

**Policy Process Steering Committee (PPSC) Policy Development Process (PDP)  
Work Team (WT)  
TRANSCRIPTION  
Thursday 06 May 2010 at 13:30 UTC**

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On page:

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**Participants on the Call:**

Jeff Neuman - Registry Stakeholder Group - Work Team Chair

Paul Diaz - Registrar Stakeholder Group

Alex Gakuru - Non Commercial Stakeholder Group

Tatiana Khramtsova - Registrar Stakeholder Group

Alan Greenberg – ALAC

Avri Doria - Non Commercial Stakeholder Group

Wolf Knoben – ISPC

David Maher – Registry Stakeholder Group

**ICANN Staff:**

Marika Konings – ICANN Staff

Liz Gasster

Margie Milam

Glen de Saint Géry

**Absent apologies:**

James Bladel – Registrar Stakeholder Group – Interim Chair

Gisella Gruber-White: Good morning, good afternoon to everyone on today's PPSC PDP call on Thursday the 6th of May. We have Jeff Neuman, Alex Gakuru, Tatiana Khramtsova, Paul Diaz, Alan Greenberg, David Maher, Wolf-Ulrich Knoben, from staff we have Margie Milam, Marika Konings, Glen Desaintgery, and myself, Gisella Gruber-White. Avri Doria will be joining us shortly and we have apologies from James Bladel and please remind everyone to state their names for transcript purposes. Thank you, over to you Jeff.

Jeff Neuman: Thank you very much. Good morning, good afternoon. This is Jeff Neuman, chair of the policy development process work team. It is May 6 as was said and this is our regularly scheduled meeting.

I think on the agenda today we have a couple of items. The first one is to finish the discussion on the thresholds which I think we should be able to do in fairly short order.

We are almost done, there's really just one question left that we would address on this call. Actually there are two of them left, the second one we don't really understand what it means and actually Margie needs to go back. And we're not going to have a discussion on that one today, Margie is going to go back and see if she can get other insight as to what that means.

The second item that we'll cover is an idea on how to deal with the issue of the bylaws and creating some sort of flowchart that Marika will talk about. And the third item is to look at the document that was sent around by Marika earlier this week on stages 1 through 5.

But also more importantly for purposes of discussion today to look at the executive summary where she has taken out the recommendations from the various places in the report, put them all up front, and there are a number of items that are, you know, either to be determined or we haven't - we don't have a recommendation yet. So we'll kind of cover a process for dealing with those going forward.

All with the ultimate goal of getting an initial report out in time to have a discussion in Brussels - well a discussion and a workshop in Brussels. So that's it. Are there any questions on the agenda?

Okay hearing none, the item that we need to talk about which came up at the very end of the discussion last week which is a bigger topic than we had time

for was the question of if we look at the document on Adobe Now and we scroll down to Page - I'll get an exact page here, Page 5 which again dealing with voting thresholds.

It's a statement that's currently in the bylaws that I believe people interpret differently. And it basically says if any case in which the council is not able to reach GNSO super majority vote, I'm sorry, yeah super majority vote, a majority of the board will be sufficient to act. And we started the discussion last week that there are two different ways that people have been interpreting it.

One camp has been interpreting it as yeah, the board can act, the board can vote on something that didn't have super majority vote. But in the event it doesn't have super majority vote of the council the board taking action, i.e. approving it, would not be sufficient enough for a consensus policy to be binding on contracted parties.

There are others that take the view of interpreting this provision in the bylaws to say no, you know, the provision says in the case where it's not able to - there's no super majority vote, the board could still act, and that would be binding on or would be considered a binding consensus policy within the meaning of a contracted party's contract.

So I believe those are the two interpretations. Does anybody think there's a third interpretation of that? Okay not seeing any hands. I think those are the two interpretations.

And what I want to try to do is I want to go around and start trying to stimulate discussion and ask each person on this call including Margie, I'm going to put you on the spot as well, to tell me what you personally believe your interpretation of that is so we can kind of get a sense of the group. And if you're not sure then say I'm not sure, it can be read either way, I have no opinion. But if you do have an opinion on this I would really like to hear it.

So I'm going to go in alphabetical order and the order in which you appear in the meeting room so Alan, you're the lucky first one. How do you personally interpret that provision? Alan are you on mute?

Alan Greenberg: I was on mute, I forgot, thank you.

Jeff Neuman: Okay.

Alan Greenberg: I interpret it as if the board approves the motion which was approved by the GNSO just not with a super majority, that it has the power of consensus policy if it's - if it happens to be an issue that involves sense and consensus.

The reason I interpret it that way is I cannot, although I can't get into the heads of the people who wrote this, I cannot fathom any other rationale for them putting the words in to explain why they're there because otherwise we're saying the board can take action but it has no meaning.

And remember at the time this was written PDPs were pretty well only about consensus policy because the concept of - was brand new. And although it has since widened that a PDP may have - may essentially give advice to the board on other issues, I think the consensus policy was what they were talking about then. So I can't fathom any other reason for the words being there if it wasn't meant to imply it has the power of laws.

Jeff Neuman: Okay let me ask you another question, right, on that. It says that any case in which a council is not able to reach a GNSO super majority vote. Your interpretation was that the council has a majority vote.

Alan Greenberg: Otherwise it wouldn't have gone to the board I would think. That was implied to me. If that needs to be clarified, I don't think there's a problem. But let's see, how does it start? The board will meet as soon as feasible after the receipt of the board report from the staff manager.

Jeff Neuman: Is there - maybe it's a question for Margie. Is there anything preventing GNSO council from sending something to the board that doesn't have a majority support?

Alan Greenberg: No okay, the - I'll - I'm not Margie but the previous Clause 12 says a successful GNS vote of the council members will be deemed to reflect the view of council and may be conveyed to the board as the council's recommendation. So you only get there if there was a successful vote of the board - of the council.

Jeff Neuman: Okay. All right, so your interpretation is then the second one that I had said, that because in your mind the words there would be kind of meaningless if it didn't have the power of law as you called it, that your interpretation is that the board if it passed it then it would be binding on contracted parties as a consensus policy.

Alan Greenberg: Yes because the words say that if a super majority of the GNSO they can reject it - they can overwhelmingly reject it but if it - even if it wasn't super majority they can accept it with a majority of the board. So yes, I interpret it that way.

