## Policy Process Steering Committee (PPSC) Policy Development Process (PDP) Work Team (WT)
## TRANSCRIPTION
## Thursday 28 January 2010 at 14:30 UTC

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**Participants on the Call:**
Jeff Neuman - Registry Stakeholder Group  - Work Team Chair
James Bladel – Registrar Stakeholder Group
Wolf Knoben – ISCPC
Tatiana Khramtsova – Registrar Stakeholder Group
Avri Doria - Non Commercial Stakeholder Group
Alex Gakuru - Non Commercial Stakeholder Group
David Maher – Registry Stakeholder Group
Sophia Bekele – Individual

**ICANN Staff:**
Margie Milam
Glen de Saint Gery
Gisella Gruber-White
Marika Konings

**Absent apologies:**
Brian Winterfeldt – IPC

Operator:     The call is now recorded. Please go ahead.

Jeff Neuman:     Okay. Is - this is Jeff Neuman Chair of the PDP Work Team. I was wondering if Gisella or Marika has the - is looking at the phone list so they could start the roll call.

Gisella Gruber-White: Absolutely Jeff. I'll do it. It's Gisella. Good morning, good afternoon to everyone. On today's call we have Jeff Neuman, James Bladel, Avri Doria, Sophia Bekele, Tatiana Khramtsova.

From staff we have Marika Konings, Glen de Saint Gery, Margie Milam, myself Gisella Gruber-White.

We also have Alex Gakuru, apologies, on the call.

Wolf-Ulrich Knoben will be joining late.

And we have apologies from Brian Winterfeldt.

I hope I haven't left anyone off the list. And if I can please remind everyone to state their names when speaking. Thank you.

Over to you Jeff.

Jeff Neuman: Thank you. Good morning, good afternoon everyone. This is Jeff Neuman. It is January 28, 2010. This is our normally scheduled meeting a half hour earlier so I have a feeling we may get a couple people that join half hour from now. But I appreciate everyone moving the time around for me.

So just what I want to do on today's call the agenda is to first go over some action items that came out of the last call, just a status update on that.

Then we'll go over the Stage V questions so we can issue the survey out hopefully by later today or tomorrow, or as soon as possible so that we can - when we get into a discussion on Stage V on the next call we can - or two calls from now we can actually have a fruitful discussion looking back at that survey.

And then finally going back to stage IV to try to address some of the open questions that still remain.

So with that said does anybody want to add - I also do want to talk about again Nairobi to see - you know (unintelligible) taking a poll as to who was going to be there. It seems like we'll have pretty good attendance from this Work Team so we'll talk a little bit about that as well. Does anybody have anything else to add to the agenda?

Okay. Hearing silence we'll move on then to just a quick status on - on the last call we had talked about - there were a number of questions that we had in stage IV that deal with the Board report - or actually I should say the Council report to the Board. And we were talking a bunch about, you know, what elements we think the Board would like to see or the Board should see when a suggestion was made - good suggestion was made to say, well, you know, probably more important to ask the board members what they would like to see and to see what they're getting now, what could be done better, what else they'd like to see.

And so that said the action item I took on was to send a note to the chairs, the GNSO chair, the council chair, and the two vice-chairs, to review the proper protocol would be on a work team sending a note to the Board asking them these questions.

Given the response that we had on the face-to-face - proposed face-to-face meeting and the controversy it caused not so much on the idea of the face-to-face but on the fact of whether a work team could ask for this or whether that kind of thing had to go through the Council as a whole. And then there were some side discussions on that call as to whether the work team - on communications from the work team to the external body.

So trying to avoid that I sent a note to Chuck and to Stéphane and Olga on the proper protocol how a letter would be sent, excuse me, to the Board

Governance Committee. And I've not gotten a response back. I think it may have been - I was told this morning that I'm not able to post to the chair's list so that they may have caused a little bit of delay because I had sent a note to that list. But I think Marika has - and Glen have forwarded that on. So we'll see what response we got.

Again the plan is to once I - once we figure out that protocol is to send a letter either through the Council, through the Steering Committee, or through the Work Team directly soliciting feedback on those questions.

There- anybody have a question on that or comments?

Okay so that's where that lies at this point. Once - again once we receive the protocol I'll draft something up, send it around to the group to see what you all think as far as the questions to ask and then we'll take it from there.

On - jumping now to Stage V questions which are up on Adobe right now, these are the questions that came up through our brainstorming session several meetings - physical meetings ago in I guess it was Mexico now that when these questions were first brainstormed and had come up through, you know, other discussions that we've had, sent the questions around on the list and James had some comments on it. So I was wondering James if you can go through your comments so we can address them.

James Bladel:     Sure. Just a moment let me pull those up. I think they were very brief. And we can take them by section if that makes a little bit more sense so that we don't skip around.

Jeff Neuman:      Yeah let's do it that way.

James Bladel:     Okay. Well on the first section, you know, I didn't have any issues with the - this is for the periodic assessment of the PDP recommendations on policies

and I didn't have any comments relative to the questions that we laid out here, 1a through 1g.

I just wanted to add perhaps 1h an additional question which would, let me pull it up here, essentially say that the Working Group itself when it's developing the policy should have some role in determining what the success conditions will be. And so where these metrics are coming from as far as to determine whether or not the PDP has been effective in addressing the problem I think that there should be some role for the Working Group in developing those.

This is something that I hear quite frequently internally through my company which is that whenever someone proposes an idea or a change, you know, the immediate reaction is, "How will you know when you've been successful?"

So I just wanted to work that in to this particular section.

Jeff Neuman:     Okay. So you're saying that the Working Group issued - the Working Group would then say as part of its report would then say, "So when we assess this in a year, two years, whatever the period is, these are the measures of success and this is how we'll know that the policy has worked or that more work is needed" essentially is your question.

James Bladel:     Yeah. And I think that that will by - you know will have the beneficial side effect of - by thinking about those metrics while the policy proposals are being developed I think it will help crystallize some of the problem resolutions that are being developed.

So if I pick on tasting here for a little bit I think if the Working Group has said, you know, "We would like to review this in 12 months" and see, you know, a significant greater than 40% reduction in testing or, you know, reported excess deletes in the AGP. And then the report came back from compliance

saying that it was 90-plus percent reduction then they would say that policy has been a success.

I think that by causing the Working Group to examine those questions and develop those metrics, you know, alongside with the policy recommendations can make those policy recommendations - or just will improve the quality of the policy recommendations.

Jeff Neuman:     Okay. I think that's a good question to add to that list. I think that makes a lot of sense.

Are there any other comments on that? I thought I heard someone…

Avri Doria:     Yeah this is Avri. I wanted to ask a question.

Jeff Neuman:     Sure.

Avri Doria:     So what you're saying is what would go in the questionnaire is something like, "Do you think a section should be required as a report that states a success criteria?" Is that what you're saying?

James Bladel:     Avri this is James speaking and I - the way I worded it was, "1h. What role should the Working Group have in proposing for developing performance metrics?"

Avri Doria:     Okay fine.

Jeff Neuman:     Okay. And then the second question is on Section 2 and what you have in the email is saying, "I have some concern that these could be seen as the various scenarios under which the Council could subvert the consensus of the group or am I reading this incorrectly?" So can you just explain that comment and - just for those of you - it's Question 2 or it's I should say Group 2 where the questions in the chart say, "Should the GNSO be" - talking about

the Council here, "be required to conduct an assessment at the end of a PDP process?"

Well let me ask the question. Marika when we say "GNSO" there we mean GNSO Council?

Marika Konings: Yes correct.

Jeff Neuman: Alright. Maybe we should - let's change that in the wording just so it's clear when people are responding to the survey.

Marika Konings: Okay.

