

**Policy & Implementation Working Group Meeting
TRANSCRIPTION
Wednesday 30 April at 1900 UTC**

Note: The following is the output of transcribing from an audio recording of the Policy & Implementation Drafting Team meeting on Wednesday 30 April 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. The audio is also available at: <http://audio.icann.org/gnso/gnso-policy-implementation-20140430-en.mp3>

On page:<http://gnso.icann.org/calendar#apr>

Attendees:

Greg Shatan – IPC
Wolf Knoben - ISPCP
Chuck Gomes – RySG
Alan Greenberg – ALAC
Klaus Stoll - NPOC
Michael Graham – IPC
J.Scott Evans – BC
Olevie Kouami – NPOC
Nic Steinbach – RrSG
Tom Barrett – RrSG
James Bladel – RrSG
Brian Winterfeldt – IPC
Philip Karnofsky - Individual
Phil Marano - IPC

Apologies:

Amr Elsadr – NCUC
Cheryl Langdon-Orr – At-Large

ICANN staff:

Marika Konings
Mary Wong
Amy Bivins
Nathalie Peregrine

Nathalie Peregrine: Okay thank you very much, (Melissa). Good morning, good afternoon, good evening everybody. This is the Policy and Implementation Working Group call on the 30th of April, 2014.

On the call today we have Alan Greenberg, Greg Shatan, J. Scott Evans, Wolf Knoben, Philip Karnofsky, Klaus Stoll, Chuck Gomes, and Tom Barrett. We have apologies from Amr Elsadr, Cheryl Langdon-Orr has said that she might be able to join the call. And Michael Graham has warned that he'll be dialing in late.

From staff we have Marika Konings, Mary Wong, Amy Bivens and myself, Nathalie Peregrine. I'd like to remind you all to please state your names before speaking for transcription purposes. And I'd like to also note that Nic Steinbach and James Bladel have joined the Adobe Connect room. Thank you very much and over to you, J. Scott.

J. Scott Evans: All right everyone, this is J. Scott Evans for the record. We're going to start with a - we've had the roll call. Does anyone have an update to their Statement of Interest? Okay.

Then we are going to look at the working principles document. At the end of our last call last week there was a suggestion that a small group take the Section 1 - I think it was Sections B, C and D and work to come up with language to present to the larger group that might be acceptable.

There were some issues with regards to things seeming to be redundant and some of the wording needed some wordsmithing. And so myself, James Bladel, Nic Steinbach and I can't remember if there was one more but the three of us agreed to participate. And so Nic took a stab and circulated a draft. And you can see in front of you a redline of the - that particular section.

And you see the change that was suggested by Nic to delete a section of B. And then there was some additional wording added in some of the brackets which were put in as placeholders were removed and the language was kept. So you can see that language.

So starting with B it reads now, "Changes to GNSO implementation guidance need to be examined by the GNSO Council or another appropriate entity as the designated by the GNSO Council on where they fall in the spectrum of policy and implementation. In all cases the community maintains the right to challenge whether such update needed further review for policy implications."

So that was the changes in Section B where that - a large section regarding administrative updates was deleted. And the brackets were removed around, "As designated by the GNSO Council." And "policy recommendation" was changed to "implementation guidance."

Any comments? Okay then in Section C it looks like the only change here was to add the additional language, "Or appropriate entities designated by the GNSO Council," in the second and third line from the bottom of Paragraph C.

But this section now reads, "ICANN staff tasked with - by the Board with the implementation of approved GNSO policy recommendations should be able to make transparent changes to the proposed translation of the policy recommendations into an implementation plan as long as these do not affect the intent of the policy recommendations."

"Examples of such changes include: administrative update, error corrections and process details. In all cases, any such changes should be communicated to the GNSO Council or appropriate entity as designed by the GNSO Council which maintains the right to challenge whether such changes did affect the intent of the policy recommendation."

Okay. Any comments? Yes, Alan.

Alan Greenberg: Yeah, just the wording at the very end is awkward; the "did affect." Is there a reason that it was not just affected?

J. Scott Evans: I don't think there's any - that either way there's a substantive change. Does anybody have a problem with changing "did affect" to "affected?"

Alan Greenberg: Or "affects" perhaps.

J. Scott Evans: Or affects. I mean, I believe the intent - as long as...

((Crosstalk))

Alan Greenberg: ...changes - just affect.

J. Scott Evans: Does anybody have a problem with changing "did affect" to just "affect"? It doesn't appear that we do so we can make that change - that revision. I've got a - Nic is typing. He says it sounds good to him. Okay?

Alan Greenberg: Yeah, thank you. Just sounded a bit awkward the way it was worded.

J. Scott Evans: Okay. Then getting to the one question that I had but I wanted to wait until we got Michael on the phone, are any of these terms used here defined terms for which the definitions team came up with definitions? Oh, Michael's not on the phone. I thought I saw him dial in. Okay, I'm sorry.

That's - he's in the Adobe Connect room or he was. Maybe he's fallen off. He's fallen to the bottom there. Okay so that would be my only question if, you know, if any of these terms are defined terms we need to at least - we may want to highlight that. Doesn't mean we want to adopt those definitions here but they need to be aware that they are - have been suggested as defined terms and we need to decide whether they're going to be instituted here as defined terms.

Paragraph D, "In all cases all material changes that are made in the development of the implementation plan that affects the implementation guidance, intent and/or policy recommendations as adopted by the GNSO

Council, must be communicated to the GNSO Council or appropriate entity as designed by the GNSO Council which maintains the right to review the changes, to determine whether or not they are supported by the intent of the policy recommendations and modify the implementation plan accordingly."

Comment? Tom.

Tom Barrett: Yeah, I think this grammatically is incorrect.

J. Scott Evans: Okay.

Tom Barrett: I think when we talk about material changes I assume we're talking about in the approved policy. However, this reads as if material changes in the development of the implementation plan which is - could be totally unrelated to the policy itself.

So I'm wondering if it would make more sense to start this with, "In all cases the development of the implementation plan," and strike "all material changes that are made to - that are made in the development."

J. Scott Evans: Okay so it would read, "In all cases," strike "all material changes" - so, "In call cases..."

Tom Barrett: The development of.

