

**Policy Development Process (PDP)
Work Team (WT)
TRANSCRIPTION**

Thursday 19 May 2011 at 13:30 UTC

Note: The following is the output of transcribing from an audio recording of the Policy Development Process (PDP) Work Team (WT) meeting on Thursday 19 May 2011, at 13:30 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting but should not be treated as an authoritative record. The audio is also available at:

<http://audio.icann.org/gnso/gnso-pdp-20110519-en.mp3>

On page:

<http://gnso.icann.org/calendar/#may>

Attendees:

James Bladel - Registrar Stakeholder Group, Chair

Paul Diaz - Registrar Stakeholder Group

Avri Doria - Non Commercial Stakeholder Group

Alex Gakuru - Noncommercial Users Constituency

Alan Greenberg - At-Large Advisory Committee

Tatyana Khramtsova - Registrar Stakeholder Group

Wolf-Ulrich Knochen - Internet Service and Connectivity Providers Constituency

David Maher - gTLD Registry Stakeholder Group

Jeff Neuman - Registry Stakeholder Group

ICANN Staff:

Marika Könings

Margie Milam

Kristina Nordström

No apologies were noted.

Kristina Nordstrom Thank you very much. Hello everyone and welcome to today's PDP

Work Team call on the 19th of May 2011. On the call today we have

Jeff Neuman, Alex Gakuru, Avri Doria, James Bladel, Tatyana

Khramtsova, David Maher, Marika Könings from staff, and Margie

Milam, and also Kristina Nordstrom. I don't have any apologies for this

call. And finally I would like to remind you to state your name before

speaking for transcript purposes. Thank you.

Jeff Neuman: Great. Thank you very much. This is Jeff Neuman, Chair of the PDP Work Team, and I am happy to say that we are getting that much closer to the end. So I just want to go over a little bit of logistics first on the call and then we will dive into the final report or the latest draft of the final report that Marika sent around a few days ago. So here's the plan and let's spend a minute talking about this.

My goal would be to get this to the council by the next council meeting. Not the one that - there's one today. Obviously we're not going to get the report to the council today, but for the next council meeting that is on June 9. In order for it to get on the agenda for June 9, we need to have it to the council by June 1, which is a week from Wednesday I believe if I'm - yeah so it's - yes it's a Wednesday.

So we have a little bit of work to do within the next - a little under two weeks. And then my guess is that the GNSO Council will - even though this has been out for public comment a number of times, generally what the council does is put it out again for comment once it gets to the council level. So then the goal would be - if the council does put it out for public comment, it would be shortly after that June 9 meeting. And then ultimately the goal would be to get the council to vote on the report - either to approve it, reject it, or I should say approve it or send it back to the working group at its July meeting, which is July 21.

If we wait until any time past then there is no council meeting in August so it would be delayed until September, which I don't want to see. If we are still addressing this in September, I would like it to be a final approval and not referring things back out to the working group - the work team.

So working backwards from that it would mean that if there is a public comment period in June, even though the ICANN meeting in Singapore would be in between the comment period, we would need it to end somewhere around July 10 so we could then figure out what recommendation we are going to make to the council for a motion by the 13th so it would be ready for the July 21 meeting. Does that make sense? Does anybody have any questions on the timing?

Okay so now my next question is we tentatively have a call that is scheduled for this coming Monday, same time as our normal conference call time, and the question is whether we need that call. If we're going to get this report by June 1 to the council, then if we don't have a call on Monday the 23rd, then our only other call on the final report will be the 26th, which is a week from today. And we would need everyone to have read the report and given all comments in before that meeting so we could discuss any last minute issues.

We are going to discuss some of the issues today and hopefully there won't be too many after today's discussion. But if there are, we would only have that one call. So maybe I will just bring up this question at the end of the meeting so it's something to think about and see how far we can get today as to whether we need a Monday call. Any questions on that?

Alan Greenberg: No that sounds fine Jeff. It's Alan. Before we get on to the real meeting, I have one other thing I want to raise very briefly.

Jeff Neuman: Sure Alan.

Alan Greenberg: It's not related to this meeting, but when I just signed on I got a message from - saying Adobe Connect is going to be upgraded with a service pack on June 17. Perhaps staff can pass on the message to the technical people that upgrading Adobe Connect on the Friday when everyone is traveling prior to a weekend when the ICANN meeting starts may not be the best of timing.

Marika Konings: This is Marika. It's better than what they did last time when they actually proposed to upgrade it during our GNSO Council meeting.

Alan Greenberg: Okay.

Marika Konings: But I will bring it to the attention of IT. I mean if everyone is traveling it might be the best time to actually get it done.

Alan Greenberg: Except if it...

Marika Konings: Upload and you know restart their machines. So I will be sure to make a note of that with...

Alan Greenberg: Unless it ends up not working in which case we are...

Marika Konings: But I think those upgrades are actually set by Adobe themselves and not ICANN necessarily.

Alan Greenberg: I know. I'm just pointing it out. The timing seems interesting.

Marika Konings: Yeah that's right. I think they are set by Adobe and I'm sure they are not really aware of when we have our ICANN meeting.

Alan Greenberg: No I understand that. That's why I raised the issue.

Marika Konings: I will pass on the message.

Jeff Neuman: All right well thank you. Yeah thank you Marika. Thank you Alan.

So the way I want to handle these comments now are Avri had sent a comment to the list just after the call last week. I want to go over that comment and then James sent some comments to the list overnight and so - or actually it may have been early this morning. So I want to go over those.

