

**Policy & Implementation Definition Subteam Meeting
TRANSCRIPTION**

Monday 03 February 2014 at 1900 UTC

Note: The following is the output of transcribing from an audio recording of the Policy & Implementation Drafting Team meeting on Monday 03 February 2014 at 1900 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

Attendees:

Michael Graham – IPC
Wolk Knoblen- ISPCP
Amr Elsadr –NCUC
Cheryl Langdon-Orr – At-Large
Alan Greenberg - ALAC

Apology: Maureen Cubberley

ICANN staff:

Mary Wong
Marika Konings
Nathalie Peregrine

Coordinator: I'd like to remind all participants this conference is being recorded. If you have any objections, you may disconnect at this time. You may begin.

Nathalie Peregrine: Thank you very much (Kelly). Good morning, good afternoon, good evening everybody. This is the Policy and Implementation Definitions Sub Team call on the 9th of December 2013.

On the call today we have Maureen Cubberley, Cheryl Langdon-Orr, Wolf Knoblen; Alan Greenberg will be joining us shortly as will Michael Graham on

the audio bridge. We have received no apologies for today's call. And from staff we have Marika Konings, Mary Wong and myself, Nathalie Peregrine.

I'd like to remind you all to please state your names before speaking for transcription purposes. Thank you very much and over to you Maureen.

Maureen Cubberley: Thanks very much. Hello everyone. It's Maureen speaking. And I see that Michael has just joined the call. Are you there Michael?

Michael Graham: Yes. Managed to get in.

Maureen Cubberley: Okay. Great. And we've got Wolf and Mary, Cheryl, Alan and myself. I think that's everyone. Right. Good. And the staff. Thank you very much Marika and Nathalie.

I was just saying to Marika before the call Michael about - I was wondering about whether you'd be able to participate because having missed some of the important deliberations I didn't want to leave anything out.

Now Wolf has just posted some comments on the latest draft and I wondered if a good starting point might be to look at that and then go back to the original document and work our way through it Michael. Does that make sense and will you help me with this process as I'm not quite up to speed today?

Michael Graham: It does make sense. I wonder at what point too we ought to address those additional terms that were suggested in Buenos Aires so that we can definitively answer the question that was raised about whether or not we had decided not to pursue definitions of those.

Maureen Cubberley: Right. As I recall on the working group call that was the decision to provide a rationale - well perhaps not anything as formal as a rationale but to

address each one of the suggested terms and either deal with it or say why we're not dealing with each one individually. Is that right?

Michael Graham: Right. I think that's where we ended up with those.

Maureen Cubberley: Okay. Let's do that. And if we could add one more thing to the list and this comes from the last call as well. I'm not suggesting we address it right now but let's address it at some point.

From the working group call more than one of the participants looked at what we're doing and suggested that it be intended for more than the GNSO than this work but for more general ICANN work.

I think we need to address that. I know that Alan has addressed that right off the top in the beginning of the definition and I think we just need to clarify that so that when we go back to the next working group call we'll be able to address that. Is that making sense?

Michael Graham: Sure.

Maureen Cubberley: Okay. Okay. Great. So Wolf, could I ask you then to take us through the changes that - the comments that you have made please.

Alan Greenberg: Maureen, Cheryl has her hand up though.

Maureen Cubberley: Oh, I'm sorry. Cheryl. Sorry, I missed - I'm looking in three places at once. Sorry. Go ahead Cheryl.

Cheryl Langdon-Orr: See what happens when you have two pieces of equipment open Maureen. It's that - and a telephone. Okay. I raised my hand when you were talking about the definitions that were added and that we discussed at our last call. Just for the record, and this is Cheryl speaking, just for the record, what I would be classing our discussion today and I agree we have that

discussion and deal with those additional terms, I would call it a second reading.

It's something - when we do terminology in the ccNSO we're very careful to do. So what that does is shows to the record that a workgroup has discussed it at least on two calls and that there is - it wasn't something that was taken as a decision or just a subset of people at one meeting.

So I just think that's a good practice when people have suggested terms, which we are then I trust and will continue to say no, it's not really in our mandate for this work now. Worthy work but just not for us now.

And the other point was that as one of the people who did raise the issue on the terminologies being used in more than a GNSO context, that preamble part where we did agree last week and have the preliminary terms about the table, I think that sort of sacrosanct because it puts our working context. Thank you.

Maureen Cubberley: Thank you. I think that's a very good approach and given that we've already got a model for it, I think we should use that because you're right, we probably will be asked to address more and more derivative terms from the original list. So and did you call that additional reading?

Cheryl Langdon-Or: No. I call that a second reading.

Maureen Cubberley: A second reading. Okay. Good. Well if the group is in agreement, I think we should take that approach. Is there anyone who would like to come up with a different idea? Okay Cheryl, it sounds like your - sounds like you're on. We'll use that, a second reading. Thank you

Okay. Sorry Wolf. Over to you please.

Wolf-Ulrich Knoblen: Yes. Thank you Maureen. Wolf-Ulrich speaking. Well, my comments came just from my at least second reading here of the text rather I have been through just before the meeting today.

So and I was wondering how to deal with Alan's - one of Alan's comments here in respect to definitions. So first thing was okay, I saw, you know, the definition of policies that we have inserted to dictionary definition what policy is. X by that.

So my question was should we refer to the dictionary where it comes from or is that just a general term is my question here? If you refer to a specific dictionary, make it just tell what kind of dictionary that is.

