Policy Process Steering Committee (PPSC) Policy Development Process (PDP) Work Team (WT)
TRANSCRIPTION
Thursday 29 April 2010 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 29 April 2010 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-20100429.mp3

On page:
http://gnso.icann.org/calendar/#apr
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Participants on the Call:
Jeff Neuman - Registry Stakeholder Group - Work Team Chair
James Bladel – Registrar Stakeholder Group – Interim Chair
Paul Diaz - Registrar Stakeholder Group
Alex Gakuru - Non Commercial Stakeholder Group
Tatiana Khramtsova - Registrar Stakeholder Group
Alan Greenberg – ALAC
Marilyn Cade – Individual (joined later in the call)
Avri Doria - Non Commercial Stakeholder Group (joined later in the call)

ICANN Staff:
Marika Konings – ICANN Staff
Liz Gasster
Margie Milam
Glen de Saint Géry

Absent apologies:
Wolf Knoben – ISCPC

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

Gisella Gruber-White: Good morning. Good afternoon. On today's PPSC/PDP call on Thursday
                the 29th of April, we have Jeff Neuman, Alex Gakuru, James Bladel, Alan
                Greenberg. From staff we have Marika Konings, Glen de Saint Géry, Liz
                Gasster, and myself Gisella Gruber-White. Margie Milam will be joining us in
                30 minutes. We have apologies from Marilyn Cade, Wolf-Ulrich Knoben, and
                Avri Doria.

If I could also please remind everyone to state their names when speaking. Thank you. Over to you, Jeff Neuman.

Jeff Neuman: Thank you very much. This is Jeff Neuman, Chair of the Policy Development Process Work Team, and was said, it's April 29 at our regularly scheduled meeting. We do have a fairly low turnout today. It seems like there's some other events that are going on.

But you know, I do think that we can - even with the few of us that are on at least go through some of the voting threshold items that we left off on, understanding that you know, a lot of this is going to go out to list and comment anyway. So, I think we just need to make some progress and move forward.

So, if we just do a little recap - or maybe, I'll start -- because I know we're waiting a couple of minutes of Alan -- to just do kind of the administrative details. We do have a face-to-face meeting that we're going to have in Brussels on that Saturday, which is -- just pulling up the date here -- Saturday would be June...

Marika Konings: Jeff, this is Marika. I think it was the Sunday that the time has been set for now.

Jeff Neuman: Okay. Glen, is that right? Is it Sunday or Saturday?

Marika Konings: I think Saturday is the Council update where we might be asked to provide a update to the Council on the status, and I think it was the Sunday morning from 10:30 to 12:30 that was set aside for PPSC and PDP work team meetings. I don't - Glen, are you still on?

Gisella Gruber-White: Glen's just stepped away for a second.

Jeff Neuman: Okay. So, we'll nail that down whether it's either Saturday or Sunday. But the time, Marika, is correct, on...

Glen de Saint Géry: I'm back. It's the Sunday.

Jeff Neuman: Sunday, great.

Glen de Saint Géry: Yeah.

Jeff Neuman: So, it's Sunday, June 20...

Glen de Saint Géry: Twentieth.

((Crosstalk))

Jeff Neuman: Thank you. And, the time would be from - I think it was 10:30 to 12:30.

Glen de Saint Géry: 10:30 to 12:30. That's right. Yes.

Jeff Neuman: Right. That would be local Brussels time. And, what we're planning on doing with that is taking the first hour for the full PPSC - the Steering Committee itself, to get organized and to talk about how we're handling the working group work team recommendations. And, just the last hour will be for us, for the PDP work team to plan what we are going to do.

I mean, we'll have some details, but to kind of go through a run through of how the consultation - the PDP consultation to the community at Brussels, how that whole process will work. And you know, just go through kind of a run through of that.

There'll be more details on that particular consultation in the next couple weeks. We're finalizing the time, and as Marika said on the chat box, you know the schedule is not completely confirmed yet. It might be subject to

change. But, I'm hoping that - you know, hoping that we can lock that down as soon as possible.

With that said, I think what our plan is - definitely to put out a document. We need to put out a document by May 31 in order to have that document in time for the rules. There are rules as to when you have to publish documents prior to face-to-face meetings so that - you know, there's going to be a ton of documents posted and a lot of things for everybody to read.

So that said, in order to meet a May 31 deadline, and working backwards, what we want to put together is the report on the five stages, which is already out there and has been out there, and then do an Executive Summary which pulls out the recommendations from each of the five stages.

In order for that to be done, we need comments on those five stages on the report by no later than May 15. If it comes any later than that, then we're just not going to be able to make those edits in time. And so, probably have to save them for the comment period after the report's release.

And, we are hoping since we've had a lot of time for everyone to review the five stages, that there are no major comments between now and May 15, because you know, I'm not sure we're going to be able to accommodate those major changes, other than just drafting you know grammar, drafting, and some comments on some holes.

One of the things that Marika is going to do in the next couple days to week is putting together this document containing the Executive Summary, which pulls out the recommendations, and showing the group where exactly we have holes in those recommendations you know, that we've kind of punted. And, we'll start discussion on some of those.

But, recognizing that what might have to happen is in those spots where there are holes, we will - in the Executive Summary where it says

recommendations maybe pull out - you know, certain people felt this way, and other people felt this way. Here are the options. You know, let's put it out for comment and see what people in the community think.

But, that's it from kind of an administrative level. Is there any questions on that?

Marika Konings: This is Marika. If I can just add to - in addition to that, I would like to put forward as well like a first - you know, go at proposed edits for the bylaws that basically follow you know discussions of - that we've had in the work team, and then you know cover some of the - Alan has already incorporated as well in the recommendation. But in addition, there's as well some changes that we need to make basically to reflect the change from task force to working group model.

So, we hope as well -- and together with this updated version of the report pulled out in the Executive Summary of the recommendation -- to have a first draft of proposed bylaw changes for the group to consider. And so that those you know, two elements will be the major part for community discussion and review.

Jeff Neuman: Thank you, Marika. Yes, you correctly noted. I had missed that. So, those are the items. Any questions on that?

Okay. I noticed Paul Diaz has joined, and Alan you are back as well?

Alan Greenberg: Yeah.

Jeff Neuman: Great. So Alan, you just missed kind of the administrative discussion. I think if Marika, you can just kind of post that out to the list, just what we've talked about as to what our plan is for this document and for Brussels, then we don't have to recap that.

Alan Greenberg: That's fine.

Marika Konings: Yes. I'll do some out - them out - put them there as well and the deadline of 15 of May for comments so everyone in the work team is aware of what the deadline is for that.

Jeff Neuman: Okay. Thank you. So, now going back to what we did last week, and then I am - I think today we do need to finalize the threshold issue, or at least finalize going through it, and recognizing we could take some more input on email.

We did actually ask on email for some comments on certain issues, and we did not get -- unfortunately -- anybody to respond to those. I'm not going to - we're not going to - you know bring those up again. And, those were issues on the charter and the thresholds on approving and/or modifying the charter, with the different options of how to prevent gaming.

So, if we could come to a full consensus as a group on that you know within the next few weeks online, that would be great. If not, I think the way that will be presented as here are the options. Here's what we discussed. Here are the options. And, just kind of throw it out to the community for their thoughts.

So, if we could just then jump into the...

Alan Greenberg: Jeff, it's Alan.

Jeff Neuman: Hey, Alan.

Alan Greenberg: That implies for those of us who ignored the questions that were on the email from last week, we still have an opportunity to go in and respond now.

Jeff Neuman: Yeah. I'm not closing...

Alan Greenberg: Okay.

Jeff Neuman: ...yeah, I'm not going to close off comments on that. That's right. I'm just - close off discussion at least so we can move on, but - on the call. But certainly, yes, if you want to weigh in this week, that would be great to do as well.

