

**Policy Process Steering Committee (PPSC) Policy Development Process (PDP)
Work Team (WT)
TRANSCRIPTION
Thursday 20 January 2011 at 14:30 UTC**

Note: The following is the output of transcribing from an audio recording of the Policy Process Steering Committee Policy Development Process (PDP) Work Team (WT) meeting on Thursday 20 January 2011, at 14:30 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting but should not be treated as an authoritative record. The audio is also available at: <http://audio.icann.org/gnso/gnso-ppsc-20110120-en.mp3>

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Participants on the Call:

Jeff Neuman - Registry Stakeholder Group - Work Team Chair
David Maher - gTLD Registry Stakeholder Group
Alan Greenberg – ALAC
Wolf-Ulrich Knochen – ISPC
John Berard – Commercial and Business Users Constituency
Paul Diaz - Registrar Stakeholder Group
Tatiana Khramtsova - Registrar Stakeholder Group
Avri Doria - Non Commercial Stakeholder Group
Marilyn Cade - Individual

ICANN Staff:

Glen de Saint Gery
Marika Konings
Margie Milam

Absent apologies:

James Bladel – Registrar Stakeholder Group
Tony Harris - Internet Service and Connectivity Providers Constituency
Alex Gakuru - Non Commercial Stakeholder Group

Glen DeSaintgery: Thank you very much. Good morning, good afternoon, good evening everyone. This is the PDP working group work team call on January the 20th. And on the call we have – I think Tatyana Khramtsova is on Adobe, isn't she? She's not yet on the call. Jeff Neuman, Paul Diaz, Avri Doria, Alan Greenberg and David Maher. And for staff we have Margie Milam, Marika

Konings, and myself, Glen DeSantgery. Jeff, over to you if I see you're not on mute.

Jeff Neuman: Yes, I can start it and then I'll kick it off. I'm at the so I appreciate everyone kind of listening in and hoping the background noise isn't too bad. I know you can hear me.

But I just wanted to – I'm going to get help from Paul and from others – Alan and Avri and whoever else can – Marika – can step in to just kind of help lead the discussion along because I can't seem to get on to the Adobe room at the moment.

But the goal for today is to kind of get over some of those last outstanding issues that we have from the chart that Marika just recently sent around and then to go into the – if we have some time, to go into a discussion on the comments that James and Paul had sent around earlier. If not, I think the plan is to have a call on Monday to go through all the comments that we've received to date on the draft final report. So with that, are there any questions?

Man: No. Okay then, why don't I turn it to Marika to go to the issue that we had left off on. Actually, we finished the issue we left off on which was the, you know, what if we want to terminate a PDP? I do have a question that I need to still get an answer from the general counsel's office on transition. So I think, Marika, if you can kick off the last subject on the chart.

Marika Konings: Yes, this is Marika. Just going back maybe to the transition because I did discuss that with the general counsel's office and they basically said that, you know, they will be able to build into the bylaws any kind of transition provision that the working group – or the work team would deem appropriate.

So that would be, in course, in that case the issues would be if the working would identify certain milestones in the process at which stage a working

group might switch to the new process after, you know, the new process has been adopted.

So that could be a potential (waste) as the group feels strongly on that. It might make sense to allow for a transition throughout the process taking into account that a PDP, you know, can take, you know, more than a year to identify those, you know, those different milestones at which a transition is possible and the legal team will be able to, you know, write this – the bylaw provisions that correspond to that for it.

Man: Okay that...

Man: So they're essentially tossing it back to us and saying we can do whatever we want and then we have to decide.

Marika Konings: No, they're basically saying that it is – because, you know, I expressed some concern on the last call on how that could work and from a legal perspective if that would be allowed. And they basically said, well, you know, yes it is possible.

And, you know, it might help if the work can be indeed identified at this stage and, you know, I guess it could be relatively straightforward because they're showing (point ways) and say, okay, you know, you have to request an issue report. You have the initiation, you know, you have the counsel votes. There are (seven) – several steps why you might see a transition where I guess it doesn't make sense, for example, halfway through a working group to suddenly change rules, for example.

So, (unintelligible) or just say we prefer to have it very black and white and, you know, any ongoing PDP finishes on the old rules and a new PDP starts on the new rules.

Man: Well, I would suggest that we take it as part of our review process to, you know, for people to put in their opinions on how they think it should go. My personal preference is that we not say nothing kicks in until a brand new PDP starts.

I think there – I think that's too long a transition if it's not comp- not actually warranted.

Jeff Neuman: And this is Jeff. I think that's right and I think we can use some of the time during, you know, when this is out for public comment to actually look at some of the PDPs that are ongoing and think about some of the ramifications of how that transitions.

So that said, does anyone else – I don't see anyone's – Paul, you've got your hand raised?

Paul Diaz: Yes, thanks Jeff. I just wanted to agree with both you and Alan. I think it would behoove us to highlight this issue when it does go out for public comments because there is admittedly an awful lot of stuff for folks to look at and we wouldn't want this particular issue to be swept away but I'm sure that the community will have its opinions.