Maureen Cubberley: This is Maureen Wolf. If I could respond to that. I proposed that and frankly it's cobbled together from about four or five different dictionaries including my 20 year old 75 pound one on paper that's in my office.

So it's not a dictionary. It's something that I put together from a number of different dictionary definitions. And I'm not sure how we can address that.

Wolf-Ulrich Knoblen: Well I don't have an idea supposedly.

Maureen Cubberley: Okay.

Wolf-Ulrich Knoblen: I understand that right now. So I was just thinking about if it's just picked up from a specific dictionary on that. And now I understand where it comes from. Then I wonder where that's - it's - hope it's okay with that. So I could follow. There is no problem with me. But Alan has some comments about that I think, so.

Maureen Cubberley: Yeah. Oh sorry Alan, I missed your hand. Please go ahead.

Alan Greenberg: That's okay. The origin of this is that definition was put into the - into this text. And I pointed out that although it is a dictionary definition of policy, it is not the one that we're going to be focused on here, which is a much more specific type of policy from an ICANN gTLD position.

And I think Cheryl last time suggested that we add the term a dictionary definition is just to show the people reading this after the fact that we are aware of the dictionary definition. It's far wider than our use of policy.

But, you know, we didn't write a new definition of policy from ignorance. That's just stating that we are aware of it but it's not the one we're using. So that's the history of where that phrase came from.

Maureen Cubberley: Thanks Alan. Wolf, does that address your question?

Wolf-Ulrich Knoen: Yes, yes. So I'm fine with that. Thanks.

Maureen Cubberley: Okay. Thank you. So shall we stay with dictionary or shall we say background working general definition or should we just leave it as it is? Any comments? Michael, you have your hand up.

Michael Graham: Well yeah. And I'm sort of wondering knowing how this will be scrutinized. I did exactly the same thing in implementation for the dictionary meanings. But I wonder if for the purposes - I hate to, you know, make work because I'll have to go back and find out where I got these.

But to suggest yes it is a dictionary or it's common definition might be - but I think citing for the sources might be something that we need to do simply to answer the criticism well where did you come up with those. And again, I hate to be doing make work but I think that's something that we might have to do even with the explanation.

Maureen Cubberley: Thanks Michael. I think that's a good idea and yes, I can go back and find the sources and simply say an aggregation from the following dictionaries. Would that be an acceptable way to address it?

Cheryl Langdon-Orr: Cheryl here. Sorry, I'm away from the tablet. You could just pluralize it and say dictionaries, asterisks and then put data or put note and then put the data out as a reference defined. That is plural and then we listen.

Maureen Cubberley: Dictionaries, yeah. That might work. I see your hand up there Alan. I just would like to go back to Michael on this though on the issue of scrutiny. Michael, do you think Marika's suggestion will get half the scrutiny by saying dictionaries? Would that be sufficient or do we need to go with the citations?

Michael Graham: I don't know. I'd feel more comfortable with the citations because I have a feeling once we (unintelligible) submitted, we will get back a question from the working group. Okay, which dictionaries.

Maureen Cubberley: Well there's bound to be a nitpicker somewhere, right. Okay. Alan, can I - are you commenting on this?

Alan Greenberg: Yes I am.

Maureen Cubberley: Okay. Thank you.

Alan Greenberg: I was going to suggest a dictionary definition. I have no problem with dictionary definitions. I really think this is moot to be honest. And Amr just suggested generic definition.

We're citing this to say we know about it but we're not using it. So I really don't see how the details source is particularly relevant. But...

Maureen Cubberley: Thank you.

Alan Greenberg: ...maybe I'm wrong but I don't see it. I can't see anyone arguing over this.

Maureen Cubberley: Okay. Thanks. And Amr is agreeing with a dictionary. Mary is saying perhaps a generally accepted definition. Generally accepted. That works too. Michael, I'm going to go back to you on this because you've got the stronger opinion.

Michael Graham: Yeah. I would be glad not to have to make additional work for myself.

Maureen Cubberley: Wouldn't we all. Okay. Why don't we go with the combination that says add generally accepted definition? Leave out the word dictionary. Would that work? That was Mary's suggestion. If anyone is not in favor of that, please let me know. Amr is saying yes and Wolf is agreeing.

Would anyone like to discuss this further? Thanks Cheryl. Shall we just agree with that suggestion from Mary then? Okay. It looks like - it looks like we have agreement. Thanks. Let's move on then. And thanks for bringing that up Michael. I think it's important that we look at any, you know, possible points of weakness and that could have been one but I think we've covered it.

Thank you. And that goes back to Marika's original suggestion too I think. So it just proves it takes many minds saying much the same thing. Thanks everyone.

Okay. From there. Can we go back? Wolf, can we ask you to take us through the rest of your document please?

Wolf-Ulrich Knoen: Yes. Thanks very much. Well I would like to confuse, you know, everything else (unintelligible). One thing I would like just to have an understanding of that. And I think now we have found that is very clear. Thank you very much.

So I had a comment I think in general that was regarding the capital and the lower case wording here. So there is at sometimes appears in our document here in the definitions. And it needs I think some clarification or explanation.

Though the question is for me the general question where we put it in the - to explain what we mean with regard to lower case and upper case definition of policy. (Unintelligible).

Maureen Cubberley: That's a good point too. Thank you. Marika, could I ask you to respond to that because you have been crafting our document from what we've been saying? Can you tell us is there a method that you've been using for upper case and lower case policy?

Marika Konings: This is Marika. I think the capitalize policy is basically when we talk about consensus policy, so policy development - developed using a PDP. While I think the lower P is, you know, policy recommendations that have been developed through a separate office. That has been kind of the rule I've used when deciding to capitalize or not. But I'm not really sure if I've done it in the right consistent way. So if I haven't, I'm happy to (unintelligible).

