

**Policy Process Steering Committee (PPSC) Policy Development Process (PDP) Work  
Team (WT)  
TRANSCRIPTION**

**Thursday, 30 April 2009 14:00 UTC**

**Note:** The following is the output of transcribing from an audio recording of the Policy Process Steering Committee Policy Development Process (PDP) Work Team (WT) meeting on Thursday, 30 April 2009, at 14:00 UTC Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:  
<http://audio.icann.org/gnso/gnso-pdp-20090430.mp3>  
<http://gnso.icann.org/calendar/#april>

**Participants on the Call:**

Jeff Neuman - Work Team chair - Registry c.  
David Maher - Registry c.  
James Bladel - Registrar c.  
Paul Diaz - Registrar c.  
Jean-Christophe Vignes - Registrar (Adobe connect)  
Alan Greenberg - ALAC  
Gabriel Pineiro - NCUC (Adobe connect)  
Zybněk Loebel - IPC  
Marilyn Cade - Individual  
Sophia Bekele - Individual

**Icann Staff:**

Liz Gasster  
Margie Milam  
Marika Konings  
Glen de Saint Géry - GNSO Secretariat

**Absent apologies:**

Wolf-Ulrich Knochen - ISP  
Liz Williams - CBUC

Coordinator: The recordings have started madam.

Glen Desaintgery: Thank you.

Jeff, I'll do the roll call. We have on the call Jeff Neuman who is the Chair of the group, Bertrand de La Chapelle from the GAC, David

Maher, Registry Constituency, Alan Greenberg ALAC, James Bladel, Registrar and Paul Diaz, Registrar as well.

For staff we have Liz Gaster, Margie Milam and Marika Konings and myself Glen Desaintgery.

Thank you, Jeff.

Jeff Neuman: Thank you.

Everyone welcome to the PDP Work Team call on April 30, I believe it's today's date.

Glen Desaintgery: Sorry, Jeff, excuse me one moment.

We have excuses from who can't be on the call Liz Williams and Wolf-Ulrich Knoblen and we have Gabriel Pineiro from the NCUC on the Adobe Connect only.

Jeff Neuman: Okay.

All right so welcome again to the PDP Work Team call on April 30th. So Glen, let me just take a roll - so we don't have anyone at this point from the IP Constituency, the Business Constituency, the ISP Constituency or non commercial, although we have (Gabriel) on Adobe but not on...

Man: Hello this Zbynek Loebel speaking. I'm from IP Constituency, I just joined the call.

(Marilyn): And Jeff, it's Marilyn, although I'm here as an individual, I am a member of the BC.

Jeff Neuman: Okay good. Glen, you have them on your list as well?

Glen Desaintgery: Yes I have, thank you Jeff and we're just missing the ISP and Wolf-Ulrich did say in his note that he would ask somebody from the ISP to be on the call. But we have at this moment nobody.

Jeff Neuman: Okay.

So for everyone's that on the call, sounds like we have a lot more people on the call than we do on the Adobe Connect, so if you are in front of a computer and find the invitation I think Glen just resent it out as well, the Adobe link so that we can see who's on and we're going to have some documents shown on the computer.

So if you could do that it would be great. Okay so where we left off, we did have a call last week and unfortunately we had to cut it pretty short because we only had about four participants, that's not including the ICANN staff members that were there.

So we really couldn't get much accomplished week so we decided to just push forward to this week and then set up a regular schedule for Thursday calls at this time every week understanding that one or two of them may conflict with a GNSO Council Meeting and if they do then we'll have to figure out other times for those meetings.

So that's it on the logistics. We have a lot to do in a short period of time before Sydney and one of the agenda items, what we'll do is we'll

continue where we left off on the - well two calls ago on Subject A, Planning and Initiation of a PDP.

Then I want to spend a little time talking about logistics for Sydney to find out, you know, just to get a poll as to when people are planning on coming in to see if we can schedule a full group meeting there and, writing it down here, and I think that's it. Any other items to add to the agenda.

Alan Greenberg: Jeff, it's Alan.

I wouldn't mind a report from staff if there's any change or predicted change in the Sydney implementation for the new GNSO or not just to give us a point of reference.

Jeff Neuman: Okay.

Margie Milam: Sure, this is Margie. I can comment.

There is no delay at this point although it's looking less and less likely that we'll have the new council seated in June.

Alan Greenberg: There's no delay but there's also no bylaws.

Margie Milam: Yes there's no official delay. We have a call scheduled on Tuesday with the restructuring team to go over the bylaws, but I just don't see how that's all going to get done by June.

Alan Greenberg: I believe given 30 day commentary at this point it's impossible.

Jeff Neuman: So on that note Margie, I know this is on the subject I know the board - I'm assuming it was on the agenda for the board meeting that was last week. Do you know if there were - can you give us kind of a run down - or could someone give us a run down on what the board discussed on this subject?

Margie Milam: Actually Liz, you attended that call, why don't you comment on that?

Liz Gaster: I'm sorry I stepped away for just one sec, can you repeat it?

Jeff Neuman: Sure.

I know that this subject GNSO improvements were - was on the Board's agenda for last - on the 23rd. Do you know - can you give us kind of a flavor of what was discussed as far as timing, possible delay, what their thinking is?

Liz Gaster: There was discussion of delay but there was no conclusion at that time. So they - there's a placeholder to reevaluate whether delay will be necessary but they were not prepared to make that call on the call.

Jeff Neuman: Okay.

Liz Gaster: There was also subtenant discussion about the pending issues before them but again they - no conclusion.

Jeff Neuman: Were any of those pending - were any of those discussions on the PDP itself or was it mostly on structure?

Liz Gaster: Yes it was just on structure.

Jeff Neuman: Okay. Alan, do you have any other follow up questions on that or is that pretty much...

Alan Greenberg: Nothing that needs to be said right now.

Jeff Neuman: Very politically well said.

Alan Greenberg: No, there's one other issue on the interim bylaws but I don't think we really care at this point so.

Jeff Neuman: Okay.

So with that said let's why don't we - you know what, let me take - because I now people probably have to drop off and seems like the beginning of the call we probably have the most amount of people.

Can we take kind of a poll on who's going to be in Sydney and, you know, what - when you think you're going to arrive so I can, you know, usually we reserve Saturday and Sunday for GNSO type meetings and so if you could just kind of - if you're on Adobe - well not everyone's on Adobe I'm looking at the list.

Could we just go down the list just to ask everyone when they're going to get in?

Glen Desaintgery: Should I do that Jeff?

Jeff Neuman: Yes. Thank you.

Glen Desaintgery: David Maher.

David W. Maher: I will be there on Saturday.

Glen Desaintgery: James Bladel.

James Bladel: I'll be arriving Saturday June 20 at approximately 8 am.

Glen Desaintgery: Paul Diaz.

Paul Diaz: I will not be in Sydney.

Glen Desaintgery: (Jon Christoph Enow). (Jon Christoph) is on Adobe Connect. I don't know if you can hear me.

Alan Greenberg?

Alan Greenberg: I'll be arriving no later than Friday and my preference if because of other conflicts is if we can have a meeting on Saturday that would be preferable for me.

Jeff Neuman: Alan, can you - what other conflicts, I haven't seen any.

Alan Greenberg: I have (unintelligible) meetings on Sunday.

Jeff Neuman: Okay good.

Alan Greenberg: I mean I may skip them but if we do it on Saturday I have no conflict.

