

**Policy Process Steering Committee (PPSC) Policy Development Process (PDP)
Work Team (WT)
TRANSCRIPTION
Thursday 05 May 2011 at 13:30 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 05 May 2011, at 13:30 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-20110505-en.mp3>

On page:

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Participants on the Call:

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Paul Diaz - Registrar Stakeholder Group
Avri Doria - Non Commercial Stakeholder Group
Alan Greenberg - At-Large Advisory Committee
Tatiana Khramtsova - Registrar Stakeholder Group
Wolf-Ulrich Knoben – ISP
David Maher - gTLD Registry Stakeholder Group

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Marika Könings
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Apologies:

Jeff Neuman - Registry Stakeholder Group

Coordinator: The call is now recorded. Please go ahead.

Kristina Nordstrom: Thank you. Hello everybody and welcome to this PPSC call today on the 5th of March. On the call we have James Bladel, Avri Doria, Alan Greenberg, Paul Diaz, Tatyana Khramtsova, David Maher, and from staff we have Marika Konings, Margie Milam, Kristina Nordstrom, and Glen DeSaintgery. And apologies we have from Jeff Neuman. May I also remind you to state your names before speaking for transcript purposes please? Thank you and over to the chair.

James Bladel: Thank you Kristina. This is James. Our chair is not with us today so he has asked me to fill in and I hope that's all right with everyone. But this is the PPSC PDP call for May 5 and we have just a few items on our agenda there this morning.

The first one being the discussion of the memorandum on Issue 42, and I think this is something that we could probably spend quite a bit of time on, but wanted to ask Margie to perhaps walk us through this memo. And then the second one would be to discuss the open issues, and Marika and I prior to the call were discussing whether that included

the impact analysis or whatever we're calling it now - checklist or whatever we are calling it and the transition issue.

So and if we have a little bit of time, maybe we could talk a little bit about what our next steps would be, although I would be a little cautious about going too far down that road without Jeff here. So if that sounds agreeable to everyone, we can dive right into the memo that's up on the screen.

Take it away Margie.

Margie Milam: Hi everyone. This is Margie. Can you guys hear me okay? Okay good. Yes we circulated this memo back in March and I think that the origin of it was that Jeff raised a concern that this language in 13F where it says that in any case in which council is not able to reach a GNSO majority vote that a majority of the vote would be sufficient to act. And I think his concern was that that could possibly create consensus policies, and he just wanted clarification from the staff on what that language meant.

So Marika and I went back - took the request back to the legal team and you know worked with them to come up with this memo to make sure that you know we understand what - how this language is interpreted. And essentially, I think the easiest way to - I will just give you the high level and then we will actually look at the bylaws language itself. I can walk you through them now.

But the way we look at the consensus policy adoption is really you know essentially three steps. We look at the bylaws to make sure that the voting thresholds have been satisfied, but then we also look at the

contract language. And so one of the things I just want to highlight - and then we also look at the circumstances and you know what actually happened in the GNSO Council. So those are kind of the three elements.

And so in any event, you know it's never going to be just a bylaws analysis. You've got to look at the bylaws, you've got to look at the contract provisions, and the contract provision vary depending upon if it's a registry agreement versus a registrar agreement and even amongst the registry agreements there are variations on how this language that relates to consensus policy is drafted. So it's really kind of a three-part analysis to adopt consensus policies.

Now I think the best way to really explain what 13F means is - I think I've said this, so you can scroll through the memo. Go to the very end of the memo where it actually has the voting thresholds because I think that's probably the easiest way to explain how this language is interpreted.

So if you go down to I think it's Page 3 of the memorandum, it defines the various voting thresholds. And if you look at 9 - let me just walk you through some of them first before we go into the (unintelligible) language.

From the voting thresholds, we have a 9C - the definition of supermajority. And here we have that the GNSO can initiate a PDP that's not within scope, which requires an affirmative vote of more than 75% of one house and a majority of the other house. So that's how GNSO supermajority is defined; more than 75% of one house and a majority of the other house.

Now if you scan down to 9D and 9E, you have where the GNSO can approve - or where there can be an approval of a PDP recommendation without a GNSO supermajority. There's this definition that says that - you know just describes that it's more than 75% of one house and a majority of the other house. But if we don't have that, there's also this other threshold that requires an affirmative vote of the majority of each house and it further requires that one GNSO Council member representative of at least three out of the four stakeholder groups supports the recommendation.

So this 9D is another voting threshold. It's not within the definition of the supermajority, but it's another way that something coming out of a PDP could be approved.

James do you have a question?

James Bladel: Yes I'm sorry. I'm trying to follow here because I think you jumped from 9 - it must have been 9D you said was that last bit.

Margie Milam: Yes I'm in 9D, but the problem with 9D is that that uses the word supermajority so you have to go back to 9C to see what supermajority means.

James Bladel: Okay.

Margie Milam: Does that make sense?

James Bladel: I think so. I think you just jumped a little too fast for my - I'm not caffeinated enough yet.

Margie Milam: No that's fine and I apologize if I'm going quickly here.

Okay and then we also have this language in 9E, which seems kind of circular, but it says that you can approve a PDP recommendation with a GNSO supermajority. It requires an affirmative vote of a GNSO supermajority. So that's basically saying you know a supermajority isn't a supermajority, which is a little circular if you will.

Okay so now let's scan down. Those are the voting thresholds. Let's scan down to - I'm sorry. Let me go down to 9F. 9F says that you can approve a PDP recommendation imposing new obligations on certain contracted parties. And this language is specific to the registrar contract, and I think there's at least one registry contract that has this language.

And the contracts say that where there's a two-third vote of the council - the contract says a two thirds vote of the council demonstrates the presence of consensus. In that circumstance, a GNSO majority vote threshold would have to be met or exceeded with respect to any contracted party affected by that provision.

So this is just kind of trying to address the point that in certain contracts such as the registrar accreditation agreement that you use this term two-thirds vote of the council and it wasn't clear what that meant. So 9F addresses it, but it needs to be a GNSO supermajority vote.

Okay so now let's scan down to - let's see the bylaws. Okay so now go down to Page 4 - Bylaws Annex A. James you have a question.

James Bladel: Well just a question of do you think this is a good place to stop and maybe make sure everybody is with us and any questions and answers here, or do you want us to hold our questions until the end, or...?

Margie Milam: I think that's a good idea James because there's a lot of content to cover.

James Bladel: This is really dense stuff at least for me and maybe some of the other folks who aren't lawyers by trade. You know we are trying to unpack a lot of these here and they reference one another, so maybe we can just throw it open to the queue and say does anyone have any questions or comments up to this point before we move on to the next session to the bylaws.

Okay empty queue. (There it is Margie). Thanks.

Margie Milam: Okay that's fine. It is confusing. And even having you know looked at it early on, I had to relook at it this morning to make sure I got it all straight. So you know it's definitely confusing and we can certainly you know address questions afterwards if - or another day if you have questions.

Now let's go to the bylaws. This question comes up with regard to the board vote, and the way it makes sense is by reading you know a lot of this. So you can reread it in context, because that language that Jeff was concerned about in 13F seems kind of broad when you read 13F where it says that in any case where the council is not able to reach a

GNSO supermajority vote a majority vote of the board will be sufficient to act.

