

**ICANN
Transcription
Policy and Implementation Principles Sub Team
Thursday 20 February 2014 at 21:00 UTC**

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<http://audio.icann.org/gnso/gnso-policy-implementation-20140220-en.mp3>

Attendees:

Cheryl Langdon-Orr – ALAC
Alan Greenberg – At-Large
Tom Barrett – RrSG
Nic Steinbach- RrSG
Jonathan Frost – RySG
Greg Shatan - IPC

Apologies:

Chuck Gomes- RySG

ICANN staff:

Marika Konings
Glen de Saint Gery
Nathalie Peregrine
Terri Agnew

Coordinator: Thank you. All the recordings are started. If anyone has any objections you may disconnect at this time.

Terri Agnew: Good morning, good afternoon and good evening. This is the Policy and Implementation Principles Sub Team meeting on the 20th of February, 2014. On the call today we have Alan Greenberg, Jonathan Frost, Nic Steinbach, Tom Barrett, EnCirca, I apologize if I mispronounced your name.

From staff we have Marika Konings, Glen de Saint G ry, Nathalie Peregrine and Terri Agnew. I will now turn it over to your host, Cheryl Langdon-Orr. Please begin.

Cheryl Langdon-Orr: Thank you very much, Terri. And welcome. In case people don't recognize your voice yet, the newest recruit is how you're described to me in the GNSO Secretariat. So welcome. And we will be gentle with you as you get your (unintelligible) on running these calls and doing a small something like this is probably an excellent thing to cut your teeth on so I'd encourage you to do a few more of these as well.

And just to relieve you, Tom Barrett's name is just Tom Barrett. The dash EnCirca is indicating the company that he's engaged with. So I see enough on the bizarre names; mine's about as bizarre as you're going to get in most of these calls.

My name is Cheryl Langdon-Orr and welcome one and all. While I hold the fort here today until Chuck, who may arrive, perhaps does arrive. But we've got a fairly important piece of work to complete off today. We have made an indication at our last meeting that we did want to further discuss where we left off which was under the item marked as ICANN Staff Limitations, which Marika has on your screen.

And, Marika, there's a very minor change here that if you'd just mention to everybody the little bit of grammar that we've done.

Marika Konings: Yeah, this is Marika. Basically I just included the suggestions that Chuck sent to the list last week one of which was to - added the footnote that you see on the screen now so it now reads, "Some possible examples include, but are not limited to, if new obligations are imposed on parties, the standard changes to burden such as related privacy, accessibility, rights protections, costs, risks, et cetera."

And there was one other minor change. I think a removed "2" where there was already 2 4 and don't know - exactly remember where that it is but it was a - just I think something we overlooked.

Cheryl Langdon-Orr: Yeah, Marika, thank you for that. Cheryl Langdon-Orr again. And that second one you mentioned is not a substantive change; it's what I would describe a simple (unintelligible) so I think we can all agree on that. But what I would ask for the sub team now is are you happy and in agreement with Chuck's proposed edits that Marika has put into the footnote? Do you object? Pick up a great big red X and I'll come to you. If you agree feel free to put up a little green tick. And if you want to speak - Nic, I'm seeing a microphone and a tick. Nic, you can talk as well as tick if you like.

Nic Steinbach: I don't have much to say. It looks good to me.

Cheryl Langdon-Orr: Great. When I saw the microphone flash up I thought you were desperate to get our attention. All right well that one's pretty simple. However, we did indicate that, apart from accepting Chuck's proposed changes there, that we did want to have some further discussion at this meeting.

So if we can spend just a small amount of time on this I'd like to open the floor for any further discussion on this section which is in Section A which currently reads, "If substantive policy..." Sorry, let me start that again.

"If substantive policy implications are identified during implementation the GNSO Council should be notified and involved in the process of resolving the issue," brackets S, "and it should not be left to implementers to resolve by themselves." Clearly I need more coffee. I might ask Marika to read in future. But that's where we discuss we wanted to have further discussion and deliberation.

So let's open the floor up on that and I'll try and get my speaking and reading in some sort of synchrony in the future. (Unintelligible) go ahead, Marika.

Marika Konings: Yeah, this is Marika. And I think I raised the point that during the last meeting as well, and I'm a little bit confused by the term "implementers" and I know I think it's something that Tom suggested and I think I tried to explain it. I think in the current environment it's staff who implements. So implementers here seems to suggest that there are other parties that will be implementing while, you know, I think that's currently as it stands that's within staff's remit to implement the policy.

And, you know, what I think the working group is tasked to do is indeed look at are there additional mechanisms that need to be put in place to, you know, ensure that, you know, staff is able to consult with the community if and when needed or what kind of procedures need to be in place to indeed assess whether there are policy implications or not.

So the term "implementers" to me doesn't really seem to fit what is the current practice. And I think the principles are underpinning to a certain extent I think as well what, you know, what currently exists and how things work.

And I think similar to the working definitions obviously if, you know, the outcome of this process would be that there would be other implementers that, you know, would join staff in implementing policy I guess, you know, this can be updated. But for now I wonder if that should just be changed back to "staff."

Cheryl Langdon-Orr: Okay. Thanks for that, Marika. And of course we do note that it is under the super heading of ICANN staff limitations. So your fear of some preemption may be settled a little bit there I think.

Tom, did you want a right to reply on that before I go to Alan and then Jonathan?

Tom Barrett: Hi, can you hear me?

Cheryl Langdon-Orr: Yes, go ahead, Tom.

Tom Barrett: Okay. The reason I thought implementers was more appropriate is because we've seen a lot of innovation come from Fadi in terms of setting up different advisory groups. And I don't think we can assume that the people doing the implementation will be employees of ICANN.

And so I wanted to make it clear that whoever was doing the implementation, whoever they designated as responsible for that task had to involve the GNSO and it was not just limited to, you know, W-2 employees or people getting a paycheck directly from ICANN.

Cheryl Langdon-Orr: Cheryl here again. Thanks for that, Tom. And so you're not trying to be preemptive at all. You're trying to be future-proofing in what we're putting together. I'm going to go to Alan and then I noticed Jonathan did put his hand down but I'll ask if he wants to speak. So over to you Alan.

