

**Policy Process Steering Committee (PPSC) Policy Development Process (PDP)  
Work Team (WT)  
TRANSCRIPTION  
Monday 31 January 2011 at 14:30 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 Monday 31 January 2011, at 14:30 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:  
<http://audio.icann.org/gnso/gnso-ppsc-pdp-20110131-en.mp3>

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**Participants on the Call:**

Jeff Neuman - Registry Stakeholder Group - Work Team Chair

Alan Greenberg – ALAC

Wolf-Ulrich Knochen – ISCPC

Tatiana Khramtsova - Registrar Stakeholder Group

Avri Doria - Non Commercial Stakeholder Group

Marilyn Cade - Individual

James Bladel – Registrar Stakeholder Group

Alex Gakuru - Non Commercial Stakeholder Group

**ICANN Staff:**

Glen de Saint Gery

Marika Konings

Margie Milam

Gisella Gruber-White

**Absent apologies:**

John Berard – Commercial and Business Users Constituency

Gisella Gruber-White: Thank you. Good morning, good afternoon to everyone. On today's PPSC

PDP call on Monday the 31st of January we have Jeff Neuman, James Bladel, Alex Gakuru, Tatyana Khramtsova. From staff we have Marika Konings, Glen DeSaintgery, Margie Milam and myself, Gisella Gruber-White.

No apologies noted today. And if I can just please remind everyone to state their names when speaking for transcript purposes. And I see that Alan Greenberg and Avri Doria will be joining shortly. Thank you. Over to you Jeff.

Jeff Neuman: Okay thank you very much. And I'm noticing again that we still don't have anyone from the Commercial Stakeholder Group on this call is that right? There's no IP or Business or ISP?

Gisella Gruber-White: Alex Gakuru is from Commercial Stakeholder Group.

Avri Doria: No he's not he's from NCUC.

Gisella Gruber-White: Oh sorry, Avri, sorry, sorry.

Alan Greenberg: Noncommercial.

Jeff Neuman: Okay.

Alan Greenberg: The opposite.

Jeff Neuman: All right I'm going to - and I know we got something from Jon apologizing but I haven't heard from the IP group in a while. So okay I will certainly raise this - do we have a council meeting on Thursday...

Alan Greenberg: Outrageous time.

Jeff Neuman: Yes, well, yes.

Marika Konings: For some.

Jeff Neuman: For some. Great for people in Europe. Anyway okay...

Alan Greenberg: Not really.

Jeff Neuman: Well all right we're going to start with actually some of the action items that I've seen a little bit of a flurry of activity on the email list. Probably more

activity on the email list than I've seen since - for months so - which is a good thing.

And so we'll start with those couple issues and then we'll work - continue working through the outstanding issues and the report. And so the first one is - and I promise to keep this call to an hour so I hope to stick with that promise.

And so the first one was on Recommendation 10, impact analysis. And Marika if you could just tell me which of the issue's list that's on. That's...

Alan Greenberg: Two.

((Crosstalk))

Jeff Neuman: ...going through here.

Marika Konings: It's on Page 17 at the bottom on the version that's on the screen on the right hand side.

Jeff Neuman: Okay great. So Page 17 at the bottom, impact analysis. There was a comment in there that Avri had put in that wanted to do a - wanted some new language to make sure that any analysis would include the broader set of rights including what she had said was human rights analysis.

And so what we had asked James to do is to go back and to look at the AOC and to see if anything covers that kind of topic. And James, just before the call, had submitted some language - and it was actually after Avri had submitted some of her proposed language.

So the - I'm going to go with James's language first since we had asked him to do that research. And he said Section 3 of the Affirmation of Commitments refers to - outlines ICANN's commitments to uphold and preserve the public

interest, security, stability and resiliency of the DNS, competition, consumer trust and consumer choice and international participation.

And so that - that was kind of what James had said; we should create some language that would refer to all of that. And then Avri had submitted some language that more specifically refers to human rights. So why don't we start there and see where we end up? So who wants to start?

Avri Doria: I don't have - I'll raise my hand.

Jeff Neuman: Okay, Avri.

Avri Doria: Yes. To say that human rights is outside ICANN's scope is sort of a strange thing to say. Human rights is always within scope; we cannot ever not take human rights into account.

And so I find it completely unacceptable that we saw it's beyond our scope to look into things like privacy. I mean, privacy is a human right; privacy is part of every decision that we've got to make in terms of what we're doing. And to say that that's out of scope is just inconceivable to me.

So I really strongly insist that we need to include some mention of human rights otherwise we are really quite remiss in looking that - saying that we don't care that the impact of our policies has on the human rights of Internet users is just a real deficiency. And, you know, so saying that it's out of scope is just totally bemusing to me. Thanks.

Jeff Neuman: Okay. James.

James Bladel: Yes just to respond. You know, I don't think anyone in the ICANN community is anti-human rights. I think we're coming up with a list of what we feel is appropriate to study of the impact of a PDP. I think that items like privacy and

other types of rights would definitely fall under the heading of public trust or public interest.

In fact I think public interest could read even more broadly than human rights. And I think there's actually some things out there that enumerate human rights. And there may be other rights that aren't contained in those that would fall under public interest. So I think perhaps public interest is a broader statement.