Maureen Cubberley: Okay. Thank you. And I was just reading - Alan, I see your hand's up and I was just reading your comment as well about approval by the ICANN Board. Could you join us please and tell us what you're thinking?

Alan Greenberg: Yeah. I think what Marika said has been the policy. I'm not sure it's the one we want to pursue because the relatively recent bylaw changes on - in Annex A of the bylaw that documents the PDP makes it clear in the preamble that other methodologies could be used to develop policy.

And I'm using - I've been using the upper case P when it relates to gTLD policy and it's almost a circular definition. If the GNSO is involved in setting it, it is policy. Like in contract and bylaws, you know, we - generally people use an upper case term when it's a defined term.

Now one of the problems we have in this working group is part - is this working group is going to be trying to define what policy is. Because, you know, we're here because we have found situations where during the current implementation phase there are things decided that some people have felt are policy, upper case P. And that's our whole problem.

So part of what we're - this whole overall PDP working - or this overall working group is is to decide what is policy. So, you know, we can't lock it in right now. But my inclination is to say upper case P policy are the things that we are talking about in this group.

Maureen Cubberley: Okay. Thanks Alan.

Alan Greenberg: And that's a vague statement I know.

Maureen Cubberley: Okay. Thank you Alan. Wolf, you have your hand up.

Wolf-Ulrich Knoben: Yes. Thanks. Wolf-Ulrich speaking. So, you know, I have stated - in some of these meetings I have comments and I'm really confused about these using upper and lower case and understanding it. So - and right now it's becomes to me more clear that there's still not the understanding between us.

So Marika has a certain understanding. It is written sometimes in this document. It's referenced to consensus policy. And Alan has a kind of variation of that or a different thing.

So I'm asking myself if we are not clear about that, how can we make it clear to the outside - to the other people, you know, from that. So the question is really here do we have a strict clear definition on if we use these terms upper and lower case policy? So it must be very clear.

So I understood from this document so right now I understood that upper case would be the consensus policy. So which is related to P GNSO related PDP and the others lower case would be the one which is outside of that or is a different form. Whatever it's my understanding from the document right now. I'm a little bit confused. So...

Marika Konings: Maureen, if I could maybe clarify. This is Marika. Because actually I just briefly looked through the document and I think actually the only terms if have in capitalize is the consensus policy apart from the first time I used GNSO policy and it may have been an oversight because I think there should be a small P.

Because maybe the working group can agree that we just use indeed the small P when we talk about policy because when it's preceded by GNSO policy, I think we've already clarified here that the definition is that it's developed through the policy development process.

Maureen Cubberley: Thanks.

Marika Konings: And the only reason why we use consensus policy, capital C, capital P is that is a - is that is a defined term within the contract. And using the smaller case may give the impression that it's a, you know, it's a policy that's adopted by consensus, which has already been confusing. And just by putting that in between - how do you call the English again - the two common having capital letters really makes clear that that's a separately defined term.

So maybe that may be a way - make it clearer and I'll try to be as well more consistent and not use capital letters where it's not appropriate.

Maureen Cubberley: Thanks Marika. Thanks for that clarification. Michael, you have your hand up and then Alan.

Michael Graham: Yeah. I wanted to make a modest proposal I think. And this is I think part of the difficulty in the discussion leading to this workgroup was the use of capital P policy and lower p policy. And the notion that there could be two types of policy within the gTLD and gNSO considerations.

And I wonder if for the purposes of this discussion we might not - and I'm proposing this for discussion I guess. We might not - rather than acknowledge that these two types of policy, capital P and lower case P co-exist, perhaps acknowledge that there has been a use of a lower case P, which we believe is confusing in terms of the terminology being used and that for the purposes of the consideration of this workgroup, we will not use lower case policy but would adopt other terms for that - those types of decisions that are made down the line.

Maureen Cubberley: Thanks Michael. Other terms would be the key to that. Did you have anything in mind before I get to Alan?

Michael Graham: Not - no. Not yet. But it was actually, you know, since we've defined the GNSO policy and that's what, as Alan pointed out, but we're really getting that is policy relating to the gTLD policy.

These other little policies if they exist, they are something other than policy. They might be implementation. They might be something else. But, you know, if we sloppily call all of this policy and then try to distinguish them by whether or not we're using the shift key on our typewriter, I think we're compounding confusion and the discussion.

Maureen Cubberley: Thanks. Alan.

Alan Greenberg: Yeah. Thank you. I think we're on really dangerous ground here.

Woman: Excuse me.

Alan Greenberg: The - if we restrict upper case P policy to only the PDP, then we are excluding from it formal GNSO gTLD policy decided on by the GNSO using some other methodology. And that policy has just as much force as the PDP policy except it cannot set consensus policy. It cannot set something that alters a contract immediately. But it can set policy if it doesn't happen to be within the picket fence.

So...

Man: (Unintelligible).

Alan Greenberg: ...I think we need to be very careful not to end up with two flavors of policy when they're actually the same flavor. And at the same time, I'm a little worried that if we use the lower case P policy, is that going to be confused with what we are - what we had as the dictionary definition, which we're discarding for the purpose of this discussion, so.

Maureen Cubberley: Thank you Alan. Michael, I see your hand up and Wolf as well. I would just like to ask you - everyone to look at the note, which followed -- it's up on the screen -- that deals with multiple kinds of policy. And this is something that we looked at earlier and agreed upon and the reference that it has to Recommendation 6 as well.