Jeff Neuman: Okay Alex, do you have a view on this?

Alex Gakuru: Yes, my view is that I think whoever was writing these was trying to preempt a situation where there would be a hung council and therefore then the board would come in and if they needed no super majority they would come in and then actually just make sure that certain policy goes through. So I do believe that it was trying to prevent the situation where there might be a hung council and so the board is given power to implement whatever policy be developed.

Of course I go by the fact - the assumption that in the first place there was a majority, there was a majority of the council in terms of there was no super

majority. So my belief is they were trying to prevent a scenario like this.  
That's the opinion I have, thanks.

Jeff Neuman: So let me - and I'll get to David Maher but let me ask a question as well. If all it requires is a majority then of the council then why would we even break down super majority for - why would we even have a definition of super majority? Why does that matter?

Alex Gakuru: Perhaps it is to stress the consensus, just the more, the super majority of a policy would be then perhaps the more that it reflected more consensus. Aware that consensus is not very visible when the board would come in and try to figure out where the best interest of ICANN and all benefactors and then say yes, it's probably a good - that's my view on that, thanks.

Jeff Neuman: Well then so - and then I'm going to go to Alan because he's got his hand raised. But then wouldn't it seem like the board should have a higher threshold than a majority to - for a consensus policy? I'll go back to Alan.

Alan Greenberg: I'll answer that question after but I was addressing the original question of what - why did - why the super majority for council. And I think this is perhaps one of the very few places that the bylaws really embody the concept of a bottom up consensus driven organization.

It says if council overwhelmingly feels something, that something is appropriate, the board is going to have to be almost unanimous against it to defeat it. That essentially council recommending it unless it's really, really stupid in the view of many, many directors, becomes, you know, to use the word I used before not appropriately law. So I think that again one of the few places that it's really embodied in the bylaws and I think that's an interesting, you know, measure.

Now the question of shouldn't the board need a larger amount to overrule the weak approval of council, I could probably live with that and say the board

needs a super majority or something else. You know, that I think is a valid subject for debate.

Jeff Neuman: Okay so let me go to David Maher. Do you share Alan and Alex's view or do you have a different view?

David Maher: I just got off mute. I was about to say I think - I'm not sure what it means. I mean, you can make good arguments and I hear those arguments but it's just - it's bad drafting and it needs to be fixed.

Jeff Neuman: And so as a contracted party how do you think - what should it be? In other words should the board - so let's say there's - let me point to it again. But let's say all of the noncontracted parties vote in favor of a policy and they manage to convince the one nominating committee member on the contracted party side so now you have a majority of the council that votes in favor of something but not a super majority. I'm sorry, wait, no no no no. I'm wrong. Let me restate it, sorry. I caught myself. A majority vote is a majority of each house.

David Maher: Yes.

Jeff Neuman: So you have a majority of the contracted parties vote in favor of it, a majority of the noncontracted parties vote in favor of it, but it does not amount to a super majority. As a contracted party in which your contract says needs to be consensus in order to be binding, do you have a particular view on that? Should a majority be enough for the board actually act by a majority? If the answer is yes then should it be or should it be a higher threshold for the board? So what's your thoughts on that?

David Maher: Should be a higher threshold.

Jeff Neuman: Higher threshold for the council and the board?

David Maher: Yes, for both.

Jeff Neuman: And why is that?

David Maher: Well these are critical issues and interfering with a contract, there has to be some overriding public interest issue that has gotten super majority support. Otherwise it seems to me the whole idea of the contract is very much weakened.

Jeff Neuman: So okay, and then to bring up the points of Alan and Alex then, do you - I guess what you said is you think it's poor drafting. Is that it?

David Maher: Well the fact that we're having this discussion, there are ambiguities and they - it's important that they be fixed.

Jeff Neuman: What about taking the interpretation that, you know, could it mean that the board could act but, you know, it may be more - is it - could it be more advisory or best practice in nature as opposed to a binding consensus policy? Is that one interpretation?

David Maher: Well sure, I mean, yeah. But we don't want to have a variety of interpretation on something this important. It ought to be clear.

Jeff Neuman: Okay let me go to Paul, you're next. How do you view this provision?

Paul Diaz: Thanks Jeff. I agree with David and I think I agree with Alan and Alex as well that the clarity is necessary, ambiguity is a bad thing in the bylaws. You want, you know, people to clearly understand what is intended and how the processes are supposed to work.

And I definitely agree with Alan - excuse me, with David that some threshold greater than a simple majority of the board should be necessary if only a majority, not a super majority in favor came out of council. You know, that



shows that there's not enough or, you know, that super majority level support, that alone should say a lot to the board and I think would impact its voting. But I think we need to clarify here that the threshold at the board level needs to explicitly be set higher.

Jeff Neuman: Okay, Alan?

Alan Greenberg: Yeah just quickly, different people are answering different questions. You know, for instance David made it clear that yes there is ambiguity and that is a bad thing in bylaws. Actually ambiguity in bylaws is often quite deliberate. I think in this particular clause there shouldn't be any. But, you know, very often one gives latitude to a board by having things being ambiguous.

David Maher: There's no ambiguity in the bylaws I draft.

Alan Greenberg: I have drafted ones where they were deliberately ambiguous in some cases. No, but the question I answered first of all for instance which David did not and some of the other people did not is what do you think the drafters meant.

Now that's not - not everyone feels comfortable in making that guess but we have two choices. We can either change the intent which is within our rights at this point and our responsibilities or we can consciously say well we think it meant something and we need to draft it clearer. And perhaps we have to explore that as we go along.

Jeff Neuman: Okay but you did give your opinion as to what it should be as well, right?

Alan Greenberg: I did but I note as we've gone through it not everyone has and they may not feel comfortable and that's fine. I'm just pointing it out.

Jeff Neuman: Okay. So let me - Tatiana do you have any thoughts on this?

Tatiana Khramtsova: I am on mute, sorry, no.

Jeff Neuman: Okay and that's fine. Let's see who else is on, Wolf?

Wolf-Ulrich Knoben: It's me yes, Wolf speaking. To fully understand so I'm not so too much (unintelligible) in the bylaws in this respect but just one question and I have later on another question. So in which cases this situation may arise?