Jeff Neuman: Okay.

Glen Desaintgery: (Gabriel Pennera) is on the Adobe Connect. Can you hear me?  
Okay.

Margie Milam: Glen, this is Margie. I've been corresponding with Glen - (Gabriel) on chat, he just can't call in right now, so.

Glen Desaintgery: That's all right. Okay, thank you. (Unintelligible).

Man: Yes, I plan to come to Sydney and I plan to come on Sunday but I still can reschedule if it is necessary.

Glen Desaintgery: (Mary Lynn).

(Marilyn): I'm planning to arrive Friday at the latest in the morning on Saturday.

Glen Desaintgery: Thank you. And that is all that we have on the list. Have I missed anybody?

Bertrand de La Chapelle: Yes, Bertrand.

Glen Desaintgery: Oh Bertrand excuse.

Bertrand de La Chapelle: Never mind.

I'll be arriving probably on Friday and the problem is that we have full day Saturday and Sunday, got meetings the most important being on Saturday, so my preference as far as I am concerned is on the morning on Sunday if people agree.

Glen Desaintgery: Thank you very much, have I missed anyone else and Jeff yourself?

Jeff Neuman: I'll get there Saturday morning probably - like James said probably around 8 am or so.

Glen Desaintgery: Okay so I think we've covered everybody that's on the call.

Jeff Neuman: Okay so great. I appreciate taking a couple of minutes because usually when we do it on email it takes - not everyone answers so this one kind of put everyone on the spot. So thank you very much and Glen actually if you could send a follow up email to the list to find out when everyone's coming in so we can schedule a meeting.

Glen Desaintgery: I'll do that Jeff, thank you.

Jeff Neuman: Okay thanks a lot.

Great, so let's then jump in. On two calls ago we started going through Topic A and I think we had a really fruitful discussion. We got through some of - we got through all of Number 1 on the chart for those of you that are on Adobe which is the raising an issue.

And then we talked - we got probably half way through Number 2 which is the creation of the issues report. The notes are - that were drafted by ICANN staff on the right hand column there and they have to really capture what we discussed.

Also after the call I will note that Bertrand had sent around a document actually I read which is pretty good by (Thomas Norton) on

Considerations for Having a Successful Birds of Feather Session, it's an RFC, informational RFC number 5434.

And for those of you that have not read it, I actually encourage you to read it because I think they do have some pretty good ideas on initial sessions prior to the creation of a working group.

And actually go through a number of items including whether deciding, you know, that there are a number of reasons for having the birds of a feather and some of them are not intended to result in the formation of a working group. But still have considerable value to the community.

And I think it also goes through things like timelines and informal steps, nothing - not that all of this needs to be in a formal PDP process but gives some good guidance as steps that should be taken even informally to raise an issue.

So Bertrand, thank you for sending that around and, you know, it occurred to me obviously because (Thomas Gardner's) is involved in the ICANN world to a great extent as to whether people might think for the next all where it would be useful to invite him to discuss this birds of a feather and see if that might help to include other things in our paper.

(Marilyn): Jeff, it's Marilyn, I'm not able to be on Adobe. Can I ask a question?

Jeff Neuman: Absolutely.

(Marilyn): Okay, could I just ask first of all to repeat the RSC number?

Jeff Neuman: Sure, it's 5434.

(Marilyn): Okay my second question is while I would welcome that; I'd like to also hear perhaps from W3C or another group. I - the (ITEF) is a unique, very technically oriented environment that often purposely does not deal with policy issues.

It's a greatly valued for them but I think we might want to maybe consider hearing as well from another group or two that actually may have to go through similar processes but may have in depth having more of a policy focus to what they end up working on. Just to get some compare and contrast.

Jeff Neuman: Okay. You had mentioned that W3C is there any other that you can think of?

(Marilyn): There are others.

Let me send a couple of the emails. Some of the others are a little more - they're not as broadly inclusive in terms of the stakeholders so I'm hesitant to necessarily rely on groups that don't, you know, don't have a broad inclusion of multiple stakeholders. Let me send a couple of emails.

Jeff Neuman: Okay. So with the W3C I know (Thomas Roesler) is a part of that, is he someone that we think we should - could invite for the next call.

(Marilyn): You know (Thomas) - it's(Marilyn)again. I would support that. (Thomas) has a broad experience in working at ICANN in its various stages of

evolution as well as now, you know, kind of an extensive experience at W3C.

Liz Gaster: Hey Jeff it's Liz, can I jump in?

Jeff Neuman: Sure.

Liz Gaster: (Thomas) has been also active in the working groups work team and has been sharing some of his expertise there in the context of working groups. So I think it would pretty easy to reach out to him in this context and staff would be glad to do that.

Jeff Neuman: All right if you could - well James do you have a mike I don't know if that was a hands up or...

James Bladel: Yes it's a hand up then it's converted to a mike.

Jeff Neuman: Okay.

James Bladel: And I just wanted to agree that there's value in bringing in some of these other perspectives but in the interest of our short schedule just wanted to possibly recommend an alternative that they be - that these folks be asked to maybe put together some notes and then be published to the list rather than - and that would us allow us to conserve call time.

(Marilyn): Actually I'm going to get back in the queue. You know - it's (Marilyn). The reason I'm going to push back a little bit on that is understanding how really busy everybody really is. I think that it may be an imposition on people to ask them to do a written document.

Jeff Neuman: So what I'd like - what I might add that we have the document from the ITF which is actually relatively short, it is 13 pages but a lot of it is pretty big font and, you know, it's a pretty quick read. That's for the (IETF) and we will - Liz if you could ask - when you send a note to (Thomas Roesler).

If you can ask if they have a similar type of document that may go through those types of provisions then - or these types of subjects then if he could forward that to the list before the call then that might kind of - that might give us ideas for questions to ask during the call. So it looks like Alan has got a question as well.

Alan Greenberg: Yes I guess I'm bothered by what sounds like an attempt - what may be an attempt to enforce detailed process where I think we should be focusing on what we're trying to achieve by a birds of a feather meeting or consultation.

And set the targets as what we're trying to get out of it, not the step by step process because we're dealing with such a wide variety of issues from a very wide set of origins. That I think it's really important to say what the substance is we're looking for not a specific process.

Jeff Neuman: Okay, Bertrand.

Bertrand de La Chapelle: Yes, just a few comments.

The first thing is that the relevant document is the W3C and I fully support (Marilyn's) comment is called the Process Document. I will

send the link on the list. It is a document that has several iterations and as far as I understand the last one may date back to 2005.

But the initial one which is much simpler was produced I think in 1999 or '98 and it's interesting to look at the way they present the formation of working groups and all that stuff and I support (Marilyn's) comment that it's probably more product oriented.

The other point is that it would be good to have (Thomas Roesler) and maybe (Thomas Norton) in the meeting in Sydney.

I agree that it would be hard to ask them to actually produce something and the last thing is that in the same mail that mentioned this birds of a feather resolution from the (IETF) or RFC from the (IETF), I also attached and I especially (unintelligible) a comment.

And maybe it's been overlooked a (proper) draft for the revision of the early parts of the Annex A and so I just wanted to mention it to remind people that this was out and we can discuss it later.

Jeff Neuman: Okay, thank you Bertrand and actually I did - I apologize I did miss that. It looks - I apologize I missed that and we'll have to go back and look at that.

