

**Policy Process Steering Committee (PPSC) Policy Development Process (PDP)
Work Team (WT)
TRANSCRIPTION
Thursday 15 October 17:30 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 15 October 2009, at 17:30 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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On page:

<http://gnso.icann.org/calendar/index.html#oct>

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Participants on the Call:

Jeff Neuman - Registry c. - Work Team Chair
James Bladel – Registrar c.
Tatiana Khramtsova
Gabriel Pineiro - Non Commercial Users Constituency
Paul Diaz - Registrar c.
Alan Greenberg – ALAC
Avri Doria – GNSO Chair – NCA
Marilyn Cade - Individual

ICANN Staff:

Marika Konings
Liz Gasster
Margie Milam
Gisella Gruber-White
Glen de Saint Gery

Absent apologies:

Wolf Knoblen - ISCPC
David Maher - gTLD Registry Constituency
Sophia Bekele

Coordinator: The recording just started.

Jeff Neuman: Great thank you. Good morning or good afternoon everyone. This is Jeff Neuman, Chair of the Policy Development Process Work Team of the PPSC.

It is Thursday, October 15, 2009. This is our regularly scheduled weekly call. The last one prior to the ICANN meeting in Seoul. And if we could get a roll call of who's on the phone.

Gisella Gruber-White: Good morning, good afternoon everyone. On today's call we have Jeff Neuman, Gabriel Pineiro, James Bladel, Tatiana Khramtsova, Alan Greenberg.

From staff we have Marika Konings, Margie Milam, Glen Desaintgery and myself, Gisella Gruber-White. And apologies from David Maher, Sophia Bekele, Wolf Knoben.

Please remind everyone to state their names when speaking. Thank you.

Jeff Neuman: Thank you everyone and welcome to this call again. And hopefully we were just talking the possibility of making this a little shorter than the normal ones, which I know everyone is disappointed about.

With that said, I think there is two main things on the agenda today. One is to talk about the email that was circulated yesterday or two days ago about a possible face to face meeting.

And the one after that is to talk about continue on Stage 3. Hopefully finish it in such a way that we could draft a survey for Stage 3. And then ultimately the draft report.

And also maybe spend a minute or two talking about Seoul. With that said, any questions on the agenda?

Okay so first item is to talk about a possible face to face meeting. You all hopefully by now have seen the email that I sent around on Wednesday talking about the face to face.

And there have been a couple comments that we've received already. Marilyn was in support of it. Wolf was also in support of it. Mike, actually I kind of wish he was on the call, Mike Rosenbaugh actually posted it to the council list.

And I'm not exactly sure why. But he said to. So everyone is informed that this request is coming from one of the PPSC work teams.

It says the new council ought to prioritize this work along with all this other work. And it's first effort. And after Seoul I certainly do not think this, I'm sorry, I certainly do not think it is as big a priority as several other ongoing efforts on council and in working groups.

So those are the comments so far. Mike has not joined us has he? Okay, does anyone have any thoughts on the request for a face to face again? The thinking, current thinking at ICANN staff has been generous to offer in providing funding for certain people that need it.

You know, and we can decide how we would request to allocate that. You know, possibly one person from every constituency, advisory, committee, etc.

You know, there's plenty of different models. So does anyone, Al's got his hand raised so Al.

Alan Greenberg: Yes I sent a note just a little while ago saying I do support such a meeting if we can find a reasonable time. I would like to see commitment from ICANN that they're paying all reasonable costs.

In the past they've said things like we'll pay travel, your, you know, food is on your own budget, that kind of stuff.

I only question - I guess I support to some extent what Mike said in that we now have the GNSO response to the board on the intellectual property issues. Which is due middle of December.

And I wonder to what extent that's going to trump many other things that are delayable (sic).

Jeff Newman: Yes I think that's a good point. And let me go to James.

James Bladel: Right, I actually was going to say something similar to Alan as well. But I think that they're going to be focused on that issue. But also the question would be since, and some of us will have to justify this internally if it were to occur.

Might need to think about what, you know, even before we know if it's going to happen or not, propose an agenda of what we would like to come out of that meeting with.

If it's going to get us back on track, you know, if you feel that we're off of our schedule. And it's going to help us close some ground there. It might help me sell it internally a little bit.

Jeff Neuman: Yes so on that, you know, it depends on when we have it right as to what the exact agenda would be. But my latest thinking, and I talked about this with Marika is if we did it in January, hopefully by that point and time you would have at least draft reports on most if not all of the stages.

So at that point we could really drill down on those draft reports and have some sort of - to agree at least on all the concepts in there. And come out of there with a final report, or at least a report to send out to the - for public comment.

((Crosstalk))

Jeff Neuman: (To situate) these statements. I think that we've gotten to draft reports. The problem is we haven't really drilled down on comments to those. Well we have a draft report for Stage 1. Stage 2 is coming shortly.

And by then we should have gone through three and four. So hopefully by then at that point and time, and five. We could really get ourselves, lock ourselves in a room and just come out and say look, this is what everyone agrees on.

It would have to be with the commitment that what we discussed in there and what we come out is at least what we're going to come out with in a report that goes out for input.

So it's really to drill down, I see Marika's got her hand raised.

Marika Konings: Yes, this is Marika. Just wanted to echo what Jeff said. The idea would really be to try to get people, you know, to sit together for a day and a half, two days.

In a room and really finalize, you know, the new PDP. And get to agreement or consensus on the different recommendations on what changes need to be made to the bylaws.

And have everything ready to be, you know, (unintelligible) in a nice report that can be (proffered) for public comment and the PPSC. Because of course we've been meeting now, you know, on a weekly basis.

But we're still, you know, suffer from reduced participation and input for example of the documents that have been circulated so far.

And one other concern that, you know, we've had internally that of course ask this group is this report or these recommendations will be reviewed by the PPSC. And then will be reviewed as well by the council.

So one concern we have is that there are people that might not be participating now. Might think we'll I'll have an opportunity later to raise my issue and put in my changes at a later stage. Which might result in, you know, re-hashing discussions that we've already had.

And, you know, going back to some of the conclusions this group might have come up with.

So our hope would be by facilitating a face to face to come to, you know, a rapid conclusion of the whole process, which then hopefully will go quicker as well through PPSC and the council if, you know, we get the buy in from the different constituencies.

So that's basically the thinking behind it.

Jeff Neuman: Alan.

Alan Greenberg: Yes, I just want to reiterate that anything we do at this point is, could well be scrambled based in whatever the council decides. And so on the board project.

So just to keep that in the back of our mind that the assumption that you and Marika are making is that we will make significant progress between now and Christmas.

And that is hopefully true unless things are pretty well put on hold for some of us. Now we don't know what process the GNSO is going to select. So it may not involve any of us.

But that, you know, we have to wait and see that.

Jeff Neuman: Yes I think that's a good point. And worse comes to worse if we schedule a January meeting and we haven't made much progress, it could be - that maybe could be used to basically give us a kick in the pants to get back on track.

But I'm hoping that all of that will be done by January, by mid January so that we can have a face to face meeting.

((Crosstalk))

Marika Konings: If I could add one thing because indeed we could maybe wait until the full meeting for the GNSO decides on their process to see how many members of this group are impacted by that work.

To decide whether it's appropriate to have a maybe mid December or otherwise early in mid January. Because another - and that basically goes a bit to I think Mike's comment with saying I'm not sure whether this is a priority.

I would hope that it is a priority for the council to come to a conclusion on the GNSO. And furthermore to go, you know, I think it would be a pity that we have a new (unintelligible) in Seoul.

And, you know, it will take I don't know how many more months to come up with a new PDP that they are supposed to work on.

So I would hope that this is one of the projects that's considered a priority. And I guess the council only to consider in light of the new work whether maybe other activities might need to be slowed down or put on hold.