J. Scott Evans: Okay, development of implementation plan...

Tom Barrett: Yeah, that instead of saying, "and/or" it could say, "that affect," you know, "in all cases the development of the implementation plan that affect the implementation guidance, intent of any policy recommendations as adopted by the GNSO Council must be communicated to the GNSO Council."

So the idea is that the development of the implementation plan could affect not only the policy for which is it intended but also any other policy.

J. Scott Evans: Okay thank you, Tom. I'm going to go to - I thought I say James's hand. He was making comments in the...

James Bladel: I lowered it. Go ahead and go to Alan first.

J. Scott Evans: Okay, Marika.

Marika Konings: Yeah, this is Marika. Just to clarify that the material changes is something we discussed as well during the meeting last week that we are referring to changes the implementation plan that affected the implementation guidance because I think we're not envisioning that staff would actually recommend changes to the policy recommendations themselves as those are, you know, adopted by the GNSO Council and by the Board.

It was more that the translation of those into an implementation plan that may affect the implementation plan as such. So that's, I think, what we're referring to here.

And, you know, I didn't completely catch the language that you were suggesting so it would be really helpful if you can maybe type it in the chat and that may be easier as well for everyone to review and see how it all aligns.

But just to clarify what we're indeed really trying to say here is that - it's a discussion we had last week as well and I think it's the result as well some of the other changes higher up in this section really trying to explain that indeed any changes are more the result - changes would result from the translation of the policy recommendations into the implementation plan.

It's not envisioned that staff would make suggestions to actually change policy recommendations as such but is more the interpretation of those or if there is specific implementation guidance from the GNSO Council provided as part of the policy recommendations or final report those may be affected as well by potential material changes.

J. Scott Evans: Okay, Alan.

Alan Greenberg: Thank you. I also didn't quite catch what was saying. My gut feeling is that - pun intended - you're making material changes to this - to the intent of this paragraph in what was proposed.

I put my hand up originally, however, to comment on the last part of the sentence, which implies that the GNSO Council or the body it designates can modify the implementation plan. And since I think the implementation plan is a staff product it's not clear that that makes, you know, that's something that they have within their power.

J. Scott Evans: Okay. Tom.

Tom Barrett: So I guess to circle back my grammatical issue, from what Marika has said then, is the material changes refers to the development of the plan. But it sounds like the material changes are related to the translation of the plan as suggested by the GNSO. So the way it's worded now implies that a plan has already been developed and then now material changes being made to it.

It sounds like the material changes is really involved in what the GNSO intended, not in revisions to the plan itself.

J. Scott Evans: Okay. Greg.

Greg Shatan: Okay. Greg Shatan. I think, you know, I'm listening to this and looking at this. I think we need to take a step back from the language here to look at the

workflow that this intended to comment on because I think we're missing kind of steps in the workflow where they're not kind of crisply referred to and defined in this - in these sections.

You know, so we talk about, first, the working group is supposed to provide implementation guidance. And then that implementation guidance is, if you look at B, it looks like it could be changed by someone but it doesn't say by whom in B because it's in the passive voice. It implies it's by the staff but can the staff change implementation guidance? That doesn't seem to make sense.

Then in C ICANN staff is supposed to be tasked with translating in policy recommendations but it's not clear now those relate to the implementation guidance up in A at all.

And then it says that they can make changes in the translation. So are they making - where is the translation in the first place that they're making changes to? That's not referred to here at all.

So there needs to be a reference to creating the translation before you can make changes to it or are they making changes to the policy recommendations? But as Marika notes in the chat they can't make changes in the policy recommendation.

And then going down to D and picking up on what Tom was saying now we're talking about changes made in the development of the implementation plan. But the implementation plan hasn't been - is referred to in C but only in kind of this translation. So it's really not the changes in the translation in C, it's really the changes in the implementation plan. I think.

Except that the changes - the implementation plan hasn't been created really under any of these four - now we're changing something that hasn't been really referred to.

So I think, you know, it doesn't quite require a Mikey O'Connor memorial mind map but perhaps, you know, a bunch of boxes and arrows that just show the workflow here and what's - what kind of is the standards that are supposed to be applied at each step in the workflow including both the creation of an item and then subsequent changes to an item once it 's been created.

Right now I would find this kind of to be un-implementable the way it is because it doesn't tie back to kind of a well thought out workflow. Thank you.

J. Scott Evans: Okay. I have to apologize, I looked away, I don't know who's first, Maria or James so I'm going to call on James.

James Bladel: I would guess Maria; I just put my hand up. Marika, sorry.

J. Scott Evans: Marika.

Marika Konings: Thanks, James. So this is Marika. To maybe first to the point that Greg was making and I think the translation, or at least how I've used the term, the translation of policy recommendations is really the implementation plan.

And just to note as well implementation guidance may sometimes be provided by GNSO working groups but it's not always - it's not a requirement. They're encouraged to provide implementation guidance but it doesn't necessarily happen.

And in relation to your suggestion of having indeed a flow chart and arrows and boxes I think that's a great idea. But I think that's actually the discussion that we'll have as part of the deliberations on this topic.

And similarly to the point that Alan made, I think here we're really trying to design high level principles but the details of those are I think what we're really going to be doing once we start diving into the different deliverables.

So maybe at some point I think we may want to just, you know, put a stake in the ground noting that this is not perfect. I think we get the gist of what we're trying to convey and maybe the wording is not right or maybe we've used terms that are not exactly the right flavor but I'm hoping that that will actually come out once we dive into the substance of the deliverables that are next on our agenda.

And as said, you know, this is - these are working principles. The idea is really that at the end of the process we come back to these and may completely rewrite these based on the recommendations and processes we may have developed as part of our work.

So I just wanted to note that because I know and the same thing happened as well in definitions, these are things that we can probably just discuss, you know, for many, many more meetings. But I think at some point we just may need to say let's just keep this, I think we understand what we're trying to say.

It's not perfect and we can actually wordsmith or make things better but let's maybe save that until the end when we actually know what it is that we want to recommend and where we have indeed specific processes and flow charts and boxes in place that we can concretely refer to in relation to this principles document.

J. Scott Evans: Thank you, Marika. James.

James Bladel: Hi. Thanks, J. Scott. James speaking for the transcript. And I think I agree with Marika. I think that part of the problems we're encountering with D in general are that, you know, we're holding over artifacts from a couple of different revisions or attempted revisions.

