go in there?

Mikey O'Connor: Yeah, that's right. This would go right at the end of there.

Steve Metalitz: Okay. I'm, you know, I think for the reasons - in part the reasons that Marika pointed out I think I would support either Alan's formulation or Tim's formulation because it doesn't get into this, you know, question of whether we're asking the Board to request it. You know, we're sending something to the GNSO that would ultimately be sent to the Board in which it says we request - that the Board requests a GNSO issues report.

And in other words it kind of gets us out of the procedural morass. It just says if you don't think that these issues are adequately addressed make sure they are which I think is the thrust of what you're - the way you're summarizing this, Mikey.

So I think - I mean, Tim's is much shorter which has some advantages but I could go with either Tim's formulation or Alan's formulation as a point in 7.3 I guess. Thank you.

Mikey O'Connor: Thanks, Steve. Turns out it's kind of tricky to moderate a call and dial in on the phone at the same time so if I totally spaz out it's just because I'm still trying to dial in.

Alan Greenberg: Have we lost Mikey?

Mikey O'Connor: Alan, you may be muted. Yeah, there you go.

Alan Greenberg: Oh no, I'm not muted, Mikey, you disappeared for a while.

Mikey O'Connor: I'm dialing in. I'll be there soon.

Alan Greenberg: Okay. You want me to talk?

Steve Metalitz: Go ahead, Alan.

Mikey O'Connor: Yes, please.

Alan Greenberg: Sorry I - if he said that I missed it. I actually like Tim's formulation over time because mine sort of is a double negative and is a bit more confusing. Tim's needs to be modified, however, to say privacy issues with respect to Whois data or something like that just to set the context of what privacy issues are we talking about.

What it comes down - what we're trying to say, I think, is Whois information contains or may be containing, in some cases, information which is deemed to be private in some jurisdictions and ICANN must make sure that its rules, you know, support that environment.

And I don't think we can be more prescriptive than that. The concept of an issue report on privacy, you know, I'm not quite sure what it's saying. The policy statement is ICANN needs to support privacy issues. The

implementation will depend - the Expert Working Group is coming up with something which may be completely different.

You know, we shouldn't be in the position now of saying in parallel with what they're doing go architect privacy for Whois in the general case because that whole base may be changing. So I think the simple statement saying hey, guys, this is important, is about all we can say.

Mikey O'Connor: Thanks, Alan. It's Mikey back on the telephone. Is this better?

Alan Greenberg: Clear.

Mikey O'Connor: Sorry about that. Oh well. I do like the new toys but not when they don't work very well. Sorry about that. I see that the queue is clear. Amr? Oh good, Amr, go ahead.

Amr Elsadr: Thanks, Mikey. This is Amr. Well for me the issue report would - what would add the advantage of really a kind of I guess defining the scope of the problem and that should be addressed whether to a PDP as a result of the issue report or a PDP on gTLD registration services following the Expert Working Group's work.

But my question would be from a procedural - or from a process perspective even though the Board is not obliged to follow the recommendation on giving us an issue report from - is there a problem of asking for one? I'm not clear on this and that's sort of the impression I got from the previous few comments. Thanks.

Mikey O'Connor: Thanks, Amr. Marika has shot her hand up so I'll let her go first.

Marika Konings: Yeah, this is Marika. Just first in the response to Amr's point, no there's never I think a problem in asking. Again, ask many things it's more just to make people aware that there's no requirement for the Board to follow this. Like

what you have, you know, if the other recommendations if they get a certain level of support in the GNSO Council basically the Board is required to adopt unless they overturn them.

But the specific voting threshold and that they can basically show that it would, you know, harm the security or stability of the Internet. So there's a very high threshold for them to actually say well no we're not going to do that. Well, I think in these kind of recommendations, which are not policy recommendations as such, or are consensus policy recommendations these are more suggestions that we're making to the Board and I think there's no problem in doing so or no prohibition of doing so.

I also made a comment in the Chat noting that - because I think Alan suggested that maybe to provide some more specificity to Tim's language. And one suggestion there would be to refer back to the actual section of the report where we outlined some of the issues that we've covered that address more the broader Whois questions and maybe not specifically the thin versus thick so there's at least a reference point or a starting point for where the Board could go and look and saying, okay, what are the issues we're actually dealing with?