Looking at the, you know, the workload that is coming. But I sincerely hope that this won't be one of the things I think already has been quite (unintelligible), and hopefully time to wrap it up sooner rather than later.

Man: Am I the only one here hearing the Donald Duck sounds on the line too?

Jeff Neuman: Yes I hear it as well. And I think three people have just joined, Paul Diaz, Avri and Liz Gasster. I don't know if it's one of their phones.

So he's not hearing it now. Yes?

Marika Konings: Sorry I was just trying to get it sorted with the operator.

Jeff Neuman: I've noticed that Avri's joined. And I don't mean to put you on the spot Avri but has the council, are there any proposals quoted right now about how the council is going to deal with the IP, with the board request?

And what kind of work that's going to entail?

Avri Doria: This is Avri, not that I know of. I mean we just got the letter. We haven't had a discussion of it yet. In fact we haven't even talked about it on the list yet.

So I have no idea. I have a feeling that not much is going to happen until Seoul. And at that point it's a council I'm not part of.

Jeff Neuman: That's a good point.

Man: Except the discussion is going to have to be had on the weekend.

Avri Doria: Certainly they'll be initial discussion on the weekend. But I think the main discussion is, you know, there's some scheduled for Wednesday. And there's another meeting scheduled for Thursday.

Now, you know, I may be non-member chair for those meetings or not, I don't know. But we haven't, we're still trying to get all the, you know, chairs in line on finishing up this transition thing.

And that keeps being the favorite topic of conversation. And we're just haven't started this one yet. It's probably a good idea that I start a discussion.

Say okay, has everybody had the time to read it? What do you think? But I haven't.

Man: I mean by the time we, only six weeks left so.

Avri Doria: I understand.

Jeff Neuman: So that's it. I think we're all probably in agreement that whatever it is that happens should be over by mid January. Should, but that's always subject to change.

So I haven't heard of anyone oppose except for I guess Mike's post to the council list, haven't really heard anyone opposed the notion of a face to face, especially if we can get funding.

I guess Al has asked a question of what funding actually includes. So we should probably get an answer for that.

And then probably at some point in Seoul and after talk about dates that we all think is reasonable. What I'm hearing now is probably January is much more reasonable then December or Nov - certainly November because of everything else that's going on.

So we just need to come up with those dates. And we'll send around a doodle I guess or we'll talk about in Seoul first.

So I think anyone else have any other thoughts on a face to face? Great, then we can move on to Stage 3.

We made really good progress the last call or two on Stage 3. So there's only a real, not too many items left that we haven't talked about.

And I think what's really, what's good about that is that we'll have enough information to draft a survey on Stage 3.

Marika do you want to just update the group on where you are on the draft report for Stage 2 and timing on that?

Marika Konings: I hope to have a first draft by fall. But to be honest I still have to start it. But hopefully I have a lot of time on the plate.

Jeff Neuman: Well do you want to perhaps put a priority on the survey for Stage 3 so we can discuss that in Seoul? Is there a way you can do that? Or do you need my help? Maybe I can help you and come up with questions?

Marika Konings: But the survey will follow the questions here. The survey is relatively easy to set up because normally I just use the questions that we use as well in the document here.

So I mean that I can set up relatively quickly. And get out. But I doubt that people will have time to complete it before Seoul.

Jeff Neuman: Yes, no I understand that. But it's - maybe we can even just throw out those questions in person because they'll be more people than just the people in this group.

And so it might help to get some fresh thoughts on that.

Marika Konings: Well what we can do as well is, you know, do the survey there with everyone. Sort of one lump in. And I don't know if the system can handle it. But and go through the questions and people put their input in on the spot. I mean that's another way of doing it.

Jeff Neuman: Okay. So with that said, if we go on to I think we left off, or what we have left are really six and seven. I think the other ones are kind of covered in some of the other statements.

There's some other parts possibly. The one thing we have to...

Marika Konings: We do so, Jeff, we do so have some questions in Section 5 that we haven't covered.

Jeff Neuman: Okay so we've gone through five A, B...

Marika Konings: No, A we haven't done yet.

Jeff Neuman: So A is, all right so we did B, we did C. Okay good. So with A the question is again we're talking about public comment periods. And this is during the working group phase.

This is during the work phase. The question is are public comment periods, scrolling in my own, it's not posted Marika so I'm actually going through my own copy here.

You, are you able to put it on Adobe?

Marika Konings: It's on Adobe.

Jeff Neuman: Is everyone seeing it? I'm seeing a blank screen. Am I the only one?

Alan Greenberg: I was getting a blank screen but I'm seeing it now.

Man: I'm seeing PDP, working teams Stage 3.

Jeff Neuman: I'm not. Okay that's interesting.

Marika Konings: Jeff I'll (be create) you as a presenter. Maybe that will change things, I don't know. I have it showing here so.

Jeff Neuman: What page of the document are we on?

Marika Konings: Four.

Jeff Neuman: Page 4. Okay thank you.

Marika Konings: It crosses over from four to five.

Jeff Neuman: Got it. All right, if I don't see it then what I will do is I will just, I'll log back in or out and into that.

So going back to 5A, the question is should there be requirements or guidelines for which elements a public comment period should contain?

Marilyn Cade: Jeff it's Marilyn and I just wanted to introduce myself.

Jeff Neuman: Hi Marilyn. So Marika is there any background on that question? Should there be requirements or guidelines for which elements a public comment period should contain?

Do you remember what the genesis of that was?

Marika Konings: I don't remember but I can imagine that it might be linked to other documents that do have sort of elements that are contained in the bylaws or, you know, what should be addressed.

For example in the issues report so, you know, the question is should some further guidance be provided to working groups? You know, what kind of - should they only ask the charter questions?

You know, do they have the freedom to also put forward solutions? I mean going back to the discussions we had before as well on, you know, how many public comment periods do we want?

Do we want one on the work plan of the working group? One as well on the interim or draft documents, one on initial reports? Or it's more a question should there be anything more formal than there currently is?

Or is this really up to the discretion of the working group with what to include or what to ask or what not to ask?

Marilyn Cade: Jeff can I, sorry, can I get in the queue on that? It's Marilyn.

Jeff Neuman: Sure, I see James has his hand raised and then I'll go to you Marilyn.

Marilyn Cade: Sure.

James Bladel: Hi Jeff, thanks, this is James. And just as the producer and consumer of numerous comment documents, I was just thinking that there's a balance here that we should be looking for in 5A.

You know, in providing a rubric or some sort of guidelines to make sure that comments are relevant and useful. Because I think that we seen some comments that certainly take working groups off track.

But also leaving the door open but, to the, you know, to the very real possibility that someone in the community has some thoughts that have been overlooked by the group.

So I think that, you know, if we can strike that balance, I think there could be requirements or guidelines for comments.

Possibly even using Marika's survey as for this group as a model to, you know, crystallize some issues but yet leave it open for other issues or relevant topics that may have been overlooked.

Jeff Neuman: Okay I think that's helpful, Marilyn.

Marilyn Cade: I want to be a little careful about our restricting what people can comment on in a public comment process. You know, I think our goal here is as I understand it we're seeking public comment.

And the comment could be that, sorry, I can't seem to use my document here. The comment could be that we basically, sorry, I've just been kicked out.

The comment could be that we basically overlooked something that needs to be taken into account. And, you know, the response may be that's out of the working scope that it can be logged and identified to come back, you know, into feedback. Because this says should there be requirements or guidelines for which elements a public comment period should contain.

So I would have thought this would be, you know, it needs to include the present terms of reference. It needs to include the length of time. It needs to, you know, include the - a description of how the public comments will be used. Because not everybody is going to be, we hope in the future, not everybody will be the experienced commenter (sic).

But new and increasingly folks who don't speak English as a native language are going to be commenting. So I would say yes there need to be guidelines.