Bertrand de La Chapelle: Okay so I thought as you answered that you were about to ask, you probably saw only the reference to the RFC and not to the attached document.

Jeff Neuman: Yes for some reason I assumed that that was just a...

Bertrand de La Chapelle: Oh yes.

Jeff Neuman: ...copy of, my mistake. I want to go back to (Alan's) comment that, you know, he was kind of concerned that - and if I - I don't mean to put words in your mouth, concerned that we were maybe trying to script too much process in kind of this informal nature.

And that you're worried about kind of developing these formal rules when there could be so many different inputs into raising an issue.

Alan Greenberg: Yes, I don't want to be in the extreme.

I don't want to say we didn't follow the process we had nothing called the birds of a feather even though effectively someone went through the same process in the development of, you know, raising the issue and raising conscience on the issue.

And I think it's the end product of such birds of a feather session or multiple such sessions that we're trying to describe not necessarily the process itself. At least that's what I think we need to do.

Jeff Neuman: Okay. Does anyone have any comments on that, on (Alan's) point? You know, Alan, is it possible that that's part of our output, you know, aside from the obvious of recommending the formal process that, you know, in order to do - to develop a policy. I mean we also could make suggestions as to steps that could be taken to guide people to raise an issue.

Alan Greenberg: Oh, indeed. I think that, you know, I guess I'd call it best practices. And we definitely want to give people options and turnkey, not packages,

but processes that may address the needs. But I wouldn't want to say they are the (soles).

Jeff Neuman: Okay. I think that's fair. Any other comments on that? Okay. Let me jump then to - does anyone have any comments on the notes in the last column from Number 1?

Alan Greenberg: I have a more general comment. At the previous meeting I was asked to put together some thoughts on what I thought the PDP process should look like. I didn't end up doing that, but I ended up doing a bit of a history and what I thought the criteria were for launching a PDP.

And I did send that a few hours prior to the meeting of the 23rd. It came - probably came just a few hours before people went into that meeting or didn't go to the meeting. So you may or may not have seen it.

Jeff Neuman: Okay. It's the emailed titled Comments on...

Alan Greenberg: On the PDP process.

Jeff Neuman: Okay. Well I encourage everyone to read that. Alan, is there anything you wanted to call out from there or just...

Alan Greenberg: I did come to some conclusions, but they were specific conclusions on the - on when to trigger the actual PDP if we call it that and we're not quite at that point in the discussion right now.

So I don't think it needs to be discussed. I did go over a bit of the history and current practices which I don't think are well-understood by everyone. So it may be worth reading at some point for that.

Jeff Neuman: Okay. I think that's good. And I think if we get to an area as we're going to get into Area 2 now where it'll fit in then we can...

Alan Greenberg: Sure.

Jeff Neuman: ...kind of read from there. On Number 2 where we had gotten to was - and I want to kind of use Bertrand because I think this was his idea during the call, which was that - and(Marilyn)had talked about this to a great extent as well, on having this before you actually have the actual "issues report."

The suggestion was to use kind of a briefing or scoping paper similar to what the (OECD) - similar to what used by the (OECD) to provide kind of an executive summary of research information obtained through educational work shop prior to creation of an issues report.

And the early paper could cover - I think Bertrand had this comment - could cover what was A, B and C in the original or the bylaws that currently exist. And then the council could make kind of a go, no go decision for more in-depth issues paper which will be put out for public comment. And that would include things like D and E that are in the current issues report.

Alan Greenberg: So Jeff, we're - that sounds like we are now talking about the process to get to an issues report initiated by council.

Jeff Neuman: Correct.

Alan Greenberg: There are three - there are two other kinds, but we're talking about the one that council has control over.

Jeff Neuman: Right.

Alan Greenberg: Okay.

Jeff Neuman: That's correct because I'm not sure. Well let me (unintelligible) before I say that's right. I guess we haven't asked the question although we kind of glossed over it. I think - well before I say think, let me throw it out to the group.

There are three ways to raise an issue as we discussed in the last call. That's through the board initiation of an issue's report (where) pretty much they just request an issues report and that's it. It's done.

Same thing with an advisory committee whether at the (unintelligible) or any other advisory committee that's (unintelligible), that those don't go through any kind of council process at this stage.

Is there anyone that feels that like we should change that, modify it, ask some questions on it? Does anyone have any thoughts on the other two mechanisms for raising an issue or an advisory committee?

(Marilyn): Yes. Jeff, it's (Marilyn). Can I be in the queue?

Jeff Neuman: Yes. Absolutely. Anyone else that's on Adobe, if you could just raise your hand.

Go ahead, (Marilyn).

(Marilyn): You know, I propose, you know, I'm not suggesting that we want to create a barrier to the board or to an advisory committee calling for an issues report. And I think we still want to be sure that there's proper support to the development of an issues report.

I am going to continue to reference the fact that informed policy making has got to be our goal. And so maybe we should consider where in the process the same kind of support and rigor would be added to the - an issues report request that comes from the other two mechanisms.

Again, not to be a barrier, but to figure out how the support gets applied.

Jeff Neuman: And before I go to Bertrand, do you have any thoughts as to where that would fit in and how that support would be measured?

(Marilyn): Well, if the - hypothetically if the board calls for an issues report on something and if it were not the board acting in the urgent category, right? That is the board just detected some frailty that is going to threaten the security and stability of the organization or the DNS.

If it's, you know, the board has received 10,000 emailed complaints about something and their response is to request an issues report, I would assume that we would still expect to have a well-researched and well-supported set of materials to - that would be incorporated in the issues report.

But we're going to keep a timeframe that we have right now for the development of the issues report we're really shortchanging the depth of research or the rigor that can go into the research.

So I don't have an answer, but I, you know, I think maybe after we walk through the more - the council-oriented process perhaps we can then figure out where we would plug in the two other - where in the process, the other two categories would fit.

Jeff Neuman: Okay. I have Bertrand and then Alan.

Bertrand de La Chapelle: Yes.

What we're addressing at the moment is actually the preparation phase before the effective launch of the full PDP creation of a working group and so on. In this preparation phase we've agreed that we don't change the three possible initiations.

And what I understood from the previous discussion is that we have actually a beginning of the separation phase and an end. And the goal is to make sure that there are no barriers to enter issues as early as they should be treated. And in this respect I think informal birds of a feather before is a nice way to nurture and argument in favor of a request.

But the three elements of the initiation of this preparation should bring the staff to produce what could we call an issues paper, not an issues report, something that would be very light and that would have three elements.

The proper issues raised for consideration, the identity of the party submitting the issue and the reasons invoked for submitting the issue and a very brief discussion of presentation of the main dimensions of the issue at that stage.

The end part of the preparation would be what is called today in the bylaws, a staff recommendation on whether to go further and to launch a formal PDP. And this could include the opening on the general counsel on whether the issue is within the scope and the expected PDP outcome whether the expected PDP outcome is broadly applicable, et cetera, which are some of the criterias already in the bylaw.

And the second element in the staff recommendation could be the degree of support for launching PDP on this issue. And the third element would be the expected outcome of the PDP and the main points and issues to address.

Between those two phases the council, the GNSO council, could decide during this preparatory process to extend the time and to request as needed additional reserves from some or all other dimensions of the issue.

And the ideas that we have a flexible mechanism that can have a very quick agreement on the initiation on the PDP if there is very broad understanding that something is urgent, that there's agreement on what has to be done.