That seems broad, but we read it in context of what the whole 13 says. And so if you start with A, it says that the board meets to discuss the GNSO Council recommendation as soon as feasible after receipt of the forwarded report from staff manager. Okay, so the board gets you know to discuss the recommendations.

And then in 13B it says that in the event that the GNSO Council reached a supermajority vote, the board shall adopt the policy according to the GNSO Council recommendation unless there's a vote of more than 66% of the board that determines that such policy is not in the best interest of the ICANN community or ICANN. So that's where this language - that's kind of the context of what we're talking about.

We're talking about when the board can adopt a GNSO recommendation. And if it goes against the GNSO recommendation, it needs a supermajority vote. And then 13C talks about if the board determines that it's not going to act in accordance with the GNSO supermajority recommendation it needs to provide a reason and submit a statement to the council so the council understands why it wasn't adopted.

And then there's a procedure in 13D where the council can review the board's statement within 20 days and can have a discussion, so that explains what happens and the council understands why the board didn't adopt the recommendation. And then again in E there's more procedure about if the board didn't adopt the GNSO Council recommendation the council can meet to affirm or modify its

recommendation including an explanation for its recommendation. And so that's more procedure.

But now when you get to F, what F is meant to apply to is in the case that the council is not able to reach a GNSO supermajority vote a majority vote of the board would be sufficient to act. In other words, the board doesn't have to have a supermajority vote to not accept the GNSO recommendation. At that point they can you know reject the GNSO recommendation by a majority.

So that was you know in the context of that whole you know process. All it is really saying is that if it wasn't a supermajority vote from the GNSO Council at the beginning, you won't have to have that supermajority vote by the board to reject the GNSO Council recommendation.

And so the - when we talked to the legal department about this, they actually made a recommendation on clarifying this so that that ambiguity is no longer there, because I think that that you know probably would address the concern that Jeff had raised.

So it looks like Avri has a question.

Avri Doria: Yes this is Avri. Quick question. So in other words, the way I had read it and the way I think you are understanding it is that this is the alternate as opposed to necessarily being all the way down at F because while C, D, and E are conditions of the primary, but this is kind of like the alternate.

Margie Milam: Right. In fact, it might make...

Avri Doria: If I was looking at it as a logical thing, you have the if C, and then if B, you have C, D, and E. If not B, you have F.

Margie Milam: Yes and that may be something we want to clarify in the order so it's more clear. Because it certainly kind of - floating all the way at the bottom of F makes it a lot more confusing.

Avri Doria: Right. If C, D, and E had been indented, then we would visually would have seen it, but of course that's not the way you write bylaws. That's the way you write programs, but okay thanks.

Margie Milam: James.

James Bladel: Yes I was just kind of building on what Avri was asking. So this is the (else) question or the (else clause), the (else conditional). I'm sorry. I lost my original train of thought, which was you said that legal acknowledged that it was unclear and offered some clarifications or recommended that it be made clearer. Did they recommend language or...?

Margie Milam: Sure. If you don't mind, I will go there now. Scan up to Page 2 of the memo, the very last paragraph, which reads specifically as it relates to the word act. Okay and then about three-quarters of the way down it says to remove the ambiguity here it may be a benefit to change the current F from - and then it's got some of the current language too.

And then look at the parenthetical. In each case in which the council is not able to reach a GNSO Council supermajority vote, a majority vote of the board will be sufficient to determine that such policy is not in the

best interest of the ICANN community or ICANN. And so I think that that kind of closes you know - it's probably the extra word that should have been there to clarify the intent.

James Bladel: Okay I think I'm following that.

Margie Milam: Any questions from anyone? Did you find that language at the bottom of Page 2? It looks like Marika has a question.

Marika Konings: Yes this is Marika. So my question would be then so would C, D, and E then also still apply to this new F? so even if then you know the board can you know reject if there's no supermajority would you still then go through the process of you know making a board statement, talking to the GNSO Council? Or is this saying that if there is no supermajority the board can just reject and that's the end of the process?

Margie Milam: I don't think we explored that with the legal department. I don't really know what the answer to that is. I think you could probably read it both ways. Avri or James I think you guys are in the queue.

Avri Doria: James was first.

James Bladel: I was just going to actually ask Avri, but she put her hand up. So what do you think of this alternate language?

Avri Doria: Actually as I was reading it, I was coming to the same point that Marika did. That C, D, and E - well no that C and D are indeed an act in either the case of B or F. In other words, in the event the term is not to act you know. So in other words in F they can determine not to act by a

majority vote so that would bear. You know it would really take quite a bit.

Because it does make sense that in any case that the board decides not to act and according to the council's recommendation whether it be by supermajority or majority, they do go back to the council and say, "This is what we think. You know let's talk."

Now the conditions that get you there are different and the conditions that you have to meet coming out of there are different, but the way it's written - I think it's written in that if B then C, D, E, F. But if it's being rewritten, someone should consider whether acting means just enacting or whether acting means discussion then enacting if that makes sense.

Margie Milam: If I may, this is Margie. I think this is probably a good question for the group whether you want that discussion in that event, because you know obviously we're now at the point where we are clarifying things. And if everyone agrees with Avri that it's a good idea to have this discussion and go through these steps, then you know we could put that in the report so that the language is clarified to you know require that.

James Bladel: This is James speaking. Well I guess I'm pretty flexible on where we want to go from here. I know that this is something that Jeff felt pretty strongly about, I think Avri felt strongly about. I want to make sure that folks you know feel like we are giving this the attention it is due. Avri.

Avri Doria: Yes just to be clear. The point I'm making is one that I think if Jeff - and of course I can't speak for Jeff. We all know we can't speak for Jeff.

But my understanding of Jeff's position is that F shouldn't apply in any case. But if it were to apply, one would assume that he would want at least there to be a discussion.

As I say, I'm not particularly you know strong on it. I think the board should always come back to whomever they get advice from or recommendations from or whatever and they don't agree - that they should always be one review loop. So I guess in general principle what I'm saying is - but I don't think what I'm trying to say is I don't think what I'm suggesting is counter to things that Jeff would be in favor of though of course I don't know.

I think in general, he would not be all that happy about if B, then C, D, E, F. But that sentence itself is the one that bothered him. Thanks. This is the one that we say is in there.

James Bladel: I wonder - we have some other folks on the call. I know we have Paul and David is here from the registries. Alan I know you have had some thoughts on this. I hate to put people on the spot, especially if they are multi-tasking, but does anybody else have any feelings? Did anybody else have an epiphany perhaps when they were going through this with Margie?

David Maher: No epiphany here. This is David.

James Bladel: Okay Paul is in the queue.

Paul Diaz: Yes thanks James. No epiphany either. I guess I have a bit of a hard time with this because given the board we are dealing with -- even the more independent board we've seen recently - I just have a very hard time imagining the board approving a policy that did not receive

supermajority vote. A policy that would impact contracted parties and those contracted parties did not vote in favor of it. I mean it may be an (elf F) clause, but I just have a very hard time coming up with the scenario where we would ever get there.

To that end or you know be that as it may, I guess I agree with what Avri is saying in that we are putting words in Jeff's mouth. Maybe we add a qualifying clause in there that does require the board to have you know another round of communication, which I agree with everybody. I think they would do anyway, but we can formalize that.

But I guess for me, I almost feel like you know we are arguing about how many angels dance on the head of a pin. I don't see - I have a very hard time imaging any scenarios where the board is going to act and counter to the interest of contracted parties in the absence of a supermajority support council level. I mean to me somebody come up with a scenario.

