

GNSO
Policies for Contractual Conditions, Existing gTLDs
Policy Development Process (PDP) -Feb06

Rapporteur group A meeting

Wednesday October 11, at 11:00 EDT, 17:00 CEST.

<http://gns0-audio.icann.org/PDPFeb06-WGA-20061011.mp3>

Attendees:

Marilyn Cade CBUC - Group rapporteur
Jon Nevett - Registrar Constituency
Ute Decker IPC
Greg Ruth ISP

Absent:

David Maher Registries C.
Bret Fausett - ALAC liaison to GNSO Council
Temporary chair - Avri Doria - Nominating committee Task Force chair

ICANN Staff

Denise Michel
Liz Williams
Daniel Halloran - absent - travelling - apologies
Glen de Saint Gery Secretariat

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GNSO Secretariat

Coordinator: The recording has now begun. Thank you.

Woman: Thank you.

Marilyn Cade: So we're going to do is just a couple of administrative things before - while we are waiting for others to join us.

What I was just saying is just (echo) to what the registrar who is on the task force who was recommended to join but is not going to be able to join. But, Glen, would you just go back please to (John) as the chair of the registrar constituency and ask him to send another invitation to others from the registrar group who might wish to fill in, on Repertory A?

And...

(Danny): And (Danny) is back.

Marilyn Cade: Hi, (Danny).

And we'll see if we can recruit another live (soul). It won't be person as a (live victim).

And so for purposes of the call, I think - I'm now expecting Mike Roberts today. I have Greg Ruth...

Coordinator: Excuse me. (John Maffit) now joins.

Marilyn Cade: Hi, (John).

(John Maffit): Hey, Marilyn.

Marilyn Cade: Hey.

Glen Desaintgery: Hi, (John).

(John Maffit): Hey, Glen.

(Danny): Hello, (John)

(John Maffit): How are you?

(Danny): This is (Danny).

(John Maffit): I know your voice (and) I was scared.

(Danny): All right.

Marilyn Cade: Just to recap, I have Greg Ruth on the phone. I have (Ute Decker). I have Marilyn Cade. I do not have Mike Roberts and it is possible that we will be adding an observer to fill in and that's work in progress for the BC. I don't have Brett Fausett and I don't have David Maher.

And, (John), just to confirm to you that (Jeff) has said that he is not available due to workload the next 30 days. So if you could in the background ask your constituency if they have someone to provide to us even an observer status, that'd be fabulous. Because since you're going to be here, ex officio, at least we've got some representation.

(John Maffit): Okay.

Marilyn Cade: Okay. And we've started the recording. And I am going to just review the agenda since I have the 6 minutes after. And we'll make any modifications to the agenda that we need to make.

What I want to do today is ask if anyone wants to be clear anything about interest that needs to be a part of the record or if they want to update a statement of interest. And we'll just put that into the record. And let me pause for that at this moment.

(Danny): Marilyn, this is (Danny). Can I get in the queue please?

Marilyn Cade: Yes?

(Danny): Okay. Since I'm new to the group, my statement of interest is as follows: I'm employed by the Artistic (Group &) Company in Manhattan. I receive no other compensation from any other parties. That's it.

Marilyn Cade: Thank you. And I hear silence (unintelligible) an update and we have statements of interest on record.

So let me move to - what I wanted to do is to take the expert questions or the questions for experts that we had received and see if we could allocate them against the three terms of reference that this repertory group is going to address.

And then, we will - as we continue with the work of the repertory group, we'll see whether the expert materials we already have help you us in answering these expert questions or any other questions which come up or whether we need additional information.

Then I'm going to - and I'm going to try to do that very efficiently. And then we're going to talk about the overlap between the two repertory groups. And I see I made a mistake in the - in my draft agenda and

said overlap with other task force, the other repertory groups regarding experts and expert materials.

And if - as we find that, then I want to jointly propose with (John) that discussions in that overlap area should take place at the full task force level with the participation of any repertory members so that we can eliminate duplication as much as possible.

I want to talk a little bit about the need for additional expert questions and expert materials and experts, but I will move that until the end of the call. And then I want to just start going through the three terms of reference that we're going to be addressing and talk about the expert questions, applying them against our areas and seeing if we have draft recommendations coming out of the repertory group that we could begin to capture and begin to build on.

Changes or addition to the agenda.

Let me add one item to the agenda that I want us to talk about. We may not be able to talk about it at least today, but in that case we will add it to Friday's call. And that is the table from Annex 3 that Dan Halloran provided to the task force.

And we have as an additional resource document a - exceptionally detailed supporting document that goes behind this that Dan put together and send out to us. Although it's hard to print, it is still - it's what I asked for to support the work. It comes across both repertory groups and it begins to put in one place, segments of the contract that are relevant to the areas that we're talking about under the terms of reference.

So (Liz) has sent that out to the repertory group again and we have a one-pager that was previously in the issues report and then the much more detailed compilation of segments from the contract.

What I want us to get into is...

Coordinator: Excuse me. Denise Michael now joins.

Marilyn Cade: Hi, Denise.

((Crosstalk))

Marilyn Cade: What I want us to get into is an analytical discussion about what we learn from the different treatments that exist today in the different contracts. And that's my addition to the agenda.

Anything from anyone else?

(Liz): Marilyn, I just got some stuff generally for people, so when you have a break, I'll just quickly take to go through what's available for them.

Marilyn Cade: Oh, good. Why don't we pause and do that now, (Liz)?

(Liz): Yup, sure.

Everyone just so that you're aware if you're online at the moment, there's a very big (fat) email which has the document that Marilyn has sent out.

And also, (Dan), if you wouldn't mind, posting those documents that are not emailed to the policies and contractor conditions issues area on the DNSO Web site. And I'm happy to start teach you how to get to this so everyone can find things in a one place.

I have not set up a Shinkuro room for this group because I've been having significant problems which I'm resolving with the Shinkuro people. So lower your expectations on Shinkuro.

Marilyn Cade: And, (Liz), let me pause for just a moment.

(Liz): Yes, sure.

Marilyn Cade: My preference is to have the repertory group use the Shinkuro room that belongs to the task force rather...

(Liz): Yeah, indeed. Indeed. And once I resolve those issues, I'm not going to set up anything different. It's just going to be all in one spot.

Marilyn Cade: All right, thanks.

(Liz): Yeah.

And then lastly, a number of people have come back - no, actually not, not a number of people. Two people Milwaukee and Alistair come back with questions that one might want to post to live experts rather than considering paper expert materials that relate to the terms of reference that you guys are working on.

And also I sent you all - because you're called Group A, for repertory group, there's a document that I sent around about a week ago when the group was being set up, which sets up Term of Reference 1 which is registry renewal, term of reference to the relationship between registry agreements and consensus policy, and the use of registry data, all collated into one place.

So you all should have everything you need. And you can just ask me if you need to have anything else.

Marilyn Cade: I did have one question for you. You sent us...

(Liz): Yeah.

Marilyn Cade: You sent us Milwaukee's questions but I had submitted questions that I think (John) had as well.

(Liz): I - you know, Marilyn, when I said to you I saw that note for me this morning, I went back and looked at all of those things. The only questions that I could see and I've kept everything were those from Alistair's notes from Milwaukee. But if I've missed anything, then just yell and I will add this group together because I'm assuming that the group today will come up with a list of questions that they want to ask...

Marilyn Cade: Sure.

(Liz): ...or particular terms of reference.

So that's the first cut but I honestly I could not find specific questions that you had put. Perhaps it was in another email that I didn't - not that I haven't got it but then I haven't - it hasn't been tackled as that, so...

Marilyn Cade: Okay, okay.

(Liz): ...(that's that).

Marilyn Cade: Okay. Okay. I'll find that again. And then what I have from the - what we have for the task force, we have Milwaukee's questions but I didn't see - did you provide us with Alistair's?

(Liz): Yup. Yup, they are underneath Milwaukee's things. They're all in one consolidated document and that was sent at (1:36) GMT plus two times - lunchtime my time today.

Greg Ruth: So, (Liz), the documents you just sent us, what - has the same name as the document we got before, the draft comparison?

(Liz): Yup.

Greg Ruth: It is an update?

(Liz): No, it's not. The one that I was also referring to, Greg, was the working materials which I sent to the group which related particularly to the terms of reference. And that's where I would expect these questions to be derived for aid to in person's experts or for you to say to me okay now, we need more in this or more in that or more in the other for improving the expert material document.

Greg Ruth: I don't think I have that one.

(Liz): Okay. I'm right on line here now, so you give me one (unintelligible) and I'll send it to you.

Greg Ruth: Okay.

Marilyn Cade: Okay. Anyone want to add anything or ask other questions to (Liz)?