And if something is much more delicate, something that is not that urgent and that requires much more in-depth, we have a longer

preparation phase that guarantees that when the PDP is actually launched the real elements are clear for everybody before (we're) discussed.

So I just re-circulated on the list the formulations that I had drafted according to this. And I hope these three elements make sense, like the issues paper very succinct at first, the staff recommendation at the end of the preparation phase and in between potential, additional research if needed.

Jeff Neuman: Okay, thanks. Thanks for that. And I do have your paper up and you do go into that detail. Alan.

Alan Greenberg: We've now wondered right into the middle of what I was - talked about in my note. What I did is try to understand what are the criteria that the council should apply for launching a PDP because we've gone around many times of should we launch a PDP if we don't have all of the studies done and all of the information in.

And I came to the conclusion that there's two criteria. One is, is it clear that a policy is needed, not necessarily consensus policy, but is it clear that policy must be developed to address this issue?

Number 2, do we believe that there is a likelihood that it will be possible to do this because sometimes you need more information to simply understand the problem. Sometimes the information is to help you, you know, address what the final answer is.

And if council believes that policy is needed and there is a likelihood that we will be able to succeed in developing such a policy, then I believe there should be no barrier launching the PDP.

And I think council needs a flexible set of tools prior to making that decision to enable to come to that decision. Once it comes to that decision one launches the formal development process and that also has a large set of tools which it can draw upon to do it - to do the actual work.

Jeff Neuman: Do you - this is Jeff - can you please go through again. You said do you believe it's possible to do this or that it - can you just explain that success a little more?

Alan Greenberg: I guess if you look at the one that hasn't been particularly successful that covers it sort of. Who is? We went into it because we believe we needed something without any real understanding of whether it is going to be possible to come up with an answer. Now this is a prediction issue, not a guarantee.

(Safflux) also I think is one of those that there seems to have been a lack of real understanding of what we're trying to get out of PDP before we went into it.

And other things are, you know, in other issues it is moderately clear going into it that we have a problem, we have a behavior that is going on that we want to stop or that we want to start or something and we need to go into a policy development process.

If you look at the domain (tasting) one that you are involved in, we went into that knowing there was something we wanted to fix. I don't think we had a strong, good idea of how we were going to do it.

As a matter of fact if you go back through all the discussions, we changed radically in what we planned to do. We didn't know the answer, but we knew there was a problem we had to fix and there was a conviction that we will be able to come to a meeting of the minds and find some ground that will be acceptable to most parties.

Jeff Neuman: So in that birds of a feather group that we had for domain (tasting), I would say this is where I'm a little kind of (unintelligible) think about your second element. I think there was a good idea by a number of participants of what the solution was or at least what they believe the solution should be.

It was very - ultimately that was turned around and changed, but that was a very difficult process, you know, because people were convinced what the solution (simply) going in what the solution was.

Alan Greenberg: That's - the domain (tasting) is probably not the best one to use as a model because in fact we had two parallel groups going. One, a back room group that no one talked about and a formal process going on in parallel with some overlap in participants, but not all. So that one is as weird bird to use the bird expression again.

Jeff Neuman: So help me understand then how with your second criteria - well let me go back. The first criteria, is it clear that new policy is needed to address the issue. Again you're not necessarily referring to consensus

policy (unintelligible) policy and then you kind of worry about later on whether it's consensus policy or not.

Alan Greenberg: It may be consensus policy. It may be recommendation to ICANN staff. It may be, you know, there's any number of forms that a policy direction from the council can take.

Jeff Neuman: Right. And can't we merge that element though with what Bertrand was suggesting in order to know whether it's clear or not that new policy is needed.

If you kind of merge that idea with (Bertrand's) first three elements and then I'll go to Bertrand, the first three elements that he had mentioned which are an issues paper that at least has the proposed issues raised for consideration, the identity of the party submitting the issue and the main dimensions of the issue.

Alan Greenberg: Well I think that issues paper or whatever we're calling it is in fact the main document that we're looking at.

And just like right now it makes a recommendation based on the cursory review that was given whether this is ready for prime time, whether it needs a lot more work to understand it because when the issues paper was requested things were not well-defined and well-scoped, so.

(Marilyn): Can I...

Alan Greenberg: And it's going to depend on, I mean that issues (repaved), issues report, issues paper is indeed the first document that will help us decide whether we're ready for this or not.

Jeff Neuman: Okay, let me, Marilyn, let me go to Bertrand because he had his hand up in the queue. Then I'll go to you.

(Marilyn): Sure.

Jeff Neuman: Okay, Bertrand.

Bertrand de La Chapelle: Yes, briefly to respond to your question and regarding (Alan's) comment which I share - I would - just let me reformulate it to connect with what I was saying. The first question is do we understand the issue correctly?

And that is the purpose of the so-called - would be the purpose of the very initial, very briefly could be three pages issue paper produced by the staff upon request and it would just highlight the main dimensions and maybe mention whether apparently some additional information is needed or not.

The second question Alan asked which was his first is, is it clear that a policy is needed? And I would make a compliment saying is it the right tool? What kind of policy? Is it a recommendation? Is it a consensus policy and so on?

The specifically the purpose of the later stage staff recommendation that is sent back to the council for decision to launch or not. In between the will it be possible to do this is about additional information if there is

a thinking that there's no agreement on what the issue is or what the goal is or what the nature of the outcome should be, what type of policy there is.

So I'm fully in line with what Alan was saying with three elements instead of his two. The first one is, are the dimensions of the issues correctly understood the issue paper.

The end is the staff recommendation of is the policy needed and what is the right type of tool we need. And in between, is it possible to do this or do we need additional information?

Jeff Neuman: Just a point of clarification. Are you suggesting that we have an issues paper and an issues report, that there be two staff documents produced in this overall process?

Bertrand de La Chapelle: No. Actually the - I would replace the term issues report that is currently mentioned by this very light issues paper, three pages with the basic elements for discussion in the community.

And then issues reports or additional research paper or background documents and so on or whatever you call them could be requested in as much as needed.

But the two basic documents are initially an issues paper and the under staff recommendation. And in between other types of reports could be prepared either by the staff or independent consultants or some members of the community but to nurture the discussion.

Jeff Neuman: But the staff recommendation is in fact then a good part of what the current issues report is.

Bertrand de La Chapelle: Probably.

Jeff Neuman: Okay. So we are talking about a two-step process with staff involved?

Bertrand de La Chapelle: Yes.

Jeff Neuman: Okay, let me go to (Marilyn) and then I have a question as well. So (Marilyn).

(Marilyn): You know, I think actually in our last call we talked a little bit about anything that was said in the preliminary document would be incorporated into obviously an absorbed inner larger document.

Maybe the other thing we need to think about is building in flexibility. So a normal process would have, what I would call, a stage zero and then a stage one but an accelerated process might combine the two.

And I think we do need to be flexible but again think about how we are building in the ability to adequately research and support and inform a decision making process that has to then be undertaken by the council.

We haven't talked about this but we're going to need to at some point and that is, let's say that - so I just want to park this idea to come back to - let's say that the issues report or reports or the two stages are done and the council rejects the idea of a PDP but the community feels very strongly - some parts of the community feel very strongly that further work is needed, even if it's not policy work.

And I think the question then remains is where does that work get sent? Right now, we seem to be able to accommodate that by having awareness or educational sessions that can go on parallel and that are very useful and needed.