And then finally there's a list of issues on the right-hand side of Adobe that Marika has pointed out within the final report itself. So I think that's the order I'd like to do things. And I believe if we actually go through James' comments I think it might cover one or two of the actual comments that are on the right side on Adobe.

So with that said, I don't know if Marika could pull up the email from Avri. If not, let me go find it here.

Marika Konings: Yeah this is Marika. If you actually scroll in the document to Recommendations - no hold on. Recommendation 31 - you will see there I basically made the changes there that were suggested by Avri. Maybe we could have a look at those first and then we will need to scroll further down to Section 5.10 where she suggested some additional changes.

Jeff Neuman: Okay.

Marika Konings: So Recommendation 31 is on Page 19.

Jeff Neuman: Great. And I know Avri is on, but she is listening to a couple different meetings.

Avri Doria: No I'm paying attention.

Jeff Neuman: Okay good. So do you want to just Avri then go through the recommendation you made and then we will discuss it and hopefully move on.

Avri Doria: Okay I mean I see it written here so basically one of the things was that doing a - providing input on issues related to implementation would be required for all policy recommendations. So requiring that was one thing.

Then this input should include and perhaps this input could include and just anticipating comments that perhaps all of the analyses aren't necessarily always appropriate. Btu this input could or should include an analysis of the impacts of the policy, both positive and negative, including but not limited to economic competition, operations, and other human rights scalability and feasibility. When appropriate, the following should be considered and then it goes back to what was there originally.

So that's basically you know the thing I'm trying to say. That if you are going to make policy recommendations, somebody whether it's the group that has competence, outside of its competence, you know however it gets done, and leaving that pretty much open to the working group, but that it should have a proper analysis, both positive and

negative. And it maybe even - we should say if it doesn't go without saying that including both sides an analysis isn't complete unless it has got the pros and the cons of something with any policy recommendation.

So it's not just we think this is good because we talked about it for three weeks, but you know we are making this recommendation and here's the effect that we believe it will have. So that's what I'm thinking. And of course I included privacy and other human rights in there among all the other things that you know people generally put in this block, but you kind of knew I would.

Jeff Neuman: So Avri let me go back to that first - one of the things you had said, which is Marika the beginning of the sentence that says this input should include. Would everyone be okay as Avri suggested to make that could include as opposed to should?

Alan Greenberg: I would prefer it.

Avri Doria: The other option I would offer would be could include as appropriate and that's the same as could, but anyway.

Jeff Neuman: (Always) for less words and more words even though I'm a lawyer and you expect the opposite. Is everybody okay with just saying this input could include? Alan.

Alan Greenberg: I was trying to put a tick mark up. Yes I not only am okay with it, I prefer it.

Jeff Neuman: Okay good so let's do that and then I want to draw as Avri did - Avri this privacy and other human rights. This is obviously something we discussed a lot. Would you be comfortable so we don't have to put other types of rights in here like intellectual property and you know other things in there just dropping the word human and just say privacy and other rights?

Avri Doria: Sure.

Jeff Neuman: Everyone okay with that.

Man: Yes.

Avri Doria: As long as - and this is just something. One of the things I should have put my hand up to ask because this is Avri asking to talk again.

Jeff Neuman: Okay yes. Yeah sure Avri.

Avri Doria: One of the things that has happened a lot and I want to make sure it doesn't happen and I don't know if we need to include something. If you look at our new gTLD recommendations we say does not infringe the rights of others, and we always read that as only being IP rights and that is a problematic reading of the word right.

So I don't know how we make sure that when people see rights you know maybe by juxtaposing it with privacy we see that it isn't just IP rights, but unfortunately what happens especially in the GNSO is the word right has been fully assigned equivalent with IP rights and not assuming the whole range of human, corporate, societal,

organizational, whatever kinds of rights there may be. So that's the one concern I have about dropping human.

Jeff Neuman: Well I think - this is Jeff. I think the fact that it's after privacy and it says privacy and other rights.

Avri Doria: Okay I hope.

Jeff Neuman: Yeah I think we will be okay on that.

Alex Gakuru: Jeff.

Jeff Neuman: Yes.

Alex Gakuru: A comment here. I'm not on Adobe.

Jeff Neuman: That's fine Alex. Go ahead.

Alex Gakuru: Yes I want to support the position - the comment Avri has made about rights because again you also find it interpreted like law enforcement. People don't think privacy law enforcement is any law enforcement, so there is this (double stigma) sometimes and we need to make sure that we avoid or we encourage the community to be clear when you talk of law enforcement. That it's more than just (casting penalties) but that everybody is also enforcing privacy and other rights, similar to rights (as she said). Thank you.

Jeff Neuman: Sure Alex. Alan.

Alan Greenberg: Yeah I think the fact that it's preceded by privacy makes it clear it's not just intellectual property rights. I mean we can add a footnote, we can add more words here. I'm not sure we're going to convince those would choose to ignore these various things. so other than belabor it by adding 12 different modifiers and then it will be treated as a list where everything missing is not included, I think privacy and other rights implies we are not just talking about intellectual property rights here.

Jeff Neuman: Correct. Correct. That's actually - that's my view as well. So is there anyone else? Avri again.

Avri Doria: Yeah I am willing to live with that with the caveat that I will be a complete pain the in the butt, but not anymore than I probably am already about this and PDP becomes IP rights only and I will quote this conversation.

Jeff Neuman: I fully expect you to do that.