(Danny): This is (Danny).

(Liz): Hi, (Danny).

(Danny): Hi, (Liz).

(Liz): How are you doing?

(Danny): I'm fine.

(Liz): Good. Sorry, your question?

(Danny): Have we compiled the list of experts yet that we're...

(Liz): Nope.

(Danny): ...send these questions to?

(Liz): There are a number of people that are included in the expert material which is being distributed which is also on the Web site. And if you have suggestions then, I'm sure they'll be taken into account.

(Danny): Okay. And the follow-up question would be...

Marilyn Cade: (Danny)...

(Danny): Yeah?

Marilyn Cade: But, (Liz), actually we do have some experts.

(Liz): Yeah, yeah, and they are included in the expert materials. They're all listed and people had made particular suggestions. And what I've done is provide an overview of the particular expert's area of expertise and provided the URLs or the connections to their particular body of work.

Marilyn Cade: So, (Danny), so, do you have access - did you see that and because you'd be adding to that, right?

(Liz): (Danny), would you like a special delivery?

(Danny): Yeah, go ahead.

((Crosstalk))

(Danny): The only follow-up question that I would have though is how much time are we giving these experts to respond and is somebody compensating them for the reference?

Marilyn Cade: So let me take that for a minute if I could, (Danny), the - and then turn it back over to the staff.

The process of identifying the experts and how to engage them, I've made a couple of suggested contributions on that idea. But the task force itself has still pending how it is going to interact with the experts.

The - Denise Michelle -- who's the VP for Policy is on the phone with us -- has advised the task force, I think three times now, that what we need to do is advise her and the policy staff on specifically what we need. So - and I'm going to make a proposal at the end of this call about how we might interact with the people who are experts but will not necessarily have to be retained.

(Danny): All right. I mean, Marilyn, the obvious reason behind my question is we know that the - that time agreement has been sent for discussion to competition authorities and it's taking months and months and months before an answer gets back. So I'm just concerned about how this is going to impact the overall timeline for the group.

Marilyn Cade: Yeah. So one other thing we need to make clear (unintelligible) so that encouraged by the General Counsel and by others to continue to be clear about is the purpose of PDP 06 is to deal with registry agreements for all of ICANN's existing registry agreements. And we particularly are reminded that this is not about a single registry agreement, although policy recommendations could apply differently to different registry agreements, but we wouldn't be examining issues that are only because of one registry agreement.

So I take your point about competition authorities from the government sense can take a long time to turn something around. The experts that we had been thinking about, (Danny), so far I had suggested that Martin - Dr. Martin Cave of the London School of Economics who is a -

economist, Dr Andrew Odlyzko who's at the University of Minnesota who's a statistician and Sam Paltridge of the OECD who's an economist, and I think some other names have been suggested. But competition lawyers in legal firms and economists retained by groups like Analysis or Witt Consulting or others. Those folks should be able to turn something around more quickly, I think, than a competition authority.

Does that make sense to you?

(Danny): It does make sense, but - okay, go ahead.

Marilyn Cade: But I would read into your comment if I might extrapolate your concern of are we moving the discussion with experts along in a parallel fashion so that we can take advantage of their advice.

(Danny): Maybe you should read it a slightly different way, Marilyn.

Marilyn Cade: Okay.

(Danny): I thought that earlier once we had a Call for Papers on this PDP, did we not?

(Liz): No, (Danny), that was for the December `05 call for the papers.

(Danny): Oh, it was in December `05.

(Liz): Yeah.

(Danny): So that Call for Papers never happened. So for the last six months, what - I get it's off topic but I'm sort of confused as to what this group has actually been doing.

Marilyn Cade: So as one of the repertories, I'll comment.

The group has not and it's why the repertory groups had been created. The group has not advanced the work as progressively as some members of the task force felt was important. There've been a variety of perhaps delays and one of those has probably been related to a health situation involving...

(Danny): Okay, that's fair enough, Marilyn. I guess I'm just getting at are we going back to what should be a Call for Papers procedure with regards to these experts?

Marilyn Cade: Well, I'll jump ahead and say - and tell you what I plan to propose.

We did not get a lot of contributions on PDP 05. And we - but we did schedule a very productive dial-in conference call. And you actually attended in person, I think, (Danny)?

(Danny): Uh-huh.

Marilyn Cade: And we made significant headway in getting input by using that process.

ICANN's President Strategy Committee used that process as well with relatively short turnaround given to people who wanted to make comments. And we had about six-hour series of conference call

interactions with people who had expertise and benefited significantly from that.

So, at the end of the call, I'm going to propose to the repertory group that we undertake a call with and do outreach to invited experts and see who we can get to participate with us in that manner in order to advance the work, even if we can't get lengthy analytical papers.

(Danny): That seems quite reasonable.

Marilyn Cade: Okay. So I marked that off my agenda and we'll just come back and talk about it at the end.

On the expert's questions, so the questions that we have, the questions from Milwaukee and questions from Alistair, can we just spend a minute on allocating these against the terms of reference?

And in Terms of Reference 1 on renewal, we have 1A and 1B. 1A is to examine whether there should be a policy guiding renewal and what the elements of that policy should be.

In Milwaukee's Question 1, and I think what we need to do is number this, so maybe we can make this be the M - this will be confusing. How about if we make it the MC1 for Milwaukee (Chenco) 1. That obviously belongs to - and the discussion under that on presumptive renewal, that obviously belongs to Terms of Referenced 1.

Does anybody in looking at this think that this needs to be applied to any of the other terms of reference as well?

(Danny): Marilyn, I have a related question if that would be okay.

Marilyn Cade: Of course.

(Danny): In reviewing the background materials, I noticed that the registry constituency had an issue with respect to the renewal's question as to whether it's within the scope of the work of the task force.

Marilyn Cade: Uh-huh.

(Danny): Has that question been officially resolved by General Counsel?

Marilyn Cade: There is a three-page General Counsel document that is dated September 27, 2006. It was a response to Bruce Tonkin as the Counsel Chair signed by John Jeffrey, General Counsel, ICANN. And I might summarize it in response to the question sent by Maureen Cubberley as Task force Chair at the advice of the task force to the counsel two key paragraphs.

One is - one paragraph I would paraphrase. The General Counsel says without knowing what consensus policy or policies might emerge in the group PDP in the answer to this question about whether all current TLD policies would be changed retroactively is - would be speculative and cannot be answered definitively. And I am just - I'm not reading this verbatim.

He does go on to say it is possible that GNSO to recommend and the board to approve consensus policies that would change all existing gTLD registry contracts. But that is dependent on both the policy and the impact to contract which have variations between registries.

It goes on to provide us with an expensive discussion and in a closing paragraph he says the stated intent of PDP Feb 06 is to make policy recommendations on a series of subjects for which ICANN currently does not have uniform policy.

The terms of renewal made (extensive) limitations on consensus policies whether or not they should be price controlled to the level of ICANN (fees). The limitation on registry uses of data and DNS resolutions that their service process and whether or not ICANN should mandate the different levels of capital investment by registries.

Such recommendations could be useful in negotiating future contracts - sorry - future agreements and might impact amendments to existing agreements even when consensus policy may limit the impact of such advice or policy (unintelligible) agreements.

The output of this advice by Counsel to the GNSO Council by General Counsel to the GNSO Council was then an instruction to the task force to - I would summarize it and I stand to be corrected is to go back to work and make your recommendations and it is - it depends of what you recommend on whether it can be applied - whether consensus policy could be applied on all six of the sub-elements.

(Danny): Thank you, Marilyn.

(Liz): (Danny), would you like me to send that to you?

(Danny): I've got that on file already.

(Liz): You do? Okay, fine.

Marilyn Cade: So I think, (John), you're the lawyer on the phone with us. Did I kind of get that right?

Man: Maybe (John) is not the lawyer on the phone with us.

(John Maffit): No, I am aware.

Marilyn Cade: Is that generally your understanding?

(John Maffit): I think that's a fair - yes. I think that's fair.

Marilyn Cade: Okay.

So I've assigned Paragraph 1 under Milwaukee's questions to this. He then goes on to ask a question that I think we may need to go back to him and clarify, (Liz). It's the third paragraph which says are there practices or procedures that are or can be generalizable and institutionalized to ensure the rebid process, provide the opportunity to improve registry services without necessarily taking to amend the agreement unless there's crime, blah-blah-blah? What is the shortcoming of that type of rebid?

I think this question is related to could the rebid be only about changing the conditions and not about complete rebid. That is what I take it to be.

(Liz): Yeah.

Marilyn Cade: So we might just ask him if that's what he is intending.

And then I think the third point he makes - we may need expert material or advice on comparative study of the TLD industry with other industries.