((Crosstalk))

Marilyn Cade: ...Marilyn and then I'll go back on mute.

Jeff Neuman: Okay let me get James...

James Bladel: Right.

Jeff Neuman: ...to finish up and then I'll go - I'll go you - was that Marilyn?

Marilyn Cade: Yes thank you. I'd just go on mute. I do want to make a comment later. Thanks.

Jeff Neuman: Okay. All right, James and then Marilyn.

James Bladel: Yes and, you know, I think here - I kind of lost my train of thought. But, you know, ultimately I think that we have to mirror or track the things that are in the AOC that the Department of Commerce and ICANN has set out for themselves in describing their own mission.

And I think that, you know, it's not necessarily a good idea within this small element of the GNSO to add to that mission or to build upon that mission. I'll just leave it at that.

Jeff Neuman: Okay then we go to Marilyn.

Marilyn Cade: Thank you. My apologies for being late and I'll announce I'm going to drop off in 20 minutes. But my comment is I think very consistent with what James just said.

During the President's Strategy Committee which worked for almost three years we did have a serious discussion about this range of topics related to defining ICANN's role in the public interest which is - which needed to be tied to their role as a technical coordinator and manager of the unique indicators.

So it was an effort to understand where it was appropriate for ICANN to examine the implications of their work. And I do think by sticking with the definitions and terms and terminology that's in the AOC we capture the concept but don't enter into a debate at this point about what would fall into it.

And we are able then to deal with the information that is needed on a PDP - on a PDP-by-PDP basis. So I would support what James is saying.

Jeff Neuman: Okay so Avri do you - if we went with just the AOC, I mean, do you think that human rights is an element that's missing from there or do you think it...

Avri Doria: Yes, yes I am totally and really this is honestly saying I am totally flabbergasted that we are so afraid of using the term human rights and that what we work and the work we do has to at least look at the impact of that on human rights.

And the fact that we can't use those two words in our document is just - it's shocking to me. And I really don't know how to deal with it. And to say well it's included here, I mean, this is just so fundamental to anything we should be doing that I just don't get it.

Marilyn Cade: I'm sorry may I get back in the queue?

Jeff Neuman: Sure.

Marilyn Cade: So I am going to respond to that. I think that actually that perhaps, Avri, not really fully understanding what I meant and, James, I'm not going to put words into your mind so it's up to you to clarify.

But, you know, there are a range of rights and I'm not prioritizing one right over another. I'm not selecting one right in preference to another. There are times, and in our world today the visibility of the implications of human rights are very high.

And I'm very personally sensitive to that because of the number of friends I have that are living in countries that are affected by that. But I'm just trying to have a phrase that is broadly inclusive and does not restrict the kinds of rights that might need to be addressed.

So it certainly doesn't exclude human rights; it should include human rights. But it also must include other applicable rights as well.

Avri Doria: Quickly if I - well I'll just - never mind.

Jeff Neuman: Okay well I can put you back in the queue, Avri...

Avri Doria: Yes please put me back in the queue.

Jeff Neuman: Okay so let me go to James, Alex and then Avri.

James Bladel: Hi, James speaking. Sorry for a little slow on the mute button. You know, I just believe that when we start to talk about human rights, you know, I don't - I don't know how to say this in such a way - I just - I don't, you know, I don't want to be seen as someone who's wanting to, you know, diminish those concerns at all.

You know, they're, I think an important part of what I do, you know, in my work and my personal life. And I think that when we start talking about, you know, the technical coordination of the DNS I just - I feel like any discussion of human rights just naturally takes ICANN out of its scope and into topics involving content and use.

And, you know, I think that that's probably beyond what, you know, ICANN's role is as a technical coordinator of the DNS. And I think that there are certainly human rights issues on the Internet, okay. But that's - in looking at the narrow scope of what ICANN is supposed to do I think it's only when ICANN strays outside of its mission does it start to encounter human rights issues.

So let's just, you know, there's got to be, you know, a boundary I think on what ICANN should and should not be involving itself in. Thanks.

Jeff Neuman: Okay thanks James. Alex.

Alan Greenberg: I think human - Alex speaking. I think human rights is so fundamental to everything and including everything that goes on at ICANN. But to leave it out would be a fundamental flaw in all the things that we are doing.

For example to relate human rights and DNS there's a fundamental right for people to receive information. But for some reason, for some technical reason or other reason that is ICANN-related if the rights to receive that information is, through some policies, is constrained we have fundamentally affected rights through a certain policy that we have denied that request for information to many people wherever they may be in the world.

So we have two intertwined issues. They may not necessarily be human rights on some blog posted somewhere but it's my (unintelligible) of, you

know, how you're manipulating information through the DNS technical ways of manipulating that.

So I do believe this is such a strong issue especially for some of us who are in the Noncommercial Stakeholder Group that we really strongly feel that it's a very important and dear subject to us. Thank you.

Marilyn Cade: I need to be back in the queue. May I please?

Jeff Neuman: Yes let me go to Avri then Alan then Marilyn.

