

**Policy Process Steering Committee (PPSC) Policy Development Process (PDP)
Work Team (WT)
TRANSCRIPTION
Thursday 19 November 15:00 UTC**

Note: The following is the output of transcribing from an audio recording of the Policy Process Steering Committee Policy Development Process (PDP) Work Team (WT) meeting on Thursday 19 November 2009, at 15:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting but should not be treated as an authoritative record. The audio is also available at:

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Participants on the Call:

Jeff Neuman - Registry c. - Work Team Chair

James Bladel – Registrar c.

Tatiana Khramtsova (joined after roll call)

Wolf Knoblen - ISCP

Alan Greenberg – ALAC

ICANN Staff:

Marika Konings

Liz Gasster

Margie Milam

Gisella Gruber-White

Glen de Saint Gery

Absent apologies:

Marilyn Cade - Individual

Paul Diaz - Registrar c.

David Maher - gTLD Registry Constituency

Brian Winterfeldt - IPC

Liz Williams - CBUC

Jeff Newman: Okay. Thank you very much.

Gisella Gruber-White: Just a quick roll call?

Jeff Newman: Yes. I was just going to ask you to do that. Thank you.

Gisella Gruber-White: I'm sorry. Thank you. Good morning and good afternoon to everyone. On today's PPSC PDP call we have Jeff Newman, James Bladel, Alan Greenberg, Wolf Knoblen, from staff we have Margie Milam, myself Gisella Gruber-White and we have apologies from Marilyn Cade, David Maher, Brian Winterfeldt and Paul Diaz. If I could also just remind everyone to state their names (unintelligible) thank you.

Jeff Newman: Thank you it's November 19, 2009. This is the work team, the Policy Development Process Work Team of the PPSC. This is our first meeting after the Seoul meeting in October and you know, I think we have a relatively low turnout here but I think we can still make progress and then go on with some of these questions.

Just to provide an update as to where we are on some of the items, first with respect to Stage, we're going to be talking about Stage 4 today, the voting and implementation, going to spend most the time on that.

Before we do an update Phase 2 the draft report will be out after this call some point today that Marika did a first draft, I kind of went through it, scrubbed it and put in some more things and hopefully you know, the most important thing is to comment on that draft.

It also you'll see it contains both Stage 1 and Stage 2 in the same document. We still have not really gotten too many comments on Stage 1 so thought it was a good idea to put both of these stages together. It's fairly long because it contains both of the stages now but please that's probably one of the most important things we can do is to comment on that draft.

The Stage 3, which we discussed the last several calls and in the face-to-face and which there was a survey, which unfortunately there were only eight responses but I think the people on this call were ones that actually responded, maybe Marika you can confirm that.

Marika Konings: I think I'm still waiting for Alan to fill it in, I'm not sure.

Alan Greenberg: Okay. Then I will find it and do it, I always do it at the last moment, you know that.

Marika Konings: And I'll provide another reminder giving people you know, another week because after that it will be great if I can pull everything together and start drafting the report for Stage 3.

Alan Greenberg: Thank you.

Jeff Newman: Right. So hopefully the report can come out in a few weeks. You know maybe hopefully by the next call, which is scheduled for two weeks from today, hopefully we can have that out.

The other thing we're going to do a little bit different with respect to Stage 4 is to move things along is not wait until the end of discussing Stage 4 to do a survey but really to do the survey kind of in parallel with discussing the issues. It may help to guide some of the discussions as well as serve as something good for the report. So that, please look for that in the next week or so as well.

So just a reminder, you'll have Stage 2 draft report today, at some point today. A couple weeks to comment on that and you'll have a Stage 3 draft, a Stage 3 survey open for another week plus a Stage 3 draft report in the next couple weeks and then in the next week or so a Stage 4 survey.

So the other item of logistics that we should talk about is there was a doodle for a possible face-to-face meeting and it seems like the two dates or the dates that work for most of the people that responded, again it wasn't everyone that responded, but the dates were January 18th and 19th, which is a Monday and a Tuesday.

Probable location in D.C. just by virtue of those that responded to the doodle, again I think that staff is still, ICANN staff is still evaluating whether this is feasible and whether we can you know, have a productive session meaning can we make sure that we work the next few weeks and months on actually, well the next few weeks I should say, on getting comments to the things that we have out already because we really only want to do the face-to-face if it's going to be productive and result in definitive outcomes and not just have it as a, you know, substitute for an ordinary conference call that we would do.

With all the other work that's going on with the STI, with the ICANN Special Trademark Interests group and responding to the board letter staff is also evaluating whether to combine that with a face-to-face with the STI if that's still what the STI wants, or whether to push out our, excuse me, our face-to-face by a couple days or I'm sorry a couple weeks, depending on where we are in the process. Does anyone have any questions on logistics?

Woman: No.

Marika Konings: This is Marika, I have a question because neither Alan or James actually filled in the, doodled it so I just want to confirm that the potential dates of 18th and 19th of January would fit your schedule as well so it'd be, can be penciled in and you know, as you've been active contributors it'll be of course very (unintelligible) if that date will suitable for you too.

Alan Greenberg: I'm pretty sure they are and I'm just in the process of filling in the doodle.

James Bladel: Yeah. This is James speaking and Paul Diaz and I were discussing you know, the potential of this meeting and I think that we discussed whether or not the, which of us would be representative of the, of our stakeholder group and I guess, you know, I tentatively planned to attend whenever it is, I will make the time but I want to better understand when it will be, whether there will be funding, you know all of those questions I think are predicated on my attendance.

Alan Greenberg: At least for some of us the assumption is there will be full funding. If that's not the case, if that's not the case my availability drops a lot.

Marika Konings: And this is Marika. We hope to be able to confirm that shortly. We need to you know, confirm internally the exact logistics of the meeting and determine you know, what exactly is going to be funded but we hope to provide those details sooner rather than later.

And just to confirm as well, you know the meeting will be open so you know, yes a number of participants will be funded to attend but it doesn't mean that for example if, you know, if the meeting is in D.C. and I believe Paul is in that area, that he can attend that meeting as well, it's not a question that we're limiting participation to one representative per constituency or stakeholder group and we'll also be making available the (unintelligible) participation facility so for everyone that's not able to attend in person but would like to participate that shouldn't be a deterrent.

And of course I think it's very important as well to communicate it, you know, although we're, the meeting is going to be intended to, to wrap this up to come to agreement on the recommendations and the proposal for a new PDP it doesn't mean that there will, won't be an opportunity to discuss some of those items, especially for those that weren't present you know, in the one or two meetings that will follow you know, any final report that we, or final draft report that we produce as a result of the face-to-face meeting.

So I think that's very important as well to communicate that, to make sure that everyone feels that they you know, can have a voice in the outcome of the meeting.

Man: Yep.

Jeff Newman: Okay. Any other questions or comments on that?

(Wolf): Yeah, (Jeff), (Wolf) was speaking.