(Liz): Yup. Uh-huh.

Marilyn Cade: This covers structure, level of investment, cost benefit analysis including investment on return.

If I might leave that question to later because I think, embedded in some the expert material you've gathered, there's some discussion on it. But I would say that more discussion and maybe expert materials on spectrum allocation in particular maybe helpful to the work of this group.

(Liz): Marilyn, just so that you know on Alistair and I've had a side conversation based on all of this stuff and there will be another version of the expert materials that will be sent out that will take into account.

The last conference call that we had with everybody, I know that - and other people have followed that with me on this, so...

Marilyn Cade: Great.

(Liz): ... I will go back to Milwaukee.

Actually having said that, though, (Danny)?

(Danny): Uh-huh.

(Liz): Are you doing things - just to be clear what you're up to, are you doing things for the NCUC?

(Danny): I am a member of the NCUC.

(Liz): Because frankly, I would prefer if you and Milwaukee would have a quick chat because he's on top of this as well. And I will also get back to him. But I don't want to create confusing conflicting emails going back with them forward.

So, I'll speak with him tomorrow if I possibly can get hold of him, but perhaps you can also check with him about the NCUCs about how to handle this kind of stuff.

(Danny): Certainly.

Marilyn Cade: (Danny) is officially appointed to this repertory group by the NCUC.

Alistair Dixon: Yeah, yeah, I realized that, but I just wanted him to feel that he was able to do that...

Marilyn Cade: Can we make sure though that we minimize the off-list communications that - in the interest of transparency to the extent it's reasonable because? If we're - if people are asking for more materials, et cetera, I think most of that, we ought to encourage people as much as possible to be posting to the list so everybody learns along the way.

But not to cut down on bilateral and necessary communications, but just when they're submitting materials, it would be helpful if they are submitting to the Web.

Just going to Alistair's question to allocate them, his question is again about renew - perpetually renewed or should they expire and then should they be fully be tendered which sounds to me like he's talking about a complete flat open rebid with no assumptions at all.

(Liz): Yes.

Marilyn Cade: And then the - which option provides the best balance between promoting competition investment and is it appropriate to price control.

So we have here a question from Alistair which belongs to (John Kass) repertory group. Probably three I think, (John).

(John Maffit): It sounds like it's going to applies to both.

Marilyn Cade: Tell me, which terms of reference would I be - I guess...

(John Maffit): Maybe you could - maybe you read it again, but it sounded like a renewal question.

Marilyn Cade: Is it appropriate to price control to, and he doesn't say what it means by these sorts of contracts. But in talking to him...

(John Maffit): No, no, no. I'm sorry. The price control is obviously would be Terms of Reference 3. I thought the beginning part of that question is related to renewal. I may have misheard you.

Marilyn Cade: No, no, you're right. I agree with you. The first one - the first two belong to renewal.

(John Maffit): Yup. Okay.

Marilyn Cade: Yeah. And then, he's got - actually the second one belongs to you as well -- which of these options provides the best balance between promoting competition which is Repertory Group A and investment which is Repertory Group B.

(John Maffit): Yup.

Marilyn Cade: And then the final one is what should the nature of Price Control B, is it sufficient to rely solely on the ability that substitute to other domain names to keep prices at an effective level.

The concept of substitute ability in economic theory is a topic that I'd like us to come back to and see if we can have a conversation with a competition attorney or a - I think it's probably competition theory that we need to look at for the concept of substitute ability.

That is the switching cost. The product that you switch to is not a suitable replacement. The switching costs are too high et cetera, et cetera, and that there is a body of economic theory. I don't know how well developed it is, but there is a body of economic theory that is discussed in - I believe in analysis of competition that we might be able to turn to.

Okay. I'm through this question allocation. Anybody wants to add to this?

(Liz): Can I ask a question please, Marilyn?

Marilyn Cade: Please.

(Liz): On the substitute ability thing, there is a very broad body of both academic and corporate theory on the cost of substitute ability in terms of - in the mobile phone industry.

So if you want to allocate that to time of reference - let me just double check. Hang on a sec. To the right term of reference, then I will add that into the expert materials rather than - for the moment to get some information around to people. So that might be a helpful way of approaching that particular part of the question.

Marilyn Cade: I think we're going to have to talk about it in a two places. One in any discussion about competition, but I think it's an over urging question that cuts across several of the terms of reference.

Why don't we come back to maybe having a discussion with Alistair online and (Milton) may wants to comment as well and others? (Danny), you yourself may want to comment about what the - how the issue of substitute ability or lack of it may influence the competition issues.

Okay. So we've identified at least one additional topic. And I'm going to leave that question of - (Liz), you said you are preparing additional expert materials?

(Liz): Yeah, I am. Absolutely. And I want to take on that substitute ability one because I don't - my analysis or my sense of the group is that it's a very broad body of theory that perhaps members of the group are not comfortable with. And I'll put that into the expert material.

Marilyn Cade: Yeah. Let me just say something about expert materials having spent a lot of time printing them out and trying to read them.

I am cautious that - about relying just on expert materials and think that we do need people to be able to discuss as experts some of these issues.

So having said that again - otherwise, what we're doing is just making big reading assignment to the task force and not giving people perhaps the digestive juices to be able to assimilate all that information.

But why don't we go on and talk about terms of Reference 1A.

(Danny): Marilyn, a quick question before we jump into that if you don't mind.

Marilyn Cade: Please.

(Danny): Back in early January, February, the different constituencies put forward basic positions with respect to these terms of reference. I'd love to see an update on the part of each constituency. A fair amount of time has gone by. Perhaps constituencies have reconsidered reevaluated and have got slightly different take on their position.

Would it be too much to ask the constituencies to put through another set of views?

Marilyn Cade: I think - let me try something as an idea. I think going back to the constituencies and asking them to redo work at this point when they are - they have four ongoing PDPs, they're dealing with the LSC, they're preparing for Sao Paolo, it's maybe unlikely to get them...

(Danny): The reason I'm asking, Marilyn, is because in view of the council's statement.

Marilyn Cade: Uh-huh.

(Danny): And view of the fact that the registries were originally onboard and not supporting really discussions on renewals, perhaps that particular body might like to reconsider the earlier comments and submit new work for the task for to consider.

Marilyn Cade: Sure. Sure. Let me lay out what I think where we're going, (Danny), and see if we're going to get to the possibility of what you're asking.

(Danny): Sure. Go ahead.

Marilyn Cade: What I expect us to do is to draft as we've done for PDP 05. They suggested -- and it maybe one or two -- recommended policies per terms of reference. So under 1A, examine whether or not there should be a policy guiding renewal and if so, what the elements of that policy should be.

Hypothetically, what I would expect to see is draft Recommendation A. There should be a policy guiding renewal and it should include the following six elements, and then let's take that.

In taking a vote on that, what I would expect to see - and the counter a draft Recommendation B that could say A or B; and B should say, "There should be no policy guiding renewals; staff should be able to negotiate on an individual basis with each registry regardless of their characteristics what the renewal terms are."

Those are two black and white very different draft recommendations. Would you agree?

In putting this together, we will need to develop a draft report that goes back to the constituencies and goes to the public, and everyone has a chance to reconsider their positions at that time based on draft - (Liz) help me. Based on the - what is - what do we call our document when we are putting it up for public comment?

(Liz): The final report.

Marilyn Cade: Thank you.

If we go back to the constituencies now, I know we're not going to get any re-drafting from the BC. We're going to go through our - the BC is going to go through our existing position paper and have an update and consider whether it was going to make any verbal updates, but we're not going to have time to do a rewrite and also do all this work.

(John), would that be true for the registrar? So do you...

(John Maffit): Yes, absolutely. I think we - before we go back to the constituencies, I'd like to take back some concrete recommendations or proposals that could be considered as opposed to refreshing the statement that we've already made.

Marilyn Cade: Greg?

Greg Ruth: The question is?

Marilyn Cade: The question is, (Danny) was asking whether it's feasible to go back to the constituencies...

Greg Ruth: Right. So your question is?

Marilyn Cade: Whether you support the - whether you think we can go back to them or you would support the approach that I just suggested.

Greg Ruth: Well, I like your approach. I mean, I think maybe we should let it be known that if they have different opinions, they could at this point in time, they could - they're welcome to submit them. But I don't think we should call, you know, we should make a formal call for them to revisit the issue, you know.

Marilyn Cade: Okay. So any constituencies who want to augment? (Liz), is that practical to do within the task force schedule?

(Liz): Yeah, it's fine. That's fine because I mean really finding the work of the repertory groups will be folded as two threads of material into the final

report. And if you're going to stick with your existing schedule and having a final - a draft final report prepared for consideration by a council prior to Sao Paolo, then that has to happen. And the constituencies have to agree that when I write (unintelligible) quickly represents their views. So there's no problem with that going that way.