Jeff Neuman: And then it says, "If yes, what elements should be included in this process? The BGC, the Board Governance Committee Working Group, reports that suggest checking: one, does the scoping of the issue remain valid? Are all relevant stakeholders aware of, and involved in the process? Has no one stakeholder group" - I should word this a little differently. "Is one stakeholder group dominating the process? Are any necessary expert opinions provided? Data has been provided and used where appropriate and can the proposed policy be implemented?

So James your concern if you could just explain it with those?

James Bladel: Yeah so - this is James speaking. And my concern really focused on the bulleted list in 2b. And I kind of go back and forth on this one Jeff to be honest is that I recognize there's a need for Council to somewhat act as a check on what comes out - or sanity tests on what might result from a PDP Working Group to make sure that it makes sense, it's implementable, that it's, you know, within the picket fence and all that all other jazz.

But I also want to be certain that if the PDP is - you know, does reach a consensus and does - is representative or, you know, has participation from

all the stakeholder groups and comes back with a policy recommendation that the Council isn't using one of these bulleted items here as a way to negate the consensus that was formed in the Working Group.

So for example, if I said, "Well there was - you know, this is a good policy idea but I noticed that there were three or four extra, you know, business constituency reps on this particular working group therefore I move that we just, you know, just disregard those policy recommendations."

So I kind of go back and forth between the idea that Council should be a check on what comes out of the Working Group versus their role in just managing policy, development, and respecting the consensus that comes out of those groups.

So I don't know how to formulate that into a question, just wanted to get that out into the discussion.

Avri Doria:     This is Avri if I could comment.

Jeff Neuman:    Absolutely. Avri.

Avri Doria:     Yeah Avri. I understand the fear. I do think that this is though part of the due diligence of the Council and the reason that the Council has representation from all sides of the issue.

And I think also that - I mean because we've been talking about similar things in the Working Group Work Team about, you know, what does the chartering organization do when it gets a report that has full consensus or what does it do when it gets a report that has only strong support, etc. and how does it treat that. And so this very much dovetails with the discussion we had yesterday.

And it is - it seems to be that it is part of the due diligence. It obviously has to be tempered by the fact that all sides are represented, that if after asking a question there aren't reasonable answers that say, "No, there wasn't wide enough representation" or, "No, the process was , you know, manipulated by one set of people" there's an answer so that something can be done. And what gets done in the Working Group team is that it gets sent back to the Working Group with questions. It's just I don't think there's ever a notion that it just gets thrown out.

And the whole idea I think if the (unintelligible) do get sent back those questions and, you know, the option that the Council has is to say, "yes due process was met. No, due process wasn't met" and to add its own conclusions to the report.

So I think it's necessary that they do this and I think it's also necessary that they cannot throw things away. They can send back for clarification.

They can annotate.

They can say due diligence was followed or not.

But certainly they can't just throw stuff away.

Jeff Neuman:     Yeah so without answering the question because I think we're going to spend a good amount of time answering these questions as we're talking about them I think James made a point that certainly what questions should be asked about.

I would also raise the point - I hear echo so let me - I don't know if it's me, my phone. Let me pick up. Is this any better or is there still echo?

Avri Doria:      Much better.

James Bladel:     Much better.

Jeff Neuman:      Okay. Yeah I'll just pick up the handset. I think one of the questions we need to ask is - it's not just at the end stage right, right James. I mean you would hope that during the life of the Working Group if the liaison - the Council liaison to the Working Group or the chair of the Working Group notices that it is dominated by one group over others or that one group is seriously underrepresented or not showing up or, you know, whatever it is, you would hope that those intermediary points that would be reported to the Council and the Council could manage it all during the process.

As opposed to, you know, the big fear like you expressed the group comes and works, you know, a year, year-and-a-half, comes to consensus and then all of a sudden these issues are raised by the Council for the first time. You'd hope that it never gets to that point.

But I do think that we should ask that question in the section about, you know, what is the exact role that - you know, Avri made a statement that said, you know, it's not really for the Council to - or it's not thought of for the Council to substitute its own judgment, simply because they don't' think the group may have been representative but should be more likely to refer back with questions. I think that's something we should not take as an assumption but it's probably something if we all feel that way we should document.

Avri Doria:       Can I comment again?

Jeff Neuman:      Sure.

Avri Doria:       This is one of the places where at some point it may be good to have a meeting of the two halves of the question, the working team group and the PDP and just to see. Because I think some of those things are included in the Working Group Working Team proposal.

So, yeah, I think you're right but we may want to at some point look over each other's shoulders.

Jeff Neuman: Yeah. Okay. So Marika do you have enough information as to drop like a question on that for the survey or a few questions or…?

Marika Konings: If someone would like to propose some specific questions that would be helpful.

Jeff Neuman: So I think one thing that came out of it is - and I'll let others speak if they want, is basically a question that says, okay, when these elements are looked at in 2b if they find if some of these have not been met or…I'm trying to think if some of them aren't worded as "yes" or "no" questions. But if there are issues what is the role of the Council in getting those issues addressed?

In other words, does it - you know, we're all making the assumption that it should just refer it back to the Working Group to answer those questions but, you know, when they go through this checklist in 2b okay then so what. Should the question 2c would be, you know, what happens if any of these areas or Council finds deficiencies in any of these areas?

Marika Konings: Okay.

Jeff Neuman: Does anybody have any - James would that address your question or is there a different way to say it?

James Bladel: No I think that that's fine and we can tackle that when the survey comes out. Like you said I don't want to dive into the substance of the question now but if the engineer in me thinks that we're building in a recipe for an endless loop so I just want to be mindful of that.

Jeff Neuman: No I think that's a good point. So I'm glad that you brought it up. It's not just the engineer in you it's the - knowing how policy processes work too.

James Bladel:     Well there seems to be a tendency to I want to say be over-reliant on other bodies to make an ultimate decision whether it's a working group, Council, or the Board or something like that and I just - I want to make sure that, you know, there are hard stops in the process somewhere.

Jeff Neuman:     Okay. And then the - just the third topic of questions that'll be in Stage V are on the - the first two questions looked at really the specific PDP that was going on, you know, how to review that.

                 The third question or the third topic is reviewing the overall PDP process and having periodic assessments on the overall PDP process. So there are some tough questions there but James I didn't see that you have any specific comments on it just a general statement of, you know, let's see how this discussion today goes. But…

James Bladel:     Yeah I…

Jeff Neuman:     I'm sorry go on.

James Bladel:     Oh I'm - this is James speaking. I didn't really think that there was anything particularly, you know, noteworthy in that list, just the thought that perhaps that could also be considered as part of the role of the Working Group to develop their roadmap for - no I'm sorry. This is the overall process so I'm going to withdraw that.

Jeff Neuman:     Well you could take the purview of this Working Group to determine the - because this is the overall - and actually one of the questions that we may want to address is does this Work Team or I should say does the PPSC become - do we have a recommendation that that is converted or something like that is converted into a standing committee of the Council?

So maybe we can ask if - I'm not presupposing yes or no but I've heard some people talk about that. Is that something Marika we want to form into a question?

Maybe instead of this committee we just say, "Should there be a standing committee that reviews these - that reviews the PDP on an ongoing basis."

Partially in 3c anyway I mean so who should be responsible for it.

James Bladel:      Jeff this is James…

Jeff Neuman:       Yeah.

James Bladel:      …with a question. Yeah and I may reveal some of my - I'm getting a really bad echo by the way and I am on a handset so I don't know if that's just me or…

Alex Gakuru:       I'm getting extreme echo. This is Alex.

Avri Doria:        I hear it as well.

James Bladel:      Okay. Maybe we could see if the operator can look into that. So my question Jeff was, and it may reveal some ignorance in this area a little bit, but isn't this periodic review kind of a top-to-bottom periodic review of all the structures and procedures part of the - you know, if not the bylaws isn't that part of what the Board is responsible to do?