Avri Doria: Thanks. I endorse much of what Alex said. I think first of all human rights are the rights that have been defined by international covenants that most all of the countries that we're from have signed and read. And they are binding on our governments. This is the international covenant on civil and political rights and it is binding on us all.

So it's so fundamental that the fact that we can't refer to it - they are known rights, you're right, there are other rights; there, as I said in the notion, there are claims to developmental rights which means that the wealth of the rich companies must be spread to the wealth of poor countries. People have made claims for corporate rights and so on.

Now many of us argue that insofar as these are rights they stem only from human rights and that there isn't some separate wealth of rights it's the rights, it's the rights that stem are the ones that could be shown to come from human rights.

And these have been defined and these are not a speculative category as rights is a speculative category. Human rights, especially capital - and even put a reference to the international covenant that is a binding instrument on us all except for maybe, you know, a handful of countries, that we're just saying these things will be considered.

We will look at the impact on these things whether it's privacy, whether it's freedom of expression, whether it's a corporation's right if that corporate right can be shown to stem from human rights of association and doing business which is also mentioned there.

So those things - it is a known quantity; it's not something beyond. And so - and as for ICANN's technical scope that's sort of one of those things that we say whenever we want to not do something. ICANN's scope has gone so far beyond technical work nothing that the GNSO does practically touches technical work.

The whole new gTLD program and everything else is purely policy; it's purely business-oriented and not, I mean, it has nothing to do - nothing in the gTLD policy other than perhaps some rules that say you have to follow IANA Rules - it's technical - it's all social policy.

And to say that we're just doing technical is a story that died, you know, in the first three years of ICANN. Thank you.

Jeff Neuman: Okay let me go to Alan and then Marilyn then I'll put myself in the queue.

Alan Greenberg: Okay thank you. I started off thinking that this wasn't a good idea. I'm starting to move to the concept that it is not a bad idea to put this kind of thing in. And I have no problem - for people who are worried that we still must consider ICANN's scope, you know, it can be phrased in the context of, you know, to the extent that these issues, you know, intersect with ICANN's scope.

You know, so we're not going into pure human rights that have nothing to do with what ICANN has any say over. But I'm not against putting something like this in. I think reminding people that indeed we do have a responsibility outside of the purely commercial aspects is a good thing.

So I think to mention it as a - as one of the areas that review should consider is certainly not bad. Now many of our policies will have absolutely no intersection with human rights and that's fine. But to the extent that they do I think it's reasonable to put it in. And I've moved a lot since we started this discussion. Thank you.

Jeff Neuman: Okay thanks Alan. Let me go to Marilyn.

Marilyn Cade: So I'm going to make a comment about where, how and when topics are addressed. Alan has maybe presented phrasing that I might be interested in examining further. But I am also going to note that there's a much larger issue; it's not only and always about PDPs.

And so I think we all individually need to ask ourselves if we - if this is a priority concern to us then we need to be taking into account how any recommendation can then be accepted and actualized at the meta level meaning approved and accepted by the board.

Now so I'm not - I'm just trying to understand the role we have in developing a PDP and I could possibly consider language of the nature that Alan might be proposing. But I think we have to be really, really careful and understand we just can't create something in a PDP.

And if it's not supported at the larger level it's still not going to achieve the change we may be committed to or the implications we may be committed to. So having said that I'm still thinking we have not talked about the nexus between the role of the PDP and examination of rights sufficiently.

And I'd like to see us begin to use that time-honored technique called square brackets. And then we could have possible proposed approaches that we could then talk about further.

And I'm sorry, Jeff, to say this needs more discussion but it is a very important issue and I don't think today is actually going to be enough discussion on this particular topic.

Jeff Neuman: Yes I'm starting to get that impression as well. And certainly there's no consensus on either one way or the other. But could I just ask Marilyn what was the language that you had kind of thought Alan had said that you said you could - you'd like to think about a little bit more?

Marilyn Cade: Well, look, when I thought we should be discussing the question of rights broadly I'm open to thinking that that could then have e.g. and I'm open to thinking that - I'm open, I'm not committed because I would have to have more conversation with others - but I'm open to thinking that the first example could be human rights followed by others.

But I just think we've got to remember who we are and how limited - even as important as our role is we can't only say we're going to examine human rights implication; we have to look at the broader language of rights.

Jeff Neuman: Okay. So I'm going to take off my chair hat and just give kind of a personal thought on human rights - actually, sorry, not on human rights - I'm not going to comment on human rights - but just to - as a registry and as someone who when going through a PDP.

Part of my issue is that a lot of what people think are basic human rights turn out to actually not necessarily be human rights as later interpreted by a court.

And to give an example when the United States Department of Commerce clarified its policy on domain names back in 2000 - I'm going to say it was 2003, 2004 when it basically banned the use of proxy domain name registrations because they said it violated their policy on accurate complete Whois there was an immediate lawsuit by a domain name registrant on behalf of a class of domain name registrants claiming that to ban proxy registrations

was a violation of their human rights, was a violation of free speech and, you know, went on with a First Amendment case.

The registrants lost that case and it went up to the Court of Appeals and they lost that court. And they did not decide to pursue that before the Supreme Court. And the court said that there is no fundamental right for any US citizen to obtain a domain name registration.