So does it come from, you know, the council - I understand the council is going to submit a PDP to the board in which case after voting on a majority basis or voting on 2/3 house basis or voting on a super majority basis? So that's my question on with regards to that situation to understand that.

Because now it's written in any case in which the council is not able to reach GNSO super majority vote. So it could mean okay, any case means okay if there is only one vote in favor, that's any case. It's also any case if it's super majority vote minus one. So that's for me critical I think.

So dependent on that I would say at least the board should have - should follow this threshold which is necessary to submit the PDP. So that's - I'm not sure about that. I would say because I'm going to come from the contrary side I would say okay the board - how I see the board is okay, he should have the right well to overrule the GNSO to some extent. So but depending on what was happening before so and then I have to understand what was happening here before in total.

Jeff Neuman: Okay so assume - so a couple of things. So number one is I think everyone is saying - oh and Avri has joined too. Avri I don't know how much of discussion you've heard.

Avri Doria: None, I just heard the very end of what Wolf was saying.

Jeff Neuman: Okay so let me summarize and then get your thoughts because I've actually gone down the list in getting everyone's thoughts. So we're talking about the

provision that says in any case in which a council is not able to reach GNSO super majority vote, a majority vote of the board will be sufficient to act. And the options that we discussed at the beginning of the discussion, you know, there have been two different ways that people have been interpreting it.

The first say is that - well let me go back before that. Everyone on this call agrees that the clause is completely ambiguous and that clarity is needed, whatever the right or our recommended interpretation is. It needs to be clarified.

The second point that we've been assuming which isn't stated in the - in E is that in any case part in which a council is not able to reach GNSO super majority vote, the assumption is that means it has to at least have majority of the council in order to get to the board in the first place. So that assumption may need to be explicitly stated. So assuming it's got majority support of the GNSO council, as majority is defined, it's a majority of each house or both houses.

So assuming it's got majority but not necessarily super majority and assuming it goes to the board, the two interpretations are on the one side and Alan and Alex have expressed views this way, that they believe that means that the board could take action and that would be a binding consensus policy on contracted parties.

And but did leave open the discussion that - well let me go back a sec. So the second interpretation is that no it would not be binding consensus policy, it may be advisory or best practice in nature if the board were to take action but, you know, it's not a binding consensus policy.

Otherwise, you know, then what's the difference between - why would you have a majority and super majority although Alan had answered that question of saying - Alex said look, it's really - if it's got super majority of the vote of the

council then it takes essentially a super majority of the board to not approve it or it takes a really good reason and it goes through this other process.

The question that also came up, the issue is that if it does mean a majority of the council is sufficient then should it be a higher threshold of the board to declare something as consensus and binding.

So that's a lot of questions Avri but just to give you a flavor of what we talked about and we've been going down the list to hear people's thoughts. So what are your thoughts on all of that?

Avri Doria: First of all on it being ambiguous, while I must confess I hadn't thought it was ambiguous because I had understood it, obviously the different interpretations being of course it was ambiguous. So I guess I agree with you all on that one.

On the is the board decision meant to be binding, on the next question on the does it take a majority to get there, yes it does take - it has to be successful. It takes a majority and yeah that should probably be stated explicitly just so there's no further confusion about it.

I had always thought that once the board voted on it that it was at the end of the PDP in the same way as if it had gone there and with the super majority where it could only be knocked down, didn't need to be approved, and thus yes I always assumed that it would be binding with that majority vote.

And I think on the final question is it reasonable to think about requiring more than a final vote, I mean, more than a majority vote by the board to make something binding that, you know, did not succeed in the council. I'm not absolutely positive that I agree but it's certainly worth considering. Did I answer all the questions?

Jeff Neuman: Yeah I think you definitely did.

Avri Doria: Okay.

Jeff Neuman: So I think - and not surprisingly, I think the way it's kind of come out at least with the small group we have on now -- and it wouldn't surprise me if this is the way it would turn out with a larger group. Although we will certainly put the issue out for the larger group -- is that the contracted parties on the call think the first approach - well everyone agrees clarity is needed, everyone agrees that it should at least have a majority vote of the council in order to even get to the board.

I think it breaks down that the contracted parties believe that it would not be binding, that the board could take action, you know, could approve it but it would be an advisory best practice, whatever in nature.

The noncontracted parties believe that it would be binding, you know, otherwise, you know, and it would have the same effect as if it was a super majority of the council. But everyone on the call is open to a discussion of whether it should be a higher threshold of the board in order to - if it were interpreted in the second way which again is not surprising and probably how everyone would have predicted this would come out.

I'm not sure that - I - so let me ask the question of the contracted parties. If we did this as, you know, just again this is kind of informal, not to put you on the spot. But if we said that it would be a majority of the council but require super majority of the board, would that David or Paul change your view as to whether you think it could be binding on the contracted parties or binding consensus policy?

David Maher: You're saying that there would be a majority of the board.

Jeff Neuman: No a majority of the council.

David Maher: A majority of the council and then a super majority of the board.

Jeff Neuman: Right.

David Maher: Yeah, I think the board should have the ultimate power. I could live with that I think.

Jeff Neuman: Okay, Paul?

Paul Diaz: Yeah Jeff, I agree with David and that's what I was trying to communicate earlier. I think if there is majority in both houses of the council and then it goes to the board as long as a super majority threshold is explicitly stated that the board can make that decision and it would then be binding on all parties.

Jeff Neuman: So Alex has agreed with that. Alan is that - Alan and Avri, is that something as kind of a compromise you will - well Avri agrees with that. Alan do you have a comment on that?

Alan Greenberg: I'm quite happy with that. I'd just like to reiterate one thing which you didn't mention in your summary but I think it's an important issue. If the original intent was not that it has the power of a consensus policy, then it comes down to as you've been saying a best practice or something. And in general one doesn't give boards powers to say what makes you a nice guy.

And I know for registries best practices have some legal implications because of safe harbors but in general it says you're a nice guy and we'd like you to do that. Boards don't normally pass motions like that.

So I think to some extent going back to the intent reinforces what we're now - the conclusion that we may now be coming to with a large consensus if not a unanimous one, that is the board has the ability to make a consensus. Now we're quibbling over the numbers.