You know, I'm thinking about all the different stakeholder review processes and whether or not that's prescribed somewhere in some structure and whether or not this could just be included in that. So that's just a question of whether this would be an appropriate inclusion into existing review time tables.

Jeff Neuman:     Well Marika you have your hand raised. Do you want to address that?

Marika Konings:  This is Marika. No but I just wanted to mention is that the Working Group
                 Work Team and the Working Group guidelines document that they have
                 developed - they actually have a proposal for the PPSC to consider in that
                 relation. And their suggestion is that the Council, the GNSO Council, reviews
                 on a yearly basis the Working Group guidelines and the PDP not meaning a
                 review as we're doing now but just basically checks like, "Do we think that
                 there's anything that needs to be added or changed? Do you think that we
                 need to have a more in-depth review?" And if "yes" then convenes an ad hoc
                 or standing committee or, you know, whoever is tasked with it to actually
                 conduct that review on the base of the comments received or the changes
                 that people feel need to be made.

                 So that's one of the proposals and I would encourage you to review that in
                 more detail and the Working Group guidelines which is probably going to be
                 posted for comment by the end of next week to see if that's something as well
                 that, you know, you would like to recommend as well or whether, you know,
                 there are any other process that you would like to recommend on how to
                 address, you know, any potential changes to the PDP going forward.

Jeff Neuman:     Yeah and I think one other distinction that we should make is that, and then
                 I'll go to Avri, is a number of these elements that we've talked about now for
                 the, you know, last several months or close to a year are things that aren't
                 necessarily going to be reflected in the bylaws but are more appropriately
                 reflected in I don't know if they're called the rules of operation or kind of a
                 guidebook to a policy development process that'll be, you know, for the
                 Council to use or to refer to.

                 And I'm not sure those are the types of things the Board under the bylaws
                 would necessarily look at. They may be more appropriate for the Council or,
                 you know, the people bottom-up to review.

So Avri you have a comment?

Avri Doria: Yeah I just wanted to add one thing. I think that these things you suggest are definitely different than the external reviews that happen every five years. These are reviews by GNSO of the way it's doing everything whether it's every year or some other period. I think it's just different than that external review which I think has moved from three to five years or is moving from three to five years I think.

Jeff Neuman: Right. And I think they're doing that because when was the GNSO review done? It was 2005 was it started, or 2006? And yeah still 2010 and we're working on it.

Avri Doria: Yeah 2005 the term of reference was started.

Jeff Neuman: Right. So, you know, it's 2010 and in theory we should have completed two additional review cycles by now after the initial one.

Man: Wow.

Jeff Neuman: So yeah so there are provisions for external reviews but they're not - from beginning to end they take quite a while to implement.

Okay does anybody have anything else to add to - as far as questions for Stage V or does everyone feel comfortable in sending this out now in its current form as a survey?

Everyone just hear a beep or was that just me?

Avri Doria: You're welcome.

Man: I heard the beep as well.

Jeff Neuman:      Okay.

Avri Doria:       The beep was me having dropped my phone and the headset having come out of it and then plugged back in.

Jeff Neuman:      Okay. Thanks.

Alright with no other comments then let's - we'll - Marika we'll send that survey out as soon as you can get it in to the SurveyMonkey or whichever one we're going to use. And then let's head to - as you're loading it right now to stage IV and see where we ended up.

We scroll down. I think we were doing 3b or I think that's where we ended up if you look at the red line there which we talked - actually we may have gone on…nope that's right, 3b.

Avri did you have another question or was just…

Avri Doria:       Oh sorry just never - I don't remember to put my hand down.

Jeff Neuman:      That's okay. So if we - if we're on - so just to remind everyone we're on - this is "delivery of recommendations to the Board." And again we talked about - on the last call about sending this letter. We're still working on that.

I think just - we're probably done or as far as we can come on Question 3 without having that sent out to the Board. I think we should go straight to Question - or subject area four which is really just what the current bylaws state right now is that a "successful GNSO vote of the Council members will be deemed to reflect the view of the Council and may be conveyed to the Board as the Council's recommendation. In the event a supermajority vote is not achieved approval of the recommendations contained in the final report requires a majority of both houses and further requires that one

representative of at least three of the four stakeholder groups support the recommendation."

It says, "Abstentions shall not be permitted, thus all Council members must cast a vote unless they identify a financial interest."

Just jumping ahead it says, "Notwithstanding the foregoing as set forth above all viewpoints expressed by the Council members should be included in the - must be included in the report."

Now, I'm trying to see who on Council we have here. So where does the whole abstention issue sit with the Council at this point or does this reflect the final view?

Marika Konings:   This is Marika. I think the OSC operations Work Team I think is looking at this issue but I don't know if Margie maybe knows more about…

Avri Doria:   I'm on the OSC.

Marika Konings:   Oh I'm sorry.

Avri Doria:   …although Margie might know more about it.

Woman:   Margie can too if she prefers.

Jeff Neuman:   Avri why don't you go ahead and.

Margie Milam:   Yeah I don't know much about it.

Avri Doria:   Okay.

Jeff Neuman:   There you go.

Avri Doria: Yes they've been looking at it extensively. They've been talking with staff - with legal staff and I'm sure that Margie's been part of it. Ken Bour has indeed written up something on the whole abstention and how to deal with that. And there's a whole very long section that's just about to go into review.

So there's more on the final word. And I don't think we want to get into the details of it. But it certainly is something that's being worked and it's something where a proposal is shortly to be made for, you know, comment and review.

Jeff Neuman: Okay. Yeah I'm not sure there's much for us, kind of agreeing with you Avri there, that since there's other committees that are looking at it I'm not sure there's much for us to offer as far as our thoughts on this question. I think it's more - this is more just kind of logistical questions at least with abstentions and with - let's see obviously - there was a sentence at the end that says that "all viewpoints expressed by the Council members must be included in the report." Does anyone agree with - or disagree with that I should say? Is there any comments on that?

Alright, you know, unless anyone disagrees I would prefer to actually move on to Number - Number 4 is what it is and it's more logistical and the OSC is addressing it so I kind of just would like to move on to Number 5.

Wolf - just actually Wolf just said is the echo still on? I think it's gotten better. Does everyone agree?

Wolf-Ulrich Knoben: Okay. Good fine.

Jeff Neuman: Okay. And maybe this is a question and maybe it's in Number 5. Where is it that says that - I think it's Number 5, when the Board actually votes?

So Number 5 states that, this is again the Board. "The Board will meet to discuss GNSO Council recommendation as soon as feasible after receipt of the Board report."

"In the event that Council reached a supermajority vote the Board shall adopt a policy according to the majority vote unless by a vote of 66% the Board determines that such policy is not in the best interest of ICANN - or of the ICANN community or ICANN."

"In the event that the Board determines not to act in accordance with the majority vote recommendation the Board shall articulate the reasons for its determination in a report to the Council and to submit the Board statement to the Council."

Then "the Council shall review the Board statement for discussion within 20 calendar days."

And then - or after receipt. Then "the Board shall determine the method of - by which the Council and the Board will discuss the statement."

"At the conclusion of the Council and Board discussions the Council shall meet to affirm or modify its recommendation and communicate the conclusion to the Board including an explanation for its current recommendation. In the event the Council is able to reach a majority vote on the supplemental recommendation the Board shall adopt it"--again same standard--"unless by 66% of the Board if they determine it's not in the best interest of ICANN community or ICANN."

"In any case in which the Council is not able to reach supermajority vote a majority vote of the Board will be sufficient to act."

"When a final decision on a GNSO recommendation or supplemental recommendation is timely the Board shall take a preliminary vote and where

practicable will publish a tentative decision that allows a ten day period of public comment prior to final decision by the Board."

So that's a lot in one section of the bylaws. And so taking that apart the first question is are these relevant and - that's the overall question. It's hard to answer I guess.