Now that's the status quo. And that is taking us down a route where we are going up to the GNSO policy definition, which is in red as the policy development process established set forth in the ICANN bylaws itself.

So my question is can we not go forward on that basis? Is what we have here going to preclude the development of new policy approaches? So with that question I want to turn it back to - Michael, you had your hand up first and then Wolf.

Michael Graham: Yeah. Well I - and I was just going to say maybe we utilize that note because actually the terms - Marika's slides there more accurately procedures just trying - maybe just clarifying that we're not referring to what has been referred to as small case policy. That that's outside of this definition.

Maureen Cubberley: Okay. Thank you. And Wolf, you've put your hand down. Oh, you've disappeared. Are you there?

Wolf-Ulrich Knoben: Yes, I'm still here. Although I have some problem in Adobe but coming back.

Maureen Cubberley: Okay.

Wolf-Ulrich Knoben: So well, I'm looking for simple, you know, for simple definition. And so it seems to me so at the time being a little bit still complicated also reflected in Alan's comments towards GNSO policy development with regards to Annex A and the P (envelope). And so when I read that so I see, you know, see an (unintelligible) the preamble, this is one thing. It belongs together. So it belongs together.

But it contains two different directions of policy. One is under the consensus policy and the other one is different methods or how it is described in the Annex A.

So there is no contradiction. I don't see any contradiction in that. So it's just if we make reference to that and for me it's that enough. It would be enough. So I - all other things if you dig into sort of different directions. So I think it makes a little bit more complicated. That's my understanding.

Maureen Cubberley: Thank you.

Wolf-Ulrich Knoben: Alan.

Maureen Cubberley: Yes. Thank you. I - yeah. Our job here is to take away the complication.
So I agree. Alan, over to you please.

Alan Greenberg: Thank you. I actually like the definition in red of GNSO policy with one very small exception. I would change the V policy development process and I note that there's - the policy development process uses lower case. So it's not the PDP. It's policy development process. I would change the E to A. And I...

Maureen Cubberley: I'm sorry. Where are we in the red, definition of GNSO policy?

Alan Greenberg: Red in GNSO policy is a formal policy developed through a policy development process as set forth in Annex A. That addresses the fact that it may not be using the formal PDP, which...

((Crosstalk))

Alan Greenberg: ...is not technically necessary if it is not consensus policy.

Maureen Cubberley: And it allows for the breadth of GNSO policy development that exists.
Correct?

Alan Greenberg: That's correct. I...

Maureen Cubberley: (Okay).

Alan Greenberg: ...would however add a second note saying this working group is charged with looking at whether there are other parts in the overall timeline of policy where something else might need to be decide - might need to be classed as GNSO gTLD policy. That's the whole crux of it.

Maureen Cubberley: Yes.

((Crosstalk))

Alan Greenberg: ...it's adding the names onto the Trademark Clearinghouse policy or not.

Maureen Cubberley: Okay. So we're looking at...

Alan Greenberg: That's what drove this whole question.

Maureen Cubberley: Yeah.

Alan Greenberg: I think acknowledging that we may change this as we go along but that's the definition that we have to start with and that's what we're working from.

Maureen Cubberley: Thank you. I think that does help clarify it. You're proposing that we change the V, policy development process to A, policy development process. Is there - can I see an indication of support for that? Thanks Michael, Cheryl, okay. Amr. Okay. Anyone who's not agreeing, would you like to speak to that? Okay. Then I suggest we change that and proceed and keep in mind that that is exactly what we are doing.

We're looking at policy and implementation and we're looking at what might be in between as well. And that's something that I was addressing earlier. And I think we need to be flexible on that.

Okay. I want to go back just to make sure. Wolf if you could let us know if we have addressed that issue that you put forward in your comments please.

Wolf-Ulrich Knoblen: Yes. For, you know, this is regard to policy and policy development. I agree.

Maureen Cubberley: Okay. Thank you very much. Would you like to point out any other of the issues that you referred to Wolf?

Wolf-Ulrich Knoblen: Yes. Wolf speaking. Just briefly to Number 3 policy advice because Alan was also commenting (on really) having an issue with the definition, GNSO input and advice on policy related issues where no policy development process is defined. And he was referring to ALAC, which it's contributed to GNSO - it's contributed its policy advice.

So for my understanding Alan, that is covered in that sentence on the policy advice and the policy advice more general term overarching the GNSO policy - the GNSP policy advice. So your point is covered with that. If not, please help me.

Maureen Cubberley: Okay.

Alan Greenberg: It's Alan. I'm not sure which point you're talking about. Sorry. I don't...

Wolf-Ulrich Knoblen: It's Number 3, policy advice and GNSO policy advice. So you commented...

Alan Greenberg: Okay. I'm sorry. We're on Number 3. Okay.

Wolf-Ulrich Knoblen: Yeah.

Maureen Cubberley: Yeah. Is that clear now Alan?

Alan Greenberg: It's clear what he's talking about. Now let me process it and see if I agree with what he says.

Maureen Cubberley: Okay. Thanks.

((Crosstalk))

Maureen Cubberley: Go ahead.

((Crosstalk))

Maureen Cubberley: Yeah, go ahead Marika.

Marika Konings: Yeah, just to clarify because basically Alan's comments are still in there. I left them in there to reflect, you know, what he had comment before. But indeed the changes may - were aimed to accommodate or draft those comments. So those were made before we made the changes.