Avri Doria: Can I give you a scenario even though I'm out of line with Alan?

Alan Greenberg: Okay with me.

James Bladel: Okay sure. Go ahead.

Avri Doria: Your assumption here is - and I hate to say this, but your assumption here is that we didn't get a supermajority because the contracted parties didn't agree. It's quite possible that we didn't get a supermajority because the non-contracted parties didn't agree.

Now I bring you know - and I guess I have no trouble imaging a board that would look at something, say this is in the best interest of the

ICANN no matter which one of them wasn't agreeing, and decide to go with the recommendation whatever the area of contentiousness. But it isn't just the contracted parties that could be the ones not agreeing.
Thanks.

James Bladel: Right. Can we - Alan would you mind? You've been very patient, but can we allow Margie to respond?

Alan Greenberg: Sure.

Margie Milam: Actually, just put me at the bottom. I have a different point.

James Bladel: Okay. All right Alan go for it.

Alan Greenberg: Yes I have two things to say. The first is since this was really Jeff's issue to begin with and he was the one who was the most worried about it, perhaps on behalf of registries but nevertheless, I really think we need to have the conversation with him present. Because anything we decide is going to have to go - you know we're going to have to be sure he's happy with it or that we record otherwise in our final report. And so he has got to be present at some part of the discussion.

The impression I got when I read this document when it first came out was that it said - how do I put this? That it will come down to the language in the agreement and the board will not be able to put consensus policy in place unless the agreement really allows them to act without the GNSO supermajority and therefore it is very dependent on contract language. It would be nice if they had enumerated contract by contract which said what, but they didn't.

So I got the impression that Jeff was going to be moderately happy when he read this because it didn't say unilaterally the board can institute consensus policy without the GNSO supermajority. With that being said, I think he needs to be a part of the discussion. Thanks.

James Bladel: Alan I tend to agree and I was actually thinking of some pretty farfetched scenarios, but I will go ahead and put my hand down. I think that we definitely need to bounce this past Jeff before we consider that this is satisfactory to contracted parties.

I think Paul raised some good points. You know in practice, it's really difficult to envision how this would play out and I think Avri raised a very good point as well. We shouldn't just assume that this is occurring let's say over the objection of contracted parties. I could certainly see this occurring over the objection of non-contracted parties or a mixture of the two houses - the bicameral council.

Margie do you want to take your new point now?

Margie Milam: Yes I think you guys are a bit confused. This language just applies to the board rejecting a GNSO Council recommendation. Okay so it doesn't apply to approving a GNSO Council recommendation without a supermajority vote. This is all about a procedure for the board to take and act, which is inconsistent with the GNSO Council recommendations. I just want you to understand that that's the context of this language.

And the point that I raised earlier was that you know that's why you know we look at the bylaws, we make sure that the thresholds are satisfied, but we also - you know and we look at the contract to make

sure that you know - to see what the contracts require. And finally, we look at the circumstances.

But the point is that you know this doesn't allow the board to you know - it isn't talking about the board adopting a consensus policy that's - because I mean the whole question came up of you know is this a way to force consensus policy against the contracted parties. And the answer really is no because you have to look at all of these other factors, so I hope that clarification helps.

James Bladel: Okay Alan you are up next.

Alan Greenberg: Yes I'm picking myself off the floor. If that's what the intent of the bylaw is and that's what the intent of this memo is, why doesn't either or both just say that? Because I read this memo - I read the bylaws the way Jeff did with some you know concern or satisfaction that the board could enact consensus policy if it chose with the majority. And I read this memo saying it all depends on the details of the contract language whether they can enact consensus policy or not.

If the bylaws meant can act to reject the policy and this explanatory memo says that's what it says, then it should have said it in the first paragraph and we should change the bylaws to make them clear. That's not how I read the bylaw possibility and it's certainly not how I read this memo.

Margie Milam: Yes in hindsight we probably should have. I mean that would have been a very helpful introduction to the whole memo.

Alan Greenberg: Well it's not only that it wasn't in the introduction; that wasn't what I got out of the substance by reading it word for word. Now maybe I read it wrong, but that's my recollection from reading it on March whatever it is when it came out.

Margie Milam: James do you have your hand up?

James Bladel: I was speaking to a mute button. Thanks. I put myself in the queue in order to just kind of - as a placeholder there. I think that we should probably take Alan's earlier advice and say we should probably wrap this discussion up and certainly at least defer it to when we have Jeff present on the call so we can get his thoughts as well.

But I think that we have a couple of options before us. One is to do nothing, one is to perhaps adopt some variation of the proposed staff language that's at the bottom of Page 2, the second parenthetical there, or you know none of the above. So I think that we can at least move forward with some of those options in front of us. If everyone is comfortable closing the discussion at this point, we can move on to the next topic.

Okay I don't see any huge objections there, so the next topic was I think we did complete the review of the public comments and we noted a couple of responses there from the working group. There was a couple of open issues there. One was originally referred to as an impact analysis. I'm testing my memory a little bit here, so I'm going to lean on Marika and Margie a little bit.

But I think that we had decided that part of the problem or consternation about that issue was that we wanted to call it something

else as we discuss things like preflight, or scope check, or scope test, or scope checklist, or something like that. Which page is that - did we capture that discussion on one of these pages?

Marika Konings: This is Marika. Yes, we did cover that and I'm just (crawling) back up because that's under Item 13 - the comments that were made in relation to Item 13 starting on Page 6.

James Bladel: Give me a moment while I get there.

Marika Konings: 5 actually - bottom of Page 5 is the first comment. And then in a note you see there the discussion we had around this issue.

James Bladel: Okay so this is the preliminary issue report. What am I looking at here?

Marika Konings: Looking at Number 13, which is impact analysis.

James Bladel: Okay.

Marika Konings: That is what you were asking about right?

James Bladel: Right. Right. Sorry. My 5 and 6 is different, so I'm actually on the bottom of Page 6.

So we had some discussion particularly regarding I think that there were some general thoughts about what would be assessed, what would be measured for impact. And I think that there were a couple of thoughts relative to one of my suggestions, which was pulling some terms directly out of the AOC. I think that there was some discussion about other things that could be added on to there.

We started calling it different things towards the end here, and I think we started to converge on the agreement that if we were to characterize this as something less than an impact analysis and something more along the lines of a scope (sanity) check to determine whether it was in scope for ICANN or GNSO. And that it was compatible or I want to say sanctioned by the bylaws and the AOC that we could go forward with it and that it was not mandatory unless the council required it.

And so I guess my overarching question is do we need to spend more time on this? Or you know I hate to resurrect a (horse zombie) just so we can kill it again, but I wanted to make sure that we didn't proceed unless we felt that this - we were all satisfied that this issue was closed.

We will go Avri first and then Marika.

Avri Doria: Yes I guess - and I recognize I missed some of the earlier meetings where people were reviewing things. So I guess I don't truly understand where human rights fell and the - but I expect that it fell in the we're not going to do that. So I just wanted to raise that as an issue that I would take exception. To realizing I may be the only one to take exception to it, realizing that both the registrars and I guess - well the registrars say drop it and the registries say it's already included in public interest. Although I guess I would argue it's not included clearly enough.

So but as I say, I think I missed the discussions where you all made your decisions on what to do about this, so I realize I may be a voice of

one. And therefore you know maybe doing that separate comment.