The next - the sub-question there is - or the first question that came out of it is if "there is a current practice by the Board to have a public comment period before taking a decision should this be incorporated in the bylaws?"

Let me throw that question out. "Should the Board be required after the Council report is issued to the Board?" Recognizing all the public comment periods that we've had before that time should the Board be required to have another public comment period before they take a vote?

Okay everyone's silent so I'll let you think about that…

Avri Doria:      I have a question.

Jeff Neuman:      Sure. Okay.

Avri Doria:      The question: are we assuming that there's one after - I think that there has to be one between the time that the GNSO approves it and the Board considers it but there don't need to be two of them.

Now where that one is located, you know - it seems to be the question whether, you know - we certainly don't need two of them. We don't need one at the end of - or do we perhaps need one at the end of the GNSO process and then one at the beginning of the Board process?

Jeff Neuman:      So we need to take - just to clarify we you say "at the end of the GNSO process" you're talking about after it already votes, after there's a Board

report, and after it's submitted to the Board? Is that what you're saying? Or are you saying…

Avri Doria: I'm saying - I'm not sure what I'm saying to tell you the truth. If there's no - anytime that there's substantive changes to the recommendation - you know if looking back at guiding principles anytime there's substantive changes yes it should be - public comment should be available and should be made.

But if there's no substantive changes from the time the GNSO gets it, votes on it even if that public comment was before their vote and sends it on and the Board gets it do we need yet another comment period to lengthen the process?

And I guess what I go on is public comment is needed on substantive changes.

Jeff Neuman: Well let…

Avri Doria: (Unintelligible).

Jeff Neuman: Oh I'm sorry. Go on, finish.

Avri Doria: No no no. That's - I'm babbling.

Jeff Neuman: Well I was going to ask - answer your question with another question which is, you know, are public comment periods different? In other words, if the GNSO Council has - or the GNSO has a public comment period could that be considered different by other people in the community than the Board comment period?

So for example, maybe the GAC doesn't comment while the GNSO's going through its processes. Or maybe the (unintelligible) doesn't comment while the GNSO's going through their processes but maybe they wait until after the

Board - you know gets to the Board level and then, you know - so my question is are comment periods different and if so if they are then maybe we should - you know, the Board should still have its own comment period.

Avri Doria: That reinforces if you're asking me - this is Avri again. That reinforces sort of our hierarchical pillars that says, "We don't care what one SO is doing or one AC is doing" until they're finished and perhaps that is the case. I don't know. I shouldn't think it was necessary but perhaps you're right.

Jeff Neuman: I mean in just thinking about the GAC and sometimes they hold off on comments until it gets to that level. And I'm not sure like you said whether that's something we should endorse implicitly by saying, "Yeah the Board should have another comment period" but it may just be a reality of what actually does happen.

Avri Doria: This is Avri if I can ask again if we put in the mandate in the bylaws that they have to then it is that. If it's up to the Board to get something from the GNSO and say, "Listen, there's been lots and lots of comment. The GAC has participated up until the end, etc. etc., no we don't need another one" or they can decide to have one. I don't know. I'm just…

Jeff Neuman: Okay. So that would be kind of the, you know, let the Board decide as it's doing now as to whether it wants to have a comment period.

Anybody else with thoughts on that question?

Okay. I mean I think that makes sense. You know, at this point. So let me ask the question so does anyone believe that it should be codified as opposed to being - so does anyone think it should be mandatory that the Board has it as opposed to being optional? So let me see if there's anyone by check - does anyone think it should be mandatory?

Okay. Then let me see checks for people that think it should be optional at the discretion of the Board.

Okay. Well I'm seeing a couple of checks for optional. So at this point the - okay I'm seeing some more. Good.

Sophia with a question.

Sophia Bekele:    No it's not a question.

Jeff Neuman:    Oh you were just doing a - you were agreeing?

Sophia Bekele    I was…yeah.

Jeff Neuman:    Okay good. So I think then that's the answer to that at least for this small group on the call today is that we think it should be optional at the discretion of the Board and not - it should not be mandatory.

And so to continue on or just to add a little more color to that, you know, Avri one of the things you pointed out is, you know, maybe that should depend on whether there's any substantive changes between the time in which there was a previous comment period I think is certainly something the Board should consider when - deciding whether there should be this comment period.

Avri you want to add to that as well?

Avri Doria:    Yeah. I think the other piece of it is if that - one of the improvement goals going back to that is that there is wider community participation informing the recommendations. And so if a recommendation has formed where you can see that there was an incredible amount of CC and GAC and ALAC participation all the way through the process then the Board can sort of say,

"Hey, you know, they had comment. They participated. They played together nicely. Everything's cool. We can continue."

Or they see something that was purely, you know, the four stakeholder groups did it together. Nobody else cared. Nobody paid attention. Etc.

So I think their view on reading it of the diversity and breadth of participation is also one of the considerations.

Jeff Neuman: Okay. I think that's right. Does anybody else have another - any other factors to add that the Board should consider?

Okay. Let me jump to the next question then which is - this is an important one. I think we've talked about it in other contexts which is should the Board have discretion - we talked about this actually with the GNSO right. And "should the Board have the discretion to pick and choose which recommendations if any to approve or is the Board required to adopt the entire recommendation?"

So in other words, does it have this what we call here at least in the U.S. like kind of a line item-veto: picks and chooses what it likes and the others it just - it can reject?

So in the Council context we did reserve that right I believe for the Council but the Working Group would make it clear though that - you know, that there are recommendations which shouldn't be separated which, you know, are the basis for the other recommendations. In other words kind of like saying, you know, "Look, these are - these should all be considered as one package and it's very important that you don't pick and choose because if you only adopt one of the three of these then it really doesn't achieve the purpose."

So I think we left it to the Working Group to really basically dictate as to say that these are separate standalones versus these are all dependent on each other.

James do you have a comment?

James Bladel: Yes Jeff. This is James speaking. Thanks. And that's essentially what I was going to mention is that I think that you can leave that discretion or the latitude with the Board the same way we did with the Council so long as the dependencies within the policy recommendations are maintained and declared but it doesn't make any sense to implement them singularly or in isolation from one another.

Maybe that could be a model as well for what's - for the way that the Council packages recommendations for the Board.

Jeff Neuman: Right. And I think - so with one - so okay. So let's say that they - should the Board when it picks and chooses it - or so let's say they followed a working group or at this point it'd be the Council report do they have an obligation to send the other recommendations back? What happens at that point?

James Bladel: Yeah this is James again. That's a good question because it really gets to the heart of what we were discussing before is that the managing body shouldn't just simply disregard a recommendation of a working group or a council it should send it back with questions or concerns that give them an opportunity to correct it.

Because otherwise…

Jeff Neuman: Okay.

James Bladel: …we have the de facto situation that we were discussing earlier.

Jeff Neuman:      Right. Exactly. So let me ask the question - and Avri agrees with that. Let me ask a question. Does anyone disagree or does anyone think that the recommendations that we made for the Council on this issue should be any different - or let me ask it in reverse. Should the recommendations for the Board be any different than the recommendations we made for the Council when the Council considers a working group?

                  Okay. So it sounds like we're - at least in this group on the phone we're in agreement that they should be treated similarly as the Council reviews the Working Group.

                  Avri you have a question?

Avri Doria:       Yeah. And it is a question. I think that there's more intimate relationship between the Council and the Working Group Working Team than between the Board and the GNSO and that one of the real formal relationships where one is a more management process.

                  And so it doesn't make sense - I mean there's a certain sense in sort of saying the Working Group passing something up to the Council and saying, "These pieces must stay together and these pieces are open for your line-item veto. These are somehow optional or they're not part of the core recommendation." Doing that with the Board doesn't seem to me to have the same logic.