Jeff Neuman: Right and I think you're right with the respect to corporate boards. I think with respect to oversight bodies of policy organizations I think it is not that unusual to have a - the whatever the equivalent of the board is although it's not a corporation.

But, you know, I think it is common to have management committees or, you know, on the ITF it's the IESG making even for best practices, you know, RFCs that are informational in basis, right? I think it is - it's not uncommon to have them approve of something.

Alan Greenberg: Just for the record the C&R name is corporation.

Jeff Neuman: That's what I'm saying, that's - I agree with you with respect to corporations that that's generally true. So what I'm hearing though is good in that it seems like we do have a recommendation. It seems like, you know, a number of - and Margie please weigh in if you have comments on this.

Alan Greenberg: She's been trying to.

Margie Milam: I've been trying to.

Alan Greenberg: She's just polite.

Jeff Neuman: You know what, I keep - it's because of this list. It doesn't allow you to see everybody at once because it's small.

Margie Milam: Oh okay.

Jeff Neuman: So I scrolled down to view everybody else and I saw Marika. Anyway Margie yes please, go on.

Alan Greenberg: But Jeff hands always rise to the top. You really don't have to look past that unless you're curious who else is on.

Jeff Neuman: Well I was actually polling everybody individually going down the list, right? And thank you Marika I think you're making it or whoever is making it - thank you. Sorry Margie, please go on.

Margie Milam: Yeah okay, actually I have a different take on this because I view the contract analysis different than the bylaws analysis. And so the way that at least the bylaws look to me as I read them, you know, it talks about what the board can approve and what the thresholds, you know, that for something to be sent up to the board.

And I do agree with Jeff in that there's different recommendations that can come up. There could be best practices, there could be an advisory, there could be all sorts of things that don't necessarily even have contract implications. And so that's why I see that there's probably - that these provisions might apply to that situation.

But even if your bylaws have the language that, you know, if it's inconsistent with what the contract is you've got to look at the contract. There's a two part analysis that you do when you're trying to determine whether something is binding on a contracted party.

And I think that even if there was a board vote, if there was not compliance with the contract you have to look at the contract. So I don't, you know, I don't think that whatever we do in the bylaws could trump what's in the contract.

I think the way that at least I've seen us look at it is always are we in compliance with the bylaws, yes or no, and that's one analysis. And then what do the contracts say. And so, you know, that's why it doesn't seem as clear to me and I think it would be useful to have clarity on the kinds of things



that could go up to the board and that, you know, could have board approval even if there wasn't a super majority in the council.

And then the other thing I wanted to point out too is that when we talk about a super majority in the council I think we're talking about that other threshold. It's not majority of each house, it's majority of each house plus three out of four stakeholders, you know, representatives proven, you know, in favor of the decision. Does that make sense?

Jeff Neuman: Correct, yes. So I think you added another element that I guess we weren't considering which is that you could have a case where it's a majority of the council using that threshold and a majority of the board being sufficient to act where it's a PDP that doesn't necessarily recommend consensus policies that may be enough.

But if it does have something that's going to be a consensus policy that what the people on the call are saying is that they would be okay with having a super majority of the board acting on that. So it's almost a bifurcation of that part. Does that make sense?

Margie Milam: Yes.

Jeff Neuman: It's an added complication but I think it's - I think people here are coming together on that and that would have clarity. Avri?

Avri Doria: Yeah on that point, I see that although I think I would recommend against trying to bifurcate it and say if it's a PDP to do a consensus policy then you need the 3/4 or the 2/3, super majority if you don't however. It starts to get really confusing.

And I think that in terms of the parallel of if there's super majority then there's one policy. If there's not a majority then a super majority is required. I think, you know, that's sort of - because that other rule, you need super majority to

knock down a super majority rule is also not bifurcated for if it's consensus policy versus not.

So I think that, you know, even though it does require a higher threshold on the board, you know, I don't see the harm in it. And it would have to be really a critical issue to see the board put down a majority anyway.

Jeff Neuman: Yeah, I mean, most of the things the board votes on, I can't remember the last time it wasn't unanimous or pretty close to unanimous.

Avri Doria: Right, they don't bring it to a vote if they don't have super majority.

Jeff Neuman: True. There have been a couple of exceptions but for the most part that's definitely true. Alan?

Alan Greenberg: Yeah I certainly agree with Avri. I wouldn't want to see bifurcation that for one kind of a policy a different vote is needed than for the other. I think - there are words in the bylaws right now about things like - and within Annex A on a consensus position. I don't know if the word consensus policy is ever used, I haven't done a full scan. But I think in the end we need words that says this is how you - this is how ICANN adopts a consensus policy -- almost defining the term so that there is no question.

Because right now we say these are consensus positions. Well is a consensus position that's adopted by everybody a consensus policy? I would think if not then we have some rather awkward explaining to do. But I think we need to make it clear in the final document.

Jeff Neuman: Yeah I think there's a lot of awkwardness and especially because the registries and registrars have a different - have different provisions in their contract. It's, you know, the registrar is defined, you know, we usually talk about this, 2/3 requirement and the registries just have a generic statement in

there referring to the bylaws but making it clear that it has to be a consensus however that's done.

Alan Greenberg: We can't fix the registrar one unless the contract terms are fixed. Right now the registrar one says even on the negotiated parts of the contract you still need the 2/3 vote of council effectively a rubber stamp. That has to be fixed but it's not within our power to do that.

Jeff Neuman: Right. So we kind of have to basically make do with what we've got. Margie is your hand still up on something different or was that the old?

Margie Milam: I forgot to take it down, sorry.

Jeff Neuman: Oh no that's okay. So I think - so what I'm hearing from Avri and Alan is we shouldn't necessarily bifurcate that into, you know, whether it's a consensus policy or not. But in either case if it's a majority of the council but not super majority then it should be a super majority of the board to act. Although Alan also has made the comment which I'm not sure if anyone would disagree with is that really there should be some clarity in the bylaws as to what would constitute a consensus policy. So we'll have to think about how to handle that one.

All right any other discussion on this - on E? Okay good. Then I want to jump on - we kind of finished the threshold discussion for now. There is an F in the threshold discussion which I think we've briefly mentioned the last time which I don't think anyone on this call really understood what it meant.