And in relation to Amr's question or comment on that, you know, the issue report would scope the issue. I think it's a little bit the other way around because actually the ideas and that's right, I agree with Alan, the current request is very vague.

And something that we've been trying to do is, as well, when people request an issue report they actually complete a template and actually outline what is the issue. And then staff can go away and do some further research around that and try to get the data.

But it would require kind of like, you know, this is the actual issue and, you know, privacy and Whois is rather broad. So any narrowing down of that

would really be helpful if, indeed, the group would go down the route of requesting an issue report on this topic.

Mikey O'Connor: Thanks, Marika. Alan, were you going to respond to Amr or do you have an...

((Crosstalk))

Alan Greenberg: I'm going to respond to everyone.

Mikey O'Connor: All right, carry on.

Alan Greenberg: Or try. There will be a GNSO PDP on directory services following the EWG. There's already a preliminary issue report issued on it. Okay? I may be dreaming in - well I may be hallucinating but I cannot imagine a PDP being chartered by the GNSO in 2013 or 2014, whenever this happens, a new directory services which will not have as one of its charter issues privacy issues.

It is just not conceivable in my mind if nothing else other than the NCSG being on Council but there's plenty of other proponents for it as well. So I cannot conceive of that PDP going ahead without addressing the privacy issues head on regardless of how well or how complete the Expert Working Group does their work.

So I'm really at a loss to understand what we're talking about. The die is cast going forward. The Expert Working Group may come up with nothing but there's still going to be a PDP coming out of it which may scrap everything they do, you know, or may adopt it. But it's - that's already pretty well cast in concrete at this point.

And I can't see how they're not going to address privacy issues which is why I worded my suggestion the way it is because I think it's a done deal already. I don't think we need a parallel operation, you know, two PDPs going in

parallel, one on privacy issues on Whois and the other on new directory services which has to include privacy issues being done in parallel, it just makes no sense to me, you know, it's a make work effort. Thank you.

Mikey O'Connor: Thanks, Alan. Avri.

Avri Doria: Hi, thank you. Avri speaking. I wish I could be as optimistic as Alan about the seriousness with which ICANN, the GNSO, the Board, etcetera, the world, takes the privacy issue.

I can very easily imagine, because I've seen it countless times over the past years, of the privacy issue being pushed to the back. So I wish I could believe, like Alan does. But if indeed Alan is right and it's going to happen anyway then there really is no problem reinforcing the recommendation that it do happen.

Now the issue with the Board not being obliged - of course the Board's not obliged. The Board is actually never obliged to anything. And since they do almost everything by unanimity these days, you know, the notion that there are voting thresholds, the Board either does what it's going to do or it doesn't.

And so the fact that it's a request for an issues report as opposed to a command or rather a consensus, you know, vote that puts them at a particular threshold I actually think is a relatively, you know, minor issue. I think the request is what's important.

Now what we're requesting here is not only - and I think it's not as broad as - I think some of these statements make it broad enough. One of the reasons why I wanted to cast it in issues to do with the transition. I think that, you know, people have argued and argued quite well that for the most part the privacy issues are the privacy issues and they span Whois, the director services and other areas, RAA, what have you.

But the specific ones of this transition - so one place we're asking for a legal review of what are the conditions and exactly what does it mean. And I know, you know, certain people believe they understand this better than I do. But I look at privacy laws in cross jurisdictional basis and I see complexities that I don't think we've tackled.

And we've gone in dot one with let's get, you know, a legal view. And I think that's good. Now once we've got that legal view and we know what other privacy issues that we're going to be looking at in the - from the Expert Working Group and other GNSO PDPs then we also know whether the legal issues that are going to be looked at that have to do with the transitions of thin to thick are also covered or not.

And so in phrasing it the way it is so you've got the legal review, you then look at the issues. And if it looks like they haven't been included that's when you have an issues report.

Now people are also talking like an issues report means there will be a PDP. No, an issue report means we've now got the legal advice, we see what's happening everywhere else. Are there any issues specifically related to this transition? And we've also been working on implementation. So as we've seen with the gTLD process as you work on implementation new policy questions and issues come up.

So the issue report takes a look at that, takes a snapshot at that point in time of what's being done, the transition from thin to thick; are there policy issues? If there aren't policy issues, great, we know that there are no policy risks, no extra pressures we're putting on people. And we thank you for the issues report and we're done.