So I think indeed Wolf is just trying to confirm with Alan that on the Item 3 that that indeed is - that means his comment was a draft and it's no longer relevant. I think that's - or at least that's how I understood the question.

Alan Greenberg: Until I reread it again in a clean form, I think it's addressed.

Maureen Cubberley: Yeah. It looks like it is. We've even got it highlighted in green, which is good. That gives us that visual clue. Let's leave it at that then Alan if we can. And if you want - if you do have a further comment on it later when you get a chance to read it more thoroughly, will you please get back to us and we'll revisit this? Okay.

Michael, could I ask you a question please? Before you came on the call Marika and I were talking about - going through the document. And I mentioned that to you initially. Is there anything else out of the meeting that I might have missed that we need to address today?

Michael Graham: I think there was - the main one was (unintelligible).

Maureen Cubberley: Okay. Thank you. So Marika, back to you for a moment then. With Alan's comment under Number 3 policy advice, it's been incorporated into the working document that we - or the working definition that we have now. Can I assume that the other comments have been as well or are there areas within Number 3 that are still to be discussed and decided upon?

Marika Konings: This is Marika. I think in relation to Alan's comment that is a draft but we still do have the open question of at the end of the sentence we're saying where no policy development process is defined, required, necessary. And I think that's still where we said we needed to decide which of those terms would be the most appropriate one to use.

Maureen Cubberley: Okay. All right. Let's get back to that. Is there any way we could use defined comma required or necessary so that we are involving them all? Or is that too broad reaching? I mean we're trying to cover all the situations here and saying that this is what GNSO policy advice would be and it would be in the three situations where it has not been defined, required or is not necessary.

So rather than choosing amongst the three, I'm proposing that we go with all three. Can I have a - some comment on that please?

Alan Greenberg: Maureen, it's Alan. Sorry. My comment could be bouncing up and down so I'm not sure what's on the screen and I can't put my hand up.

Maureen Cubberley: Oh, okay. We're on police advice Number 3.

Alan Greenberg: Yeah. Sorry.

Maureen Cubberley: GNSO policy advice.

Alan Greenberg: I know what we're talking about. I'm just not sure exactly what you're looking at. I'm a little bit confused.

Maureen Cubberley: Okay.

Alan Greenberg: I guess I'm asking for a definition of GNSO policy advice before we write the definition. Is this advice that comes from the GNSO or advice about GNSO policy? (Unintelligible).

Maureen Cubberley: Well, if I can just jump in and then I'll go to you Marika. My understanding is that it could be either and that it is up to us to either enunciate that it could be either or if there's a good reason to say one or the other, then we should say one or the other. But that's where I'm at with that. And Marika has her hand up.

((Crosstalk))

Alan Greenberg: ...ask Marika a question before she speaks.

Maureen Cubberley: Okay.

Alan Greenberg: Marika, do we ever use the term in the GNSO policy advice? The GNSO makes policy recommendations. I'm not sure they...

Marika Konings: Yeah. This is...

Alan Greenberg: ...give advice in the past.

Marika Konings: No. So this is - so this is Marika. So I actually think I disagree with what Maureen said because at least where I was coming from or how I understood this term is indeed GNSO policy advice in those instances where we currently don't have a process.

And I think in (SAS) discussion paper I think we actually refer to it as policy guidance. But I think or at least I was coming from and which is currently I think the missing piece of the puzzle if you look at GNSO processes is that they currently don't have any process available to them to actually develop guidance or advice or whatever we may want to call it.

And that's, you know, one of the charter questions is that, you know, when GNSO was asked for input and they don't have any formal process in doing so apart from the PDP, which, you know, as we all know is a very lengthy process. Has a lot of checks and balances in place. But there's nothing more light weight that they currently have.

And their availability when for example the Board comes back and it could relate indeed to implementation related issues where they ask for guidance or for advice. I don't know what the Board has labeled it at least in the request. But I think that's what's more where this was looking at.

Again, as we're in this working group we can look it from the perspective of the GNSO. So indeed there may be instances where others are providing advice on GNSO policy recommendations or implementations - proposed implementation plans.

But I think that's probably outside of the scope of what this working group is currently looking at. And I think that's at least where the definition leads - initially had in mind and I think reflects as its currently worded.

Maureen Cubberley: Thanks Marika. Yes, you're right. I did miss that. And you're right. That's what we're trying to do. I'm trying to follow the chat here on this side as well. We're getting some very good input there.

If the intention then, and I think we all understand that it is, is to provide another venue for input into policy development other than the formal PDP process, then to get back to our original discussion and points that you brought up Alan, GNSO policy advice is advice to the GNSO instead of saying input and advice on policy related issues.

And then we could go with the rest of the definition. Would that be a logical approach? So instead of saying input and advice, we're going to say GNSO

policy advice is advice to the GNSO so that we're getting that clarified. On policy related issues where no policy development process is defined, required or necessary. Required and necessary are the same. So I'm going with where no policy development process is defined or required. Let's put that out there.

Okay. Amr, over to you please. Would you tell us what your comments are?

Amr Elsadr: Thanks Maureen. This is Amr. On - it's just that I was under the impression that when we're talking about advice - we're talking about advise as in advice that is provided for example by different ACs with the GAC or ALAC and it's advice about the GNSO or the GNSO PDP, not specifically directly to the GNSO.

But like Marika said, one of the questions in our charter was - is to discuss the context of the GNSO guidance. So...

Maureen Cubberley: Okay. I'm not - if I can ask a question on that Amr. I'm not sure I understand the difference between advice to the GNSO and advice about the GNSO because if it's about the GNSO, should it not be directed to the GNSO?