Jeff Newman: Absolutely, yep.

(Wolf): I'm looking, I'm thinking about you know, the entire schedule let me say, the global schedule for the PDD group here right now is what I mean, what is the target carrier and how does it relate to the face-to-face meeting. That means for me so for example if you look for the Nairobi meeting, so what should be the outcome for that meeting?

When do we, I understood from the discussion in Seoul that the, we are planning let me say to have a, a complete document available, not having part of it you know, sometimes basically like we are doing right now, and bring it up to the council to the PPSC. So that's my question, what is the horizon, what is the overall target?

Jeff Newman: I think that's a really good question and a lot in part depends on how people participate and whether people respond. The goal I would like to see happen is that a draft report of all of the stages and the overarching issues could be presented to the PPSC as a whole in Nairobi. That's the goal, I don't, I think it's too ambitious to make a goal of getting it up to the council but at least getting it to the PPSC or out for public comment you know, at that point probably Nairobi would be, I'd be very happy with that.

(Wolf): You know we had a, we have got a side discussion in (unintelligible) that I was thinking so whether it might be possible to split it up let me say to have some parts available but that's to be discussed diversely I may say so really you could not agree on that because I understand that you are looking for to have a document as a whole at the end, you know.

But, just would like to put that question here in the discussion whether what will the others think about you know, putting up that or having, having one

document available, a complete document which is then going to be filed to the PPSC.

Jeff Newman: Yeah. So Marika and Alan have their hands raised. I will just say that the issue, well let me let Marika address that and then Alan and I'll jump in after. So Marika.

Marika Konings: Yeah, my comment was more on the timelines, I think the idea would be you know, if we would have a face-to-face meeting in half January where you know, the objective is to come to agreement on the recommendations on each of these pages and the overall you know, how the overall PDP will look including the overarching issues for our timelines and (unintelligible).

But on the basis of that staff will be able to produce a final draft report which you know, would follow the model of what we have now for each stage of the discussion and each of the recommendations, but which would also include like basically the language, the proposed language for the by-laws relating to the PDP and just basically like a, I don't know, could be a kind of charge that really outlines okay, so how does the new PDP look.

And the idea would be then of course to have you know, a couple of weeks probably discussion within the PDP work team to finalize that, that document and then of course there is as well this two-week document deadline before that, the document should be shared with the community before Nairobi.

So then you know, my proposal would be that the Nairobi meeting could be used in two ways because I guess I would probably be coincide with the launch of a public comment period that could be a way to present these ideas to the community and explain to them like you know, what we would like input on.

Because it might be as well that maybe there's some areas where the group has different options that it wants to consider but doesn't want to take a

definitive view yet, you know, following the months wait for community input for example, so it's an opportunity to provide that input.

And maybe also take an opportunity to present the ideas to the PPSC so they can already start thinking about it and you know, processing the idea so when it comes on their table they have already been familiarized with it and they might already be able to arrange some points as well for the group to consider.

And on the point of setting it up I personally would see that as problematic because I think the PDP is an overall process and a lot of issues are very close and in together such as timing and translation so I think it will be very difficult to present parts of it and have comments on those and not knowing what happened in the other parts, what the recommendations are for the other parts but that's just my view and so Alan might have some more comments on that.

Jeff Newman: Yep. Alan?

Alan Greenberg: Yeah, my comments are very brief, I think Marika has summarized most of the issues quite well. I would find it problematic to publish part of it and not all because a lot of the things really are linked if you think of our discussion over the last God knows how many months, you know, we've kept on referring to that you know, one part really depends on how we decide another and we've gone back and forth a number of times and I would not want to see part of it without the other.

I think an aggressive timeline is to get something out for comment by Nairobi. It's not clear do we want to put it out for comment before going to the PPSC or do we want to sort of pass it by the PPSC before we do that, I'm not quite clear on that. But regardless I think getting anything out to discuss in Nairobi is going to be aggressive at this point.

Jeff Newman: Yeah. Thanks Alan. This is Jeff Newman again. I agree with Alan, I agree with Marika as well about you know, that each of these stages are related. I will say that there is possibly some things in Stage 5 on you know, after the fact, after a PDP that's really to check on the progress of how an implementation went you know, things like that, that possible to separate that out.

But I don't, I don't even think we should address that unless we, unless we have to later on but I think in general Alan's right, that really once you reach Stage 1 and 2 you're going to see a lot of reference back from Stage 2 to Stage 1. Same thing will be from 3 to 2 there's going to be a lot of references back to Stage 2 and to 1. And I think you're going to see that as well when we talk about these things in Stage 4.

Alan do you have another comment or is that...

Alan Greenberg: Yeah. No this is another one, which I should've made already. One of the things that's come up here before and is also now coming up I think big time in one of the STI discussions is what do we do for review periods for review of PDP work? We've pretty well come to the consensus operationally that PDP should have some sort of review checkpoints to see how they're working. I mean that's been what has happened in the last few PDPs.

We have never come up with a concept of what do we do if we need to make a change. And this is, and what we've been doing to date in the PDP working group really is thinking about how well things have worked and making some changes where we think it's appropriate, in that case it's a brand new invention we've never had the concept.

The only way we can change policy at this point is with a full PDP or board emergency action and we've never really addressed how do we tweak things after the fact when we realize with some operational experience we didn't quite get it right.

Jeff Newman: And I think the interesting thing just to add to that Alan is we've had some PDPs where we've built in review periods but I don't think we've ever exercised them. (Unintelligible) (Hasting) one have a, I think we were supposed to review it after six months and I think it's been longer than six months and I'm not sure anything's actually happened.

Alan Greenberg: Well we have gotten reports and the results have been so good we haven't had a need to really make a change, but some day we're going to make a mistake.

Jeff Newman: Yeah.

Alan Greenberg: And we really have absolutely no process other than embarking on a brand new full PDP to tweak things and I think we really do owe the process some real good brainstorming of how do we fix that problem without violating the concept of consensus bottom up design.

Jeff Newman: Okay. I think that's right. What I want to do actually is, not to cut this discussion off, and I see I'll let Marika and (Wolf) address this, but that is Stage 5...

Alan Greenberg: Yeah. No I, I was just pointing out why we still have some work ahead of us, not to have the discussion right now.

Jeff Newman: So let me go to (Wolf) after Marika and then (Wolf) and then cut it off there and go to Stage 4. It also looks like some people joined Adobe, I'm not sure if they've joined the call but okay, so Marika.

Gisella Gruber-White: (Unintelligible) is on the call (unintelligible) so (Janet) joined the call.

Woman: Thanks a lot.

Man: Hello.

Jeff Newman: Okay. So Marika and then (Wolf).

Marika Konings: Yeah. I just wanted to comment, not for say on like you know, how you review outcomes of the PDP but on the new PDP model itself the work groups, working group work team has made some proposal in their guidelines to have some kind of system whereby the council is required to review the guidelines on a yearly basis and if they determine that there should be any changes that they should create an ad hoc committee that they would look at those and make those changes.