                  And I tend to think that the Board should be more represented with a full set of recommendations that they don't have the intimate relationship of the liaison and common participation. It's not like the Board ever participates in working groups. So there isn't the intimate knowledge of what's been going on.

                  They should have a complete package. They should be able to send back questions. And one of the things that I'm not sure is in there but I always

wished happened is that they approve something but then there's some other issue that came out of their discussion and they send back a clarifying issue even after they've approved.

And sort of like with the new gTLD if a year-and-a-half or two years ago whatever when they had approved it they had said, "Yes, we have - you know, we don't have enough people to knock this down." And so it is approved but we've got some questions about trademark stuff and so could you please go into this further in another PDP." That is the mechanism that they've got.

So I wouldn't want them - and I just didn't know how to say whether I agreed or disagreed when you asked the question because I couldn't figure out which was the right answer and that's why I rose my hand - raised my hand.

Jeff Neuman: Okay. So are there any other - you said the new gTLD process. Was there any other instance where - that you know of where if something was approved but you had kind of wished that they had sent back - or there was some discussion that you kind of wished that they had sent back for the Council or others to address?

Avri Doria: This is Avri again. I can't think of any offhand. That was certainly - because that was a recommendation where the Council had had a vote before deciding can any of these issues be separated out because there had been a motion inside the Council to separate the question. And the Council had voted against separating the question and had decided that, no, the recommendation had to be voted on in its entirety and sent it on. But it contained, what, 19 recommendations and all kinds of principals and everything else.

Most other PDPs have been more or less one point or, you know, a lot clearer. So I can't think of another instance at the moment. But that's certainly

one where in general the tendency was to want to approve of new gTLD and the bulk of the work.

But even at that time there were questions in the Board about, "Well we don't really understand this one. Well, you know, how should that work? Well, did you consider all these things properly." That would have been totally reasonable within the Board's, you know, bylaw prerogative to send a question to the Council for PDP anytime they pleased. And obviously at the time I wish they had sent them back as opposed to letting things linger for two years. But that's besides the point.

Jeff Neuman:    Okay. Margie you have a question or a comment?

Margie Milam:    Yeah. I agree with Avri that it'd be useful to have more dialogue between the Board and the GNSO Council and to, you know, get clarification on what the Council was thinking or what the Working Group was thinking. I think there's - it'd probably be too formal now and not enough, you know, interaction between the two.

So one thing though that I would caution is - and I don't know if we were really going there or not requiring the Board to adopt all or nothing. Remember that the board members are, you know, bound by fiduciary duties under corporate law and they have to exercise their judgment however it's, you know, applicable. So I just want to - you know, to  highlight that that having a, you know, hard rule about that probably doesn't fly from a corporate law standpoint.

But certainly, you know, getting more information and dialogue between the - you know, the Council and the Board is a good thing.

Jeff Neuman:    Okay. Avri.

Avri Doria:     Yeah I would just like to add that though that all or nothing is indeed the situation we are in now. And so therefore from the corporate bylaw fiduciary standard it has been an okay standard. It's basically the case that if something in a PDP strikes them as wrong from the fiduciary responsibility viewpoint then they should be able to reach that 66% threshold that sends it back and says, "For the following fiduciary responsibility reasons this recommendation does not work. Fix it."

Jeff Neuman:    Okay. Anybody else on that topic? So certainly an encouragement of more dialogue. I think we've kind of - we've talked about that at every level of more dialogue with the Board or more dialogue with the Council certainly to understand what's going on during the entire policy process but certainly at this stage as well.

                If we go on to the next question which is "should there be additional means - excuse me, means/procedures for Board/GNSO interaction which may be useful to resolve any issues that may exist either within the Council or between the Council and the Board?" And I think we just talked about that, really about additional dialogue.

                You know, one of the things we talked about with the Council level is should the Working Group have a chance to meet directly with the Council either through presentations to the Council on the report or some other - you know, on one of the Council calls? I mean should we - could we not make that - I'm asking a negative question.

                Should we make the recommendation that the Board - that there's something similar to that where the Council or maybe even the Working Group or whoever the Council would like to have some interaction with the Board once the report is delivered so that it's not just staff that's presenting it to the Board or, you know, one staff person that's presenting to the Board but maybe a chance to ask questions of the Council and/or the Working Group?

I see Avri has a check mark.

Sophia still has her check mark I think from the last one but I'll ask. Sophia do you agree with that? Do you think there should be some sort of presentation to the Board or a chance for the Board to ask questions?

Sophia Bekele: I think - yeah I think it's a very good idea. I've mentioned that way when we started this thing but it's been a long since I came on board. Yeah I agree with that.

Jeff Neuman: Okay.

Sophia Bekele: Can you hear me?

Jeff Neuman: Yes yes. I did. Thank you. And yeah I know we've kind of all - I'm asking the question. I pretty much know the answer because I think everybody on this group has kind of agreed at one point or another, said more communication is certainly the ability for anyone to present to the Board other than staff has been pretty much nonexistent. And I'm not sure that that's something that's worked in the past and something that…

You know, so if we have a similar recommendation here Marika in the report of, you know, an opportunity for the - I guess it would be for the Council to present the report to the Board and the Council could - you know, they could choose people from the Working Group or they could choose to do it themselves but certainly an opportunity for the Council to present the report to the Board and be available to answer any questions whether it's an in-person or just a teleconference call.

Anyone disagree with that or anyone have anything to - Avri you just put a comment on, "That could be the liaison." Yeah it could be. I don't think we need to dictate in this group who does that report but just maybe just say an

opportunity for the Council or council members to present that report to the Board and be available for questions.

Okay.

Alex Gakuru:     I'm in agreement. I think I've been too quiet. I might just say something. I'm in agreement. This is Alex.

Jeff Neuman:     Yes. Hi Alex. Great thank you. Yeah I'm glad you…

Alex Gakuru:     Of course I'm not Adobe - you'll have to excuse me when I interrupt a conversation but I'm trying to sort it out.

Jeff Neuman:     No no please do interrupt. And I know the difficulties that you have there with Adobe.

Alex Gakuru:     Okay thanks.

Jeff Neuman:     So James just posted a question on the - on Adobe which says, "Is the role of the liaison specifically defined somewhere or is the Working Group Work Team looking at that question?

Marika Konings:  This is Marika. Some of the roles - there is a description of what is expected of that person's function, that role but it's more giving number of examples what is expected. It's not strict like, "You need to do this and you can't do that." But it's more a description of the role.

                 And again I said the Working Group guidelines will go out for public comment probably by the end of next week so, you know, if people feel like there should be a stronger description or something like this should be added to it, you know, I would suggest - or support - you put it in the public comments period.

Jeff Neuman:     Yeah I think - and Avri just agrees with that. I think one of the things I would say is I think our report - I'm not sure we should be specific as to who we would recommend delivering that to the Board. I mean it could be the liaison. It could be the Council may want the chair of that Working Group to do it. Or the Council may want the chair of the Council to do it.

I think - I'm not sure we need to - well let me throw that question out. My own feeling is that we shouldn't necessarily be prescriptive as to who we would recommend delivering that report but - and Avri I guess agrees with that.

Any other comments, questions?

Okay. Oh sorry - oh okay Avri. You're - I'm trying to look at what people are posting and just for Alex's sake because Alex doesn't have access to the Adobe at this point. So they were just talking about the roles of liaisons on the chat and - but I think Avri in the end you agree with the statement I just made as far as let the Council choose who would like to present that to the Board?

Avri Doria:      Yes.

Jeff Neuman:     Okay. Going on to the next question which is "currently there's a staff report that's sent to the Board on each issue. Should this" - I think we talked about this already in other - or other areas. But let me just finish reading the question. "Should the Council have the right to draft review of the report sent to the Board? Should that - should the part that goes to the Board just be executive summary…"

Okay I think we talked about this in Topic Number 3 so I'm not sure we  - let's not address that again. I think we all agree with the notion that there shouldn't - well let's not address it again.