Let's be sure to underscore this particular issue. We're seeking input. Get their views and then take it on board for the final report.

Jeff Neuman: Okay. Anyone else have any comments on that?

Alan Greenberg: Yes, it's Alan. I guess to the extent that any of us have any suggestions that we can come up with quickly that they be incorporated as possibilities. You know, there're things that we haven't decided on but this is – you know, the following have been discussed or something like that.

Jeff Neuman: Yes, that makes sense. And, again, I think as we discussed the last time, the transition shouldn't be too difficult because it's not like we're presenting a whole new voting model or, you know, some difficult things that we're – that could really impact greatly the existing PDPs I don't think.

But when people read through it, keep that in mind. Okay. Do we want to now start on the – there were two subjects actually left over from the outstanding issues. One was the – we all said we would look at kind of a working group guidelines as they now published for public comment to see if those rules could apply to PDP.

So I think we kind of on the last call said we think that that's the case but we all wanted to kind of sleep on it for a week and just fully read it and think about it.

So does anyone have any additional comments on the working group guidelines and whether we think those could app- or should apply to PDPs as well? And more so- more specifically what we were looking at were the three- sorry, not the thresholds but the measurement of full consensus, consensus, strong support, but really more the decision models as opposed to the, you know, the – all the working group guidelines as a whole.

So I see Alan's got his hand raised.

Alan Greenberg: Yes. I really don't see how we can not use them at least, you know, for the period of time until they're reviewed. For – to a large extent, they were created for this process because the PDP working group, you know, is sort of – is the first instance of working groups within the GNSO and, you know, in a formal sense and are being mandated as the decision making process.

So I don't really see how we could say no, we don't like that. We're going to do something different. I mean, I can see how we can end up saying eventually that they don't work or we should do something different. But I

think that would really mean changing the working group decision making process and not just the PDP.

Jeff Neuman: Great. It seems like Avri agrees with that. Guys, it's kind of loud in here so can I just ask Marika to just collect the comments on this or Alan and you guys just discuss?

Alan Greenberg: Yes. I don't see anyone else's hand up at this point.

Marika Konings: So...

Jeff Neuman: I will – yes, I'm sorry Marika. Go on.

Marika Konings: Yes. No, just if there are no further comments maybe then we move to the last issue on...

Alan Greenberg: Yes, Avri did have a comment on the chat thing. If we don't like it we should comment to the working group on the working group comment period not just do something different.

Marika Konings: Right. And this is Marika. And then, no, that comment period is open until the 8th of February so if anyone has any suggestions on that particular item or on any of the other elements of the working group guidelines, you're encouraged to provide input on that there.

Man: And Paul...

((Crosstalk))

Marika Konings: I see that. So on the last item on the original outstanding issues list is amendments or modifications of approved policies. And this basically goes back to what should be done if there are elements of a policy that people feel strongly should be modified. Should people run through the whole process,

the whole PDP to modify the policy? Like we're, for example, doing for open IRTF current (needs)? Or should there be an alternative approach that might be quicker especially if you're talking about really minor elements that, you know, if you're not reviewing the overall policies and then maybe you've seen that a particular part of the policy is not working as intended or has unintended consequences or that wants (to seem).

So – but we've proposed in the document is that the approved GNSO policies may be modified or amended by the GNSO council at any time prior to the final pro- approval by the ICANN board as follows.

So this is specifically actually talking – sorry – I have to refresh my own mind on this one – if a policy hasn't been approved yet by the board but it's, you know, between a final approval, then in that case, the PDP team, if it has not been, the (ban) should be consulted with regards to the proposed amendment and modification to the proposed amendments or modifications posted for public comment for no less than 21 days. And...

Man: Marika, where is this in the document?

Marika Konings: In the document, we put that I think in the rules of procedure under document...

((Crosstalk))

Man: No, no. On the screen.

Marika Konings: Page 13. Page 13.

Man: Page 13. Thank you.

Marika Konings: Page 13, going into Page 14.

Man: Yes, yes. Okay.

Marika Konings: And then the third part of that, the GNSO council approves such amendments or modifications with a super majority vote in favor. And then it goes on to the approved GNSO policies that have been adopted by the ICANN board or has been implemented by ICANN staff may be amended or modified as follows – the initiation of a new PDP on the issue or a unanimous vote of each house of the GNSO council for those modification amendments considered to be non-controversial or involving insignificant wording changes to the approved policy.

Prior to any (decision), the GNSO council should consider opening a public comment forum on the proposed revisions to the inducted policy.

Man: I have a number of comments on both of them.

Marika Konings: Alan (unintelligible).

Alan Greenberg: Yes, on the first one, of prior to board approval, the way it reads it sounds as if the GNSO can decide to make changes but they should consult the working group. That's counter to what we've been saying the GNSO should not be writing pol- not be making policy. So I – you know, I personally have no problem with it but it's counter to what we – the way we've been talking and I wonder how we rationalize it.

