

**Policy Process Steering Committee (PPSC) Policy Development Process (PDP)
Work Team (WT)
TRANSCRIPTION
Thursday 27 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 27 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-pdp-20110127-en.mp3>

On page:

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Participants on the Call:

Jeff Neuman - Registry Stakeholder Group - Work Team Chair

Alex Gakuru - Non Commercial Stakeholder Group

Alan Greenberg – ALAC

Wolf-Ulrich Knochen – ISCPC

Paul Diaz - Registrar Stakeholder Group

James Bladel – Registrar Stakeholder Group

Avri Doria - Non Commercial Stakeholder Group

ICANN Staff:

Glen de Saint Gery

Marika Konings

Margie Milam

Gisella Gruber-White

Absent apologies:

Tony Harris - Internet Service and Connectivity Providers Constituency

David Maher - gTLD Registry Stakeholder Group

Coordinator: This call is now being recorded.

Gisella Gruber-White: Thank you. Good morning, good afternoon to everyone on today's PPSC PDP call on Thursday, the 27th of January. We have Jeff Neuman, Alex Gakuru, James Bladel, Alan Greenberg, Paul Diaz, Avri Doria. From staff we have Glen de Saint Gery, Marika Konings, Margie Milam, and myself Gisella Gruber-White.

Apologies noted from David Maher and Tony Harris.

And if I could just remind everyone to state their names when speaking for transcript purposes. Thank you. Over to you Jeff.

Jeff Neuman: Thank you. My name is Jeff Neuman. I'm the Chair of the PDP work team. Welcome to our weekly Thursday call.

Just as a reminder, we do meet now Thursdays and Mondays at the same time. I'm going to try to keep these calls -- since we're meeting twice a week - - to just an hour just so we can have some sanity.

And also, I just wanted to note again - so, we do not have anyone from the Intellectual Property constituency. We have not heard from John Berard from the BC, and Tony - I guess the ISPs are not here either. Has anyone heard from Wolf?

Marika Konings: This is Marika. I think Wolf normally joins a little bit later in this call because he has another meeting that you know, goes a bit into this call. But I think that's his usual practice, but I don't know if that's the same for this call.

Jeff Neuman: Okay. I should - I will not the - again, this is I guess the second meeting now, or the third meeting or so that we haven't had really participation from the commercial stakeholder groups, so I'll have to mention that at some point.

All right. We are going to - we got analyst comments this morning, or late last night for some people. And so, we - Marika has incorporated those comments into the outstanding issues list and into the document where possible. Some of those issues actually relate to areas that we've already passed in the report, so we - Marika put them at the end of the outstanding issues list. So rather than backtracking now, we'll just kind of cover that at the end.

Alan Greenberg: I'd like to nominate Marika for outstanding staff support person for doing that.
Thank you.

Marika Konings: Thanks, Alan.

Jeff Neuman: I second that.

So a first thing I wanted to ask is are we expecting anybody else to file any comments before we kind of consider at least this part closed? And obviously by this part, it's just to get the report out for public comments so anyone's free to comment at that point time, or frankly at any point. But you know, just to put a stake in the ground here, or for Avri and my sake, who's shoveling out of our driveways, to put a shovel in the snow.

So with that said, we have - we left off at Issue Number - or Recommendation 16, which is Outstanding Issue on Page 19 at the bottom. It continues into 20. And so, that is on the - well, we started talking about it, and we probably got most of the way through it. But, it's on the right to basically - it's flexibility and the right of one stakeholder group, constituency, et cetera, to ask for a one meeting delay in a vote. And so for - and this is a vote to initiate the PDP.

And what we had talked about was that a individual on behalf of their stakeholder group or constituency could - and we should continue this practice that's been going on in the Council. And, we just also wanted to - as part of it, if you look at the notes on top of Page 20, we were going to consider whether the addition of "on behalf of the stakeholder group, constituency, it would be appropriate" following "voting Council member". And then, Marika had circulated and - has circulated kind of the average timeframes for PDPs. I think that came up in our discussion last week.

Is there any other thought on that? If you look at the left side, you'll see the proposed language.

Avri?

Avri Doria: Yes. Just a quick thought that I didn't have until this morning when you started speaking of it. If - why is this part of the PDP practice? It seems to actually be a general GNSO Council practice, and perhaps it does belong in the GNSO Guide Book, and perhaps it doesn't. But, why is this a PDP specific issue? Thanks.

Jeff Neuman: Yes. It may not only be a PDP specific issue. It is not, but I think our kind of mandate is really only to look at the PDP. So if - much like we said we're going to kind of adopt the working group roles to the PDP process, I would think - or I would think others who are looking at the general operations of the GNSO could say, "Hey, that's a good idea. We should apply that across-the-board."

But, that's the only reason. It's really just because that's what our scope is. And yes, I suppose we could have a note in our - in the report itself saying we think this is in general a good idea not just for PDPs, but for everything. But I think as far as the recommendation, it's kind of limited to the PDP.

Does that make sense, or did I not answer enough?

Avri Doria: No, it's fine. It's just that I'm just wondering if we need to go further, or we need to you know (liaise out there) with the rest of the Council or whoever is taking care of the general practices to do something.