Avri Doria: Thank you very much. I knew you would.

Jeff Neuman: All right thank you. All right let's - I think we are good with this paragraph then. Marika we can take out the comment there now. I think we are good. Let's go to James' email of this morning.

Marika Konings: Hold on a second. There is still as well Section 5.10.

Jeff Neuman: Oh I got ahead of myself didn't I?

Marika Konings: Yes I presume it will be similar to what we discussed now, but I just want to make sure that we cover that as well.

Jeff Neuman: Okay can you give the page number that that's on?

Marika Konings: Yes that's on Page 56.

Jeff Neuman: Yeah I see it. Okay yeah.

Marika Konings: So just looking at that, I presume that the change made in our previous discussion is just taking out human to synchronize it with the recommendation.

Jeff Neuman: Yes it's the same language. It should just be a mirror, yes. Okay and I understand that Wolf is now on the call.

Wolf-Ulrich Knoblen: Yes hello.

Jeff Neuman: Great. Hello. I know we have a lot of calls today so this is going to be a long day. So okay great. Yeah let's just mirror the same language. I don't see any need to discuss this again unless I see a quick hand up. Let's - and I don't see any, so let's go to James' email of - now I'm turning to it as well. It was at 12:30 am Eastern U.S. Time, which was probably just the start of morning in Europe.

James Bladel: Yeah sorry about that. It was just past beer thirty here in the Midwest, so I figured it would be okay to make that. You know I'm responding here to a conversation that - I missed last week, but Marika and I were able to have kind of a follow up chat because we were in the same

event in Germany. And then - so she kind of alerted me to the fact that I had a follow up action for this call.

And I apologize if it seems somewhat like a non-sequitur from what we were just discussing, Avri's comments, because I didn't just focus on this in isolation and outside of looking at the whole report. But I think the general question was are we fine with striking Recommendation 13 for an impact analysis assuming that we can cover the desired steps in the Recommendation 4, which requires or which discusses the use of an issues report template.

And I think my general feeling is yes we can tweak Recommendation 4 to cover and essentially obsolete the need for Recommendation 13, so I think that's the overall theme of what I'm trying to say. I did have a couple of recommendations on how we would adjust Recommendation 4 - the first one being where it says something like identification of problems.

I think that identifying problems has not really been a shortcoming of issues reports or PDPs. Quantifying problems however has been something I think that I would - you know I have been pushing for on PDPs and I think others might tend to agree with that. and I think as I said before, it's an important step to understanding what the best possible remedies will be and then measuring those remedies so that you can determine whether or not the policy had the intended effect.

And the only other thing I wanted to point out here is that the last sentence once again says that the template is encourage but not mandatory, and I just wanted to make sure that we were all still comfortable with that or if we wanted to strengthen that. And I think the

only (step) you can get from strongly encouraged but not mandatory would be to change it to mandatory or mandatory except in you know special circumstances.

The reason being that you know if something - I understand we are trying to preserve some flexibility, but I think if something is so flexible that it can't fit into a generic you know issues report then maybe we should really be looking at whether or not it is a monolithic topic that ICANN should be tackling on its own anyway. Maybe it needs to be broken up into smaller chunks or something. So that was kind of the gist of my comment and hopefully that made sense as a recap.

Jeff Neuman: Yes thank you James. And so let's take that apart a little bit and if we can discuss the first part of your comment, which was - and it may be as simple as just adding a word or two in Recommendation 4.

In the first sentence - and we are on Page 10 of the draft right now - if we just - where it says identification of problems. If we said, "Identification and quantification of problems," James, would that address that part of your comment?

James Bladel: It absolutely would Jeff.

Jeff Neuman: Okay so let me throw that out to the group. Would anyone object to in Recommendation 4 where it says the PDP Work Team recommends that a request for an issue report template should be developed including items such as definition of use, identification, and we would add the word and quantification of problems? And then it would go on as it is now - supporting evidence, economic impact, effects on competition, et cetera.

Perhaps also maybe modifying it a little bit saying identification and quantification of problems something like to the extent feasible - James would that be okay too?

James Bladel: Yeah I was just typing in the chat. Quantification - if we're looking for word economy here, quantification could even replace identification because I think that identification is implied in quantification. That's (unintelligible) I guess.

Jeff Neuman: Okay so let me turn it over to Alan and then Avri, so Alan.

Alan Greenberg: Yeah with the where feasible or to the extent feasible I can live with. I think putting a burden on the requestor of the issues report to be able to quantify the problem puts a hurdle there, which may not be practical at all. Quantification of the problem may well require some work. It may in fact be part of the creation of the issues report to try to quantify it to the extent that information is available.

So I think we have to be you know somewhat flexible here. Otherwise we are putting hurdles in front of problems where we - you know where ICANN has not collected the information ahead of time and therefore we can't fix the problem even if it's deemed to be really apparent.

So you know I'm happy with the wording you suggested. Anything stronger than that I would object to strongly at the request for issues report. I can certainly live with putting something in in the issues report that the issues report needs to include quantification where possible, but certainly not unconditionally on the request. Thank you.

Jeff Neuman: Okay so I just mistyped it in the chat, but I just typed it now the right way. So it's something to the effect of the identification and quantification of problems to the extent feasible. Let's work on that language. Avri.

Avri Doria: Yeah okay first of all at first I thought we were going to try and remove identification - say it was subsumed by quantification. And I wanted to disagree with that, but I guess I don't have to.