And the issues of course that for the working group guidelines it's different because that's guidelines and it's not you know, it doesn't need to go through (unintelligible) and yeah. So you know, that's something that they put on the table as well that there should be some kind of coherent system that would work for everything related to the you know, working groups and PDPs.

But should be some kind of you know, ad hoc or (unintelligible) committee that at some point would decide hey, we've seen many issues and people have raised issues with us. We think it's time to review now. Or you know, whether there should be a standing review to say well every year or every two years. So that's something for the group to consider.

And you know, I don't know the answer there either but it's something that the other group has been thinking about as well and that could be something that, an issue that you know, both groups might want to talk about and see if there's a model that would fit all these issues being looked at by different work teams also on the OSC side because they have many products as well that they're putting up so.

Jeff Newman: Yep. Okay (Wolf).

(Wolf): Yeah. (Wolf) is speaking. Well I just would like to say not to discuss any further though (unintelligible) I am fully convinced by your argument and so the only thing is (unintelligible) we should have a global (like we say) timeline and scope so that we can say to the other, to the other (unintelligible) something you know, and present something for next time, something materialize. So I got the feeling already in Seoul by some discussions you know, people got nervous you know, what this group is doing and what shall be the outcome and then and so, that's the only thing.

Jeff Newman: This is Jeff. I think that's a good action item for us and I think Marika you and I can put together a global timeline so that we can send that out and actually it's probably a really good idea because the council call is next week. So why don't you and I kind of put together a timeline and that could be presented to the council at their next call.

(Wolf): That would be great. Yeah.

Marika Konings: The call is already on Monday so (unintelligible) do that very quickly.

Jeff Newman: You and I will do, well I think you and I have talked about it so we can pretty much...

Marika Konings: Yeah.

Jeff Newman: ...just write it up and get that out really Monday, wow, today's, yeah that's right. Time moves pretty quick yeah, so we will get that out in the report.

All right, let me turn to Stage 4 which is, should be up on everyone's screen right now talking about we're now into, so we've gotten through the whole stage of what happens for an issues report, what happens to initiate a PDP, what happens to for a charter. We've talked about you know, everything up until when the working group is created and starts their work. We've talked about public comment periods during the working group work.

Now the working group is presumably finished with this work and they're ready to present it or they've presented it to, they're presenting it to the council. A bunch of questions came up when we initially were brainstorming as to really what is the role, I think 1A is kind of the overall question and the sub-parts are BCD, you know, I see it's misnumbered, it's probably my fault there, but you know, these other parts are really sub-parts as to some general questions what's the role in the GNSO council receives this report.

And the first question is does the GNSO have the discretion to pick and choose, or should they have the discretion to pick and choose which recommendations if any to approve, or is the GNSO required to either adopt the whole recommendation or reject it or can they you know, do like a line item. Can they pick and choose certain things from the report.

That's really question, the first question. Do people have, I see James and then Alan. So James.

James Bladel: Hi Jeff thanks. This is James. And this is interesting touching on you know, the concept of like line item and pocket vetos a little bit but I think that you know, the recommendation of a working group needs to go to the council and of course the, I think that it's understood that the council has the ability to then accept or reject the recommendations.

But I think that the challenge is that if there's any dependencies or linkage between recommendations such as they must be accepted or rejected you know, as a package I think that needs to be noted in the report so that you know, if there's any dependencies between recommendations that council doesn't inadvertently break those dependencies.

Jeff Newman: Okay so, I'm sorry to just question, just to clarify. So if the, are you saying if the working group has a report and says look, you know, all of these things are, I'll give you an example right. So, even though this was not a PDP, but

like the IRT said this is a tapestry of solutions adopting one is not sufficient that they all really are related to each other and we've made concessions that either you adopt them all, if you don't adopt them all then our recommendations may change.

Is that kind of the thing you're talking about that the work groups should really specify...?

James Bladel: And we see how effective that was.

Jeff Newman: Right.

James Bladel: (Unintelligible) I think you know, turning that around to presume otherwise presents the council with somewhat of an ultimatum and finds their discretion to you know, give each recommendation a valuation and on its own merit. I think if working group were to say look, we recommend A, B and C and B and C are linked so that if you were to reject one it doesn't make sense to accept the other and vice versa.

Then I think that you know, that kind of guidance could be and should be provided to council, otherwise I think the default assumption is that the, that the recommendations are independent and isolated and can be deliberated and accepted or rejected on their own.

But I think that you know, bundling them together like that I mean you know, you guys help me out I know we've got at least counselor here, but you know, that seems like a presumption of what council can and should do. I mean we don't want it to be a rubber stamp, correct?

Jeff Newman: Right. The other argument on the other side though is that the working group's really the ones doing the work. Council's not as familiar with the issues and therefore for the council to inject its own opinions it's in the process at this late stage may be seen as going against the whole bottom up

process, right. It may be acting more as a legislature than a, than just policy facilitators or managers. So let me go to Alan and then (Wolf).

Alan Greenberg: I think there's a few issues at play here. I mean we don't want a situation where an overall policy is rejected because there is one aspect of it, which is not palatable to a large number of the counselors or constituencies. Now how that happened when they in theory were participating is an interesting question, but nevertheless.

The other aspect is we're treating all outcomes of working group the same and I don't think we can. I think we have to look at situations where there is indeed consensus or unanimous consensus out of the working group, and cases where there are strong minority reports.

If council approves something with a strong minority report it goes up to the board and the board is then in the position of saying who do we, who do we listen to. And the board has made it clear that they don't really don't want to so either council makes the decision at that point or it remands it back to the working group with some sort of advice or goes to outside advisors.

But I think the situations of something coming out of the working group with very, with a very strong support and something with very divided support are two different situations and may be treated differently.

Jeff Newman: Okay. So let me ask on that one, so if there are a series of, in a report a series of recommendations that have strong support, what do you, or consensus even, what do you think is the role of council at that point for those recommendations?

Alan Greenberg: Are you asking me?

Jeff Newman: Yes.

Alan Greenberg: I think it's accept or remand back with specific questions or targets.

Jeff Newman: Okay. Sorry I'm just writing this down with. Okay and then what if it's got something less than strong support? Recommendations that have something less than strong support, what is the role of the council?

Alan Greenberg: I think ultimately council may have to make decisions at that point or it may choose to pass it on but since the board has indicated it doesn't want those decisions you know, we're in a quandary. Someone along the way has to make a decision if we're going to end up with a policy. So I think there are situations where council will make decisions such as that.

Jeff Newman: Okay. (Wolf) do you have any thoughts on those or are you, well your hand is raised so?

(Wolf): Yes (Jeff). I do not have specific thought on (unintelligible) on situations what happens if this case or why is this kind of recommendation, but I have a general observation regarding this, these questions so that the question for me has been just a new counselor so to find my own role, you know, and counselors now and this is reflected also in those questions or it means, what is the, what is it about in the future the GNSO council.