If, on the other hand, the issues report says, look, we've looked at the legal, we've looked at all the other work that's being done on privacy but in this

cross jurisdictional change we have noticed a couple issues that are not covered and therefore.

So asking for an issues report is basically a backstop to make sure that as we go through - if at any of the stops along the way in what we've been describing there's a gap, something fell through, it didn't make it, there is a request to sort of make sure that this one doesn't fall through the cracks.

We are talking about something that is a change that affects the majority, over 80%, I don't - I'm throwing around numbers; I really don't know Com and Net and what percentage of the world's registrants they are. But we're looking at a situation that affects the world's registrants. And I think that to do what's happened in some other of our policy implementation (unintelligible) that we get to the end and we've policy, you know, issues that weren't quite covered adequately.

And instead of coming back to the process we just sort of punt on it and the Board makes a quick decision or something. This is to say, Board, you notice that this is happening, please use the proper process, please request an issues report so we can decide whether there is a proper GNSO process to be followed.

So that's the spirit of the recommendation. And I think that that's what we need to do to have closed up this issue, to have bracketed it, and to say, listen, you know, we may not have had all the answers, we may have had some crazies that had some ideas of risk that weren't really risks, but they argued that, you know, you never know, there might be risks like we found out in the gTLD program. There were risks that nobody knew except for a few lone people crying in the forest.

So that's pretty much the reason why I think we've got to go all the way through to making sure that at the end of the day if the Board doesn't feel that

all these issues are being covered they request a proper issues report that could initiate a PDP but doesn't necessarily do so. Thanks.

Mikey O'Connor: Thanks, Avri. I see a pretty good queue building up. I want to jump in before I get to anybody in the queue, exercise my prerogative here. I typed a little - well I think one key issue that I want to ask you about before I let you off the hook, Avri, is the one of sequence. I think what throws people, including me into a panic is if we have to wait to do the transition until all of this is settled, at that point I think life gets really tricky.

But if, on the other hand - and that's why I typed that little modification in there - it would work to say something like that the Board requests an issues report on privacy issues arising from the migration from thick to thin so that after the fact essentially if we find privacy issues there's an avenue to resolve them. Sort of the way we're doing it in the larger new gTLD process.

Would that kind of sequencing be acceptable to you? Oh, you may be muted, Avri or you may being polite and waiting until the end. But I'd really like to ask you...

((Crosstalk))

Avri Doria: ...the unmute from the other telephone number, the star 7 instead of the star 6. I forgot which phone number I was calling on, apologies.

I tended to see them all as happening in parallel. And an issues report is a rather short thing so I actually tended to see them as going in parallel. I don't think this is going to be a rapid, you know, implementation. And so I was thinking that the issues report would be something that was simultaneous with the end of the - just before the implementation kicks off.

But I wasn't - I wasn't suggesting that it had to be but basically I was suggesting that it came right after the legal. And if the implementation that

started it had started and then we'd have these kind of hands up crisis, you know, that we're having now with the gTLD of all of a sudden let's stop, let's start, let's figure it out, if there is a crisis policy issue.

I speak as if - and someone also commented while I'm talking again - that I was speaking as if we hadn't already had a PDP. We did but we discussed that there were things we couldn't answer because we didn't have the legal background so, therefore, we have to follow up with the legal view on the legal implications of thin to thick on a cross jurisdictional basis. And if there is an issue that comes out of that then it's something we need to come back to.

Now, you know, I mean, there's other ways to do this but they're more complicated. An issues report is basically just an issues report. It's asking staff to look at the legal evidence that came in, to look at the work we've done, to look at the AWG. And if everything (unintelligible) write an issues report and tell us what's missing or tell us everything is fine, we've dealt with everything. That's all. Thanks.

Mikey O'Connor: Thanks, Avri. Okay, now onto the queue. Thanks for clarifying that a bit. Marika first of course and then on to the rest.

Marika Konings: Thanks, Mikey. Just two brief comments. I'm a little bit confused about Avri's order of events. Because as I see it, indeed, the legal review is actually where the assessment would happen as part of the implementation discussion because it really seems that having a parallel track on going down an issue report I'm not really sure what would actually do that.