Perhaps you know what we're really talking about is estimation and not so much quantification. Because if at this point before studies have been done, before anything, you just are basically saying there's a problem and you are asking for an estimate to what extent it -so you know is there - you know to the extent feasible perhaps does that also. But I think recognizing that all we've got when you are saying we have a problem and it is this problem and it is so big, that that so big is just an estimate. Thanks.

Jeff Neuman: Right and so I think - so James so I - what would you - two questions. One is adding to the extent feasible and then the second one is changing quantification to estimation. So James.

James Bladel: To the extent feasible is fine. I think changing quantification to estimation - I mean in the context Avri used estimation I think is fine. I'm concerned that you know like the word rights in our previous discussion that someone might take away a different meaning for estimation. That it doesn't necessarily require you know some rough projections of data.

You know I want to make sure that we're capturing this idea that the problem that we're raising for the community to solve needs to be expressible in some sort of unambiguous or non-qualitative terms. I mean the only thing I could come up with is to you know quantify it.

But you know if we can change the word estimation so that it's clear that we're not just - you know I think we solve the problem of being attacked by the Loch Ness monster at ICANN meetings because I estimate it's happened over 10,000 times. You know how to change estimation you know to eliminate for the possibility that it's just one person's opinion however wild that might be.

Jeff Neuman: So is it just to try to kind of move it along. If we dropped the footnote there, if we had estimation, really what you are saying or at least what I'm getting out of it - and I can be off base - is that you want to show that this is more than just a theoretical problem. That this is...

James Bladel: That this is a real problem with real harm that can be measured so that we can measure the benefits of the policy, and also that it is not - you know maybe a word to work in there would be objective estimation. You know something that says you know I'm for example - and I don't want to pick on one particular constituency who would say I'm an intellectual property lawyer and this has happened to me 20 times in the last week so therefore it must be a huge problem for the community to solve.

You know I'm just trying to say that you should be you know starting policies on the strength of their merits and their impacts to - you know as their broadest possible impact and not necessarily their persuasiveness of the person who is requesting the report.

Jeff Neuman: Okay so going back before we get to Alan and Avri, where are we on the - Avri says well-founded estimated quantifications. Where would you put that Avri? You would say...

Avri Doria: (Quantification) with a phrase kind of like that - well-founded, well-formed.

Jeff Neuman: So you would say identification and well-founded estimated quantification of problems to the extent feasible.

Avri Doria: Yes something like that.

Jeff Neuman: James.

James Bladel: Yeah that was a joke. I like Avri's language. I think it's precise. It might be a little cumbersome, but I think it's what we want. I guess the first step Jeff - and I don't mean to you know jump in front of you as you are the chair of this group. The first step is to determine if everybody is kind of onboard with the principle that I'm trying to - even if I can't express it very eloquently. And then try and hammer out some language whether that's a tweak or just a separate sentence. But I'm concerned if we are all aiming at something slightly different that we are not going to be able to find the right language.

Jeff Neuman: It sounds like in the fact that Avri is recommending the language, it sounds like - and I will let Avri and Alan jump in too. It sounds like nobody is objecting to the principle so long as the principle is not making it I should say mandatory to actually demonstrate the quantity because in some cases that may not be known.

James Bladel: Right.

Jeff Neuman: But so does anyone - Alan let me let you jump in here to make sure as James said that you are okay with that principle and then we can finish up the wording.

Alan Greenberg: Thank you. I'm okay with the principle, but I'm not comfortable where this is heading and the kind of examples. The issues report is not something that comes - the request for an issues report is not something that comes out of thin air. It has to be requested and approved by the board, an advisory committee, or the GNSO. So if indeed to use James' example there is a great amount of concern about the danger to attendees from the Loch Ness monster and some group believes it is within scope and something that should be addressed as a policy issue by the GNSO, then so be it. It's not just one person thinks it's a good idea. It's one organization thinks it's a good idea - enough to have pushed this through.

So I'm really reluctant to put a lot of conditions on what they have to do ahead of time, which may well be completely impossible for them within the power that they have to do that. so I can accept the general concept, but I think the words need to imply enough flexibility that we're not putting up roadblocks to something which are going to be impossible to satisfy by groups that have no staff and no mandate to collect information. Thank you.

Jeff Neuman: So just to follow up, the language that Avri has recommended - is that - how do you feel about that?

Alan Greenberg: Can someone read it in full at this point because I'm getting a little bit confused about where it is?

Jeff Neuman: Okay so I think the way it would be now is the PDP Work Team recommends that a request for an issue report template should be developed including items such as definition of issue, identification, and quantification - I'm sorry. Identification and well-founded estimated quantification of problems to the extent feasible, supporting evidence, economic impact, and then it goes on.

So to the extent feasible...

Alan Greenberg: I think it's both awkward and vague. I'm not sure what well-founded estimation is, but I can live with it. But I think we are making this harder to understand, not easier. It's one of those fewer words versus more words issues I think.

Jeff Neuman: Okay well let me go to Margie.

Margie Milam: Yes this is Margie. Thank you. I agree with Alan and (Paul). The word estimation doesn't really - I don't understand it and have a problem with putting it in. I thought it was clear the way it was written before with quantification. It seemed like that was you know a good way to deal with it, and so I just wanted to raise that this estimation thing to me doesn't seem very clear. And from a staff perspective, you know, we're going to be the ones looking at the template to make sure that it, you know, it satisfies whatever the requirements are.

And so, you know, it - we'd like to be as clear as possible. But the other point I wanted to make was regarding the issue of whether it should be mandatory or not mandatory, and I had a comment on that.