But we need to be careful that we're not cutting off free expression of speech by saying you can't add in information that is out of the scope.

We just should make a request that comments be relevant and targeted to this particular topic. But I don't think we can say, you know, people can't identify to us that we have left something out.

Jeff Neuman: So I think that's a good point Marilyn. And so what I've gotten from the elements that you said you include terms of reference, length of time, how comments will be used.

I guess I'll turn it, Avri's got her hand raised. If anyone else can think of anything else that would be useful in the notice or the solicitation for public comment, that would be great, Avri.

Avri Doria: Yes, I actually was very much in agreement with what was just said by Marilyn. And basically I think one of the things that you can indicate in how it will be used is you can say that in cases where things we're deemed out of scope or were discussed previously, the documentation first of all should already include that.

And so in response to that would be noted, in other words I don't there there's a necessity to re-hash something just because someone brings it up in a comment period.

But certainly to say you'll take their comment. You'll balance it against the discussion what's had, see if there's anything new that needs to be dealt with further. And indicate that.

Jeff Neuman: Okay, I think that makes sense. Any other elements that anyone else can think of for requirements in a public notice?

I guess Marika one of the things we could do, and Margie is kind of go through the latest, you know, some of the samples of the past 5 or 10 solicitations for public comment and just see what elements they contained.

What we liked, what we didn't like. And just kind of see what co - and what common elements there are. You know, kind of, that would help the group.

Marika Konings: Yes we can do that.

Jeff Neuman: Okay. All right, jumping on to we talked about 5B, about the public workshop. We talked about how public com - how to obtain public comments from, well actually did we talk about 5C? No, actually we haven't.

So the question is how do we take comments from groups that do not participate in ICANN or other SOs, slash ACs? Anyone have thoughts on that other than the stuff that's normally done which is, you know, obviously it's posted on the ICANN Web site.

It's sent out to the liaisons of all the groups, certainly within ICANN. I'm not sure, does the liaison list include the other SOs and ACs? Or is it really just GNSO? Does someone from ICANN staff know that?

So Al has got his hand raised.

Alan Greenberg: Yes I don't know the answer to that. The liaison list is always a mystery to me just who is on it and not.

Glen Desaintgery: Jeff this is Glen, sorry I was on mute. The liaison list only goes to the GNSO constituencies. It does not cover the SOs and the ACs.

Jeff Neuman: Other than the (AVAC).

Glen Desaintgery: Other, well, you get it via that list. But what I always do is I do send notices to the other ACs and SOs.

Jeff Neuman: Okay you send it generally separately to the...

Glen Desaintgery: Yes, exactly, yes.

Jeff Neuman: To the GAC as well?

Glen Desaintgery: The GAC yes.

Jeff Neuman: Okay. So aside from doing that, and actually was there anything else you wanted to say on that or?

Alan Greenberg: Yes I did. In the last several years when calls for constituency statements have gone out, the ALAC has been explicitly included but not necessarily other SOs and ACs.

And obviously anyone can comment on a formal public comment. But if you look at the history, most ACs and SOs don't. So I think to the extent that a working group believes that there may be significant input from another part of the ICANN organization, that they should be explicitly requested for a public comment or for comments that they have.

And so I think that's one of the things that should be included in the checklist of do we want to send out an explicit targeted request to other bodies within ICANN on this particular issue.

Jeff Neuman: I think so. During the last call we talked about really not necessarily distinguishing in public comment periods. I mean unless there was some reason the working group wanted to.

But in general not to distinguish and send out separate calls to constituencies versus public comment. Possibly allowing additional time for constituencies to make comments.

But not issuing separate calls. In other words, not having one call directed at constituencies and another call directed at the public in general.

Again that doesn't speak to how the working group may consider those comments. It's just in general when you're soliciting public comments not to necessarily have that dichotomy.

Man: So you're suggesting they be done in parallel.

Jeff Neuman: Right.

Man: And synchronized.

Jeff Neuman: Synchronized but it's, we also discuss the possibility that constituencies may need more time or ACs needing a little bit more time than the public in general.

Man: No, understand.

Jeff Neuman: So just because of the coordination efforts that have to take place. But yes, that when you do a comment there really shouldn't be this distinction between receiving comments from constituencies and the ACs and the public At-Large.

Again the working group could always choose to weight things differently, or to weigh things differently. That's up to the working group.

So Avri you have a comment?

Avri Doria: Yes just a quick one. If comments are going to go out to the public in multi lingual form, it will take as long as constituencies.

Jeff Neuman: And that's even assuming that the day it's available for public comments in (Aske) or in English, it's available to any other languages.

Man: Which is generally not the case.

Jeff Neuman: Right. So I think that's a good point to note. Yes, Marika.

Marika Konings: Yes, if I can make a comment on the translation issue because, I mean that's a question that will need to come back to the group I guess at the end because it's, you know, one of the overarching questions.

But in a recent case for an IRTP Part D we actually (unintelligible) the comment period in the five UN languages. And there we actually, I mean the announcement was relatively short.

So we actually waited until we had all the translations before launching the public comment period. But there we did keep, you know, the same time as it said in the bylaws as we had all the information in the different languages available when we launched it as well in English.

So I can just say, you know, take that into account. Maybe in the translation discussion whether you wait until everything is available or, you know, you start but you give everyone the same amount of time.

Even if it means that, you know, Chinese starts 10 days later than English. You've got each of them over for 20 days or 30 days or. So that's something that the group will need to consider at some point as well.

Marilyn Cade: Jeff I'd like to get in the queue on that. And unfortunately I can't use my laptop. Can you put me in the queue?

Jeff Neuman: Yes, you're next.

Marilyn Cade: Okay, It's Marilyn Cade. I work in a lot of international forums and not just in ICANN. And it is customary to provide the baseline text first and go ahead and publish it and then to provide translation.

Then it's - it is pretty much expected that there will be some documents that will - that will be available in the base language they came in in first. With other documents translated.

Now what we're talking about right now I think is documents that ICANN itself develops right?

Man: Yes.

Marilyn Cade: But I haven't actually heard and perhaps I missed any comments about if comments come in in other languages than English, how they're going to be translated if they are.

Marika Konings: This is Marika to respond to that. For the public comment period we had the idea was that people could submit it in those five UN languages and they would then be translated back to English for the working group to consider.

Unfortunately we didn't receive any comments in other languages than English. So, you know, we didn't have to do it in practice.

But of course it is a question when, you know, you have maybe a public comment period, or new GCLE that, you know, you received hundreds of comments.

Then of course it will take much more time. And will cause a delay.

Marilyn Cade: Well Marika my suggestion to staff is they really should take a quick look at common practices in the UN agencies. Which are fairly easy to come up with.

And what you'll see is there is no delay in posting documents to wait for translation. But there's a set amount of time that needs to be provided for any documents that are translated.

And I think, you know, rather than reinventing the wheel or trying to say that ICANN is even richer than the UN, that's a joke.

You know, we might just look at what the common practices are in some of the other global forums.

Jeff Neuman: Yes, Alan.

Alan Greenberg: Yes, first of all it's problematic if you have different periods where the comments close in different languages. For, you know, to look at the At-Large, we tend to make our comments in English which tends to close first.

But we can't make that comment until we get the input from the people who have to read the other doc - the other language documents.

So the current practice is not quite what we really need if we're going to have multiple languages. And want to seriously treat that input.

Then we can't have comment periods that end in different languages at different times. And in reference to the point to the UN, we're in a very different space right now.

And I think we have to be a little bit pragmatic about it. ICANN finally posted bylaws in multiple languages, except the bylaws are a year and a half out of date now in the other languages.

You know, it took a year and a half after the decision to do it to get the translations up. So I think we have to be a little bit pragmatic when making rules around multiple languages.