And the point on the second one is I think asking for unanimous support – or unanimous vote of both houses makes it almost impossible to do especially as- you know, if there is one of the stakeholder's groups who doesn't agree. And since we're building into almost every PDP these days, you know, we should review the outcome and make adjustments if necessary.

I think we're in a bind. We're building into the PDP – into PDP recommendations the requirement to review but we're making acting on that

review almost impossible. And so I find both of these somewhat problematic.
Thank you. I think we have Paul next.

Paul Diaz: Yes, thanks Alan. I share a lot of your concerns. I just need to take a – ask the group to take a step back and help orient me here. When would this, what we're discussing right now, when would this come into play? I mean, I'm having a hard time imagining, for example, you know, the first point.

If the PDP has not been disbanded, okay, so if a team comes up with a recommended change to an existing proposal, I'm just – I'm sorry, I'm – it's early and I'm – I guess I'm being dense but when is this going to come into play, this idea that there be amendments or modifications to approved policies and a PDP team's not available or to Alan's point, why would council ever be the one making the recommendation? Why wouldn't it be bottom up?

I – just please, somebody help – give me an example, a realistic scenario where we might be dealing with this.

Alan Greenberg: I guess as I read it it's almost a scenario of the council has – because it says approved GNSO council policies, but not approved by the board. So if the board goes out for a comment period, for instance, you know, following the GNSO approval and comments come in or maybe board members independently raise issues that have not been discussed before it.

It seems to be looking at the issue of the GNSO has already stamped it but somewhere along the way someone has said, "Hey wait. There's a problem." That's what it sounds like it's discussing. I wasn't on the meeting when this was originally conceived so I'm guessing a little bit, but that sounds like what it's discussing.

Paul Diaz: Okay, that helps Alan. Thank you and guess we can...

Alan Greenberg: Well, it's a guess on my part.

Paul Diaz: Yes. And again, I don't honestly remember this particular debate and I think I've been on most calls but I'm still hard pressed because, you know, in the example you just provided, it's hard to imagine the council has started to move on something and then, you know, at the 11th hour and the 59th minute somebody steps up and says, "Whoa, I want to do something that was totally unanticipated by the work group," and they're trying to just squeeze it in so we need this extra process.

Alan Greenberg: Yes. Well, it's not at the 11th hour of council action. It says approved by the GNSO (council) so it's already passed off from the GNSO to the board but the board hasn't acted yet, is what that preamble says.

Paul Diaz: Yes. Okay but it...

Alan Greenberg: You – Marika, maybe you know what it – how – why this decision was actually made.

Marika Konings: This is Marika. Actually to clarify, this is an issue that actually hasn't been discussed by any working before. This is one of the items when staff, you know, writing the procedure manual, one of the (items maybe said) well that's maybe an issue for the working to consider whether anything needs to be done to address those situations which, you know, I think as probably everyone agrees, they might be highly unlikely but there might even be instances where policy has been approved.

And I think Alan gave a good example where maybe the board comment process or, you know, need new evidence to have suddenly become available making it necessary to amend the policy. So I think – but I think it's more likely in the second case where, for example, I think, you know, Paul you mentioned that – or I think Alan said, like, that would be very hard to have any kind of review. I think for a normal kind of review where you really

want to review the overall policy, you probably would go through a PDP process.

I think it's more – and this is the case where you have to implement the policy and as part of an implementation, you know, you suddenly realize, oh my God, you know, we really didn't foresee that this would happen in this way and practice.

It's very easy to modify that we, you know, change these three words in the policy, that kind of thing where they might say, okay, everyone agrees that, you know, this can be an easy fix. But in the current circumstances you would need to go through the whole PDP process to change those three words.

So I think the second scenario might be more likely when there are (identified) changes that are, you know, very straightforward and, you know, might not need to go through the whole process while you might foresee those kinds of rules.

But if you don't mind, I'll hand it to Margie because she's actually the one who drafted this language so she might have some further comments.

Margie Milam: Hi. Yes, this is Margie. A couple examples of where this might come into play – as you recall, the rec 6 working group, the charter of that group essentially left the work to be purely implementation and not policy. The – had the result been that they wanted to revisit rec 6, what – under the current rules it's really unclear how that would happen.

And you might have to go through the full PDP just to change maybe a few words or to readdress an issue that came up after the GNSO had approved it. You got community input. You've got ALAC advice, GAAC advice, board discussion and something has come up that really just wasn't contemplated or that requires change.

So that's an example of the kind of thing that can happen and, you know, in that case, the advice ended up being, you know, implementation instead of a new policy. But that is certainly the kind of example that we're talking about.

Marilyn Cade: And Jeff, it's Marilyn. Can I just announce I was able to join the call?
Apologies to be late.

Alan Greenberg: Okay we have Avri with here hand up. Margie, were you finished?

Margie Milam: Yes I was.

Alan Greenberg: Okay, because your hand is (off). Go ahead.

