

**Policy & Implementation Working Group Meeting
TRANSCRIPTION
Wednesday 17 July 2014 at 1900 UTC**

Note: The following is the output of transcribing from an audio recording of the Policy & Implementation Drafting Team meeting on Wednesday 16 July 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-20140716-en.mp3>

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

Attendees:

Alan Greenberg – ALAC
J Scott Evans – BC
Phil Karnofsky – IPC
Tom Barrett – RrSG
Cheryl Langdon-Orr – At-Large
Stephanie Perrin – NCUC
Michael Graham – IPC

Apologies:

Olevie Kouami – NPOC
Chuck Gomes – RySG
Wolf Knoblen – ISPCP
Klaus Stoll - NPOC

ICANN staff:

Marika Konings
Mary Wong
Steve Chan
Terri Agnew

Coordinator: All recording lines have joined the conference. Thank you.

Terry Agnew: Thank you.

Good morning, good afternoon, and good evening. This is the Policy and Implementation Working Group Call on the 16th of July, 2014.

On the call today we have Michael Graham, Cheryl Langdon-Orr, Phil Karnofsky, Alan Greenburg, J. Scott Evans, Tom Barrett, and Stephanie Perrin.

We have apologies from Chuck Gomes, Olevie Kouami, Wolf-Ulrich Knoblen, and Klaus Stoll.

From staff we have Markia Konings, Mary Wong, Steve Chan, and myself, Terry Agnew.

I'd like to remind all participants to please state your name before speaking for transcription purposes.

Thank you very much, and back over to you, J. Scott.

J. Scott Evans: Hello everyone. This is J. Scott. I want to welcome you to our meeting. This is the July 16th meeting of the Policy Implementation Working Group.

We've just had a roll call. I would ask if anybody has any changes to their Statement of Interest.

Michael Graham: And J. Scott, I will have one. This is Michael Graham for the record. I will be submitting that by the end of the week.

J. Scott Evans: Okay, great.

Okay, I also note that I went in and looked at mine recently and it had been updated but it had not been - they had just reprinted a lot of the old information, so I would suggest to everyone that it might be a good time in the next week or so just to go back through. It's listed on our Wiki under the members of the working group. You can click on it and it'll lead you to your Statement of Interest.

You have to login to make any edits, but I would suggest that you know, you might want to look at that. They still had me as a member of the IPC and I'm a member of the Business Constituency, and little niggly-naggly things like that. They hadn't updated some things.

So I would just suggest that we all do that.

Last week we had spent some time going over the summary overview for Deliverable 1. It was a draft lessons learned that we were looking at, and there was considerable discussion on it. And based on those discussions, I think it was (Greg Shatton) that had raised a point that got a great deal of debate between several of our members.

And you can see that Marika has gone in and has made some adjustments to the wording in accordance of those discussions.

For the record, the major revision was to Item 3, which now reads, "If another entity, for example working group or drafting team, is tasked by the GNSO Council to develop policy guidance, clear guidance needs to be provided by the GNSO Council on how recommendations are to be adopted if different from the standard methodology for making decisions, as outlined in the GNSO Working Group Guidelines."

Which, as you all know, is a consensus-based model, and so I think this is just saying if there's a group that falls outside of that and it's not going to take place in that formalized structure, it needs to be clear how decisions are going to be made so that everyone is very clear on that, both within the group and also for transparency purposes, to the community itself.

Then also there was an amendment to Number 11. The term iteration was deleted I think on somebody's suggestion that that - they weren't quite clear with what that meant.

And so I think we just put in a more - you know, additional wording that we hope would clarify what we meant, and that is to allow for feedback and revisions as guidance is developed, if it's needed.

And so this was circulated to the full group I believe Monday afternoon and Pacific Coast time, evening for Marika, who is circulating it. And everyone was asked to review it and put in any comments.

I didn't see anything on the list. I do realize that two of the participants who were having the majority of the discussion amongst the various points are not here with us today, so I would ask the group does anyone have any additional comments with regards to this list. Understanding, that this list is by no means you know definitive.