Also, and just talking personally very practically, what we would probably just do is look what is already in this report on this topic. I'm not really sure what else we would find as part of, you know, the staff investigation what hasn't already been covered by this group. So I'm really not clear on what the issue report aims to achieve that is not already done by the legal review as part of the implementation.

So, again, I think if we go down the road of the issue report it would really need to be clear what that is actually expected to cover and with a lot more specificity than what we currently have for us to actually be able to do that.

Mikey O'Connor: Thanks, Marika. Let me try and summarize what I heard from Avri since I'm likely to be the drafting person on this. In that last little bit from Avri what I heard was, okay, let's start the implementation. The first stages of that include a legal review and the rest of the implementation stuff.

If the legal review uncovers an issue then the - you know, that we, as we've documented, are unable to do on our own, then that issue that's uncovered by the legal review gets folded into an issues report that's created by staff. So it's, you know, otherwise we do get into the circular problem that I think Steve is alluding to which is, you know, if we just go back to the community we wind up right back with us.

And I think that the ingredient that changes things is that legal review. And I think what Avri is looking for there is a backstop that says if that produces an issue that the GNSO needs to review then trigger that review, don't just charge ahead on your own.

I'll let - Avri's in the queue so I'll let her correct me at the end. But let's take it from the top. Alan, go ahead.

Alan Greenberg: Thank you. A number of points. First of all as is going on in the Chat as noted, a PDP requested by the Board does - an issue - by the Board does lead to a PDP. Maybe there is some concept that the Board could undo its request depending on what the issue report says but the bylaws say a PDP ensues, period.

So, as Marika pointed out what's the issue report going to say that we haven't already uncovered? You know, staff has been involved in this whole process.

I really don't understand where it's leading to. And I would like a little bit of clarity - and, Mikey, you asked the question and maybe Avri will answer it - of what is the order in this?

If we're talking about an issue report and perhaps a PDP which has to be completed prior to the transition, which in other words says redo part of this PDP and trigger the implementation of this PDP recommendation based on another PDP then let's issue our final report as it is written now, go to Council and see if it wins or not.

If it dies it dies. If it wins it wins. But putting another PDP in the middle of this one before this one's recommendation can be implemented I think is just a mangling of the process and, you know, I just don't understand it. I don't understand why the next PDP will have better people on it than us. I'm glad not to be on the next one because I'm not going to go through this again.

But I don't see how suddenly we're going to have new, you know, brand new blood that's going to have the ability to do what we couldn't do. We've asked for a legal review.

Clearly if that legal review by ICANN's attorneys says there is a problem that's going to put a halt to the implementation until the problem is addressed whether it's a problem that has to go back to the GNSO for policy advice or it's a detail of implementation or it simply stops it saying ICANN is going to get it pants sued off and we're going to violate, you know, all of Europe's privacy laws by doing it, clearly that's going to halt the implementation.

So we've already put a legal review in the process or at least we're talking about it. If we want another PDP that's going to go off in another direction along with the EWG PDP, fine, I can live with it. I think it's stupid. I think it's a replication of effort. But fine.

If we're talking about something that's going to be in line and has to be completed before the transition to thick is done then what's going to stop that PDP from saying we need a third one? You know, I just don't understand and...

((Crosstalk))

Alan Greenberg: I think we're...

Mikey O'Connor: You're starting to repeat yourself a bit.

Alan Greenberg: Okay, I'm over.

Mikey O'Connor: Thanks.

Alan Greenberg: That tells you my state of mind.

Mikey O'Connor: Yeah, I understand. But, you know, just to clarify, again, I think that the difference between the state of this group and the state of the group after the legal review is that the legal review will have been completed.

Alan Greenberg: Excuse me, Mikey, do we really think that Legal has already...

Mikey O'Connor: Alan.

Alan Greenberg: Remember, Marika has to consult with Legal staff before this PDP goes through.

Mikey O'Connor: Alan, put yourself back in the queue please. Amr, go ahead.

Amr Elsadr: Hi, this is Amr. Yeah, I never saw the legal review as anything that would halt the transition from thin to thick. And what I was hoping for was an issue report that does - well the legal review, I'm sorry, to go back - the legal review was

meant to mitigate any risks involved during the transition not to halt it. And I thought we made that clear when we were recommending it.