Avri Doria: Thank you. Yes, I certainly find it very easy to imagine not only in the cases that have been brought forward, but just if you happen to have a change over in the council between the time that a report was made and the board hasn't acted on it, and also very often there are questions coming down from the board and that question from the board starts a turn. And once you're – or the question coming from the staff, you know, starts to turn.

Now one of the things I thought was discussed was that first of all, while the PDP working group finishes this work intended to report, it nec- doesn't necessarily blink out of existence immediately but sticks around. I think we'd also – and I forget whether it was in the context of this group or the working group work teams have, you know, another group (to say).

I think under no circumstances could the council be empowered to change anything other than, you know, a trivial spelling error or punctuation or something like that I think in the recommendations because the second you open up even the smallest crack and the council can make policy under the following circumstances, the following circumstances become a slippery slope.

So I think, you know, yes, if the policy has already been implemented, has already been approved by the board, you've got to do a new PDP. I mean, I think that that is the only thing you have to do.

And I think if the council has approved it and for some reason reconsideration is necessary, it needs to go back to the group and that's one reason why groups need to sort of – they go into a holding stage, they go into, you know, become dormant perhaps but they should not disappear until it's actually over and that becomes a good period for doing the clean ups and the post reviews that are process oriented not, you know, policy oriented of how does this working group, how could we have done better, how could we have done worse, and all that important stuff that we say there's no time to do.

Well, that's the kind of stuff we could do during this dormant period but so I think a solution to this is a working group goes dormant but it doesn't actually end until things are done. But under no circumstances should the council in this new model of council be making anything that is a policy decision and it becomes a slippery slope. Thank you.

Alan Greenberg: All right. Thank you Avri. My hand is the next one up. A couple of comments – and some of it – some which I agree with Avri, some which I disagree. I think it's absolutely essential to have these kinds of clauses in the process, to not have them presumed in fallability of workgroups and the GNSO, and I think in the face of, you know, a strong belief in the community one way or another for the board, that's something is not implementable.

And the board will otherwise reject it, I think there must be a way of going back and adjusting it or at least reviewing it and looking at whether to adjust it or not.

So I think in both cases – I disagree with Avri that I think even after the board passes it, I think there needs to be a mechanism for reopening without

restarting a new PDP because otherwise the concept of putting review clauses in PDPs as we've done a number of times now, is a sham. It really says there is no ability to fix it even if we find – do a review and find a fix is needed.

I also – I disagree on a princ- in a philosophical note but it doesn't really come into this particular decision on council making decisions. I personally think that if a working group is divided and cannot make a recommendation but gives alternatives then I believe the council should be able to select among them but that's a different – not really part of this discussion. Thank you.

Paul is next.

Paul Diaz: Yes, thanks Alan. I think I can agree with most of this just a Jeff Neuman's saying in the chat and I recognize now, thank you for, you know, helping explain where this scenario will come up because there always will be these cracks in the process. Nothing's infallible.

That said, going back to the – some of the initial concerns that were expressed about, you know, the voting threshold, first going down the list. In number two, the comment period I think should be one of the 30 day comment periods and not to jump the gun, but in James' and (my) comments I'm sorry we were under the impression I thought we were standardizing around 30 days.

But I guess there are some cases where it's still going to be 21 just because in any situation other than a typographical error, there's going to be a lot of controversy about any of these late changes that are being proposed here.

I think that the longer comment period is a necessity here. Similarly, I share Alan's view in the second part, the number two, the unanimous vote of each

house. I think that threshold is unrealistic. If we want it high, keep it super majority.

But I think unanimity is something that, as we've said in other working groups, is very rare in ICANN and if there's – I think it's more likely that the situations that we're potentially envisioning here, are going to be controversial. The likelihood that they – that we could ever achieve unanimity at the council level to address these is low.

So I think that we need to look at changing that threshold, set it as high as we want but unanimity seems unrealistic.

Alan Greenberg: Margie, is your hand still up from before or a new one?

Margie Milam: Another comment.

Alan Greenberg: Okay.

Margie Milam: Just to clarify as I understand what the working group is saying. When we're talking about changing a policy, are you – and saying that it needs to go back to the PDP process, are we all envisioning that that should be the entire process, start to finish?

So in other words, go back to the issues report, back to the, you know, the public comment periods that are associated with it or is it a truncated process? That's my question really to the group.

Alan Greenberg: I think you'll get different answers from different people. I – from what I see under – from Avri's comment, and Avri, speak up, is Avri is saying that the full PDP process. I'm saying that I believe, you know, we need some sort of abbreviated process assuming there's a strong will of council and whether it's reconvening a working group or delegating how it's delegating I'm not talking about.

But I believe this should be an abbreviated process especially when it's due to something which was caused by a provision of the original outcome. Avri?

Avri Doria: Yes. Hi. Far be it for me – this is generally on a role I'm not in – for – to protect the sanctity of picket fences and consensus policies within that. But if a PDP has been approved by the board and a consensus policy has been set, then I don't see any way to have a valid change to that.

We're talking about a substantive change here, a valid change to that without going through the entire process. And I've said before, I'm very against any of the fast track PDP notions.