As we go through this process, if we believe that there are other lessons learned and we can add things to this list at any time. I think that that's what the parenthetical at the top of the paper is supposed to indicate.

And I see that Stephanie Perrin has raised her hand, and with that I'm going to recognize her.

Stephanie Perrin: Thanks very much. Can you hear me?

J. Scott Evans: We can.

Stephanie Perrin: Hello?

J. Scott Evans: Yes?

Stephanie Perrin: Wonderful. I've been having troubles with it lately.

So I may be opening up something that you have discussed over the last couple of months, because I have not been attending because of being

overloaded with the EWG work. But, I'm now back and I bring a number of questions from that EWG process, the expert working group on Whois replacement.

And I gather Item Number 3 speaks to it, but I mean after a year and a half of working on this, I'm still unclear how the guidance that we provided is going to be - or should be, or was expected to be adopted, discussed, implemented? That's question number one.

And question number two, a lot of the material that is in that report that looks like implementation is wholly embedding policy.

So apologies for bringing up something you've probably dealt with over the last few months, but if somebody can (unintelligible) what's going to happen and how that little phenomenon fits, I'd love it.

J. Scott Evans: Alan?

Alan Greenburg: Stephanie usually asks really good questions. I don't have any answers for that, but it's not applicable to number three, and it's not applicable because of the wording saying if a workgroup is tasked by the GNSO Council, then the GNSO Council has to provide guidance as to how it should do its work.

So your questions are completely reasonable, but I don't think are relevant to this particular point.

Stephanie Perrin: So basically because the GNSO Council did not task it, the Board did, that makes the expert working group - where does it put it? Which constellation is it revolving around?

Alan Greenburg: It's - I can try to answer. It's Alan.

It's outside of the GNSO purview in terms of what it did. Now the output from the expert working group is now going to be fed into a process in the GNSO, presumably a PDP, but I wouldn't presume to make - you know, say that's how the GNSO's going to react.

It's a process which if indeed we follow the expert working group advice, it's going to be a rather complex PDP because not only is it going to have to be a PDP that's going to be implemented, it's a PDP that's likely going to require significant software implementation (unintelligible) in the middle of that implementation. And those things always generate policy issues, or almost always generate policy issues as part of the process of doing the detailed design.

So how the expert working group is going to evolve, whatever work we do, if we do it soon enough, will influence how that is going to be handled, but it's not entirely clear what that - how that is going to be now. Until the GNSO starts talking about it, I don't think we'll know that.

I mean, it's almost surely going to generate a PDP. It's the only major tool we have in the GNSO.

J. Scott Evans: Thank you, Alan.

Marika?

Markia Konings: This is Marika.

First of all, agreeing with Alan that indeed the EWG falls you know outside of the scope of what we're looking at here as it was separately initiated, but I did want to clarify, as triggered by Alan's comment, that a PDP on the topic has already been initiated. And basically, how the EWG came into being was that the Board at the same time as requesting for an issue report on the topic also formed the EWG to look at this issue.

And the whole idea is that as a kind of expert group, their report will basically feed into the final issue report which would then go into the phase where a working group would actually start looking at all the information, including the EWG recommendations, and see how that you know can potentially result into policy recommendations.

And I think where we're currently at is that we - well, we have the EWG report. We have the preliminary issue report. So, we now need to see how those two tracks come together and as well - and that's a discussion that has already started as well at the GNSO Council level how to break that into you know potentially pieces that are digestible and are able to go through a PDP process.

So I just want you to know that that PDP is already kicked off as such as that was a Board-initiated PDP. We're now more at the phase of looking at how all those pieces come together and how the expert working group input feeds into that process.

But again, I don't think it's specifically relevant to what we're looking at here, because here we're really looking at GNSO policy guidance process that would you know deal with or address issues for which a PDP would not be required.