But what I was hoping for is that the issue report would address this more clearly or ask that this be addressed more clearly following the transition. And if the issue report was issued in parallel to the transition taking place that doesn't mean that a PDP would - that transition would have to wait for the ensuring PDP to go ahead and be implemented.

But I also wanted to say that the language in Avri's recommendation here doesn't suggest that a dedicated PDP has to arise as a result of the issue report but just if there are other PDPs, for example, the one that is to follow the Expert Working Group's work then that - whatever considerations need to be taken or whatever needs to be taken into consideration from this issue report if it is not already present in the charter of the post Expert Working Group PDP then it should be.

And Alan was saying that according to the bylaws an issue report means a PDP or not if the Board rejects it I guess. But I wasn't - I'm not too sure about that but I'm hoping that if two issue reports could - could be combined to sort of include whatever needs to be done in one PDP.

And as far as whether recommending an issue report in this - in our final report is adopted by the Board or by the council or not, my understanding is that according to the PDP manual is that not all recommendations need to be adopted when being considered by Council or the Board and that even when they are interdependent it is recommended that they be adopted together but that is not necessarily the case.

So I guess some recommendations could be dropped and some could be adopted - or implemented. But so it doesn't really hurt to add a recommendation for an issue report in that context. Thanks.

Mikey O'Connor: Thanks, Amr. Avri.

Avri Doria: Me already? I thought there was one person before me. Okay. Yeah, I guess I really apologize to Alan for, you know, I guess confusing things so badly that it's becoming such a frustration. So I do apologize for that.

I think there's two things that came out of that and - on having the Board request the issues report I think we've actually discovered an issue that we have to send back to the SCI because it - truly stepping back for a second it makes sense that the Board should be able to request an issues report.

But if the issues report says that no PDP is required there really should be a mechanism for the Board backing out. And there isn't. So thanks to Alan and others I do think we have something to dump on the SCI.

And that's a good enough reason for me to sort of back off the notion of the Board requesting it because it does put us in a bylaws failure mode. And being, you know, a process person that is problematic. So I've seen a certain amount of light there.

Now the problem I have is that we have seen in the recent history of ICANN that when we get to these implementation issues - again, I wish I could be as confident as Alan. We have seen that when we come up with these issues that require a policy termination they don't come back to the GNSO.

And even if the GNSO decides on its own that it should take them up and it does send opinions forward they aren't necessarily taken into account because they weren't part of a PDP.

And so what I'm looking for is something that says - and I think I was fine with a lot of what Mikey said, is that what you're doing is you're looking at the policy implications of what we have done plus what the AWG has come out,

plus the legal review that's specific on the, you know, cross jurisdictional issues with the transition.

You're looking at the three of those and you're saying is there a pending policy issue? That's what I want to say and that if there is a pending policy issue then we need to have a proper GNSO PDP on that issue. And if someone can help me find the words that say that because that is what I think is the critical nut here in all of this is things fall through the cracks. Policy issues fall through the cracks and we need a way to get it back into the GNSO.

If that happens I think this group in ending its work has to look what it's done, it has to look to what it hasn't done and what it said it couldn't do and prescribe something that makes sure it gets done and it gets done according to proper process. Thanks.

Mikey O'Connor: Thanks, Avri. I think we're getting there. Marie, go ahead.

Marie Laure-Lemineur: Can you hear me?

Mikey O'Connor: Yes.

Marie Laure-Lemineur: Okay. Three points. The first one is that my understanding - and you correct me if I'm wrong - is that either of the three versions would delay the implementation of the transition from thin to thick.

Number two - so what we're doing now is sort of adding another request or requesting additional actions, it wouldn't delay the process which I think is very important.

Number two, again, in the three versions, the three different paragraphs we are in a - have the same spirit. It's an if/then situation. The only difference I see is the type of action that would be recommended. In Avri's version it

would be a little more specific whereas in Alan's and Tim's versions it's more open, it's broader language. So we're speaking in Avri's version of an issue report.

My understanding, point number three, is that it would be sequential, it would be first the legal review based on what you all said and Avri said. It would be first the legal review then the issue reports, as you say, Mikey, based on the findings of the legal review. That's how I understand it and you correct me if I'm wrong. Thank you.