I don't know if you want to go to that now or after we've fleshed out this - the issue of estimation.

Jeff Neuman: Yes I want to - let's flesh out this issue first and then we'll go to the mandatory nature.

Margie Milam: Okay.

Jeff Neuman: The current proposal...

Alan Greenberg: You mean mandatory for the template.

Margie Milam: Yes.

Alan Greenberg: Okay.

Jeff Neuman: Correct. So let's go back to the wording of identification and quantification of problems to the extent feasible. Avri, is that something - Avri now on...

Alan Greenberg: I'm happy with that.

Avri Doria: Basically I don't know what - I don't think quantification is any less vague than - and I should have - as opposed to well-founded I should have used the term that basically always gets used in logic which is well-formed.

But I didn't because I figured that was too philosophical for this particular document. The problem with the quantification is there can - what's totally ambiguous on it is the degree of precision that you expect from that quantification.

So basically if you look at a set of estimated numbers you can say, "Oh no, no, no. What is your basis for this quantification? Show us that you've done statistically proper accumulation of your data, and that your data is properly quantified."

And so you're basically allowing someone, and I think this was something that Alan had worried about, to basically make it a very difficult estimation on the other hand is a well-known concept and it's basically sort of saying that the data is an estimation, that you haven't necessarily gone out and collected.

The well formed or well founded meant that it can't just be a simple hand wave. And so that's why I tried to sort of add the adjective. I think with just quantification you run into the risk that somebody can block something, because I don't know whether you mean something's estimated or you mean I have to have gone out and done proper studies and proper showings at my numbers, because as soon as you get the numbers proving that your numbers have meaning and that they were collected in a statistically valid manner, becomes an open challenge item. Thanks.

Jeff Neuman: Okay so I just want to - I'm going to go to Marika then Alan, but in terms of blocking remember this is not - are you worried that - because it really just takes a small vote of the Council, so I'm not sure that this

would block it. I think it's just a discussion point for the Council, but let's...

Alan Greenberg: ...the Council requesting it.

Jeff Neuman: All right, so let me go to Marika then I'll come back to Alan. Marika?

Marika Konings: Yes, this is Marika. I think that addition of to the extent feasible covers, you know, the scenario where a group maybe is not in a position to provide that information or, you know, it doesn't have the resources to do so.

So I would see it very unlikely if, you know, a group fills in the template request and says, "Well, you know, we haven't been able to quantify it. We just think it's a big problem."

I don't think for that reason, you know, we would reject it. It might be a reason to say, "Well, when we scope the issue report or write the issue report, that scenario where we're going to specifically focus on, because we didn't get any information or data from the requester just saying that, you know, they think it's a big issue or a small issue or a medium issue."

So in my personal view I think the addition of to the extent feasible, you know, addresses any concerns people might have on, you know, what quantification might entail or what data people can provide.

And I think again this is just a request, you know. I think it's really good. The more information or requests that can provide the better, but part of the scoping will also happen in the, you know, in the issue

report and on all the work that, you know, we try to go and have in that phase of the PDP to make sure that we have all the information available.

So again I think as we - as has been suggested identification and estimation to the extent feasible I think should, you know, cover hopefully everyone's comments so far in my view.

Jeff Neuman: Okay let me go to Alan then (Paul) and let's - I want to try to close this because I think I want to see if we can get some sort of consensus to close this out. Alan and then (Paul).

Alan Greenberg: Yes okay, Marika said most of what I was going to say. I think to the extent possible covers that. When we talk about rejection of this, only Staff has the ability to reject it once the group that has issued the issues report makes their decision.

And we can't set rules for what that, you know, for what the Board or the GAC or the ALAC decides is the critical threshold for saying it's important. And I don't believe Staff should have the ability to reject the issues report and say, "We're not going to do it because you didn't satisfy the criteria."

But that may well define part of the work they have to do. So to the extent feasible I'm happy. I can live with either estimation or quantification. Quantification I think is a cleaner term but to the extent feasible means, you know, if you can't get actual numbers you can estimate them or you can pull them out of the air, depending on whatever you're - whatever you believe is feasible.

And it's got to pass the sanity check of getting approval of the organization that feels it's an - a problem and feels it's onerous enough to warrant initiating a PDP.

And that's not a trivial issue, so I think we're worrying a little bit too much about this here.

Jeff Neuman: Let's - so now let's leave in the language that was just proposed which is identification and quantification of problems to the extent feasible, and then Avri if you have...

Avri Doria: I don't care enough to make an issue of it.

Jeff Neuman: Okay thank you Avri. Let's go to the last part of that then and - which is - and we got a number of comments on this that said that they believe it should be mandatory, the use of the template.

So let's start that discussion. I kind of want to take a poll of the group here to see, you know, who believes - and by show of a checkmark if you could, who believes that the use of the templates should be mandatory and included in the PDP manual?

So I'm seeing - let me - okay (Paul) and James think it should be mandatory. Wolf thinks it should be mandatory. I know the Registry had said it - I'm going to put a checkmark because I know the Registry had said that they wanted it to be mandatory in their comments.

Okay, so we still - we don't have full consensus here. So let me go to - let me ask Margie actually first if you could just comment on - and why do you believe that you didn't think it should be mandatory.

Margie Milam: Sure. I think a couple of things. What Marika had mentioned about it being really more of a tool to help write the issue report as to a requirement. And then I, you know, as I look at, you know, who can request an issue report, we're going to get a template filled out by the GAC or, I mean, you know, or the Board.