You know, I think that in - but, you know, going back to what Marika was saying that we're trying to capture a few high level principles here, if we want to call it the translation of a policy recommendation into an implementation plan and that staff is charged with putting that together that there seems to be some mechanism here where the mis-translation or the misinterpretation potential are identified and that those are then sent back to Council.

We said something here about modifies the implementation plan. The reason that changed originally was recommends that the implementation be modified, something along that nature. But I think we were thinking that it was a little too passive last week so we were trying to give it a more active language but understanding that that seems to read that we're putting the GNSO into a different role if we suggest that.

So, you know, at this point I am in favor of whether we continue to, you know, whittle away at this language or we just kind of toss it and restate what we're trying to say in D, you know, from whole cloth I think might be a better approach at this point because I just feel like we keep trying to tweak it to get at what we're - to get closer to what we're getting at and then we go back and realize that oh, you know, it just doesn't work with something that was stated earlier.

So maybe we just need to, you know, at least - not for this whole document but maybe just with this lower case D maybe take a fresh look at that.

Thanks.

J. Scott Evans: I see Chuck agrees. Alan.

Alan Greenberg: Thank you. I think Marika and James captured a lot of what I was going to say but I'll say it blunter. We're trying to write detailed instructions for a process that we don't - that we haven't designed yet.

And I think indeed what we should be doing here - and I - this is late in the game to say it - is we should be coming up with principles. A principle in this case covering an awful lot of what I see on the screen right now is, "The GNSO, or the body it so designates, has the right and the responsibility to ensure that the ultimate implementation of a GNSO policy recommendation follows that policy and the intent of that policy."

And the details will depend on exactly - with a flow that - that we and staff end up designing for anything. But that's the principle we're looking for that staff cannot go off on a tangent unilaterally without being called on it by the GNSO.

J. Scott Evans: Okay.

Alan Greenberg: I wasn't trying to wordsmith something there. But, you know, I think we're looking for something as short as that. It has a right and a responsibility to make sure that the policies it recommends are implemented in line with the policy and the intent of that policy. Thank you.

J. Scott Evans: Greg.

Greg Shatan: Thanks. Greg Shatan. I echo what Alan was saying. I was thinking about it a little bit differently is that we're trying to write rules for a board game but we don't know what the board looks like yet. So - and I wasn't thinking about anything elaborate in terms of a flowchart just, you know, three or four boxes and arrows so that we just refer to the same thing.

I think we've gotten kind of stuck halfway between high level kind of policy/principle statements and more detailed implementation, if you will. And we don't have enough detail or enough, you know, acknowledgement of what exactly it is that we're commenting on to be detailed.

So in a sense we're better off going back to where Alan is making high-level statements that are true regardless of what the specific boxes and arrows reflect as the workflow.

I go back earlier just to say that, you know, to be - my point about creating a workflow is not that that was something we should do later but that the various - the very points that we're looking at here under implementation standards, you know, kind of create or refer to a workflow but the references are kind of - don't really work. They're inconsistent. They don't seem to have either the actors identified or necessarily the right actors identified.

So either we have to give some comments, don't necessarily need to be detailed - much more detailed, but they do need to reflect it - an accurate workflow at the level of detail we're commenting on it. Or we need to kind of take it back up a few thousand feet and make them, you know, various, you know, some more principled statements. Thanks.

J. Scott Evans: Okay. Tom. Hello? Tom? I'm not hearing - I see he's typed something in the...

Tom Barrett: Yeah, I'm sorry, I just - I guess if we feel like - I mean, I'm not comfortable waiting off until we can create a flowchart to - if we're going to use terms in here that no one really understands what they mean or that haven't been defined.

So what I suggest to make this more of a general principle is to simply say, "In all cases all material changes that affect the implementation guidance," et cetera. And so we remove the reference about made and the development of the implementation plan and we just make this a general principle about any material changes made from things coming from the GNSO basically, must be communicated back to the GNSO.

Is that sort of amendment...

((Crosstalk))

J. Scott Evans: Are you saying that would amend the entire section or just D?

Tom Barrett: I'm talking just D. Just D taking out the phrase, "That are made in the development of the implementation plan that," so basically in all cases all material changes that affect the implementation guidance intent and/or policy recommendations as adopted by the GNSO Council," et cetera.

It sounds like we don't want to get into the nitty gritty of really what material change we're talking about.

J. Scott Evans: Greg, is that an old hand or a new hand?

Greg Shatan: It's an old hand but I'll probably put up a hand shortly.

J. Scott Evans: I think Marika has posted in the agenda side, Tom, what she perceives as your suggested language.

Tom Barrett: Right.

Marika Konings: Yeah, and this is Marika. Just one question because I just copied and pasted what Tom had put in the chat. But when he read it out he said - the first "material changes." I'm just trying to clarify if you meant to have "material" in there or not. Because in the chat as it was written it didn't have it but I think we need to - read it out or paraphrase it...

((Crosstalk))

Tom Barrett: As a general principle I would drop the word "material."

J. Scott Evans: Well there's an argument you made that if it affects the implementation guidance it can be material, right? Okay. (Unintelligible). Okay.

((Crosstalk))

J. Scott Evans: Greg.

Tom Barrett: The rationale for taking out "material" is that you don't want someone to use their judgment in deciding if something is material and basically...

((Crosstalk))

Tom Barrett: ...and the general principle communicated.

J. Scott Evans: Greg.

Greg Shatan: I guess, you know, two things. First the word "affect" I think is ambiguous. I would propose changing that to "are inconsistent with." And, I, you know, which kind of goes back to another point. And I guess the question is what are we talking about changing and what?

I think we need an object that is being changed. So should be changes in the implementation plan that are inconsistent with the implementation guidance, the intent of any policy recommendations or the - or the intent of any policy recommendations as adopted by the GNSO Council must be communicated, et cetera.

J. Scott Evans: Marika.

Marika Konings: Yeah, this is Marika...

((Crosstalk))

J. Scott Evans: Can I ask...

((Crosstalk))

J. Scott Evans: ...you pull the original language - can you pull the original language that was in D and let's look at what was originally in D. Okay.

Marika Konings: I think this is the version.