Mikey O'Connor: Thanks. I think that the - I think that that's right. I think the sequence is - well, regarding sequence we've talked a bit about sequence and the hope that much of this can go on in parallel. I think there is a great concern that the process getting held up and that's part of the reason for the language that we've got up above about that.

I was delighted to hear Avri talk about the issue with the Board. And I agree, I think we do need to send that one back to the SCI and probably also to the Policy and Implementation Working Group because this is sort of in that same category.

And so I think where we're headed is a closer understanding amongst us and the need to draft some language. So I stuck something into Tim's that kind of highlighted the need for a GNSO process, not just any old process. The chat has been going crazy and at some point somebody's going to need to summarize this.

And I'm sorry, Steve, is correct, put myself in the queue. Alan, go ahead.

Alan Greenberg: Okay. I guess I'm having trouble understanding this concept that ICANN Legal does a review, finds out there's a real problem and it goes ahead anyway. Now is ICANN Legal or external counsel they engage all seeing and a guarantee that they don't find a - that they don't say, yeah, everything looks

okay, we go through the implementation and find a rats nest as we have with the new gTLD process.

Well, we're not perfect and it is conceivable that could happen. But I don't think doing it over a second time necessarily changes that. So we've asked for a legal review. I have no problem saying, "And if the legal review finds a problem that problem must be addressed before the implementation." I have no problem with that because I can't imagine it going forward any other way.

So I think we really need clarity on whether this other option is one that is going to be a trigger to the final cutover or is something that goes in parallel because other than that I agree with Tim, let's do a consensus call and go forward one way or another. Thank you.

Mikey O'Connor: Thanks, Alan. Sorry to jump in front of you like that. Marika and then Marie. Marika.

Marika Konings: Yeah, this is Marika. I think to follow on what Alan suggested because just indeed to point out to the group of course, you know, Legal has reviewed this issue report. You know, they've also reviewed all the things going on in relation to this and, you know, new gTLD recommendations in relation to thick Whois. It's not a new issue.

You know, many registries operate already under a thick Whois model. But of course, indeed, we can all accept that, you know, something may have changed in the meantime and as, indeed, part of the legal review that is currently being requested issues may arise.

And I think, you know, hearing what the different people have said and basically building on what Alan also suggested may be a path forward would be to say okay the legal review is conducted, should that review identify any policy issues that need to be addressed, you know, before a transition takes place, at that moment a PDP is initiated either by the Council or the Board.

Or, you know, it can of course find other issues as well that maybe also would need to be addressed by a PDP but that not necessarily need to hold up the transition. So I think to build in more that the legal review is really the first step and if that identifies any specific issues at that point something is triggered.

Because I think otherwise indeed doing things in parallel doesn't seem to really help the situation. It probably makes it more confusing. And I said, our issue report would probably look a lot like what is already in the report currently as the group has already spent a lot of time in exploring the issue as such.

Mikey O'Connor: Thanks, Marika. Alan, that new?

Alan Greenberg: Yeah, just a quick one. I agree with what you're typing on the screen right now. I would actually say it be referred back to this PDP. You know, if essentially they're saying oops we just found out your recommendation is not implementable then refer it back to us, you know, and not start a whole new PDP from the scratch on what might be a bit of an implementation issue.

Mikey O'Connor: Oh, somebody coughed that isn't on mute so whoever that was. Sorry, Alan, didn't mean to cut you off.

Alan Greenberg: I'm done.

Mikey O'Connor: Okay. I'm sort of sketching some stuff in there. Marie? You may be muted, Marie.

Marie Laure-Lemineur: Yes, sorry. I'm the one who coughed, I'm sorry about that.

Mikey O'Connor: Oh, no worries. Go ahead.

Marie Laure-Lemineur: So the last bits of the sentence refer back to us? I find it a bit contradictory because we ourselves (unintelligible) we don't have enough in some parts of the report that's some of the issues privacy issues, go beyond our knowledge and we need the legal review meaning external people to address those issues at least assess some - and pinpoint some of the key issues.

So if we say in the sentence that it would come back to us it doesn't really make sense because we are already admitting that we're not in the position, you know, to address those issues; we don't have enough knowledge or time or whatever. So why come back and do exactly the same, you know, if we have limitations? I'm just wondering...

Mikey O'Connor: Thanks, Marie.

Alan Greenberg: I can address that if you want me to.