I mean yes; you're right. With a working team - with a working report team, there was a certain amount of back and forth, and you know the PDP adopted their practices. They adopted the OSP's practices you know, or worked with the SOI/DOI stuff. And yes, there's been a lot of you know cross trading between these various sort of work teams. You know, the - well, I won't get into the why.

But so, I'm just wondering whether - it's fine to do this, but whether one should also ask the OSP, which is you know the one that's responsible for the Guide Book except for this section, whether this is something that they want to do something and incorporate it or not. Just - you know, because it is a broader issue if the General Council practice it -- and it seems to me that it's actually totally irrelevant to PDPs per say -- it has to do with Council practice, not with how you run a PDP.

I don't think a PDP is any more or less valid because of this practice. This is just Council practice. So I mean you know, do whatever you know you think is right. It just strikes me that we've left a gap here between you know passing this off to the other group that has responsibility for Council practice. That's all. Thanks.

Jeff Neuman: Okay. Thanks, Avri.

Anybody else have comments on this recommendation issue?

Alan Greenberg: It's Alan. I'm sorry, I'm not - I can't put my hand up right now. I agree with Avri in principle, but should the working group - you know, should Council decide that this is not a practice they want to do in general, because it's causing too much disruption or whatever, I still think - I think it does belong here. Because, we're saying PDPs are important enough that we want to make sure that constituencies can have that opportunity.

So, I think it's valid to put here, given that we do not know exactly what Council will do in the more general case.

Jeff Neuman: Okay. James?

James Bladel: Hi, Jeff. Thanks. James speaking. And maybe I'm looking at this through the other side of the looking glass, but I see the benefit of keeping this in a PDP specific context is that it defines the maximum number of times the Council

can defer on a PDP so that they're not - that one or more groups within a - within the Council are not continuously let's say deferring a PDP as a means to push it down the road as far as possible.

So, I think that there - there's another benefit here that we're also setting a maximum.

Jeff Neuman: That's a good point, James, and one that we kind of haven't discussed. But, I think that that's - the point is well taken, Avri and Alan. I mean, I seems like everyone's okay with it in there, and just kind of noting maybe in the body of the report that we think this may be a good practice Council wide for any item that they're working on.

Avri Doria: This is Avri again. Yes. Leave it in. I do think that perhaps some notification -- an email or whatever -- should be sent to Philip/Ray, you know discussion the issue and asking whether they want to deal with it would be an outcome. I haven't actually thought of the point that that is in any sense saying - at most it can be pushed off one meeting. It says it can be pushed off one meeting. I'm actually not sure that that wording says at most it can be - I'm not looking it at the moment. But if that's what we want to say, then perhaps we should say that.

Jeff Neuman: How does everybody feel about that? I mean, that's kind of what James is saying. It's a changing of the wording. Does anybody agree - disagree with that?

Alan?

Alan Greenberg: Yes. I'm not sure that we would want to be - say at most. You know, I'm not sure we understand what contingencies can come up that may require yet another postponement. There have been postponements of other important motions, including I believe PDP ones, that have gone on for more than one

meeting because - you know, the second time it was deferred for a different reason.

So, I'm not sure we want to be too dogmatic of it; although, I agree with the concern that you don't want someone to be able to keep on putting it off forever. But, I'm not sure we want to be too dogmatic.

Jeff Neuman: Yes, the way - and I remember this came up with another motion we were talking about at the Council level. And the first time it's deferred almost as a - or basically as of right. One person asks for it on behalf of their group, and it's automatically deferred. The next time, it actually has to come to a vote of the Council on whether to actually defer it.

Alan Greenberg: Perhaps. Yes.

Jeff Neuman: Because I remember Stefan and I had discussed that about one of the motions. It turned out the motion was actually voted on. But before the meeting, someone had said that they still wanted more time and...

Alan Greenberg: Yes. I think the practice has been to defer even before the discussion sometimes. You know so when the actual (unintelligible) discussion is held the next time, there may be a valid - you know a substantive reason for deferring. I'm not sure. You know I think it's varied over the times, so I wouldn't to be too dogmatic.

Jeff Neuman: Okay.

James?

James Bladel: Yes. I think I agree with Alan. But you know, I'd like to - I think in the general case, you know we need to ensure that Council and Council Members individually have the flexibility that they need for all possible situations. But, I think that we also need to just emphasize, either in this section or with some

additional language outside of the recommendation, that we - you know we as a community, especially those who are sending them PDPs, need some reasonable expectations of a decision, and that it won't linger for...

You know, I'm thinking of (unintelligible). I don't really you know, hold that up as a Council (unintelligible). But you know what, I mean it was just kind of out there over my head like a sort of (unintelligible) for you know over a year and a half, and it just kind of - and it was - you know, it was kind of wrapped up and it went away.

But you know, it was just - that was an issue where we need to kind of wrap these things up if we're going to take on new and exciting topics and issues. And you know, in order to dive into those, we need to make sure that we've got a process that's all - on everything that's currently out there. So the flexibility, but you know some reasonable consistency in the expectations of the folks who are preparing the PDP.

Jeff Neuman: Okay. So it sounds like basically, we probably should just leave the language in the recommendation the way it is, with some notes in the report basically saying this may be a good practice for other items the Council handles. And as Avri suggested, maybe a note to - an email to Phillip and - actually, there'll be a - at some point soon, there's going to be a standing Committee - that the Council had passed a resolution, I think in December at the Cartagena meeting, to set up a standing Committee to look at issues that have already been resolved, or recommendations that have already been put into place.