Alan Greenberg: Thank you. I guess first a clarification. Last time I checked, although it may have changed, I doubt it, ICANN has a vast number of people that we treat as staff who are not technically employees but are contract people. So - in general we do not differentiate between whether they're an employee or some other, you know, type of financial arrangement.

Normally I would tend to say let's just put staff there and not worry about it. It's a little bit disconcerting however because if you look at all of the reconsideration requests and things ICANN has recently treated things that they subcontract under a variety of terms to be not ICANN. And therefore reconsideration doesn't - requests don't count because these aren't ICANN employees; this wasn't ICANN that made the decision, it was someone else.

So I'm a little bit sympathetic to it. But implementers I think adds too much confusion. And I would tend to put staff and perhaps a parenthetical or a

footnote adding, "Or to whoever ICANN delegates this implementation responsibility." Thank you.

Cheryl Langdon-Orr: Thanks for that, Alan. I see a plus one from Jonathan in the chat to Tom's earlier statements and rationale. But I'm now going to go back to Tom. Go ahead, Tom.

Tom Barrett: Yeah, I like Alan's suggestion that we say, you know, or whoever ICANN has delegated this to. And I also wonder if it would be appropriate for us to define ICANN staff. Because again, as you point out, we may think that anyone they subcontract is part of staff but they have their own definition of that which may not be consistent.

Cheryl Langdon-Orr: Okay, Tom, can I split that in two so we can sort of deal with what you said in a couple of parcels?

Tom Barrett: Yeah.

Cheryl Langdon-Orr: The first one is you're agreeing now to use the term in the sentence under A, staff, and have that then as a parenthetical or do have the footnote because Alan actually suggested alternatives. Were you happy with the...

((Crosstalk))

Tom Barrett: I think it should be right up in the text.

Cheryl Langdon-Orr: Okay.

Tom Barrett: I don't think this is something you footnote.

Cheryl Langdon-Orr: Thank you. Okay so you're happy to almost take this as a friendly amendment, for one of the better...

((Crosstalk))

Tom Barrett: Yes.

Cheryl Langdon-Orr: ...if we have it as a parenthetical in the body of the text. Terrific. Okay so, Alan, if you would like to repeat some of your words of wisdom so that Marika could attempt to capture them in replacement of the word "implementers" so that's now going to be replaced - left to staff.

Remembering this is under the heading "ICANN Staff Limitations." But, Alan, if you could give us some words now that would work for parenthetical and we'll see if we're happy with that and then we'll come back to this question of how we identify staff.

Alan Greenberg: Or I don't think the second "to" is necessary. And in my grammar I would use whoever but maybe whomever is technically better. ICANN has delegated the implement task to...

Tom Barrett: Right, although the next to...

Alan Greenberg: Sorry, or to whoever because otherwise we'll have two tos in a row.

Tom Barrett: Right.

Cheryl Langdon-Orr: Sorry, I'm giggling here I...

((Crosstalk))

Alan Greenberg: Yeah, I would tend to put it in parentheses from "or" until "dedicated as tasked" because then it makes it - the parsing the sentence easier because you can omit the parentheses and see what it's saying in a clearer way.

Cheryl Langdon-Orr: Yeah, thanks for that, Alan. It's Cheryl again. And we did actually refer to it as a parenthetical so I think that's important. Tom, I'm going to ask you now, as your hand is still up, how does that read to you? And then I want to come back to the second part of your earlier comment.

Tom Barrett: Yeah, I think that reads well.

Cheryl Langdon-Orr: Okay. Do you believe with this then, Tom, that we need to actually make an attempt to somehow identify a definition - and it could only be a working definition of staff then if that is as it is read there? And I must say personally I'm a little fearful of trying to make definitions too early in these processes because terms like "delegate" or "delegated authority" might actually give us more wiggle room than something in the future. So with that said how do you feel about your request to define?

Tom Barrett: So given - I do think it's worth defining since there's been a difference in what it means.

Cheryl Langdon-Orr: Okay. Do you believe then - and this is an open question to you all - that we should try and define or should we now request, which I can only suggest is - if it's difficult to hear my bird chorus will stop shortly, I do apologize but it is lovely morning here and they're happy. That we should ask the definition sub team to very quickly pick up that piece of work.

Tom Barrett: Well is this the only sentence we have that refers to ICANN staff?

Cheryl Langdon-Orr: Other than of course the, you know, headings, et cetera, I think there are other ones in comments but those comments may be removed if we finish this section.

Tom Barrett: Well I had another comment here which is, you know, why are we only talking about staff and not talking about limitations of the Board?

Cheryl Langdon-Orr: Okay. Alan, were you in response to that or did Marika's hand go up first?

Alan Greenberg: It's in response to all of that.

Cheryl Langdon-Orr: Okay.

Alan Greenberg: If we need to define ICANN staff, and I personally do not feel we do, then that would remove the parenthetical and staff would be the more wide ranging place we define it.

With respect to the last question I don't think it's within our remit to define what the limits of the Board are; nor do I think we know what the limits of the Board are.

And so I - at this stage in definitions I think we need to stay away from that with - or not definitions in principles, because I think that's something that would need debate or discussion if we wanted to make a - put a stake in the ground and say the Board, under no conditions, may come up with anything which resembles policy. I'm not sure we're on solid ground saying that.

Cheryl Langdon-Orr: Thank you, Alan. Marika.

Marika Konings: Yeah, this is Marika. My comment relates to defining ICANN staff because I think that's actually something that probably ICANN should do itself because they're the ones hiring people. And I think it's probably for our HR department to define who they consider staff and who they don't consider staff so I'm not really sure if that's appropriate for a community group to try and decide what the definition of ICANN staff should be so I have some concerns about that.

Cheryl Langdon-Orr: Thanks, Marika. Nic.

Nic Steinbach: Yeah, I just think that there's - at least part of this whole kind of ICANN staff issue might be caused by the headings that I've put together. And I just want

to make it clear that the headings are kind of put together out of convenience more than anything just to make it clear for these kind of discussions.