J. Scott Evans: So...

Marika Konings: Yeah, and this is Marika. Just something to note because actually D was added I'm just realizing pulling this up now I think it was - originated with language that I think James had suggested on the last call.

J. Scott Evans: Okay.

Marika Konings: And I think this originated from that trying to capture this kind of separate element because it indeed a more holistic capturing A, B and C and paraphrasing that.

And just to Greg's point I think the challenge here is that I think what we're trying to capture changes indeed is the Board is not written because, again, it's somewhere where - it's not something specific yet because indeed the implementation plan is not there yet.

But staff, thinking through, you know, how to do the implementation, knowing the policy recommendations, possibly knowing, you know, implementation guidance, being clear on the intent but realizing as part of trying to translate that into an implementation plan realizes that certain changes need to occur that don't draw a straight line basically from the policy recommendations and implementation guidance or intent to the implementation plan.

And in this case I think we're talking about an abstract level because it's not something that is really there yet; it's just as staff works through that, you

know, possibly with the help of an implementation review team there's a realization that the straight line between the two just cannot be drawn for whatever reason.

And that's where I think the conversation needs to happen that indeed if it's clear that that's, you know, not a material change or of it is how can that be dealt with? And I think, again, I think that's something that we really need to work out as part of the deliberations and we may not be able to capture exactly in here.

And, again, I think we're just trying to communicate the high level principle that indeed there should be a mechanism by which that should happen and the different steps that need to follow in that. But I think at this stage we're probably not in a position actually to clearly define that.

J. Scott Evans: Yeah. I don't see, looking at C, how - because C says if there are changes in the - if the implementation plan - so that's for changes, right? Should be able to make any changes that do not affect the intent. So then D is just supposed to cover those changes that affect the intent, is that correct? That's the distinction. Chuck or somebody who...

((Crosstalk))

J. Scott Evans: ...that's the distinction between C and D.

Chuck Gomes: Repeat the question please, J. Scott. This is Chuck.

J. Scott Evans: C says that the Board - ICANN staff is tasked with the implementation of the approved GNSO policy and they should be able to make transparent changes as long as they do not affect the intent of the policy recommendations, in other words, ministerial changes.

Then D is supposed to capture those situations where they realize that they are going - as I understand Marika's explanation, they realize in developing the implementation plan that they are going to have to make changes that will affect the intent.

Chuck Gomes: So this is Chuck. Is that - I'm going to direct this at James because I think Marika is right, last week on the call...

J. Scott Evans: Yes.

Chuck Gomes: ...we added the - what is now D based on a suggestion that James made. James, can you recall, is that a correct interpretation of what you intended or maybe we're beyond that. But if you could try to respond I'd appreciate that.

James Bladel: Yeah, I'll help if I can. Can somebody - can somebody tell me where we are? What - can you reread what you're suggesting?

J. Scott Evans: We're asking whether your suggested D, which is - which deals with material changes, that affect the implementation guidance.

James Bladel: Right.

J. Scott Evans: If the reason for adding that is because in C it says that it - in implementing - the staff in implementing the GNSO policy they should be able to make transparent changes so long as they're only administrative.

James Bladel: Right. So...

((Crosstalk))

J. Scott Evans: ...is D to say there are situations where they're going to have make changes that are more than administrative...

James Bladel: Yeah. So where we were - or, you know, what I was attempting to inject into the process last week - and I'm stretching my memory here a little bit - was that there was a - the process involved checking in with Council when the process - when there were parts of the implementation plan were deemed to be materially different from the recommendations.

And what we were saying - trying to convert that from a multiple check in process to an interrupt-driven process where the Council could essentially step in and intervene in the implementation of a policy if they believe the changes were material.

So, you know, again I'm starting to feel like the - you know, that we might want to take a fresh look at some of this language rather than continue to refine it because I think we're, you know, it's just - it's changing (fractally) here and I'm not sure if it still works.

J. Scott Evans: Yeah.

James Bladel: The other change that we did was there was a - there was a common - there was a common sentence at the end of both C and D that we consolidated into a new bullet - well now my Adobe just went away - that we kind of teased that out and made that more generic and tacked that on after D and I believe that became the new E.

So - but again, you know, J. Scott, I feel like - and I feel like I'm not helping in this regard so I'm putting myself in this basket here is that we're kind of chasing a spiral and I'm wondering if we need to take a step back and just look at some fresh language for these two.

Chuck Gomes: James, this is Chuck. When you say, "these two" what do you mean "these two? C and D or just D? I thought...

((Crosstalk))

James Bladel: Well mainly D Chuck.

Chuck Gomes: D, okay good. That's what I thought. Okay thanks.

James Bladel: But if C - if the problem is, is that C is, you know, teeing up D in such a way that it's confusing then there may be, you know, that needs to be reworked as well. But I think primarily the problem is D.

And the goal here is - and I don't know if you were, you know, if it was worthwhile last week - if the goal here is to make sure that the folks who are making these recommendations and improving them recognize them when they turn into contract obligations because all policies ultimately end up in our contract.

And I think the concern here is that more often than not they, you know, by the time they come back through ICANN Compliance they look very different - or at least, you know, substantially different so.

J. Scott Evans: Okay, Greg, is that a new hand?

Greg Shatan: No.

J. Scott Evans: Marika, is that a new hand?

Marika Konings: Yes. So this is Marika. And I think I completely agree with the comment that Alan made in the chat that we're getting ourselves buried deeper and deeper in the mud. And I'm just wondering if we can't just replace C and D with the language that Tom had proposed. I think that captures at a high level what we're trying to say.

And I think we need to recognize and maybe this is, you know, the language that's currently written maybe that's something we take as part of our notes

when we go into deliberations on, you know, how to develop, indeed, this consultation mechanism or how that process should work and just, you know, not have it lost.

But for now just use the language that Tom had suggested and, you know, get that in for the current C and D and just leave it as that noting that, you know, this is definitely an area that will be further worked out and more detail will hopefully be available once we've gone through the deliberations on the specific charter questions that relate to this topic.

J. Scott Evans: Well, yeah. This is J. Scott. One of the other things to do is to strike the "in all cases" language from B and C and then make D the language that Tom has suggested.

So you acknowledge that staff can make administrative changes but then you just have a catch-all that says any change that are inconsistent with the - affects implementation - with the - inconsistent with the implementation guidance intended - any policy recommendations adopted must be communicated blah, blah, blah so you just cover anything.