And so, I don't know if it's more appropriate - to which group it's more appropriate, but either way we'll send a - the message.

Marika and Alan?

Marika Konings: Yes. This is Marika. Just a note that the current version of the draft (kind of) report actually doesn't have a section on notes. What we refer people to is

the initial report where we basically try to capture the work team discussion on the different items.

So an alternative would be to actually you know, capture this in the outstanding issues document and maybe provide a link to that so it's still tracked somewhere, or you know another way of capturing it somewhere in the report. But then we need to maybe create a separate section. We actually don't have it for the other items in the report. We just provide the recommendation and the suggested language for the procedure manual and the bylaws.

Jeff Neuman: Okay.

So - I'm sorry. So Marika - but, isn't there a more full discussion in the body of this report on each of these items?

Marika Konings: This is Marika. No. That's basically what was in the initial report where we had for each of the items a different discussion, notes that we had, and you know more fleshed out what we were thinking about. But for this report to make it shorter, the idea would be just to provide a link to that discussion. You know, referring back to the initial report where all that information is captured.

I thought a way to capture it would be provide a link to for example this document, where you know some further notes are captured as well. Or another way would be to add additional bullet points to each of the recommendations. But as I said, you know we haven't done that for any of them so far.

Alan Greenberg: Yes. But we need to be capturing the discussion we've had since the initial report. So somehow, that does need to be captured somewhere, whether it's...

Marika Konings: Right. A way to...

Alan Greenberg: We can link it to somewhere else.

Marika Konings: And the way that it's captured is the reflection of the public comments received, and there we provide as well a link to the public comment review tool. That's where people can see how we've you know discussed each of the comments and how these have been addressed. So - but it would be as well linking.

And another way would be then to link this document that's on the right hand side of the Adobe Connect screen to make sure that people can see how we've discussed each of these items.

I mean another way would be to actually bring the outstanding issues document into the final report as a separate chapter, and say, "Look. You know from the initial report, these are the items that we further discussed, and this is what we discussed. This is you know, agreement we reached on the approach to take," because that's basically what's reflected in the document. That would be another approach just to incorporate the outstanding issues document into the final report.

But, it's more a question of you know how long do you want to make it? And you know will people really ready that? Or, is linking sufficient, but that's for the work team to decide.

Jeff Neuman: Yes. I think it's - well, as Avri says in the chat area, I think making that outstanding issues document an appendix to the report, or annex, or whatever you want to call it. I think that's a good idea. I would like to see this captured. And whether someone reads it or not, you know that's their own prerogative, but it should be in there.

Marika Konings: Okay.

Jeff Neuman: Alan?

Alan Greenberg: Yes. I had my hand up to talk back on the substance of this particular point. And after my hand raised, I realized we're sort of between a rock and a hard place. It may be worthwhile putting a recommendation in saying Council should be able to defer once pro forma, based on its standard operating practices. But any more than that requires a vote of Council.

The downside of that is what happens if Council does not vote to defer, and therefore forces the vote on a PDP, and one of the stakeholder groups ends up saying, "Well, we said we weren't ready to vote," you know. And therefore, the outcome is not really valid.

So I - you know as I said, I put my hand up to say perhaps we should put something in saying only one pro forma, you know automatic deferral. The rest require a vote. But there's a downside to that too, and I'm not quite sure where we end up.

Jeff Neuman: Yes. I think - why don't we just leave the recommendation as it is, because I think...

Alan Greenberg: Okay.

((Crosstalk))

Jeff Neuman: ...(unintelligible). And let's see if we get any comments to that effect.

Alan Greenberg: Okay.

Jeff Neuman: Marika.

Marika Konings: Yes. This is Marika. Can I just clarify then as well that we're not going to add the "on behalf of stakeholder group and constituencies", or we're still getting to that part of the discussion? Are we leaving the recommendation as it currently stands?

Jeff Neuman: Well, I'm not hearing any further discussion on the language, but I'll raise the question again. If you look at the wording on the left, you'll see that the stakeholder group and/or constituency is cross out. So, it basically says any voting Council members can request a deferral of the consideration.

And what we talked about last time is that each constituency and stakeholder group had their own rules and procedures, and to (adlib) on behalf of didn't really - in one hand, it didn't really add too much when you say a voting Council member. On the other hand, it could be taken as kind of a -- what's the word I'm looking for -- an imposition on - it could look like we're basically telling Councilors how they have to act, even though we all implicitly know that really when they do vote on something, it really should be on behalf of the group. But...

Alan Greenberg: Do we really need voting there, by the way? You're only excluding one person. You're excluding the non-voting NomCom.

Avri Doria: And does the GNSO liaison and any other liaison?

Alan Greenberg: No, they're not Council members according to the way the bylaws are worded.

Jeff Neuman: Right.

You know, I think it's fine - well, I'll let James comment.

James Bladel: Well yes. Just - I guess if it's explicit that there are Council Members -- capital C, capital M -- then I suppose that's okay. I think what we wanted to - at least

my feedback on this language was that we wanted to ensure that it was being channeled through the appropriate Council representation for each stakeholder. If the stakeholder group or constituency wanted it delayed, that it was going through the proper channels and not just kind of coming at the Council from all different directions.