Let me ask another question in this area which I thought was a question here but I guess I'm - I forgot about it. But at the end it says - or in the

recommendation it says, and this has always been confusing in a number of PDP's but, you know, it talks about if there's a supermajority then the board must do this. And then it says later on it says but if there is a majority that's all the Board needs to act.

Let me get the exact language. Where is it here? Someone help me out here. I know I've read it just before. Oh here it is.

Woman:            (Unintelligible).

Jeff Neuman:      "In any case in which the Council is not able to reach a GNSO supermajority vote a majority vote of the Board will be sufficient to act." Does anybody know what that means?

Avri Doria:       This is Avri. I can tell you what I always assumed it meant.

Jeff Neuman:      That's what I'd like you to do. Please.

Avri Doria:       Basically at that point they by a majority of vote can either approve or disapprove the recommendation. That basically if the GNSO can't present a supermajority then it's saying, "Here's a set of recommendations that, you know, have strong support but - or have a majority but don't have that so we leave the question up to you. We are presenting the work. We couldn't reach closure. We have a majority. You guys decide it."

Jeff Neuman:      Right. And the question that always comes from that - and I think that's right. I think it's a literal interpretation of that. The question that always comes and I kind of wish Alan were on the call because he and I know have debated this and have discussed this topic so maybe we'll re-bring it up when he's on the next call but the question is, "Does that become, or could that become, a consensus policy?"

And so if the Board acts right - so some people have taken the interpretation well a majority was reached and it was approved by the Board and therefore it should be binding on the contracted parties.

Avri Doria:     Yeah.

Jeff Neuman:    And the contracted parties have taken the position that, no, the Board can act but that doesn't mean it's a consensus policy. So in other words if it's - if the Board acts on it and it's like the - you know, the new gTLD process for example. You know, that's not a consensus policy in the way we think of it being binding on the existing TLD operators but it's certainly guidelines and it's certainly something that the approved for the new gTLDs.

                So does anybody have thoughts? And I know Avri you've been vocal on this too.

Avri Doria:     Yes.

Jeff Neuman:    It's been a source of confusion.

Avri Doria:     I mean I certainly believe that yes because it was bylaws-defined as a way to resolve a PDP which was a method of doing consensus policy. But of course I'm not a lawyer and I don't even play one. But for that reason as it was a successful completion to the PDP and the PDP defines the method of consensus policy yes it should be because that's the policy.

Jeff Neuman:    So let me throw that out to the contracted parties on this - so David Maher, James, what Avri is saying is that, you know, if a majority of the GNSO agrees with a policy and then the majority of the Board agrees with the policy even though the GNSO is not able to get a supermajority that should still be binding on the contracted parties and considered a consensus policy.

David Maher:    It's David. That bothers me.

Jeff Neuman:     Okay. Can you explain why?

David Maher:     Well it's - it just gives too much power I think in policy areas that have a very negative impact on registries as contracted parties.

Jeff Neuman:     Okay. And I think that's consistent with what certainly the registries have said before. James any thoughts on that as a registrar contracted party?

James Bladel:     Yeah I mean I tend to agree. Trying to understand it. When you say "majority of the Council" what flavor of majority are you talking about? Just a simple majority of the Council as a whole or majority in one house and a supermajority or a unanimous in the other or? I'm trying to - I thought these were prescribed pretty specifically somewhere.

Avri Doria:     They are.

Jeff Neuman:     Yeah. I can't remember what they are at this point.

Avri Doria:     But it would definitely be - I think it's a majority of both houses but I'd have to go back and look at the bylaws which I'll do.

Jeff Neuman:     Margie do you happen to know that off the top of your head?

Wolf-Ulrich Knoben:   Yes. This is Wolf speaking. So I was working on the…

Margie Milam:     (Unintelligible).

Jeff Neuman:     Oh I'm sorry. Let me go to - Margie was that you responding or…

Margie Milam:     Yeah. I'm looking at the bylaws right now. It says, "To approve a PDP recommendation without a GNSO supermajority requires an affirmative vote of a majority of each house and further requires that one GNSO Council

member representative of at least three of the four stakeholder groups supports the recommendation."

So there's two votes. There's - you can approve a PDP recommendation with a GNSO supermajority or you can do it through this non-supermajority requiring this affirmative vote of a majority of each house and one council member from at least three of the four stakeholder groups.

Jeff Neuman:     And so has the general Council or anyone from ICANN evaluated whether a majority would also be a consensus policy under the contract?

Margie Milam:     No.

Avri Doria:     Can I ask a question?

Jeff Neuman:     Yes. Avri and then…

Avri Doria:     Yeah.

Jeff Neuman:     …other people who - and Wolf too. I think Wolf had raised some. So Avri yeah.

Avri Doria:     I would think, and I'm not saying that this group can't decide to change that if they don't - you know, if the group doesn't like it. But I would think by having reviewed it as the PDP and accepted it and put it in the current bylaws that they must have reviewed it because the PDP is there - is by definition isn't it the consensus policy?

Margie Milam:     No Avri if I may respond. A PDP doesn't necessarily have to produce a consensus policy. So I think that's where there's a disconnect.

I haven't had this discussion with the legal counsel's office so I don't know if they were thinking that when they approved the bylaws. I just don't know.

Avri Doria:        It'd be good to have that conversation.

Margie Milam:      Do you want that to be an action item for us to follow-up on?

Jeff Neuman:       Yeah I think that's - that would be a good idea.

Margie Milam:      Okay.

Jeff Neuman:       Wolf I know you started to raise some comments so let me - do you want to - I didn't mean to cut you off.

Wolf-Ulrich Knoben:   No. I was just saying about similar like Margie was commenting on. But it's okay.

Jeff Neuman:       Oh okay. James did you have another - oh you just lowered your hand.

                   Okay. So I think, you know, I'm not sure what I'm getting from this group as far as whether we want to change that. I do think that statement alone is confusing and I do think there are different interpretations of that statement which says that "a majority shall be required to act."

                   I do think this group should make some comments on that because again I don't - even on this group having different interpretations of what it means to act I think is reason enough that we should address it in some way either by saying, "We don't understand what it means or we think it's confusing and we think we need explanation as to" - or, "Here's a different interpretation that we've - that people have taken and this needs to be cleared up." I mean at a very least we need to kind of - to do that even if we can't decide what that meaning is.

Alex Gakuru:     Yes I think Jeff, Alex, yeah I think that is - that would be proper. But from - you know we move on with clarity of what that - on the two means. That's nice hearing that.

Jeff Neuman:     Good. I think that's right. And I'd actually like to hear - you know, I know Alan - like I said before I know Alan Greenberg has commented on some of the working groups that we've been on together to what that means so I really want to get his thoughts on this as well.

Is there any other - let's try to look at - any other questions on this Section 5 for the board vote?

Okay. Then I think we can jump on to Number 6 which I think is a longer discussion that we can certainly - we'll certainly start today and see where we end up. But this is all on implementation.

And this is from - so now that - it basically says "upon a final decision of the Board the Board shall as appropriate give authorization or direction to the ICANN staff to take all necessary steps to implement the policy."

And so we've had a number of different flavors of this over the years. You know, at some - in some PDPs there's actually, you know, I think back - way back to transfers back in 2003, 2004 where there was a transfer policy that was decided and then a separate transfer implementation team that was created to work out the implementation.

There's been everything from that to domain tasting was brought up earlier on this call where the policy was decided and pretty much staff had determined the implementation plan but there was no implementation team I don't recall being set up for that.

So the question is, the first question is, "Should the role of ICANN staff in developing the implementation of approved policy be further defined?" What do people think on this call?

Seeing Avri agree that it should be further defined.

Wolf-Ulrich Knoben:   I don't know how the definition is right now. Wolf speaking.