Marilyn Cade: But - and do people on the repertory group agree with me that our goal at this point is to then to draft for each of these elements the proposed recommendation as we've done in PDP 05?

Man: I think that's a good idea that we take - the repertory group takes that back to the task force and we ask if that's what they agree on.

Marilyn Cade: Okay. So my suggestion on PDP - sorry - on 1A, all recommendations reading what's been given here and looking at the extra questions, I'm going to ask whether we think we - what else do we need? Do we need a - do we have enough expert material? Do we need a discussion with experts to formulate a (straw) recommendation on 1A?

Man: Let me...

Marilyn Cade: Here's what I think is missing at this point, that is the information on spectrum allocations, not auction but spectrum allocation which, you know, auctions are a mechanism by which you actually make the allocation. But I think what Alistair was suggesting is under what terms. It is their automatic assumption that you would get the allocation again regardless of whatever the mechanism is.

What I've seen in the material that I've been reviewing is there are always conditions to the renewal and many agreements have a term to

them. Even agreements that are bids from national security agencies to procurement providers have terms by - so I have ending terms in them.

So just because Boeing wins the bid to supply fighter-bombers to a government for a five-year term or seven-year term, they don't automatically get the renewal of those fighter-bombers or those stealth bombers or whatever. They have to go through a competitive bid process. And looking across even security agencies, procurements, you see assumption that there will be a renewal.

And I used security agencies because of the concern that's been raised about whether we would be destabilizing the stability and the security of the Internet by having bid - having competitive bids.

Thoughts?

Man: I agree that when you take the example of government procurement, it's clear that there's no presumptive renewal there. Everything gets competed after five years or some period of time. And usually the incumbent has such a great advantage that, you know, they don't complain about that. But everybody is forced to go back and sharpen their pencils and make another proposal that they hope will be a winning proposal. And no one seems to think that that's apparently unfair process.

Marilyn Cade: Other comments?

(Liz): Marilyn, can I ask a question?

Marilyn Cade: Yes.

(Liz): I would - you know, as I understood our objectives right and how we're going to proceed the work, we are eventually going to come to a recommendation for each one of those points. And it seems to me that it is really only once we have made and formulated the recommendation that we will know exactly what questions we want to ask the experts and what are the additional expert material we might need, additional to the (webs) of material we already have.

Now, my question is how are we going to arrive at the first draft or such a recommendation?

Marilyn Cade: I'm entertaining (straw) proposals today on 1A. So 1A which is examined whether or not there should be a policy guiding renewal and if so, what the elements of that policy should be, one (straw) proposal to draw Recommendation A. And I, you know, maybe we put everything in square brackets as we write this so that everyone knows that this is very much a draft proposal.

In square brackets, the answer would be there should be a policy - guiding renewals of all gTLD registry contracts.

(Liz): Yes. And then, will the - at the elements as well on today's call?

Marilyn Cade: That's right. And then - what I would say is draw Proposal B with the there should not be a policy guiding renewal. And then we would go back to A and fill in the elements.

On B, we would need to fill in the element. Does that make sense to people or am I...

Man: Well I think on the second alternative, we'd have to find some other example where a presumptive renewal was a norm.

Marilyn Cade: To back it up, right.

Man: Yeah, to back it up.

Marilyn Cade: Right.

So would that - so for instance on - so Straw Proposal A in bracket is the answer is yes and then we need to develop elements, and then underneath that, we need to cite the expert resources about why we are proposing it.

Under B, to Greg's point, we - the answer is no, and we would need to cite the examples of where there is presumptive renewal. And I think we also should go to the table from Dan and stop at this point and look at the table from Dan at where there is presumptive renewal and where there is not.

And I've done an eyeball analysis of it. I'm sorry (Dan) is not here, but let me try my eyeball analysis of this.

So - and I put it in an email earlier that I circulated when I asked Dan to flush out this chart. The presumptive renewal exists and people I think should sort of write this down and we'll come back and talk about the characteristics on .Aero, (.Pat), .com1, .com2, .com3 that are - their

sequential variations of the .com contract on .coop, on .job, on .moby, on .museum, on .net and .travel. Presumptive renewal does not exist on bids, info, name, org., and pro.

Man: One other point we should mention, I'm not sure if this is the right time or not, Marilyn and (John). There are different flavors of this renewal provision, whether there's a renewal expectancy, whether there is a presumption of renewal, whether there's an automatic renewal provision and their - the devil is in detail on this renewal provision. So I wouldn't want to lump them all together saying yes, there's presumptive renewal.

I would say there's a renewal expectancy in the ones that you listed, in the first group, but there are very different flavors of that expectancy within the terms of those contracts.

Marilyn Cade: Exactly.

And, (John), I - do you (unintelligible) to become competitive with the ICANN legal staff on knowing and with Bruce Tonkin on you and knowing too much about the contracts which will, I hope will not happen.

But the - so that's why I ask Dan Halloran to flush out the - to put in the relevant sections in the larger document. But the analysis that you just made, I still don't see that that exists. Do you...

(John Maffit): Exactly.

I think it'd be more helpful than flushing out this section by just - if he gave a list of the different flavors that exist. And then he just list say, you know, aero, coop and museum has the following flavors of presumptive renewal.

Marilyn Cade: And that's what I was going to get to is the next thing that I think is needed, this...

(John Maffit): And I think he did this in the Brussels meeting. I know there was a chart or...

(Liz): Yes, he did.

(John Maffit): Yes. So I think there's probably the work already out there; it's just getting it to the - to these folks.

Marilyn Cade: Okay. So, (Liz), can you help us with that?

(Liz): Yeah. I have just been taking notes (unintelligible) speaking. There's a couple of things that I just want to double check with you. One is because Dan is not on the call, he's traveling at the moment, I will speak with him about what (John) has just said about the different flavors.

The other thing that I just wanted to clarify for everybody before we get too far down the - excuse me - straw man is that I note, Marilyn, on your roll call that there are no reps from the registries and no ALAC people. So we need to - I just want to clarify how you want to write down what your straw man proposal is to each thing and who's actually doing the text for that.

So we should ask that question and I think that we're going to have to very careful that we have broad representation from the group, from the repertory which we know. And I just want to be careful about how or I just want to be clear about, not careful, clear about how you're actually going to write your straw man proposals (down). Are you expecting me to do that or is the group writing that down or what would you like to be done?

Marilyn Cade: Thanks, (Liz).

So, two things. One of the reasons that I asked to have the call transcribed is so that any constituency who misses a call has the complete transcript available to them.

And in terms of writing the straw proposals, I'm actually thinking that the detail discussion is available to everyone. We will document the work items that come out of this, so the further work request that come out of this and then I'm going to take a document that just has the terms of reference and write on it as the (Repertory) Straw Proposal A, yes.

(Liz): Okay so, Marilyn, just to be clear, your - the document that I sent around to you which is working material for Repertory Group A has the terms of reference that this group is considering, and you're going to put the text in the straw (column) and you're going to distribute that to the group and then say guys, what do you recommend about da, da, da, da, da?

Marilyn Cade: I'm going to make a new document that only has the terms of reference typed on it.

(Liz): Yes, great. Okay, cool. Thank you.

(John Maffit): If I - this is (John). If I can respond to the first point about the representation just so we can hopefully put this to bed because it's going to be a recurring theme especially with the - with a smaller repertory group. My analogy is to - and I'm sorry if it's US-focused but the US Congress, they have a web of committees.

You don't have a representative from every state on every committee because that would be akin to the entire Congress. What you do is you have people working on an issue, you have a working group or a committee pull the information together, provide recommendations to the full body, and then the body with full representation will take action or not take action.

(Liz): That's great. Thank you, (John). I'm happy with that. I'm just cautioning - I'm just being cautious. That's all.

(John Maffit): Okay.

Marilyn Cade: And guys - and, (Liz), I'll augment that by describing how study groups in the ITU-T sector work.

(Repertory) is appointed by the body. People volunteered to be on the repertory group. There are a lot of people who are there as observers and make no contributions at all.

The repertory progresses the work but the work goes back to the body to debate, discuss and make decisions. And the important thing about the (repertory) group is that the list is transparent and documented and open to anyone who is either in the repertory group or is in the full body.

So I think there's a couple of examples of existing processes and legitimate entities. One is a standards entity and the other is a political entity.

So, are we okay to move on?

So I want to go back to - so, (John), what I'm looking for then is the concept of - I'm looking at (John's) chart where there's a column of presumptive renewal. I want to make a short...

Man: Dan's chart.