So if we want to be specific and say you know Council Member only or something, that's fine. But, I think that the key here was that we just didn't want them being bombarded from requests (from) multiple directions.

Alan Greenberg: Yes. The reason I raise it is you could say that the request for deferral is because I am not ready to vote, or my stakeholder group is not ready to vote, in which case the word voting is appropriate. But, I think it's also reasonable for the same reason that on any Board or group, someone can ask for a deferral. It's because we do not believe there has been substantive discussion, or you know, there's some (saline) information that we believe needs to be added before we have a vote.

And, I think the non-voting NomCom appointee should be able to make that kind of request as well. You know, that's - it's a person who's contributing - you know, is part of the Council and contributing even though they don't have a vote.

So, I (unintelligible)...

((Crosstalk))

James Bladel: I (disagree) with that part, but - you know, but I guess - well there's a queue, so I'll pause. I do disagree with that part.

Jeff Neuman: Yes. Okay. So, the other thing - the other reason I like -- and I started to say before I let James -- the reason I like any voting - or the reason I like voting Council members is I know Alan, what you're saying is technically correct,

that in theory - not in theory, but according to the bylaws, the only Council members are those that represent the stakeholder group or constituencies.

The reason I like voting in there is because I don't like referring to those members as not members of Council, even if the bylaws say that. So, I want to make it clear that we are here - if this is what we all agree to, that it's any voting Council member and not - and - I just think we need to be clear and not have to refer people to the bylaws to figure out who is a Council member.

Alan Greenberg: Well - okay. Being the only liaison who's in this position, or rather - I'm sorry. There's the ccNSO one which is a liaison. But you know, I'm regularly reminded of it. But so I don't need to be reminded.

The point I'm raising is the non-voting NomCom person already is - sort of has been shafted in that they've been appointed to Council but they don't get a vote. This is yet another sort of - you know, I'm twisting the knife and - it's not a big thing. I'm going to - I'll heal.

Jeff Neuman: Okay.

Avri?

Avri Doria: Yes. I guess I find I'm of two minds about it, and at first I was saying, "Yes. We should leave the voting in." But you're right thinking about the shafting of the homeless NomCom member who is not a voting member. And to say that they have no right to defer something, even though they are a - and should be considered a full and equal member of the Council.

The one thing that bothers me about the voting - about the Council member is I would hate to have a prejudice between two different liaisons because - well one is a Council member and one liaison is not. I would think all liaisons should be equal and that all liaisons should be the same as any Council member, except in regards to voting and such.

So as I say, I think it should be by a you know, GNSO appointed or elected Council member, but I don't think we should be prejudicing against one liaison against another. Thank you.

Alan Greenberg: Sorry. I didn't mean to imply that we were - if I said that, that was - it came out wrong. Under the previous bylaws, there was a distinction between the GAC and the ALAC liaisons and other ones who's GNSO might choose to add in. There's not really such a distinction anymore.

Jeff Neuman: Okay. James.

James Bladel: Yes, I - sorry, Jeff. This has already gone a lot longer than I imagine you had thought of. I think that we still don't want to lose sight of the idea that it's coming through - you know, any request to defer is coming up through the stakeholder groups, and I guess my concern with the NomCom representative there is that if they requested a deferral, wouldn't that almost by definition be coming from them as an individual as opposed to through a - you know, through their formal representation of a stakeholder group?

Alan Greenberg: But then you should be excluding all NomCom members, even the voting ones if you don't think that's appropriate.

Avri Doria: That would make too many people happy.

James Bladel: Yes. I don't know guys. I mean, it wasn't the idea that we wanted to you know ban something or prohibit something. We just wanted to channel it and control it so it was manageable and we had some reasonable expectations for consistency. So you know, I think we're just inserting three words, voting Council members. I think we weren't anticipating this level of complexity.

Jeff Neuman: Right. I think that's right James.

So I'm trying to figure out where we are in this. It sounds like - I mean, how strong of an issue is this for you, Alan and Avri?

Avri Doria: Since you asked, my view is that it shouldn't be in this recommendation at all. It should be in an (OSB) Council, whatever. But since having said that, and since I'm not going to make an issue of it and such, I couldn't care less. And it's not the right place for it anyway, so it doesn't matter.

Jeff Neuman: Well, okay. But let's assume...

Alan Greenberg: And I'm not going to push it either. I think it's adding a little bit of insult to injury that's already there, and I don't think we should be doing that. But, I'm not going to make a big fuss of it. If one of - if the person or one of the people in that position want to raise it as a comment, they're welcome to.

Jeff Neuman: Yes. I - that's the - kind of way I was leaning to. Let's keep it as it is. It's a little bit controversial, which may be good to stimulate comment on it, and we'll get to see how people outside this group feel, or whether they feel it's an issue.

Okay. Let's jump on then to the next issue, which is an appeals mechanism. I guess that was the whole subject. If the Council votes against initiating a PDP - and Avri has raised the comment - actually Avri, why don't you talk about your comment.