Mikey O'Connor: Yeah, I didn't - maybe I'll let Avri - Avri, were you going to respond to Marie? If not maybe I'll let Alan respond but if you were going to respond go ahead.

Avri Doria: I was going to make a comment about what she said but, no, that wasn't why I raised my hand.

Mikey O'Connor: Okay. If you'd let me let Alan jump in front of you that'd be great. Alan, go ahead.

Alan Greenberg: Yeah, we're asking for the legal review. If they come up with identifying a specific problem that they - that needs policy work then they should refer it back to us. We may throw up our arms and say we don't have the skill and we have to go hire somebody or whatever.

But we don't know what the problem is going to be so saying we're not going to have the skills to do it, you know, I don't think we can say that right now. If

we knew what the problem was we wouldn't be asking for a legal review. So what I'm saying is if the legal review identifies a policy issue then they refer it back to us. What we do with it at that point there's a lot of options including throw up our hands and saying it's out of our league.

But I don't think we could presume it's out of our league. It may be something which just requires a rethinking of how the transition is done or the timing or I don't know what the problem is so I can't, you know, say or a caveat saying if jurisdictions are subject to somewhat or other they don't have to do the transition. I don't know.

You know, we're hypothesizing based on an answer we haven't gotten from the legal review. So all I'm saying is we should be the first recourse to fix the policy which obviously needs tweaking because we didn't foresee something. Whether we can do that or not I can't say. Thank you. But I'm hoping...

((Crosstalk))

Mikey O'Connor: Thanks Alan. Okay. Avri.

Avri Doria: Yeah, thanks. This is Avri speaking. In some ways I think we're heading down the wrong road. What we were looking at was privacy issues and are all the privacy issues covered. And if they aren't all covered are they being covered in another process, in other PDP? If they're not how do we get them done?

Now we're talking about the - we feel that this PDP may need - obviously does need, you know, the cross border legal implications review of the we're recommending before it can kick off implementation though it can work on implementation until then so we already had a parallel track in that.

Now I think it is - so to say that they - that that needs to come back to this group one could reasonably ask well then why didn't this group ask for that up front and complete its work once that review was done? Now we made a

decision not to do that so to say then that it has to come back to this PDP I
see difficulty with that for the two reasons.

One, if we need it to finish our work then we should just do it and then finish
our work. But the reason we need it is to feed into the wider policy on the
issues of transition itself and are there any specific issues which is the
question that we can't answer.

So - but the notion that Marika mentioned of the legal review sort of being an
automatic - being the trigger is interesting and I think worth exploring. I still
see a continuity in that legal review itself does not kick off issues. I mean, so
I'm not quite sure of the construct that sort of says we have legal review and
it starts a - it's not restarting this PDP, it's getting into the privacy issue and,
you know, kicking off what we've been trying to put in 3.

So I think it's an interesting mechanism for sending it back to the GNSO for
further consideration on the privacy issues what have you. But so while I'm
not strongly supportive of this PDP working group, you know, waiting for the
legal review I do like the idea of the legal review as a trigger to action or non-
action. Thanks.

Mikey O'Connor: Thanks, Avri. I think I'm going to let Marika jump in the queue and then to
Maria. Marika.

Marika Konings: Yeah, this is Marika. I do believe that in the report we recommend the
creation of an implementation review team so that may be the mechanism by
which, you know, any issues may be brought back to the council because at
least how I see it in my head.

And, you know, I'll talk as well to our legal team to see how they would see
this and practice it, that they would take this away, you know, go do their
legal review and either come back saying fine, you know, we've checked, we
haven't found anything else that, you know, would prevent implementation or

they would come back saying, well, these are the three issues that we find - we have found and think needs to be discussed, covered, further research or whatever the options are.

And then the implementation review team is the consulting mechanism whereby staff could go back saying hey as part of the implementation we've now found this.

You know, our suggested approach was - is, you know, maybe we need to do some more research on this specific issue or these issues may need to go back for more work and then it's the implementation review team that can serve as that mechanism saying yes we completely agree with your assessment and we're taking this back or they could say as well well we don't agree with what you want to do, we'll take it back to the council in any case.

And as I put as well in the chat under the current PDP rules there is also a mechanism for the Council to actually take it straight to the Board if they believe staff is conducting the implementation that is contrary to the policy recommendations.