And I know there's a lot of people that, you know, may disagree with that. But the problem I have from a personal level is there will always be people making claims like that and, you know, how to analyze that.

And again I know it's just US law but my point is that any time a registry wants to do something or registrar wants to do something or anytime that somebody wants a policy they're going to make claims on human rights which are very difficult for anyone within the ICANN community whether that be ICANN staff, people within the community, even experts, everyone will disagree on such a hotbed topic like that.

It makes me as a registry kind of nervous to include a term like human rights. But again that's just kind of a personal commentary. I'm not saying that it shouldn't be considered at all I'm just giving you kind of why something like that just makes me a little bit nervous. So with that let me go to Avri.

Avri Doria: Yes thank you. I think first of all I could say pretty much what you just said if we're talking about economic impact, compensation, consumer impact, etcetera; that all of those things are certainly highly argumentative and highly, highly fueled topics.

What we're talking about here is an impact analysis. What we're talking about here is something that gives us a picture of some of the landscape that stands before us; that gives us a picture of where the dragons lie in the details of the PDP work that is just going to start.

That's all, at the moment, that I'm asking for is that we have to look at that whole picture. And certainly when the economic analysis is there you know that half the population is going to say that's wrong.

When there's a consumer impact you know that half the population is going to say that's wrong unless we get to the point of impact analysis reports that sort of give us both sides of an issue and try to give us a complete panorama of what it is we're facing.

Obviously you already made the other point that I wanted to make is that we have to go just beyond US law. I realize that with a US corporation and that therefore ultimately if somebody takes ICANN's core it's going to happen under US law.

But within setting our policies insofar as we don't go against US law we really have to take a broader perspective in what others consider rights and what others consider relevant so that we don't need to just restrict ourselves to being barely legal within a US context.

If the union of rights is greater than the rights that the US says are rock bottom there's no reason not to go with that. So certainly just because something would lose in a court case does not mean - as long as we're not breaking US law - does not mean that ICANN can't take an account of those in looking before starting the PDP at what the impacts may or may not be so that the people doing the PDP are as informed as possible of the ramifications of their work. Thanks.

Jeff Neuman: Okay thank you Avri. So Avri, if we did that - if we did something like Marilyn and Alan were kind of - were saying is if we had rights and the word rights in there and then in parentheses, e.g. human rights, economic, whatever other rights there are, intellectual property, whatever they are, would that be something that's kind of a compromise in the middle or is that...

Avri Doria: It might be. I'd need to see what it looked like. As I say, you know, if people mention corporate rights then I'll ask to mention developmental rights. So certainly for every one side we look at look at the other side. And that's why I'm saying it's simpler to go with something that's got a basis in international covenant, international treaty, international law.

I have no problem with getting more complex but once we get more complex I would argue to maintain parallelism. And so whenever we come out in favor of intellectual property rights then I feel that we need to mention the other side of the coin, privacy. If we mention...

Marilyn Cade: Apologies, I have to drop off...

Avri Doria: ...corporate rights then I feel the necessity to mention developmental rights and just to keep parity in what we say. Thanks.

Jeff Neuman: Okay. Alan.

Alan Greenberg: I'm starting to get very worried here. We're describing impact analysis and it sounds like we're describing one which may be required or we're talking about or any given stakeholder group can demand that it be done before a decision is made that we're putting in an ability to stop any PDP from happening because of the require to do such an extensive study that it's going to be almost impossible to perform and to do to the satisfaction of everyone.

And when I say satisfaction, you know, when they - if they don't like the results they'll say it hasn't been done adequately. I'm starting to worry we're putting a huge impediment at the beginning of a PDP process which is going to be almost the - a guarantee that it can be thwarted, you know, that the PDP process can be thwarted because of the lack of analysis which we're now mandating or saying can be called for.

It's just starting to worry me very, very highly. Thank you.

Jeff Neuman: Thanks Alan. I think that kind of actually puts some things into perspective too. We're not talking about - if we go back we weren't talking about this being a mandatory every element must be examined.

Alan Greenberg: No but we're saying it's an opportunity. And we're now using words like ICANN must - and I'm not sure who it is that's going to do this; is this the people who are asking for it? Is this an independent party? Is this going to be a two-year study that ICANN's going to have to go to outside people for?

It's starting to sound like something which is - could be used as a tool against PDPs instead of helping them do it right.

Jeff Neuman: Right so if we back to the recommendation I think that's a good point. And let's go back to the recommendation which says...

James Bladel: Jeff, can I just chime in on that? It's James.

Jeff Neuman: Yes sure, sure, James.

James Bladel: No I just wanted to say you're absolutely right, Alan. And I think that that means that if there's anything at all in here it should be as narrow as possible so it doesn't end up being the universal PDP killer, you know, that all PDPs fail to get off the ground because they fail on one aspect of the impact analysis or the other.

So that's why - I think what you just said is - I agree completely and that's why I would advocate keeping it as narrow as possible.

Jeff Neuman: So here's what the recommendation says that we had. It say, "The PDP work team recommends that the policy development procedure manual describe

the option for the GNSO Council to require that an impact analysis be conducted if appropriate or necessary prior to the vote for the initiation of a PDP. Such an impact analysis could include the assessment of the economic impact, the impact on competition, the impact on consumer choice and/or protection, etcetera."