So I from my understanding it is a, it is okay a kind, still let me say a kind of hierarchy that means, so there will be some working teams, working groups which are going to be set up by the council on the, they report as council, they bring up some recommendations and from that point of view I would really see that the council is in the position where to alter and to amend and to let me say to comment on those recommendations in that sense that council could find an agreement on those recommendations.

So that's my first point. So that means that the, we on council have found we have to find a kind of moral how to cooperate with the working groups that meet in between until they come up with these recommendations.

It doesn't mean that the council has only to tell the working team and then to lean back and wait what shall be the outcome and then just start to comment, he has to company the counselors have to reach a company the entire process what's going on in the working group that at the end it would be ideal, recommendations could come up which are (unintelligible), that's what I see, let me say as, as optimal.

So I don't know whether it could happen but it depends on the kind of corporation the council is going to check up in the future with the working teams. So and therefore I think we also in counselor we have to, we have to (unintelligible) in advance and we are going to prioritize our work and certainly we are going to check out working teams. I don't think there are any comments to a specific (unintelligible) but just in general.

Jeff Newman: Okay. Well let me ask another question that may or may not change things and then I'll go to Alan. If you think about the composition of a working group, right, we don't require that a working group has members of every constituency, every stakeholder group it may and it certainly occurs, we don't require it nor do we require that it's the same number of people from each of those constituency working groups.

So for example like Alan can tell you first hand you have a working group that's comprised a lot of registrars of one group, so the council, so the question that Alan had raised initially is well in theory the working groups should not have come out with a, you know how it got to a stage where counselors disagree it may be a little bit of a mystery since you know, it went through the whole process but the reality is the working group may not necessarily reflect a balanced opinion as would be on the council.

Does that change anyone's view of things or are they still, does that have any effect? And Alan I don't know if you want to answer that or something else but?

Alan Greenberg: Well I was going to say something very similar that theories are very nice, the reality is that working groups are not balanced, they may have a very large proponent from one side or another. Now since the working group doesn't vote in absolute numbers if you know, as the example you gave if the registrars are all against something it may make it very hard for the working group to come out with that, even though they are just one, one of the components.

Now in theory everybody should be participating but the reality is due to schedules and relative priorities and things like that it doesn't always work out that way. Ultimately council has a responsibility of coming out with good policy and regardless of whether we follow the process or not if there is a judgment that the policy is not a good policy council should not be passing it on simply because the process has been followed.

And I think ultimately that's the test of the rules we put forward is are we having a high degree of assurance that council's going to come up with good policy. A PDP can go on for years, the situation may well have changed, which drove you to initiate the PDP, but working group should be nimble enough to take that into account along the way, but ultimately it's council's decision and I think council needs a fair amount of discretion at that point to at least remand if not, if not make changes.

Jeff Newman: Okay. Let me go to Marika.

Marika Konings: Yes. Following on Jeff's comments on the spread, a working group might be different and not necessarily representative of the company, of course one challenge there is that you know, one of the aims of the GNSO improvement and the restructuring is to have, to come for more as a manager and not as a policy maker or a developer of policy.

The challenge is of course if you go too much down that line and saying oh well, you know, if the working group is not represented but the council just you know, redo it again or just change things and you know, you might take a (unintelligible) incentive for people to participate at a working group level.

I don't know necessarily you know, an answer to how to avoid it and make sure you that you have participation and that when the working group comes with a recommendation those are you know, representative of the community because otherwise I feel that you might go back to a situation where you have you know, no representation or participation from certain groups and once it gets to the council that's when we start making changes and discussing things, which you know, where the working group probably would have been the place to actually do that so.

Jeff Newman: Let me, and I think that's a really good point and let me take Alan's proposal because it was kind of a, it was a concrete one which we could take in two parts and then if, and I want to hear what James things and others and I can give my opinion too I guess if people care.

But let's say something does have strong support or consensus, I think Alan's proposal on the table was that if there are recommendations coming out of the working group that have strong support or a consensus but the only role for a council at that point is either to accept it as a whole, reject it as a whole or remand it back with specific instructions as to you know, what it could do to move that issue forward. Alan did I kind of phrase that correctly?

Alan Greenberg: Yeah. It assumes something I didn't say but I think is important that it assumes strong cross constituency support that is a working group which was not balanced enough could end up with a very strong statement which is not supported by all groups on council.

Jeff Newman: Yeah.

Alan Greenberg: So I think it has to factor, that part has to be factored in.

Jeff Newman: So let me, sorry this is a sub-issue related is Marika has the working group work team yet addressed the issue of what constitutes strong support versus what constitutes consensus versus rough consensus and the other terms?

Marika Konings: Yes. But now this a discussion I'm realizing as well that indeed they haven't really discussed like okay but how do you factor in or how do you measure or how do you, you show if you know, if consensus means that you know, with 99% of only registrars on the call and 1% of disagree was you know, someone else, they haven't really spoken about that and I think we haven't spoken about that either in you know, in the outputs of the working group.

You know maybe we should pay some attention there as well like because they defined (unintelligible) consensus levels but maybe we should you know, think about or maybe talk to them as well (unintelligible) you could factor in if indeed certain recommendations you know, yes, there's consensus but the group is completely unbalanced.

I mean there is a provision or you know, the working group guidelines do indicate like the chair really feels that you know, there is no real documentation or disproportionate representation of some groups that he or she should go back to the council and say hey you know, (unintelligible) should get some more members from different parts. So there is some kind of you know, safeguard there but still you cannot force people to participate and show up.

Alan Greenberg: Well, and it's hard to dissuade the group that has a lot to lose based on the output of a PDP not to participate in large numbers. I mean, no who in government who lobbies for a change or a gains to change, those who are most involved.

Jeff Newman: Well let's for purposes of this discussion and to moving forward, Marika if we can, if you could add that to the agenda item of the working group work team and I think implicitly what we should define as strong support or consensus is from the stakeholder groups as constituencies as a whole, right. From the same groups that would be represented on the council.

Marika Konings: Well this go of course back to one thing as well like you know, is everyone equal on the working group or are there some more equal than others. Is it because you know, someone's representing a stakeholder group or constituency does their view have more weight or not. I mean the same question has been discussed as well and I think rediscussing as well on you know, constituency statements versus public comment.

How you know, I guess in the end it's as well the chair's duty maybe to weigh that to a certain extent and say well, you know, we have your whole constituency voting yes and we have one individual not representing anyone saying no, how do you go about that.

Jeff Newman: Yeah. Well I mean that's obviously as a contracted party there are definitions in the registry agreement, probably the registrar agreement, where registrars actually are probably more numerically defined as opposed to principally defined, then it has to be consensus of Internet stakeholders as opposed to just a consensus of those participating in the working group.