Thanks.

James Bladel: Okay and we'll go to Marika, but I didn't want to point out that it was also in the registrar comments that the human rights subject was covered in public interest. So I think it was - I don't think there was any...

Avri Doria: Right. Yes it was adequately covered. Sorry.

James Bladel: Yes.

Avri Doria: I don't mean to cast dispersions on you guys at least not in this case.

James Bladel: Okay. Marika.

Marika Konings: Yes this is Marika. I think just to point out that this is an issue where we might need to come back to once we've, you know, reformulated the recommendation because I think as we, you know, as well I think going back to the discussion we had I think we partly realized as well that looking at some of the comments people might have misunderstood what we meant with impact analysis.

Because I think impact analysis seems to imply that we're trying to assess what kind of impact something might have which at the stage of identifying an issue might not really be appropriate. So I think that's when we discussed well what we're actually really talking about is assessing the scope; is this an issue that fits within ICANN's scope and there you might still talk about issue indeed, does it fit, you know, the public interest or does it fit, you know, what is in the AOC or the ICANN bylaws.

So I think from there we said okay we need to really rephrase that and make sure that people understand what this is actually about. So indeed the question would be do we still, you know, need to leave references into, you know, how the scope can be assessed.

Or is it the view then of the working group that we talk about it in a more general way without really giving specific examples or maybe just referring to, you know, the AOC and the ICANN bylaws and then, you know, except that at the stage where, you know, the GNSO needs to make a determination whether they want a scope check that they might at that stage identify the different elements that they see relevant in relation to the specific issue that is identified.

James Bladel: Okay thanks Marika. Alan, you're up next.

Alan Greenberg: Yes my recollection of this discussion is not that we rejected human rights but we rejected impact analysis. That we said an impact analysis it looks like an opportunity for those who didn't want this PDP to either delay it or kill it. And this wasn't the proper time for an impact analysis of what the PDP could do.

The issue report is the impact analysis of is there a reason for doing a PDP and - or should be. And the whole concept of an impact analysis at this point sounded like an obfuscation and not something that we should be doing at this stage in the process. So it wasn't a rejection of what is the impact analysis considering but that we should doing an impact analysis at all. At least that's my recollection of how our discussion went. Thank you.

James Bladel: Avri, you're up next. Thanks Alan.

Avri Doria: Yes. Thanks. It's Avri. I guess I would have, as I say, I missed these meetings so perhaps I only have a limited right to comment. But I would have even more problem with it. I thought that the impact analysis went beyond scope in that document and what it needed to do was not show the actual impact because no until the policy is made you don't know them.

But within the scope shows the probable areas and the types of questions that would need to be responded to in terms of the type of impact this policy could have and that therefore as people proceeded on this PDP both in deciding on it and in doing it the issues they need to pay attention to is this had a competition impact; we don't know obviously what exactly the impact is because we don't know the policy yet.

This has a human rights impact, this has an economic. This has a policy financial impact for ICANN because, you know, if you make certain decisions it's - so it was that kind of list of the probable areas and probable questions that would need to be addressed in the PDP within the scope.

So getting rid of impact analysis completely and just turning it into scope analysis seems that we'd be losing something important not just for human rights but in all the areas where we need to understand what a PDP might impact. Thanks.

James Bladel: Okay thanks Avri. I'm going to go ahead and go to Marika next but then I wanted to make a comment just as a registrar. Go ahead Marika.

Marika Konings: Yes, this is Marika. I think part of what triggered the discussion as well was actually staff raising the question saying look if the Council would come back to us and say, hey, can you do an impact analysis on, you know, what issues have we discussed into Registrar Transfer Policy Part B.

I think for staff it would be incredibly difficult at that stage of the process to make a determination what impact that could have on which kind of areas because you're really talking about - and maybe IRTP is easier because you already have a policy there.

But on the issue where there is no policy there; you have no idea whether the outcome of the PDP might actually be consensus policy recommendations or best practices I think it's incredibly difficult at that stage to make any kind of impact analysis because that would be predicting what the outcome is going to be of that PDP.

And I think that's the challenge that from a staff perspective we had with the word impact analysis and, you know, the different areas you might look at. So I think that's why in that discussion we had at that stage Gisella was saying well actually what we're trying to do more here is at this stage of identifying the issue just making sure that it, you know, really fits within the mandate of what, you know, ICANN and the GNSO is supposed to look at.

And that's how I understood the discussion. And I think that's quite we went from, you know, impact to scope analysis. And I don't know if the impact analyses are then more appropriate really at the end stage of

the process where you do have, you know, the policy at hand and you do have very concrete what the recommendations are going to be.

And at that stage I think it's easier to say okay now we can see what, you know, in which areas it will have an impact and then how it can impact. So, you know, to give some additional color to the discussion we had at that stage.

James Bladel: Yes, thanks Marika. I remember that there were - there was some discussion about that was a pretty big blanket for asking staff to fill in for some of those things.

And, Avri, I mean, I think I had a different take on this. I'm speaking now just as myself here. I remember I had a different take on this entirely which was that I would hoping that for every PDP you could draw a straight line back through the GNSO and ICANN bylaws back through Section 3 of the AOC which essentially said here are the things that ICANN is charged to, you know, to be responsible and answerable to.

And that every PDP could be held up against that yardstick and there weren't extra items or topics or issues within a PDP that were outside of things that the GNSO and ICANN were authorized to tackle.

You know, I think that for example, you know, a wild example would be I hate the fact that people keep running the stoplight down by my - down by the intersection where my kids' school is, but, you know, I don't know that that's necessarily fodder for a PDP. And that's of course an absurd example. But I think that everything should be able

to be drawn back to - up the chain of authority from the PDP to the Council to the Board to the AOC.

And that was just kind of what I was thinking we wanted to do by impact analysis or scope sanity check. I think we can call it different names but ultimately if we're trying to get three or four different things out of it then maybe we need to break this up into those three or four different components and look at them individually.

Alan go ahead.

Alan Greenberg: Yes thank you. You answered part of the question I was going to ask. And the question is essentially wise let's go back to basics and what problem were we trying to solve with this part? I mean, we have some history of doing PDPs under one name or another over the last number of years and did we not do this at all in those cases where did we do it under the guise of something?

And we wrote the words impact analysis when we did this originally. And there was a lot of negative reaction both within the working group and outside to both what did it mean and, you know, can we actually do that at this point. So I think we need to go back and try to figure out what problem are we trying to solve and how did we do it before or did we forget to do it altogether?

And I think the answer is we probably didn't forget but we may not have treated it as a separate step, you know, in formulating what the charter items are which we do in recent years anyway, you know, we essentially looked at what kind of impact we are projecting. And we only voted for it if we in fact felt it was something within our scope.

So I, you know, I agree we can collect many things but by calling it some things we send messages that we may not want to be sending. So I need - I think we need to figure out what we're trying to do and then name it something that will - people will relate to that. Thank you.

James Bladel: Semantics matter I think is...

Alan Greenberg: Well partly.

James Bladel: Yes. And going back I think - I agree, going back to the original problem is probably key there. Marika.

Marika Konings: Yes this is Marika. To respond to Alan's comment why whether this, you know, wasn't done before, I mean, if you look at the bylaws and then, you know, in relation to creation of the issues report there is this element where it talks about, you know, what the recommendation from the staff manager should include.