Jeff Neuman: Yes, Marilyn did you want to respond to that?

Marilyn Cade: Well I just, I agree with Alan on that. I'm just saying that I don't think we should set objectives that can't be met by even, you know, international organizations that have been around for an extremely long period of time and have very well established rules.

You know, even though certain documents are translated into all UN languages by the UN, many other documents are not.

And particularly for regional meetings the translation may be both the interpretation and the translation may be limited to what is specific to that region.

I'm not suggesting ICANN can do that. I'm just suggesting, you know, we do have to be pragmatic and reasonable and figure out what's essential to do that enables participation.

But I don't think we can take on unrealistic, if we set unrealistic expectations, then people are going to find that a barrier to participate as well.

Alan Greenberg: Yes.

Jeff Neuman: Yes, I agree with that. So I guess the question is so what would you put, so what would you put in the bylaws or rules of operation to address those concerns?

((Crosstalk))

Marilyn Cade: Jeff it's Marilyn again. Why would we set the - we're talking about the PDP process in the GNSO?

Jeff Neuman: Correct.

Marilyn Cade: Why - wouldn't we be guided by whatever the overall ICANN bylaws say about this topic because it's a topic that's about four more than the GNSO?

Jeff Neuman: Yes, I'm just trying to narrow it down that we're trying to provide some guidelines as to on our public comment periods within the policy development process.

Marilyn Cade: Right, right, right, right. Sorry, I just meant on translation.

Man: Because there are no established ICANN policies at this point.

Marilyn Cade: But isn't the participation committee of the board examining that and thinking about addressing it?

Jeff Neuman: You're asking a question I don't necessarily, I mean I know what they're supposed to be doing.

Man: I assume they are going to be looking at, and I also assume we're not going to end up with a policy saying everything is translated.

Therefore there's going to have to be judgment calls along the way. Do we want to put some guidelines in for PDP groups to remind them of that is really the only question.

Marilyn Cade: I think I would have to say, it's Marilyn again, that this is an area that needs further consideration in light of other activities related to this topic that may be underway at ICANN.

And we should try to ask staff to help us look across the rest of ICANN. We'll be it sold, there's a public participation meeting I think. Maybe we could come back to this topic.

Jeff Neuman: Okay, Marika can you make that note.

Liz Gasster: It's Liz. Can I make a suggestion too?

Jeff Neuman: Absolutely.

Liz Gasster: My sense on the public participation that what they posted for public comment has more to do with kind of the preparation for meetings and document schedules.

And I know that, I think you're absolutely right Marilyn and I agree with the recommendation to coordinate with what they're doing. But I guess I also want to emphasize to this group that it is useful for the group to consider what is really appropriate in the PDP or and policy discussion context.

There could be things that are especially important in terms of these timeframes or how they should be incorporated or the importance of the breadth of what soliciting that you should feel comfortable and empowered to at least make a recommendation about what you think is appropriate in this context.

That could feed into that process which is not fully defined yet. So the coordination is really important. But I don't want the group to feel that they need to sort of be dependent on that process.

I think it's very important for this group to drive this question in terms of what's relevant and appropriate for PDP.

Marilyn Cade: So it's Marilyn and I have another question for staff then.

Liz Gasster: You bet you.

Marilyn Cade: Are you, you know, one other approach, not perfect, but on other approach is to examine the utilization of machine translation for documents. And to set

certain guidelines that enable the more effective use of machine translation, as imperfect as it is.

Liz Gasster: Yes, another good idea.

Jeff Neuman: Okay Alan you have your hand raised. Is that old or is that?

Alan Greenberg: No that's new.

Jeff Neuman: Okay.

Alan Greenberg: Clearly if the - if ICANN comes up with any ICANN wide guidelines regarding translation or multiple languages, we will end up having to follow them.

In the absence of those, I think we should include within the PDP process that PDP groups should consider whether multiple language documents and comment periods are required.

If they are, that multiple - the other languages, the language of the English should be given equal access. In other words not have common periods ending at unreasonable time - at different times.

But we should not delay publication of the English documents waiting for translation. I would think those three things phrased as briefly as possible are warranted in the PDP to remind people that we are dealing with issues which are relevant to other language, the speakers of other languages.

Jeff Neuman: So Alan can you, I hate to ask because it was really...

Alan Greenberg: I actually wrote those down. So I can repeat them.

Jeff Neuman: Great.

Alan Greenberg: Number 1, working groups should consider the issue of whether other languages need to be considered. Do other languages need to be used?

Jeff Neuman: Yes.

Alan Greenberg: If they are then the comment period, then all language groups should be given reasonable opportunities.

Jeff Neuman: Okay.

Alan Greenberg: And in my mind that maps to the comment periods should not end one before another, specifically English should not end before the other languages because that loads the dice against someone consolidating multiple language comments into an English one.

Jeff Neuman: Yes.

Marilyn Cade: Yes that's good, yes.

Alan Greenberg: And At-Large faces that all the time. You know, we're expected to put in our comment by a certain date. But two thirds of our community hasn't read the document yet.

And lastly we should not delay publication of English documents waiting for translation. So it means English speakers have longer time, but everyone needs adequate time.

Jeff Neuman: So Marika will and Margie will have these notes for this one. But I'd also make the note that can you put those comments into Stage 6, which I think is the overarching issues on language translation. So we don't lose that.

I think that's - that was well stated. Does anybody have any comments on the email, you know, comments on that?

Woman: Made great sense to me.

Jeff Neuman: Okay, anybody else have comments on what Alan has said? Anything to add, modify?

Would it, Marika and Margie would it help you to have Alan send that to you, to us on an email or did you catch it?

Marika Konings: I did capture.

Jeff Neuman: Okay good.

Marika Konings: But I would invite Alan once I put out the notes, you know, to check if I got it right.

Alan Greenberg: Okay.

Jeff Neuman: Great so we talked about language translations. We talked about public comments that - well we didn't actually address most of that question which was so we talked about translations.

But how do you obtain comments from groups that do not participate in ICANN? Obviously it goes out to the liaison list. Glen sent it out to the other SOs.

ICANN generally, there are a number of news organizations that pick up ICANN announcements. Is there anything else ICANN should be doing to try to reach those groups?

Or is there anything, or is that pretty much dependent on working group to working group? And maybe it's dependent on them to seek specific input from certain experts that they believe will be relevant?

Marilyn Cade: I have a question on that.

Jeff Neuman: Sure.

Marilyn Cade: I'm not sure I fully understand the purpose of our asking that question. I think, you know, I think we need to ask ourselves are there specific topics.

And I might use IDNs as an example. So they're, originally there may have been a very large number of parties interested in IDNs that were not participating in ICANN.

And so the question there I think is are we distributing or making access and aware - are we creating awareness about the public comment process to parties who can reasonably be identified as having an interest in this topic?

And it may vary from topic to topic. So, you know, obviously there's making the, there's making the public comment period easy to access on the ICANN Web site.

But then there's the issue of outreach and awareness. And that's what we're talking about here, isn't it Jeff.

We're talking about how do we, yes.

Jeff Neuman: Yes, this one is on outreach awareness and related to D is how do you help those that are not intimately familiar with ICANN's, with these issues?

How do you expand the information so that they can read up on it outside of what's put into a very specific report.

I think they're kind of related in a sense. But you're right outreach is Number 1. And then once you have, once you've reached outside of ICANN and have

gotten these people, how do you make sure that they have all the information so that they understand what's in the report.

Marilyn Cade: So it seems to me that within reason a Webinar could be offered. And I say within reason because I think we have to be reasonable about the demands on staff.

A, you know, a fact based flyer similar to what the staff does now, you know, here's the history of the topic, blah, blah, blah. But I don't know how, you know, I'm really struggling with ICANN's ability or even responsibility to undertake worldwide global awareness on a PDP by PDP basis.