Marilyn Cade: Dan's chart, sorry. And then, I need to have the - so if were thinking about this as a mini chart that was going to go in to a report, I would have the column presumptive renewal which says yes and have a different column next to it which says - pardon me for this but right now let's say what flavor of presumptive renewal. And that would be filled in with a phrase that comes from the other charts that Dan has done. Right?

But I want to go back to presumptive renewal and talk about characteristics for just a minute.

The gTLDs that have presumptive renewal with the exclusion of .com and .net are all sponsored TLDs. So I have a history, I have a characteristic that before the staff started re-negotiating with one particular registry, the history of presumptive renewal was that sponsored TLDs had presumptive renewal.

(John Maffit): Yeah, I wouldn't agree with that because if you look at this - all right, I would (straw) that comment from now.

Marilyn Cade: Then, so I had no presumption of renewal in .pro, .org, .name, .info, and previously I did have presumptive renewal in .com. Right?

The 2001 contract did have presumptive renewal in it. But the other open or unrestricted TLDs according to this chart did not have presumptive renewal. Does that - is that an accurate statement?

And then my question is what is the flavor of presumptive renewal that exists? Is that right?

(Liz): Marilyn, could I just check that everybody has the document that you're referring to in front of them?

Marilyn Cade: The white page that you've sent out?

(Liz): No, it's the very complicated document that Dan sent out which has the specific provisions, flavors and...

((Crosstalk))

Man: That's Table 3, right, you were referring to?

(Liz): That's right, Table 3. That's right. That's Annex 3 which is in the issues report.

Marilyn Cade: Except that, (Liz), I'm not working from that document right now. I'm working from the one pager for simplicity.

(Liz): Okay fine. Fine, fine, fine. Okay, just checking.

Marilyn Cade: Yeah. I've been trying to keep it simple purview.

(Liz): Okay, cool.

Marilyn Cade: And then, my question is going to be does the chart you're going to provide to us from Dan provide that what is the flavor of presumptive renewal?

(Liz): What is the flavor of renewal?

Marilyn Cade: Okay. That chart is going to - I'm confused. The chart you're going - if there is no presumptive renewal - what I'm looking for is what are the that Dan - that (John) pointed out.

(Liz): Yup.

Marilyn Cade: I'm looking for, what are the characteristics that are in the presumptive renewal.

(Liz): Yup. Yup, yup, yup. I understand what you're trying to get at. That's fine.

Marilyn Cade: Yes. And that chart I'm expecting.

(Liz): Yup. That's fine. I'll talk to Dan about it. That's fine.

Marilyn Cade: Okay.

Then can I go back to - so, I think I need a discussion for - at the task force level, I need this discussion further here perhaps online but also the task force level of given the presumptive - the straw proposal of, yes there should be a policy guiding renewal, do we - what are the elements that should be in that? And does anybody wanted to take a cut at element?

Because one of the things the people get confused about is even presumptive renewal is a policy, so I think the answer - let's break this down into should there be a policy guiding renewal. The answer is yes or no.

If yes, the second question would be, should there be a policy of presumptive renewal. That would be again a decision tree of yes or no. Would it not?

And if there is presumptive renewal, because if there is yes, what are the elements. If there is no presumptive renewal, what are the elements for the policy. Is that - does that track with what people expect?

(Danny): Okay. Right.

Marilyn Cade: Okay.

(Danny): Marilyn, I think maybe I'm confused on one point. If we're talking about policy across all of these different TLDs, isn't there a possibility that policy could be treated by the board as something that is not necessarily uniform?

Marilyn Cade: So, good question. I think I was going to go there next, (Danny), and that is - so is there a policy guiding renewal. And the second question and the couple of the constituencies raised this in their comments - let me find this. I wrote - I summarized the comments so let me see if I can find what I said.

The BC has previously said that there can be a not one-size-fits-all approach off on the document that (Liz) sent us on Page 6, middle paragraph. For instance, it maybe appropriate to have different renewal qualifications to sponsored TLDs where there's a significant investment of sponsoring organizations and policies for the TLD.

Such a policy should be further examined - such a possibility should be further examined during the PDP process.

So, (Danny), that one example might be that sponsorship of building a sponsoring community is a complicated process and renewal expectations could be different for sponsored versus other kinds. That's just a hypothetical question.

Were you thinking of something in addition to that?

(Danny): No, just looking at your decision tree. I didn't think that there was a clear yes-or-no situation.

Marilyn Cade: So, okay. Examine whether there should be a policy guiding renewals. Answer yes, answer no or answer - give me an...

(Danny): Circumstantial.

Marilyn Cade: Circumstantial by what?

(Danny): I guess I'm just asking. Are we talking about one policy to govern all of the different TLDs or are there circumstances that may impact arise in the future...

Marilyn Cade: Uh-huh.

(Danny): ...or might be present at the moment in which a global policy is not appropriate?

Marilyn Cade: Okay. So hold on just a minute and I'm going to see if the decision tree goes yes, no, yes - hold on a minute. Sorry. I'm having trouble with my little decision tree.

Yes, no, circumstantial. Then yes, there should be a policy.

And the second question is, does it presume renewal and under what conditions or no - I'm sorry - or should it - there is no presumption of renewal for any or circumstantial.

I guess I was putting circumstantial at the second decision tree and I'm just trying to understand where it fits.

Did you see what I just did? Visually, I just moved circumstantial to the second level of the tree. Does that work for you or do you think it belongs at the primary level?

(Danny): For now, I'm comfortable enough. We can certainly debate it further if it has to be debated.

Marilyn Cade: Okay.

So, can we go to elements on this or we could actually assume that we have a very high level initial draft then go to 1B because 1B actually addresses (Danny's) question, I think.

1B says recognizing that not all existing registry agreements (unintelligible) rights of renewal (Unintelligible) to determine whether or not these conditions should be standardized across all future agreements.

(Danny): So you're basically asking harmonization, yes or no?

Marilyn Cade: It looks to me like we're asking harmonization, yes or no. (Ute), is that that what you would say?

(Ute Decker): Well, I think the question is should there be one policy for all which would be harmonization should be - should that be a more complex policy that would take into account the different characteristics of the

policies which would be more in the (unintelligible) harmonization for each group only or should there be no policy at all.

Marilyn Cade: And so we would be - complete harmonization or a framework which has flexibility in how it supply or each contract is a one-off, or there should be no policy.

(Ute Decker): That's right.

Marilyn Cade: I have four categories there.

So one is standardization which we were calling harmonization but I think it's actually standardization.

Two is, a more complex approach based on the characteristics of the registries and perhaps the string. And one of the - they're going to be affecting IDN registries as well as ASCII character registry because PDP 05 and PDP 06 interlock with each other at some points.

(Ute Decker): Uh-huh.

Marilyn Cade: So I have four categories under Straw Proposal 1B.

And does that sound - that's what you'll see back from me in this document is four options in square brackets.

(Ute Decker): But, Marilyn, do we agree that IDNs are not within the remit of the task force or repertory group?

Marilyn Cade: It isn't that IDNs are in the remit of this task force; it is that things that we propose will lead to conditions that will affect further agreements.

So if we propose for instance that there is complete standardization across all future agreements, the question that PDP 05 will need to ask is, okay, there are 14 - is that right, one, two, three, four, five, six - oops, sorry - 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14.

Tare 14 gTLD agreements today. If we propose that the conditions of assumptive renewals are standardized, that would be something that would be reflected into future new registry agreements. Some new registry agreements will be IDN agreements.

We talked about this in one of the council meetings about the concept of sort of an age that PDP 05 is progressing or a ladder or something like that so we sort of used this analogy. But at some point, there has to be this crosschecks to say is this policy recommendation applicable or will it affect.

So, for instance, if we come up with - sorry - not we, but if (John)'s group comes up with something on ICANN fee, that will presumably - and if you read (John's) guidance to us on the last page, he is suggesting the same thing that guidance that we provide will presumably be - or a policy that we provide will presumably be reflected in future agreements.

So I'm not seeing us as saying this is a bad idea and this is our existing agreement. But I think we need to flag those recommendations which may be - may have implications for PDP 05.

Does that make sense to you, (Ute)?

(Ute Decker): Yup. That makes perfect sense.

Marilyn Cade: Okay. So, we can ask that question.

(Danny): Marilyn, can I throw in a hypothetical?

Marilyn Cade: Sure.

(Danny): Let's say that folks on the noncommercial side are interested in putting forward a proposal for a .ngotld. And they've really don't feel comfortable with the contractual environment that ICANN has been working with them for of course for the last five to six years and instead decide to put on the table the concept of working along the lines as a framework of accountability or exchange of letters or any of the other options that the cc TLD community is using at the moment. Is that an option?