So it's still at this point - it's an option for the council to require an impact analysis so it's all optional at the GNSO Council's discretion. And I guess we would just be - instead of just this list here we would include impact on human rights as another element. It's not mandatory; it's not - but it's something that the GNSO Council could decide to do.

And, you know, presumably that would be a majority of both houses. And that would be a - well Margie has got a comment so maybe I'm stating something incorrect. But, Margie.

Margie Milam: Oh no this is Margie here Jeff. I was just pointing out that I guess if this is prior to the initiation of the PDP, I mean, are you really asking that staff in the issues report would have to outline the impacts to these various rights? I mean, I just don't know how we would do that; we would probably need a lot more - if this is something that gets adopted, you know, guidance on how that would even be done.

Jeff Neuman: Yes so I think it's not much different than what sometimes happens with other PDPs right now where you do go in and say this is, you know, you point out the issue; you don't solve it; you don't say that - you don't point out to the extent. You'd say these are parties that could be impacted and here's some reasons why.

And so you oftentimes - I've seen in the issues report say, you know, IP owners may claim this or may believe this. And registries and registrars may have to do these things depending on the outcome. I think it's a light touch on these issues and not any kind of extensive analysis.

Margie Milam: Oh okay, okay I understand. Thanks.

Jeff Neuman: Okay, Marika.

Marika Konings: Yes this is Marika. I think how it currently reads to me it does sound as is, you know, really extensive heavy kind of impact analysis that maybe a third party or a research institute would do.

So if the intention is to make this indeed a lightweight, you know, indeed maybe take into consideration when someone, you know, submits an issue or request and they might want to outline as well, you know, who are affected by this and for staff to, you know, take more into consideration what other parties might be affected by a certain issue, you know, might want to make that a bit more lightweight because I think it reads more heavyweight here.

And another question I have because we do talk about requiring an impact analysis; I don't know if indeed if you're saying well this is really optional if we should change require as well to request to make it sound indeed that if this is really an option for the council to request and not to require at every time there is an initiation of a PDP.

Jeff Neuman: So I think that makes sense to change require to request. And I do think it's lightweight at this juncture because we don't know what the outcome is going to be at this point. And I think - I don't know if Alan raised that or someone else did raise it in the comments.

But, k we don't want to presuppose any outcomes and we can't. So to the extent that it needs to be done it would be a very lightweight - at this point. And then maybe later on I'm sure a working group if they have a strong opinion - or a work team - could request a more in depth type of analysis.  
Avri.

Avri Doria: Yes, I'd just like to point out that we already say to require be conducted if appropriate or necessary prior to the vote. So, I mean, we've already got the if appropriate or necessary. I have no problem with changing a request if appropriate or necessary.

I guess a request if appropriate or necessary means the council could decide that it was necessary and the ICANN staff could say no, we're not going to do it because it's just a request not a requirement. So think about that carefully. And, you know, perhaps you do want to give ICANN staff the ability to say no to the council when it asks for something.

But other than that you already do have, you know, the internationally well known if appropriate and necessary which means you can get away with doing nothing in the phrase already. And then in the second sentence you said could include.

And I haven't been recommending - well I guess when I rewrote something I did write it stronger. But if we're just adding human rights to the list I'm not recommending that we change could to should or must. I'm not making that recommendation, I'm just at the base recommending that we have one extra clause in what could be considered if appropriate or necessary.

And just as an aside whenever you see if appropriate in UN document it means forget it, it's not going to happen. I know that's not the case in ICANN but if appropriate and necessary gives so much leeway to not do something. Thank you.

Jeff Neuman: Okay well so what I'm going to ask, Marika, is if you could take the language there. I've heard what Avri has said but let's just square bracket the word - put request in for require and put a square bracket around human rights in, "...such impact analysis could include." And, you know, add human rights to it.

And maybe even, you know, some of the language that James had forwarded around like public interest, human rights, security, stability, resiliency of the DNS; we need to add those elements as well. So if we could do that that'd be great.

Let's move onto the next one. I didn't realize we'd spend so much time on this one but it's kind of important at least a number of feel like that was important to cover so I don't consider that wasted time at all.

Recommendation 18 - is it 18 - 18 is the next one. James has a comment on which is reconsidering this issue - so let's go to Recommendation 18 which just to remind everyone was - sorry I'm scrolling as we do this - this is an appeals mechanism.

And we had said that perhaps putting in there suggested approach would be - to allow an appeal mechanism for those with standing. And so we basically put in some language says that for ACs that request an issues report and to the extent that the GNSO - I'm paraphrasing - does not initiate a PDP then there should be some sort of meeting between the AC and the GNSO to see if they can kind of resolve that.

It's not a mandatory you have to do it - you have to do the PDP it's just kind of a - or a formal mechanism for the two to get together within a certain timeframe. And then we said we had asked James to put together some language on that.

And James's comment is reconsidering the issue I'm now repeating that we should leave the existing text intact. Providing a formal appeals mechanism would have numerous unknown and perhaps unanticipated consequences that could be seen as undermining the role of council and policy development. We can discuss further on today's call but I would oppose any additional language here.