Also you're going to have a situation where you have discovered that something is wrong. You're going to need an analysis of what it is that's wrong, which is the issues report/review, a review feeds into an issues report or a problem reports feeds into an issue.

You then have to say, okay, what is the scope of the work you are going to make to this already approved consensus policy that's (does) change picket fence issues, etcetera? We're not talking about just the general recommendation that a working group does.

We're talking about the PDP. So I think you have no choice but to go through the full PDP if you want to maintain the validity of PDP as how we mess with stuff within the fence. Thanks.

Alan Greenberg: Jeff.

Jeff Neuman: Yes, I think I agree with Avri on this one but I think it can go a lot quicker than obviously the original PDP. You know, with the exception of a public comment period, nothing's really preventing – you know, the issues report

could be a lot smaller, it could be a lot more narrow to whatever the change was.

And the - hopefully the working groups wouldn't take as long. So, you know, I think it does have to go through the formal processes that are in place to make these changes.

But were we also talking about, you know, the notion of if the GNSO passes something and then it goes to the board and then through the board public comment period or a comment from another SO there's another issue to address?

In that circumstance I - obviously it shouldn't go through a full new PDP but just back to the working group to address the issue. So I think there's two different scenarios that we kind of need to think about.

But if it's already been approved, if the board's already approved it, it's been implemented and now there's something we learn that's new then what Avri said is correct. We need to go through the full PDP but I just don't see it taking quite as long.

Alan Greenberg: Okay so both you and Avri are saying the part one of this dialogue is we should do ahead and we should scrap part two, the part two being after board approval?

Avri Doria: It's valid to say you initiate a new PDP.

Alan Greenberg: Oh yes of course. You can always initiate a new PDP although the - it's such an onerous thing to do I question whether it would happen.

Avri Doria: Well you can always say - I'm sorry for jumping in but...

Alan Greenberg: Okay.

Avri Doria: ...you can always say initiation of a new PDP on the specific point under question...

Alan Greenberg: Yes, oh of course.

Avri Doria: ...to opening up the whole kettle again.

Alan Greenberg: Yes. I guess the only problem I have with what both of you said is you said it's only a true consensus policy and can only be imposed upon contracted parties if we follow the process.

But we're writing the process here. If we choose to put in a yes but, you know, there's a short path for something. And I'm not saying everyone agrees but if we choose to it is part of the process.

And if it gets as far as being approved by the board then it's a bylaw and it has followed the process.

So you - saying it's only valid if we follow the process is a circular argument. We're writing the process here.

Well we're divided here. I'm not quite sure...

Jeff Neuman: Well Alan I have another - Alan I have another point to bring up on...

Alan Greenberg: Okay I'm sorry. Go ahead.

Jeff Neuman: Yes so the other thing we haven't considered is I guess we're only thinking about the outcome of a PDP being a consensus policy. It's entirely possible that an outcome of a PDP may not be a consensus policy but just, you know, best practices or something other than that.

And it's also possible that it doesn't have to be a PDP to handle the new issue. If it's just a best practices or something else then it's possible that the council could start - could just set up a new working group to handle the new issue without following a formal PDP simply to address whatever issue is outstanding.

So we kind of need to build in that as well. So maybe it's just by language of, you know, if it's the type of thing that should go through a PDP then a new PDP must be started.

But if it's the type of thing that doesn't require a PDP for whatever reason, then the council will follow that procedure.

So, you know, I mean I see Avri's comment now. It says if a best practice was recommended and approved then someone sees a change is necessary to contract, then what?

Avri can you just explain that scenario? I'm missing the word.

Avri Doria: The PDP came out with no changes to contractual conditions, no changes to anything necessary. And then that gets approved. That goes to the board and all of a sudden we say oh wait a second. No, we really do need to tweak, you know, the - a consensus policy to make this work.

So it's just a small change to consensus policy. It's a small change to something inside the picket fence. But, you know, hey, we all agree that it's necessary and, you know, we're unanimous that this needs to be changed I'd still think it was problematic.

And so you're basically saying if it's just best practices then we don't have to worry. Well if it's just best practices, someone may decide that a consensus policy change to within the picket fence is required. Then what do you do?

So...

Jeff Neuman: Yes, no so I think...

Avri Doria: ...are we making our rule very complex and sort of saying well if A then this. If B then that, if C than that or just no, you have to go back to the process?

Jeff Neuman: Well I guess the scenario I was thinking about kind of - and if it's a change to consensus policy then it needs to go through the new PDP.

But I was thinking more of let's say you go through a full PDP, like say you go through a registration abuse PPD and it turns out the outcome is that we want staff to basically send letters reminding registrars of their obligations, you know, -- whatever it is. But it's not a consensus policy or anything. It's maybe an action by staff.

At that point in time if the board has some comments on it then in theory if you want to address that, that particular item of having staff write letters or issuing things may not require a PDP to fully, you know, a new PDP to fully address. It may just be a working group other than a PDP.