Alan Greenberg: Yeah. It's just been - this is tax week in Canada. It's been a bad week to try to do anything.

Jeff Neuman: Well hopefully, you've paid your taxes.

Alan Greenberg: I have not, but I have until tomorrow.

Jeff Neuman: Yes. Taxes are something - if you owe taxes, there's no reason to pay early.

So okay, where we left off then is the vote of Council. So right now, we've talked about that the work has gone through a working group, and the working group has now presented its recommendations to the Council, and in the bylaws it defines what the threshold is for the Council to approve a PDP that has a - with a GNSO super majority - how to approve it with a super majority and how to approve it without a super majority, and then to discuss you know really what that means.

So right now, it says, "To approve a super -- I'm sorry -- to approve a PDP recommendation without a GNSO super majority requires an affirmative vote of a majority of each house, and further requires that one GNSO Council member representative of at least three of the four stakeholder groups supports the recommendation."

Now, one little nuance here that we talked about was that when we presented a report to the Council, the report could have multiple recommendations -- plural -- and/or it could be - you know, multiple separate recommendations or

the group can recommend as a whole, the group -- meaning the working group -- could say to the Council, "Look, we recommend you know, approving all of these or none of these," but you know, not cherry picking, right. We left a bunch of flexibility to the working group to do that kind of thing because you know; one recommendation can easily affect another.

So James, do you have a comment?

James Bladel: Yes, Jeff. And, this is James speaking. Thank you. And, that last - it was that last bit that you just mentioned, so maybe I'll withdraw, but the idea that some recommendations may be interdependent, and maybe alternatives (sic) choices on the same question.

And, it would be - we need some mechanism to provide instruction to Council that the either/or proposition, that choosing both or choosing neither is not really an option, as far as approving the recommendations.

Jeff Neuman: Right. And, I think one of the assumptions is that there may be groups of them, right. So, it's not necessarily the working group saying you have to approve every single recommendation in here. The working group could say, "Look, you know, we have these packages, so - you know, if we see Recommendations 1, 2, and 3 as being so closely interrelated that we recommend that you don't cherry pick amongst those. But if you want to separate 1 through 3 from 4 through 6," that may be fine, right?

It's preserving the flexibility, but having the working groups send clear instructions as to which recommendations they believe are tied to each other.

James Bladel: Right.

Jeff Neuman: Putting that nuance aside, but recognizing that that's what we're talking about, does everyone feel like - I mean, I'm not sure what we - those thresholds kind of stand themselves, you know. And, we're not talking about

what it means to have a super majority or what it means to not have a super majority.

We're just saying this is what's going to be declared. A super majority of the GNSO of approval or recommendation, and this is what's going to be not declared approval of a super majority, but just a regular approval of the recommendations.

So for the first one - I mean, we talked about the super majority. We've talked about an option that Avri had brought up of - and we haven't fully - we haven't gotten comments on it yet, but it was the option of having a super majority not just be the GNSO super majority of 75% in one house and majority of the other, but changing it to 66% - it's either 75% of one house and a majority of the other, or 66% of both houses, or of each house I think is the right way to say it. And, I don't think we - I didn't seem like anybody objected to that, at least presenting that as an option.

So, Marika and then James.

Marika Konings: This is Marika. I just wanted to note that Wolf-Ulrich submitted some comments and specifically related to that issue. And (of course), he proposed - his comment related to this proposal having the - you know, either 75% (of the house) or the two-thirds. And, two-thirds means 14 votes. In case of 75%, CPH at six, and a majority of NCPH, seven, the threshold would be 13. Suggestion (at) - including at least one vote per stakeholder.

Jeff Neuman: So, he's saying - he's saying -- sorry, just to recap that -- 66% of the non-contracted parties may not include both stakeholder groups. Is that what he's saying?

Marika Konings: I'll post his comment to the chat now, so people can actually read it. And I'll - (if it help) - because it specifically relates - actually, he puts that to the notes that are on Page -- let me just scroll down -- on Page 7...

Jeff Neuman: Well, so...

Marika Konings: ...(unintelligible) the definition of - so super majority is proposed to add the original meaning of GNSO super majority, i.e., two-thirds of Council members, to the definition so that it won't be 75% of one house and a majority of the other house or two-thirds of Council members. And then that (unintelligible)...

Jeff Neuman: And so, I think that maybe it wasn't two-thirds of Council members. I think it was two-thirds of each house, which may explain why...

James Bladel: Yeah, there is never any counting which counts all Council members.

Jeff Neuman: Right. So, I think that just may be a miscommunication on the summary. Marika, it's not two-thirds of all Council members; it's two-thirds of each - of the Council members of each house, right, because the contracted parties have less Council members than the non-contracted parties.

Marika Konings: Okay. So, I'll update that so it - you're basically saying that his comments isn't applicable because (he's basically got the summary) of those incorrect there.

Jeff Neuman: Well, - yeah, I mean his comment is true...

Marika Konings: Yeah.

Jeff Neuman: ...in the fact that if it's two-thirds of each house...

Marika Konings: Yeah.

Jeff Neuman: ...then it will by definition include at least one vote per stakeholder group.

Marika Konings: Okay. I'll update that.

Jeff Neuman: Okay. James, do you have a comment on that? Or, was that left over? I can't remember.

James Bladel: No. It's something new.

Jeff Neuman: Okay. Go.

James Bladel: But, it's on this issue. I'm just struggling a little bit with the idea that if you had mutually exclusive or interdependent recommendations -- as we discussed before -- and the existing rules or definitions for a super majority on the Council, and there's nothing preventing a Council - an individual Councilor from voting in the affirmative on both mutually exclusive choices, then there's a possibility that it will simply just come down to which order they are presented in front of the Council.

                 I'm getting a lot of background noise. Is that me?

Jeff Neuman: I'm not sure who it is, but I hear it as well.

James Bladel: Okay.

Jeff Neuman: Is there someone that's on mute - or not on mute that's in a car maybe, or...

James Bladel: Well, it's gone.

Jeff Neuman: Yeah. So just to summarize James, I think your comment is if there are options presented, then in theory - I think this is similar to what we talked about last week, where in theory you could have both options getting - and maybe even in that case it was only 33%, but here you're talking about you know, getting a majority or super majority.

And, I think - James, I think our solution to that one is yes that's possible, but I think we need to trust the Chair to only - you know, when the working says only one of the options can be approved, I think the - sorry, not the Working Group Chair, the GNSO Council Chair should really then retake the vote.

I mean, it should vote on both. If both get super majority, then you know obviously, it's got to go back and say, "Look guys. We need to pick one. And you know - so, go back and cast your ballot for either Option 1 or Option 2, and then we'll see which one's got the most support, or we'll see which one - or if either of them have super majority support at that point." But, I'm not sure we could prescribe - you know, is there any other suggestion that you would have to resolve that, James, or...

James Bladel: Well, just that you have one affirmative vote per group of mutually exclusive recommendations -- and this would be an instruction to Council -- and say something to the effect of - or qualify it with the statement that to - you know, to avoid conflicting instructions coming out of Council, whenever there is a group of recommendations that the working group has identified as mutually exclusive, that you know we would essentially say that the Councilors have one affirmative vote across those - that group.

Jeff Neuman: Okay. I think that makes sense. Alan, do you have a comment on this?

Alan Greenberg: Yes. I'm not sure we can or want to be too prescriptive as to what Council can and cannot do. Any given working group can put words in its report saying this group of recommendations is a package. You cannot pick and choose. Council may choose to ignore that, which puts it back into a deliberative body and not a legislative one. But, that's its prerogative I think.