So let me go to - James, do you want to offer any more color on that and then I'll go to Alan.

James Bladel: Well just that, you know, just what it says; I thought about this since our last call on Thursday. And I just - I'm concerned that it's opened a door that becomes very complicated if we try to set that down into rules and start to write that up as a prescribed requirement or procedure.

And I think the way we have it is, you know, it accounts for possibly more scenarios in a way that is respectful of the roles of the AC and the council. It's like hey if you guys can't agree then you should get together and talk this out.

You know, it doesn't say how they should talk it out, when they should talk it out, who they should be talking to, you know, I just - I feel that, you know, keeping it as informal and leaving it up to the discretion of the council and the ACs I think is the preferred approach. And that's really all I wanted to add to that section. So I think the language we have there right now is pretty good.

Jeff Neuman: Sorry the language that's in the - the existing language that's in the black or the suggested - the agreed approach?

James Bladel: I'm sorry the existing language for Recommendation 18 I think is open ended and allows for discretion and flexibility.

Alan Greenberg: James, which language; the black or the red?

James Bladel: The black language, Recommendation 18...

Alan Greenberg: Yes, okay.

James Bladel: ...in the black on the far left column.

Jeff Neuman: Which basically says that recommends no formal - no special formal appeals mechanism be developed however the PDP work team recommends that the GNSO Council be required to state its reasons for declining a PDP after receipt of an issues report so that's what it says right now. And...

James Bladel: Yes maybe we can add just a little wiggle to that or something and say, you know, and because - in consultation with the AC that raised the issue or something like that. You know, I just didn't want to go overboard and giving them a kind of a paint by numbers of how to resolve this issue because I don't think that we can anticipate enough scenarios to do that properly.

Jeff Neuman: Okay so you would be okay with adding something to the effect of in consultation with the AC that raises the issue. Okay. Let me go to then Alan and then Avri.

Alan Greenberg: Okay I'm going to reiterate the point I made in regard to that black wording. But it also applies to the suggestion that there be, you know, discussions between the AC and the GNSO.

The current black wording says the GNSO Council is required to state its reasons. The GNSO Council only has one reason for rejecting something, the votes didn't add up. Individual voters or stakeholders group might have a reason that they could publish for why they voted in a particular way and they could be required to state that in such cases.

But the GNSO Council itself does not - is not an entity with a thought process; it acts based on the sum total of its constituents. And I find the same problem with the proposal that the GNSO meet with the AC.

As we've seen in recent discussions the GNSO itself, you know, it will not and has not been willing to delegate the GNSO decisions to its chair or to other people to act on its behalf, you know, unless there's been the very explicit motion in council.

So how can the GNSO, a 21-person group, meet with an AC to discuss things? You're simply going to have a lot of different solitudes stating their position over again and...

Jeff Neuman: So, Alan, it's...

((Crosstalk))

Alan Greenberg: It's not a mechanism that I think can work.

Jeff Neuman: Can I then - so would you be okay if it says that a PDP work team recommends that GNSO council members be required to state their reasons?

Alan Greenberg: I could - I don't think that's going to be particularly useful in this process but yes that's better - that at least has some meaning.

Jeff Neuman: Okay. I mean, so at least it'll give you, you know, something...

Alan Greenberg: I mean, it's either the member of the stakeholder group depending on at what level a decision is made within each stakeholder group and that varies but...

Jeff Neuman: Okay.

James Bladel: Hey Jeff, this is James. I'm sorry, you've got a queue; can you put me at the end of it please?

Jeff Neuman: I - yes, so let me go - I just wanted to kind of offer that as a possible suggestion and then people can comment on that. Avri.

Avri Doria: Yes, thank you. I'm not sure I understood Alan correctly. But basically, Alan, you're saying that you don't believe that there's any reason for discussion

between the GNSO and the PDP requesting AC to discuss and perhaps reevaluate?

Alan Greenberg: No...

Avri Doria: If that's what you're saying I have a problem with...

Alan Greenberg: No I said I don't see a mechanism to do that.

Avri Doria: I think that the GNSO has a mechanism for appointing people to do stuff. They get the names of volunteers and they do it. I don't think we need to specify for them how they do it. And the other body has whatever mechanism it does.

But to suggest that there be a sit-down between a group appointed by the GNSO Council and a group appointed by the appropriate AC to discuss their differences and try to find a mutually acceptable solution seems to be something that we don't need to specify how they do it; the GNSO has a way now for finding volunteers for a committee and anybody that cares participates.

And every other body has a way to determine how it's going to do things. And just, you know, I don't think we need to get into specifics about how it's done. I do think that it's imperative that we have a way for the GNSO Council to allow the person - the group - and it's a group withstanding - it can only be another AC - the group withstanding to say let's talk about this and let's reconsider and...

Alan Greenberg: I'm certainly not - I certainly do not object to that not one iota. I just feel that we need to put in a mechanism which has some, you know, some semblance of reality. The GNSO right now can appoint a group to do the work but not to act on its behalf.

Avri Doria: Well, yes, they would bring a recommendation back to the council.

Alan Greenberg: Which could be voted down again just like everything else.