So I just didn't want to set a hard and fast rule that says you have to initiate a new PDP. I basically want to find a way to say if it's a type of thing that should go through a PDP according to, you know, the subjects of a PDP and the outcome, then yes, you'll have to do a new PDP.

But if it's a type of thing that wouldn't normally have to go through a PDP then you may not need to initiate it if that makes sense.

Alan Greenberg: Makes sense. I don't agree with it but it makes sense.

Jeff Neuman: Well so Alan go ahead.

Alan Greenberg: Yes. The kind of scenario I was thinking of, if you go back to the domain tasting one, we set some, you know, for instance I think there's a 5% limit in that which says up to 5% of AGP deletes are okay. Above that you pay.

You know, if we had miscalculated and for real valid business reasons the number should have been eight, I think that's the kind of thing that should be able to be changed without initiating a whole new process.

Or if we had gotten the wording wrong and the interpretation of the wording was under no conditions can a registrar get credit for AGP deletes which are necessary do to outright fraud, you know, again if we had gotten something wrong and it's not till after implementation that we realize it, I think there should be a process that you can fix it without starting a long process which even at the best of times I think we calculated would take something like nine months.

So that's the kind of thing I was thinking of. But, you know, the group doesn't seem to agree so I'm willing to live with that.

Jeff Neuman: Well I mean if you look at what Paul wrote -- and maybe we can have Paul speak on this -- his comment was as long as there is super majority support at the council level from the minor change, so Paul do you want to go into that a little bit?

Alan Greenberg: I - no, Paul is back. Okay sorry.

Paul Diaz: Yes I just got back and forgive me having been away for a few minutes in case I missed something. But I'm - and maybe I'm going to say what Avri's saying right after in the council - in the chat.

I'm still having a hard time. I don't envision these issues - the scenarios we're describing, anything ever being truly minor.

You know, even to use the example that Alan just threw out, you know, 80% versus 5%, why eight and not ten? You know, there's always going to be some debate. And there's some more pushing and shoving going on about changes especially later in the process.

So, you know, whether it needs to - any changes that come up at the end, if we're arguing to that it - you know, a new PDP, a brand new PDP is going to have to address that or not is one thing. But, you know, or is it - I guess that's going to be specific to the particular issue.

But at a bare minimum, I think that if it's going to be minor you should be able to get a very high level of support at the council to make the change.

I mean if people really see to use the example, going from five to eight as a simple little switch, nobody really has a problem with it, fine. Then let's in our rules here make it clear that there's that level of support.

Alan Greenberg: Yes Paul that was implicit in what I was saying that it would have to be a very high level support, certainly a super majority. But I seem to be in a minority so I'm willing to yield, at least on this call anyway.

Paul Diaz: I'm sorry but you're yielding because - and this is when I've stepped away. Are we talking about deleting this entire section or just the second half?

Alan Greenberg: The second half.

Paul Diaz: The second half, okay.

Alan Greenberg: No I think most people agree that until it's actually enacted we shouldn't presume that we are infallible and there should be some way of going back to the working group, you know, reconvening it or restarting it or whatever.

Avri Doria: Raising hand.

Alan Greenberg: Consider raised.

Avri Doria: Right. Okay...

Alan Greenberg: Oh I see Margie and Marika had their hands up.

((Crosstalk))

Avri Doria: (Unintelligible) their hands raised. Sorry. I'll...

Alan Greenberg: Yes.

Avri Doria: ...shut up.

Alan Greenberg: To do...

Margie Milam: I think Marika was next.

Marika Konings: Yes this is Marika. Just we've - we spoke a while ago on expedited procedures that might possibly apply. I just want to know that that's one of the items we agree to go back to at some point. Because in our previous discussions we didn't reach consensus on that item and we know that we would look back at that at some point so just to know that.

And then just very briefly do I understand then on the suggested approach, the first part that - that would be instead of saying like the PDP team if it has not been disbanded that we say the PDP team, you know, should be reconvened or that it's clear that the working group is asked to look at this again?

Alan Greenberg: I would think it's - the working group still exists as reconvened. And if not a new one is re-whatevered.

Marika Konings: Okay.

Alan Greenberg: And Paul just put his hand up. Margie did you have something first?

Margie Milam: Yes. I mean I guess my preference on the issue of changing a policy after it's been, you know, already approved and implemented would be to have a really high, you know, vote on the council as a possibility and leave the council the flexibility of making it go to a new PDP, you know, if there's support for that as opposed to doing the high vote just to give flexibility so it isn't so - such a long process.

And on an earlier point that I think Jeff was making that the PDP process would only be needed for consensus policy changes, I'm not so sure I agree with that.

You know, we have - and this is kind of that gray area of well what is policy? There's - I think policy's more than just consensus policy that's binding on the contracted parties.

And so to the extent that there was something that was policy that wasn't a, you know, consensus policy that had been approved before I think we would need to be clear on how that should be changed.

In my view if you had silence on that issue you would probably have to go to the full PDP. And if that's the intent and I just wanted to, you know, clarify then that - you know, that I just want everyone to know that that would - that'd at least be I think how I would look at that issue.