And I think as we're looking at the topics at the EWG address, that those clearly fall within scope of potential contractual changes. So you know, would be required to go through a policy development process.

J. Scott Evans: Okay, thank you. I see that Stephanie feels like some of this explanation has been helpful for her.

So at this point, I look at these and I think that they look to be in fairly good shape. However, given that two of the people who were most vocal on last

week's call are not here, and these were only circulated for a couple of days and it is high vacation system - season for most folks around the world.

I suggest that we, Marika, circulate these at the end of this call with the admonition that they will be considered closed out. We will not be revisiting them wholesale on every call, and any comments or concerns need to be raised via the list.

Does anyone feel that that is inappropriate or agree or disagree with that course of action?

Cheryl agrees.

I'm not hearing any protests. I'm seeing agrees come around, so we'll do that. Is that all right Marika?

Markia Konings: Yes.

J. Scott Evans: Okay, good.

So I guess now we can put up the Deliverable 1 chart.

So let me - I'm going to have to increase this for my old eyes.

Okay. I want to remind everybody, because as Stephanie indicated, she, along with some others, have not been here for all of our discussions, so I just want to remind everyone about what our Deliverable 1 is at a high level so that when we go down and we look at these questions we sort of are keeping in mind what our overall umbrella issue is.

Because, we spent a lot of - weeks in the weeds, and now I want to take us back up and - before we delve back into the weeds and look at sort of where we are.

So if you'll see at the top, there's this Deliverable 1. It's to propose a process for developing gTLD and other ICANN policy in the form of GNSO "policy development process", "policy guidance", and proposed criteria for determining when each would be appropriate.

So, that's our overall task here. So look at these questions and then decide you know what's the process for determining when something has to be a PDP or when something is just getting policy guidance. And then if it is getting policy guidance, then you know, what that process should look like for providing the policy guidance.

So with that, just does anyone have any questions or concerns with that deliverable or - okay.

With that, let's go down to questions in the far left hand column, and everyone, you can control your own page. So if you need to make it bigger, if you look down at the bottom, there are page - tells you which page we're on. The arrows will take you to the previous or next page. And, you can increase the size if you need to increase the size of what's in the screen.

So we want to go down to D in questions in the far left hand column and - so what we are going to do now is we need to have some discussion on these questions. We've done A, B, C, but now we need to look at D, E, and F.

And so the first question on D is what lessons can be learned from past experience? And I think we have identified those in the previous list of 13 identifies the lessons learned. That's my take. Does anyone disagree or think that there's something else?

Okay.

So - yes, Alan?

Alan Greenburg: I don't think that was a question asked in its own right. It then breaks it down into five subquestions.

J. Scott Evans: Right. It does.

Alan Greenburg: But, we really need to address the five subquestions first then see if they address the overall question.

J. Scott Evans: Okay.

So the first subquestion is what are the consequences of an action being considered policy versus implementation?

If you want to look at the chart that's in the Annex that is the last page of this document, you may have to blow it up even bigger than you've done everything else, you can see that for the new gTLD process and from the staff paper, they put in a chart that sort of showed how they dealt with this issue on the - from a staff perspective.

So you see that you've got a proposed action, and then they look at that proposed action and they ask some questions with regards to it. And depending on the question that was answered, how that question was answered was how - the track that it proceeded down.

Now this was not a formal GNSO process. This was just within the staff I think.

Alan, is that a new hand?

Alan Greenburg: It is a new hand.

J. Scott Evans: All right.

Alan Greenburg: Well I - there's subtext in this question which is not said, and the question is who's doing the considering, and I think the answer is different.

If something is considered policy by anyone, then it's going to generate a - require the GNSO to act on it through some mechanism, perhaps yet to be determined.

If something is considered implementation and everyone agrees, then it gets implemented.

If everyone doesn't agree, I think our experience is all hell breaks loose.

So the answer is different depending on who's doing the considering.

J. Scott Evans: Right.

Michael?

Michael Graham: Yes, Michael Graham for the record.