Avri Doria: Exactly, exactly but at least it would have been talked through.

Jeff Neuman: Okay. Let me go to James and then if Alan you want back in the queue...

Alan Greenberg: Okay.

Jeff Neuman: ...let me know. James.

James Bladel: Yes I just wanted to say that Alan raised a very good point that I hadn't considered, you know, how do you, you know, the GNSO Council is a body that may or may not, you know, be monolithic in its positions.

And I think that, you know, it's a good point to say how do you get, you know, one body to work with another body, you know, in such a way that they can raise the issues.

You know, I just feel that we should be - we should avoid being prescriptive here and we should leave it open, flexibility different informal processes may work in one situation where another situation may call for a more formal process. And we just need to leave that open. But Alan raised some really good points that I hadn't considered. Thanks.

Jeff Neuman: So, James, what do you think about the change in language, you know, that - the change in language instead of saying recommends that the GNSO Council be required to state its reasons we would say GNSO Council members, stakeholder groups, constituency - we have to figure out a good wording. But essentially take it out of the body but make sure that its members be required to state their reasons.

James Bladel: Well, you know, if you're asking me directly I think that, you know, you know, I think that, you know, Alan had a really good point; it's the GNSO Council - the reason is we didn't have enough people vote in the affirmative on this so that's the reason why we didn't do this.

Now as far as the reasoning behind their votes I think that that is something you have to go to the individual council members for. And they, you know, you know, I wonder how much discretion they would have about saying that this is, you know, the way my constituency or stakeholder group feels and that's why I'm representing what their, you know, what their interests are.

And that should be enough. You know, why is that not a legitimate reason for denying a PDP?

Alan Greenberg: I'll point out that saying that the stakeholder group must state its reasons can end up with the same level that, you know, if a stakeholder group has its - the council members bound by a vote of the stakeholder group then the stakeholder group doesn't have a reason other than that's the way the votes came out.

Jeff Neuman: Okay so I think that, you know, I think we are supposed to be an open and transparent community and we're supposed to operate with transparency and so just a little bit of a counter to what James said.

I think - and I know this is my case personally as a councilor and what I always take back to my stakeholder group is that any time we vote something down we need to actually have a good - or in favor for that matter - we need to have good rationale to explain why other than it's just why we want to do it.

And I think for the most part stakeholder groups and constituencies have explained themselves fairly well. People may not like their rationale but I don't think - I don't think it's too much of an imposition to ask groups why they vote for something or against something for that matter.

I think that's, you know, that kind of helps debate - healthy debate - and it kind of helps with transparency and accountability. So I'm not sure if I misinterpreted something you said, James, but just saying - just from my personal opinion just saying well my stakeholder group told me to vote that way is probably, you know, ideal.

James Bladel: Well, okay and maybe I'm not being very clear and I apologize, it's kind of early in the morning. But, you know, we rarely see, I mean, I think of the way issues go through the ICANN process is that issues are not voted down. It's issues have to gain a consensus, a threshold of consensus support.

And some issues will achieve that threshold and some issues won't achieve that threshold. So you're essentially saying not necessarily why someone voted against something; it's just like why don't you feel you can support this? And maybe it's because they don't feel it goes far enough for example.

You know, I don't - I think it's possibly a little confusing when we start to think of issues as being voted down as opposed to issues that just failed to achieve enough support.

But, yes, I mean, sometimes it may say that, you know, explaining on the behalf of a stakeholder group or constituency that, you know, we just can't support this. Reason being, well, you know, the reasons may vary.

And it might be very difficult for an individual councilor to encapsulate all of the possible reasons that something has failed to achieve support into, you know, something that would satisfy the original - the origin of the issues report.

So I'm just, you know, I'm - I guess I'm in favor of just keeping this open and flexible and keeping people talking in a manner that works best for that situation rather than trying to build a one size fits all process.

Alan Greenberg: Yes, I can live with that.

Avri Doria: I can't.

Jeff Neuman: Okay Avri.

Avri Doria: Yes, first of all, I mean, we're starting out by saying recommends that no formal appeals mechanism. And so we're starting out our sentence by saying sorry, GNSO makes a decision or rather GNSO Council makes a decision; that's it, final, no discussion, no (balking) our decision; we are the final arbiter. And so I think starting out something with that sentence does not leave it open and flexible.

Now if we said something like, you know, it needs to discuss - it needs to set up a group to discuss; it needs to do whatever, then that - I'm not saying there needs to be a formal but there does need to be some way of going forward.

The GNSO Council not set itself up as totalitarian in these issues. It must offer some leeway for the ACs to come back and saying - and to go with James's reasoning - perhaps it was voted down, perhaps it never got to the level of being supported because you didn't understand our point.

So please you said it didn't rise to the need, well let us, you know, explain to you why it rose to the need. And it's just basically to give a chance for some sort of closure between the groups so that you don't have a situation where someone makes a request for an issue, the GNSO says no and that's the end of it; that is not a good model for ACs and SOs to work together.

And I'm not saying we should prescribe it tightly; I'm basically just saying there needs to be some form of discussion. It doesn't need to be the council

members it can be the thought leader from the constituency or stakeholder group. It can be anyone the council decides to appoint.