And any change that does this has to have that, that's sort of the interrupt that James was mentioning before. Would people be comfortable with something like that?

Chuck Gomes: J. Scott, this is Chuck. The - I think you may be onto something in terms of removing "in all cases" in both B and C. I think that would probably be okay. I'm concerned about deleting C and combining it into something else because I think C is okay; I don't think C needs any changing except maybe what you're suggesting, the "in all cases."

So I guess I'm not ready to just delete C and replace it with something else; I think C's okay. I don't see any problems with C except maybe the "in all

cases" because I think that - when we say "in all cases" which I think is your point, we're combining them all which...

J. Scott Evans: Right.

Chuck Gomes: Yeah, so that would be my opinion on that.

J. Scott Evans: Okay. So does everyone understand if you would show by - well if we get our Adobe Connect back. I see that James understands and, James, what I'd like everyone to do is tell me if they understand what I'm doing by show of a green arrow if you understand what I'm suggesting. Okay, I've got three.

Greg seems not to - I don't know if he - do you not understand, Greg, or you disagree?

Greg Shatan: More of a disagree.

J. Scott Evans: Okay. Anybody else disagree or not understand what I'm suggesting? Okay. So here's what I...

((Crosstalk))

J. Scott Evans: What?

Greg Shatan: I was just going to say that it could be that my disagreement is actually in not understanding but what I thought we had here previously was essentially that all changes, material or immaterial, just to use those terms for lack of other ones for the moment, would be reported back to the GNSO Council but - and that the Council would have - or its designee, which might be the IRT, would have the right to challenge whether they in fact were material and if they were material to essentially interrupt and oppose them.

J. Scott Evans: Yeah, I mean, the way I see it is we just takeout the "in all cases" and we make D the in all cases. And it's, "In all cases changes that are inconsistent with the intent of any policy recommendations as adopted by the GNSO Council must be communicated with the GNSO Council or appropriate entity as designated by the GNSO Council which maintains the right to review the changes to determine whether they are supported by the intent of the policy recommendations and modify the implementation plan accordingly."

Greg Shatan: My point, J. Scott, is what about changes that are consistent or that are - that the staff thinks are consistent that are, you know, say administrative updates, error corrections, process details and the like? Under C the way we have it - had it those would also be reported back to the Council or its designee.

But if we take out the "in all cases" language then it's only the inconsistent or, you know, potentially inconsistent changes as identified by the staff that would get reported back. So that's a substantive difference between, as I see it, and that's why my Disagree is there. Are we reporting - is all the workflow going to go at least through the IRT or the Council or whoever is designated or is the staff only going to direct through this referral process or informational process those changes that are at least arguably inconsistent? Thank you.

J. Scott Evans: James.

James Bladel: Yeah, thanks. And I agree with Greg maybe for the same reasons or maybe just parallel reasons which is that it seems like if we say - I like your language the way you had it but I think there was one little hiccup which is that it appears to be giving staff the discretion to determine whether or not a change is or is not consistent with the original policy recommendation.

And I don't know if that's what Greg was driving at but essentially it leaves that determination up to them. And I think that that's where, you know, it's kind of pointless to have an interrupt process where the GNSO can intervene

if, you know, the - that determination is made by the folks that would be intervened, you know, against.

So that's where I think - that's where I think I have just a little bit of...

((Crosstalk))

J. Scott Evans: Well, I mean, why don't we just do this then? I'm sorry to interrupt. But why don't we just take that language and import it into D? So we say, "In all cases..."

James Bladel: Well I like what you said there a moment ago, J. Scott. I just think it just needs a little, you know...

J. Scott Evans: That's what I'm saying, I'm saying why don't we take that report to the GNSO language and put it in D?

James Bladel: Okay.

J. Scott Evans: So in other words because my question would be, as we were looking at it earlier was, well who's the arbiter of what is material, what isn't material? Who gets to take, you know, and bring up D? So if what we say is that all - in all cases we pick up the language - in all cases any changes should be communicated to the GNSO Council or appropriately designated entity.

Then we could say, "Any change that are inconsistent with the effect," or something like, "are - which the GNSO Council believe are inconsistent with that." You see what I'm saying? Does anybody understand? Greg understands and sees what I'm saying.

((Crosstalk))

J. Scott Evans: What I'm saying is you delete all the "in all cases" language and you make D that says in all cases all changes have to go back to the GNSO Council. And in any case where they believe it's inconsistent with the implementation guidance the intent of the policy recommendation is adopted then they have the right to maintain, you know, fight for changes.

James Bladel: Right.

Marika Konings: This is Marika. I have another suggestion maybe here to fix D in that sense. I get what you're trying to say but I think the way it currently reads makes it really that, you know, for every, you know, if we change "the" to "a" we need to send, you know, an official communication to the Council to notify them that we changed, you know, "the" to "a".

I'm wondering if by rewording it and saying, "In all cases changes are inconsistent with the implementation guidance in terms of any policy recommendation adopted by the GNSO Council may be flagged by the GNSO Council or appropriate entity as designated which maintains the right to review the changes to determine whether or not they're opposed to it."

So basically it basically says that I think we're trying to say that we would communicate all changes because that's something that already happens. But it is in the remit of the Council or the entity designated to flag if they believe that when we say this is a minor change that they can flag at that moment and say, no, we believe this is a big change and we do want to review it and look it over.

Because I think the way it currently works in practice, as well, indeed we're trying to do it hand in hand with the implementation review team. And I if remember correctly as well in the way we phrase it even in the Council resolutions or as well the call for volunteers for implementation review teams it really basically explains as well that one of the tasks they have is that when they believe there are any things or any changes in the implementation plan

that actually affects the intent of the recommendations or create new policies out of the blue that they have the ability or the responsibility to actually flag that through the GNSO Council to take action.

So I'm wondering if there's a way we can actually instead of making it a kind of, you know, requirement for staff to communicate every single thing basically saying, yes, of course we need to communicate what we believe are the big things but it doesn't preempt the Council or the implementation review team on picking up on any of the other changes that we may designate as immaterial and flag those as, you know, big changes that do need further consideration or discussion.

J. Scott Evans: I see agreement for that so...

Greg Shatan: That's not agreement by me.