If it helps to kind of alleviate some of these concerns to drop, you know, this into something, you know, into the implementation section or into the policy section, you know, that's certainly somewhere where we can go to. It doesn't really make a whole lot of sense to have ICANN staff separated. I think in the long run it was just kind of done so that we could kind of easily frame these discussions.

But as far as, you know, maybe getting back it might make sense to just roll these two into the policy and implementation sections.

Cheryl Langdon-Orr: Thanks for that, Nic. And I see - I haven't taken my agreement down and I do still agree with that but I am taking it down now because I want to move on to - I'm still seeing Alan, Nic and Tom's hand up, is that just a delay in my Adobe Connect or...

Tom Barrett: This is Tom. I do have a suggestion...

Alan Greenberg: Delay in my brain.

Cheryl Langdon-Orr: Okay, your hand is a new one, Tom. Go ahead then.

Tom Barrett: So I'm wondering if we could replace ICANN staff involvement and ICANN staff limitations with implementations team involvement and implementation team limitations. Does that - is that an equivalent substitution?

Cheryl Langdon-Orr: This is Cheryl. And I'm umm-ing because I think that might cause some more issues than it solves although I am supportive of what Nic suggested in terms of rolling these two sections back up into something that just sits under the higher order ones, the principles as they relate to implementation.

But having said that, I think we could in fact even use just a smaller heading such as "limitations within implementation processes" or something that we can come up with rather than label it as a term. That's just my personal view. I've got Marika and then I've got Greg. Marika.

Marika Konings: Yeah, this is Marika. I share your concerns in labeling that Implementation Team because that's a term we currently don't have. And as I said before I think, you know, like with the working definitions these are our working principles. So, you know, presumably if indeed at the end of the day what comes out of this is a decision that there should be an implementation team that consists out of X, Y and Zed then these principles need to be updated.

But I think, you know, the current world we live in and the current reality still that, you know, ICANN staff is tasked to implement the policy by the ICANN Board, you know, after adoption. So - and as well like the first principle under ICANN staff involvement really talks about this policy staff role and not so much about the implementation.

So I think I would be more comfortable as well in actually rolling this into, you know, the broader category and, you know, maybe taking out the headings if that creates confusion or discomfort with people because I think the principles themselves explain pretty well I think what it's about. And I'm not really sure, indeed, if it needs to, you know, be headed by limitations or involvement because I think the principle itself speaks for itself as I think Nic suggested.

Cheryl Langdon-Orr: Thanks very much for that. And I see a big tick from Nic in the Adobe space. To you, Greg.

Greg Shatan: Hi, it's Greg Shatan. Sorry for missing the first few minutes. In looking at what we've got up on the screen now it occurs to me that the heading - what's under ICANN Staff Involvement relates to the working group part of the process and what's under ICANN Staff Limitations so far, you know, it relates to the implementation part of the process.

So maybe what we're really talking about here is something like, you know, ICANN staff involvement in working groups and ICANN staff involvement in implementation.

Cheryl Langdon-Orr: Thank you, Greg. Cheryl again for the record. And I think you're getting very close to picking up on some finesse on what Nic suggested and what I think most of us are agreeing with. And that is the principle of rolling - removing this section, which is labeled currently in our document ICANN Staff Limitations, removing that title totally and having put it up into the appropriate sections.

So we've got - we're talking about principles relating to ICANN staff. And that's the section that we may be making disappear. And if we take, as you then suggested, Greg, those principles that are existing under Section 1 and where they clearly involve and relate to the policy part we simply put that as a new part to the existing section in Policy.

And we do the same for what's currently listed as ICANN staff limitations. But within Implementation we already have a heading called Limitation of Implementation. And so it would be quite reasonable to make this reference to staff as a Section C in that so that would give us under Limitation of Implementation it would now read, "A, there should be a mechanism to flag and address unanticipated outcomes of implementation decisions that may significantly impact the community."

"B, there should be a mechanism to flag and address situations where there may be a deviation between the implementation and the policy as it was originally intended." And then there will be a new C which will be our agreed text which starts off, "If substantive policy implementations are identified during implementation the GNSO Council should be notified and..." continues as Marika had on your screen.

Are you all happy with that?

Nic Steinbach: I am. This is Nic.

((Crosstalk))

Cheryl Langdon-Orr: Yeah, Nic, go ahead.

Nic Steinbach: Yeah, I think that looks good. And I think, you know, for that other one the one that's currently titled ICANN Staff Involvement in Policy Development, I believe that there's a section called - in the policy there's a sub heading called Policy Standards where that one would fit nicely at the end in a very similar fashion.

Cheryl Langdon-Orr: Perfectly identified. Yeah. Yeah, all right if we can all agree to that - if anyone disagrees then let me know or let us know in the chat if there's a bit of a delay or lag. Otherwise, Marika, I hope you're going to make that so. Yes, Marika, over to you.

Marika Konings: Yeah, this is Marika. Just to confirm, Nic, is this the section you were referring to? I've moved the policy staff section to the D part of the Policy Standards in the Proposed Principles Relating to Policy. Was that the part you were referring to?

Nic Steinbach: Yeah, I think it could be in either the standards or the community, whatever the group decides. I think it's - could be either. So, yeah, if that works but we could definitely drop it into the community I guess is a relevant sub heading as well.

Cheryl Langdon-Orr: Okay thanks, Nic. Cheryl here again. Let's poll that then if we've got two choices we need to decide on one. I'm certainly happy with it where it is but there's an option to put it to - under the Community section. Is there anyone who, you know, I'm going to be very specific, is there anyone who wishes to

move the new Section D, as you see it on your screen now, to a new section under the following, Policy and Community part of the document?

If so indicate that you want that to happen. Not hearing from anyone and I'm not seeing anyone waving at me so I'd save where it is then. Thank you very much, Nic, team and Marika.

If memory serves I think that means from our last meeting all we need to deal with before we get onto the much more exciting part in my view which is the - getting the discussion going on how the document will be formatted. We just need to look at text that is currently listed under C, Explanatory Notes to Principles.

We do have a couple of notes that have come in to this. And just see if we agree that explanatory notes are needed that this text is appropriate and what needs to be changed, if anything, in it. Marika, over to you.