But maybe that's the other question for us to ask ourselves is what if the issues report does not recommend a policy development process, is it able to recommend something else?

Jeff Neuman: Okay, sorry I'm just writing this down and taking notes. And that would go after the council vote which we're not quite there yet but I've written that down to get back to that issue.

So whatever we call this - and Bertrand called it kind of a staff recommendation document - do we know what elements we think should be in there aside from the ones that are currently in the PDP.

So let me read those. Right now it says that there needs to be a recommendation - this is in the current PDP, not in the proposed one but the current one says there needs to be a recommendation from the staff manager as to whether the council should initiate a PDP for this issue, that's called a staff recommendation.

Each staff recommendation shall include the opinion of the ICANN general counsel regarding whether the issue proposed to initiate the PDP is properly within the scope of the ICANN policy process and within the scope of the GNSO determining whether the issue is properly within the scope of the ICANN policy process, the general

counsel shall examine whether such issue wanted in the scope is within the scope of the ICANN mission statement.

Two is broadly applicable to multiple situations or organizations? Three is likely to have lasting value or applicability albeit with the need for occasional updates or will establish a guide framework for future decision making or five implements or affects an existing ICANN policy.

What do people think of those five items? Should there be more, should there be less, do we need clarification? I mean I'll tell you from experience, when the general counsel weighs in, sometimes people understand what the general counsel is saying, sometimes not so much.

What do you all think of that process? What should be changed or should anything be changed?

Alan Greenberg: I think what's outlined there is reasonable whether it needs tweaking or not, I'm not sure. One of the problems in the past has been the lack of understanding of determined scope and I'm one of the ones who has been guilty.

And because just like ICANN uses the term constituency and consensus in multiple different ways, we use the term in scope in multiple different ways. And we need to make sure that whatever we end up coming out of this is clear enough that people can actually know what we're talking about.

Maybe we need to invent different words or maybe we need to qualify them by the time we finish. But other than that, I think the overall description is reasonable if I'm interpreting it the proper way.

Jeff Neuman: Okay and I think that's right as far as scope. What do you think we can do to make some recommendations on how they can make it more clear?

Alan Greenberg: Well it's too late to go back and change the words that ICANN uses universally, all over the place and pick different ones now. Maybe it comes back to, you know, simply a good set of definitions of these words and identifying the different ways that they're used in different forms.

Jeff Neuman: Okay, well could one suggest a change or - not change but clarification be that, you know, when you say it's within scope, clarify that that does not necessarily mean it's a consensus policy. Like in scope, people understand and don't get into an argument of whether something is in or out of scope.

One thing you can clarify is even if it doesn't rise of level of consensus policy or within the scope of that picket fence, it could still be within the scope of ICANN or the GNSO's mandate.

Alan Greenberg: Exactly, it's just that that hasn't been crystal clear to people many of the times and I think we need to make sure whether it's by sets of definitions or trying to use slightly different words or adjectives modifying them that we - in our final document, we make it clear.

I think we understand right now, it's just to make sure that there's not going to be a misunderstanding of the words that get cast in concrete afterwards.

Jeff Neuman: Is that Margie?

Liz Gaster: Oh it's Liz, but I thought, oh I should raise my hand.

Jeff Neuman: Okay, so let me go to Margie and then I'll go to Liz and then Bertrand.

Liz Gaster: Well Margie will say what I'm going to say.

Margie Milam: Yes, we've had a lot of discussions about how to involve the legal counsel in this topic and you're exactly right, the initial inquiry is really whether it's within, you know, ICANN's mission because they just don't know early on what we're going to end up within the GNSO, you know, process.

And so one of the suggestions that we've been talking around internally is whether we want to take out the recommendation where we get an opinion of the legal counsel but just, you know, have more of a staff recommendation and then we bring in the legal counsel later on when we know what's the outcome of the process.

In other words, whether it's meant to be a consensus policy or enforceful policy or something like that.

Woman: I'm going to get into the queue on that.

Jeff Neuman: So let me go to Bertrand and then I'll go to you, (Marilyn).

Bertrand de La Chapelle: Wasn't that Margie? No.

Jeff Neuman: Yes, that was Margie and then I'm going to go to Bertrand because Liz said that her comment was the same. I'll go to Bertrand and then (Marilyn).

Bertrand de La Chapelle: Okay, just one point. I think the current wording is okay in spirit but it can be more concise because it's pretty lengthy for something that is in the bylaws.

The proposal that I've circulated is to formulate it this way, that the staff recommendation would contain the opinion A, the opinion of the general counsel on whether first (point issues) within the scope of ICANN's mandate and the scope of the GNSO.

And two, the expected PDP outcome is broadly applicable with lasting value in effecting an existing ICANN policy. This more or less covers the different points in a more compact format.

The second point, beyond the opinion of the general counsel, would be to have the staff recommendation indicating the degree of support for launching PDP on that issue. And C, the expected outcome of the PDP and the main issues to address.

The expression the expected outcome of the PDP would be exactly to determine whether it is a consensus policy, a recommendation or a full policy.

Just one point regarding - final point regarding the question of scope. I don't think it is actually in the annex of the bylaws regarding the PDP that this should be addressed.

The ideal thing is to make sure that the scope of the GNSO and the ICANN's mandate in general are clearing the other parts of the bylaws and maybe we should have a clearer look at the part of the bylaws that describe the GNSO council regarding what it's exact mandate and scope of activity is, probably not here.

Jeff Neuman: Okay. Let me go to(Marilyn)and then Alan.

(Marilyn): I really strongly urge that we demand and require legal review and involvement all along and not after the fact because I really think that we are shortchanging the policy development process by withholding the legal involvement from the beginning.

I have been - I was a counselor for a very long period of time and not to put too fine a point on it, the experts on the - there were very limited staff, but the experts on the bylaws were named Bruce Tonkin and ((Marilyn)).

And, you know, we've gone far beyond that. But even if members of the council are experts on the bylaws, there's still a legal review and accountability issue.

So I'd like - I think there has to be points of review and consultation and there will be times when the council does not agree with the legal interpretation and as we did in the past there must be the ability for the

council to take into account the legal opinion and to override that legal opinion based on the findings and the responsibility of the council.

They still need to be advised by the legal counsel on what the implications are of their doing that.

The council may need to take a look at, you know, really kind of thinking about what additional legal resources need to be provided. I'm not saying that has to be from the general counsel's office. But there has to be a - there has to be an understanding that there's a legal review built in along the way.

Jeff Neuman: Okay.

Margie Milam: Jeff, can I comment?

Jeff Neuman: On that particular point?

Margie Milam: Yes, yes. What I would suggest - not that legal counsel isn't involved, just it's behind the scenes if you will.

In other words, if, you know, if staff's making the recommendation that it's within ICANN. So it's only because we've talked to legal counsel but we don't have to have a formal opinion in the sense that we have now.

(Marilyn): Margie, with all due respect, if we're going - there has to be built-in checks and balances. So if that means that the policy staff presents a statement that they have reviewed with legal counsel and this is the finding of the legal counsel, I still would say that the legal - that has to be documented.

Jeff Neuman: So let me also kind of jump in and then I've got to go to Alan because he's got his hand raised. I will note that something I observed and this goes back to the (Feb) '06 PDP.

One of the issues in that one was that the general counsel was very unclear as to the recommendation and a lot of work was being done.