I think it's strengthening the existing tools. But I don't know, unless it's an extraordinary topic that's brand new, how we go about PDP specific outreach to communities we don't yet have relationships with. That's a huge burden of new work.

Jeff Neuman: Yes I think that's a fair point. It's tough to do on a PDP by PDP basis. We already did talk about making Webinars available on option - not requiring it, but make - certainly making it a tool available to working groups to have at their disposal to solicit public comments if that's what they wanted to do.

We spent a fair amount of time on the last call talking about whether it should be an option, a recommended practice or a requirement.

And the group at least on the call leaned in favor of an option as opposed to even a best practice.

And so I don't want to kind of re-hash that at this point. So I think that's a tool that's certainly available. A flyer is something new that we haven't actually talked about which is a good suggestion.

And I also take your points well that it's hard to do this on a PDP by PDP basis. And, you know, is it necessary for every PDP to get the whole world.

I mean maybe a PDP is so targeted that you don't need the whole world's commenting on it. And it makes it much more convoluted to actually have people that aren't familiar with the processes and what's going on make those comments.

It looks like Marika's got a comment.

Marika Konings: Yes, I mean I think one of the issues we already spoke about is on in the previous call is the user workshops or Webinars during a comment period.

And one suggestion made at that time was as well maybe it can be done at the start of a public comment period as a way to inform the community as what a working group is looking for.

And then provide some further explanation as well on the issues that are being requested.

On the other point on how to reach other groups, I think something that has been quite effective in recent experiences is actually asking the working group members to make an effort and put it out to, you know, their respective communities and blogs and mailing lists.

And, you know, other organizations they are participating. And it has been quite effective in getting comments in from groups that, you know, normally might not participate in ICANN.

But because a working group member posted it on a blog somewhere raising, you know, in a discussion related to the topic that's on the public comments. We did manage to get it in.

So it's a way as well to spread the burden and, you know, not maybe make it the task of ICANN staff to try and find others that might be interested if I try to encourage working group members to take on responsibility for that as well.

Marilyn Cade: I have a comment on that Jeff.

Jeff Neuman: Sure. Yes.

Marilyn Cade: You know, I'm not saying that's a bad idea. But I'm going to say that relying on present working groups is maybe, you know, we have to be realistic that sometimes that actually would mean you would miss all communities.

So I'm kind of contradicting myself. But I really think that broad awareness about the PDP process underway at ICANN is a meta issue across the GNSO and more broadly into participation in the organization's work.

And then specific activities that highlight a particular policy process are going to need to be thought through including how much time and resources go into each stage of this kind of outreach.

And I think, you know, at some point Jeff we probably want to have a little straw walkthrough and say, you know, hypothetically here's Issue XTA. And we're going to walk through all of this and say how does this - how would this look in implementation.

Jeff Neuman: Yes I think we'll be eventually drawing a bunch of diagrams to map out what different possibilities and processes would look like, different scenarios.

Marilyn Cade: Right.

Jeff Neuman: Okay any other comments on outreach? And any thoughts on how to expand the information available related to a PDP? Which is okay, now that we're

getting these new people in, making comments to the is there something more we can do?

And maybe the answer is no. But is there something more we can do to make additional information available? Okay silence, let me jump to the next one then.

Which is how can public comments be handled in a more transparent way? And I'm assuming this is not receiving comments, but how could they be handled in a more transparent way when comments come in?

We sent around or Marika sent around, we asked Marika to send around the language from the affirmation of commitments. Which I think are helpful in this respect in that they do have some pretty strong statements as to what ICANN as an organization needs to do to address comments that are received.

And Marika sent that around on Wednesday which was actually attached to the link about the updated Stage 3. And Section 9., I think these sections are right Marika, the 9.1.

It talks about...

Marika Konings: I'll post them up on the Adobe connect as well so people can see it there. We'll, you know, go over a bit that document we're looking at. But in this way everyone has the language in front of them. So you should be able to see it now.

Jeff Neuman: All right, and that no, yes so that's the language from the affirmation of commitments. And it talks about, let's look at which one it is here.

Trying to see if this is actually the one that I was looking at.

((Crosstalk))

Jeff Neuman: Acting in the public interest. I think there was another one in that document. I'll find it as well. Yes Marilyn.

Marilyn Cade: You know, I'm going to put a placeholder down to come back to. One of the things that staff does now is to summarize the comments.

But sometimes those of us who make comments disagree with the staff interpretation of the comment.

So, you know, one thing I would say is the - there's two things that I think are a concern. One is the opportunity for someone who makes the comment to clarify whether or not the interpretation is correct.

Secondly very often staff prepare reports that go to the board. And those are not made public to the community. But the board makes decisions on them about PDP recommendations.

So one thing that could be enhanced is the transparency from end to end.

Jeff Neuman: Yes I think that's a good point. And certainly one I've made comments on on a number of occasions, including the latest, one of the latest public comment periods about transparency of making staff supports to the board public because you never know how they're summarizing it.

And certainly I've heard about things that are - have not been summarized in a correct fashion. Marika is there a way you could post, I don't know how to post a not - Number 7 from the affirmation of commitments document?

Marika Konings: Yes. I'll post it at the bottom of this. There you go.

Jeff Neuman: Because I think that one talks about fact based policy development and responsive consultation procedures that provide detailed explanations on the - of the basis for the decisions.

Including how comments have influenced the development of policy consideration. Obviously forget the part that says in publish each year an annual report.

But in addition, ICANN commits to provide a thorough and reasoned explanation of decision taken the rational thereof and the sources of data and information on which ICANN relied.

So with the exception of the annual report, I think the rest is very relevant to a working group. And of course not the budgeting process, but you could see that Number 7 I think is very relevant to a working group as it is to the staff and the board. Alan do you have a comment?

Alan Greenberg: Yes, a coupling that I strongly support the issues of transparency from end to end. And statements similar to Number 7 in the AOC have been made recently.

But this one certainly is a rather concrete one and one we can't ignore. And I'll point out sitting - running a working group right now which is dealing with it's first set of comments under these new rules so to speak.

It's really onerous. And it's going to significantly increase the amount of time and effort to address comments. But I don't think we can avoid it. And I'll go a little bit farther then you or Marilyn did.

In that it's not always that comments are misinterpreted. It's not unheard of for comments to be completely ignored.

And there needs to be a recourse that one can point that out and make sure that it is not ignored in the next pass as it were.

Jeff Neuman: Yes, so what's your, what, let me push a little bit on that. What's your definition of ignored versus, there's a lot of people that make comments.

And maybe I'm guilty of it on some occasions too, a comment that when someone disagrees with that we've submitted in a comment that, you know, it's easy to make the statement well my comment was ignored.

And you see that constantly. Now in some cases that is true. They are ignored. And they may be ignored for a number of reasons.

Alan Greenberg: No I, you're misunderstanding what I said. I don't mean ignored by the working group which is now expected to put a rationale for why they ignored it.

I'm saying ignored from the summary.

Jeff Neuman: Got you.

Alan Greenberg: As if you hadn't made the comment, erased from reality. Can I make it any clearer?

Jeff Neuman: Yes, no thank you. I, right, okay right so my point is that you need - we need to be clear that ensuring that, or minimizing the ability, let me, I'll frame it in a different way.

Avri's got a comment.

Alan Greenberg: Let me try. Staff are human and make mistakes. And sometimes they're not accidental mistakes.

Jeff Neuman: Okay thanks, Avri and then Marika.

Avri Doria: Okay thanks. This is Avri. I'm not usually known for coming to staff's defense on things. As the staffer, another contact who is responsible for writing up comments.

I think there's a couple things. One is yes, things are sometimes forgotten. Two, I think things are rarely intentionally left out because there is a fear of the devil coming and hitting you on the head for leaving something out.