Amr Elsadr: It could be directed to the ICANN Board.

Maureen Cubberley: Okay.

Amr Elsadr: So...

Maureen Cubberley: I missed that. Good point.

Amr Elsadr: (Unintelligible).

Maureen Cubberley: Okay.

Amr Elsadr: But GNSO guidance is a process that we've been chartered - there are questions that we've been chartered to sort of explore and how...

Maureen Cubberley: Yes.

Amr Elsadr: ...there might be a process for the GNSO to sort of not go through the lengthy process of a PDP but somehow give guidance well I guess to be determined. So that's why I differentiate between the two terms, guidance and advice.

Maureen Cubberley: Guidance and advice. Okay. And this is the one that we were tasked with doing rather than advice. But let's come back to that. Alan, you had your hand up first and then Marika. Thanks Amr for your comments.

Alan Greenberg: I'll let Marika go first.

Marika Konings: Yeah. This is Marika. Just to clarify indeed to the point Maureen was making before. I think we're talking here about advice that would be provided to the Board normally and not necessarily back to the GNSO.

One suggestion I was just going to write is - I think the reason why we're talking about this is actually a need. And as I pointed out or was going to point out that actually we use in our paper the term guidance because indeed advice is confusing because it gives the impression that indeed for the GNSO be also becoming not only a supporting organization but also an advisory committee. And I don't think that' the intent.

So hence I think while we - in the staff paper use guidance. So maybe here because the only reason why we're talking about GNSO policy advice is to make - was to make it specific from, you know, police advice in the general term.

So maybe we can put in brackets something like, you know, refer to in the charter as GNSO policy guidance. Make clear that we're not maybe trying to coin a new term here but the - what we're really trying to define here is the - what we're - have intent of looking at is the policy guidance function and not the maybe capital - and that's maybe another one.

Not use the capital A advice, which I think we associated with what advisory committees provide either to indeed the ICANN Board or to other SOs when they provide their advice.

Maureen Cubberley: Thanks Marika. It's Maureen again. And Alan, just before I acknowledge you, I want to ask Marika a question. Going back to (Wolf) mandate to keep it simple with which I think we all agree, can we then say that GNSO policy advice is policy advice to the Board from the GNSO?

How can we clarify this language so people know exactly what we're talking about rather than - not that I'm saying we shouldn't reference existing documents. But I think that these definitions need to be as standalone as possible. So how can we come up with the wording that is going to give us exactly what we mean by this? And Marika, do you want to respond before I go to Alan and the Michael?

Marika Konings: Yeah. This is Marika. I think one of the questions is indeed do we still want to label this advice with risk indeed of confusing this with the advice provided by advisory committees.

Or should maybe here we take the opportunity to actually start using a different term, which could be guidance, input or label it as a term that basically the definition will provide the explanation what we mean with it and we can still even refer to the charter questions that's looking at it.

But indeed move away from actually calling it GNSO policy advice so it doesn't become confusing with policy advice - capital A - capital P capital A that's provided by advisory committees according to the bylaws.

Maureen Cubberley: Okay. Thank you. And thanks Cheryl. I see your indication of support there. Over to you Alan, then Michael please.

Alan Greenberg: Thank you. I guess I generally agree with Marika. I think using the term advice is loaded. Advice from - advice in the sense of advisory committees is to the Board and it comes with various degrees of requirement for the Board to listen to it or to consider it. And that's a hotly contended issue.

I don't think we want to get into the question of can the GAC advise the GNSO and if so, is the GNSO obliged to listen to it. You know, that - it's a whole political issue that I think is - we can't - the world can't ignore but I think we can for the moment.

So I like the - in the concept that we're doing all the definitions, I like the term of using a new term that is not going to be confused. So guidance I think is a good term.

And at this point I don't believe the GNSO has ever issued any guidance with the exception of on the Trademark Clearinghouse, which might be deemed to be guidance.

And we - and it may never do so in the future. We don't know. But I would think a working definition could be - it is - I mean let's do it tongue and cheek and we can come up with better words later. Wisdom from the GNSO on gTLD policy that is developed without using the processes of Annex A. So it's a lighter weight process. (Unintelligible).

Maureen Cubberley: Okay. We get the spirit of that.

Alan Greenberg: ...can pass it on.

Maureen Cubberley: Yeah. Okay. Thanks. Thanks very much Alan. Michael. And we're going to come back to that. Let's hear Michael and Wolf and then let's come back to that suggested language. Okay. Michael, over to you please.

Michael Graham: Yeah. I'm sort of being swayed to the idea that advice is much less formal than guidance. For clarity sake, I was suggesting that advice not recognizing that that's also coming from the advisory to the Board but to the extent that it's relevant to GNSO considerations of policy it seems to me that that would be - policy advice would be any sort of suggestions that are being received by GNSO outside of its PDP process.

I don't think it, you know, from the discussion I don't think we should use GNSO policy advice since it isn't an accepted use term but just policy advice in that regard.

And similarly I like the notion of - and it is one of the questions we have been chartered to answer whether or not some sort of policy guidance might be advisable in which case I think the idea there is policy guidance that is actually beyond the development of a policy but relates to the implementation of the policy and therefore it's from GNSO to the Board or to staff and again, without it being GNSO policy guidance.

And I think although that is something we've been tasked with determining whether or not it's advisable to have it, I think it's good for us to define policy guidance in terms of a conversation going forward.

Maureen Cubberley: Okay. Thank you. Wolf, your hand was up. Oh, it's up again. Over to you please.