It can be four people, one from each stakeholder group or it could be seven, one from each, you know, constituency, that doesn't matter. It's the people that are interested just like the GNSO always does things on that basis.

So I just think that closing the door and saying we don't need to talk to you about this because - and we don't need to explain ourselves because we decided and that's the end of it is just a bad model for us. Thank you.

Jeff Neuman: Okay. Let me go to Alan.

Alan Greenberg: Yes when I said I can live with that - to what James said - I could live with what he said which I didn't think mapped to the writing in black right now. And maybe I misunderstood what he said.

The writing in black says there is no recourse but someone has to state a reason, and we're talking about who it is that has to state that reason, which is not what I heard James say of keep it open and flexible and not necessarily say one size fits all.

You know, so I'm agreeing with what Avri just said; I don't think we want to have - close the door. I'm not quite sure what Avri said about - or James said about a loophole for tyranny of the majority of - we live by tyranny of the majority right now; that's exactly how we make all of our decisions. So I'm not quite sure of the implications of that.

But I was agreeing that we need some words which do allow a way forward not just tough, we made a decision, go away which is essentially what the writing in black says. Okay James, I can accept tyranny of the minority better than the majority.

James Bladel: Sorry, yes, that was a mistake on my part; I need more caffeine on this end. And then the other bit of that would be, you know, we have to be very, very careful here folks because it sounds like we're saying we don't trust the council and we don't want them to do their jobs.

They, you know, they have a role to play that's an important one in determining what issues go forward as PDPs and what issues do not. And if we're opening the door to, you know, we agree with the GNSO Council only when it says yes and we disagree with them whenever they say no I think that we need to really take a look at what that means existentially for this body. Thanks.

Jeff Neuman: Okay guys, I'm trying to find a middle ground here to see what we could say and it seems like we have just two opposite sides here. So we had suggested wording here that basically says that the members should be required to state their reasons.

And then I'm not sure - I got to re-listen to this discussion again to think about what else we could do, if anything, to address kind of what everyone is saying. I think we've spent a lot of time on this. Alan is your hand still raised from before?

Alan Greenberg: No it isn't, sorry.

Jeff Neuman: Well okay. I'll call on you with the hope - oh it isn't raised, okay.

Alan Greenberg: Well I'll - I'll talk more if you want. It wasn't intentionally up.

Jeff Neuman: No thank you. Not unless you could offer a middle ground solution that everyone will accept.

Alan Greenberg: I'm the - at this point I'm a representative of the only group that's ever done this and both times we won; both times the PDP was initiated. And I'm trying

to think of, you know, and particularly the last one on expiration issues, what would have happened if it had been turned down? And what would have been a reasonable recourse?

And to be candid I'm not sure discussions would have made any change in that one. You know, maybe you go into private discussions and, you know, with someone and try to convert votes. I'm not sure that's going to be done by changing their minds publicly, you know, in a formal discussion.

But maybe there needs to be a way that the At Large - not the At Large - the advisory committee can, you know, perhaps hold discussions and/or submit a new document and - that requires the GNSO to reconsider. You know, it's not a formal appeal to someone else but it's an opportunity to go turn the crank once more and see if the outcome is different.

And I don't quite know what the mechanism for that would be but that may well have merit.

Jeff Neuman: Right well and the other thing you need to consider too is that there's such a low threshold for initiating a PDP that if a - if an AC is not able to get that low threshold then it's probably - discussions are probably not going to get you very far again with the council.

I just - I think, you know, it's not as if we're saying you have to get a majority of both houses; you really only have to get such a small percentage to get that PDP. And I'm not sure how many circumstances we're talking about where a PDP fails to get initiated when an AC has requested that issues report.

Alan Greenberg: That's a rationale for us not agonizing over it too much and put it in because it's not likely to be used all that much. I agree with Avri that putting in some recourse if it's turned down to the AC that has put probably a significant effort into this so far and - I think has merit. I'm not quite sure of the wording and

I'm not sure I want to volunteer to come up with one. But, you know, I could certainly try between now and the next meeting.

I think there is merit; I'm not sure I like the idea of going to a body to - that could reverse the GNSO's decision. At best the body which may be the AC itself can request or require a re-vote on the assumption that something will have changed between this vote and the last vote.

So I don't think we want to override - overrule the GNSO, you know, other than going to the board and the board saying yes do it. And the board always has that right.

Jeff Neuman: That's another point I was going to make, yes. And I don't think anyone here is suggesting that there should be an override mechanism. I could be wrong about that but I...

Alan Greenberg: All right against my better judgment let me try to put together some words.

Jeff Neuman: Okay thank you Alan. All right we have a call - just a reminder - we have a call on Thursday - same time as normal. Hopefully we'll get to some new issues this time. We have some bracketed language in here. Alan will hopefully circulate some language on this subject and then we can continue from here. Any last questions? Issues?

All right we're going to try to move much more quickly on Thursday. The goal again is to get this report out certainly before the document deadline but I was hoping well in advance of that. But let's keep working. Thank you everyone.

Avri Doria: Thank you. Bye-bye.

Alan Greenberg: Thanks Jeff.

Jeff Neuman: Okay bye.

Avri Doria: Thank you.

END