And unfortunately there was a belief that whatever was developed by the council or the working group or whatever we had for that, that that was going to be binding on the registries - the existing registries and a lot of work went into it with that kind of understanding.

The general counsel did not offer a clear opinion one way or the other during the entire process. And then I think a lot of people that actually worked pretty hard were very disappointed after the process when it was made clear that some of that may not be "within the scope of something you can - of a consensus policy."

And I think that caused a lot of frustration amongst people in the community. Not only - not just the registry operators but, you know, amongst everyone who participated in this group because it was so unclear and I think the community wants to avoid that type of thing in the future.

And if that only means, you know, an opinion from a general counsel stating yes, it's within mandate of ICANN. We're not sure yet that it would follow to consent this policy because we haven't seen a recommendation.

But providing some guidelines so that when the group is working they understand what - or have some objective way to determine whether something is or not within the picket fence, for example.

I think that's extremely valuable and necessary. Otherwise you're going to have a lot of people that are just going to lose faith in the entire process. So with that then let me turn it over to Alan.

Alan Greenberg: I mean, before I make my comments I was going to make, I think what you're describing is making sure we set expectations and make it clear that what we're aiming at is going to be in, what you were describing, a consensus policy which is effectively binding once council approves it with (unintelligible) majority.

Or it's simply a recommendation to the board or staff which is not binding at all because that - those are really the only tools that the council has.

Now Bertrand made the comment that what we have right now is too many words and too complex for the bylaws. I don't think anyone has made a decision or even had a discussion right now of whether this whole thing should still be in the bylaws or not. So I think that part is somewhat up for grabs.

As you mentioned right now, if it is legal counsel's and staff in conjunction with legal counsel's opinion that something is with - is not within - is within the scope of ICANN but not within the scope of the GNSO. That's why we currently have a different (holding) threshold.

If you look at the - if the GNSO starts on a PDP which is deemed out of scope for the GNSO, it has a higher threshold to initiate. It doesn't have a higher threshold to approve.

Once it gets started it's a PDP like any other PDP. But we do have the two different levels of the amount of support that you need to initiate a PDP as deemed to be within scope is relatively low. It means you do have to get some other people in the community to agree with you.

So and lastly, in terms of defining the expected outcomes before it's initiated, I would strongly say that's not the right answer. The whole process of developing policy, you're going to end - the group is going to end up having a lot of discussion and probably getting a lot of more input as to the details of what the issue is and how to fix it.

And I don't think you want to rule out at the beginning that the outcome is only going to be consensus policy when it becomes obvious along the process that some other type of outcome is also needed in addition to or instead of.

So I would caution as to setting things - casting things in concrete early before we've had the substantive policy development process activity to begin with.

Jeff Neuman: Okay.

Let me - can I - if I can ask just for clarification. You said that if it's within the scope of ICANN but not within the GNSO then that's subject to the higher threshold.

Is - and maybe it's a question for Liz, is the document that specific or does it just to say if it's determined out of scope. So in theory counsel says it's out of scope of ICANN completely, I think the council could still override - I think that threshold still applies. Is that true Liz or did I misinterpret that?

Alan Greenberg: Let me answer my thought first. I don't think it's untrue. But council would be rather foolish to spend a lot of time developing policy which has already been stated as outside of ICANN's scope altogether.

Jeff Neuman: Yes, I'm not going to disagree with that statement. But I don't - but just to clarify...

Alan Greenberg: Yes, no I'm sorry. I just wanted to get my two cents in but...

Liz Gaster: The question is when we say out of scope do we mean both out of scope for GNSO and out of scope for ICANN? Is that - and I think it's sort of a two-step analysis that we actually go through. It's actually a multi-step analysis that we go through. But I think in terms of the threshold it would apply to either case.

Alan Greenberg: Either/or.

Jeff Neuman: Well, that's actually - I think that's an element we can discuss.

Liz Gaster: And clarify in the future.

Jeff Neuman: Well, let me let me...

Liz Gaster: Margie may have additional - she's been doing some work to try to look at how that's expressed well and how to express it more clearly and she may have a clearer sense.

Jeff Neuman: So I'll ask Margie, do you have anything to add on that?

Margie Milam: Yes, I think I agree with Liz that it's a two-prong analysis whether it's outside of ICANN's scope and the GNSO scope.

Jeff Neuman: So what though with the threshold as the board has approved was recommended by the working group of members of the council and others, just used the term out of scope, it didn't define it any further.

So let me throw it out to the group and maybe some people that haven't necessarily weighed in much - we could go either way on this. We could say that either of those two prongs is determined out of scope then the council would have that higher threshold.

Or we could say that if the council determines outside the scope of ICANN completely then it doesn't matter if you have the threshold, it shouldn't be addressed at all. Or we could do something else. So let me throw that out to the group and see what thoughts are. Alan, I don't know if that's a newly raised hand or the old one.

Alan Greenberg: No, that's the old one.

Jeff Neuman: That's the old one, okay.

Alan Greenberg: I think I still - well at one point I still had an old microphone too.

Jeff Neuman: I think I took those off. So does anyone have any thoughts on how we can further clarify - well, A should we further clarify the definition that the working group put into place, the board approved? If so, how? And what are your thoughts?

Liz Gaster: And Jeff, just so you know my hand is up because I want to respond a little more to(Marilyn)at the appropriate time on that other thread.

Jeff Neuman: Oh, okay. And Margie your hand is up...

Margie Milam: Yes, I actually when - after you explained the various options I think I'm wrong - I think what I said earlier was wrong. My understanding I think is that if it's out of GNSO's scope then it's their threshold.

In other words, just in a GNSO scope (unintelligible) and if we've got a recommendation on something else (unintelligible) or whatever (PGNSO) or something that's not, you know, related to (unintelligible) that's the higher one. It's not the overall ICANN (unintelligible).

Jeff Neuman: Well, I guess a subset of out of the scope of GNSO it's out of the scope of ICANN completely, right?

(Marilyn): No.

Jeff Neuman: You could in theory say it's out of the scope of the GNSO - or if you say it's out of the scope of ICANN, it's also out of the scope of the GNSO, right? I mean that's...

Alan Greenberg: Deciding to develop (ITB9) is probably not an ICANN issue or a GNSO issue.

(Marilyn): I want to be in the queue. It's (Marilyn).

Jeff Neuman: So let me - let me go to (Marilyn).

(Marilyn): I - first of all, I just want to back us up for a minute. The GNSO's charter is to develop policies related to generic top level domain. But there are obviously evolving interactions that implicate policy that may be developed by the two other existing SO's with policy making authority. The GNSO and ASO.

ASO within ICANN is largely a coordinating entity. So while it clearly would be out of the GNSO's scope of competency and responsibility to develop (ITB9), it might not be out of the GNSO policy council's area to call for policy to be examined and proposed by a sister policy organization.

In addition, if the GNSO found that there were considerable implications that existed at the root server level or the DNS level that had strong implications for the GNSO policy recommendations.

It certainly could behoove the policy council to make a request or a proposal that would then lead ICANN to send a liaison statement or a request to a relevant standards entity such as (ITO).

Jeff Neuman: Sure. So...

(Marilyn): But let me just make one other comment about out of the scope of ICANN. When I helped found ICANN, working very closely with Larry Landweber and Mike Roberts and John Parcell and others, at a very

narrow understanding of the areas that we would need to address within ICANN.