And it talks about that it should assess whether the issue is broadly applicable to multiple situations or organization; it's likely to have lasting value or applicability with the need for occasional updates; it will establish a guide or framework for future decision-making.

So there are some elements in there that I think, you know, try to achieve what we're talking about. But, you know, to be very honest with you whenever I have to write an issue report it's extremely hard to fill back in.

I think most of the times we talked - you know, tried to talk in very general terms because it's almost impossible to assess, you know, or answer those questions in most circumstances. And I think that's why when we spoke about, you know, which elements an issue report should contain I think we recommended as well that those elements might need to be rewritten in a way that, you know, they make more sense and are actually, you know, possible for staff to answer.

James Bladel: Yes I think certainly we don't want to make any ambiguity or empty concepts and then just throw them over to staff to fill in those blanks. Avri.

Avri Doria: Yes hi. This is Avri. I actually take quite seriously the comments both that you made and that Marika made. And it does make sense that the analysis that's done by the staff before the PDP starts be one that looks at the topic and its scope as you say directing from AOC bylaws, GNSO charters, what have you.

So I think that makes perfect sense and therefore the renaming and re-scoping of this as it were is probably a reasonable thing. I think losing the impact analysis at any point during the process is problematic. I think it's something that needs to be done.

Now whether it's inserted as a part of the - what comes out of the initial, you know, report or draft report or whether it's something that comes out at the time of the final reviews and such is something that, you know, perhaps we should discuss. And then of course we get back to the topic of what it included.

But I think that a PDP without an impact analysis is problematic but I think doing it once you have some notion of what you're proposing makes a whole lot of sense. Thanks.

James Bladel: Thanks Avri. And this is James again speaking personally that I think we're starting to converge a little bit on what we want to see out of this. You know, I think before you can set off to solve a problem you have to have an adequate definition of the problem otherwise how will you be able to track your progress and how will you be able to revisit that later and know that you've solved it?

So I think that whatever we want to call that threshold certainly was not the intention at least from my perspective to create barriers to PDPs but to kind of make them I think a little bit more - and make the issues reports be, you know, that we're initiating PDPs a little bit more resilient so that they could hold up better under scrutiny and could be quantified as far as whether or not they were measurably being solved.

And I think that those were just some of the things that we were thinking of when we were originally proposing the impact analysis. So, you know, I think that we're starting to converge on this idea that we need to identify the problems; we need to assess where ICANN and the GNSO and the AOC and where the chain of authority lands on that problem and why the PDP is the appropriate way to solve it.

And then establish what all these downstream - at least the perceivable downstream consequences of the PDP might be. I don't know, maybe we're - maybe we're converging; maybe we're going off in different directions. Marika.

Marika Konings: Yes this is Marika. I just want to point out that, you know, we do foresee talking about impact at a later stage in the report. If we look at Recommendation 31 there we talk about, you know, recommending that PDP working groups provide input on issues related to implementation impact, economic, (business), social, operational etcetera and feasibility including when considered appropriate, you know, recommend inclusion of implementation guidelines and some other stuff.

I'm wondering as well if there - because I think it's implicit if there at that stage we want to add something then of course, you know, the Council always has the opportunity when they consider the report to, you know, request further information on the impact or further research on that.

I mean, I guess it's something that at least from my perspective I think that's something that's implicit in here already where, you know, a working group can make specific recommendations in saying well this is what we consider in relation to the impact but they might say as well, well, you know, we cannot really assess that and we think before actually going ahead we recommend that, you know, further research is done to actually assess the impact of the specific recommendation.

So I think we have already elements in there to, you know, foresee for such an assessment at a later stage in the process which I think is where we now see agreements, you know, on - and moving away from having impact analysis as such at the start of the process. But I think we're agreeing that it should be more of a scope analysis at that stage.

James Bladel: Okay thanks. Avri, I mean...

Avri Doria: Yes.

James Bladel: ...I guess my question is are we getting closer or we are getting further apart?

Avri Doria: I think we're definitely getting closer. I think what Marika is suggesting and perhaps beefing up that language to - and then to actually consider whether that is something that should be a norm and just assumed to be done or whether it's something that needs to wait for Council to order it is perhaps something we should discuss.

But I think - I think we're - I don't know if we're converging because I don't know if we agree about beefing up the point that Marika just mentioned but we're certainly moving the problem to a different place and agreeing that this one is not an impact. But I'm still arguing that we do need an impact and I do think we need an impact that includes global public interest which has to be defined to include human rights. So I haven't given up on the issue but I do agree with moving it out of here.

James Bladel: Okay. Yes I think that - my only concern is that I think that that's how we got to scope the sanity check is that we were discussing - having the conversation very similar to this one and that's where we decided to move impact analysis to someplace else which was a scope check. So I don't - I want to make sure that we are not just kind of repeating an earlier exercise.

So, Marika, can you just kind of give us your proposal once again that you were saying beefing up the issues reports to include what now?

Marika Konings: This is Marika. Note it's relating to Recommendation 31 where we talk about that's the working group can also provide, you know, guidance or input on issues related to implementation, impact and feasibility. So there I think we specifically talk about that a working group can make recommendations in that regard.

I guess the question is do we provide further information there on, you know, of course a working group can provide a recommendation saying there should be an impact analysis I guess the question is should that be a requirement for every outcome of a PDP? Should it be at the discretion of the GNSO Council to decide whether such an impact analysis takes place or not?

You know, does it fall under the same kind of recommendations the working group makes and they are all just considered by the Council so it's only if a working group recommends that there should be an impact analysis that it's actually, you know, an option for the Council to take forward.

So I think there's still some further questions we need to answer and I think considered because again one of the things I think where some people expressed concern about the impact analysis at the start I think apply also if you do then at the end because of course it does imply a certain delay factor and might be used maybe to, you know, stalled the overall process and saying oh we need to, you know, assess the impact of this and needs, you know, X amount of studies before we want to actually go ahead.

So I think that's one of the concerns that was expressed in the public comments and I think would still be relevant, you know, even at a later stage. So I think that we need some further consideration by the work team to see, you know, who can request such an impact analysis, you know, who is responsible for doing it, what are the requirements.

And then again, you know, back to Avri's point, does any guidance or - need to be provided as what such impact analysis should address or is that, you know, at that stage really up to the working group or the Council to define depending on the issue or policy that's on the table.

James Bladel: I think now I believe we might be talking about two separate things because if you're saying that the working group should consider its recommendations in the context of their impact. And I think that some of us at least with the impact analysis idea or the scope check were saying we need to settle some of these issues before the working group is formed, before the PDP is chartered and approved.

And I think that the reason was it's a lot of us were seeing that those problems don't - if they're not addressed at the outset then they are passed on to the working group to solve for it's self. And the first thing the working group wants to do is to go back to the Council, go back to the issues report, put things out for public comment and get clarity on it's mission or on its scope.

So I think if we're talking about, you know, I think we're talking about a couple of different things. And maybe we can open a little text window and start to capture some of these, you know, start to capture some of these concepts.

But I think, you know, we're talking about what is this idea, impact analysis? What is it's trying to solve? You know, what problems or tests do we want it to check? And should it come at the beginning of the process? Should it come at the end of the process or from the working group? Should it be both?

Because I think that's now I think we were getting closer but now I think we're starting to talk about - have parallel conversations. I agree that some people have a concern that this would be used as a stalling tactic. I think that, you know, that it could be used to ask some tough questions of PDPs but the PDPs that would pass this would be much better for it.