I mean, I just don't see how it's feasible to require them to fill out this template. And then my last kind of concern about it is when you start talking about things mandatory versus non-mandatory, does it mean that if the template wasn't, you know, adequately filled in and that process followed, that somehow the outcome of the PDP is in question?

That's kind of my, you know, take on it is, does it rise to that level that would, you know, set off a criticism of the outcome of the PDP itself, and so I just looked at this as more of a tool. That's why I strongly encourage seemed to be the right language.

Jeff Neuman: Okay, let me then go to some that voted in favor. So let me go to (Paul).

(Paul): Thanks Jeff. I was just in the interim writing it there. For those that are against, are your concerns about making it mandatory, would they be allayed with the addition of to the extent feasible?

Were you afraid of having a mandatory template before we added that qualifier in there, or is there something more because for me that's a very important qualifier and that's what made me switch my vote or make me think that it should be a mandatory use of a template?

Jeff Neuman: Well to just - (Paul), to the extent feasible is only on the identification and quantification of problems. It's not on the other elements, so it still has - it would be mandatory to define the issue to submit supporting evidence.

So there are some things that would still be mandatory in there. All right, let me go to - let's see, who else was - Alan.

Alan Greenberg: Yes, can we play a mind game for a moment and say, "What happens if we make it mandatory and someone decides it was not followed?" Who is the someone and how is this handled?

The only someone that passes this by is the group that's requesting it themselves and Staff. And Heaven help us, we don't want to put Staff in the position of rejecting a PDP or policy discussion at that stage based on an assessment of whether a template was followed or not.

I mean, we continually say decisions - policy decisions have to be made by the organization of ICANN, not Staff. And by making it mandatory we put a hurdle in place that is going to be a pure Staff decision, and I just don't want to go there.

Jeff Neuman: So let me ask it a little bit different and I understand the question completely, but what if - and I'm interested to hear from Marika and Margie who write these issue reports, what if it's just the GAC or even

ALAC or anyone that just - let's just say the Advisory Committee that just says to ICANN Staff, "I want an issue report on you name the subject and that's it."

They don't submit anything else. They just say, "I want - Staff, I want you to do an issue report on UDRP period. That's it."

Alan Greenberg: Just for the record in the old days that is how it worked.

Jeff Neuman: Well I understand that and that's - I think...

Alan Greenberg: I had to interject that. Go ahead though.

Jeff Neuman: Right, but that's - but I think that's what we're getting at is as a tool, so Margie with the same question, I understand you don't want it to be mandatory.

But what are you going to do if you get an Advisory Committee like the GAC to say - or something more realistic that may come up, right. "Staff, write a paper, write an issue report on the URS for existing TLDs and that's it." I mean, is that...?

Margie Milam: Yes if I may comment, it's Margie. Alan's right. I mean, that's exactly the way it is right now and we've dealt with it. And with the new improvements that we've done in the new process, we actually have the flexibility of doing just what we did on the Webinar last week where if we feel we just don't have enough information before we write the issue report, we get out there and, you know, and try to do a little bit of initial data gathering.

And it's - that's what's so nice about this new process, you know, you guys have all come up with, that there is the flexibility of inserting steps to get that information.

So that - so, you know, I do worry because if it is mandatory then, you know, I don't want - I can actually agree I don't want Staff to look at it and say, "Oh it doesn't have enough information."

And now I got to go back to the GAC, I got to go back to the Board or whoever to try to flesh out those issues. It just seems, you know, like an extra step that delays the process and might get a whole bunch of people angry when they really want this, you know, the issue to start, you know, moving along.

And so that's kind of my concern about it, I mean, I like the template. I think it's a great idea. I just don't see that making it mandatory is, you know, is the way to go.

Jeff Neuman: Okay but just to play - just to clarify something you said Margie, those extra tools in the policy process like the Webinar, that's not - and I think Alan would agree with me.

That's not for ICANN Staff to decide whether to have a Webinar. It's really for the supporting - the person making or the entity making the request or the avenue.

So if it's through the GNSO, the GNSO Council can recommend a Webinar and these other tools. If it's through the ALAC or through the GAC it's not up to Staff to say, "Let's do a Webinar on it."

It's up to the ALAC or GAC to agree that a Webinar should be done on it. So those tools may not be something ICANN Staff has the ability to control, right.

So if the GAC says, "Write an issue report on a subject," the current process we recommend, it doesn't allow ICANN Staff to initiate the Webinar and other tools on its own.

I mean, and just - we could change that but that's currently the way it's written and if anyone disagrees with that let me know. I saw Alan.

Margie Milam: I do disagree with that. The process that - did, you know, says what should happen but it doesn't say what shouldn't happen. And I don't see how anyone can stop Staff from doing a Webinar whenever they want on any subject.

I mean, I just, you know, I think we would take the viewpoint that if it's useful, you know, even if it's not, you know, delineated in the process, you know, it's just an extra thing.

I mean, this is - the process we're developing here is a baseline and it's not the maximum that can be done. You know, and, you know, I hope you guys would all agree that, you know, if we - if it's useful to do more work we, you know, obviously there's nothing preventing Staff from doing that.

Jeff Neuman: Okay, Alan do you agree with that?

Alan Greenberg: Yes I agree with it strongly. I mean, this is not - these are not things that are all done in isolation. Conspiracy theorists notwithstanding, you

know, when there's a decision to have a Webinar there's actually discussions ahead of time between various people.