In the 11 years I've been heavily involved in this space and with the evolution of the importance of the DNS underpinning communications and commerce, I would say we need to - there are clearly going to be things that are easy to identify as within the scope and things that are easy to identify as out of scope but having direct impact on the - on ICANN.

That doesn't mean that the policy will be developed within ICANN but it may mean that there needs to be liaison activity and I might just use as an illustration the role of trying to advance the emergence of IBNA.

Jeff Neuman: So - but to just ask a clarifying question. There could be something that the GNSO may want to do like make a call on another group to develop policy.

But would that necessarily be something that would have to go through a PDP before the GNSO council makes that recommendation because remember all we're talking about is launching of the more formal process to develop policy itself.

(Marilyn): Right. Yes, so Jeff that was why I wanted to park that topic of what else could be called for besides the PDP because while it might not need to go through a full PDP, it should not be done superficially or without thought.

Jeff Neuman: Okay. So let me - Alan has got his hand raised.

Alan Greenberg: Yes, very short one. I'm agreeing with what(Marilyn)said. And we want to be careful not to say - not to forbid a policy development process even if it may be partially out of scope because the policy it develops may be a recommendation to the board to do something whether it's interact with another group or renegotiate what ICANN's mandate is because the world has changed around us.

I don't think we're going to see many of these. But I see no reason to prescribe it and forbid it.

Jeff Neuman: So if I - just trying to understand then, in your view then if it's out of scope of GNSO or out of scope of ICANN, if that's what the council determines, then the higher threshold will apply no matter what?

Alan Greenberg: If that's what staff determines currently.

Jeff Neuman: Right. So if staff determines look - I'm trying to make up an absurd example but I'm sure every absurd example you can find something it relates to. But let's - I can't even think of one.

Alan Greenberg: I tried (ITB9) and(Marilyn)came up with reasons why it wasn't absurd.

(Marilyn): Scary isn't it?

Jeff Neuman: I could throw in something like let's say someone wants a policy on the Internet being used for defamatory purposes and...

(Marilyn): Jeff?

Jeff Neuman: Well,(Marilyn)could find something so...

(Marilyn): I can. I do think it's out of scope for us to be involved in protecting kids online.

Jeff Neuman: Okay.

So if - let's say so the council then says it's - there's some proposed measure that someone wants to study protecting kids online, council recommends look that's out of the scope - I mean sorry, staff recommends that that's out of the scope of ICANN completely, Marilyn, still council can override that?

Alan Greenberg: With a sufficient vote.

(Marilyn): Right.

And so you know, what I would say is the rationale to override it might be that the unique indicators are being maliciously used and exploited. So the topic of protecting kids online is actually not the correct topic.

But there may be a functional implication that council would say look, you know, we're not actually studying protecting kids online. We are looking at how unique indicators in this case to name names are being maliciously used and exploited.

Alan Greenberg: Yes. I mean - remember...

Jeff Neuman: So you've added though let me - just to clarify then I'm going to go to Bertrand, you've added actually another element that if council determines it's out by the scope of ICANN - I'm sorry general counsel

or staff determines it's out of the scope of ICANN, you've just added Marilyn, that council could - what you said is council wouldn't just then vote with the higher threshold.

It would be your interpretation that GNSO council would then try to find an element of that within scope and use that to override.

(Marilyn): I actually assumed from the beginning that the reason the GNSO policy council was looking at it was because they discerned the element of rationality and responsibility, but it - you know, it may have been - and I think we went through this Jeff in PDP '06. There was a lot of talking past each other even within the working group.

So you know, I would assume the reason the policy - that the GNSO policy council is even considering a topic, is that some members of the council or the community have discerned what the relationship is.

But if it, you know, so there may be this narrowing of, you know, and I'm not suggesting they're looking for that element, I'm assuming that element was there in the beginning, but wasn't well articulated.

Jeff Neuman: Okay.

Let me go to Bertrand who had his hand up and then - Liz is your hand still up or is it from - oh sorry, your hand is up for another subject right.

Liz Gaster: I can put it down though and you can just hold the thought.

Jeff Neuman: If you could that would help me out.

Liz Gaster: Sure.

Jeff Neuman: Thank. (Bertrand)?

Bertrand de La Chapelle: Yes, just one element to say that the discussion right now is very interesting because it points to one ambiguity in the term policy. We are using the same word for three at least, I'm sure there are others, at least three different types of outcomes.

One is consensus policies, which are very clearly defined as (offering) the picket fence type of provisions in the regimes, applicable to individual or (unintelligible) - that's one.

The second one is the full policy-type of things like the policy for new (GTLD), which is a very long process with a lot of consequences and many iterations.

And the third one would be what we've been describing informally as recommendations, which is something that is not necessarily binding, but that could be a message from the GNSO to other actors in a somewhat formal manner, but that wouldn't have enforceability capacity.

I think the process that we're designing here should be able to accommodate the different aspects or we have to make clear that we create three different type of press and I don't think we are there yet.

So the objective, as we've always said, is to find a flexibility to make sure that when we get into the policy development process per se after

the preparation phase we're discussing now, that we exactly know what kind of outcome we are trying to produce.

And this is why, in the end of the preparatory phase, I was suggesting that we have a staff recommendation that says policy is needed and this is the type of policy that we should produce.

A general policy or picket-fence consensus policy or a recommendation and to have a clear description at the end of the preparatory phase on the exact issues that are supposed to be addressed.

Is it to identify a solution to a very concrete problem? Is it to highlight the broad dimensions of something that is the introduction of new (GTLDS), for instance, and so on. But it is important to understand that we are covering at these three dimensions.

Jeff Neuman: Okay, I'm sorry.

Just to clarify, I got - just to restate the three, I have consensus policies, recommendations by GNSO to other actors. What was the third one?

Bertrand de La Chapelle: And the third one is the full policy, typically the new (GTLD) opening up of the space.

Jeff Neuman: Okay. Okay, let me go to Alan.

Alan Greenberg: Yes.

With regard to (Bertrand's) last statement, we need to be just a little bit careful. I'm currently the front man on what might be a PDP, which if it goes ahead, is likely to have all three types of outcome. So one can mix and match these kind of thing.

With regard to non-consensus policy, the GNSO council has no ability to make it binding, but if it is a recommendation for staff to do something and the board approves it, it becomes binding. So some things become binding along the way regardless of whether they are in GNSO's scope or not just by nature of the process that follows things.

And lastly, when we're talking about going against recommendation of council and whether it's in GNSO scope or not or for that matter ICANN scope, ICANN talks of a capture a lot. We certainly also have to worry about what if we disagree with council.

What if, you know, counsel is not a - legal counsel is not infallible and if the GNSO Council disagrees, then yes, the higher threshold, a lot more of us have to disagree, but nevertheless we shouldn't stop from going ahead just because legal counsel didn't agree with.

Jeff Neuman: Okay. Anybody else's comments on this subject? All right. I'm going to go to - I know Liz has another comment on an aspect that we haven't touched.

Liz Gaster: Well, this actually relates to the little discussion we had about whether the review of the scope at this juncture should be kind of the general counsel or the staff and Margie had suggested maybe the staff and(Marilyn)made some very good points about the general counsel's role in wanting to make sure that if that review was required that was

going to be up front so that you don't have the concern, and I am paraphrasing (Mar), feel free to edit my characterization.