Alan Greenberg: Which is why council is by definition balanced across the stakeholder group's constituency and a working group is not.

Jeff Newman: Right. But the question I guess still remains though, it would worry me as a contracted party to just let the council substitute it's own judgment in, for things that a working has worked on as opposed to, so let's say there's a strong recommendation or consensus out of the working group that of certain recommendations.

Council should at that point say yes, either yes we accept it and the council as a whole votes to accept it or reject it or send it back and says look, even though there's strong support we don't think you really got the input of intellectual property owners for example so we're going to, we want to send it back to remand it back to the working group to make sure you take into account that viewpoint as opposed to just basically changing the recommendations on the fly within the council.

And that should be I would think one basis for the council to send it back, but Alan I don't know if that's a newly raised hand or?

Alan Greenberg: It's a new, I had lowered it and then raised it again.

Jeff Newman: Okay. So Alan?

Alan Greenberg: Yeah. I'm just as uncomfortable as you are with the council making policy, although we still, the council still tends to want to wordsmith documents and make substantive changes at the very last moment by changing words. But I'll use the perhaps worst possible example of WHOIS.

And I think council needs the flexibility of taking reasonable action, now whether that is remand back to a work group or create yet another work group or a different process to try to address something where there is not a consensus and a simple answer. I don't think we can tie council's hands to a large extent there.

Jeff Newman: But well, I think what you're saying though is something different than complete flexibility to re-write provisions or what you said, what I heard which I think is fine from you know, my own personal viewpoint is if council doesn't like a recommendation and they don't feel like it's got, that the working group got it right they can send it back or they can send it to another group but they really shouldn't be rewriting it on their own, that's not why they're there.

Alan Greenberg: That's not why they're there and but isn't that similar to a discussion one can have about the board, that the board should not be making operational decisions but there are times when some, when we have to come to closure and the board does make decisions and I'm not sure council is a lot different.

So I'm not sure, I'm not sure I'd want to see an absolute law about how something is handled. Council in the past has voted to accept or reject PETs on mass and they've done it section by section for instance. I think that the, the GTLD when it was done section by section. And that allows council to give advice to the board at a more discreet level.

Now should council be allowed to make an arbitrary change? I can imagine situations where the council you know, puts together a quick working group, you know, a balanced working group at the end to decide should it be A or B and comes out with something that everyone can live with. We do that in crafting motions all the time, you know the RA would not have been, have proved had there not been that level of activity and I'm not sure we want to preclude it in this kind of situation, but I've talked enough.

Jeff Newman: But even then, yeah okay. But just to stress that even then it wasn't council on its own that was rewriting it, council set up some process to deal with it that actually could take input from other parties, it wasn't just at a council meeting that you know, council raised their hand and said you know what, the recommendation I know it had strong support, the recommendation was for A, B, C and D. I now want to change A so that it's now something completely different, how does the rest of the council feel and then the council passes something that doesn't look like what A initially looked like. I think...

Alan Greenberg: Yeah but what really happens is there are back room conversations and conversations over a drink and we end up coming out with something that everyone can accept. I mean that's not government's work too or international even between governments. I think ultimately if we have a difficult situation the simpler and more agreeable output of the GNSO is

better than following procedures strictly and presenting to the board, which the board then has to do that same work on.

So I look for ultimate flexibility but specifying what we consider the norm to be.

Jeff Newman: Yeah. I guess for a consensus policy especially, one that would dine registries and registrars, unless the registries and registrars voluntarily agreed to this change...

Alan Greenberg: But there is a vote, ultimately there's a vote.

Jeff Newman: Yeah. I...

Alan Greenberg: And the voting thresholds clearly allow a policy to be changed against the party that will have to implement it without their approval, that's the nature of the thresholds that we've come up. It's not preferable but it's often what happens.

Jeff Newman: Yeah I just in the registry constituency we don't elect our counselors to do that. In fact if they do that they get removed.

Alan Greenberg: Say that again?

Jeff Newman: We do not elect our counselors in the registry constituency to make back room deals without consulting with the entire constituency as a whole.

Alan Greenberg: Oh, but presumably before you vote you will consult whether they agree with the results or not.

Jeff Newman: Not if things happen over drinks at an ICANN meeting in between the times where the stakeholder group meets and the council meets. I mean James do you have any thoughts on this, are you, you want to, yes you do. Good.

James Bladel: Yeah I had my hand up because I'm listening to this and I need to qualify this statement with an apology that I haven't been around the process all that long and probably this is my fourth or fifth or sixth GDP, but it certainly seems that we have a legitimate and justifiable reason why a decision should not be made at every level, okay.

Working groups are unbalanced and unrepresentative, council should be more of a manager of the process and less of a deliberative and legislative body and then of course the board doesn't want to appear to be a top down creative policy. So it seems like we've got a really good reason why we shouldn't ever have any decisions made at any (unintelligible).

Alan Greenberg: I'll vote for that.

James Bladel: And so I wanted to step back a little bit and say if the question is you know, and probably not you know, don't have the you know, international government background to you know, weigh in on this outside of the U.S., but I'm thinking of just how different sub-committees of Congress would work and taking a look at that as a model.

I mean at some point decision and accountability have to be you know, have to be enforced at some level and you think that well, if the working groups are unbalanced then maybe you know, that's a requirement now and maybe we recommend to the PDP working group team that they take a look at this issue of establishing minimum thresholds by which a working group would qualify as a balanced working group and therefore, you know, able to make sort of recommendation.

And then you know, that can be factored into whether or not the council has the latitude to accept or reject a recommendation out of a working group based on whether or not it met that requirement for balance. But I'm just, I'm listening to this and I'm kind of, I mean I'm agreeing with everything you're

saying, I have no reason not to, but I'm also kind of shaking my head a little bit is how do you, you know, untangle this so.

Alan Greenberg: How do you eventually come up with policy and preferably good policy.

James Bladel: Right. Because what I see, and it's like Alan I think you alluded to it, is what I see is people looking for end around to the process okay, they're looking at well instead of consensus policy let's go you know, overload the RAA or other agreements or let's have a few drinks with a few people you know, on an ICANN meeting and you know, we'll get 90% of the work done in the lounge as opposed to you know, when the translators and recorders and transcription is running.

So I think that, you know, people are looking for you know, well intentioned people are looking for ways around these road blocks and they're finding them in these other alternative areas, which somewhat undermines the legitimacy of the process we're trying to fix.

Jeff Newman: I think James I think you're right in the sense that there's a lot of going around either from every angle right, registries to proposed new registry services to actually get around it if they don't like it the (WIPO) can propose a new, you know, it's own changes to the EDRP if they don't like the way something's coming out. We've seen (unintelligible) informal working groups forming to try to you know, for expressions of interest policy.

Man: Right.

Jeff Newman: So all these types of (unintelligible) of the policy process are going on and I think the reason it's going on is because you know, they're not, they don't want to participate or they don't think that the policy process is working for them and for their particular interest.