Which is when the final decision on the council recommendation or supplemental recommendation is timely, the board shall take a preliminary vote and where practical publish a tentative decision that allows for a ten day period of public comment prior to a final decision by the board. We don't really remember or Avri is your hand up?

Avri Doria: Yeah I just wanted to say what I understood that timely to mean and what I understood timely to mean was time critical and that's the way I've always read it. And maybe that is a meaning of timely in some law book somewhere, I don't know because I'm not a lawyer. But I've always read it as if it's time critical.

Jeff Neuman: Okay that's certainly a good interpretation. Wolf or Alan, do you have a comment and then Wolf?

Alan Greenberg: Yeah sorry, the phone dropped. Basically the same as Avri. I read it as, you know, if I were to draft it I would use different words. You know, if the board deems it urgent, to be time sensitive and urgent instead of just the word timely. I would make - give it more specificity and say who decides whether it's timely. But that's what I think it means.

Jeff Neuman: So you said the board considers it time critical. Is it the board or is it the council?

Alan Greenberg: No it's the board that's deciding to bypass the normal posting and wait procedure. That can be recommended by the council but I think it's a board decision. I mean, at some point boards do have to make decisions.

Jeff Neuman: Okay Wolf?

Alan Greenberg: And it could have become critical after it left the hands of the council.

Jeff Neuman: Okay Wolf?

Wolf-Ulrich Knoen: Yeah okay, thanks. Well it's more a question now before we leave the threshold discussion. If I may a question about super majority vote. My understanding, since I missed the last meeting.

So we have - I suppose we have a definition for super majority vote which means there may be different cases with regards to or different results with regards to GNSO super majority vote. Is that correct? On Page 7 I think so I refer to that. So we have defined either 2/3 of council members of each house or 75% plus a majority of the other part of the house. Is that my understanding of the definition of super majority?

Jeff Neuman: Sorry, I put myself on mute, yes. Yeah that's correct.

Wolf-Ulrich Knoben: So that means - and to my understanding that could lead to - if you look at the number of votings, of votes on council, that could lead at the end to different results. So either on - if you sum up the both houses it could result if you look for 2/3 of each house it would result in 14 votes and if you look for the other case, the 75% plus the 50% in one case it could lead to 14 votes and in the other case to 13 votes only. Is that the understand of all of us?

Jeff Neuman: Well it's hard to look at it in terms of number of people because a contracted parties only have six council - I'm sorry, seven council members.

Wolf-Ulrich Knoben: Yes I understand.

Jeff Neuman: Right, so you have to have 75 - for super majority you have to have 75% of on house which could be either, right, so you do have the different numbers but I think - I'm trying to understand your question.

Wolf-Ulrich Knoben: It is just to make it clear, so if you take 75% of one house and a majority of the other house, it means so 75% for the contracted party house is 6 votes and the majority of the other house is 7 votes. It means 6 plus 7 means 13.

In the other case if you look for a super majority of the noncontracted party house that means 10 votes and the majority of the other house of the contracted party is 4 votes that means 14. So I just would like to know that

since that's to make that apparently clear. And if that is your understand and if that is agreed then it's okay.

Jeff Neuman: Yeah I think in your example it sounds like it's a one vote difference but it's not really. It could be - in other words you could have for a majority you could have a number of situations where it's a majority but not super majority which would result in a bigger difference of whether it's one vote. But in your example that's right.

Alan Greenberg: Jeff it's Alan, can I try to...

Wolf-Ulrich Knoben: That's the threshold, I'm talking about the threshold.

Jeff Neuman: Right so Alan, yes.

Alan Greenberg: Yeah although it's a forbidden word, the split in council with the different number of seats per house essentially has given a different weight to the votes on the two sides. They're not calculated as weights.

I think in their wisdom the board had decided that there were 3 councilors on every - on the contracted parties stakeholder group and 300 on the noncontracted parties. Clearly the number of votes that we would see that is hand sup that we would see in each of these thresholds would be radically different.

Wolf-Ulrich Knoben: Yeah.

Alan Greenberg: And that's why we went to count the houses as percentages of each house and not count votes. So, you know, the fact that there only are 6 and 12 make the numbers very close. If the imbalanced number of councilors was much larger which it could have been in a different model, then the vote numbers would be radically different based on the representatives but it still passes because of percentages of houses.

Wolf-Ulrich Knoben: Okay good.

Jeff Neuman: Thank you Alan, you explained it a lot better than I could have. So Wolf did you have another point or is that...

Wolf-Ulrich Knoben: No no, thank you.

Jeff Neuman: Okay Alex?

Alex Gakuru: Yes I'm commenting on point bullet F and I'm focusing on the second part, the or supplementary recommendation is timely. And I think on a previous call somebody spoke of suggestion where the board may want to ask maybe the committee to think of something because a supplementary recommendation that may have come not necessarily against GNSO council recommendation or development but (unintelligible).

I don't know whether it was Margie and I wanted maybe to revisit that why they needed the ten days for public comment. Is it - what is the construct of that which the board requires ten days to inform what? Maybe then we can understand what bullet F really means and see what rephrasing may be necessary if at all it is. Thank you.

Jeff Neuman: The supplemental recommendation is just to remind everyone, that is where the board has rejected a consensus policy recommendation, I'm sorry, not a - where the board has rejected a council position. It's a - I'm just going back in here.

If the board determines that a recommendation is not in the best interest of ICANN, the ICANN community or ICANN, it will send it back to the council and then council will in a formal report statement so it's articulating the reasons. Then the council will have that for discussion, the board statement,

and the council will then meet to either affirm or modify its recommendation and communication that conclusion to the board.

So the board rejects it, states its reasons, the council can say okay well this is how we addressed your concerns and modified its recommendation or it could just say we hear your concerns board but we still really feel strongly this is the way to go and so this is our recommendation that you adopt it as is. That's the supplemental recommendation.

Your question is what is the purpose of the ten day comment period, how is that being used? And I think it's basically...

Alex Gakuru: Yes absolutely. Sorry, I was on mute, yes I want to understand the ten days (unintelligible).

Jeff Neuman: Right so if it's a supplemental or regular but it's time sensitive which I think is the interpretation that Alex - I'm sorry, that Alan and Avri have given to the word timely. So if it's time sensitive determined by the board, maybe recommended by the council, the board shall take a preliminary vote and where practical publish a decision for ten day public comment period.