Marilyn Cade: I would say, no, (Danny) because we had this discussion. I'll give you my view and ask others to comment.

We had the discussion at an earlier stage in 05 where we talked about what the nature of the relationship between ICANN and the generic registries is versus - between ICANN and cc TLD and we in particular went into a discussion about the fact that cc TLDs are governed by different set of rules. They come up the ISO 3166 list, and so anything other than that is a generic TLD and it is subject to the consensus policy et cetera, et cetera.

What you're proposing is - would be environment which does not actually have a contract.

(Danny): Correct.

Marilyn Cade: There is therefore not relationship between ICANN as the manager of the single authoritative root and such a party and ICANN would have no authority to put such a - I'm struggling with what their authority to put such a string and in root would be given they had no relationship to the third party.

(Danny): Well, I'm looking at the INT contact for example, that doesn't exist and yet the INT registry seems to function, doesn't that? And they are not a cc TLD by any means.

Marilyn Cade: The INT - .int, .mail and .gov and .edu were - and I - you know, you have actually called my attention that the legacy TLDs are not all documented our Dan's chart. So maybe we could ask Dan to give us a footnote which explains the nature of the relationship to the legacy three-letter TLDs that are not included on it.

(Danny): Right. It's just, Marilyn, that I see some of these legacy models as being good models. I see nothing wrong with the way that EDU is administered or - well I got a couple issues with INT. There are perfectly good ways of getting things done.

Marilyn Cade: .edu does have - but, .edu does have some kind of an agreement. They have a contractual agreement with ICANN.

(Danny): Oh, I wasn't aware of the contract.

Marilyn Cade: There's some kind of an agreement between and that's why I don't - I'm not going to try to describe it. I'm going to ask Dan to tell us what the agreement is. The - I don't think that .gov necessarily has a relationship. But why don't we just ask that question to Dan of what is the nature, the relationship between the other legacy TLDs such as .edu, .gov, .mail, and .arpa and .int. Have I covered all of them?

Woman: I got the note, Marilyn. It's fine. I'll deal with it (unintelligible).

Marilyn Cade: And then to (Danny's) question, we had a question about -- sorry, (Danny) -- should - actually, (Danny), go back to 1A.

(Danny): Okay.

Marilyn Cade: There - examine whether there should be a policy guiding renewal and if so, what are the elements of that policy should be. Tell me in your proposal where is the relationship between the - in the straw idea, where is the relationship the registry agreement is not called in contract here.

So this would hypothetically someone who proposes a letter of agreement or mutual or an MOU that they design and bring to ICANN to accept. Would that be right?

(Danny) Yes, it would.

Marilyn Cade: Okay. Under B, in our example, we have four options. Under 1B, we have 1.b.1 complete standardization, 1.b.2, more complex based on the characteristics, 1.b.3, a one-off approach.

Your proposal I think would probably fit somewhere between 1.b.2 and 1.b.3, wouldn't it?

(Danny): Treat it as a footnote if you have to.

Marilyn Cade: No, no, sorry. I'm just asking where - I'm asking the group, where it would be discussed?

So is that okay with the group if I put it in under the one-off - I probably need a better term, but individually negotiated agreement and approaches and provide (Danny's) example of a string that is put forward by a party that - and they self-generate the idea of rather than coming through the formal process.

And it's probably a question that belongs, (Danny), in the new gTLD PDP 05 group more than fitting here. But we can document it and add it to our list of questions for PDP 05.

Is that all right?

(Danny): Sure. Fine.

Marilyn Cade: Okay. Can I move people - so I have a couple of straw proposals. Can I go - we have 45 minutes left. Can I go to Term of Reference 2, relationship between registry agreements and consistent policy? Because I think this one is going to actually take a discussion with some experts including the legal - the ICANN legal counsel's office and maybe a couple of other invited experts to talk to us about the picket fence and what it means and doesn't mean and to capture and

document that. And, (Liz), my proposal would be the discussion about the picket fence that belongs to the task force level.

(Liz): Yeah.

Marilyn Cade: (John), would you agree with me about that?

(Liz): Sorry, (John). Go ahead.

(John Maffit): Why would it be relevant to this group as well?

Marilyn Cade: Sorry. It's relevant to both, so I was thinking - this is one of those things we might try to do one time.

(Liz): Marilyn, don't you think it - sorry, (John). You answer the question first and then I'll add (another bit).

(John Maffit): No, (I'll shut up now).

(Liz): You haven't been noisy at all.

Marilyn, just a quick one. I think that the second - the picket fences that you're talking about, am I understanding you correctly that the - there were two elements to the GNSO Council's request to the General Counsel's office which was that general piece of advice about what is applicable.

And then the other part of that was an analysis of the PDP (service), this term of reference and five elements of consensus policy application. Is that what you mean?

Marilyn Cade: Right. And so, my - and Dan is working on that. It's my understanding.

(Liz): Dan and I have been emailing back and forth about exactly that. And we're conscious that we had two weeks to do it.

Marilyn Cade: Right.

(Liz): So I think that our two weeks is up on Friday. And I know Dan is traveling so I provided him some comments on his draft to me, so the group can be assured that it is being done. But Dan is just managing a very busy travel schedule.

Marilyn Cade: Okay.

(Liz): And it will be released to the council because it's a council request, and then the group will of course get it because it would be for (unintelligible) group as part of the work.

Marilyn Cade: And so my suggestion...

Man: Yeah.

Marilyn Cade: ...to (John) is that the discussion of the implications of the picket fence affects as I think - maybe not all of the elements of the terms of reference but most of the elements.

(Liz): Yup. Okay.

Marilyn Cade: And so I was just suggesting there'd be a joint conference call discussion between the task force and the repertory's groups with Dan and perhaps other legal experts on that document and that it'd be done jointly instead of us trying to do it separately.

(Liz): Yeah. And I would suggest that we do it at the proposed task force meeting which will be on the 19th of October.

Man: When on the nineteenth?

(Liz): Do I have that (unintelligible)? Let me defer to Glen actually. And I don't know whether Glen is still here.

Marilyn Cade: No, no. I think...

Glen Desaintgery: The 19th - sorry. Can I just put a flag up to the 19th (unintelligible)...

(Liz): I beg your pardon, Glen. It's my mistake. It's a council meeting then.

Glen Desaintgery: Okay.

(Liz): Yeah. Sorry, it's my mistake. That would...

Marilyn Cade: Well wait a minute, guys.

(Liz): I'm sorry. I'm muddled it up. So go back again, Marilyn, to wherever you want to have it discussed as a task force then that's fine.

Marilyn Cade: Yeah, but, (Liz), I don't think you did muddle it up. Unfortunately, we canceled the task force meeting in Thursday.

(Liz): Yup. That's fine, okay.

Marilyn Cade: We have to have a task force meeting that week. The council's meeting for two hours on the 19th...

(Liz): Uh-huh.

Marilyn Cade: ...why isn't it possible to - oh, and you have a PDP group on the 19th, don't you, (John)?

(John Maffit): Yes.

(Liz): Yup.

Marilyn Cade: So if it's amenable to you, perhaps the Repertory Group A could just join you and we could...

(John Maffit): No. I'm not - that's not amenable for me.

Marilyn Cade: Okay. When are we going to - sorry, I guess we need to figure out when we're - we need to have this discussion before we conclude the work of the repertories, don't we?

(John Maffit): Yeah, no, we set up three meetings for Repertory Group B that do all that work and that's the third meeting. So I would....

Marilyn Cade: Okay. And you're not worried about incorporating this analysis in your work?

(John Maffit): Not very.

Marilyn Cade: Okay.

Glen, would you and (Liz) - so given that we have to have to have a - it looks to me like the 18th might be a possibility for a PDP - for a full task force meeting if (Aubrey) can make it. And that would be after my group's last meeting, but before we put forward our final report and, you know, and edit it together on the 24th.

So if the task force could meet on the 18th and we could have the review of this document from Dan...

(Liz): Marilyn, I had in my schedule that you had a repertory group meeting on the 20th?

Marilyn Cade: No, I don't. I asked for an administrative meeting between (John) and Denise and you and me and Glen and (Aubrey) on the 20th. But I'm thinking that we could handle administrative details by email.

(Liz): Email.

Marilyn Cade: Yeah.

(Liz): Yeah. Yup, yup, yup.

Okay. So then I'll just take an action item to schedule a task force call to discuss the analysis that Dan and I are putting together on all of this material sooner rather than later.

Just - do you want to just leave that one with me and I'll work with Dan on when he's available and I'll make some suggestions?

Marilyn Cade: Well, it's actually (Aubrey's) call.

(Liz): Yeah, I'll work with (Aubrey).