J. Scott Evans: Okay. I see some agreement for that; some none agreement. I think Tom just did agreement. Greg.

Greg Shatan: Yeah, I guess the issue is, again, one of communication which is who would the Council or its designee know about these immaterial changes if they're not being communicated to them? It just seems to me that keeping whatever the designee is - and again it could be the IRT - kind of on copy for everything, you know, it shouldn't, I would think, increase the burden as changes are made and saved.

But then the burden is in essence on the IRT to look at everything. I would say, you know, if you look at a redline, you know, you see the changes whether they're material or immaterial. It may be a good idea to have kind of an additional burden, if you will, on the staff to identify and call attention to changes that are at least, you know, arguably inconsistent with the policy recommendations and red flag those.

But, you know, all changes need to at least kind of go by the - by the IRT for them to see them otherwise, you know, the opportunity to say that a small change is really not so small, you know, doesn't seem to be practically implemented. Thank you.

J. Scott Evans: Okay that caused a flurry of activity. Alan.

Alan Greenberg: Thank you. I'll restate my original statement that I think we should be going to principles and not working on details. And I think these details are, given that we - as Greg said, we don't know what the board game is we're playing, are only going to get us into trouble.

There's not a lot of experience on this. We haven't had a lot of implementation review teams. And I've only participated in one in any great depth. But it really wasn't an issue. Assuming we're not talking about something on the scope of the new gTLD process where the implementation plan is a 700-page manual, the implementation review team gets copied on the full text of the implementation and all of the details and has an opportunity to look at it and a responsibility.

The people who make material changes are not doing it consciously typically. And in my experience either they're making them by mistake or they raise them as saying, do you think this meets the needs of the original policy or original recommendation?

So I think we're getting ourselves into a real problem here where I'm not sure the problem exists in reality. And it's because we're trying to find the right wording for the details of a process that we haven't designed yet and with the existing one, with the limited experience, and Marika has more experience than I do on it I suspect, it hasn't been a problem.

J. Scott Evans: Okay. Tom.

Tom Barrett: Yeah, I guess I have to express some disagreement with Alan. I do think people make material changes on purpose and do not highlight that they made that change. And so the principle needs to address that potentiality.

And so I actually agreed with how Greg laid it out where there's actually three discrete principles. One is where all changes are communicated back; two, staff highlights what they think might be material changes; and, three, you know, the recipient of that document has the responsibility to review it and take appropriate action.

But I definitely think that we should not rely on people's - always having good faith. We want to have a principle that addresses those instances where they might not have good faith.

J. Scott Evans: All right. Chuck.

Chuck Gomes: Thanks. You're leading quite an interesting discussion, J. Scott. Hey, I think I also agree with Greg that the communication needs to happen. I don't think that has to be bureaucratic and everything. But if changes are made I think we want to take the total judgment responsibility away from staff so it doesn't impact them in a negative way.

And I like the way Tom said it there. So when the changes are communicated it's then the responsibility of the GNSO to identify, in a timely manner, that part is not a principle, okay or at least not part of what we're talking about now, but it's the responsibility of the GNSO then to identify if it's material, if it's minor, if it's not.

And if they don't respond then we move ahead. But I think we do need to take away the responsibility of the judgment call on whether something is material or not.

That's why in C, after a lot of discussion on that, and lots of changes getting to where we're at right now, we still wanted it communicated so that there is that opportunity for the GNSO to make a - were those really administrative or just errors or whatever. And if not then it's in the court of the GNSO to respond. So I do think that the communication is an important part of the principles.

J. Scott Evans: Thank you, Chuck. James.

James Bladel: Thanks, J. Scott. James speaking for the transcript. And I want to echo a lot of what Chuck and Tom have said - Thomas. I disagree with the point that Alan made about this not being a problem; I see it as a huge problem. In fact it's shaking the, you know, it's undermining the industry's confidence in ICANN as an institution at this point. But, you know, so it is a huge and widespread problem I think; very impactful.

So, you know, I think one of the things we're trying to do is perhaps make this a lightweight process and we keep tripping ourselves up here. But I think that, you know, if we have to go back and say essentially along the lines of what Thomas was saying that, you know, you come up with the implementation plan, that has to be approved by the Council that, you know, has to be reconciled with the original recommendations.

And then the Council could certainly modify or amend that or cause it to be amended if they're not doing that themselves. And, you know, and if it's a case where we need to, you know, just make it a - put it on the critical path for implementing new policies and take staff judgment completely off the table then maybe that's one way that we have to do it.

But, you know, I do believe that this is something that is causing enough friction in - particularly in the commercial side of the industry that needs to be resolved to provide for some certainty for - in the operating environment for

commercial providers so that we can, you know, make commitments on behalf of our customers.

And I think that that's the concern in not having some mechanism or some feedback channel for those implementation - policy implementation plans.
Thanks.

J. Scott Evans: Okay. Thank you, James. Alan.

Alan Greenberg: Thank you. Just for the record when I said there hasn't been a problem I was talking about in the cases where we have formal implementation review teams, which is a new embodiment. There have certainly been significant problems in the new gTLD process and we're all very painfully aware of them and they continue to haunt us and grow in some cases.

But then again that's why I'm saying that we should be focusing on high level principles here, not the detailed, you know, plan of who (walks) changes over to who and who identifies them and who redlines them and things. We're saying the GNSO has sign-off rights and responsibilities on the implementation of policies that it decides on. And I'm not sure we can be more specific than that until we have the next steps detailed. Thank you.

J. Scott Evans: Okay, Marika.

Marika Konings: Yeah, this is Marika. I think partly echoing what Alan is saying is that basically I think as well where we get to in the deliberation is review some of the implementation review teams that have, you know, operated and how they have worked I think both from the perspective of staff but also for members that were involved in those groups to see what worked, what didn't work and indeed talk through, you know, how that communication should work, what indeed should happen in cases where there may not be an implementation review team.

Talk as well through, you know, what mechanism should an implementation review team have to flag issues to the Council. Can anyone just stand up and run to the Council? Should that be a consensus decision? A majority decision?

So again those things I think really will come out as part of the further deliberations on this topic. And I think here we're now trying to indeed, you know, shoehorn something in where we don't know exactly yet which direction that will go.