The board can informally I guess discuss it amongst the board, say okay here's what we think we're going to do but we want to put it out for a comment period to see if we're on the right path I think is basically what it is. But Alan do you have a comment on that?

Alan Greenberg: Yeah well I'm not sure if it's a comment. It's amazing how you can read these things so many times and then suddenly see it differently. I have a question. What's the path that is followed at this point if it's not timely, whatever timely means? You know...

Jeff Neuman: Well if it's not time sensitive my guess is that it just goes to the board as...



Alan Greenberg: Who can simply take a vote and not ask for public comment. So if it's time sensitive we delay the process, if it's not time sensitive we can act immediately. That's my confusion. There normally is a public comment period associated with the board voting on a PDP. My recollection is but I'm not sure, that the board normally calls for a public comment period after the PDP is presented as (unintelligible) and before the board votes I think.

Jeff Neuman: Correct.

Alan Greenberg: I don't think there's normally a comment period after the board votes to approve it but I may be wrong on that because these comment periods seem to pop up with some regularity.

Maybe staff can clarify this because it's only talking about this process in times where - and we're interpreting as being urgent and it sounds like for really urgent things the board can't act immediately, for not urgent things the board can act immediately. Something's not parsing here.

Jeff Neuman: So let me cut off this discussion with the same way we kind of started it which is Margie if you could go back to staff and see what, you know, we obviously have a discussion here, there are different ways it could be interpreted. If you could go and seek some clarification on that and then I'd like to actually move on to the next subject but Margie do you have a closing kind of remark?

Margie Milam: Yeah, I mean, I keep staring at it and coming up with nothing but blanks so I will definitely follow up and get information on what that was intended to apply to.

Alan Greenberg: How many years has that been there and no one has questioned it?

Margie Milam: Yeah I know, (unintelligible).

Jeff Neuman: And I am one who helped draft it and I can't remember which I guess is pretty sad. Although I admit it was almost like at least six years ago so time has faded.

Alan Greenberg: You didn't focus on just that one paragraph.

Jeff Neuman: Yeah so anyway let's move on then. The second item that I wanted to discuss and Marika I'm going to turn it over to you is kind of a way forward with respect to how to deal with the bylaws issue at least in our initial report. And, you know, Marika do you want to kind of discuss what we talked about earlier?

Marika Konings: Yes, this is Marika. You've all received a copy of an updated version of the report and we discussed last week that, you know, and I think everyone agreed that our goal should be to have something for our community discussion and review in Brussels so that puts us at a 31st of May deadline. I think what we'll talk about at this point of the recommendation next.

But one issue that we would like to include in the report and of course it will be a crucial focal point for the community is what does this group recommend in relation to changes to the bylaws.

So an issue we're working and that's what we did throughout the report, take the relevant sections from Annex A and provide some deadlines as to, you know, the discussions we had and where we had some agreements on changes to be made.

But, you know, having had a closer look at the overall bylaws and taking into account that, you know, the shift from the task group model to the working group model, there are many provisions that are basically obsolete and no longer relevant as well as certain parts that are going to be used. And we can discuss this as well, but there are some other ones that are really not clear.

And it's all part of moving towards a whole new model of how we want to conduct the PDP even though some elements might still be the same.

So our proposal will be in order to get something that the community can look at that will give a good idea of where the group is moving towards. Instead of having a red line or a very, you know, word by word what the new bylaws will look like, have more of a kind of flowchart model in which we'll outline the different phases and steps of the new PDP with different elements that we have identified and where we have agreement on which also of course are modeled on the recommendations that are in the report.

And use that as a way of saying look, this is a broad outline or the broad strokes of the new bylaw model that we are looking at. We first want to get your input from the community for, you know, are we moving along the right track. You see these elements as being part of the new bylaws. We also need to have a discussion which elements of course go in the bylaws and which should go in the rules and procedures.

But using that as a way of shaping the discussion and trying to visualize for the community which direction this group is working and then following community discussion and public comment come back, look again at the recommendations, finalize those. And then translate those into actual bylaw language and even more legal analysis of how to phrase certain things and decide on which elements should go in bylaws and which elements should move into rules or procedures. So that's a suggestion we wanted to put up for discussion. Avri do you have your hand raised?

Avri Doria: Yeah I do.

Jeff Neuman: Thanks Marika, I was on mute. But yes.

Avri Doria: Yeah I think the idea of having a flowchart is ideal and in fact I must say that the whole time I operated this chair I had a flowchart that I think had been

prepared by (Ola) on how the PDP worked. And while I had read the bylaws many times, that flowchart was, you know, biblical in proportion.

I do think however that we might want to have in addition to that, you know, the idea of where the bylaws language is going. Because a flowchart in itself, while it gives us good, good indicator of the flow and the thing, it doesn't necessarily explain what's in the box. And so a flowchart while totally necessary and great might not be enough by itself. But I think having the flowchart is a great idea but I think you'll need more. Thanks.

Marika Konings: Yeah and I think the flowchart, I mean, I'll need to think about how to put that on paper but I think the idea would be for example that in the flowchart, you know, we make a bullet point of the, you know, crucial elements of each state and we could work for example with coloring those.

Like red elements are, you know, a must in the bylaws. Orange, you know, we're not sure. It might be in the bylaws, it might be in the rules and procedures. Green, you know, we think those should go in the rules and procedures.

You know, we can think of different ways of trying to do that in a way that is, you know, we get all the elements into one document and still make it understandable for, you know, the community as a whole without having to read our - although they probably should, you know, read the 150 page document.

Jeff Neuman: Okay, I am off mute. I had to check.

Marika Konings: Sorry.

Jeff Neuman: Oh that's okay. Alan?

Alan Greenberg: Yeah maybe I took this in a different way. I took what Marika was saying as that's what we're going to do, that's what we should try to do for Brussels. And although I think a flowchart is a useful tool I don't think that we can enact our policy as a flowchart.

But I also think it's ludicrous to think that we're going to end up with bylaw wording that this group has generally agreed to, you know, suggested bylaw wording this group has agreed to in time to publish for Brussels.