Jeff Neuman:   That's a good point. In order to have - in order to further define something you have to know what the original definition is, right. So I think your answer is yes that it should be clarified or defined.

James do you have a comment?

James Bladel:   Yeah just for the sake of being difficult here I'm wondering what the concern would be if that were less - somewhat undefined? Is it that staff would, you know, fail to implement the policy correctly or that they would overreach and expand the policy beyond what it was intended to do or? I mean what's the concern here? Is there one?

Jeff Neuman:   So Avri you have your hand raised. Do you want to…

Avri Doria:   Yes.

Jeff Neuman:   …address that?

Avri Doria:   Yes I think that - and this is going back to perhaps the software engineering metaphor is that in an implementation often while you're in implementation you find yourself coming up against design or policy issues that basically hadn't been thought of and sort of don't become apparent until you're in the middle of implementation. And I think, you know, at least in my opinion we've seen several of those in the new gTLD.

And so I think there needs to be a mechanism by which when you get to those kinds of questions and some guidelines as to how to identify those questions where you go, "Oops we could go this way or we could go that way." And whenever you get to one of those "we could go this way you could go that way depending on" you probably hit a policy decision point.

And - could be another definition for PDP. And those are things that teams have to be kicked back at least perhaps not for whole policy development process but for a review is is there anything that's policy substantive in this implementation query or can we just move on just as in a software engineering project I would inspect the implementer who came up against one of these, you know, "Do I go this way or that way?" And it's a design issue to come back to me as a designer architect and sort of say, "Yeah yeah yeah you want to take the left path and not the right path."

Jeff Neuman: Yeah I think - and then I'll go to James. I think it certainly has come up in a number of PDPs especially ones that result in consensus policies. Actually, you know, not just those ones. I take that back. Certainly came up with new gTLDs. There has certainly been a debate as to what constitutes a policy versus implementation.

And I know that staff has taken a view on certain items that they've called "just implementation" which is in their sole discretion as opposed to being policy and others have taken issue with that.

James do you have a comment on that?

James Bladel: No I just - briefly I wanted to thank Avri for crystallizing that a little bit. Now that - in that context I do recall that there were several consensus issues and some post-GNSO decisions that, you know, whether it was implementation or whether they were in effect, you know, staff was creating new policy on the fly.

And I just wanted to point out the idea that since this is - these types of issues are by - probably by definition unanticipated by the PDP Working Group and the Council that there should be some mechanism without - I want to say that we don't want to necessarily put in a function where we try to anticipate all of these and lay out the guidelines or criteria by which the Council has to be reengaged, but rather we should have more of a implementation review where, you know, the staff would essentially go back and reaffirm that - what they're doing and the implementation is in line with what Council intended with the policy.

If that made any sense. I think that it's difficult to - you know, by definition it's difficult to anticipation what these will be in advance so what we just need here is a review and a - and recheck and reaffirmation.

Alex Gakuru:     Jeff I would like to comment on this one.

Jeff Neuman:     Yes please.

Alex Gakuru:     Yes I think rather than appearing to tie staff by trying to predefine their roles on implementation issue -- and we are quite in agreement that issues will arise in the course of implementation -- perhaps we could create that mechanism where we could probably just say where there is - there are multiple implementation options should the staff (unintelligible) one of those situations where they find there may be multiple implementation options or possible policy issues arising. Perhaps the mechanism is the one that should raise a red flag and say, "Okay what should they do in those situations?" rather than appearing that we are starting by defining their role and confining them it might constrain staff maybe on this one. I don't know what others think.

Jeff Neuman:     Okay. James is your hand up on that question? Or was it just left up?

I guess it was just left up. So how does everyone - so does anyone want to respond to Wolf's point? So Wolf's point is that if there are multiple implementation options - or that we shouldn't really restrict staff's role but unless there is multiple options in which, you know, staff identifies at that point they should involve - that's my next question. Who do they involve? Do they involve the Council? Do they involve the Working Group directly? Let me throw that one out there.

So Avri and then James.

Avri Doria: Yeah I think that you have a hybrid situation. I think what James recommended in terms of the periodic implementation reviews and basically walking you through the code is a good way to bring those out.

I think in the other one where there is something that might smell of policy I think that basically contacting the Council would be - the Council's the management of - the managers of the policy process. The Council would look at it. You know, they'd be able to decide, "Yeah we think there's a policy issue here. No we don't." If they think it's one then, you know, it's up to them to initiate some process to deal with it or to send back a note to the staff saying, "Nay, you know, you're doing good. Keep going the way you're going."

Jeff Neuman: Okay. James.

Alex Gakuru: Just for the record it's Alex who had given that. Sorry I didn't give my name that last comment. Sorry.

Jeff Neuman: I'm sorry Alex. Thank you. James.

James Bladel: Yeah I think - I'm just not entirely comfortable going too far into the arena of trying to insert a crystal ball into this process. So I think that Avri's point is

correct. If there can be a mechanism by which the implementation is reviewed with the Council I think that's the appropriate level to do that.

And then, you know, of course leave open the discretion where the Council can intervene even if staff doesn't approach them. But if the Council detects or believes that the implementation is straying into a policy question that they can unilaterally reinsert themself into that process.

Jeff Neuman: Okay. I think that's a sensible recommendation. Does anyone disagree with that or does anyone have additional thoughts on that?

Let me ask the question. So we've said the Council - are there areas that people in the community would want this to go them as opposed to just the Council or is this the Council issue?

Okay Avri's saying Council.

Alex Gakuru: I think it would be Council as well. Alex here. I think it's Council.

Jeff Neuman: Okay Alex.

Jeff Neuman: Okay. Margie do you have a comment on that?

Margie Milam: Yeah. I guess a question whether it is a Council issue at that point because isn't the goal of the restructure to make the Council more of a manager of the process? And so isn't it more appropriate to have the work team or the working group that came up with the recommendation deal with some of those implementation, you know, questions?

And then the other question I have is if you go down the route of seeking input like this maybe it's formal and it's not formal what kind of a vote or approval would you want to be able to send the response back to the, you know, staff on the implementation, you know, questions that were raised?

Jeff Neuman:     I think Margie just took some of my questions out that I was going to ask next. So let's - let me ask - let's ask those. So take those. Margie's first question was is it - should this go to the Working Group or should this really be the Council in the new restructured environment? So Avri you…

Avri Doria:      Yeah I typed the answer but I guess I'll say it too since Alex…. I think that the working team is probably gone. In other words the working groups basically don't normally persist after the end of a PDP process and I don't know that - I mean I don't know that it makes sense or even it's possible to keep them online for, you know, the other year that might take to implement something. Perhaps that is a good idea but in which case I don't know.

                 I think that because the Council is the manager of the process I think that the issues go back to the manager. And then the manager is the one that has to do the right thing with it.

                 I think it is a good question of what the threshold does it take to reinitiate an issue but I think that it really depends on the depth of the policy issue and, you know, how that goes.

                 So I think you're right there are some good answers to questions as to well what do you do and the question is also does one keep a working group hanging out until such time as the implementation is done? And if so you know that they're going to have their hands in the implementation much more because the working group has to be kept busy or otherwise, you know, why is it there.

Jeff Neuman:     Okay. James you're next.

James Bladel:    Yeah pretty much what - I wanted to echo what Avri said is that I think once something's been approved by the Board and it's in the implementation stage the Council pretty much owns that. Reconstituting the working group and then

sending it back through the PDP process could - you know, I mean in the - in an ideal situation could be just a relatively straightforward process but it could also reopen a lot of that work and essentially, you know, drag the implementation out for years.

So but I just wanted to agree with what Avri was saying.

Jeff Neuman:       Okay. David.

David Maher.

David Maher:       I'm sorry. I'm…

Jeff Neuman:       Yeah.