James Bladel: Right. And there's a lack of confidence in what you know, will come out of that if the prescribed process were followed.

Jeff Newman: Right. Alan do you have a comment?

Alan Greenberg: Yeah. I disagree strongly with a lot of the tone of what we, what was just being said. I think the discussions over a drink and the informal groups that form periodically are not end arounds. I think that that is often where the constructive, innovative thinking and compromise comes from, not necessarily in the formal meetings.

And I think to pretend that those are purely used to bypass the process as opposed to augment and support the process is pretending that our formal processes are a lot more perfect than they are, I mean I see very often that's where the compromise and the innovation comes from, not necessarily in the formal meetings.

Jeff Newman: Okay. James.

James Bladel: Yeah and just real quickly. I agree with you Alan, a lot of good things come out of those types of meetings and activities, so long as they are fed back into the formal process, but you know, oftentimes they aren't and who's monitoring that they are or they aren't, you know and that's not a, that informal group that convenes in a lounge isn't an ad hoc decision-making body. So, I mean I think that there's a balance that we're looking for.

Alan Greenberg: Yeah. I mean I look at what happened in domain tasting, and I don't think we would have come to closure with as satisfactory an answer if we hadn't had back room discussions going on in parallel with the formal ones.

James Bladel: But did you then bring that you know, bring that conversation back to the PDP or...

Alan Greenberg: It wasn't brought back as a result of this private conversation that we're not talking about, but yes it worked its way back into the PDP of course. There was a huge overlap in the people.

Jeff Newman: Right. That's true too and I think in that circumstance there were certain factions that were trying to block it and so what some of the registries and you know, I'll be open and honest about it, I was part of that birds of a feather group and we got frustrated that it wasn't moving in the policy process so we proposed it as a registry service and we implemented it and once we proposed it and it got through the registry services process we then introduced it as part of the PDP process that was going on, and that helped move it along, but in the end James, it did go back.

I think that's the point Alan that we're trying to make that it could be very beneficial and it could be great innovative ideas but it has to go back through the process...

Alan Greenberg: Well but of course, but look at the decision which yielded getting the council to approve the RAA amendments. There was, there was a belief among some of the counselors that this was a bad thing and it took a lot of private discussions and a little bit of haggling with the wording to get everyone to approve it and it was approved unanimously and I don't think there's many people around the table who think it was a bad thing.

But it's not clear it would've come out of another formal process.

Jeff Newman: Yeah. I think that was a little bit different too in that the RAA specifically call on a vote of the council as opposed to a PDP process.

Alan Greenberg: No. But I'm giving the example of how things change because of these kind of processes I'm not using that as the model.

Jeff Newman: Okay. So where are we on this, so let's see, I'm trying to figure out Alan where we are because I...

Alan Greenberg: We're still on the first point.

Jeff Newman: Well I think this relates to all of the questions in one to be honest, right, with the exception of time period. I really do think that, I liked where you were going at the beginning of you know, council really if something's got strong support or consensus within a working group and the working group is balanced, or even if it's not balanced, that the council really may be restricted in either approving the recommendation but it can go recommendation by recommendation, approving it, rejecting it or sending it back. But rewriting it as a council...

Alan Greenberg: Or well I would be wider than sending it back either remanding it back to that work group or to another, or to another deliberative process.

Jeff Newman: Okay I think that's fair enough, right. With specific instructions as to why...

Alan Greenberg: Yes.

Jeff Newman: ...sending it back.

Alan Greenberg: Exactly.

Jeff Newman: Right. So do we have a, anyone disagree with that point? Again this is if a group, this is if there are strong support or consensus within a group. Okay. So Marika you've got that down, that's, I think that's moving forward.

The second point is if something's got something, if a group's got recommendations that have something less than a strong support or consensus. What happens with those recommendations and what I'm hearing is flexibility, Alan has proposed flexibility, I'm still not personally comfortable

with that much flexibility in a sense if a working group's not able to work out and get strong support, I'm not sure the counselors again should substitute their own opinion. It may be an acceptable outcome to not have an outcome.

In other words it may be acceptable to just say hey look, this is not resolved. Either we send it back or we just kill it for now, instead of having the...

Alan Greenberg: Or take some other further action.

Jeff Newman: Meaning what?

Alan Greenberg: Well I hate to use WHOIS as an example but it's one that has gone through a number of processes, it's still not resolved and council still has active things on the books.

Jeff Newman: Okay. But still these are still kind of I guess the same prospect of it could either, it could remand it to another working group, the same working group to try to figure out or it could just say you know what we tried, let's move on and not address it. The question is can the council, what's that?

Alan Greenberg: Just as a follow-on on that quickly, remember council did take a vote on some blended results, they just failed on WHOIS. Now I don't know if we want to repeat that but you know, there was actually some votes there council took on WHOIS which failed which is why it's still an open issue. Okay, I've spoken enough.

Jeff Newman: All right James?

James Bladel: Margie's ahead of me in the queue by the way.

Jeff Newman: Okay sorry, I just looked up now so Margie?

Margie Milam: Yeah. I mean on the issue of whether there isn't enough consensus I mean I think what you guys are talking about is in the restructuring we're trying to move the council from being a you know, a decision maker and more to being a manager of the process.

And so where there are gaps, at least this is kind of my perspective thinking about this, where it looks like there's a lack of consensus maybe because there's imbalance or something like that but I think it's you know, appropriate to have the council come up with a you know, clarification of the procedure.

So it's more you know, I mean and this is just a suggestion that it's more coming up with okay, this is the additional process we'll use to come up with consensus as opposed to having the counselors haggle out the you know, what is the right answer. And so you know, I mean I think that's a little different from what Alan was saying and more of what like Jeff was saying.

Jeff Newman: Okay. James on that?

James Bladel: Yeah that's a good point Margie and I think that just going back a little bit you know, the recipe of, so growing on my background as a software developer that the idea that council could send back recommendations to the same group without any additional guidance to me is the recipe for an infinite loop right, and it will just essentially boomerang back and forth between those two groups.

But I think that Jeff made a good point earlier which is that when you said if the you know, if the working group reaches a strong consensus and it is balanced, and if it is not is not outcome an acceptable outcome. And I think that's an interesting point because what it says in effect is that the status quo prevails unless and until a balanced working group can reach strong consensus.

And I think that's an incentive to you know, and incentive to encouraging consensus, I think it's an incentive to broader participation and representation in these working groups so that you don't have one or two stakeholder groups kind of carrying the load and coming up with things that are unpalatable to other groups that didn't participate in the process.

So I think that, you know, going back to what you said Jeff is that you know, we should say something to the effect of the status quo prevails until those thresholds can be met. And if they are met then I think that the council's actions are very clear, they simply have to look at what's coming out with strong or unanimous consensus from a balanced working group and accept it.

Jeff Newman: Okay. Alan.