So I think there are separate - several mechanisms in there that, you know, could serve as this triggering point should issues be identified as part of that review.

Mikey O'Connor: Thanks, Marika. And I note for the transcript that Alan is agreeing to that notion so I changed what I typed. Marie, go ahead.

Marie Laure-Lemineur: It's just a quick point. I don't know whether we all agree on that but my impression is that now the new version, Alan's, let's say, summary of Alan's comments or suggestions, would actually - the way it's written would delay the implementation whereas the original three versions were not that explicit and didn't say that we had to (resolve) the address the issue before implementation.

So actually the new version, the blue sentence, is actually tougher and would, you know, I don't know, maybe got us backward instead of going forward. Just a thought.

((Crosstalk))

Alan Greenberg: ...clarity on which sentence Marie was talking about?

Mikey O'Connor: Yeah, Marie, are you talking about the one that's on the screen here?

Marie Laure-Lemineur: Yes, the one - in my screen it's written in blue. The bit that you just added based on Alan's suggestion. And it's in between the brackets. And if the review find a problem to be addressed before implementation is completed. So...

((Crosstalk))

Mikey O'Connor: Take that out. That's an artifact.

Marie Laure-Lemineur: Oh, now it's gone. Oh.

Mikey O'Connor: I think this is where we're at now. Sorry, that very first one in brackets was the - so I think this is the current state of the understanding that should the legal - I'm sorry, legal review identify any policy issues those issues would be referred to the implementation review team for action. Something like that.

Is that close? Give me some tick marks or some red Xs out there in participant land to whether we're okay there. I'm getting a tick mark from Chris. Now I've made the list a little too small, let me expand it. Not seeing any reaction at all. Amr, go ahead.

Amr Elsadr: Yeah, hi. This is Amr. I was just wondering if there's any reference on how a legal review exactly works in terms of a process. I mean, the legal review takes place and then is there a report that's issued as a result of the legal review or is it somehow part of the implementation effort? I was just wondering - it would help me understand the process and what it is we're recommending exactly. Thanks.

Mikey O'Connor: I think we're kind of inventing this as we go so we may need to clarify that. It would be useful to know, you know, what your hope would be in that because I think we can probably specify, you know, what would come out of that. My guess would be but I'm, you know, not sure, that they would write a report that would at least go to the implementation review team for a review.

Amr Elsadr: So is this completely unprecedented then?

Mikey O'Connor: Well, no I'm on thin ice here. I'm not that familiar with all of the implementation stuff. And, oh, Marika has got her hand up, maybe she's going to rescue me. Go ahead, Marika.

Marika Konings: Yeah, this is Marika. I think you were putting a specific term on something that already happens because basically, indeed, as part of a working group working through recommendations we already consult with our legal team on a regular basis. And at that point, you know, they will flag if they see any issues that, you know, would violate specific laws or would be in contradiction to, you know, existing policies.

                So I think what we're doing here is just calling that out that, you know, even though they may have already done that throughout the process that as part of the implementation they do that again and specifically look at it.

                And, you know, my understanding would be - and, again, I'm happy to talk to our legal team how they would see this working is that as it is specifically called out in the recommendations that they would actually come back with

either report or an email or a note saying look, you know, this is what we've done and this is what we've found.

I now we saw that, for example, on the working groups there have been legal reviews as part of the working group effort. I know in the IGO/INGO group there was a specific request made and certain questions. And there indeed a report was provided back that basically outlined well this is what we found.

So I presume it would go down a relatively similar path as such or at least that's how I would envision it but I'm happy to check as well if my colleagues would see it in the same way.

Mikey O'Connor: Okay well as Steve Metalitz pointed out in the Chat we're over time. I think we've got some work to do in terms of some of the late-breaking chat stuff. Amr is raising the question, "How are the flags raised? You know, how are they addressed?" So we probably need to get some process clarity going there.

So I think we'll keep working this another week. And it's now quite a bit after time. So I think we'll just wrap it up at this point. I think we're getting there. I'm not feeling like we're wasting our time. I think other people do but I myself think this is pretty productive. So thanks, all, thanks for the hard work, cordial tone. We'll pick it up in a week, maybe some chatter on the list and with that I'll draw this one to a close. Thanks, all.

Marika Konings: Thanks. Bye.

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