You know, these are not unilateral things that either the GNSO decides, which is not - it is not an ability to say, "We will have an ICANN Staff provided Webinar."

They - you discuss it and if the idea is initiated by Staff and say, "Before we really, you know, can go ahead and write the issues report, since we're giving them time now, flexible in the new - or in the new rules a flexibility," there will be discussion going. I think we're agonizing over this far more than we need to be.

Jeff Neuman: Well I'm not - so just to, I mean, so I understand your point. I'm just again kind of playing devil's advocate to make sure we cover this. I'm - have a concern about what Margie said about - so I agree with you Alan.

I agree that there should be a discussion, but right now it's - the way that Margie had explained it, it's really ICANN Staff could decide on its own no matter who's requesting an issue report to have a Webinar to collect additional information.

And I'm not sure just being a GNSO Councilor that I want to give that discretion to ICANN Staff if it's the GNSO Council recommending the issue report, to have Staff be in the position and say, "Well before we could do it we need to do a Webinar without getting Council's approval on it."

Alan Greenberg: On the other hand Jeff, it could take three months to get Council's formal approval on something as you well know. And I think we're worrying far too much about this and if Staff want to hold a Webinar and do it quickly and effectively, do we really care?

I mean, if we care that we wanted it then its life is unrolling as it should, and if we didn't does it really matter?

Jeff Neuman: Okay, let me go to some others here. Let me go to James and then Wolf and then back to Marika and Margie and then Avri, sorry. James.

James Bladel: Hi Jeff. James speaking. So I'll just go over things very quickly here. First off is that I, you know, to some of Margie's comments I thought that requiring or at least encouraging the templates to be used in all but the most extreme circumstance would actually be helping Staff, you know, in that effort because - and certainly the Working Group that would later - come on later down the line.

You know, my experience has been fairly brief but it certainly seems like any ambiguity or missing data from this - from these efforts is invariably kicked down to the Working Groups and kicked down to different subteams, and then we always have to go back and scramble back to the issues report to discern what were the meaning or the intent of - and I'm just trying to encourage that that kind of work be done at the front end of the process rather than have it become a - something that the Working Group has to struggle with.

But I think that where I'm going with this now is that it's along the lines of what Avri was saying about the equivalent for the IATF as it should, I think we see this elsewhere in ICANN Bylaws where it'll say something

for example like the Board should do X unless they can demonstrate that it's - that doing so is, you know, is, you know, harm to the organization or something like that.

That's how, you know, I'm thinking like, you know, if we had something like you should do this, you should use the template unless you can demonstrate that there's a compelling reason why the template is not appropriate to the situation.

I think that would cover it just fine. You know, I think the encouragement here or the concern that I have is the words strongly encourage is just not strong enough.

It does not get us to the point where we want to be, where folks are saying that it is a requirement unless you can demonstrate that there's a compelling reason why it shouldn't apply.

Jeff Neuman: So then - and I'll play devil's advocate to you James. If you say unless you get the shade is why it shouldn't apply, who's the one who makes that determination about the restriction, and then what's the ramification of that?

James Bladel: I mean, because it's just - right now it's between the requesting party and Staff, and I guess it's the person, the requesting party, the onus is on them to say why they shouldn't have to.

And then I guess that that should - just as a matter of practical operations it be - always be acceptable to Staff because as Alan said we don't want them interjecting their, you know, their decisions into the policy process.

Okay but, you know, again let's think about what we're saying here. Someone is requesting a policy, that a PDP be started and, you know, they're not giving Staff and then assumes - one assumes later on it could be, you know, a Council or a chartering organization or a Working Group, they're, you know, they're reluctant to give people the data or the, you know, the various informational elements that are being requested.

And I think that that's - we should really push back on that and have these things come to the chartering organization as fully baked as possible.

Jeff Neuman: Okay, can we go to Wolf?

Wolf-Ulrich Knoben: Yes thank you. Wolf Knoben speaking. So I would like to support what James was saying, so I also see it that way that the entry data to such a template could really support the process and the - to one and Staff as well.

So - and on the other hand I wouldn't see it as that - the one who has to fill out the template should be - handle it as a slave if you let me say, that means not every point must be filled out in - at the first time and in detail.

And if there's other information available, which is not asked or not covered yet by the template, it could be added as well. So I would see it that way, that the template itself gives a certain form to what is asked for and that's what I would like to support. Thanks.

Jeff Neuman: Okay thanks Wolf. I just had some language in there in the chat. I don't know if this addresses their concerns or it is strong enough for James, but let me go to Avri and then others can get in the line to look at the language.

If you notice I took out the words but should not be mandatory, because I'm, you know, I - the Registry kind of concerned that if it says it should not be mandatory, that people just aren't going to do it because it says it's not mandatory.

If you just have the words strongly encouraged, then people still may fill it out. So let me go to Avri and then others.

Avri Doria: Okay yes, hi. I find myself in a position where everybody I listen to I sort of agree with, which I realize is probably terribly distasteful of me. I think your language gets close there.

I mean, I think what comes out of it is it should be used when appropriate, which is the diplomatic speak for the IATF should. I think certainly nothing should preclude ever the Staff deciding that, "You know, we really need a Webinar.

We really need to have a research person. We really need to have a - just educate ourselves and the rest of the - of ICANN about this particular issue." Obviously I'll jump and down and say, "That has to be a balanced Webinar, a balanced research and we'll all do that."