Avri Doria: Okay. Yes. I believe that any and all decisions made by any and all groups should be appealable. To say that the Council is supreme and if it decides not to do a PDP, "That's the end of it. Go away. Don't bother us," I think is - as long as could be, and as big an error as we can make in this document.

But, that's based on a general belief that all things are appealable. Okay, maybe Supreme Court at the end of the day is not appealable, but I wouldn't even go that far.

So obviously therefore if I'm told, "Sorry. You can't appeal this," and I was an active member of an Advisory Council, I mean I would take it to the press. I would take it to the Board. I would create a big issue about it, because that would be the only path for a (redress). And, I don't think that the Council necessarily wants to invite that.

So, I think that there has to be a mechanism. I think that a mechanism that requires a consultation with the AC who made the suggestion, and - and somehow of - and I know this is a stretch for the GNSO Council to actually sit down and negotiate with another group. But, I think that has to be included. It's not possible that the Council says no and that be the end of the story. Thanks.

Jeff Neuman: So for the mechanism you're describing, Avri, is really outside of the Council, right, which is - so what you were - I mean, the Board could always - as you kind of said in the middle of your - in the middle of what you were saying, you said that the - you could always go to the Board, and the Board could kind of force that upon the Council. I think that still exists.

I think what the recommendation was, was that there was no additional formal appeals mechanism that we recommended above and beyond what you could otherwise already do. But what you're saying is that maybe the other thing you might add is some sort of - I won't call it mediation, but some sort of sit down between the AC and council leadership or council to see if there's any middle ground or see if there's any way to get that done.

Avri Doria: Yes, a sub committee even. I mean basically a group composed of representatives of the two to see if something - and then an option for the council to reconsider and revote on you know like any time you have something that goes on in committee and you have two different committees that make different decisions or different recommendations on the same thing, they get together, they discuss it and then if it still fails well then fine, it still fails.

But the notion of an insular council that you know takes in requests and disposes of those requests without any appeals mechanism is just - doesn't pass the (gibble) test.

Jeff Neuman: Okay, James?

James Bladel: Thanks Jeff, James speaking. So if I could - I have a couple of just thoughts or concerns on this as it's written and then Avri's comments.

One would be why are we essentially - is this a privilege that is extended exclusively to an advisory committee or can this also be raised by some of the component stakeholder groups within the GNSO if they felt like the PDP originated there and wasn't adopted by council.

The other one is you know I'm concerned that when we start talking about a formalizing appeals mechanism that we start to go down the path that we were on with the - you know some of the discussions with the AGRT in that you know now we have to determine who has standing and who doesn't, whether there's a time limitation.

We don't want folks going back you know X number of years and resurrecting issues that didn't pass from previous sessions and certainly want to make sure that there's a consolidated appeals process so that there's not multiple pending appeals.

And it starts to go down a road that I think it's in the interest of fairness that we essentially shut everything down. So I think that you know perhaps what I'm hearing - maybe what I'm understanding from Avri is that there were recommendation for an informal process and we left it at that.

And in the language here and left it to the council and the various SOs and AC to come up with what that might look like. I think that might be more

appropriate coming out of this group than to actually design an appeals mechanism.

Thanks.

Jeff Neuman: Okay, Alan.

Alan Greenberg: Yes, I'm just wondering, are we talking about this just in regard to approving the PDP or could for instance a workgroup that comes out with a PDP report that council decides not to approve have the same sort of process?

Because you know it's not only the approval process, where something comes in to council and council has to make a decision. It's not only the initiation process rather.

Jeff Neuman: Right and actually I was going to raise that after you said it. I mean why just at this stage if you have an appeals mechanism why not you know failing to raise an issue, that's a vote.

Or approving the charter or here initiating the PDP or approving the results of the PDP. I just - I'm not sure and with the discussion when we discussed this the first time in going back to some notes it was the group felt that there were already mechanisms in place at this stage that they could go to the board and they can get the board to try to take it up as an important issue to you know force it upon the GNSO.

But having anything more formal just seems like it wasn't - it didn't really make sense at the time.

James Bladel: The reality is the board is not going to overrule the council. I can't imagine the scenario where the board may say council think about it again but that's about as far as it's ever going to get.

Jeff Neuman: Right, and the reality is though and you can't have an appeals mechanism either that forces GNSO council to initiate a PDP. So I mean that's the other thing of an appeal.

I guess what Avri's talking about is more to just have - sorry, I'm going to say have a sit down again. It's to just force people to just kind of talk about it and see if there's any way to resolve it.

You know I think we kind of did - well I won't bring up the recent situation but I think it's been tried and I think if people think it's important enough they could certainly convince council members to kind of reassess the situation, that's what happened with the JS charter.

You know that it was voted - I think it was voted down and then it was either voted down or it was known that it was going to be voted down and the council decided basically let's try to form a committee to see if we can resolve it.

You know it didn't work out in that situation but you know I think if the council thinks it's important enough I think they will sit down with the people that are questioning.

I don't think things are just forgotten but Alan and then Avri.

Alan Greenberg: Yes, if that's what we want to happen then I think we need to put words into that extent. If you look at the tone in council right now where there are at least a number of people who are saying we must follow the words of the law.

And if we don't put something in it to that effect then you will see comments in council and strong ones I believe that say sorry, we already voted on it, we are not required or perhaps not allowed to vote a second time on the same issue and it's dead, go away.