But, you don't want a situation where there is a U-turn later on a different understanding that's created and I think what we were suggesting - because I appreciate that very much, you don't want that and so the obligation would be on the staff to make sure that what we came back with was the overall staff opinion, including the general counsel.

It's just that as an internal matter, being so specific about the general counsel's review, when in fact, you know, there might be more than just the general counsel's review that gets conducted, we want the flexibility, I think to, you know, to conduct the review and sort of own the process as a staff function, but the need to have - to be able to rely on the staff recommendation and analysis and conclusion at that point would be the same.

We'd want to give the same weight to the staff recommendation, as it would be to the general counsel. So I just wanted to make - to recognize what(Marilyn)I think your point is and say that we weren't suggesting that, you know, that then the second review could undermine the first review in some way, but rather that the two would in a sense have a synonymous weight.

Jeff Neuman: So just to clarify Liz, then you wouldn't foresee a situation where the staff would come out with a recommendation and later on general counsel would disagree with that.

Liz Gaster: No.

I think that would be a real problem and I think (Marilyn's) point is extremely well taken. Now I appreciate some other aspect of the discussion that we're also having in this context which is that as you delve into an issue more deeply, sometimes the policy question morphs, you know.

The scope issue might start out being, you know, could we do such and such because our understanding of an issue is at, you know, a sort of initial - more initial or (nascent) level and then as the working group progresses, the shift - there may be a shift in terms of what the policy question or issue becomes.

Maybe we should, you know, the question becomes should we impose that on the registrars and registries where you would need, again, another staff review on the second question, you know, as the thinking evolves.

But again, every time there is a staff review or staff analysis, the community would need to rely on that staff analysis the way you're relying today on a general counsel.

That's at least what our suggestion would be to clarify where we were coming from on that because I really recognize the concern that(Marilyn)is raising and would not want that to happen.

(Marilyn): Do I need to - Jeff if I might clarify. Liz, I need to think more about this...

Liz Gaster: Okay.

(Marilyn): ...and see what this looks like in writing because I have worked in complex organizations for most of my life and I want to ensure that the GNSO council has the ability to disagree with a ruling and to seek an additional opinion.

Jeff Neuman: All right. So Marilyn, if you could do that and then let us know your thoughts on the email list.

Liz Gaster: And let me just say, this very quickly that might be an additional thing or step or mechanism that might need to be built-in regardless because I am not real sure that you have that today.

(Marilyn): Actually, we did.

We got a ruling from the general counsel that we did not agree with. The policy staff was not in a position to - and the council did not accept the decision of the general counsel. I don't want to, you know, I think there was an issue of lack of clarity, but the point was the council did not agree with the interpretation and they had the ability to launch a work process.

I don't want to go into the details of whether they should have been able to or not, but, you know, we can't - in a bottom-up environment, we have to build in appropriate safeguards and the ability to ask for a second opinion.

Liz Gaster: Right and I think that is a good idea personally. And I wouldn't expect the council to necessarily agree with the opinion or even be monolithic in its view of an opinion. So I don't see that as any - I think that's a

valid point in addition that this group could give some further thought to. So very good point from staff perspective.

Jeff Neuman: Okay. So before, because we're only scheduled for an hour and a half and we're almost done, I want - I think we've made good progress and as I scroll through the list of all the 11 items, I think we touched on each and every one of them, even though it seems like we're only stuck on Number 2, we actually covered all the other items in our discussions.

So I think, you know, the first item is for staff to - and myself to draft a note to this call and circulate it as to where we think we're coming out on some of these items and, you know, get more discussion going on the email list.

I do want to say that for the next call, I think we should start talking - start about - start with talking about timelines because that's one thing we've kind of avoided talking about.

All of us understanding that there needs to be flexibility, but, you know, we all understand that timelines do need to be built in otherwise things can drag on forever and it's been an extremely controversial subject and one that we all agree, I think, that the timelines of the current PDP aren't necessarily the most realistic to achieve.

So I do want to put that on the agenda to talk about on the next call as one of the first items. So if you all can give some thought after we distribute the notes as to what timelines you would recommend putting to each of these and also mechanisms to extend the timelines frankly which I think came up once or twice on this call.

I know Bertrand has said that if the council believes more information is needed before we can launch a full PDP, do you add some more time, things like that.

So if people can get started thinking about those types of issues, I think that is a good place to kick off on the next call before we jump into the next full item. I see Alan has his hand up.

Alan Greenberg: Actually, that was the previous hand, but I do have a very brief comment. The document I sent around a week or so ago does have some ramblings about timelines in them and we're probably going to redo it again now that we have had this discussion, but there are some thoughts about timelines, both on the issues report and the decision to launch a PDP.

Jeff Neuman: Okay. And then Bertrand.

Bertrand de La Chapelle: Yes, likewise the document I circulated and suggested that we have two timelines. One, that is the existing 15 days for the initial brief issue paper like the one that starts the thing and the time to be determined for the issuing of the staff recommendation.

It can be an additional 15 days or it can be a month because we have take into account what is the actual practice and, of course, nothing prevents going faster.

But the idea is that it is up to the council in-between to potentially extend this by requesting additional reports or studies if needed.

Jeff Neuman: Okay. Great. So we'll look at those documents and anybody else with thoughts on it.

So I have, for the next call, to invite - the first thing is to decide in this book as far as order - the first thing we want to do is reach out to the W3C and the (unintelligible), specifically (Thomas Norton) and (Thomas Roesler) to talk a little about their process and procedures for raising an issue, creation of an issue report - all the things leading up to a working group.

And then to go into the timelines of the items that we talked about on this call. And then I - the hope is that the next - the end of the next call is to finish out this first item A at least enough to get a draft going of a paper that incorporates all the suggestions and items that we have come up with on topic A.

By the end of next or - by the end of the next call, we should be able to get to that stage where we can get that paper, so that at the following call we can start on some of the other items B, C and et cetera in the work plan.

Anyone have any comments on that? Great. Well I appreciate everyone participating and for showing up and the next call is the same time next Thursday.

Glen Desaintgery No, no Jeff, excuse me this is Glen. Next Thursday is a council call...

Jeff Neuman: Oh, okay.

Glen Desaintgery ...so can we make it the 14th please?

Jeff Neuman: Two weeks? Can we make it May 14?

Alan Greenberg: Wait, wait, wait. May 14 is Thursday.

Glen Desaintgery: May 14 is Thursday, yes. But next Thursday is the council call that is May 5.

Alan Greenberg: Oh, I see, so two weeks. Oh, okay. I'm going to be traveling on the May 14, but I think you may have to go ahead because the only days - yes- the...

Jeff Neuman: Yes that week is also the - so I think it might need to stay the 14th because the beginning of the week is the IRT meeting - San Francisco, a couple of us are involved and then I know the (INTA) meeting starts in Seattle for a number of people on the - right after that.

So let's keep with the schedule if we can Alan and if you could send us any thoughts, if you can't make it, hope you can, but if you can't if you could send up some thoughts on email.

Alan Greenberg: (Unintelligible).

Jeff Neuman: All right.

So okay the next call will be May 14, which actually gives us more time to invite the other guests. But please, I know the discussion on the lists have kind of slowed down. Let's try to keep it up and going because I

think we have some good momentum here and I think - I'm happy with the progress that we've been making.

Man: Thanks for a good call.

Jeff Neuman: Thank you everyone.

Man: Bye-bye Jeff. Thanks for your time.

END