So the leaving out intentionally is not something that I believe happens much. Third, there is something that I certainly noticed has happened to me in my other context.

Is I don't know or at least understand the comments. That's sometimes I will think a comment is the same as another comment I read when they're not.

And so as I say, I'm not known for coming to staff defense, but in this case I really don't think we should talk about intentionality.

But, you know, there is always the possibility that something does get left out unintentionally or because it's not understood.

Alan Greenberg: And it's irrelevant which it is. There needs to be a way to address it.

Jeff Neuman: Oh okay Marika. Marika are you there?

Marika Konings: Sorry, I didn't take myself off mute. And, so yes to come through to our response is, you know, I completely agree. As the person responsible for, you know, making many summaries of PDP public comments period.

And, you know, I'm required to make an assessment as to, you know, describe even in the bylaws (it's for soft to) and it's reasonable discretion to include, you know, the relevant comment.

And sometimes that leads to a question that sort of think the right technical and, you know, you might not realize the importance of it.

That's why I would like to point out that the summary that staff provides is a tool for the community and as well for the working group, you know, to have an easier way to handle all the public comments.

But I think it is in the obligations of the working group members to review all public comments in their full detail. That's why we always add the disclaimers while in the (pubavy) summary saying this is a summary.

Take into account things might have been left out, you know, not intentionally. So I think it's, especially in the PDP contacts where it's for a working group to review public comments.

It should be up to the working group to make sure that all of the relevant elements have been included. And that they verify that, you know, staff unintentionally didn't leave something out that was of key importance for a work group to consider in their deliberations.

Jeff Neuman: Does anyone have any comments on that? You know...

((Crosstalk))

Jeff Neuman: Okay.

Alan Greenberg: And Alan.

Marilyn Cade: You know, I think that actually, I'll just speak from historical experience. Not involving any of the staff who are presently employed at ICANN.

There was a previous situation where a report was written that participants significant, the broad group of participants significantly agreed with.

I happened to be chairing the working group at the time. And that was, so that's one example where we needed to have a process by which the parties who were in the working group, in the task force.

I think it was called at the time. Needed to have the ability to actually provide some editorial advice that significantly revised a initial staff draft. That's one example.

The second example that I would give is actually not so much in the cycle of work that Marika described. But actually where I see concerns are, and maybe this does address a point that you made Marika.

That, you know, something just gets omitted accidentally or not picked up or you're synthesizing dozens, dozens, dozens, dozens of comments. You think it's covered because someone else said something like it.

But the pre - the submitter thinks that their comment is actually distinct. So that's a, that to me is sort of a, you know, how a clarifying comment could be interjected to enhance the staff summary.

But the broader point I was making takes place I think actually at a different stage. And that is after, since we are dependent on the history of the summary all the way through.

And I know the board members because I've interviewed them privately. I'm joking. But frankly the board members can't read and digest all of the comments.

So the summaries are incredibly important. And that's where I think we just need to think about what is a process that's effective and pragmatic by which

a addendum or a clarification or a minority statement or something of that nature can be appended to the staff summary.

Without requiring a complete staff re-write to take into account a sig - something that's viewed as a significant gap by a commenter (sic) or a group of commenters.

Jeff Neuman: Okay Alan I think you were...

Alan Greenberg: Marilyn covered what I was going to say.

Jeff Neuman: Okay, any other comments on that? Okay so if we can take down Note 4, I don't know how to do that from my screen.

Great the next question is we talked about 5E, we talked about 5F, or I think actually we talked probably we talked about the other one.

So although I don't see a separate notation on 5E which says which public comments should be mandated by the ICANN bylaws. But I think we talked about, we actually did cover those maybe in G or in another place.

So let me jump on to Question 6 which is implementation impact and feasibility. And this, you know, relates overall to the job of a working group to look at historically what has happened with the exception of a couple of scenarios.

Transfers being an exception, and Marilyn could probably remember that, maybe some others. In general what happens is that the working groups or task forces will come up with a policy if you will.

And then staff has been left to develop the implementation. And although they will put that out for public comment, the question is should working groups be more involved in developing that implementation plan?

And I say transfers was an exception because I think initially with transfers there was a separate group that was formed, an actual implementation group that was formed to deal with that.

It wasn't the original task force. It was another one. Although there was certainly a comment overlap, I mean I was on both of them. I think Marilyn may have been on both of them.

So I think that's the overall topic. The first question is should implementation guidelines impact and feasibility be part of the work of a working group?

And this article says an approach develop on a red streak constituency determine of policy is optimal. It could be considered.

Marilyn Cade: So I do have comments if I can get in queue.

Jeff Neuman: Sure.

Marilyn Cade: I chaired two task forces in the early days, which is one of the reasons that I have so much admiration and respect for our current staff. Because we didn't - we, I think we enslaved our volunteers in those days.

And but one thing that we learned, and particular I think the transfers working group was an excellent experience on this. We learned that we actually needed to have what I would call expert advisers from the task force to carry into the development of the implementation guideline.

I was (XF issue) on that group and (Grant Forsythe) was as the chair of the former group of the ta - former task force. And (Grant Forsythe) actually represented, I think Jeff it was you and (Grant).

But I think that we have to have the ability to understand the implement ability of policy recommendations. But that can't be limited to only looking at the impact on contracted parties.

It also has to take into account the impact on registrants. And again I would say the affirmation of accountability contains in it something that, and I should identify, this is Marilyn Cade speaking.

The affirmation of accountability contains in it something that I think has huge implications for ICANN. And that is that ICANN must act in the public interest.

Which is not something that has been practiced within ICANN for quite some time in my view as somebody who helped to establish ICANN and to reflect on (Pascal)'s commitment to ICANN's role in acting in the public interest.

So the implementability (sic) and the impact on the value change, registrants, all the way through the contracted parties.

I think we do have to, what we used to do is what I call a feasibility assessment at - before we finalized the policy recommendations we got a really good scrub from the operations staff that raised a lot of questions.

I know we did that at various stages on the new GTLD process when I was still involved. My question to you guys is are you still doing it now? Or are you, have you replaced that step because there are, you know, such terrific staff at ICANN.

Have we, are we omitting that step? And if we are omitting it, then I think it has to be built back in. Sort of a, when I directed policy previously at computer systems at AT&T, we re, you know, we sat down and did a 360 review of the policy at various stages.

Before the policy position was actually, you know, put forward from the business unit.

Jeff Neuman: So James you had your hand raised. You took it down. Do you want to raise a comment?

James Bladel: Yes, just that I have to drop off. I was going to put that in the chat. But my screen went blank. So thank you.

Jeff Neuman: Oh okay. So Marilyn your comment is what's going on now is more feasibility. And what should be inserted more into the process is impact, not only to the contracted parties, but to others in the Internet community, to registrants or whoever else could be affected by what's coming out of the working group.

Marilyn Cade: I, that - I'm actually asking a question Jeff. And it's Marilyn speaking. You know, I have not been directly involved in - since I stepped down as a counselor in working through - the last policy development process I was closely involved with, directly involved with was the gTLD - the new gTLD policy up to a certain stage

Do we actually have integrated into the working group and into the whole PDP process what I would think of as a 360 review? You know, staff may say, "Oh my God this is incredibly onerous and we don't think we can implement it," and, you know, "We feel we'll drown under the consequences of your policy recommendation."

And the stakeholders may say, "This is incredibly important, it has to be implemented. We have to come up with the resources and we have to have that dialogue early in the stages of," you know, sorry, "prior to finalizing policy recommendations."

And then I think we do have to have some window into the development of implementation but we need to be careful that we're not actually running the development of implementation guidelines by a policy council.

Jeff Neuman: Okay. I support that. Alan.