I mean, we have talked very early in the past of what happens if a working group cannot come to closure and provides Council with options, and Council must make a choice. So, I think it's up to the working group to package it however it wants, and in all likelihood, Council is going to honor it because

they don't want their decision to be questioned as not following the bottom-up process. But, I don't think we can be more prescriptive than that.

James Bladel: Hey Jeff, this is James. Maybe it's just enough to - you know as you mentioned, notify the Chair and the Vice-Chair that certain groups are mutually exclusive, and you know trust in them to sort it out if they approve conflicting recommendations.

Jeff Neuman: Yeah. And we can - and, I think that's right. I think we should note that in our report Marika is - you know to make sure that you know, this work team is you know recommending that the Council really pay attention to the instructions from the working group.

We obviously can't mandate that, but to say that you know, we envision as a PDP work team that the working group - the specific working group will make - or may make recommendations and may make those recommendations in certain bundles, and may present them in options.

And, that you know in accordance with the recommendations from the Board of Governance Committee of policy being done at the working group level, you know this work team strongly recommends that Council adhere - you know, adhere as close as possible to the recommendations of the work team. And, without kind of making it sort of - you know, we can't make it mandatory or anything, as Alan talked about.

Marika?

Marika Konings: Yeah, this is Marika. I mean one thing - this might be as well probably for a later discussion, maybe after we have you know, the first cut of the report done. But, one thing that the group might want to discuss or consider is how to deal with those recommendations that are not consensus recommendations. Where indeed you have two recommendations that are indeed maybe either mutually exclusive or just take a different approach, but

you know for example, one has strong support. The other one is an alternative view.

And, if the group would like to provide any kind of instructions to the GNSO Council how to deal with those kind of recommendations. And, I this probably an issue where as a working group we ask some specific questions on up to the working group work team, and I think they've put those together and I'm not sure whether they actually formally shared them.

But I think at some point in time, the group might want to you know, think about that as well, and whether any guidance needs to be provided or indeed - you know, for the Council to take it into account and factor in that one recommendation was - had more support than another when deciding.

James Bladel: Jeff, this is James.

Jeff Neuman: Yes. James.

James Bladel: Yes. Just real quickly. I'm wondering if there's any merit to the idea -- and I'm just brainstorming here -- of putting together outside of the final report a - the working group will develop some sort of a Council note or a Council bulletin that they could send to the Council, which might even have some recommendations on you know, what the ballots of a recommendations would like. Because, it sounds like we're wanting to pass a lot of information up to the Council that may or may not be centralized in the report.

Alan Greenberg: It's Alan. We can certainly recommend to Council that certain new rules be put into its own rules of procedure.

Jeff Neuman: Yeah. I think - and Alan on that note, one of the deliverables that we talked about early on, and Marika and I were just talking about it before this call, was after we put out these reports and after we get comments in, and as we're - after Brussels as we're working through all of them, is to think about

whether we want to put a skeleton rules of procedure together for the Council as part of our final report, so that they could - you know, we could do the work as the work team here, and then pass it on to Council to run through whatever process.

But essentially, it would be our vision of - because we have recommendations in our report, some of which are you know, we think these are bylaw changes, and then others, we think these should be rules of procedure, or must be rules of procedure. So, to provide that guidance I think will be helpful.

Alan Greenberg: Or, we can let them reinvent it all themselves.

Jeff Neuman: Well, they're going to do it (what they're going to do, though), right. So...

Alan Greenberg: That was a joke. A bad one.

Jeff Neuman: Well it's partially a joke, but it's - you know, that may end up what - you know, be - that may be what they do anyway.

Alan Greenberg: We shouldn't require them to do it. If we have wisdom, we should pass it on and let them ignore it.

Jeff Neuman: So with that said, I want to kind of get back to the threshold. I don't see us - again, without talking about what the effect is on the Board as to what it means when it has the majority or super majority. I don't hear anyone wanting to change those thresholds, other than possibly a redefinition of what GNSO super majority means, to include the option of what's already there or 66% of each house.

So that said, then we have a C - 4C which says, "Approve a PDP recommendation imposing new obligations on certain contracted parties, where an ICANN contract provision specifies that a two-thirds vote of the

Council demonstrates the presence of consensus. The GNSO super majority threshold will have to be met or exceeded, with respect to any contracted party affected by such contract provision."

A little background on this. Right now, it's only the registrars that have in their accreditation agreement a provision that specifically says that a - that certain elements to be - or certain policies to be a consensus policy requires a two-thirds vote a Council. The registry agreements don't have that two-thirds in there for the most part. They have a general definition of consensus.

So, the questions been posed which we may or may not tackle in this group, but the question does say - or these contracts do say, "A two-thirds vote of Council." Margie sent around a memo a few weeks ago saying that the staff recommends that the two-thirds be interpreted -- at least for these bylaws -- as a GNSO super majority. Which again, is three-quarters of one house plus 50% of another, or 66% of each house is the - what we're talking about.

James - and Marika has just pulled up the part of - in the RAA, which is in bold there on 4.3.1, which says, "A consensus policy are those specifications or policies established based on a consensus among (unintelligible) stakeholders. Representing the ICANN process is demonstrated by A, action of the Board establishing a policy -- I'm summarizing here -- or B, a recommendation adopted by at least two-thirds of the vote of the Council of the supporting organization to which the matter is delegated."

James?

James Bladel: Yeah. Just real quickly, Jeff. I mean, is there any reason why we're not just making the effort to go back and fix these contracts and say super majority as defined in the - you know, in the bylaws, or something like that, and just - I mean, this comes up it seems fairly frequently, and I think that the reason was that these original contracts were too prescriptive and didn't take into account any GNSO restructuring.

Jeff Neuman: Right.

James Bladel: So, I just wonder if we can address this at the root and amend those contracts.

Jeff Neuman: Well, there is a - as you know, there is a working group that is looking at the RAA. I do think essentially - I do think eventually the contracts should be fixed, but I think what we can do is just say until those contracts are amended -- so, it's more of maybe a transition item -- but until those contracts are amended, the PDP work team recommends a change to the bylaws, which would say for the purposes of two-thirds vote that's in the current RAA, that shall mean the GNSO super majority as defined in the other section of the bylaws, which would be this PDP Process.

I completely agree with you that the contracts should all be fixed. I just think with how difficult that has been over the last few years in getting registrars to sign these agreements and getting ICANN - you know, getting everyone to agree on opening up the contract; I think that may be much more difficult than a change to this section in the bylaws. But...

James Bladel: Okay.

Jeff Neuman: ...before I do that, Margie, you want a clarification on that, or...

Margie Milam: Yeah, I do. This is Margie. The RAA working group does have that as one of the items, to clarify that section. So, that's one of the amendments that's been proposed for the RAA.

But, what I wanted to point in the memo was I think the bylaws are pretty clear with respect to contracts that have the two-thirds vote requirement. But as you know, some of the registry agreements don't have that language, and so it has a broader statement about needs to be developed, you know, as a

consensus, but there's really no definition of what consensus is. And so, the staff recommendation in this memo was to clarify that across-the-board for all registry agreements.

If we're talking about consensus, we're talking about the higher threshold, which is the - you know, the -- what does that say -- you know, whatever the higher - the super majority - whatever you define as majority. Because, it's not clear when we look at the contracts now which standard would apply for those contracts, because we have several standards in the bylaws.

Jeff Neuman: Yes. I think that's a little bit more complicated Margie, when we talk about the registries, in the sense of - well first of all, I think what the RAA should be considering - that team should consider, is making the definition or consensus policy the same as the registry's, or you know somehow making them both the same, so that you can't have consensus under one without having it under the other.