So I don't know, can we maybe outline what the four or five key questions are - and I would just throw this open to the floor here - and see what it is that we're trying to solve because we may be talking about two or three different concepts.

Marika Konings: This is Marika, if I can just respond. Because, I mean, I didn't mean to confuse things more because my understanding was that we all agree on the scope assessment at the start of the process where we're really looking indeed is the issue, you know, within scope? Does it, you know, map to either AOC or the ICANN bylaws and address some of those issues where we've, you know, faced in the past where we had issues that, you know, went beyond or were very difficult to assess because they weren't narrow enough; they didn't relate to, you know, ICANN's mission or the GNSO scope.

So I was actually talking about this as being a separate issue that, you know, we've sort of discussed and, you know, we have some language

in there looking at the working group and its report being able to, you know, assess impact or make recommendations in that regard.

But the question is should be more detailed? So I think there are two separate elements where I think one, we have agreement on what the scope assessment or scope check should be and how it should look like. And then I think there's the second issue of indeed the impact analysis.

And I've put on the Adobe Connect screen, you know, just some questions I think that we've already gone through in some of our discussions now and there may be some others that we would need to address in order to see whether indeed there is another recommendation needed or whether, you know, it fits - and impact analysis fits with what we've already put in the report as it stands to date.

James Bladel: Okay so before we go on - before we take, you know, another step on this and we just - Marika said something about everyone was in agreement that there should be some sort of a scope check at the outset of the process and that that was - that was something that everyone could support. Is that still the case?

Are there any objections to saying that yes we all agree that there should be a scope check at the beginning and then we can move on to the next - I mean I think that's how I understood it. Okay so now we can talk about this other thing...

Alan Greenberg: I've got my hand up James.

James Bladel: Hi, yes and Paul did as well. Okay I lost the queue there for a second.
So, yes, go ahead Alan.

Alan Greenberg: Yes, I don't disagree that we need a scope check but isn't that part of the issues report and why do we need to delineate it as a separate item here?

James Bladel: Is it part of the issues report?

Alan Greenberg: I think it's one of the required parts.

Marika Konings: This is Marika. Yes I think we do - there is an element that talks about indeed the scope. I mean, I think this is more - because where it currently stands is Recommendation 13, and answering Paul's question in the chat, I think the idea is that the Council if they feel that, you know, the scope isn't appropriately addressed in the issue report or maybe, you know, there is disagreement...

Alan Greenberg: Well then the issues report - we may all have an iteration on the issues report with the preliminary one being issued; that should be the right time to address that.

Marika Konings: Right so maybe indeed we don't even need that recommendation. But as it originally stood the Recommendation 13, the impact analysis was, you know, prior to the vote by the Council.

Alan Greenberg: Yes, know I understand and I was asking what is the problem it's trying to solve.

Marika Konings: Right, right.

Alan Greenberg: And I would have thought scope is already addressed. I mean, if Council disagrees with the scope analysis I'm not quite sure what gets done because the voting thresholds are keyed off of the scope analysis in the issue report. So if...

James Bladel: Right.

Alan Greenberg: ...Council disagrees with that I'm not quite sure what the process is but doing another issue - another scope analysis at this point will change what's in the issue report so...

James Bladel: And are we saying that we want the second one, Alan, or are we just seeing that we want the one that's already there to include this test, you know, this...

Alan Greenberg: Then it should be in the issue report specifications and not as a separate step. I guess I'm getting very confused; we seem to be getting deeper into a hole here.

James Bladel: Yes. Yes I agree. Some other folks had their hands up and then they took them down I guess that's a tacit surrender. We kind of lost a hand along...

((Crosstalk))

Alan Greenberg: Are we doing an hour or an hour and a half call?

James Bladel: We're a couple minutes over the hour. I think we were good - staff are we 90 minute call or are we 60 minute call?

Marika Konings: This is Marika. I think we're 90 minutes.

Alan Greenberg: I thought we had made all these one-hour.

Marika Konings: I missed the previous calls so, Margie, was there a change in duration?

Alan Greenberg: No that's a few meetings ago. I thought Jeff had said that. Okay in any case I'm going to have to drop off in 10 minutes; I have another call in 20 that I need to do some work before but I'll be on...

James Bladel: Okay.

Alan Greenberg: ...I'll stay on for another 10 minutes though.

James Bladel: Thanks Alan. And anyone else that needs to drop off certainly understand. I wasn't clear on what the length was either. Paul.

Paul Diaz: Yes, okay. Not to keep dragging this on but just trying to get my head straight around this as I noted in the chat. I do think semantics matter going back to I think Alan said that.

If we're talking about impact analysis but we're talking about the things that might come out of the work of the policy effort, in other words, a recognition of things to be looked at that would be attached to the issues report.

If we're going to call that impact analysis shouldn't we add something like potential impact analysis or potential issues or something that gives this kind of conditional sense?

Because I can't imagine in the initial - in the issues report, right, early on at the very beginning of the process that it's going to say more than things like there may be impacts to consumers; there may be this, that, whatever. But it's all going to be very, very subjective or conditional.

If we mean impact analysis towards the end of a working group's lifespan when recommendations have been settled and whatnot then were at a different stage where I think turning to experts perhaps competition authorities, whatever, you know, there you're going to have a very different creature.

As a result because I see them as very different can we come up with different terminology because, you know, I think using the same term I'm not clear what we're talking about and therefore I'm not sure if - what I should support or oppose.

I mean, somebody help please clarify this for me because I feel like in this call we've gone all over the place and it's not at all clear to me what we're talking about.

James Bladel: Thanks. I tend to agree, Paul. And I think we're trying to put down on paper here what, you know, some of the basic elemental things that - what it is we're trying to talk about and what we should be calling it.

At this point, you know, I'm trying to remember what the beneficial thing was that we were trying to capture. I think we may have even lost the handle on that.

You know, maybe we should just table this topic for right now and let everybody kind of take a step back and we can put some ideas out to the, you know, out to the list as far as what we originally were trying to solve with this and what some of the concerns were.

Because I think we're talking past each other now. I think that folks are seeing different things in an empty space and not really clear that we're all talking about the same thing anymore. Marika.

Marika Konings: Yes, this is Marika. I'm happy to try to write up some of the notes in relation to the discussion and put this out on the mailing list and hopefully that will clarify or at least it will show my take back from this discussion.

Because I think, you know, I see quite clearly where we stand now and indeed, you know, where the focus should be and we probably need more discussion. But I think indeed it makes more sense to write it out so to make sure that everyone is clear where we are and make sure as well that I have clear what everyone else thinks we're talking about.

James Bladel: Right, right. I think Avri has got a good point in the chat too that we should probably make sure to capture.

So maybe we should move on here and - not that the next subject is particularly simpler. We were talking about transition. Margie, did you want to step in on this or something else?

Margie Milam: Yes, before we go on to a new topic there were a couple things that I was asked to follow up on on the last call. And the question is would

you like me to go over those rather than go into a new topic or I could just table those for the next call.

James Bladel: Sure, I mean, asked by whom, by Jeff or by the group? I would be in favor of that. I wasn't on the last call so I don't know what those are.

Margie Milam: It had to do with clarification of voting language that I think the registry stakeholder group had come up with. It's two recommendations; it won't take me very long but I could certainly do it next call if you prefer to have Jeff on the call.