David Maher:       I was on mute sorry. I sort of disagree with that. I'm thinking of a couple of instances where recently staff very clearly decided to make policy about and the Working Group was in a sense had technically finished its work but was also I believe fully available to be redone immediately. And it just seems to me more practical where there is a Working Group that has spent a lot of time and the - when staff implements - when it starts making policy which they have done I think it would be better to go back to the Working Group.

I - and also I'm sorry to say I have another meeting so I have to drop off but.

Jeff Neuman:       Okay thanks David. And we're going to finish up in a few minutes anyway.

David Maher:       Okay.

Jeff Neuman:       Let me expand a little bit on David's comments. And I think, you know, sometimes the working groups - the working groups that we have now I know they're - there is definitely a lot of overlap between council members and

working groups. I think in the future what was envisioned at least for the working group process is that you'd have a lot more subject matter expertise.

So is it possible, to James and Avri, to bifurcate: yes it should be the Council's role to determine whether there is policy or whether there are issues in what staff is doing. But perhaps at that point it's incumbent on the Council to actually find either the - either through the working group that was or may still be around or the subject matter experts to deal with that issue as opposed to Council themselves debating the issue once they determine that it is policy related?

Right, I mean couldn't we bifurcate say, Council's the one that makes the decision to say, "Hey look, the staff's gone too far with implementation. It's actually crossed the lines of policy. And now that we've determined that we should farm it out to the Working Group if they're around or some other subject matter experts"?

James do you have a comment?

James Bladel:     Yeah Jeff. And I think that's a good point. And in fact that's what I presume the Council would be doing. The question I was attempting to address was, you know, where is - where's the first step and who ultimately has the decision.

And I think the answer to both those questions is the Council, but how they arrive at that decision whether they reconstitute the working group, you know, just poll the members if they're still around and active or if they just, you know, go back to the - to their stakeholder groups and try and gauge what should be done there.

I mean how they actually arrive at the determination I think is really at the discretion of the Council but I just wanted to emphasize that my point was

that they should be the first step where staff would engage them and then that they should ultimately also own the decision.

Jeff Neuman:     Okay.

James Bladel:     Maybe it was just an assumption on my part that that was going to happen so.

Jeff Neuman:     Well I mean so there have been some - I know probably Avri's thinking, "Okay Jeff you're one of them," but there have been some that have argued that, you know, when this has happened in the past Council does - or has not been the greatest at farming that stuff out, that Council likes to take it on themselves. And so maybe providing guidance - you know, you give Council the option of determining how they want to handle it but providing guidelines saying, "Look in areas where subject matter expertise is needed or is desirable they should - they may want to seek that out."

Avri.

Avri Doria:     Yeah I mean I think first of all that that was the old Council because the old Council was both manager and doer and we're slowly evolving away from that. So I don't think that that was necessarily wrong in the past.

I think there's some interesting ideas here. The whole notion of a working group either sticking around or constituting some small section of itself to remain on hand as in implementation review team is actually something interesting. And we should probably consider it, that basically, you know, you don't need to keep the whole working group structure around but the working group itself can constitute some small subgroup that remains a implementation review specialist as it were.

And that if more is needed say then the Council can bring in a new working group back into effect but just have it, you know, within the ICANN we

certainly done that often that one or two experts are left behind by a working group so that the area directors can consult them in times of, "Well gee what was meant here? Well, you know, etc."

Jeff Neuman:     Yeah I think that's a really good suggestion. Like you say, "left behind." They're the sacrificial lambs. But I think that's definitely a good suggestion.

Does anyone disagree with that?

So to sum up this area I think what we talked about is maybe, you know, kind of a bifurcation of the process of, you know, we don't want to define too heavily the role of staff or we don't want to constrain the role of staff in implementation that's one.

But the Council should be - you know, act in the policy management process of reviewing implementation to see whether they believe it crosses the line between pure implementation and policy.

And if they do decide that there are policy issues that they should be free to deal with those either through, you know, some standing members of the - as Avri suggested kind of standing - I think you called it "review specialist" which may be standing members of the working groups that are still around or the experts left behind but essentially that that should be a role for the Council to decide and maybe even the Working Group to decide those members that could be around as a resource in case these questions come up.

Okay good. I think we are just about - or we are out of time. I want to thank everyone. I think today's call has been great. We've gotten through a lot of issues which I'm happy about because I think we will close out this area on the next call. We'll close out IV and then hopefully start - we'll have the surveys out Marika before the next call next week to start addressing Section IV?

Marika Konings:   Yes.

Jeff Neuman:   Great. And I think the last question on this Section IV is the same as the overall question so I'm - I don't really plan on addressing that, the timing issue, until we get to the overall. Does that make sense?

So I think we'll finish up implementation which we may have - we'll just recap and maybe get some additional thoughts from Alan and some others if they're on the next call, finish up stage IV and then jump into Stage V, and then talk more about Nairobi. I didn't - we didn't get to talk about it this time but we were making such good progress I didn't want to stop.

Marika Konings:   Jeff just one question because we are looking at the schedule for Nairobi and at the moment there's quite some time set aside for the PDP Work Team. It would be good like on the Sunday schedule - it would be helpful to get an indication maybe now on how much time you would need, and then we can still discuss what we use that time for just to make sure that we, you know, block a chunk of time if the group feels it would like to meet there.

Jeff Neuman:   So I think there's enough people or a lot of people on the Work Team have indicated that they will be there. So I think - how many - what's the time zone that Nairobi is in?

Margie Milam:   UTC+3.

Man:   Yes that is right.

Jeff Neuman:   Okay so that's - so they're - right now it's like…

Man:   It's 7 pm.

Jeff Neuman:   …7 pm.

Man:             Yeah 7 pm in the evening.

Jeff Neuman:     Okay. And is the time that's set aside in the morning or in the afternoon do you know on Sunday?

Marika Konings: It's early afternoon. I think - there's two slots set aside now because I think we initially foresaw maybe doing quite some work there so I think there's one slot just before lunch and slot just after lunch set aside. But it's probably - I don't know if people can spend that much time as our - you know have a lot of other stuff going on as well on this.

                So looking here we now have set aside 11:30 to 1:00 and quarter past 2:00 to quarter to 5:00.

Jeff Neuman:     Let's keep that afternoon slot and let's say - and we can have a call in number. This way it's not too early for people in the United States to - you know, I know the IPC is not sending any members and this way we can get a call-in number that they can join for the afternoon session.

Marika Konings: Okay great. Thanks.

Jeff Neuman:     Because I think every other - I believe every other member of the Work Team - or every other constituency has at least one person that's able to attend the Work Team meeting if I'm recalling that correctly. So I think if we do that then the IPC can - and the business - or if they're not coming they could actually call in for.

Marika Konings: Sounds good. And we should have remote participation facilities available. And, you know, this might be an opportunity as well to maybe - as we have done some face-to-face time to focus maybe on some of the recommendations and look at those.

Jeff Neuman:     Yeah I think that's a good idea.

Okay. And we'll talk more about the specific agenda. We'll make that the first agenda item to talk about next week.

Okay. Thank you everyone. Thank you for sticking this out. I think this is a - we've made a lot of progress in this call. So thank you so much.

Man: Thank you Jeff. Bye now.

Woman: Bye.

Man: Bye.

Man: Bye.

Woman: Bye.

Woman: Are you there? Hello?

Operator: Hi there. This is the operator speaking.

Woman: Hi.

Operator: The call is over. Sorry.

Woman: Sorry. No problem.

Operator: Okay thank you. I'll just disconnect your lines now. Thank you.

Woman: Thanks. I'm talking to myself. Thank you. Bye bye. Bye.

Operator: Sorry were you on mute?

Woman:     Yeah I'm on mute. We're going to get off this line because otherwise it gets transcribed.

Operator:     Okay bye.


END