I think the other part that that ignores though, if you just change it to GNSO super majority is it changes some of the other things that are in there. In other words, if you just say that the registry agreement's consensus will have been achieved by this voting structure, ignores the other parts of the consensus policy definition, which is even in the registrar agreements too, about participation and other things.

So...

Margie Milam: Yeah. I'm not trying to - I guess I wasn't really attempting to address that. I was just trying to - we were suggesting just the vote part of it. So, we're not changing the rest of it. It's the - you know, the - what's the vote required to get the thing passed?

And so anyways, that was the recommendation in the memo that we standardize that so that it's the same standard across - you know, across-the-board. Essentially, we're saying the same thing you're saying.

Jeff Neuman: Yeah, I think - and so, while we can - I mean, the options here I see are really - I'm not sure if this group is the one that deals with that since it is in a contract, and maybe you just leave that to the registry agreements and the registrar agreements, and try to bring those into line with the process that we set up. But, I don't think by bylaw we could actually change the registry (impact), or even the registrar agreements.

The only reason it's not too much of a change to the registrar agreements is that the GNSO super majority is actually a higher threshold than what's in the registrar agreement. Then, you're probably not going to have a - too much of a push back from the registrars, since you're creating them higher.

But, the problem is if you try to make it applicable to the registry agreements, that there you may be lessening it, (and what's in) the registry agreement. And there, you'll probably get push back from the registries.

Alan, you have a comment?

Alan Greenberg: Yeah. There's a couple of things. First of all, we're not going to fix all of the ills of the RAA at this point. I mean as an example, as the RAA is worded, you still need the 66% -- however you end up interpreting that -- of Council to approve the negotiated parts of RAA changes, which are negotiated between ICANN and the registrars. We've never - we didn't address last time, and we haven't addressed this time how that is going to work the next time around, but the words are still there. So, we can't fix all of the problems.

In terms of is there going to be any push back of de facto interpreting the 66% words in the RAA as being our super - new super majority. I don't think there's going to be any push back, because the alternative is they - you in

fact count heads - you know, hands up in a Council meeting, and that means a consensus policy can be approved with zero registrars and registries voting for it, which I don't think is going to be something that is a nice alternative for the registrars to accept.

Jeff Neuman: Right. And, I agree with you Alan. So, I think if we just limit it to - for those agreements that - or for those agreements that referenced a two-thirds vote of Council, the PDP work team recommends that that be interpreted as the GNSO super majority standard without touching any other aspects of the registry or registrar agreements.

Alan Greenberg: Yeah. And, what would happen if a given registrar after a consensus vote using that rule says, "Hey. You didn't follow the rules." I don't want to - I'm not a lawyer, and I'm not going to be ICANN's lawyer, so I don't think we need to - the most we can do is make that recommendation.

Jeff Neuman: Right. And I...

Alan Greenberg: How it gets enforced, how it gets on here, I don't know.

Jeff Neuman: Right. Marika? I'm sorry, Margie.

Margie Milam: Yeah. I have a question for you, Jeff. When you say you think the standard is higher than the super majority, what do the registries define as consensus, because, that statement surprised me. I guess I didn't see what we were suggesting as being - you know, expanding the vote. We were thinking it was actually helping registries. So, I'd like some you know, clarification on that.

Jeff Neuman: Well because it's more than just a vote, I guess is my - there's more that's required in the registry definition, including active participation in the - by the registries. So in theory if the registries feel like they were excluded in some sort of way, then a super majority may not - standing alone may not be enough for a consensus policy. (Unintelligible)...

Alan Greenberg: So, you're saying registries can boycott a consensus process, and therefore, not allow it to happen by not participating?

Jeff Neuman: No. No. No. No. I wouldn't say that. I would say - I would basically say that the registries could envision a situation where they were pretty much ganged up on where they - even though they had opportunity and they did participate in groups, everything they did was just meant - completely out of hand. Didn't consider feasibility of registries. It was the registrars voting in a coalition with the other non-contracted parties, and convinced the one Nominating Committee member in the contracted party to also vote in favor of it. And therefore, that...

Alan Greenberg: That was the exact intent of the thresholds, to allow that to happen.

Jeff Neuman: Well, no. There's a difference between everybody voting in favor of something and a witch hunt, right? So, if it just that the registries are being stubborn and they've had plenty of opportunity, and they had opportunity to be heard by everybody, and you know, there was good rational reasons for not including it, that's different than a witch hunt in which registries were specifically excluded from certain things and they were not - they did not feel part of process.

So...

Alan Greenberg: Excluded is different from we didn't agree with you, though. So...

Jeff Neuman: Correct. That's correct. Right. So, that's what I'm trying to say is that if you just tie it to the vote and nothing else, then that protection is not afforded to the registries. Now, it's probably not going to happen too often, and I think most claims are going to be ridiculous under it.

But, I think the registries feel like - and in certain circumstances in the past -- by the way -- they felt like you know, with the - the example is you know, with the (Feb. '06) PDP. We really felt ganged up on. And you know in the end, it turned out that the staff and others did listen.

But, it was a number of registries -- and me being one of them -- felt like there was nothing we could do or say that meant anything to anyone, and there were certain people on a witch hunt. Fortunately, the entire group wasn't on a witch hunt, but there were some in there that were.

And so, the vote itself is not everything, I guess Margie, is my point.

Margie Milam: Yeah. Sure. And, if I can comment. I mean, we're not suggesting revising the registry agreement so all of the other language in the registry agreements that you're pointing to are still in there. The reason why we thought it was beneficial for the registries is because there was this vagueness, and I have - that appear in the memo on Page -- let's see -- Page 3 - the bottom of Page 3, that the other standard could apply. Because, we don't have a definition of what is consensus for the vote - at least for the purposes of the GNSO vote.

And so, there can be an argument made that in addition to the super majority, you could pass a consensus policy with an affirmative vote of a majority of each house, as long as its representative as three of the four stakeholder groups supports the recommendation. And so, that in our view was much lower than the super majority standard that's in the bylaws, and we wanted to clarify that certainly, that standard wouldn't apply.

And so, what we were talking about was just you know, making it consistent across-the-board with all the registrars and registries, that the standard has to be the higher standard. And then, you look to the contract for, you know, the rest of the (stuff). It's really you know, closing that argument. If you don't address it, I think you've got the argument that consensus could be either of

those, since we never had a formal definition of what is consensus - you know, a consensus vote anyway.

Jeff Neuman: I don't think any registry ever thought - and still doesn't think that the other standard would every apply. And so, I don't see the registries seeing that as a concern. I think the concern right now from the registries is that we don't have the other language that the registrars have which talks about the documents and the intensity, and all that other stuff. We have different language. And so you know, whereas the registrar part there is a specific reference to a vote, there is no specific reference to a vote in the registry part.

And so, I think - I really think the only way you're going to solve this at this point is only in the - you know, basically saying in a limited statement of saying in places where a two-thirds vote of Council is required in agreement, we interpret that to be the GNSO super majority standard, and leave it at that.

I think the other - trying to make it in the bylaws apply to every single party, I think you're going to widen the debate, and it's going to be something that'll be never ending until all of the agreements - the registry and registrar ones are made the same. They should be, but...

Alan Greenberg: Jeff moreover, whether we're going to fix the problems in the RAA this time, in terms of defining how it's changed in the future or not, some day it should be fixed so it has a consistent set of rules which can actually be followed.

Jeff Neuman: Yeah. And, I actually made - I mean, I personally made this recommendation when the first RAA working group came up - or not the working group, the - when those private negotiations were going on, and the answer I got from ICANN staff was we don't want to open that can of worms.

Alan Greenberg: The can of worms is open and will be every time we try to change it.

Jeff Neuman: Right. So, that...

Alan Greenberg: Until we find a Council that likes rubber stamping things.