James Bladel: I think, yes, you know, was he one of the key folks that was requesting that?

Margie Milam: Well, I think, if I'm not mistaken it came from their comments so I assume David Maher if he's still on the call could address, you know, could respond to it. I don't know that it was a Jeff issue per se.

Alan Greenberg: Can you tell us what number it is?

Margie Milam: Sure. Let me see, I think it's...

Marika Konings: Thirty-seven.

Margie Milam: Thirty-seven - let's go with 37.

Marika Konings: Page 15.

Margie Milam: Okay. I think my page is a little different, hold on. Let's see, 30. Yes that's right Recommendation 7 on Page 15.

James Bladel: Okay and that reads that the - the comment summary from the registries was to reword as follows, "And passes the motion with at least 75% of one house and a simple majority of the other house noting that if Recommendation 48 is approved or at least 2/3 of each house should also be added."

And it said, "The working group responsible has agreed if the proposed changes consistent with prior language but suggested for ease of reading." Margie, to confirm no change to substance of the voting threshold. So you're following up on this?

Margie Milam: Yes, I'm following up on that. Is it all right if I address that now?

James Bladel: Yes please.

Margie Milam: Okay I did look at the existing threshold and I looked at what they did in their recommendation was insert the word simple instead of majority. And actually it's not clear what simple means. And so if I can pull up another document which explains that. Marika do you want to pull it up?

Marika Konings: Which one is this?

Margie Milam: I'll find it, hold on.

Marika Konings: Oh yes, simple majority, I have it. I'll put it up.

Margie Milam: Okay. Okay so I did a little - a quick research on Google to see what simple majority means and maybe David Maher can comment on what the registry stakeholder group was suggesting here.

But simple majority could mean that less than half of the total votes but more than the minimum required to vote.

David Maher: This is David. I think that's an unreasonable interpretation.

Margie Milam: I found - if you glance through the document I've put up I have three different websites that define it similar to that. And so, you know, obviously this is not, you know, written in stone. But if you look at how they interpret it from the US Constitution it means, you know, there's different ways of looking at it; half of the valid votes cast or even under this other cha-cha whatever that is could be less than half the members of the group.

So to answer the question that Jeff has suggested I do think that inserting the word simple may change the definition.

David Maher: Well, you may be right. In that Council there are rules for a quorum. And isn't there any rule that says that if a quorum is present a majority of votes are required to take action or something equivalent to that? I mean, I would think that would be the case.

But, you know, supposing you have a Council of whatever the total number is but a quorum is something less than that and emotion is before the Council and say seven people vote for it, I'd vote against; I would call that a majority vote sufficient to carry the resolution. But it

ought to be spelled out in the current bylaws or the charter of the Council.

Margie Milam: And if I may respond. I don't disagree with you; we have rules in the Council. I'm just - my suggestion is if you insert the word simple you may be changing the way the Council does its current voting methods. And my recommendation would be to just leave it the way it is.

David Maher: Take out the simple?

Margie Milam: Yes, take out simple; just leave it the way it was which was a majority.

David Maher: Yes, well I'd go along with that.

James Bladel: Okay. And I think that makes sense. Avri is next in the queue. I just - do we know where simple came from?

Margie Milam: I believe it came from the registry stakeholder group comments.

David Maher: I think it was probably intended to differentiate the requirement of 2/3 supermajority. And for example in our own voting we sometimes need a super majority to do something but otherwise a majority of votes cast when a quorum is present is sufficient. But I don't see any problem with taking out the word simple.

James Bladel: Okay thanks David. Avri, you're next.

Avri Doria: Yes, I was going to point out that I think in its working procedures the council has pretty much worked its way to something always being a considered or a qualified majority in that they're working always with

the notion of fixed denominators and with proxies and everything else so that the vote is never a simple majority of those there. I can't think of any instances left that they allow that but that it's always a majority of those eligible to vote.

And with everybody holding a proxy for everybody else or at least eligible to hold a proxy for everybody else and the whole notion that all of any stakeholders groups votes have a right to be expressed whether one is in the room or not, you know, the notion of simple majority really I don't think it exists anymore in the Council.

So, you know, just basically a green with the notion that taking it out is probably the less confusing route because I don't think Council has that notion anymore. Thanks.

Margie Milam: Alan, do you have a comment?

Alan Greenberg: Yes, I have two comments. The wording in the bylaws we have right now are percentages of the house. And I interpret that in just the way that Avri just described as the number of people who are in the house not the number of people who may be voting at one point or another should not all of them voting - be voting. So I interpret - when you say the number of each house that is the - the denominator is fixed. That's number one.

Number two I'll point out that in the current bylaws it says in the absence of one of the other voting thresholds a simple majority is what we use so it's - if the word simple is confusing I suggest we go back and fix our bylaws. I haven't checked what it says for the Board but for the GNSO the term simple majority is used.

James Bladel: Okay so it sounds like some momentum here building just to strike the word simple in this particular recommendation?

Alan Greenberg: Well with some homework for Margie to look at the bylaws. If simpler is confusing in our case...

((Crosstalk))

Alan Greenberg: ...it's confusing in the bylaws as well.

James Bladel: Right, right.

Margie Milam: Yes, I will look at that because...

((Crosstalk))

Alan Greenberg: And with that I have to drop out. Thank you all. Bye, bye.

Margie Milam: Okay.

James Bladel: Thank you Alan.

Margie Milam: Okay...

James Bladel: Okay we've got Paul. Paul, do you mind if I just have a quick question for Margie and then...

Paul Diaz: Sure, we might even have the same question.

James Bladel: Okay which is just you said that there was something else Margie or was that the extent of your follow-up homework?

Margie Milam: I have two things. Let me go back to the public comments tool. So maybe Paul if he has a comment on this?

Paul Diaz: Yes, just to close out the last item, thank you. You know, it's the problem with the use of the word simple tied to that first definition that Margie put up that said it could be less than half. I mean, to me that's not the majority. And I think in all ICANN circumstances a majority means 50% plus one, right?

So, I mean, I think we're kind of belaboring this again in that in all of our practices, you know, that definition, number one, from dictionary.com, less than half the total, that just confuses. I mean, forget that. Everywhere else it's talking about it means over half - 50% plus one. That's what we're talking about right?

So whether we use simple majority or majority are we again kind of belaboring this? Yes, Avri's point, you know, the first definition is not the majority it's a plurality; it's different. But I think we're just killing ourselves running around in circles something that's honestly kind of understood.

James Bladel: I tend to agree with that Paul. You know, maybe if we can just strike the word simple and just have, you know, Margie check that I think that we - you know, there's a whole branch of mathematics that study these kinds of problems. And I would really prefer we not try and wrestle them to the ground here.

So can we - can we move onto the next topic, Margie? You said there was a second follow up?

Margie Milam: Yes, sure, let me go back to it. We were back - we were on 37 right, because I think I had one more comment on that; that was the first comment about the word simple.

Okay the other one is it says passes a motion with at least 75% of one house and a simple majority of the other house. I think the bylaws say more than 75% when I looked at it. So the question is, are we intentionally changing the threshold? In other words is it greater than or equal to 75% or is it greater than 75%?

When I read at least 75% that to me means greater than or equal to but when I read more than 75% to me that's, you know, it does not include 75%. So I'm just asking the group what the intent was with that change. To me it does change the language in the existing bylaws.