So I think a flowchart is an ideal way of representing where our ideas are going right now given that there's no opportunity to do it in a firmer way anyway and it's probably easier to visualize as the flowchart. So I - as a long term aid and as the short term only way we can present it in Brussels, I support it.

Marika Konings: Yes and another idea of course is at the end of the day we need to have, you know, the firm language but, you know, as you said I don't think we'll get that before Brussels and I think we need, you know, some further discussion.

And I think probably as well as we had, you know, limited participation in this group I think it might be a good task as well to put this out to the community and hope to get some, you know, (unintelligible) and saying yes, you're moving along the right direction, we're happy with what you're doing.

So that, you know, if we put all that effort in getting bylaws written and then people come back and say, you know, we read it and didn't like it, now at least we can, you know, put a stick in the sand and say look, do you like where things are moving? And, you know, we take that as a green light then, you know, finalizing our work following Brussels hopefully.

Jeff Neuman: Yeah this is Jeff, I do think it will be very helpful to have that and, you know, a lot of people are visual in nature and seeing that in a chart will certainly be a useful tool for them. I am visual in nature as well so that certainly helps me.

Any other questions or comments on the notion of the flowchart? Okay so Alan you still - is that...

Alan Greenberg: No sorry, just haven't put it down.

Jeff Neuman: Okay and Avri has a check mark so she is agreeing whatever I say no matter what it is.

Avri Doria: Got it, always.

Jeff Neuman: So on the third item on the agenda is talking about what - and Marika is going to walk through it, we decided on the last call because it's 150 pages or whatever it is, and also kind of consistent with what we talked about when we were talking about what should be in our report is really to take the recommendations and put it up front in the executive summary.

So people don't necessarily have to read the whole 150 pages, in order to get the context they may have to, so they can see their recommendations up front in an executive summary.

So given that and also that it's helpful for us to figure out the work that we need to do, Marika has taken out the recommendations from the different places in the report, put it all up front in the executive summary. And as you can see if you scroll through it there are a number of highlighted yellow to be determined, to be decided questions that we'd like to fill in before we submit this report.

And when I say fill in, it doesn't necessarily have to mean here's the concrete recommendation that we have to do. In other words, this is the one answer. We don't have to do that but what we should do is say here are the options and even though we don't necessarily have consensus yet in our group as to what the right answer is, here are the potential answers and we're seeking your feedback on that. I'm assuming everyone is still there.

Avri Doria: I can still hear you.

Jeff Neuman: Everyone else still here? I hear Avri.

Man: It's okay Jeff. I'm on.

Woman: Alan disconnected.

Jeff Neuman: Okay Alan did say he needed to make another call and be back in a minute so I'm assuming that's what happened. Okay so with that our approach is really that we need to and there's a number of them, there's 20 something of them that still have this yellow highlighted that need to be decided. That means a lot of work in a very short period of time.

What we are going to do is we are going to - well I'll ask your opinion on this. The recommendation is that we basically send around these issues in a separate email, copying and breaking it down into a logical number of them so we don't get overwhelmed with all these.

So maybe take for the next call the first five or six, send around an email by Tuesday that has the relevant portion of the discussion that's in the main document so that people can see that. And then gathering thoughts as to what the recommendation should be and then talk about that on the next call so that by the, you know, 15th or, you know, I'm sorry, by the 30th we could have those filled in with some sort of recommendation.

Again the recommendation could be we've talked about A, B, or C options, we're seeking your feedback as to which one we should adopt. Does that make sense? Anyone have any comments on that? Marika?

Marika Konings: This is Marika, I just have a question. Do you want to focus on those that are yellow and assume that people are reviewing those where there is language?

Jeff Neuman: That is my assumption since the others are taken directly from the report which in theory should have been reviewed already or you have until the 15th to review. It's not precluding comments on those, it's just spending our time working on the ones in yellow.

Now it could be after people do get around to putting comments by the 15th that one of these could become a yellow one but at this point in time we function as let's just focus on the yellow ones. And I'm seeing agreement. Marika?

Marika Konings: Yeah there is one point I actually realized earlier today looking at this document that if you look at Page 1 it's called planning and initiation and Page 2 we've also called it initiation of the policy development process.

And I was just wondering if it would make more sense to say planning and request of the issues report to make sure because we've been talking about these before of not having this confusion and I just wanted to make sure if it's okay then I can change it throughout the document. I think it might otherwise cause confusion.

Jeff Neuman: Well I think that recommendation make sense. Does anyone disagree with that recommendation? It does accurately reflect what's in that relevant section. So why don't we do that? Okay so Marika I think you said there were - on the pre-call there were 20 something, 23 maybe 24 of these yellow ones?

Marika Konings: Yeah I think there are 23. I think some of those have, you know, some suggested language that, you know, I think I wrote on the - based on the discussions. So it's a mix of whether - a few of those where there's really nothing and some there is, you know, some suggestion but I definitely need further review and input from the group.



Jeff Neuman: So I think we'd like to, you know, if we're planning ahead it would be great to have to post this by the 30th which means that we have three more meetings before that time period. So if we can - if you can go through and logically break it down into three groups which may mean equal numbers in each one of them, or it may not be depending on how dense the question is, right? It could be a real serious topic that may take longer.

If you could just go back and maybe figure out a logical way to divide that up into three different sessions, that may hopefully will make sense so we could discuss them on the three next calls.

Marika Konings: Yeah I don't think that would be a problem. A question I would have though, would the group like that I, you know, put some suggestions on it? I'm just worried that, you know, I send out the document and no one responds and no one puts forward options, you know, we won't get done in time.

So I'm just wondering if - are people happy if I just put down some bullet points for, you know, based on the discussion and the things that are in our discussion as options for consideration that people would comment on that or add to that? What does the group think would be most productive in trying to get this language out of there that people may comment on or revised or added?

Jeff Neuman: So when you break this down into three logical groups you're also going to put in the email the - sorry, my voice is going. In the email you're also going to put the reference or the actual section, the discussion for the section? But I do think and Alex seems to agree, I don't think it hurts to put down some thoughts that you have on the options and that may help steer the conversation.

Marika Konings: Okay.

Jeff Neuman: Any other questions or comments on that? So I think that's kind of going to be our approach. I do absolutely want comments from everyone on everything in the five stages, you know, by the 15th, May 15. Putting aside that this part of the discussion will not be done by then but, you know, we do really want to get this preliminary or this initial report out by the 30th or, you know, June 1 or whatever the deadline is to get the documents out before Brussels.