Marilyn Cade: Okay. But my preference for purposes of the repertory group and for purposes of the task force would be to have this discussion by the 18th at the latest, otherwise, we are doing a lot of work and not being fully informed.

If we can't...

(Liz): Yeah, yeah, I understand what you say.

Marilyn Cade: Okay. If we can't do it by then, then we will have the repertory groups reporting in and then we have the debate. That's feasible as well but we need to know when it comes in.

(Liz): Yes, okay. Leave that with me for a day, would you, and I'll just speak with (Aubrey). I spoke with her before the call this evening and I'll speak with her again tomorrow. She wasn't available for tonight.

Marilyn Cade: So - and that's particularly applicable to me, to 2A and 2B -- examine whether consensus policies are appropriate and how the limitation should be determined.

So we can craft a straw proposal to C.2A which says straw proposal, consensus policy limitations are appropriate, yes or no? If appropriate, what should they be -- that is how are they determined?

The picket fence may be one area of determining a limitation.

A second approach to limitations might be going back to the previous discussion and saying limitation should be shaped by the nature of the kind of registry string such as sponsored/non-sponsored, or limitations might be shaped by something else, some other way.

Man: Like on some other way.

Marilyn Cade: Sorry?

Man: Some other way is okay if that's choice of word.

Marilyn Cade: Well, I - actually, I want to fill something in under some other way. I'll put "some other way" now but if we don't have anything to write there, then to go back up to the decision tree, our consensus policy limitation is appropriate. The answer is no. There should be no consensus policy limitation.

And certainly some of the groups who responded, the registries said limited only - appropriately only to the extent they undermine

interoperability, security and stability. And any determination should be limited to review of this impact - other impacts on three subjects.

So question might be, how will the impact of consensus policy limitations be determined? Who will make that determination?

The registrar said (appropriate) such as price of registry services and fees, otherwise no contractual limitation to - on consensus policy.

IPC says aligned with the GNSO and any variation should be justified.

The NCUC said they haven't discussed this enough and so we'll come back to that.

The BC says consensus policies should apply and we don't see the need for limitations. And we're looking for justification to exceptions.

And the ISPs say that consensus policy should apply.

So in the answer that say "No," there - should there be any limitations, there is one path that says yes and here's how the limitations are determined. There's another path that says no limitations to the applicability of the consensus policy. So I have a different question.

Bruce Tonkin - I mean, sorry, a related question. Bruce Tonkin had suggested and I had commented earlier that there could be a situation where consensus policy applies but the registry is given the opportunity to present justification for why a consensus policy is too onerous for them and there should be a special circumstances limitation.

I'm not speaking for or against that idea but one example of that that has come up in PDP 05 was a request by some registries to be able to act as their own registrar.

If we recognized that it comes that - if there were a consensus policy that registries are required to use registrars and that's the consensus policy, do we build in the opportunity for exception under special circumstances and then build in a required publication to - for public comment before such an exception is implemented? Is that a third track that needs development or does that opportunity exist already in the two paths we're examining?

Have I confused everyone?

Man: Well, I guess that it's something you can't really do without. And we can't foresee all possible circumstances and policies and so forth, and so there has to be a sort of a (PO) process or something like that, another court of appeal.

Marilyn Cade: All right, an appeal process. I got it. Great. Okay. I think that - let me - does that work for others, the idea that there ought to be some kind of a special appeal about a particular consensus policy which doesn't - which for some unique reason? And then, would we propose, Greg, something like that such a situation is not negotiated in the dark; it would have to be published for public comment with the explanation or the justification for the exception to consensus policy?

Greg Ruth: Oh, certainly, yeah. Transparency all the way.

Marilyn Cade: Comments from others?

(Danny): Yeah, just one quick comment, Marilyn.

When we're dealing with contractual conditions, are we looking only at the registry agreements or does this - is this inclusive of the registrar accreditation agreement which is incorporated by reference to those documents?

Marilyn Cade: We are not looking at the registrar accreditation. This - the terms of reference of this PDP are limited to the elements that are identified in the terms of reference. So we would be looking at them.

If there was a proposal by a constituency to council that there should be an examination of those agreements, that would be taken back into council.

(Danny): Or I mean, isn't the consensus language itself in the registrar accreditation agreement as opposed to the registry contracts in some of the earlier ones?

Man: So could you - (Danny), why don't you explain your question a little more?

(Danny): Yeah. I think I remember that prior to the most recent rounds of contractual negotiations we had the earliest of contracts that only had the consensus policy spelled out by way of the language in the RAA that was incorporated by reference into the registry contracts. I could be wrong on that, but it wouldn't hurt to double check.

Man: Do you think the registry contract is incorporated by reference to the registrar accreditation agreement? Or are you talking about the RRA?

(Danny): RRA, I'm sorry.

Man: Yeah, okay, that's makes - okay.

(Danny): Yeah. Right.

Man: That's a Registry Register Agreement. That's - yeah, that is usually part of the registry agreement, at least it has been in many of the - certainly all the old ones and most of the newer ones.

Marilyn Cade: So, okay, now I'm a little clear.

So the question it is because it is a consensus policy, we're not - help me on this, (John), but this task force is not examining any other consensus policies other than the ones that are in the terms of reference.

So, (Danny), I'm going to go to 2B for just a minute, then...

(Danny): That's fine. That's fine Marilyn.

((Crosstalk))

Marilyn Cade: 2B said examine whether the delegation of certain policy making responsibilities sponsored TLDs as appropriate. And if so what is what, if any changes are needed?

So I think we have to come back to your question. I was thinking that this was going to - I was remembering this a little differently and I thought it was more examine whether the delegation of certain policy making responsibility to TLD operators is appropriate, but this is sponsored TLD operators.

And your question is how will our discussions under 2 - under C2A address existing agreements which were incorporated by reference. Is that right?

(Danny): Yes, that's right. I just wasn't sure in my own mind whether there were consensus elements in some of those other documents or not. It's just going to take some review on my part. That's all.

Marilyn Cade: I have an easy under to - I have an easy solution to this. Actually, it's a question for Dan.

(Liz), would you please, rather than asking - (Danny), asking you to study, can I hand it off to Dan to just give us an answer?

(Liz): Sorry, Marilyn, I was just getting off silent mode. Could you put me back - could you just ask the question again please?

Marilyn Cade: Sorry. (Danny's) question is, are there existing agreement - and you need to edit me, (Danny). Are there existing agreements that are consensus policy involving the registrars that are incorporated by reference in the registry agreement? What is the relationship with this?

(Liz): I'll take that on notice. I'm not willing to give (unintelligible) especially when the call is being recorded. I will speak to Dan about that.

Marilyn Cade: Yeah.

(Liz): And, (Danny), I'll come back to you specifically about what your issue is there.

(Danny): Okay, thank you.

Marilyn Cade: (Liz), come back to the pull group on both.

(Liz): Yeah, yeah, of course I will. But I just want to be sure I understand the question because I'm not going to take up Dan's time if I haven't got a specific question.

Marilyn Cade: Under 2B - so I think I got straw draft to do there and it could be - and I'm going to - I'm going to wrap up after 2B, do a little bit of a plan for the agenda for Friday and the conclude the call at 12:45, if that's okay with everyone.

Man: Okay.

Marilyn Cade: So on 2B, examine whether the designation - sorry - the delegation of certain policy making responsibilities sponsored TLD operators is appropriate, and if so, what if any changes are needed?

My question about 2B is going to be, are certain policies making responsibilities allocated today to sponsored TLD operators? And the answer to that is yes. If so, what are those or what are delegated? Is it consistent delegation or a one-off situation?

And I think we need to start with that. And I don't we know the answer to that, so I'm thinking the question to Dan would be, do we have any place - and I got to go to his document because I'm not sure that his document addresses this question. But I'm not sure like what does - sorry - what does .coa able to do? What (does) .travel able to do? What (does) .pro able to do?

We do ask a question about delegation of policy to the sponsored TLDs in these analyses that Dan did, right? Unless it would be under consensus policy is limited - our consensus policy is limited. I don't think that question - I don't think we have the section in - what I'm going to do is send an email to (Carey) and (Cherry Ann) and ask them - and to (Ray) and ask them this question.

And (Cherry) and (Ray) - (Carey), is on the - two of them are on the task force. So I'm going to ask them that question -- what are the limitations and - sorry - what's delegated to them. And let me ask them by email if they could respond by email before Friday.

And then the question is, what changes are needed? And I guess the next question is going to be, do we have consistency on what's delegated across all the sponsored TLDs?

So I have two stages of questions there.

Okay, does anyone think that possibly the chair of the registry task force would know the answer to that? Maureen?