One point I did want to make because I have now heard several people I think referring to adoption by the GNSO Council of an implementation plan. Just for the record the way, you know, it currently works is that, you know, staff is tasked by the Board to develop an implementation plan.

And the recent PDPs we do that in close collaboration with an implementation review team where indeed we, you know, first go back as staff, you know, try to digest the recommendations, understand them, identify whether there are any questions or clarifications we need in the first instance.

Then come up basically with a timeline in which we believe we can, you know, develop an implementation plan clearly highlighting as well which phases of that process we believe the implementation review team should or needs to be involved and then indeed working an iterative way through the recommendation for the implementation language which then is posted for public comment as well.

So initially indeed sign-off is sought from the implementation review team to really make sure that they're comfortable and feel that the recommendations follow the intent of the policy recommendations. And then there's also the additional opportunity for public input on those.

And as for that if, you know, from staff perspective as well we believe that indeed, you know, the right note has been hit also in confirmation again with the implementation review team. And then fact a date effective is announced.

There is no approval neither from the Board or GNSO Council in the current environment. And I do want to note as well that actually that issue was discussed as part of the revised PDP whether there needed to be a formal approval.

But I think as part of those deliberations it was actually found that that really created so many additional complications and as well significant risk of, you know, using that vote to maybe reopen certain policy issues or people felt that they didn't get what they wanted to actually block implementation so at that stage it was decided that that actually wasn't a path that people wanted to pursue.

But again, you know, the creation of implementation review teams and as well this provision that exists in the PDP manual that the GNSO Council has the ability to go to the Board and basically, you know, put up a red flag if they believe that implementation of the policy recommendations is not in line with the intent of those on which the Board needs to hold the implementation and basically have a close look at that.

So I think there are really a number of mechanisms. And as I said, we're learning in practice and hopefully we can dive deeper into that as part of deliberation. But again, you know, in conclusion I think we really should try to probably keep this at a high level and avoid trying to already go in other details which we'll definitely do when we get to the different charter questions that relate to those topics.

J. Scott Evans: Tom.

Tom Barrett: So I'll come up with a higher level principle than any of these here and that is we do not want ICANN staff to be deciding what is a material change. And so we want all changes to be communicated back to the GNSO. Point blank, right?

And so we try to say that in C. We try to say that in D. We don't want to find out after this has gone to the Board for review or out for public comment that changes were made that were - staff thought were immaterial that are in fact material. It's too late at that point.

So we want to find out up front. And we'll make it clear that all changes need to be communicated back. And the GNSO will decide if they're material or not.

J. Scott Evans: Okay. I'm going to take the chair's prerogative and jump in here. I think that that is a concern. I'm not sure that's the general principle. I think the general principle is that all implementation should be consistent with the policy recommendations and that the GNSO Council, as the manager of the policy process, should have the right to - the right and responsibility to review all changes.

See, that's where I - that's the high level that I see. And then we get into the details, Tom, and everyone else, that I think happened in B, C and D in this section when we go on and start talking further.

But it seems to me that if we somehow took what Alan had said earlier and raise it way out of all of this, and it's just one brief paragraph, that sets sort of the thesis. And then when we go into the development of the - we break off and start developing a workflow we can decide these things about when it, you know, is it communicating back? Is it every change? That kind of thing. Alan.

Alan Greenberg: Thank you. I'll give an example of the - I think the mess we're getting into. We have focused a lot of this recent discussion on changes to the implementation plan. That sounds as if there is an implementation plan that is passed from the gods or from the original GNSO recommendation or something and then staff makes changes to it.

In fact, although the GNSO policy recommendations may include implementation details they often do not. And it is then up to staff to create an implementation plan. And that plan is a moving target. It's a work in progress until it finally gets signed off on by everybody.

So it's not as if there are substantive changes that are made to something which is already static, it's just an evolving document and plan. And that's true whether we're talking about a relatively minor PDP or in fact the new gTLD process where the Applicant Guidebook was a four-year evolving work in progress.

So I think using terms like, "if there are changes," changes to what? What's the level against where they're being made? You know, again that's why I think we want something at the high level saying the GNSO or its delegate has the right to critique the stuff and be satisfied. And I'll also point out that again for things of moderate size it has typically been the implementation review team that is an - essentially an autonomous body.

The only rationale that I could see that it goes back to the GNSO is if the IRT reaches an impasse with staff where there is a disagreement which cannot be worked and must be raised at the Council level so the Council can complain the Board or take other action. Thank you.

J. Scott Evans: Okay. Greg.

Greg Shatan: It's Greg. I agree with - and I want to actually kind of add on to a couple of things that Alan said. First, I think the word "changes" in the document and in

our discussion is really a misnomer; it's really kind of the translations and additions as the policy recommendations and implementation guidance that have come down from, you know, the working group through the Council and the Board are translated from those documents into an implementation plan. So it's really not changes.

And that's where I kind of tripped up way back in the beginning of discussing this because there's nothing - we're not really yet talking about changes, we're talking about kind of a first drafting exercise by the staff to take these two kind of more high level documents of policy recommendations and implementation guidance and turn them into a concrete and detailed implementation plan or at least more concrete and more detailed.

And it's those, quote unquote, changes which are the - that this comment is being made about. So they're not changes at all. And I agree also with Alan that if we - to the extent that there are IRTs they would be the first stop or should be the first stop for these changes or really reviewing drafting - drafts of the implementation plan.

And only escalating them to the Council if they, you know, see a, you know, a problem that almost requires a PDP or in other words some sort of impasse. They have the, you know, they have the freedom to escalate it or make a change if they think they can make a change that keeps things back on track.

I just wanted to mention, you know, lastly I did take a quick crack at a workflow, try to express in pictures what I think we're trying to express in words. You know, so if you want to take a look at that please do so. I apologize, I do not have mind mapping software or anything like that so this is just, you know, stuff I did on Word. But I think it says what we're trying to say here kind of. Thanks.

J. Scott Evans: Chuck.

Chuck Gomes: Thanks. And now what I'm going to say - let me be up front - is going to be related to you deliverable tasks, okay? And I recognize that what I'm going to say is not a principle but the more I'm listening to all of this the more I'm thinking that right now there is no requirement for approval of an implementation plan.