Alan Greenberg: Yeah. I support what Marilyn's saying. I think de facto it is happening. We have enough staff and luckily at this point anyway knowledgeable staff who are involved in most of the PDP processes that I've been involved in recently that this de facto happens. It's not mandated anywhere in the policy.

And it's a careful path you have to tread. You don't want policy defined by what staff thinks are easy to implement. On the other hand you do want it implementable and you want the - what comes out at the far end of the tunnel to look vaguely like what you thought it did going into it. And...

Jeff Neuman: Well I think that...

Alan Greenberg: I'm not quite sure what words you put to it. It does seem to be happening today, how do we guarantee it happens in the future? I don't know.

Jeff Neuman: And I think that actually is a good segue into the next sub part of the question which people may have seen I commented on even today which is, should there be a procedure for clarification, reconsideration or complaint once the policy moves into the implementation phase and questions or concerns arise?

Those of you who are following or may have seen an article I did in CircleID on post-delegation no matter what, again, what you thought of the IRT - whether it was legitimate or not or the work it did, the fact is the IRT submitted a proposal for post-delegation, ICANN staff then took that, created an implementation of that which I believe - and some others, does not even

resemble what the IRT came up with. You know, what do you do at that point?

So what if...

Alan Greenberg: You write an article for CircleID?

Jeff Neuman: Yeah. That's - frankly that was my only option at that point, right? So, you know, is there anything else - is there - does the working group have an ongoing role at that point? Should it go back to the working group? Should there be a process? I mean ICANN usually does have a public comment period, is that enough?

Alan Greenberg: Well the working group doesn't exist at that point typically.

Marilyn Cade: Well the working group could be - can I ask a question about that? I think the point - it's Marilyn. The point Alan would be in today's scenario or procedure it doesn't exist. Isn't the question whether we are going to add in a window during which the working group could be recalled so to speak - attached or consulted or you get my point.

Jeff Neuman: Now the working group may not exist but the people obviously are still there in some fashion, are still somewhere. And the people could together decide to respond as the former working group, you know, the people who formerly comprised - and maybe that's it, maybe to say they could comment during any public commentary

Avri's got a comment.

Avri Doria: Yeah. I think that, you know, at some point it does have to terminate. And you could find yourself in a constant cycle of, you know, the working group put in a thing, staff did an implementation based upon comments plus the working

group, working group comes back and says, "Whoa, that's too different from what we did," et cetera.

And at a certain point I think that you've pretty much got it. It ends up with the Board and any group that feels strongly enough puts together, you know, a position paper, presents it to the Board that the Board considers and says, "Whoa, you know, we suggested A, B, C and D because of the following and they trashed it.

And just the Board has to make it's decision based on that. Otherwise we end up in a constant, you know, rotation of, "It's not what we said." And it never terminates and it takes even longer to get worked on.

Marilyn Cade: I have a follow on question for Avri - it's Marilyn.

Jeff Neuman: Okay Marilyn.

Marilyn Cade: So Avri I'm going to use a specific example. Let's say that during the working group process some of the participants who are contributing or a third party funds a relevant study such as an economic study and requests the working group to take that into account and that is not taken into account. Or they obtain a technical review of the capability of the DNS which is relevant to the development of policy.

Avri Doria: Yep.

Marilyn Cade: That's new information...

Avri Doria: At that point the council should actually kick it back. Because the council's job as I see it in all of this process is to do the due diligence and make sure that everything was considered that should have been considered that they can see. So the council's responsibility is to read through all of the addenda and all of the position papers that were sent saying, "You need to do this."

And they need to be the ones to say, "Hey wait a second this wasn't dealt with." Unless of course there's a section of the report that says, "We were asked to look at this economic study, we looked at this economic study, we don't think it fits into our particular job there. You need to..." or something else. But at that point that's the council's responsibility in doing it's due diligence as manager of the process to make sure they did the right thing.

Jeff Neuman: So let me go to - Alan's got a comment as well.

Alan Greenberg: Yeah. Avri's earlier comment about, you know, at some point the Board's going to have to make decisions I think is true. However in a section of the PDP that we haven't gotten to yet is what happens at - what happens when it goes to the Board?

Right now if I remember correctly the Board can accept the whole thing, reject the whole thing, or remand it back to the GNSO. And when we get to that point we may well want to give the Board more discretion to pick and choose based on the comments that are made during the period. Just a thought. I'm not arguing in favor or against but it's certainly one of the things we need to look at.

Jeff Neuman: Well I think it - and that's a good point for an issue we have to look at. I will also question, Avri you say you can go to the Board if you disagree or someone wants to write a paper on it but how do you know that what you write actually goes to the Board?

I've - there have been situations that I personally know of where things have been written and they never go to the Board because they're not in the staff report. The Board never even knew that they were out there.

Avri Doria: No. Yeah. You're right. We have a different issue there. The only way of making sure something goes to the Board is to publish it openly and send it to each and every one of them. And...

Jeff Neuman: Right.

Avri Doria: ...until such time as that changes and there's direct communication with the Board as opposed to them being behind the Chinese firewall you're right. The only way to get to the Board is to send them each a message.

Jeff Neuman: Yeah.

Avri Doria: Which is what I do.

Marilyn Cade: It's Marilyn.

Jeff Neuman: Yeah.

Marilyn Cade: I - I want to - I really - elevating policymaking to the Board I'm strongly opposed to - really. Either the GNSO is going to work as a policy development body or not and all it's going to do is comment on things and give opinions and let the Board make policy, even though the Board is not suitable to make the kind of detailed policy.

So I want to come back to maybe Avri's response that - let me just do this very quickly, let's say there's the terms of reference and doing the work of the working group they discover that significant - just due to innocence, it's all innocence, due to innocence certain details, certain details or fact based information was not available at the time or realized to be necessary to inform the decision.

I would say as an example we have the Root Scaling Study that we probably should have had before we did the GNSO policy, now we have it. I think

maybe what we need to have built into our working group process and into the council review is the ability for the working group to say, "Let us raise our hand to the council and, "Say actually we've discovered we need more information to make an informed policy."

Or the council to raise their hand and say, "We have discovered that our working group needs these additional resources including this additional information to make informed policy."

Jeff Neuman: So let me ask the other question that's inherent in something you said Marilyn and I'm not sure it's something that happens now - and Avri. Is that in the past what's happened is that the policy has gone through the GNSO council but the implementation has not

So what happens with, you know, the - let's say there's a policy, even a consensus policy comes out of the council, staff goes up, writes an implementation plan, has a comment period but it doesn't involve the council at all. Is it at that point the council has an obligation to raise it's hand because members of the working group notice and said, "Hey wait a minute, what staff did in their implementation plan does not resemble what our working group came out with. We need - before this goes to the Board we need to readdress this because this is just not what we intended."

Because right now that doesn't happen. Right now it's out of the council at that point. So are we saying it should be back in the - which is fine, are we saying that needs to go back to the council? That it cannot go to the Board without the council at least looking over the implementation plan and making the determination, "Yeah. This is in line with what the working group actually came up with." So, Alan.

Alan Greenberg: Given the timeframes we work on it is virtually impossible for the council to make a comment during a comment period. Comment periods are typically a

month, council meets every few weeks. It takes time to actually do something and vote on it. It is virtually impossible

I mean we have this problem in At-Large all the time. It is virtually impossible to make a considered comment with real input from people and that you can get a consensus on within the comment periods that are typically allowed. So...

Jeff Neuman: Is that...

Alan Greenberg: ...anything that we say in that line has to, has to be pragmatic and implementable.

Jeff Neuman: So does that mean then that if the working group's got a - I'm trying to think. If the GNSO council passes a policy does the working group then - or approves the policy, if the working groups stay in existence, have the implementation plan presented to the - this would take more time, but would you have the implementation plan presented to the working group for it to look over? And then once the working group is satisfied that it meets what they came out with after consultation with ICANN staff at that point the implementation plan goes out for public comment and then goes to the Board.