Jeff Neuman: Yeah. I - so I really think, Margie, the only thing that we can recommend as a PDP team is basically saying where two-thirds of Council is referenced we recommend the GNSO super majority standard apply, and that's it.

Margie Milam: Okay. I understand your perspective. And, it sounds like it'll be too difficult to try to make it more consistent.

Jeff Neuman: Yeah, at least through the PDP bylaw changes. I think through their registry agreements. I mean you know look, there still are registry agreements out there for new TLDs. There'll be ones - you know, .com, .net; everyone comes up in the next couple of years. There's still opportunity to change those agreements and make some sort of unified standard. But, I think that's the way to do it as opposed to trying by bylaws - and trying in ICANN's bylaws to redefine the contract.

Alan Greenberg: I'm not sure you can even do that. I'm not sure bylaws - bylaws which are unanimously passed by the corporation can't overrule a negotiated contract. I just...

Jeff Neuman: That's absolutely - that was going to be my next point, and you're absolutely correct. I think - and why we can get away with doing it with the registrars is because we're actually imposing a higher standard that's more favorable to registrars. And therefore...

Alan Greenberg: We don't think anyone's going to complain.

Jeff Neuman: Exactly.

Alan Greenberg: Well. I mean otherwise, it would be a sweet world if any corporation could change their bylaws to unilaterally change contracts. I like it.

Jeff Neuman: Well, that's what I...

Alan Greenberg: It depends which side I'm on of course.

Jeff Neuman: As a side note, that's exactly what I said when ICANN had proposed the initial unilateral amendment language, which was when ICANN feels like it, they could you know, change it. And then I said well you know I'll have that on my side, too. You know, we'll put those in the agreements.

                          Anyway, that's actually moving forward in a positive way, so I don't want to bring that up. But you're absolutely right, Alan. That I'm not sure that even if we did put this in there that it could have any effect.

                          So that said, I think - it sounds like we're kind of on the same page with that one. Certainly put that out for comment with the rest of the group. Margie, can you - I'm sorry, Marika, can you go back to the other document?

Marika Konings: Yes. Give me one sec.

Jeff Neuman: Sure.

Alan Greenberg: And roughly, where are we in it so I don't - we don't laboriously each find it on our own.

Jeff Neuman: We are in Section 4. I'm sorry, the voting thresholds, which is D Number 4. I think we just did 4C. I'm trying to scope through it. Yes. We're on 5 now, the Board vote, which is on Page - there we go.

Alan Greenberg: Okay. So, (unintelligible)...

Jeff Neuman: There we go. So, now we're on...

Alan Greenberg: Yeah.

Jeff Neuman: ...5A, which is the Board vote. This may require a little discussion. What it says is, "In the event the Council has reached a super majority vote, the Board shall adopt the policy according to the vote unless by a vote of more than 66% of the Board determines that such policy is not in the best interest of the ICANN community or ICANN." I'm not sure we can do anything really to change that. That's what it says.

We could seek to try to define that, but I think part of this is governed by corporate law - by California Non-Profit Corporate Law, which is that the Boards really always has to maintain the ultimate discretion of the runnings of the corporation, and not in the best interest of ICANN is really - of the corporation is really what the standard is, and they've added the ICANN community. I'm not sure how they measure that, but Alan?

Alan Greenberg: Yeah. That's a curious notion in that it's worded - or curious bylaw in that it's worded negatively. If you word it positively, it says all it takes is a 34% majority - a 34% vote of the Board to pass something. But, that loses the message that the Board determines such a policy is not in the best interests.

So, I think the way it's worded is about as good as it's going to get, because that - the notion of not in the best interest is an important one. But - well, I must admit I've never seen anything in a Board - in bylaws which say -it says a Board approve can approve something with a 34% vote in favor.

Jeff Neuman: Yeah. It's - you're right, it is in the negative. But, I think it's - I think you're right. I think it'd be hard to word in the positive. You - you're - yeah, I think you're right.

Alan Greenberg: I mean, essentially, they're saying the Board motion says - how do you word this? Do we reject GNSO advice? And, that 66% vote - a super majority of the Board can reject this.

Jeff Neuman: Correct.

Alan Greenberg: So...

Jeff Neuman: I think - yes. That's right.

Alan Greenberg: Maybe it should - maybe we can word it like that. It requires a super majority vote of the Board to reject GNSO advice because it is believed to not be in the best interest. That does phrase it in a positive way.

Jeff Neuman: Yeah. I'm of the opinion that if it's saying the same thing, that we probably - I'm not sure we should - I think getting the Board to approve that - (change) the bylaw - I mean, we can recommend it. We can recommend whatever, so might as well. I mean, we can make a note saying you know, we think this is the right standard. We would propose rewording this in the positive, and then what you said would be the way we would do it.

Alan Greenberg: Yeah. If you just change adopt to reject, the rest of the sentence flows in the positive, and it still requires a 66% vote to do something.

Jeff Neuman: Right.

Alan Greenberg: It may be worthwhile.

Jeff Neuman: Margie, do you think we could take that and turn that into a draft, recommended positive motion?

Margie Milam: I'm sorry. Which section are you referring to?

Jeff Neuman: It was 5A. If we just worded it more positively to say that in the event the Council reaches GNSO super majority vote, the Board must approve the

policy - no, I'm sorry. Alan, how did we say it? The Board may only reject the policy with...

Alan Greenberg: The Board shall - a super majority vote of the Board is required to reject the policy, and then try to put in the harm to the community part.

Margie Milam: Yeah. I mean, it's - essentially, you're saying the same thing but in a more positive way, right. So you know, I could take that back to legal, but it seems like there should be a way to accommodate that.

Alan Greenberg: Yeah. I - my sensibilities are offended by the - it says the Board approves something with a 34% vote.

Jeff Neuman: Yeah. Okay. So then in B, it says that in the event the Board determines not to act in accordance with the super majority, the Board shall one, articulate the reasons; and two, submit the Board's statement to Council. Is that enough? Is there anything else the Board should be submitting?

James?

James Bladel: I guess to answer that question; we'd need to know what's contained in the Board's statements.

Jeff Neuman: It's just to find out the reasons for the determination.

James Bladel: Does it also include you know, advice or recommendation on how to modify the recommendations so that they would be acceptable, or was that completely open ended?

Alan Greenberg: You just opened box, which you probably need - which we probably need to open.

James Bladel: I'll back away from that hand grenade...

Alan Greenberg: No. No. No. I...

Jeff Neuman: I think - so what you could say is articulate the reasons for the determination, along with any - yes, along with any recommendations by the Board on how - on what may be done to - just trying to think of the words. But essentially, I hear what you're saying. I think we can put that concept in. We just need to think about the words. But, you're essentially saying give us the reasons why you're rejecting it. Tell us what we could do to fix it. And, submit that to Council and we'll try to work with that, right? I mean essentially is what you're saying?

James Bladel: Right.

Jeff Neuman: Because, I could definitely envision things - you know, you could envision the Board saying, "We just think it's harmful. We think it's not in the best interest of the community because," blah-blah-blah-blah-blah. "But if you did this, then maybe we will reconsider it."

James Bladel: Well you know, it shouldn't be a guessing game, but you don't want the board getting overly prescriptive in what it was going to take, and you know drawing a road map for the working group to give us recommendations through. But neither should it be vague, and you know the Board shouldn't be a (black box) where you don't know what's - why something was rejected.

Jeff Neuman: So what's not in here -- at this point -- is when the Board has to do a vote. Obviously, (unintelligible) when we can reply to that, but - so assuming the Board votes, it rejects it, is there any kind of timeframe we want to suggest for getting a - you know, within X days of the rejection we want the statement delivered? I mean we can certainly do that.

Alan Greenberg: I think that's necessary.