Marika Konings: Sorry, this is Marika. I was actually just reading my own notes. So you basically wanted me to talk about the note that's in here?

Cheryl Langdon-Orr: Yes please. On my screen I can't possibly read it.

Marika Konings: Yeah, I'm reading in the note and I think it's probably made in relation to - I think a previous principle we had because I don't think it was - because I think the explanatory notes were added later. And I'm just trying to - because I think the language that is there actually comes from the discussion paper we developed.

So just trying to - "ICANN may continue to refine implementation of the requirement over time as more experience is gained without having to go back to a requirement defined in the policy as recommended so long as public comment is solicited with regard to those proposed implementation

refinements. The community can access its success with the implementation against the requirements."

And then Chuck and Avri noted that this is not enough to simply solicit public comment and then leave it to staff to analyze and implement. I think this probably actually goes already to, you know, what we'll be discussing as part of the working group deliberations so we'll talk about, you know, what should be the process as part of implementation whereby indeed, you know, either staff consults or through the Implementation Review Team there's a consultation what needs to happen.

So I'm not really sure if this is actually an explanatory note or just a comment that was taken from previous discussion and has ended up here because I'm not really sure what the linkage is at the moment.

Cheryl Langdon-Orr: Thanks, Marika. And I was certainly going to move to have it removed or if not incredibly sanitized if it was going to stay. But I see Alan. Go ahead, Alan.

Alan Greenberg: I vote for the removed.

Cheryl Langdon-Orr: Yay.

Alan Greenberg: On a couple of reasons, the previous paragraph we just honed - we just honed and refined says, "Staff supports the working group." Staff does not direct the working group. Staff may produce a summary of public comments but it is the working group's responsibility to analyze the comments, not the summary, but to analyze the comments.

If that's not clear in the Working Group Guidelines and in the PDP rules then it needs to be clarified although I think we did a moderately good job. And I'm presuming that any follow on process that may be developed in addition to the formal capitalized PDP will also include input from the community since

we can never presume that all the relevant members of any given working group at any time. So I don't think we need this at all.

Cheryl Langdon-Orr: Thank you, Alan. My personal opinion - and Cheryl here -is that I would agree with that. I'm still smiling at Marika's comment in the chat but over to you, Marika.

Marika Konings: Thanks, Cheryl. So, yeah, this is Marika. You know, I completely agree with removing it but just as well to note that I think the two lines don't even match because I think indeed the first comment that, as Alan suggests, relate to, you know, the role of public comments in the policy development process which we indeed talk about that, you know, staff may provide a summary that goes actually to the working group before the actual analysis.

Where actually I think my note or my comment relates to what may be a potential - or what is currently done as part of implementation when staff is of the view that there may be implications that need to be, you know, checked with the community whether, you know, either it's a change from the original intent or guidance given or whether, you know, we're moving into the policy direction where, you know, staff normally conducts a public comment and gets input from the community.

So I think there's, in any case a mismatch between I think the one and the actual note. So I completely agree with just taking it out here because I don't think it has any - and it doesn't do any explanation of what is actually in the principles.

Cheryl Langdon-Orr: I think it's more - it's Cheryl here - clouding then explanatory. Tom, I saw your hand up first and then I think Alan has his hand re-raised.

Tom Barrett: So sort of a general - a question which is the comment I think Alan made about, you know, the assumption that the working group will assess the public comments. And I'm wondering if in practice that is the normal operating

procedure for public comment periods or in fact is it mostly ICANN staff assessing the public comments and not a working group? And do we need a principle here to suggest that we want working groups to do this work?

Cheryl Langdon-Orr: Thanks for that, Tom. I saw both Marika and Alan waving frantically to get attention. I did recognize Alan earlier and I know he and I have certainly gone, as many of you have, through a number of these processes and working groups, so, Alan, would you like to make your comment and pick up in response to Tom?

Tom Barrett: I certainly will although I'm in - I lowered my hand by mistake which is why I changed the order. Number one, recent work PDP working groups do take the review of public comments as a religious duty. Now I do admit that on occasion some of the members do not go back and read the original comments but only read the summary but there are always some who do read the comments. And, yes, I think we do it religiously in the most - the best sense of that word.

Now there are many public comments which are not issued by GNSO working groups and how well those are analyzed is subject to a different - might be a completely different interpretation. And I will note that there were some things in the ATRT2 relevant to this.

But I raised my hand for another issue but, Cheryl, I won't raise it now but if you can come back to me?

Cheryl Langdon-Orr: I'm happy to come back to you, thank you Alan. In which case I believe it's Marika and then Greg in that order please. Marika.

Marika Konings: Yeah, this is Marika. And as also pointed in the chat it's actually something that is specifically mentioned in the PDP manual as one of the requirements for PDP working groups that they are responsible for analyzing and

responding to the comments. And, you know, as Alan said that's religiously done.

The only thing that staff does is provide a summary that's actually posted in, you know, on the Website so there is something there that provides a summary. But then it very clearly remark as well that - because there's normally - a summary part and an analysis part and then we very clearly state that, you know, staff is not analyzing these comments as that is the obligation and role of the working group to do so.

And to facilitate working groups doing that what we typically do is just really copy and paste, you know, full sections of the comments in a Word document and the working group then goes through those one by one.

You know, and staff assists by actually taking the notes, you know, of the working group discussions and any decisions that the working group takes based on the comments received and the analysis of that and that's actually something that's as well then attached or linked to the final report so that anyone can actually go in there and see what the working group did with their comments, how they were reviewed. You know, what changes were made based on that or why the working group decided that, you know, no changes were needed.

So I think that's something that's, you know, as said, religiously followed and there's definitely at least since I've been on staff since 2008 I don't think there's been any instance where staff actually provided the analysis and told working groups this is what you should be doing based on the comments.

So, you know, if people still think there needs to be a specific principle that's fine but as said it's specifically called out in the PDP manual as being one of the requirements of a PDP working group to analyze, review and respond to comments received.