So if we believe there needs to be some ability to reconsider and revote under some circumstances with some process we need to say it. Thank you.

Jeff Neuman: Okay, go back to Avri.

Avri Doria: Yes, I'm not going to get into talking about the JAS flash point but I do want to point out that that committee was pretty much purely a GNSO you know proponent and opponent within the GNSO to try and work out their differences.

There was - it was not a - the GNSO council has made a decision which is contrary to your recommendation. So let's sit down and see if we can't hammer out in a committee an amicable you know compromise.

Even at the moment within the JAS example that's not an ongoing activity that might have been a mail exchange between the chair of one group and the chair of another group.

And both of them look like they're standing fairly firm, there is not a group of members of each that have been told okay, we obviously have a difference of opinion between the SO and the AC here.

Let's sit down and see if we can't resolve it and so yes, I think I agree with Alan that you know we basically need some questions, some answer replace basically words that say to the effect of you know there is no formal appeals mechanism to say that should you know the SO - should the GNSO decide against guarding the PDP, a committee will be established or should be established to leave open the possibility that there may be an occasion where it's not appropriate.

But should be established between the AC and the SO to discuss resolution of the difference in perspective, or something like that. As opposed to just saying no appeal, go away. Thanks.

Jeff Neuman: So how do the others on the call feel about that? James, Paul, you know Alex agrees with that.

So the last way - oh Paul, okay.

Paul Diaz: Hey Jeff can you hear me?

Jeff Neuman: Yes.

Paul Diaz: Yes, I was just going to ask Avri, what you just said could you jot that down and put it in the chat or have Marika put it on?

Avri Doria: Sure I'll give it a try. By the way I can hardly hear you; you're really hard to hear Paul.

Paul Diaz: Sorry, it's the combination of being sick and on a headset I rarely use. I was just saying can you please write it down? I mean what I heard you say sounded okay to me.

But it would just be helpful to see it in writing.

Jeff Neuman: Okay so while Avri's typing and just to kind of recap, Avri was just saying it's at this stage for the initiation of the PDP Avri I'm assuming it's not at any other stage like you know voting on whether to raise an issue or voting to approve charter or any other vote.

It's really just at this stage?

Avri Doria: Yes, basically. Someone who has standing to ask for bylaw space standing to ask for an issues report at the time that the PDP is voted on is the issue that I'm talking about.

Now as I said in other places I believe that the charter and the hopes the PDP should be together but if they're not together no, I'm not suggesting that it also happened at the time of the charter, although of course that's where we are in the JAS flash, but that's beside the point.

Jeff Neuman: Okay, so while Avri's typing, James.

James Bladel: Yes sorry, I did step away briefly so I may have missed something very critical but if we're going to go down this path where we start prescribing that there is a formal or informal appeals mechanism, I think that we need to also establish some sort of a threshold.

For example with the independent review panel the threshold is that the person raising the appeal has to demonstrate that the deciding body I guess in this case the GNSO council either had material omissions on the information that they considered when making their decision.

Or that they didn't follow their own processes. I think that that would possibly limit the idea that appeals are happening just because you know I think this issue is important but I couldn't get enough people around me to agree that it was important so now I want to raise it again.

And I think that we need to possibly define what constitutes an appealable decision, not just where in the process it happens or who can raise it but also you know on what grounds. Thanks.

Jeff Neuman: Okay, so the who can raise it is what Avri said is anyone that has standing in the bylaws meaning certainly an advisory committee if they ask for an issues report. It got the issues report and then the council considered it and rejected it.

An advisory committee like the ALAC or the GAC or the...

James Bladel: Are you saying any of those has standing or only the one that actually made the request?

Jeff Neuman: I would think it would be the one that made the request.

Avri Doria: Yes, I was too.

James Bladel: Then we don't need to say who has a more general thing. The objection - the whatever, the appeal can only come from the body that requested the issues report.

Jeff Neuman: Now the question though is what if it's just - there's a lower threshold. Okay, have this in advisory committee request and issues report. Now we have if it's within the GNSO it's a lower threshold to raise an issue or to get an issues report than it is to get a PDP initiated.

So are we also saying that anyone who wanted the issues report on the council even if it didn't get voted on for a PDP they can then go through this process? Or are we just limiting it to the advisory committees?

Alan Greenberg: There's nothing in our document which says the process within the GNSO for raising an issue. All that takes is one councilor to make a motion.

Jeff Neuman: Right, but there's a threshold to approve it.

Alan Greenberg: Yes, but the requestor is the - is once it's approved the GNSO there's nothing in what we've described so far which describes the process within the GNSO prior to the GNSO voting on it.

So I don't think we want to get into that right now.

Jeff Neuman: Well I mean in theory you could say it, I'm not recommending this, you could say that it had to be somebody who voted in favor of raising the issue.

But I understand what you're saying, on the other - so the first question is, is this appeal limited to just an advisory committee or is it just anyone on council?

That's just not happy.

Alan Greenberg: But then you're raising the issue of can any councilor object to any vote that they're not happy with the outcome of.

Jeff Neuman: Exactly.

Alan Greenberg: We don't want to go there.

Jeff Neuman: Right, so I agree with that so it sounds like just an advisory committee is what we're saying.