Jeff Neuman: So we could say, "In the event the Board (term) is not to act in accordance with the majority - the super majority vote, the Board shall within," we'll leave it blank now, "But within X days issue this Board statement that contains these things."

Does that make sense, Margie? Marika?

Margie Milam: Yeah. I mean it makes a lot of sense because if they're not accepting the recommendation there should be some communication back that explains why. I think that would be helpful.

Jeff Neuman: So it's - maybe we can - maybe this is easier than - you know, so if the minutes are due now within seven business days after the board meeting, do we want to say - it shouldn't take much longer than after the minutes are posted, you would think, so maybe within ten business days as a kind of recommendation?

Margie Milam: Ten business days is two weeks so that - it seems doable.

Alan Greenberg: That an always be adjusted if they don't like it, so let's put a placeholder in.

Jeff Neuman: Okay. All right. So then we - so we've added a time period and we've added a sub-element to that not just articulate the reasons, but people can word it much better, but it essentially provides guidance on, you know, what it may take to correct any deficiencies that the Board saw in it, and that's probably not the word. Oh, and Marika just dropped off but she's back now.

So, Margie or Marika, can - what we just said basically in the - in C is that - two things. One, is to require the Board to deliver the statement within ten business days after the Board Meeting, and then the second thing is to add another element to what the Board - what's in the Board statement, which is some sort of guidance on how to cure any deficiencies that the Board saw in the policy as, you know - yeah, you guys can word it better.

All right. Then if we jump to D which says, "The Council shall review the Board statement for discussion with the Board within 20 calendar days after the Council's receipt of the Board statement." I would say instead of calendar days, I think what we've converted the others to is, "within meetings," right. So, shall consider or shall review at the next - I think it should review it.

I'm not saying that they have to do anything other than review it. I think we should take "Should review at the next meeting," after the - what we said in other situations is, "At the next DNSO Council meeting after it receives this, unless that's within seven days prior to the Council meeting, in which case it would be moved to the one after that." I think that's what we said in other situations.

Alan, do you have comments on that?

Alan Greenberg: I have a more general comment on this whole section, but let's finish this one first.

Marilyn Cade: And Jeff, can I just -- sorry to interrupt you -- but I just want to make sure that I announce I'm here. It's Marilyn.

Jeff Neuman: Hi, Marilyn. Welcome.

Marilyn Cade: Thanks.

Marika Konings: Jeff, this is Marika. Can I make a comment on the days?

Jeff Neuman: Yes.

Marika Konings: Because actually in looking at the bylaws, I saw a need that we mention the most case is seven days before a meeting, but actually I think the new rules of procedures say eight days ahead of a meeting. So maybe we should be

consistent as well with the rules of procedures. I'd make that it's either - it's submitted eight days in advance of a meeting, otherwise it's considered the meeting after basically.

Jeff Neuman: I think...

Alan Greenberg: We need an elegant way of stating that, however.

Marika Konings: Yeah. Sorry for not being elegant.

Alan Greenberg: No. No. No. No. No.

Marika Konings: But I - we have the language -- I think -- in other sections where we use that, you know, either eight days in advance or otherwise try - you know, we can use that same language here. I mean...

Jeff Neuman: Yes.

Marika Konings: ...it's in the report where we have several sections where have similar kind of recommendations.

Alan Greenberg: Yes. I agree. I think we should standardize that across our report. If that's what the Council now has then yes, we should keep with that.

Marilyn Cade: Jeff, I have a question. I think I just got disconnected from Adobe, but that was my fault. It's Marilyn.

Jeff Neuman: Yep.

Marilyn Cade: Does the Council have a process to deal with emergency that's already incorporated as well?

Jeff Neuman: I - it actually does have a process and that's a good point, Marilyn. I think their process - you know, someone has to just make the motion...

Marilyn Cade: And it has to carry by a certain vote if I recall, right?

Jeff Neuman: Right.

Marilyn Cade: That's the majority. Would it be feasible to just follow the rules of the Council and refer to that as the...

Jeff Neuman: We certainly could do that. I think, you know, you're putting this directly into a bylaw and if the bylaw's want to (punch) the rules of Council, I mean that would probably be a question more for Margie and legal counsel as to whether they want to just blindly cite the rules of procedure, which could be changed by the -- excuse me -- the Council as opposed to being changed by the Board. The Board could do that, yeah. I mean that's within their power to do that and maybe Margie...

Marilyn Cade: Well, let me make a comment before we go to staff. We've lived with a problem for years in relation to the PDP in that it was in the bylaws, and even though we had a internal review of Council when Bruce Tonkin was the Chair and the Council had, you know, set up this priority list of things to change, including the PDP. And putting the PDN - PDP into procedures that had some limitations on how frequently they can be changed, but aren't subject to bylaws.

                 It seems to me that, you know, we're - if we put things - if we put timeframes and other things into bylaws we have create - we're recreating a challenge we've lived with for years about being able to propose rational changes.

Jeff Neuman: Yeah, I think and for the most part, most of what we've - we're recommending, almost - you know, I would say 70% of what we're recommending are more for the rules of procedure and...

Marilyn Cade: Right.

Jeff Neuman: ...not in the bylaws. I think what we're talking about on this call are specific things within the bylaws...

((Crosstalk))

Jeff Neuman: ...so I - look, I do not disagree and I don't hear anyone on this call, maybe Alan's got a separate comment on it, but I don't think - I don't disagree with that notion of if we could say, you know, "Or otherwise within the rules and procedures adopted by Council." And you know, it would be up to Margie and others and the ICANN staff to see if the Board would go for something like that, or you know, if they can.

I do like - so Alan, do you have a comment on this?

Alan Greenberg: Yeah, I have a specific comment, and I don't know again if it's allowed in bylaws, but I would favor wording - remember all we're talking about is when it first gets on the agenda. It doesn't say Council's going to resolve the issue at that meeting. It may in fact take many, many meetings before the issue is going to be resolved if they go back to a working group or a drafting team, or whatever.

So I would favor something like - would normally be considered within two GNSO Council meetings of the time the statement is delivered. You can remove the "normally" if you don't like, but that gives the fudge factor of we don't have to worry about the exact number of days, it's an opportunity perhaps for constituencies and stakeholder groups to have some discussion about it prior to the meeting.

Marilyn Cade: That - I'll just say on my own behalf I like that. I think it provides flexibility, but some boundaries.

Alan Greenberg: Yeah. And I like the "normally" because -- again -- whether it's going to be legal or not I don't know, but you know, you occasionally have a Council agenda that already has so many emergencies in it that it is impractical to put a subset discussion about something important.

And the reality is no matter what days you put in, the Council will on occasions say, "That amount not withstanding we're delaying." The Board does it all the time, GNSO Council has been doing it regularly, there's not belief it's not going to when the realities of time passing simply say, "We can't do it right now."

Jeff Neuman: Right.

Alan Greenberg: Look how many things the Board is supposed to look at within 7 days or 14 days or 1 month that it doesn't.

Jeff Neuman: Well, it may look at it, it just doesn't do anything to it.

Alan Greenberg: Well, some cases it - if you look at (ombudsman) reports sometimes they don't even meet the - hit the agenda for six months.

Jeff Neuman: Right.

Alan Greenberg: And yes, there's a bylaw requirement there, so...

Jeff Neuman: Okay. Margie, you have a comment?

Margie Milam: Yeah. I guess to answer one of the questions Marilyn raised related to the operating rules and procedures, the ways the bylaws were amended right before Seoul, the bylaws essentially say that, "The GNSO operating procedures are effective after a 21-day public comment period, subject to Board oversight and review."