Alan Greenberg: Yeah. I think we want to be careful about using the term working group, which is now a defined term. If I look at the two examples where the board has remanded things back to the GNSO, which the GNSO has not been able to just come to closure on and that's the restructuring of the GNSO and now the SGI things, which I may be Pollyanna but looks like we may come to closure on.

In both cases the GNSO ends up either being told to or on its own created a balanced non-working group, you know something, a working group not called a working group, which may be able to under pressure come to a decision whereas the formal WG structure in ICANN cannot do that.

So I think we need the ability of council to take actions which would result in good policy outside of the formal working group process if necessary, which is why I don't want to bind it.

James Bladel: Right.

Alan Greenberg: I don't disagree that...

James Bladel: I think good policy or that term is in the eye of the beholder and I don't...

Alan Greenberg: Indeed but bad policy is often generally agreed upon.

James Bladel: Well that's true, but I would...

Jeff Newman: A lot of profound statements here. James you have another comment?

James Bladel: No, that was all, I was checking my hand, I think it's down.

Jeff Newman: Oh okay. Let me, I think we've spent a good amount of time, we have some notes on it, let me go to 1G, which there's two of them apparently. The first one, which I would think is probably pretty obvious one that we could probably support but it says should there be an opportunity for the working group to meet with the council to present its report and allow for a dialog and Q&A?

Does anyone think this is a controversial one, does anyone disagree that that should be allowed or does everyone think it, let me ask, okay Marika yeah.

Marika Konings: This is Marika, I'm talking about disagreeing but just talking about current practice, you know, either sometimes it's staff, sometimes it might be the chair or sometimes it might be the you know, the council liaison that might present the recommendations from the working group.

But what I've noticed is that there's very little discussion or dialog. It might be that you know, some council members (unintelligible) for the first time, haven't had a chance to maybe review the report or think about the recommendations.

So I'm just wondering if there is, you know, there should be an opportunity to have a more in depth discussion on the report and for the council to be able to ask questions and that it might help as well avoiding where you know, they might debate on whether (unintelligible) recommendations yes or no and they have an opportunity to actually ask questions on you know, why did you, you know, why did you recommend this and why didn't you take that into account.

And I wonder if there's some kind of structure you can find to have a more in depth discussion once a working group produces its report and have made it's recommendation because what often happens in practice it seems that the recommendation have just taken over and (unintelligible) to a motion and that's it.

Jeff Newman: So just to add something and then I'll go to Alan, this has been by the way, on one of the biggest frustrations, not necessarily at the council level but at the board level is that there's never an opportunity for the board to talk to the counselors or to talk to the, a working group or anyone once something gets forwarded to the board.

It's really, and this will come up later in another question, but staff produces a report, a staff report which is never made public. The staff report, which is never subject to any public comment, that's all that goes to the board, I mean maybe the, sorry, the report is usually attached to the back of it, it's a working group report, but there's no check and balance to make sure that the staff got it right or just to, there's no opportunity for anybody for the board to question.

So now you're talking about two levels removed, right, the council there's never dialog or opportunity for the working group to meet at the council, and then there's not opportunity at the board level for the board to question. So this has kind of been one of the things that I've in other circumstances have championed to the fact of the group that's making the decision should have at its disposable, disposable, sorry at it's disposal the group that came up with

the recommendation. I think in general I think that is a good idea but Alan let me...

Alan Greenberg: Oh I support what you and Marika and saying 100%, I'm not sure the logistics will ever work out. I mean if you look at the, the similar thing with relation to the board, the only time we ever really have those substantive discussions is after the whole thing has blown up and then we decide to take the time to talk.

We never do it on a routine matter because there's not enough time to do that and logistics are too hard to get the same people in the same room at the same time and I suspect that would be a very similar case between council and working groups. I mean we can invite all the people to the ten minutes in the council meeting when we have the discussion but there's not going to be enough time for real, any real interaction or discussion to that point and devoting a whole meeting to it is something we just don't take the time to do.

So I support the concept, the logistics boggle the mind.

Jeff Newman: Okay. But I think we can make the recommendation and then have the council figure out...

Alan Greenberg: Sure.

Jeff Newman: ...how to do it, right. I mean I just I think, I think it can be done it just it hasn't been done but I do think it can be done, even if it's at, even if it's at a meeting, even if it's at an ICANN meeting itself.

Alan Greenberg: Yeah.

Jeff Newman: Or during a call, even, it doesn't necessarily have to be the whole working group it could be representatives of the working group that are there, but at

least a recommendation to have, to allow for a dialog should probably come out of our group.

Alan Greenberg: Certainly in cases where it is clear there is no universal agreement in the working group it would be nice to be able to expose the issues to the next level up yes.

Jeff Newman: Well it would also be nice if the counselor were to, counselor were to ask questions on a report or issues that discussed on the council list that those could be presented to the working group to provide answers. It doesn't all have to be in person I guess it could be, it could be over e-mail.

I think one of the problems with the council list, I raised this to (Aubrey), I'll raise it again to (Chuck), at least several times a year, is to have some mailing list that's fairly, that's moderated in a respect but then allows for people to have direct conversations with counselors.

Alan Greenberg: Yep.

Jeff Newman: So the next question is what time periods does the council need, what are the time periods in which the council needs (unintelligible) to work. So the working group's presented its report to the board, what is the time period with some flexibility in all the rules we've kind of talked about with respect to time frames, what is everyone's general thought on how soon should the council be required to act.

Can it be the same as we kind of came up with with issues reports where it was that the council should address in some manner either accept, approve or defer within, at the first meeting following release of the issues report unless that falls within seven days, giving of course any constituency stakeholder group the right to defer for one meeting? Should we just apply the same rule for consistency?

Alan Greenberg: From the point of view of drafting I certainly would and then see how it fits when we look at the whole thing. I have no problem with that.

Jeff Newman: Okay. Anyone, so that the, Marika I guess for the report we'll just or for the question we'll just keep the same time frame and see how that goes across.

Marika Konings: Okay.

Jeff Newman: And I wrote that up in the Stage 2 one hopefully, hopefully it came out right.

Okay public comment period. So the working groups present its report to the council, should the council have another round of public comments on the final report? There have not been comments to the final report at this stage right, there were comments on the initial report, maybe multiple comments, but then ultimately there is a final report, the final report's presented to the council, at that point in time there has been no or there is no requirement for a public comment period. Do people here think there should be? Again this is on the final report. Alan.

Alan Greenberg: Doesn't it really matter depending on whether there's been substantive change or not? I mean you can imagine cases where it's virtually you know, they corrected three typos and other cases where the whole thing has been turned on its head.

Jeff Newman: So...

Alan Greenberg: Certainly those are different cases.

Jeff Newman: So perhaps there's a recommendation that the council may initiate a, that maybe the working group should maybe have a recommendation in their final report as to whether they believe their report's changed enough to have a public comment period. Maybe that's something that could come from a working group, but there should be flexibility for the council to have a public

comment period if the final report contains substantial differences to the other reports that have gone out for public comment.