Alan Greenberg: Or presumably the board should choose to.

Jeff Neuman: Sure, the board...

Alan Greenberg: No, no hold it; on the board the GNSO does not vote to initiate a PDP, they are required to. So it's only the advisory committee.

Avri Doria: Aren't they just required to do the issues report, they're not required to do the PDP.

Alan Greenberg: I don't think so; I think they're required to do the PDP.

Jeff Neuman: I believe Alan's correct.

Alan Greenberg: I'm not sure our rules cover that but I think that is indeed what it says. This never happened though.

Jeff Neuman: No, and I think there would be a lot of pushback if the board were to try to force a PDP on the council that it didn't want.

Alan Greenberg: The board has done it several items; they just haven't called them PDPs. They have forced council to do things which resulted in policy. It's happened several times.

STI is one of them.

Jeff Neuman: Absolutely, and in fact you'll find in the last one the board has asked in their resolution the council to do something on competition trust or whatever they called it.

And if you listen to the last council meeting and Alan you're on it, the council pushed back for the first time rightfully so.

But okay so we have a couple people in the queue and I did not see who was first, Marika always appears first because she's - so I'll give her the benefit of the doubt.

Alan Greenberg: Marika deserves to be first.

Marika Konings: Thanks Jeff, this is Marika, just to comment on the discussion that you just had on whether you should apply to the council as well or only to the advisory committee or whoever's requesting.

I think you know as my understanding is part of the reasoning for this recommendation will be that an advisory committee wouldn't be party to the discussion or maybe party through a liaison but if there's no liaison it might not be party to the discussion while in the case of a council member the council member is part of a discussion.

So he or she could ask directly you know why are you feeling this way or why are you not voting in favor of it. So it seems less likely that such a mechanism would be necessary for council members as such but it might be more appropriate for advisory committees or anyone else who has standing as they are not directly party to discussions that the council is having.

Jeff Neuman: Good catch. I think that does make sense although let's see, I'll go to - actually let's read and James you may have a comment on this too but let's read the language that Avri has just put - has just sent in.

So it says the council shall initiate the PDP...

Avri Doria: No, that's - that was just me quoting from the bylaws, it's two before.

Jeff Neuman: Ah, sorry. It says...

((Crosstalk))

Jeff Neuman: occasions of the GNSO council rejects the initiation of a PDP it should form a committee with the AC requesting the issues report to attempt to find a solution that is amenable to both the GNSO and the AC.

Following such a discussion the GNSO council should vote again on initiating the PDP. James you want to comment on that?

James Bladel: Yes, I mean this I feel should be a symmetrical process so for example what if that issues report is passed, can an AC, an SO appeal that and ask that it be stopped?

We're assuming that we're talking about a PDP that didn't make the threshold but what if one did and someone was on the other side of voting against it.

Look, I'm just pointing out that this seems like a great idea and I was you know pretty involved with the - some of the fact finding that we did in AGRT.

And I'm not trying to say that you know that's a model that you need to follow or anything like that. I'm just pointing it that this is a really complex issue once we scratch beneath the surface.

And I think we need to be very carefully here about how prescriptive we want to be. Thanks.

Jeff Neuman: Okay, so is there anything you want to - I mean would you modify the words a little bit or you just don't think we need it?

James Bladel: I would think that we would want to keep the language as minimal and as informal as possible because since we start going down this road I'm afraid that there's no bottom to this rabbit tunnel, it just keeps going.

Avri Doria: I find describing it as a rabbit tunnel to be totally dismissive.

James Bladel: Now Avri, I want to respond to that. I'm describing it that because the issue is very large and very complex. Maybe an iceberg is a better description but we only look at what's on the surface but there's a lot more residing under the water line.

Avri Doria: True. And one could do that with any issue, but you're right.

Jeff Neuman: Okay, Alan.

Alan Greenberg: Yes, I guess I don't agree with James on this. If you start looking at the concept of appeals and saying where may we have one and where may someone want to appeal because they believe they have cause.

And they feel justice is not being done. It is the rabbit hole or the iceberg we're talking about. But this was to be raised in one very specific situation of a issues report requested by an AC which the council has voted down.

And I don't think that one is nearly as complex and yes, if we start to generalize it it becomes exceedingly complex and it's certainly also something that we want to look at.

The issue that Avri raised originally I believe is not nearly that - as prone to be too complex, I think it's relatively simple.

Jeff Neuman: Okay let me go to James.

James Bladel: Okay, just real quickly if we can explicitly confine it to the context or the scenario that Avri described then I have fewer concerns that we're not trying to create a generic all purpose appeals process.

I would however want to see some language that establishes why a council would need to revisit an issue that it has already considered and voted down.

For example, had new information come to life that was left out of the issues report, was there a change in the environment or the industry that needed to be considered that wasn't considered at the time or did council not follow its own procedures?

I think you know we have to say why we feel the council was in error in rejecting the issues report and it can't just be because it didn't pass, okay.

Jeff Neuman: Actually that's a good segue into James, why don't you take the language that Avri has, why don't you revise it to include what you think would be the criteria and then we could discuss it kind of on the group.

I would also put in a time frame as well. You know I think that was another issue that came up as far as how long after the decision should we have this - form this committee or should the request to form this committee come in.