So, there - the way that we envisioned it when we did the bylaws revisions was that you wouldn't need Board approval for the changes in the operating procedures, but there would always be Board oversight. And so, if there was something just patently unfair or something like that the Board still would have the right to come in and say, "No, that doesn't work," but at least it's, you know, gave the Council a little bit of flexibility.

Jeff Neuman: Okay. Alan.

Alan Greenberg: Okay. On to my more general one, we have all been living for the last several years the situation with the gTLD policy where the Board believed it was not empowered to pick and choose parts of the policy, but had to improve it or disallow it amass. But, we were then confronted with the staff effectively being able to change the policy bit by bit based on implementation issues.

And you know, we're going through the vertical integration one right now. We've gone through several intellectual property ones and they're not quite finished yet on things like that. We just a few minutes ago had a discussion of, can the GNSO, at its jeopardy of course, but override the working group and pick and choose and we said ultimately it can.

Do we want to give the Board the ability of doing that?

Marilyn Cade: I'll speak on that I feel very strongly that that is a major change and I don't support - this has been a longstanding debate. We can have a bigger debate at another time on this, Alan, maybe, but I'll just say that when we - we fought this battle about keeping policy making related to gTLD policy within the SO, with the acceptance or rejection by the Board.

The Board in the last -- sorry -- in the evolution and reform process there was a proposal. I'm not sure how, whether it was put forward by one of the co-Chairs or - that raised this question, and the community strongly rejected it. It

elevates, it may not appear to, but it elevates policy making authority to the Board.

The problem you raised, which is how implementation changes the intent and the purpose of a policy recommendation, is a different challenge that I think we need to address. But I don't want to give the Board policy making authority. The - and I'll say one more thing about that.

The Board should be a governing Board and ideally and practically, we all have to recognize that they do not have time to thoroughly digest the level of detailed understanding that would be necessary for them to pick and choose -- in my view -- from policy proposals that have been more thoroughly developed and researched.

Jeff Neuman: So, I - and I'm watching the chat too, I think essentially what they asked for, Marilyn, and I remember I was on that committee as well, they had asked for this, you know, a concept of line item veto and we all negatively reacted to that.

Marilyn Cade: Yeah. Right.

Jeff Neuman: And I think Avri has said on the chat that she's against that. I think, Alan, I think what we're - what you're hearing is, and let other's speak up, is that I'm not sure there's any support or how much of their support for giving the Board explicitly in the bylaws a line item veto.

I mean remember in the end, they always have the out by saying that they don't believe it's in the interest of the ICANN community or ICANN, and they could that for any reasons. I'm sorry; they could do that because it's one part of the policy as a whole, all right? So, they always have that option, of course it's a higher standard, but they still have that option to do that.

So in essence, even though they don't have a line item veto, they certainly have the ability to veto the entire policy even if one part is not in the best interest of the ICANN community or ICANN.

Alan Greenberg: Yeah, just for the record I wasn't advocating a line item veto. I said we should discuss it.

Jeff Neuman: Ah, okay.

Marilyn Cade: And...

Jeff Neuman: Avri, do you want to (unintelligible)...

Alan Greenberg: And given we have been living the situation where the Board has been drifting in that area and recognize the Board just recently formed a technical committee on how do we get two gTLDs to map to the same - you know, to the same set of second level domains? That was a Board technical committee, so even this Board, which I think is being pretty good about things, understands there are problems that sometimes have to be addressed.

So, I just was saying this group needs to address the issue and reaffirm the current position or make a change or address the issue of implementation.

Marilyn Cade: Can you put me in the queue after Avri?

Jeff Neuman: Yep. Let me go Avri and then Marilyn. Avri, you may be on mute.

Avri Doria: I am mute, sorry.

Jeff Neuman: That's okay.

Avri Doria: I think the Board not only has what Alan said, in terms of the ability to say, "This is such a serious issue that, you know, we kick the whole thing back to you." But I think they also have the ability to raise other questions and to start bottom-up processes, as it were, on questions they feel haven't been adequately answered.

And I think in a large part that, you know, is what happened in the case of the trademark issues, the IRP. The vertical integration is an issue that came up bottom-up through the GNSO. So, even though other people were talking about it and there was the overarching economic issue, the PDP that we've got at the moment was bottom-up generated from a stakeholder group to the GNSO, et cetera.

So, I think that I would certainly argue against changing that mix. Now, I think the Board has not used its ability that it's got to send questions to the SOs. Also on that technical thing, I mean that was ccTLD issue, but of course it's one we're going to have to pay attention to.

I think there's always been the ability for the Board to start a technical question for which there isn't an existing SO or AC to handle the questions, and certainly some of these IDN technical issues have fallen into that kind of category.

Thanks.

Jeff Neuman: Okay. Marilyn?

Marilyn Cade: I don't think the - just I'm - I would support everything that Avri just said, but I don't disagree with the idea of discussing this, but I'm not sure that the topic belongs in - or just belongs in this PDP group.

Since we're laying out the PDP process, but the question of the board of either policy being modified in the implementation process, or the Board

picking and choosing is a fundamental change that affects all of the SOs. And I think, you know, would have to be addressed at larger level, even if it's discussed first in this PDP group.

Jeff Neuman: Yep. I do think it is a broader issue. Alan, did - is your hand still up or is there something (unintelligible)...

Alan Greenberg: No, no. My hand's up again.

Jeff Neuman: Okay. All right.

Alan Greenberg: I think what we're really discussing here is - or maybe what we need to discuss is how we can put into the process what is de facto happening right now?

If you look at the new gTLDs a bottom-up policy was developed, it was approved by the Board. Then it became clear that there were certain issues which needed to be resolved. According to the rules, the only thing that could've been done was what is happening in vertical integration right now -- to some extent -- and that is start a PDP, which can then modify the previous PDP.

If you look at what happened on - in the IRT or STI, which is not - which was not really in violation of the PDP, but just look at the concept. The Board initiated a sort of bottom-up or -initiative to try to resolve a question, but there's still no formal mechanism to get that initiative to change the PDP, which was approved - voted for by the GNSO.

And the - do we need to (form if that happens)? That may be a larger a discussion than we want to hold today, but we're using ad hoc procedures right now, which are not really in accordance with the bylaws...

Marilyn Cade: Alan, I...

Alan Greenberg: ...to adjust these.

Marilyn Cade: Sorry, I need to ask Alan a question. If the question is something external, some external activity leads to the need to modify a approved policy or a PDP in progress, the Board has the ability to ask the GTL - the Council to create a PDP or to create an issues paper that would lead to a PDP.

So, I'm trying to understand...

Alan Greenberg: It does, but that isn't the procedure that's being followed.

Marilyn Cade: Well, they had...

Alan Greenberg: We're using a much more ad hoc one and as long as the results come out of it get some level of - don't get a lot of complaints, it's being treated as a de factor acceptable way to modify the policy, but not in accordance with any of the bylaw rules of what - how to do that.

Marilyn Cade: Okay.

Jeff Neuman: Well - so the Board...

Alan Greenberg: And the question is, is that okay or do we want to try to (think) that?

Jeff Neuman: So I think I'm - I think we - look, the Board has the right to form expert committees of the Board. It certainly has the right to do that. And the Board could always form any technical or policy committee it wants to form. Now, what it could do with that, you know, maybe where it fell afoul and what ended up happing - what they realized is, "Yeah, we have the right to create a technical committee or even an IRT-type committee."

And then it realized, "Okay, great. Now, we have these recommendations from the IRT where a (unintelligible), we have no ability to adopt those because it really relates to activity within the GNSO." And therefore, it pushed a bunch of the issues to the GNSO eventually and that's probably why they did what they did.

But they certainly have the right to create an IRT type any - they can create any community they want to give (unintelligible)...