Cheryl Langdon-Orr: Thanks, Marika. Cheryl again. And as a card-carrying devotee of that particular religion I can assure you it sure does happen. I'd also just pick up on something Alan said before I go to you, Greg, and that is the question on what happens in some of the spaces very much based on these excellent practices that are discussed now. And I don't - I personally don't think need a principle because it is, as Marika said, enshrined and also in the PDP manual.

I have seen the ccNSO act in a similar way even with their study group which is not a PDP process simply a study group and public comments on those things. And of course one or two of the times when ALAC has called for public comments a similar process has gone on so you've led by example already GNSO and some others at least in the ICANN community are following. To you, Greg.

Greg Shatan: Thank you, Cheryl. Greg Shatan. I was just going to say "amen" to you and Alan. Having served on a few working groups and actually probably having done more in working groups than any other kind of aspect of ICANN I would say that it is, you know, religious and it's probably a religion that I observe far more than any actual one in which I am, you know, born or card-carrying so...

Cheryl Langdon-Orr: Thank you, Greg. Cheryl giggling for the record. I think we're all pretty strongly answering your question, Tom. But that gets a hell yes from me. Back to you, Alan.

Alan Greenberg: Thank you. I guess for both clarity and to make it clear, when I started in ICANN there were not as many public comment periods but there were public comment periods and people did respond to them. And I believe my perception was that people would issue a public comment, it would close and they say, good, now let's issue our report. And I think that was a pretty accurate description of the process.

So the perception that public comments were something that we did for show but no one actually ever read them I think has some significant basis in fact. And although now that they are nominally summarized I suspect there are cases when they are still treated in a similar manner, not in the GNSO or the ccNSO or the ALAC but nevertheless. But there is some background to it. And that may be the reason that we follow the religion so much now is because of the history.

However, I raised my hand due to something else. When Marika was talking earlier and she made reference to what I think she said was probably the origin of this comment and that is the concept of public comments during implementation, not in the PDP process but do we need comment during the - do we need to solicit input during the implementation to get a feel from the community that things are going okay.

And that's a really intriguing question. If you look at what we've written so far we've said that if there is a smell of policy during implementation we have to revert back to the GNSO and go through some sort of policy - bottom up process.

And you've heard from me before some level of fear that this is something that's probably not practical on the global sense. That is we stop things and go to a policy process, send it to a group that only meets once a month and, you know, that's just loaded with problems.

And I think the concept of using a public comment vehicle, whether it's the formal PC for ICANN or a subset of it or, you know, a less - somewhat less prominent one, we can debate. But that may be one of the halfway points that we make to not have implementation shut down completely.

And I don't know whether it fits as a principle or something simply to raise when we go on to the next step of deciding how do we use these principles, are they implementable and how do we - sorry, use the word implementation

- how do we build processes that adhere to the principles in the - in our overall task? So I'm not sure this warrants a principle here or simply a note to remember it. Ad I'll leave it at that.

Cheryl Langdon-Orr: Thanks, Alan. Cheryl again for the record. And I think what was done in this course - and I am going to go to you, Tom, and then to you, Marika, although I did see Nic's hand raised (unintelligible) as well. Just on that I think we've all agreed that the text certainly - well let's assume all the text under 1 is to be deleted as an explanatory note to principles.

However, Alan has just raised a possible use for the first sentence which is currently reading, "What is the role of public comments and their analysis and response to them in the policy development process?" as a point of discussion for the working group as a whole. So we may wish to list some notes but not explanatory notes in this document.

So, Marika, whilst I think we've all agreed to ditch all of this text you might want to just save that first sentence because I think it might perhaps end up back in a different category...

Alan Greenberg: Yeah. Cheryl, it's Alan. I think we need to say, "The policy development process, including all aspects of implementation," because to some people, perhaps validly, perhaps not, the policy development process, especially the capitalized one - and actually that probably should be lower case, policy development processes...

((Crosstalk))

Alan Greenberg: ...certainly the PDP ends at the time the GNSO tosses it over the wall to the Board.

Cheryl Langdon-Orr: Marika's making those changes...

Alan Greenberg: Yeah.

Cheryl Langdon-Orr: ...on the fly here so that's great.

Alan Greenberg: Yeah.

Cheryl Langdon-Orr: And that'll be the sentence she saves. She'll just go to the lower case now. Thanks for that, Alan. Tom, and then Marika.

Tom Barrett: I just have two I guess observations. One is that the people contributing public comments are not always aware of how ICANN works and how PDPs work. And so everything is one big black hole to them. They don't even know what a working group is.

And second of all I do think ICANN, in many cases, solicits public comments for which there is no working group, at least an active one. And it's still not clear how those comments are assessed and feedback provided to the folks who provided the comment.

Cheryl Langdon-Orr: Yeah. Thanks, Tom, for your second point. Cheryl here. I can give you chapter and verse on that being a high and very important issue raised. On the first Accountability and Transparency Review Team, and I know Alan has already mentioned it still was its ugly head in the second. However, our work is to get this Principle Sub Team documentation finished, not solve the total problems of ICANN. So let's get back on task.

Marika.

Marika Konings: Yeah, this is Marika. Basically inspired by what Alan was talking about, you know, the role of public comment potentially in implementation I partly think, you know, it definitely will be an important conversation but I'm hoping it will be facilitated to a great extent by the current structure of implementation review teams.

Because I think especially every time we throw out examples we seem to be referring to, you know, what happened in the implementation of a new gTLD recommendation where, indeed, we didn't have a concept yet, as well, very specific situation where a lot of the principles were very high level, not a lot of detail.

But if you look at the actual implementation of some of the recent policy recommendations and see the interaction there between, you know, staff and the implementation review team, I think we're going towards a much more kind of defined process.

And, you know, again still I think some of that needs to be built by this working group. But where you may see that, you know, indeed staff takes on the policy recommendations once they're in - adopted by the Board, it goes away, digests them, you know, comes back with any specific questions they may have or clarification to the implementation review team.

You know, based on that they write a proposed implementation, goes back to the implementation review team to see does this meet the intention of the policy recommendation or, you know, were any issues raised that, you know, weren't covered that may, you know, smell of policy?

And then the implementation review team could serve as a kind of flag of saying okay we're actually saying that at this stage we may need to have a public comment forum on this specific issue or we need to go and check back with the GNSO Council because we believe that, you know, we're going way beyond what we actually said.