So James do you want to take that to something you feel comfortable with?

James Bladel: Yes, I'll take a swing at that and I'll send some language around to the list. It's probably just putting two or three qualifying adjectives into the language that Avri already has provided for us.

So I don't think it will be much.

Jeff Neuman: Okay can you also put in a timeframe too, just recommended time frame and then we can all throw that around?

James Bladel: Yes, I've got that, thanks.

Jeff Neuman: Avri.

Avri Doria: Yes, I think putting in the time frame is a great idea and to say they have to do it within 15, 21 days is easy.

I think to try and generalize the criteria for which they consider it beyond the fact that the AC making the request had its request denied is going to open up that can of worms that you don't want to open.

Because you know it's just how can we foresee all the possible issues and if you do put a laundry list of issues I can guarantee you that I can come up with wording that will for any issue that matches one of those issues.

So I think it's a complex of my task. I know you've already decided on it and agreed to do it so I wish you luck, but it does (complexify) it other than to say,

listen, two fundamental bodies who have bylaws standing to participate in the creation of PDPs are in disagreement.

They've never spoken on the issue, there's nothing in the bylaws in the process that says they've got to sit together and work this out.

So here's basically a point where they fit together. Now if what comes out of the committee is a recommendation that there be no change but that the discussion has been logged, the council members have read it, etcetera and they vote against it again.

And then at least there's been a process that's been properly followed and there have been contributing conversations. But to say that that committee must find a you know matter of fact that will cause the appeal to be - you know and then we'll end up in Virginia where even innocents, well that wasn't on the list of things that you could appeal for.

So I just think that that makes it far more complex, but thanks.

Jeff Neuman: Why don't we just have - I kind of want to jump on to the next subject. Why don't we just have James draw up the language and then we'll comment on the - sorry, you probably hear my kids in the background.

Let's see, the - let's talk about the next question is the thresholds and then we'll kind of end it here. It says should the approved voting thresholds apply to the entire GNSO council or just members present?

As is the current practice and then Avri had made a comment, isn't this the reason for making a rule (unintelligible) the percentage of the entire council and Alan says question is still applicable but it must be rephrased or just members voting.

So Alan is your comment really because I think now most - in fact all items for PDPs are subject to absentee voting as well.

Alan Greenberg: But absentee voting doesn't mean everyone - at council someone - first let me ask the question. How has council decided to treat abstentions? Do they count as negative votes or they're out of the count total?

Jeff Neuman: Looking to Margie, I should know this but it hasn't - in the couple votes I've been on since I joined the council we haven't had any abstentions. Actually I think I'm the only one.

Alan Greenberg: There was a substantive discussion a while ago, I just don't remember how it was resolved if it was resolved.

Avri Doria: I believe that they are not votes in favor and they are counted.

Jeff Neuman: Yes, they're counted as being present, right?

Alan Greenberg: The problem is if you're present you cannot be excluded from the count if you're an absentee vote, you cannot vote. You know if everyone is present in the council you will have 21 votes, yes, no or abstention.

If some people are missing you may not have 21 total votes or 20, sorry.

Jeff Neuman: But it's still percentage right, so if one person doesn't vote of the registries let's say you'll still have 66.67% of the registries that voted in favor.

Alan Greenberg: that's why I said it depends on whether we question this or not. If it's percentage of the people eligible to vote then someone not voting is essentially a vote against.

Jeff Neuman: Margie do you have a comment on this?

Margie Milam: Yes, it's Margie. Unfortunately it's really complicated and I don't know the answer but I know that Glen does, so we can get that information for you for the next call if that will be helpful.

Jeff Neuman: Yes, why don't we do that.

Alan Greenberg: I don't think it's a big issue but if the question was relevant before it may still be relevant now even though we have (unintelligible).

Glen DeSaintgery: This is Glen Jeff.

Jeff Neuman: Yes, please.

Glen DeSaintgery: The abstentions are counted as votes against. I mean if they are three abstentions that you count as votes against.

Jeff Neuman: Okay.

Alan Greenberg: But how would you treat it if people simply didn't vote, if they were absentee voting and they didn't vote by the threshold time.

Glen DeSaintgery: Well then that's counted as what the don't come in. So you've got say 13 non-contracted party house, and there are three people who did not vote and the votes did not come in.

And the rest are either for or against or mixed but those are (unintelligible).

Alan Greenberg: So it would only take six votes to be more than 50%.

Glen DeSaintgery: Yes.

Alan Greenberg: So the question still stands.

Jeff Neuman: Okay. Let's take this and think about it for the next meeting. We have a call scheduled for Monday, same time. Why don't we continue on that and then also let me know if you're going to have additional comments but the goal is to get this report out as early as February if we can.

Remember when we get the report out it's not saying that as much as we would like everyone to agree with every single recommendation we - it's not saying you agree with everything and in fact if you want to file something it's kind of a minority even in a draft report, you're certainly welcome to do that assuming we get it by the timeline.

Obviously if you don't agree with it by the time we get to the final, final report you of course can do a minority statement. Anyway let us know and we will talk to you in a couple days, on Monday.

Any last comments?

Avri Doria: Bye.

Jeff Neuman: Thank you, thanks everyone.

Man: Stay warm.

Woman: Bye.

END