But I think that one of the things that the Staff should definitely have the prerogative is to make sure that we don't do anything before we're

educated and we know what we're talking about, especially if they're going to have to write an issues report.

So whether it's, you know, your - absent extenuating circumstances but that still puts a burden of saying, you know, defining what is a set of extenuating and who judges, and I think language that we have adopted in many places of this document to say should, you know, when appropriate use hopefully is - as I say I'm sitting here pretty much agreeing with everyone at various points.

And that's what sends me to that, you know, diplomatic wording when appropriate. Thanks.

Jeff Neuman: Okay, now let's see. Okay, and actually I was going to write something in the chat basically saying, "Look, if Alan's okay with giving Staff the full discretion of delaying a - an issues report because they want to do a Webinar or need other information, then I'm okay with it too, because Alan's the one who's usually the strongest about anything introducing delay."

So let me go to - I know Marika's had her hand up for a while, so let me go to Marika then I'll come back to Alan.

Marika Konings: Yes, this is Marika. First maybe on the point of delaying, I mean, I don't think there would be a delay. I mean, we're still - according to the new rules it would be 45 days unless we ask for more time.

So by asking for more time, if we need more time for Webinars, of course then at that point the Council can say, "Well, you know, we don't think it's necessary. We want it within 45 days."

So I don't think it will be delayed just on behalf of Staff just, you know, adding in additional Webinars. But on the issue of the template, you know, what I've heard some people as well worrying about that, you know, some groups might not want to fill in the template because, you know, it's just not the thing they will do.

So I'm wondering if there's another way forward by just, you know, we're saying something like, "Any request for an issue report, either by completing the template or in another form, should include at a minimum," and then we highlight I think, you know, the name of the requester, the, you know, brief explanation of the issue and possibly as well the identification and quantification of problems to the extent feasible."

And then maybe we could still say something, "And there are other elements, you know, the more information we get the better." But maybe writing in a different way saying that, you know, "This is the minimum information we expect from any request, and either you provide it by filling in the template or, you know, you send it in an email or a Word document or any way you want to do it.

But these are, you know, the basic information that we need and this is really recommended or really helpful if you can provide that on top of that."

Jeff Neuman: Okay, so let's go with - let's - let me get some comments on Marika's proposal. Avri?

Avri Doria: Oh sorry, I should've - you already gave me to talk. I should have dropped my hand.

Jeff Neuman: Okay, Alan?

Alan Greenberg: Yes, I think I support that. Just for the record I'm far less worried about delay than I am blocking or a delay which serves to effectively block. So I, you know, I'm happy with saying what's going to help people do the job and get it done well.

I mean, I think our - everyone's target is to get it done well and not go off and charging down a direction which makes no sense at all. But I don't think the onus can be on Staff in rejecting this kind of process, so I think we have to give the - give some flexibility.

By the way, when I put my hand up it was because I was questioning why did we ever have but should not be mandatory anyway? I'm not quite sure why we have that phrase when we say strongly encourage. Strongly encourage implies not mandatory so...

Jeff Neuman: I agree with - yes I agree with...

Alan Greenberg: I don't think we need absentee extenuating circumstances to then again who's the judge of extenuating circumstances and, you know, if it's the group that's writing it but no one's going to apply a test to it, why do they need to state what the extenuating circumstances are?

So I think simply removing that last phrase in the original one addresses almost all the problems we're looking at here.

Jeff Neuman: Okay so...

Alan Greenberg: Other than those who want it mandatory of course.

Jeff Neuman: Marika, can you do two versions and just say we'll pick one over the other, one which just is the existing wording, dropping the but should not be mandatory?

And then if you could write out your proposal as to what it would look like, then we could on the next call decide which one we want to go with?

Marika Konings: Okay, so what - the first one, what do I need to change?

Jeff Neuman: Just the - take existing language as is, and it would say, "The use of such template should be strongly encouraged," and you would drop out everything after the comma.

And then the last - it would be such a template is included in the manual because we are including it, right, so...

Marika Konings: Okay.

James Bladel: Well if you take that out Jeff that could just be one sentence. Such a template is used twice. You could say, "The use of such a template should be strongly encouraged and should be included in the PDP manual."

Jeff Neuman: Well - or we should say, "And is included," because we're...

James Bladel: That's right. I just don't think such a template could be used twice in the words.

Jeff Neuman: Okay thanks. That was James for the transcript. And this is Jeff. Sorry. Okay, so Marika can you do that?

Marika Konings: Yes I can. This is Marika.

Jeff Neuman: All right, so guys, I know - so I wanted to end now because we kind of have to because there's a Council call in a few minutes, and so we need to prepare for that.

I do think there's a lot of issues we still need to get to, and it's my inclination to still have the call on Monday because that'll give us Monday and Thursday. I know there's a couple of people that can't be on it.

For those people that can't be on it, if you could take Marika's questions in - that are in the email she sent out and reply to that on - with a return email so we can discuss it on Monday, that'll be very helpful.

So unless I hear a real strong objection, you know, we all want to get this done. So the plan is to still have a call on Monday at the - at this time, the normal time. Any questions?

Alan Greenberg: No questions but thanks for getting us through this laborious discussion.

Jeff Neuman: Yes, and to this working well. Okay guys, thank you very much and for some of you I'll talk to you in a few minutes.

Alan Greenberg: Okay bye.

Wolf-Ulrich Knochen: Okay, thank you.

James Bladel: Bye.

Jeff Neuman: See you. Bye.

END