Wolf-Ulrich Knoben: Yes. Thank you. So I think first I understand why now that we are clear about that we are talking about policy advice or guidance coming from the

GNSO to other bodies, in particular to the Board and outside the formal PDP process.

So that's what I understand we are talking about here. And then so for the wording advice so I - say - I would say I'm okay with that. So because so from my understanding from where I come from so advice is something which is not binding and which is not let me say directing something but it's giving some information, you know, and for clarification in these things which somebody's asking for.

So the only problem we have here is if use the term advice is that it is used also by others; by advisory committees. So that's - that makes it difficult. But well, that's the only - that's the only problem. So and I think this is not a big problem. So it - because the understanding is really that there is nothing which is in a binding form provided to anybody else.

Maureen Cubberley: Thank you. Thank you very much Wolf. Your hand. Okay, that's your old hand. Okay. Thank you. I just want to - in the chat Amr has raised a couple of good points. One being that the charter uses the term policy guidance.

So how did we get to policy advice? That was a term when - in the initial meeting was it not that we were given. But now that we're throwing light on all the implications of the word advice including the fact that it might require a response from the Board as opposed to guidance, which would be a less formal approach. I wonder if we should reconsider that.

And I know that some of you have spoken in favor of using the word guidance and we've had some others say we need to stick with advice. I think our first step here and our first decision is to decide whether we're going with advice or whether we're going with guidance.

Can I have some comment on that please because they are different and they are going to have - they're going to lead us to different words in the

definition? Michael, yeah, I need to be clear on a limitation of definitions. And I think that we've - yeah, that has - that's what everyone is saying in one way or another.

Cheryl's saying guidance. Amr, you have your hand up. I didn't mean to put words in your mouth. Would you like to speak yourself now please?

Amr Elsadr: Well thanks Maureen. This is Amr. Yeah. I think advice - if we're going to use advice it should be used in the context that is - that already exists. As in advice about the GNSO and not from the GNSO.

Answering the question on guidance - GNSO guidance or policy guidance by the GNSO, it is something that the working group needs to go through and hopefully we will be doing that over the course of the next few months. And then we'll willing to get into that right now right here.

But I would - in terms of definitions, I would or understanding of what they are, I would differentiate between the two by saying this is what advice is and this is what guidance is. And they're not the same thing.

I don't see any need - maybe I'm just not getting it. But I really don't see why we need to differentiate between different forms of advice or a new meaning for advice. If we're talking about something that comes out of the GNSO that the Board is required to consider, well if the GNSO feels strongly about an issue that -they would like the Board or require the Board to consider, then well that's what the PDP is there for.

And I guess that's why it's there. And anything else is what the charter of this working group is - requirements to look at, which is policy guidance and we will do that I think. Thanks.

Maureen Cubberley: Okay. Thank you. I'm - thanks very much Amr. I'm going to go to Marika and then Alan. But Amr, could I ask you to just look at the existing definition

and either change it or craft something that follows exactly what you've just said.

In light of the fact that we've just had a proposed definition as well from Michael, wasn't it? Yes. Okay. And then let's look at the wording that's being proposed and let's be cognizant of the fact that we only have a few minutes left. So Marika and then Alan.

Marika Konings: Yeah. This is Marika. And just maybe in - probably in response to Amr's comments because I think, you know, we're basically looking at, you know, the working group eventually will look at - will need to look at these questions from two aspects basically, so.

The one hand there is a question indeed if you have a formal process, what kind of response is a trigger from the Board? Because then I put in the chat as well the Board has asked on occasion from SOs/ACs to provide input. But there's no requirement for the Board to even respond to that.

So indeed with there being a desire if such a formal response would be provided that there is a response from the Board or the kind of mechanisms whereby if they would, you know, disagree about that in fines or feedback, it can, you know, they need to provide a rationale, they need to have us running voting thresholds to do so.

I think on the other hand there's also the question from internal GNSO is should there be a formal process when you provide that kind of advice? Because I think we now have worked on ad hoc basis where indeed we draft letters. If no one objects it gets sent.

Then maybe some people will say well, but, you know, we didn't really go to paper so it doesn't really count. So I think it was also the question like should there be anything formal by the GNSO when you can say as a whole like we

adopted it or we followed the process that we outlined. So this now really counts as GNSO guidance - formal GNSO guidance.

So we can demonstrate that it has met certain, you know, minimum standards of, you know, getting there. While I think now because we've only relied on output processes, some people may have said I - well it doesn't really count because it wasn't a PDP. So it doesn't really stand for much.

So I think that's, you know, the two aspects of the question of policy guidance that eventually I think the working group will need to answer and, you know, work on.

Maureen Cubberley: Thanks Marika. I'm wondering if we could do two things in our definitions document then, one being to reiterate the understanding of policy advice as you've just described it and what its implications and requirements are.

And then craft the definition for policy guidance. I'm just going to throw that out there and I want to get Alan and Mary and we are going to have to bring the call to a close soon. Alan, over to you please.

Alan Greenberg: I guess I strongly advise -- and I use that term with care -- that we not use the term advice. It is a technical term in ICANN's bylaws. It is politically loaded and there are 12 different - at least different definitions of it depending on how - where the advice comes from and exactly what the methodology used - that was used to create it and what the Board must do about it. Stay away.

Maureen Cubberley: Okay. A great big red X you're saying in front of that. Okay. Thanks Alan. Mary please.

Mary Wong: Thanks Maureen. And I was going to say something along the lines of what Alan just said very, very clearly that because of our experiences that a number of people have had and also specifically because of the bylaws usage of the word advice.