I could also just - maybe I'll ask if they had done their own analysis. Or, (Liz), could you when you talk to Dan ask if he has done an analysis anywhere of what's delegated or if it's just embedded in the contract?

(Liz): Marilyn, I hate this mute (C). Just repeat your question, I beg your pardon. I was coming off mute when I knew you were asking a question.

Marilyn Cade: Yeah. I'm going to ask the question informally of the task force members and see what they tell us.

(Liz): Yup.

Marilyn Cade: So would you just ask Dan what is - does he have a summary analysis of what policy making responsibilities have been allocated to sponsored TLD operators and are they consistent.

(Liz): So you're talking about the delegation of responsibility which is fine, we can put that into a little table.

Marilyn Cade: Yeah.

(Liz): (Unintelligible) sTLDs, anyway.

Marilyn Cade: The question is only - 2B is only about the sTLDs.

(Liz): Yup, that's right. Exactly.

I suspect probably if we're thinking about final report, I'll put that as an element. If you're producing a straw man proposal that could be

produced in table then it will be quite easy for readers to see the way in which delegation of policy making responsibility is treated across those.

Marilyn Cade: Right.

(Liz): ...TLDs which is fine.

Marilyn Cade: Right. Then...

(Liz): If you want to just leave that with me, I'll draw out those things on the sponsored TLD agreement which I have handy, and I'll just work with Dan in making sure that that accurately reflects the situation.

Marilyn Cade: I don't want - and then we can take this discussion because I don't feel like we can discuss this until we know what's been delegated already.

(Liz): Yeah. Yup, that is fine.

Marilyn Cade: And then one final comment on in Terms of Reference 5, the uses of registry data, you're working with the registries to get information from them on what the definition of registry data is?

(Liz): Yup, that's right.

Marilyn Cade: And what's the turnaround on that?

(Liz): On the registries, like anybody else, absolutely frantic like those on the reserved name list. I've asked them a couple of times to provide the

information. I'm actually just (unintelligible) conversation with (Carey) and (Ken) and (David Maher) today on that issue.

So it is being worked upon but it's not dissimilar to many other things of which keep slipping off.

Marilyn Cade: Okay. Then my goal is going to be to target discussing traffic data on the 17th and not on the 13th?

(Liz): I'll tell them.

Marilyn Cade: Yeah.

And...

(Liz): So you'd expect then that (David Maher) would absolutely need to be available then - if I'm anxious at the registries, (unintelligible) not on this call and they need to be around to answer these kinds of questions.

Marilyn Cade: So let me go to an administrative suggestion I'm going to make.

My suggestion is that they are welcome to provide other members of their constituency to participate in the calls when the primary task force members are not available. Or...

(Liz): You know, that's normal for everybody, isn't it?

Marilyn Cade: Yeah.

So, you know, I'm happy to have (unintelligible) to the call to explain traffic data or, you know, some other person, (Jeff Newman) or (Ron Mohan).

(Liz): Yup. Yup, yup.

~ Yeah.

(Liz): So I'll send them a note reminding them. And did you - just clarifying the date again, 17, October, do you want to handle that particular element of it?

Marilyn Cade: Right. What I'd like to do is go a level deeper on Friday's call on the things we're working right now and see if we have the answer back on 2B so that we can talk about that. And identify whether we've got any other expert information that you're working on that we want to take into account on Friday's call. And then I would like to have a call with invited experts that can come from the community or the constituencies themselves before the end of the month. And I - I'll bring that up of the full task force list.

(Liz): No, just a point of clarification on that. You're expecting - just to clarify again the dates I mean that you expect to have invited experts, on which date?

Marilyn Cade: I'm going to propose back to the full task force list that I think we need to schedule a call and follow the process we followed on PDP 05 where we invited people to schedule the time, tell us what they wanted to talk to us about, and we basically took probably testimony on this. And so you could for instance envision that (Milton) would decide that

he wanted to wear an expert hat and talk. Alistair who is an economist might decide to do that. And outside competition attorney might volunteer to do that.

I don't have a date. I'm suggesting that...

(John Maffit): That's an (oxymoron).

Marilyn Cade: Is that up-to-date?

(John Maffit): No, attorney volunteer.

(Liz): Thank you, (John). That's great.

Marilyn, I'm just anxious that that kind of call - for example for those people who are not in the Washington meeting for the Call for Papers for the new TLD's process, that process yielded 11 responses on our Call for Papers which was quite a substantial response compared to what we had in the past.

And the way in which that was treated was anyone who had submitted a response to our Call for Expert Papers was given invitation to participate in very specific meeting and then to be asked question.

Those people that respond to that Call for Expert Papers which was advertising internationally in the international press were very, very different from how -- and (John) makes no joke here -- highly paid competition attorneys that we expect to see for service or that have other day jobs.

So I just want to make sure we are talking about the same thing here. If we are talking about people in the community who have particular expertise and Alistair is one of them and (Milton) is another on elements of the terms of reference, then that is a different proposition then - and it turns to me and to Glen to arrange this to set up a way in which we can listen to “outside advices” about specific questions that we might wish to post.

Marilyn Cade: Yes. (Liz)...

(Liz): That’s not a quick turnaround process.

Marilyn Cade: Okay, two things, (Liz).

Fist of all, I’m not going to continue to have lengthy debate about how things are similar or different because it’s not a good use of anybody’s time. The way that we took invited comments on PDP 05 and the way that the President’s Strategy Committee took invited comments ended up with a mix of people who may be experts and people who may have opinions. And that’s okay since you as a task force member are able to screen out which category people fit into.

So why don’t we not debate this issue on this repertory group because it’s really a task force decision on how are we going to deal with experts and some material may be expert but come from someone with an interest and it’s still relevant to review. Other material might be independent expert. But I don’t want to spend anyone’s time debating how long it takes us to identify independent experts because I’ve been going back to the material and I can see we spent so much time on debating it that we have no time left to retain them.

So why don't we just deal with whatever proposal I put forward and let everyone edit it on the full task force list. And your concerns about how difficult it is to do, I really appreciate and take note of. And independence is indeed a difficult thing.

(Danny): Marilyn, may I jump in for a minute?

Marilyn Cade: Please.

(Danny): While I'm taking a look at the joint project agreement, I'm seeing an emphasis on developing mechanisms for the involvement of those that are affected by ICANN policies.

I would like in the course of enumerating all (policy options) to perhaps preserve just a little bit of time to enumerate who is potentially affected by Choice A or B, so that when it comes time for discussion of these potential parties by experts, we can also create an opportunity for potentially impacted parties to put forward their views.

Marilyn Cade: They do that in the public comment process. Were you thinking that it needed to be done in - within the repertory groups too?

(Danny): Yes, because in my experience, by the time it makes it to the public comment process, people generally don't pay (unintelligible) to the public comments and the thing just got shoved through.

Marilyn Cade: I don't know what time - how much time we're going to have, (Danny), or how that would work. Can you say something on the list about how

you think, you know, like how we might be able to identify who's effective?

(Danny) Yes I can. I think our emphasis should be to recognize the fact that the board has agreed that they are going to involve themselves with increased engagement and that they are going to develop additional mechanisms for involvement.

I think we should be part of that process. So I'd definitely write to the group...

Marilyn Cade: Okay.

(Danny) ...some thoughts along those lines.

Marilyn Cade: And Brett had sent me his apologies. I know he's trying to recruit a second ALAC person. So that's another issue I think, (Danny), for how to reach into the existing ALAC list that we can try to take up with Brett for other ideas even if he's not able to be on the call.

(Danny) And, Marilyn, if you don't mind, perhaps you could send a nicely worded note to the folks on the general assembly list and ask if anyone there has an interest in turning in this repertory effort.

Marilyn Cade: Let me take that up with you offline, can I?

(Danny): Sure.

Marilyn Cade: Thank you.

Okay, I'm done. I owe people document which incorporates the discussions we've had so far. I owe the task force a proposal on discussions with experts. And (Liz) ended up with a long list of work items. (Liz), I apologize about that.

(Liz): No, you don't. You mean it absolutely.

That's fine. I was not intending to come back to the repertory group to confirm that list of work items, unnecessary email traffic. I will just go away and then come back with stuff. I've got all bunch of list and things here to do.

So - but if I missed something, then please let me know. I'd rather (unintelligible) with the new TLD's process going the same time.

Marilyn Cade: I know you do.

So thanks everyone. And thanks, Glen. And I assume the recording ends when we hang up.

Glen Desaintgery: That's right, (it is).

Marilyn Cade: And, Denise, thanks for joining us.

Man: Thank you.

Marilyn Cade: Bye, bye.

Woman: See you everyone. Bye.

Man: Thank you. Bye-bye.

Woman: Thank you, (unintelligible).

END