Alan Greenberg: Yeah. Remember the working group has the ability of saying we've made a whole bunch of changes, let's put it up for comment before we submit it to council. So the working group could have initiated that on its own, I don't think there's anything prohibiting it.

Jeff Newman: Okay.

Alan Greenberg: Now if, you know, the question is should it have done that and it didn't does council have the right to do it? I would think council has an obligation to do it.

Jeff Newman: All right...

Alan Greenberg: You know if there have been substantive changes.

Jeff Newman: If there have been substantive changes to a, to the recommendations between, and those substantive changes have not gone out for public comment in any prior period, that the council should, it's a recommendation from this group that the council should put that out or have the option to put it out for public comment.

Alan Greenberg: Yeah.

Jeff Newman: Anyone disagree with that? Nope. Marika did you capture that?

Marika Konings: Yes I did.

Jeff Newman: And then the question is, okay now there's a public comment period, what do you do with it? Who incorporates it? The working group, are they still around, does council do it?

Alan Greenberg: Maybe we want to retract our last (unintelligible).

Jeff Newman: So I mean I think, I think what we said is probably sound, substantively right but then what do you do. So Marika were you going to say something or?

Marika Konings: Yeah. No I wasn't going to say, if indeed the working group would you know, if you would I mean it's a recommendation of course you could build in and you know, any PDP guidelines that we would produce and saying well if the initial (unintelligible) you might want to consider (unintelligible) are you still there?

Alan Greenberg: I'm here.

Jeff Newman: I'm here (unintelligible) there we go.

James Bladel: That was interesting.

Marika Konings: I think we were being put on hold. What was I saying, so maybe a recommendation could be to the working group like if you decide to have, if (unintelligible) between the initial report and your almost final report you might want to consider running a public comment period. So then it would be the obligation for the working group to incorporate any you know, changes to their final report at that stage.

Alternatively if the council runs it you might just you know, what staff does recommend staff do, do an analysis and summary and you know, the council can review then those comments in combination with the report so then you come back to the point like can they then make decisions based on those public comments to change any of the recommendations or if based on those public comments they feel there should be changes they then give it back again to the working group.

Jeff Newman: So I agree with everything you said up until the point of the last point I think which we need to discuss because that seems to make sense, that if the council puts (unintelligible) out for comment it really should be summarized and gathered by the staff. I think your last question is something we should talk about. So what happens if that results in changes? Alan any thoughts on that?

Alan Greenberg: If council, if we want to essentially eliminate the opportunity of council to make the decision or recognize whether the comments are substantive enough to warrant a change, this is, then it's got to be back to the remand or create a new group.

Jeff Newman: I think that makes sense.

Alan Greenberg: Now, but now we have a decision that council's going to have to make is was this substantive enough to require that. I mean we're talking about judgment calls all along the way.

Jeff Newman: Yeah, but I think as the managers of policy I think that is okay...

Alan Greenberg: Sure.

Jeff Newman: ...make that call.

Alan Greenberg: Yeah, I have no problem with that, I'm just pointing out that it is a judgment call that will have to be made in that process.

Jeff Newman: Okay. So that sounds like we're sort of, we have a place to go with that. And the final question on this one is that should there be an opportunity for other third parties to provide the council with an opinion or view before it takes the decision on the recommendations?

So let's say there's a working group recommendation, it goes to the board, to the council and let's say the (SSAC) has its own view, has read and said whoa, wait a minute we have some comments. Should they have the opportunity or should they have participated in the regular public comment period?

Alan Greenberg: I think we had words somewhere that there should be explicit invitations to responder in some of the comment period which go out to the various ICANN bodies.

Jeff Newman: Yeah so...

Alan Greenberg: I don't remember where that was but I remember talking about it.

Jeff Newman: Yes. That's in, you'll see that in the draft two report.

Alan Greenberg: Yeah.

Jeff Newman: And I think that's right, so maybe my example is, maybe it's the anti-fishing working group, or maybe it's someone else that's not a formal advisory committee or supporting organization.

Alan Greenberg: Well I mean look, when something's going, in the process we're defining here when something's going to the final comment period before it goes to council it is essentially cast in concrete and if someone objects they should be saying so.

Jeff Newman: James?

James Bladel: Yeah, I'm just not clear to why the public comments weren't utilized for this input in this scenario.

Jeff Newman: Yeah I think, I guess that's part of the question James, I mean the answer to this question could be no, they should not have the opportunity, they've had the opportunity on multiple occasions. We just wanted to introduce the question just to see if it had a different answer. What I'm hearing...

James Bladel: Okay. I just wanted to make sure that I understand it, but it sounds like that then my, my preference would be that you know, it sounds like they've had an abundance of opportunity prior to this one.

Jeff Newman: Right. And presumably once it goes to the board they'll have that opportunity as well.

James Bladel: Right.

Jeff Newman: Okay. So maybe in the last few minutes maybe we can ask the question on number three, which I think is not that difficult of a question, not necessarily are the current bylaws the right ones but maybe 3B, which we've kind of talked about already in the council but 3B is, right now what happens is there's a board report that's created that the council, well maybe it's not as easy as I thought it was.

Let me break it down in general because I think there's a sub-question as to what goes into the council report to the board. That's the first question and then the second question is right now what happens is staff usually writes a report above and beyond what goes into the council report and that goes to the board and oftentimes the feedback I've gotten from board members is that that's really all that they have time to read, which is what concerns me a little bit.

So maybe I save that for the next discussion because I think it's more substantive than we thought it might have been.

Alan Greenberg: Yeah.

Jeff Newman: So I think we had a good, even though there's a few of us on here I think we made some good progress. What I also want to do is kind of throw in the survey we're going to get some of these questions out there too so we can move a little bit, move a little bit faster on these.

We also Marika, probably need to fix the numbering on some of these.

Marika Konings: I will. Sorry (unintelligible).

Alan Greenberg: You know you don't think the two, three 1Gs are good?

Marika Konings: I just accepted your changes and didn't realize that I had changed some numbers, but (unintelligible).

Jeff Newman: Yeah, no yeah and I didn't, I didn't even both looking at numbering. But I think we've made some good progress. Next call is scheduled for two weeks from today, same time, and in the meantime you'll see a Stage 2 report, Stage 1/Stage 2 report that comes out Page 1 hasn't changed from what it was the last time we put it out, now it's just combined into 1 and 2. A survey for Stage 3 for Alan. A Survey for Stage 4 for everyone, and did I miss anything, oh and a Stage 3 draft report that hopefully will be out around the time of the next meeting. Any other questions? Comments.

Alan Greenberg: Good meeting.

Jeff Newman: All right. Thank you everyone.

Alan Greenberg: Thank you. Bye-bye.

Man: Good morning.

Jeff Newman: Thanks.

Woman: Bye.

Woman: Thank you. Thank you (unintelligible).

END