And in any case what already happens in practice is any implementation plan is put out for public comment to get, you know, broader community input on, you know, what we're proposing and how that meets the policy recommendation.

So I'm actually hoping once we get to the substance of that discussion we will have some expertise based on what is currently happening and how we can, you know, build around that a framework that will be, you know, predictable and transparent on, you know, how we deal with implementation related conversations. And, you know, when is, for example, public comment triggered?

So again, I think the short of that I think indeed it is an aspect that will come back in the working group conversations but hopefully will be more straightforward than I think some of the notes that were included in relation to this point so far.

Cheryl Langdon-Orr: Thanks, Marika. And I'd ask you to hold some of that thought for when we possibly come back to that sentence because you might want to make a second sentence based on some of what you said. Alan, go ahead.

Alan Greenberg: I think she should try to put it all into one sentence. Sorry. No Marika is right of course that the implementation review teams may well be the vehicle that are used. But I do think capturing it here to remind us that we do have that vehicle without necessarily going through a more formal process to decide on the outcome.

In other words, this introduces the concept of staff proposing a solution to a possible policy issue and testing the water on it. And so I think that's moving on a good direction, one that will not necessarily bog us down.

But before I relinquish the mic I'll just remind Marika that I really think this should be lower case, policy development processes, and you can eliminate deleting "the" at that point also.

Cheryl Langdon-Orr: Thank you for that. And I note Marika is busy making those changes.

Okay if I can just assume that we're all in violent agreement on these points

and that we have indeed agreed to, under the heading Explanatory Notes to Principles, remove everything under 1.

Can I move you on to 2 and see if this has any merit in staying? Number 2 currently reads - and remember it's supposed to be an explanatory note to principles. "In relation to emergencies that justify not utilizing the bottom up process these should be the exception rather than the rule," based on comment by Avri in an earlier version.

I think this one can go as well but that might just be me. So Alan and I think Nic beat Marika but you two can fight over it once Alan finishes with his commentary. Go ahead, Alan.

Alan Greenberg: I actually forgot to lower my hand so I didn't raise it this time. I didn't beat Marika. But I will make a comment since you gave me the mic.

Cheryl Langdon-Orr: Is that how you...

((Crosstalk))

Alan Greenberg: The sentence right now, especially when you take out the parenthetical, which doesn't belong in the formal document, is a little too cryptic.

Cheryl Langdon-Orr: Yeah.

Alan Greenberg: I think what it's saying is it's a cynical statement saying it's fine to have an exception rule but everything shouldn't become an emergency. It's a fine statement to make but I think it needs to be less cryptic. Thank you. I'll lower my hand for real this time.

Cheryl Langdon-Orr: Thank you. And now I know how you keep on top of the list by leaving your hand up.

Alan Greenberg: No, no, no, normally I do not do that.

Cheryl Langdon-Orr: Okay. Marika or Nic. Is it Nic? Go ahead, Nic, anyway.

Nic Steinbach: You know, this whole section is really confusing to me. I'm not sure what it is actually explaining or if it's in a final version necessary. I think that if we're going to go with any of the principles or kind of add-ons I think that the questions that were coming to that we think we should raise to the whole group should go in a totally separate document. And I think that anything in here that is a principle should get bumped onto the appropriate section.

I'm not really sure if there's, you know, what the value is here. I don't really feel like it's explaining anything to me.

Cheryl Langdon-Orr: Thanks, Nic. I don't think it's explaining anything at all either. And I'm certainly going to vote with you on that suggestion. Marika, to you.

Marika Konings: Yeah, this is Marika. I'm actually completely agreeing with what Nic was saying. I think as well in looking ahead, you know, at Point 3 and 4 I think...

((Crosstalk))

Marika Konings: ...indeed these are just questions that have come up. And I guess we needed to put them somewhere but indeed I don't really see how these are explanatory notes because I think it's - I think it's more questions that have come up.

But as Nic said I think he makes much more sense that if we still believe that these should be included - for, example, Item 3 that is really, you know, it's a charter question so that will definitely come up. And I think similarly with 1, I mean, you know, for sure that will come up as well in relation to, you know, the implementation review team discussion or, you know, the process in

relation to implementation related discussions. So, you know, I think we can just basically get rid of all of this.

And maybe similarly to what the sub team - the Definition Sub Team did is, you know, based on input that comes back from the working group there may be a need, indeed, to create a separate table or separate document in which we capture those comments that, you know, are not really related to the principles but actually really dive into the substance to reassure working group members that, you know, we didn't ignore them but we are, at the same time, cognizant that those are not really related to the working principles but we still provide a way of tracking those like the Definition Sub Team did.

And then if, you know, if people come back with these kind of comments I guess they could go in there basically.

Cheryl Langdon-Orr: Thanks for that, Marika. And is there anyone game enough to disagree with what I think is soon to be a fairly strong majority view? If you are game enough to disagree with that say so now. And if not we will now strike Section C, Explanatory Notes to Principles, from this document.

But it appears we will be retaining some version of the Sentence 1 as it currently - is modified on the screen and some very particular point which is currently and could even be left as simply what is the role of the implementation review team.

Would anyone like to save anything to do with Number 2 recognizing that as Nic suggested, if we feel it is required of us to say in principle that not everything should be made into an emergency to use the rule on emergencies that could perhaps be, if not perhaps bumped up to the Principle section, as body text it could certainly be a footnote. How do you want to approach Number 2? Alan, new hand. Over to you.

Alan Greenberg: New hand. With regard to what this section is I would suggest for the moment just renaming it Notes to Pass Back to the Work Group. You know, we don't want to lose - we could do it on a separate piece of paper if you want but not lose the concept.

I personally think Number 2 is the kind of thing that doesn't need to be said because if and when it becomes a problem there will be things said.

Cheryl Langdon-Orr: Agreed.

Alan Greenberg: And I don't think we need to have this as a preemptive strike. There are emergency rules that are currently in registry contracts saying if formal - capital C-P - Consensus Policy needs to be enacted in an emergency the Board can do it without resorting to the GNSO. They have used that capability very few times.