If we have comments in by May 15 that will give us enough time to look at that, revise the reports or sorry, revise the sections, and then put the report out. Do we have - and I probably - Marika sorry, do you have another comment?

Marika Konings: Yeah this is Marika. I just wanted to point out as well that I've added as well some other language. For example there is an introduction in the executive summary that explains a bit, you know, the responsibilities of the group and as well the fact that, you know, we haven't gone through everything but this is our way of getting input.

I've provided some updates as well to Section 2 where we, you know, describe the approach we've taken. I think in one of the annex we have the background on like the GNSO improvements process and, you know, the mission of this group and how, you know, it's been formed. I think as well on the working group I've added a column on the meetings attendance so we can reflect that as well in the documents.

Those are other elements where I hope the members of the group will look at and provide comments or input if you don't agree with the approach. And then of course ideas as well to plug in the document on the overarching issues and put in the notes there, I probably need to rework it a bit but the layout to put it in I think Section 8. And then in Section 9 we would eventually have like the flowchart bylaw document that we'll be working on in the coming weeks.

Jeff Neuman: Great, thank you Marika. I think we - I know I certainly do and I'm sure the group definitely appreciates all the work you've done on this. I think this is - unlike any other group I've been in, the amount of issues that we've had to tackle has just been enormous.

And I know it's taken a long time and, you know, there may be some that are - that stopped showing up for these calls in frustration but I really do think that we have made a lot of progress and in the end will be some really beneficial recommendations coming out of this group.

That said, before we adjourn the call, is there anyone on here, I don't know if Glen is on. Do we know what day the workshop will be and if we finalized the days of our meeting? I know that the vertical integration group is recommending - is requesting a fairly big block of time on Saturday or Sunday and I'm not sure if that changes things with respect to our meeting.

Glen Desaintgery: Hi Jeff this is Glen. Yes I am aware of that and I think that maybe we might have to get an extra room and run it in parallel. I'm waiting to hear from Stéphane. Not in parallel with the PPSC PDP and working group as we said on Sunday but perhaps on Saturday we might have to run it in parallel with something.

Then of course there is a huge question mark that (Cliff)'s time is not yet secured so we might have to change everything if (Cliff) tells us that he can do his GTLDs on Sunday instead of Saturday.

Jeff Neuman: Yeah I think there are a couple of things that we certainly don't want to conflict with because I think there are a number of people in this group. So for example there are a number of people in this group that are on the vertical integration one so I'm not - so it will be difficult to have a conflict with that. And, you know, obviously new GTLDs is a big item so we wouldn't want to conflict with that.

So I think everyone in this group that's planning on attending Brussels should plan on being there on Saturday anyway. You know, if it turns out that this meeting that we have is on Sunday well, you know, you're there a day earlier but you'll at least be able to participate in the other events.

But in order, you know, to plan your trip and get your plane tickets and everything I would be safe and plan to be there Saturday morning and just be a little flexible as to when we meet. Do we have Glen a date as to when the - our presentation will be or our workshop will be?

Glen Desaintgery: No that hasn't been fixed either yet Jeff unfortunately.

Jeff Neuman: Okay do we have kind of a timeframe as to when we think that might be set?

Glen Desaintgery: I think it probably would be on Monday afternoon sometime or on Wednesday or maybe even Thursday. I believe the public forum has been pushed around too.

Jeff Neuman: Okay so I guess we'll kind of play it by ear. Hopefully this will - when do we think that ICANN will be in a position to kind of make sure that the agenda is final? Do you have any kind of...

Glen Desaintgery: I've got no idea, no idea at all. But I'm going to say something which is not very optimistic. There's a board retreat which is on the 20th to the 22nd or somewhere around there of May and I'm just wondering if everybody - when everybody is together if they won't be making some plans there which is rather late.

Jeff Neuman: Yeah. Okay well I guess...

Glen Desaintgery: But it will be a lot more optimistic and be next week but unfortunately I have got no idea. We haven't even received the meeting forms yet.

Jeff Neuman: Okay so hopefully in the coming weeks we'll have a better update for the group.

Glen Desaintgery: But I think it's very wise what you said Jeff that people should be there on Saturday because if we have to move around because of (Cliff)'s schedule it will be much easier.

Jeff Neuman: Okay.

Marika Konings: Jeff this is Marika. A question like for the workshop or the public consultation, is there a day that is preferred over others? I mean, Glen already mentioned normally the typical days for workshops are, you know, Monday afternoon, Wednesday afternoon, and now I think it looks like Thursday morning might be free as well if the public forum moves in the afternoon. I mean, we can put in a preference so, you know, if they looked - if you prefer Wednesday over Monday we can definitely try.

Jeff Neuman: Why don't we put that out to the list? I don't have, you know, my biggest concern is what it competes with as opposed to when it is but I don't know if others have thoughts as well. So why don't we just ask that question on the list.

Marika Konings: I mean, maybe just leave it open because I normally try as well or we can indicate, you know, conflict of course with any big major workshops. I normally try to because there are several workshops I'll need to plan in and it will depend as well on where those are fitted.

So, you know, if there's no strong preference we'll just get a slot that doesn't compete with any other big major meetings that we know many of the GNSO community members will be participating in.

Jeff Neuman: Okay. I think with that I'm not sure there's anything else to discuss. Anyone else have any thoughts? All right, that said I will talk to everyone same time next week. And please - I'm sorry Alan?

Alan Greenberg: Just one comment. At the start of this process there were some comments that you might have too many opinions to chair this project and I think if anything how you handled the discussion on consensus thresholds indicates we picked the right person. So thank you.

Jeff Neuman: Thank you. Thank you everyone for the check marks. Alex do you have a comment?

Alex Gakuru: Yes I wanted also to add my vote of confidence I think in Jeff chairing.

Jeff Neuman: Oh thank you guys very much. I've actually enjoyed it. It's been a lot of work keeping on top of everything but I've certainly learned a lot and so I thank everyone for that.

Alan Greenberg: It's not over yet. Thank you.

Jeff Neuman: It's just beginning, thank you.

Alex Gakuru: Bye everyone, bye-bye.

END