Alan Greenberg: Well yes, and if the IRT had come up with recommendations which were generally acceptable to the community, they would have been adopted. But, that's really outside of the process that's described in the PDP for generating a consensus.

If they had lucked out, it would have been adopted skirting the current rules. I'm - all I'm asking is do we want to make adjustments so they're allowed to do that kind of thing?

Jeff Neuman: Well and to be fair, right, it doesn't say the Board may only act through the GNSO. I don't think it ever says that anywhere in the bylaws, all right? I mean that's - we need to go back and look at it, but it does not say that Board - any policy that's made that affects (unintelligible) does, must be made through the GNSO.

I don't think there's a must in there and I think that's all...

Alan Greenberg: Yeah. I...

Jeff Neuman: ...(unintelligible) within the Board. I'm not trying - I'm not advocating it for or against that, I'm just saying that I've heard that said from Board members.

Alan Greenberg: Okay, we're running out of time and some of us have another meeting at...

Jeff Neuman: Right. So...

Alan Greenberg: ...in eight minutes, so I'm not going to push the point right now. I think...

Jeff Neuman: ...so let's...

Alan Greenberg: ...it's something we need to discuss at some point, but not now.

Jeff Neuman: Yeah, let me just jump then to E real quick just is, "The (solution) of the Council and Board discussions, the Council shall (meet through) a firm or modify its recommendation and communicate that conclusion to the Board, including explanation for the current recommendation that the Council's able to reach a super majority vote and supplemental recommendation." So adopt, you know, same thing we talked about before.

                  So, here is actually an interesting thing that's obviously never been done. But, it basically puts all the power with the Council to come up with a modification or affirm what it already said to the Board. Does anyone have any thoughts on this?

                  (And) how we talked about, do we think the Council should punt that back to the working group? Is that something that's the rules of procedure, (about) the bylaws, or do we think the Council should be able to do this as a whole? And right now, actually the theory of the working groups probably resolved at this point.

                  So that's something to think about. We don't need to take comments on it now. It's just a question that's come up. And then it said, "In any in which it is asked, in any case in which a Council's not able to reach a super majority vote," this is after the Board sends it back. No, I'm sorry. This is in general. "In any case in which the Council is not able to reach GNSO super majority vote, a majority of the Board will be sufficient to act."

And this actually is going to require a lot of discussion that I want to take this up on the next call, but there are some that believe that there's no clear interpretation of what this means. Some believe that if there's not a majority of the Council, the Board can - I'm sorry, if there's not a super majority the Board can still act and then how does that impact contracted parties?

So in other words, if there's no super majority in the GNSO, but it falls within the (picket fence), can this be enforced against contracted parties?

Marilyn Cade: Well, how would - how -- sorry, it's Marilyn. I - we do need to discuss this because I don't understand how a topic would make it to the - so we're saying there could be a non-super majority vote at the Council.

Jeff Neuman: Right. (Unintelligible).

Marilyn Cade: But since it is related to (picket fence) issues, super majority votes are required in order to be binding.

Jeff Neuman: Well, but it's - there's this ambiguous bylaw now that says, "In the case where the Council is not able to reach a super majority, a majority of the vote will be sufficient to act."

Alan Greenberg: Remember, that was - that's in light of it only 34% of the vote...

Marilyn Cade: Right.

Alan Greenberg: ...to act and it presumably act - it's the same census as the previous one, to adopt the GNSO motion, the GNSO policy. That is, if the Council was not really convinced it's a good thing at least half the Board has to be convinced instead of just 1/3.

Jeff Neuman: And so, I want to put that on the agenda as the first item to talk about on the next call. Avri, do you have a quick comment or do you want to...

Avri Doria: Yeah, I had a quick comment and just wanted to say that, yes there obviously is ambiguity because I always had a completely different interpretation than you did, and we've talked about it before.

I think one of the things that we need to include in our thinking about it though, is with the different role that the Council has now and the different meaning of their vote, does that add any complexity in the issue?

For example, if the working group has a consensus on it, but for some reason the Council decides not to endorse that consensus and it goes forward to the Board, or it goes forward to the Board with only a majority, as opposed to a super majority, since the Council is not the legislative body that it was in the past, does that have a different meaning that it had in the past?

So in other words, it's just an extra element to the question that I think we have to include. Thank you.

Jeff Neuman: Yeah, I think that's a good point Avri. And so, I want to - this is a big subject, I want to put that on the agenda for the next call as we could spend literally a couple hours on it, but I won't let us spend a couple hours. So if there's some discussion on the list that would be great.

And then the last one that we'll talk about on the next call is a statement in the bylaws that I'm not sure people really understand. It's never been in vote, but it basically says, "When a final decision on a GNSO Council recommendation or a supplemental recommendation is timely, the Board shall take a preliminary vote, and where practicable will publish a tentative decision that allows for a 10-day period of public comment prior to a final decision of the board."

I'm going to - I don't know what that means right now. I can't remember what that means and Marilyn, maybe you can. I - this was probably - I'm assuming

we discussed in 2003 or '04, whenever the evolution and reform, when we proposed it. I cannot for the life of me remember. So, Margie, is it possible - can you see if there's anyone on ICANN staff that knows what that means?

Margie Milam: I'm sorry, what are you referring to specifically?

Jeff Neuman: (Unintelligible).

Alan Greenberg: Point G.

Margie Milam: G, let me look. One second.

Alan Greenberg: Jeff, while she's looking, my understanding has always been currently if the GNSO passes a policy, endorses a PDP, there is a full 30-day comment period at that point.

Marilyn Cade: That was my understanding and...

Alan Greenberg: And this says, "If it's urgent the Board can bypass it."

Marilyn Cade: Right. And the...

Jeff Neuman: So that's not in the bylaws. That's practice...

Marilyn Cade: Well...

Jeff Neuman: (unintelligible)...bylaws.

Alan Greenberg: It's written there.

Marilyn Cade: And, Jeff, remember that - so - and the idea was that even though the Policy Council had taken public comments throughout the work, the Policy Council

never actually gets the broadest pubic distribution or visibility of all stakeholders.

So the 30-day process of gathering additional comments allowed the staff to bundle up, and this is - this feeds into another question that we've had, so there's a report - there's a recommendation. Policy Council approved it, we're talking previous process, the recommendation goes to the Board, right, and in the meantime there - in between there's this 30-day comment. The staff were to summarize the additional comments received and present those to the Board as well.

If it's an emergency, I'm struggling with, you know, I don't think we ever defined what that would be.

Alan Greenberg: Well remember, there's a completely separate clause saying the Board can pass policy decisions in an emergency.

Marilyn Cade: And...

Alan Greenberg: Period.

Marilyn Cade: ...well - so though they can pass them on an interim basis.

Alan Greenberg: Yeah.

Marilyn Cade: Yes.

Alan Greenberg: This allows them to, without notice, say "This is our tentative decision. You've got ten days to scream otherwise it becomes final, period."

Marilyn Cade: But - so hypothetically -- I don't know I'm going to make something up -- you know, it's -- God, it's hard for me to -- something similar to the implications of the initial introduction of wild cards, such as (side finder happen). And I think

(side finder) was what was driving our awareness of fact that there could emergencies.

Alan Greenberg: Yeah. Can I interrupt? Jeff, you said we should discuss this next. I'd prefer do. (Paul), James, I, and Marika have another call which we're late for and it's a very time-constrained one.

Jeff Neuman: Okay. So yeah, why don't we - we'll do that. Margie will look into this provision; see what it was intended for. If she could figure that out and I will talk to you all next week, same time.

Alan Greenberg: Thank you.

((Crosstalk))

Jeff Neuman: Thank you, everyone.

Alan Greenberg: See the rest of you in a few minutes.

Jeff Neuman: Bye.

END