Cheryl Langdon-Orr: Yeah. Thanks, Alan.

Alan Greenberg: So I really don't think - I really don't think it's an issue. But Avri isn't on this call and she would almost surely disagree with me. Thank you.

Cheryl Langdon-Orr: But that's okay because Avri will be given every opportunity to raise these points when the committee as a whole discusses it and that's what we're suggesting happens with the points now held under this Notes section. Over to you, Tom.

Tom Barrett: Yeah this is Tom. I wonder if there are exceptions that are not emergencies. So for example just to pick a recent example, the proposal from the Brand Registry Group to modify the contract for dotBrands doesn't seem to be a bottom up process but certainly seem to be an exception to how we're handling potential policy changes. Letting a third party propose something it goes out for public comment, and presumably someone is going to analyze the comments and decide how to move forward.

Cheryl Langdon-Orr: Okay. Thanks, Tom. Very valid point. I'm going back to you, Alan, but I suspect what we might be doing is creating a new 3 for our new section. Over to you, Alan.

Alan Greenberg: I think the current IGO/INGO issue is a good poster child for things that may not be emergencies but we need to address in the real world. The GNSO produced a policy which the Board, in its wisdom, and I'll note - side note - ALAC - felt was not a self-consistent set of things that the Board could simply implement especially factoring in GAC advice.

And the Board has now taken the recommendations from the GNSO and will consider them in the larger world and decide what to do with it. Not an emergency but it's something which they're going to have to come to closure with and very soon because we have domains that are coming live.

You know, so, yeah, not everything is an emergency that needs to be resolved. This particular statement was focusing on the emergency clause which could give the Board unilateral action and some people fear would be used unreasonably. Thank you.

Cheryl Langdon-Orr: Thanks, Alan. Cheryl again. What I'm hearing from this part of our discussion is that in our note to pass back to the working group for full committee discussion we're keeping the matter of public comments, et cetera. We're keeping the matter of the role of the implementation review team, which will become a new 2. And we are suggesting, thank you very much Tom, a new 3 which is an exploration of other exceptions. Is that correct?

Tom Barrett: Yes, that's correct.

Cheryl Langdon-Orr: Thank you, Tom. Alan, is that a new hand or are you just being tardy again?

Alan Greenberg: Yes, the latter.

((Crosstalk))

Cheryl Langdon-Orr: Oh tardy again, oh dear. All right. Okay so seeing as we now don't have a Section 6 but we do have a stand along set of note to go back to the working group. And unfortunately I've just dropped out of the Adobe Connect room so, Marika, if you can make sure if anyone's hand is up they get recognized, et cetera.

Is everyone happy with what we've got in those three points? Do you want to push - I don't think there's a validation for putting any sort of catch-all others. I think that would come out of the activities of the committee as a whole. But are we all satisfied that three important points have been captured? We can always add more later should we have the need or necessity to do so.

And Marika, if everyone's agreeing...

Marika Konings: Yeah, this is...

Cheryl Langdon-Orr: ...fine, if not tell me otherwise.

Marika Konings: Yeah, this is Marika. There are actually no hands up but I actually have a question. Because now we currently have as 3, exploration of other exceptions. I'm wondering if we need a little bit of more explanatory language or whether we need to leave, you know, Avri's sentence and add then we need to, you know, expiration of other exceptions. Because just alone like this it doesn't make much sense.

Cheryl Langdon-Orr: Sure. Marika, what I'm going to do is I'm going to ask - I thought we'd deleted 2 totally. So the other exceptions were - would be, should principles be discussed and decided upon by the work group would end up as principles

relating to emergencies or near emergencies but not as emergencies. So they're exceptions that are not emergencies. So I'm not sure linking those two things together is going to solve that problem there.

Tom, is it possible for you in chat to perhaps put some words that you think does justice to what we want there? And then I want to ask you, Marika, while I've got the microphone, I actually have this call scheduled for 90 minutes but is it a 60 or a 90-minute call?

Marika Konings: This is Marika. I believe it's 90.

Cheryl Langdon-Orr: Thank you. At which point I'm going to suggest if Tom and you can argue in chat about the final words and everyone else can contribute as well and hopefully I will get back into an Adobe Connect room. I wanted to see if we could spend the next part of the call from the top of the hour on and we can come back perhaps to these notes to the work group if we need to.

But to get on to now the structure of the document in front of us with all of our agreed text and to that end we need to recognize that we have actually removed the last two sections anyway with their - what was in those has either been removed to a separate document or have been rolled up into other parts.

Now in the note section, from memory, Chuck has made a proposal of a flow of sections. Nic, as the person who put the first design together for our documentation can I ask you first of all with a view to what we've already decided today to comment on how you think Chuck's proposal may or may not work? Over to you, Nic.

Nic Steinbach: Yeah, most definitely. I mean, I think it's very, very clean. I would just keep it - I believe right now we have the overarching principle, the principles that apply to both, principles that are more policy-based and the principles that are more implementation based. I think those four sub sections make a lot of sense.

And that's personally where I would go. So I would go with, you know, Chuck's kind of suggestion and remove 5 and 6.

Cheryl Langdon-Orr: Terrific. Then I'll ask for comments from anyone else who either agrees with Nic or wants to disagree with Nic. Nothing is waving frantically at me. No one's yelling at me which is a good thing. And more importantly, Marika has made it so in notes so it now is.

Okay well would it be a reasonable proposal now with that layout in mind for us to go back to the top of the document, Marika, and just do a quick sanity check through in the rest of the call to - or to perhaps for the next 15 minutes or so on the call to see if there's some serious omissions and oversights that we may have made? I've got bumped out of the room again.

Hearing nothing I'm assuming that what might be happening while I'm coming back into the room is that we are going back up to the top of the document. And here what I'd like to do is ask you to ignore all the side comments and track changes that you may see because they have, I believe, all been dealt with.

But take, as a reading, through the document now with a purpose to look if you can find any clear omissions either in format or in some section that we may have missed or not done justice to.

Having no luck getting back in the Adobe Connect room, so, Marika I'm going to ask you to guide us through the document and let me know if people want to make any comments or have made comments in Chat. Thank you.