Alan Greenberg: That's certainly more workable.

((Crosstalk))

Woman: (Unintelligible).

Alan Greenberg: But again then it's the committee - the working group that's commenting, not the council. That may be fine but...

Jeff Neuman: Right. It's almost like a conference committee between like in the U.S. and the (unintelligible) right?

Alan Greenberg: Yeah.

Jeff Neuman: It's a conference committee - joint conference committee that says, "Yeah this is how we need to revise things to make the two versions gel." Marilyn did you have a comment on that?

Marilyn Cade: You know, sorry. I'm going to say two things and with all grace and good will, we got to be really careful about something. In theory the council is moving into a management role but in reality in many cases the council is going to eject slowly into moving away from being the advocate that they are elected to be today into supervising or let's use the word guiding policy development.

So, you know, I think we need to be careful in my view. Just as we're not kicking or I don't support - let me just say that, it's Marilyn, I don't support kicking policy menus to the Board to pick and choose from.

I think we need to be careful not to relitigate policy decisions that have been made. So if things go back to the council, right, or come to the council and they are - right now their new role is to look at process, look at resources, guide the direction of policy recommendations and then pretty much do a pass through

I'm not sure that's totally the answer. But I think we need to be careful not to redo the work of the working group, pass it to the council, then have it come back and have the council relitigate again. Do you see what I mean? So...

Jeff Neuman: Yeah. I completely see what you mean I'm just in my own mind I'm trying to figure out well what happens when implementation crosses the line? Right? And the working group that did the work, you know, some could argue and some have argued so this is not - I'm not saying one position or another. Some people have argued that on new TLDs the working group came out on

the (unintelligible) that council approved that said that there's an obligation for registries to protect the legal rights of others or however it was worded.

Marilyn Cade: Right. Right.

Jeff Neuman: Out of that one statement came all of these things from the IRT. Okay, now whether you again agree with the IRT or not but essentially that's what came out. That's implementation if you will.

There are a number of people that would argue that that went way beyond implementation, that actually went into policy. Others that think, "No that's consistent with the policy." The question is...

Avri Doria: Okay.

Jeff Neuman: ...where do people who think that implementation has crossed the line into policy, where do they actually have redress and what could they do?

Avri Doria: Okay. So Jeff I want to get back into the queue and respond to this specific example.

Jeff Neuman: Okay. I was just - yes you can - I don't want to delve too much on the IRT but...

Avri Doria: No, no, no, no, no, no. But this is - this is the really important point. Look I am very familiar with the public comment processes at ICANN because I live and breathe and die by them, right? And right now I'm overwhelmed by the number of public comment processes.

However the public comment process that the council goes out for and then the Board goes out for at various stages goes far beyond. So the public comments - and ICANN is required to take the public comments into account. Not just the public comments that come in during the working the - what we

used to call the task force, now we call the working group, but also the council process

But also when the staff open up at the Board direction, opens up additional public comment processes they take in additional comments that ICANN by bylaw is required to take into account.

So if we were to just use the example that you gave we need to recognize that ICANN received extensive further detailed comments on the new gTLD implementation process that went far beyond the comments received during the working group. I may be calling it the wrong thing now the task - the council as the whole working as the policy body.

Jeff Neuman: Right. Okay. So let me go to Alan and then Avri. Again I want to keep this not - I - maybe I opened it up by bringing up the example. The question is really what redress does a working group, does the council or does anyone have when they believe that implementation has crossed the line into policy? So that's the question. Alan, Avri.

Alan Greenberg: Yep. I think that is the question. And we need to look at the redress that council has and the working group has and commenter's. I mean as Marilyn says people make all sorts of comments but people may often make exactly opposite comments and clearly not everyone is going to be addressed in the change.

The situation we have today is the bylaws say the GNSO council through it's various work groups and task forces creates policy, it passes it on to the Board which doesn't have the discretion to pick and choose. But then staff may unilaterally make changes which the Board will then accept without any feedback from the earlier parts of the process other than public comment periods. But without going back to the people who were formulating the policy.

And that is the question. What do we want to put in, if anything, to address that kind of situation? And, you know, it's not just the intellectual property issues if you look at gTLDs. You know, it was geographic names, it was confusingly similar there was a whole bunch of things where when they got to implementation and comments from other people life wasn't as simple anymore.

That - gTLDs may be the worst possible case because it was so complex. But the question is, do we want to build something in to address those kinds of issues or not?

Jeff Neuman: Okay. Avri. Avri you may be on mute. Avri are you there? Okay. I think Avri - we're not able to hear you I'm not sure...

Avri Doria: I'm trying to get off mute. Can you hear me?

Jeff Neuman: Now we can Yes. Thank you.

Avri Doria: Okay. Okay. I'm sorry. Basically - and this is something that's been developing in my - over the last couple years. When I'm looking at policy I'm actually seeing three phases of it. And I'm seeing the policy design and recommendation that's happening in the GNSO, I'm seeing the policy approval that happens in the Board and I'm seeing the policy actualization that comes out in the implementation.

And then there's the cycle back through comment on the implementation and the Board being in that position of deciding whether the implementation is true to the design that they approved.

Now I think Alan's right and that that final implementation review of 21 days may not be enough time for At-Large or the GNSO to make a comment to the Board saying, you know, "This is not an accurate implementation." And so perhaps the solution is that that period needs to be lengthened. But the chain

of process from design to approval to implementation seems, seems right to me.

And it does seem that the staff has the responsibility to implement faithfully based on the design plus the comments. And the Board again is in that - and again I am not known as being a defender of the Board, the Board is in the position of having to make a proper judicious judgment that this was done properly or not

And if it's not, kick it back. And if it is then, you know, let it go forward. So maybe what needs to be addressed is just the time for comment in the implementation comment phase.

Jeff Neuman: Okay. Any comments on that?

Marilyn Cade: I do have a comment - it's Marilyn. I'm going to introduce a topic - I don't mean to take us off topic but I am going to introduce a topic that I think is going to have to be dealt with in another process.

And that is at what point can the community demand starting over on a policy process? Is it only after a policy has been developed, an implementation plan has been developed? And then if parties in the community or the community widely says, "Okay. We disagree, things have changed, we want to start over."

Right now the standing to demand such a change is limited pretty heavily to contracted parties. The new account - the, you know, and I don't want to discuss accountability mechanisms here I just want to raise the question of do we think in the process that has - that is being put in place is there a mechanism for the council itself to call a halt and start over on a process or modify a process? And, that's question one.

Question two - because I think that was our intent. Not to make it easy to do that and not to make it spurious. But question two is, can - if there's overwhelming objection in the comment process at the - into the council even if the council goes ahead and approves a policy and sends it to the Board what is the mechanism for reconsideration at the council level, if any?

Jeff Neuman: Yeah. I think - I think those are overall overarching questions we kind of need to put aside and address maybe in the Stage 6. I also think that there is - Marika you can, if you're back on you could - I think that the working group work team is supposed to look at - well I guess this is after that phase so never mind. I was thinking of what happens if it falls apart and the working group has to start over but you're talking about what if it's taken so long and now things have changed or there's overwhelming comment that disagrees with how it came out.

Does anyone else have a any comments on that? We've kind of gone over time. I think we have enough right now to do the survey on these statements. Does anyone have any closing remarks on this topic?

Well great. I will see everyone or everyone that's able to go in Seoul. We have a regularly scheduled meeting that maybe Marika or ICANN staff you could send around just a meeting time for this group. I know it's on the GNS's schedule. I'm not sure this group saw the schedule, the latest revised one but if we could just send that around.

Marika: Sure.

Jeff Neuman: Okay. Thank you everyone.

Alan Greenberg: Thank you Jeff.

Jeff Neuman: Thanks.

END