Alan Greenberg: Thank you Margie.

Jeff Neuman: Hey Alan, can I just step in on that one?

Alan Greenberg: Sure and I have one comment on it also. Go ahead.

Jeff Neuman: Okay. Yes, no so Margie I don't think I said -- and if I did I didn't mean it -- that you should only have a new PDP if it's a consensus policy. I think I was saying, sort of agreeing with you that if it's a type of change for which a PDP is required, then you need to go through a new PDP.

But if it's a type of change or issue for which a PDP would not normally be required, then you can go through some other process that the GNSO council has.

So the example I gave was let's say you have a PDP and the outcome of the PDP was staff sending a letter to registrars to remind them of their obligations or the registries to remind them of their obligation and there was some issue that the board had then in theory the council would not have to initiate a new PDP to address that change or it may not have to if in its determination that does not require going through a PDP with all the outcomes of a PDP as I think Alan has said on a number of occasions.

You know, you want to go through a PDP if you want to force the board to have to implement it unless 2/3 of the board disagree or whatever the rule is.

So I think some analysis needs to take place as to what the change is addressing and whether that's the type of thing that would normally need to go through a PDP. Consensus policy is just one example of that.

Margie Milam: Okay I got it. Thanks.

Alan Greenberg: Yes. Jeff you just brought up the issue I was going, the one you say I always make and I'll make it again.

You used the term things for which consensus policy is required. The only thing from a consensus policy is required - not - a PDP process is required is to create a consensus policy.

However the council can use PDPs to force action on the board barring overwhelming opposition of the board. And that's not required but that's a decision of council to use the PDP process for something because it feels strongly that this is something that is important enough that it should be imposed on ICANN, not necessarily contracted parties, you know, barring super majority of the board opposing of course.

So I don't think we can use the term a PDP is required in that case. So we - if we're going to put something like this in we have to be very careful of the wording.

Jeff Neuman: What about - so what about the wording I just put in the chat? So you would say something like for which a PDP is required or otherwise desired?

Alan Greenberg: Okay I'm not sure where those words go. I'm...

Jeff Neuman: Well I'm saying it would initiate - the initiation of a new PDP on the issue, you know, I don't know what - sorry. I don't know how - basically you would say that you would have to initiate a PDP if it's a type of subject for which a PDP is required or for which council otherwise desires to have.

Alan Greenberg: I don't think we even need a sentence about that. In the absence of a way of jumping into - you know, reverting back into the PDP process or whatever it is, it doesn't exist and a new PDP is the only mechanism.

So I'm not sure we even need that...

Jeff Neuman: Well the reason I came up with the language was because it says that approved GNSO policies that have been adopted by the - in this outstanding -

sorry, outstanding issues document it says approved GNSO council policies that have adopted by the ICANN board and have been implemented by ICANN staff may be amended or modified as follows.

And it says the initiation of a PDP - of a new PDP. And then you - we were talking about before eliminating the second part of it. And if you eliminate the second part then it's - we're saying it's only modified through the initiation of a new PDP. And my point is that we've got to add something where the initiation of a new PDP is not necessarily necessary if it's not the type of subject for which a PDP is required or otherwise desired.

Alan Greenberg: But why do we need that whole paragraph? Why do we need that whole section of for situations where the GNSO where the board has already approved? Just being silent on it says the same thing.

Jeff Neuman: I'm always of the opinion that where you can be specific and provide some guidance, I mean we may think it says the same thing, but who knows what's going to happen three, five years down the road.

Alan Greenberg: Well I don't see how it says anything else. It says the only alternative is to do a PDP. So that's all - a PDP is always an alternative for council. It perhaps doesn't hurt but I don't see the need but...

Jeff Neuman: Well I guess I'm reading it differently then. Maybe I'm the one misunderstanding. We're basically saying a council and to the community that look, if you want to make any changes for which there was originally a PDP, then you must go through a new PDP if it's a type of subject for which a PDP's required or if it's desired.

But in other words, you don't want to put it in the hands of the council to say well we're just making a small change. So let's just decide amongst ourselves to make that small change.

Alan Greenberg: No, no, no. I understand you're saying you don't want the council to be able to make a small change or even reconvene a working group after board approval.

So after board approval it's a done deal. It's a clean slate. And the only thing you can do is initiate a PDP.

Jeff Neuman: So I - okay, anyway. Avri?

Avri Doria: Yes I - listening to you I think you guys are actually almost agreeing. And the only time a PDP is required as I understand you saying is when either - when the council decides it's required either because it's in scope and they reached that threshold or if it's out of scope they reached the other threshold.

But as you say Alan, a PDP being required is only determined by a GNSO action. So to say initiation of a new PDP is probably enough to make the step and say the (initiation) of a new PDP has required, you know, just sort of makes it stronger and emphasizes that it does have to reconsider as opposed to automatically doing one.

But yes, I think you guys should almost - it sounds like you guys are almost agreeing, not that I'm good at knowing when people are agreeing but thanks.