Mk: Yeah, so this is Marika. Actually Nic noted he has to drop off at this time so...

Cheryl Langdon-Orr: Okay, thank you...

((Crosstalk))

Marika Konings: I see - okay so basically I'm scrolling through the document so we have A, the overarching principles and, B, just updated as I think we said the principles that apply to policy and implementation.

We haven't discussed principles, I don't know if it still needs to say "Discuss principles or whether we can just take out this heading.

Cheryl Langdon-Orr: Yes, in fact, Marika, I think one of the early comments I made to Nic's design was that some of this text would need to be renewed when we did our final run through. So I'm certainly for removing that. Go ahead, Jonathan.

Jonathan Frost: This is just a formatting issue. (Unintelligible) but, A, overarching principle, A and B principles. A has a colon after it, B does not have a colon after it. And then later on C does not have a colon after it. So it should be uniform and (unintelligible) Roman Numeral 1, (unintelligible) principles, additional principles and then on the third one - I might be wrong there.

Cheryl Langdon-Orr: Thanks for that, Jonathan.

Marika Konings: Yeah and this is Marika. Presumably we need to get rid anyway of the Roman Number 2 because presumably that is replaced by principles that apply primarily to policy. Right?

Cheryl Langdon-Orr: I would say that's the case, wouldn't you Jonathan?

Jonathan Frost: Yes.

Cheryl Langdon-Orr: Terrific. Okay thanks for that, Jonathan. And I want to give you the pedantry award for today's call as well as the attention to detail award because you are obviously the fastest one to read through with all of this. And the fact that you've beaten Alan's (unintelligible) I think is noteworthy for the record. Thanks for that.

Marika, while you're making those changes after you've done that we'll scroll back up to where you were and we can continue with a quick run through.

Marika Konings: Yeah, this is Marika. So I think I've now introduced all the headings where they should be so I'll scroll from the top.

Cheryl Langdon-Orr: So we now have, A, overarching principles and they've all been well and truly enshrined in our little world by now. New change to Section B. Just put your hands up or jump it right in as Marika scrolls down if you see anything that needs to - I wonder whether we need to have that section under B italicized now? "Those GNSO principles and implementation process must be based on," I mean, it was there for emphasis but I don't think we need to be making that emphasis in our document at this stage. Thanks for that, Marika. Okay, continue on.

We have our new section there under Dot Point. See title...

((Crosstalk))

Marika Konings: Yeah, this is Marika. I'll need to fix some of the spacing because it's not everywhere the same but I'll do that after the call.

Cheryl Langdon-Orr: Yeah, no C1(d) I think it is? Yeah. Changes there. See title change. There is some change that has been made but was agreed with on our last call under 1A and B. Same for B and then C. (Unintelligible) have changed. That then will be the end of the document with the rest going to a separate mechanism. I don't mind whether it's a tabular form such as the definitions team did or whether it's just a little short text.

But unless anyone can give me good reason otherwise I think we have our document in an almost good enough form to go to the full list. And ask for any final read through and comment and in the absence of any final read through

or comment coming back to the list within 72 hours it should be okay to go to the committee as a whole but under Chuck's signature because he's acted as chair for this sub team.

Does anyone agree with that way forward? Does anyone disagree with that way forward? I'm hearing nothing so silence is agreement with what I'm suggesting. I want to note that Jonathan, it's all right, Alan is able to...

Alan Greenberg: Agreement or sleep.

Cheryl Langdon-Orr: Alan does manage to relinquish some of his pedantry rights but you did get an award from me today because they were all very good catches. Well, ladies and gentlemen, others on the subject do some minor formatting (unintelligible) which we can leave in the very capable hands of Marika.

I would like to suggest that you've all got 20 minutes of your life back and we can conclude our whole - our call ahead of time. Marika, correct me if I'm wrong but there should be no reason for another call for this sub team to be organized at this stage, is that correct?

Marika Konings: This is Marika. I think that's correct unless, indeed, some of the members that are not on the call come back with a whole range of comments then there may be a need to reconvene but at this stage...

Alan Greenberg: Too late.

Marika Konings: I can - I can push this out I think still tonight my time and maybe encourage everyone to submit any comments by Wednesday at the latest and following that we submit it to the full working group for reviews so they have a week to look at it?

Cheryl Langdon-Orr: Give them 72 hours...

((Crosstalk))

Alan Greenberg: Marika, unless you've moved it's already tonight your time.

Marika Konings: I know still my evening. The 20 minutes I'm getting back now I'll spend on this.

Cheryl Langdon-Orr: Yeah, yeah, she'll have done it within the confines of the call. Ladies and gentlemen, thank you very much. I'm sorry that Chuck isn't with us at this point in time because this has been a substantive piece of work. I think it's a work each and every one of you, and I'll say us, can be truly proud of. And I believe we've given a very good document, or we're about to give, a very good document to the committee as a whole.

Yes we know it will be pulled apart, chewed over, spit back out and altered but without this foundation a lot of time would be taken getting these principles agreed and established within the committee as a whole. So on behalf of Chuck I want to thank you all. I want to go down on virtual bended knee to Marika for the heroic amount of work she does with all of us, with all of this drafting and capture and stuff that she does with - of our flying thoughts and fancies from time to time.

Thank all the staff who's been on the call. Do a yay team to Terri. Well done. And...

Marika Konings: Thank you, Cheryl.

Alan Greenberg: And thank you for...

((Crosstalk))

Cheryl Langdon-Orr: ...that we wrap up now and we do whatever else may be needed, which hopefully will be nothing at all on line via the list. Alan, did I have your dulcet tones...

((Crosstalk))

Alan Greenberg: You did. I wanted to thank you for stepping in to chair. It's been a while since you've chaired a meeting that I've been at. And it was a pleasure. And I just want to issue a comment - a caution to everyone - not so many compliments for Marika otherwise she's going to get promoted out of this job.

((Crosstalk))

Marika Konings: Thank you, Alan.

Alan Greenberg: Let's tone down the compliments just a little bit.

Cheryl Langdon-Orr: That's a very valid point and a good one to end on. Thank you, one and all. Terri, you can wind up the call now.

END