And maybe there should be. As I'm listening to all that we're talking about it's something that we can consider when we - we should consider, I think, when we do our deliverables work which is a main part of our task because that might solve a lot of these problems if there was a requirement for approval of an implementation plan. And that could be broken into parts for big things like the - like the new gTLDs.

But anyway I throw that out. And I guess that supports the idea that Marika has been pushing for weeks is, is that maybe we should move on and come back to these. So I don't know. I throw that out for consideration and of course Marika's been suggesting it for a while. Thanks.

J. Scott Evans: Hey, Greg, is that an old or a new hand?

Greg Shatan: A vestigial hand, sorry.

J. Scott Evans: All right so I guess it's on the table now. Should we just bracket A through F with a note that we will return to these at the end of the process? I'm looking for anybody that's in Adobe Connect, if you could indicate one way or the other. Chuck's raised his hand.

Chuck Gomes: Yeah and go ahead and respond in Adobe Connect if you want to like J. Scott suggested. But I definitely would bracket D.

J. Scott Evans: Okay.

Chuck Gomes: I'm not sure I would bracket all of them because I think we have fairly good agreement on the others with some - maybe with some minor word edits, I don't know, like be in all caps or something.

J. Scott Evans: Okay.

Chuck Gomes: But I would definitely bracket D for that. I would fix - make the one fix in D though because it is - it says, "that are made in the development of the implementation plan." And I thought that's what Tom was getting at with his first comments. It's not the development of an implementation plan that we're talking about, it's probably the implementation plan it self or something like it.

So I would fix that because I don't think that - we're talking about the development of the plan. So - but I would just bracket that. Thanks.

J. Scott Evans: D.

Chuck Gomes: D, correct.

J. Scott Evans: Okay. Marika.

Marika Konings: Yeah, this is Marika. I just want to clarify like we're bracketing D and noting I think, you know - and I think that of course applies to the whole document that we'll get back to those.

But just to clarify are we using for D the language that was suggested by Tom that's on the right hand side? Or are we just leaving it currently as-is? Although I think, you know, Chuck suggested something may need to be fixed but I haven't seen any specific way - or I think Greg is suggesting changing "development" to "drafting."

So it may be helpful if we can just get some clarification on that. But that's really agreeing with the fact that maybe we should just park this for now and

actually start diving into the substance of our deliberations and then for sure we'll have more meat when we come back to this to I think put on the bones of the principles.

J. Scott Evans: Okay. How many people, if you will show in Adobe Connect - oh Greg has raised his hand. Yes.

Greg Shatan: I guess - this is Greg Shatan. I guess I don't know that we're necessarily that far away from turning this - these sections into something viable. You know, clearly everything that we're doing is a work in progress and we're going to return to these deliverables iteratively to make sure they work as we move along.

So whatever we park there - whatever we do here is in essence parked. Right now I feel like it's still kind of fragmented. You know, and I think there are not that many changes that could be made to - that would make it actually quite a bit better, you know, still a draft - obviously a draft but I think right now it's kind of all over the place.

And if we don't maybe make one more effort we're going to have more trouble coming back to this in a few weeks and try and remember which things we objected to, which things gave us heartburn in the drafting like for instance the word "changes" or, you know, what does development mean or, you know, does that really mean the drafting or, you know, the document itself.

So I feel like there's still some - there's still some value in trying to improve this. But I know we're - it's frustrating and I don't want to keep, you know, working on the shape of the table instead of having the substance, you know, right in front of us. Thanks.

J. Scott Evans: Okay. I see Michael agrees with that. Anybody else agree that we should continue to work on D?

Chuck Gomes: J. Scott, I think - this is Chuck. Maybe the way to handle that is for those who would like to do that and take a crack at improving especially D do it between now and the next meeting.

J. Scott Evans: Yeah. Do we have volunteers for that? And a resounding silence.
Unfortunately I will be heading out of the country next Wednesday and will be gone for 9 days so I'm not going to be able to do it.

Greg Shatan: My checkmark is also volunteering as well as agreeing with the suggestion...

J. Scott Evans: Okay.

Greg Shatan: ...since it would be churlish to agree and then not be able to do it.

J. Scott Evans: Michael Graham has agreed and Tom Barrett has agreed. Does that mean, Michael and Tom, that you will help Greg and do this offline and bring something to us next Wednesday?

Michael Graham: I'll help out. I'm going to have a little bit of travel in the next week but over the weekend if we can hack into this I think we can get it done.

J. Scott Evans: Okay.

Greg Shatan: This is Greg. I'd be happy to take the first crack then circulate it to Michael and Tom for improvement.

J. Scott Evans: Okay. Okay. All right that looks like a plan. It looks like...

((Crosstalk))

J. Scott Evans: ...a plan.

Greg Shatan: We will take it back to the woodshed and hopefully return it viably improved.

J. Scott Evans: I note that it's 20 after the hour so I think I'm going to forego going to Agenda Item Number 3 and suggest that we begin next week with deliberations on Deliverable 1.

And I think Marika has - and Mary both - have circulated some materials that you all should look at that are designed to stimulate a robust and fruitful discussion. So I would ask during that time that you do that.

And perhaps the best thing to do is - and I'll leave it to Mr. Gomes, since he's going to be leading the call, is - that I would suggest that maybe we want to think about putting the discussion about the principles at the end of the call so that we spend the first hour actually talking about the Deliverable Number 1 so we can kick that off. And then we can circle back to the principles later in the call. But he will be the chair so I will leave that to his wise discretion.

Is there any other business? Oh, Greg Shatan, just so you know if you didn't see in the text chat room James Bladel said he'll also volunteer so if you'll include him on your list of the initial redraft?

Greg Shatan: Thanks. So we'll go from the three musketeers to the four horsemen. Very good.

J. Scott Evans: Yes - of the apocalypse.

Greg Shatan: Hope not.

J. Scott Evans: So with that - is there any other business? Okay. I would thank you all for your time. Hopefully we'll kick off looking at Deliverable Number 1 next week and we will also look at the revised language that Tom, Jim, Greg and Michael will be crafting for us. Thank you all very much and have a great day and a nice weekend.

Greg Shatan: Thank you all.

J. Scott Evans: Bye.

Marika Konings: Thanks. Bye.

Nathalie Peregrine: Thank you very much, Melissa, you may now stop the recordings. Thank you.

END