But more specifically in relation to what this particular phrase whether it ends up as policy guidance or something else is not to capture. It goes back to what Marika was explaining. It really is for a fairly vast potentially anyway realm of actions that the GNSO may want to take. That isn't something that's done within a formal PDP.

And in that regard I wanted to remind everyone that there are a number of reasons that can be very different why the GNSO Council may decide not to launch a PDP on any particular subject. It could range from the subject matter being too broad to tie to anything else. And this really depends on the issue and what the issue report says and the deliberations of the Council.

So the idea here is for the GNSO to have more flexible and more diverse avenues where its input may still be desirable because for instance it may be an issue being discussed by the Board or in the ICANN community that does impact gTLDs but to which the GNSO Council feels for one reason or another that it's not appropriate to start a formal PDP. So hopefully that's helpful.

Maureen Cubberley: Thank our Mary. Yes that is. I'm looking at the chat and I'm looking at the comments. Alan, yes, you're right. The current working group is not a PDP. Guidance comes up again. We're getting the word guidance again. And I've seen quite a bit of support for using the words guidance both in the chat and indication of checkmarks. Okay.

Who - is there anyone violently opposed to changing this to GNSO policy guidance and proceeding from there?

Michael Graham: Maureen, this is Mike. I'm going to (unintelligible).

Maureen Cubberley: Michael. I'm sorry. You're breaking up there.

Michael Graham: Can you hear me now?

Maureen Cubberley: Yes. Yes Michael. I had made a note earlier that you were in favor of advice.

Michael Graham: Well I think what - based on the decision I think what we need to do is - I would be in favor of including the definition that is only the generally accepted definition of advice and point out that, you know, the fact that it is a defined term in some context and is used in these other contexts and for that reason, you know, we disfavor if used in the discussion of this particular area or something to that.

Maureen Cubberley: Well, yeah, I think there is a way to find consensus here. Let's not ever starting thinking about that word. We can include in our document the understood and established meaning of policy advice. But what I'm hearing from the majority of the group is that policy guidance is the term on which we should be focusing and for which we should be developing a definition. Can we do both? Can we do that?

Michael Graham: Being away from the keyboard, I'd say yes.

Maureen Cubberley: Okay. I think if we do that we put policy advice in not to limit in any way and not to change to acknowledge and make a differentiation between advice and guidance, which is what all of you have been doing through this discussion because invariably if we use the term policy guidance without a reference to policy advice, the discussion will start all over again when we present the work.

So what I'm proposing - Cheryl's agreeing. What I'm proposing is that we include both just as a quick recap. Define policy advice as we know it and then apply our creative writing skills to defining policy guidance in the way that we've just discussed so that it is inclusive and enabling in the way that you've all discussed. Can we proceed on that basis? I'm taking that as a yes and a considered yes from some of you. Okay.

Alan Greenberg: Maureen. It's Alan. Just one caveat.

Maureen Cubberley: Yes.

Alan Greenberg: Although the term advice is used heavily in the bylaws, the term policy advice is not.

Maureen Cubberley: Okay. I see what you mean.

Alan Greenberg: You may want to restrict it to advice, which may relate to gTLD policy, so on and so forth.

Maureen Cubberley: But might not relate beyond gTLD policy.

Alan Greenberg: It - certainly. (Unintelligible).

Maureen Cubberley: Yeah. So maybe we don't want to mention gTLD policy. Okay. Okay. Any other comments? Okay. I'd like to bring the meeting to a close. And I know we didn't get through our list but I think we certainly made some significant progress because these are very sticky issues.

Marika, can I ask with the next iteration of the document that you include both policy advice and policy guidance in the way that we've discussed? Well then - if everyone could please just have a go at that and try and craft it in a way that reflects your understanding and the way that you've discussed it today. We'll have something substantial to work on for the next teleconference.

And I think we are getting pretty close to the finish line because there isn't as much discussion and disagreement on the remainder of the topics, at least not yet. So I'd like to propose that we have another teleconference and in between now and then work on refining these definitions and formally accept

the ones that we've already decided are workable starting at the beginning with the dictionary definitions of policy and so on. Is that acceptable?

Marika Konings: This is Marika. If I can maybe ask if we can maybe already confirm a time and date for that. The challenge is that next week at the same time as we have the call now there's already the Policy and Implementation Chair's call.

Maureen Cubberley: Right.

Marika Konings: So would it be possible for people to do maybe an hour earlier than today's meeting? Would that work? Or otherwise an hour later?

Cheryl Langdon-Orr: Yeah. That's fine for me and I'm probably the one that's (unintelligible).

Maureen Cubberley: Yes. You're the one with the 17-hour difference from EST. So okay. Is that okay with everybody else either an hour before or an hour after?

Cheryl Langdon-Orr: Before.

Maureen Cubberley: Before.

Woman: Before.

Maureen Cubberley: Okay. An hour before. Is there anyone who's having a real problem with that?

Wolf-Ulrich Knoblen: (I'll be first okay).

Maureen Cubberley: Okay. I see some consensus. We'll go with that. Thanks Marika. Good point and let's do that. Okay. And sorry I've had to miss so much everyone. Please send me whatever additional thoughts and ideas you have and copy the whole group and - or put them up on the Wiki so we can move this ahead before our next teleconference.

And thanks again to Marika for all your help. Really appreciate it. Thanks everyone.

Woman: Bye bye.

Wolf-Ulrich Knoben: Thanks. Bye.

Woman: Thank you.

Woman: Bye.

END