James Bladel: Well I guess the question is is that a whole person or are we dealing with a fraction of a person because, I mean, I don't even know if the 75 is equal to - equal or greater to or greater than; it's, you know, a practical concern is it?

Margie Milam: Right. And I've worked a lot with Ken Bour on some of this stuff. It, yes, obviously you can't have a fractional person so it's, you know, if it requires, you know, you may have to round up in order to get to the, you know, the whole person.

But my point - my point being here that the language suggested could change, you know, what's existing in the bylaws. And so if the intent

was not to change it then I wouldn't make the suggestion that was made by the registry stakeholder group.

James Bladel: Okay so, I mean, I guess the question on the table is do we take a registries - stakeholder group's comment as a clarification or do we feel that that's a substantive change? Correct?

Margie Milam: Correct.

James Bladel: Okay. I think it's just a clarification. Avri.

Avri Doria: Yes, in other words what we're trying to determine is whether 75% is just a clarification of 66%? Is that what we're trying to clarify? I'm confused.

James Bladel: No...

((Crosstalk))

Avri Doria: ...it's the 66%. Seventy-five is not 66%.

James Bladel: No, no, no, no.

Avri Doria: So I'm confused.

James Bladel: That's not how I read it. I thought that there were two methods getting super majority in the bicameral council right?

Avri Doria: Oh and so they're adding either 66% of both or 75% of one...

James Bladel: Of one...

Avri Doria: ...and it's majority...

James Bladel: ...majority of the other.

Avri Doria: Okay got it. Thank you.

James Bladel: And they're using that language to replace the term super majority vote. Because there's more than one way to get to that. At least that's how I read that. David is - I know we've only got five more minutes left but is that what we're trying to do here? We're just trying to clarify that super majority vote be wherever that appears that we just, you know, reference the new methods of achieving super majority in the bicameral councils.

David Maher: That makes sense to me.

James Bladel: Margie am I even poking at the right question here or...

Margie Milam: I guess the way I understood the comments from the prior calls were that that we didn't want - or we will that it was meant to be a clarification as opposed to a change.

James Bladel: Right.

Margie Milam: So if, you know, if that's the case that it's just - it was meant to be a clarification I wouldn't suggest the change.

James Bladel: Okay I think that everybody is on board with that if it is a clarification then therefore it's okay that the intention was not to make a substantive change and that's not something that the group wanted anyway so. I got Avri next.

Avri Doria: Yes, I remain confused. I don't know whether I'm in agreement or not. Are we now, I mean, to call it a clarification we're saying that this is what super majority means.

James Bladel: I - my understanding which is very tortured at this point - but my understanding is yes that we - that there is a term - the super majority and it doesn't, you know, that there's more than one path to getting super majority.

Avri Doria: Right, that's right.

James Bladel: And that, you know, it's really - we can call it - we can call it whatever we want; we can call it the, you know, the trial by fire or whatever we want to call it. But there's more than one way to get through that and that if you do then it fits wherever the bylaws call for a super majority.

Avri Doria: Yes, in which case I would recommend that we always use super majority and not try to define specifically in particular places otherwise we start - if we all want to change what super majority is because we're no longer bicameral, we're tricameral or whatever strange permutation we get to next time we get reorganized we have to, you know, redefine everything.

So I would think that we should really rely as much as possible on defined terms so that if those terms gets defined we still have a process that works.

James Bladel: Okay. We're coming up towards the top of the hour. I think that's a good idea, Avri, and I think that, you know, we've seen that in other PDPs as well so we want to make sure that we're changing the, you know, we're keeping the stuff that's static static and then changing things where they're appropriately changed so that we don't find the definitions are pulled out from underneath us in other areas.

Real quickly I know we just got a couple more minutes here. But we wanted to get Margie and Marika, go ahead.

Margie Milam: Sure. I pulled up the memo that we were talking about earlier. If you glance down to Page 3 where it has the voting threshold I think it'll be obvious what my - I hope it'll be obvious what my comment was.

If you scan down to 9(c) where it defines super majority right now it says, "Requires an affirmative vote of more than 75% of one house." Okay and so the change that the registry stakeholder group asked for was at least 75% of one house. Okay so that, you know, so that's - so in my view that is a substantive change.

Avri Doria: At least it's substantive?

James Bladel: At least or more than.

Marika Konings: This is Marika. If I can comment because I - again I don't know if that was the intent of the registry stakeholder group to actually change that

threshold. Because what I think they tried to do - because if you look at the original recommendation we talk there about super majority. I think the only thing they were trying to do there is just instead of saying super majority define what it actually meant.

But I'm trying to get a clarification now from the working group. And if I understand Avri correctly - and I don't know if that's - maybe the view of the work team it's people's view that we should just leave it as super majority and maybe just add something like as defined in the bylaws so that the reference point is the bylaws and that would then address also Margie's concern where we're saying look the accurate language is in the bylaws and that's what is the, you know, the determining factor when we talk about super majority.

Did I understand correctly that that's the view of the work team in relation to this particular point?

James Bladel: You know, I - I think I lost the handle on this one. I think that, you know, from my perspective whatever gets us out of this topic faster is probably the right approach.

Marika Konings: I'm happy to write this up...

James Bladel: Because, you know...

Marika Konings: ...as well in a little note on this call...

James Bladel: Yes.

Marika Konings: ...so people can think a bit more about it. But as I understand it I think the intent of the registry's comment and David, please correct me if I'm wrong, was just to basically clarify what super majority meant as in the original recommendation we just say super majority but we actually don't say what it means.

So I think the question is more like do we want to spell out in the recommendation what super majority means or do we indeed follow what Avri says like leave just the definition there and make sure that people, you know, go back to the bylaws to make sure that they have the latest version there if at any point in time it would change that they can see there what super majority actually means.

James Bladel: I tend to agree with - I tend to lean where Avri is coming from here. It's like we only get ourselves into trouble by defining the same concepts - especially complicated concepts - in multiple documents because then they're open to if you don't use the precise exact wording in all places then you open yourself up to this more than or at least type problem.

And I think Avri's got the right approach; let's leave it as super majority, you know, you know, we know what super majority means in the Council - it's the bicameral council that has this, you know, this algorithm that we can follow. And then that way we don't run the risk of stating it inconsistently in multiple places at least...

David Maher: I agree.

James Bladel: ...I'm convinced now that's the right way to go.

David Maher: This is David. I agree.

James Bladel: It looks like Paul agrees. Okay. I think you've won us all over on that one, Avri, that's definitely the most practical way to keep this all sane. And with that I note that we're a couple minutes past. So, you know, thanks for bearing with us on this one folks. Good attendance. Hopefully today's call doesn't act as a deterrent for future attendance because I think we've got just a couple more of these to knock down and then we're ready to wrap this up.

So if there are no other objections we'll close for now. I think Margie and Marika are going to send a few things to the list so please watch for those. And chat with you guys next Thursday.

Marika Konings: Okay.

Paul Diaz: Thanks James.

((Crosstalk))

David Maher: Thanks.

((Crosstalk))

Marika Konings: Bye.

James Bladel: Bye.

Gisella Gruber-White: Thank you very much, (Lee). That'll be all for today.

Coordinator: Thank you. You're welcome. I'll stop the recordings now for you.

Gisella Gruber-White: Perfect, thanks.

Coordinator: Thanks. Bye, bye.

Gisella Gruber-White: Have a good day.

END