Alan Greenberg: I mean to bring up a current subject and not quite appropriate but I'll use it as a bad example is, you know, one could consider the current (Pedner) PDP as a reopening and minor adjustment of the EZDP PDP from 2003.

But I don't think anyone even considered that. It was just, you know, we still feel some changes are necessary therefore it's a new PDP.

I really don't see the difference on how - whether you label it a modification or a complete new issue. It has impact on what the working group will do perhaps but that's all.

But any case, I don't - I see no harm in putting it in. If people want to go ahead.

Marika Konings: So this is Marika if I can just then ask for a clarification. So there's agreement to leave the second part in but then only have the number one bullet saying the initiation of a new PDP as required? Did I understand that correctly?

Alan Greenberg: I think that's what people are saying.

Marika Konings: Okay.

Jeff Neuman: Yes we may just want to work on those words at the end of as required. But I mean that's the concept because you're almost saying the initiation of a PDP is required. And I think you want to say as appropriate or something like that. If it's appropriate then it's the new PDP.

Anyway, that's the concept. Maybe it'll look - when you write it up it'll look fine and so we'll just - I think Avri's got a comment on that.

Avri Doria: Yes I do. I think we have to be careful. If we put in as desired or as appropriate or whatever, what we've done is we've fuzzed up how one starts a PDP.

And we've opened it up knowing us, we've opened it up to questions a year or two from now. What did they mean as appropriate. Does that mean we don't necessarily have to go through all the initial steps, et cetera?

So that's perhaps an argument in favor of Alan's just the (initiation) of a new PDP because it includes all the is it appropriate steps.

There's no other way of determining that a PDP is appropriate except by going through all the steps. So I think as required by the PDP process is

redundancy but it's nailing the nail down so that there's no question of well, can we just restart this one? Can we do this? Can we do that?

And so it's the specificity to stop the same kind of speculation we're having now in the future. Thanks.

Alan Greenberg: We have no hands up and I'm not sure we have any more subjects and we're at the - almost at the one hour mark.

Marika Konings: This is Marika. Can I just then ask for a (recap)? So are we now - does the (work team) now prefer just to leave it as is so it says approved GNSO policies that have been adopted by the ICANN board and have been implemented by ICANN staff may be amended or modified by the initiation of a new PDP. And that's...

Alan Greenberg: I would think it's solely at that point by the initiation of a new PDP to make it clear. If you - if we're trying to make it clear we should make it clear.

Marika Konings: Okay.

Alan Greenberg: Right, so may only be amended by...

Jeff Neuman: Yes.

Alan Greenberg: ...the initiation of a new PDP on the issue.

Jeff Neuman: Yes.

Alan Greenberg: So before we leave for the day I just want to remind everyone that comments are due tomorrow to the old draft. I shouldn't say old draft, sorry, or the draft that's out there from October.

Really read that draft in conjunction with this outstanding issues list and all the comments we've made. I understand it's not ideal to be reviewing it at this point but we kind of have a really compressed timeframe that everybody agreed to. And I think it's the only way that we're going to basically be able to get all of our comments in, get Marika to finalize this draft final report out for comment for, you know, public comment for everybody including us again.

I mean if we have additional comments it's not like we can't make comments during that time period as well.

And, you know, look, everyone go back to your constituency stakeholder groups, supporting - or I should say advisory committee and just make sure that they're ready to comment on it.

It's a fairly short amount of time for the dense amount of material that's in here. And, you know, we do have subjects that we're going to address when it does go out for public comment.

So with that I do want to say that we are having a call on Monday at this same time slot so that we can address some of the comments that we've received and that, you know, and as Paul points out this is technically a 90 minute call. But I think we'll have the 90 minute call on Monday to address the comments.

And, you know, please read it, make some comments. Let's try not to reopen some issues that have already been decided. But obviously we will go where the discussion takes us.

Marika do you have any other comments on the review or anything like that?

Marika Konings: This is Marika. No, just to note that it might be helpful as well for people to look actually at the notes in the outstanding issues document if they haven't done so to make sure that I've captured well the work team discussions and

agreement on the different items so that if needed we can still go back to some of those items as well in our next meeting.

And to note as well that I mentioned on the expedited procedures that's one of the things we left open and need to go back to at some point.

Alan Greenberg: Right. Okay, so anybody else with any comments?

Man: No.

Alan Greenberg: Okay well then let's - I'll talk to you all on Monday. Thank you everyone.

Jeff Neuman: Only to give condolences to Marika who has to assimilate any comments we make on her three days off.

Marika Konings: Well fortunately I hope to have some time Monday morning as I'm in Europe. So that's a - that might help me get...

Jeff Neuman: So you're being optimistic that we won't actually many comments. Okay.

Marika Konings: Indeed.

Alan Greenberg: All right, thank you everyone. Thank you Jeff.

Jeff Neuman: Okay, okay bye. Thank you all.

Man: (Unintelligible).

Jeff Neuman: Bye.

END