I agree, and Alan's point is exactly right. I mean it's who is making that consideration of whether or not its policy or implementation, and triggering you know the response?

I think you know from past experience, we all know that if something is arguably policy or implementation, that's sort of a third category that gets us all into a discussion of that rather than the actual policy or the implementation.

And I guess my thought is in asking the question, you know since the consequences of the debate as to whether or not it's policy or implementation

is that it holds up appropriate implementation and also you know threatens to create policy outside of a normal PDP.

My, I mean, question which is not from past experience I suppose then becomes, well, who should be watching over this? Once there's a policy we know where that goes.

But once implementation occurs, who is it - who is or should be considering whether or not it's policy or implementation?

I'm afraid I'm getting ahead of the discussion, but I think we can put in a sort of a capsule of the consequences of it being questioned as to whether or not its policy or implementation is that it holds up everything.

J. Scott Evans: Okay. Okay.

I would ask that - I just need a clarification. This is J. Scott Evans for the record. And then, I'll get to you, Cheryl.

Alan, did you - were you stating the reality or were you stating the aspiration that anyone - when anyone decides its policy it has to be considered policy? Or is it just without a defined process, that's where we are now? I'm just curious as whether you're saying where we need to end up or where we are now?

Alan Greenburg: That's an interesting question.

I mean, we - issues have come up in the past where someone said we need a policy process to determine this, and other people have said why? This has always been implementation. It's always been handled as implementation. Does anyone really see a reason why it needs to be considered policy?

And although I can't remember a specific instance, I suspect we have dropped it as policy because no one saw it as policy even though it was hypothesized that it was.

You know, presumed by someone with less of sense of history.

So I would guess that yes, the GNSO in its wisdom could say this is not policy and then it reverts to implementation.

J. Scott Evans: Okay. Cheryl?

Alan Greenburg: But short of that, if...

J. Scott Evans: Okay?

Alan Greenburg: ...someone thinks its policy and the GNSO doesn't agree - doesn't disagree, then it is policy.

J. Scott Evans: Okay.

At least at this stage without some sort of formal way to determine it. Okay.

Alan Greenburg: I think there's always going to be judgment calls in these things.

J. Scott Evans: Right.

Alan Greenburg: I don't think we're ever going to quantify it to such an extent we can feed it into a computer program.

J. Scott Evans: Okay.

Cheryl Langdon-Orr: (Unintelligible) boys. Give the girl (unintelligible).

J. Scott Evans: Come on Cheryl.

Alan Greenburg: Not without a stronger (unintelligible) than people are claiming we now have.

Cheryl Langdon-Orr: Alan, stop it. Cheryl here for the record.

J. Scott Evans: Yes.

Cheryl Langdon-Orr: It's interesting because you two have actually been discussing exactly why I put my hand up, because I - the question being, (unintelligible) had these consultation mechanisms be updated to take into account input from other ACs/SOs and the public?

I think where this conversation was heading is we ask, there is a standard question or standard trigger, and that's two different directions. You can ask the other inputters, ACs/SOs and indeed public, if any of them care, "Is it in your opinion - is this matter in your opinion new policy?" Because, optimists will come out of the development of policy or implementation.

Or, you can take the lie quietly and hope nobody notices approach but have a rule that says if someone, and that's where you were coming from J. Scott - if someone declares that in their opinion it is in fact policy or I guess declares its implementation, that that then triggers a discussion to develop a consensus, and that may only be a small survey or some form of testing whether it's just one outlier or is it a genuine ceiling a Cross Community -- with a capital C under that circumstance -- view?

We've got to be able to come up with a mechanism that allows it to be flagged and dealt with because if it's just an outlier, one or two groups and/or individuals getting their knickers in a knot about it, as Alan said perhaps with a lack of history, then that's something that can be repatriated, repaired, remediated, and dealt with because you just educate those people. They understand. They agree hopefully. And then, we all move on.

But if it's not, if it's the feeling of a wedge and what you are suddenly going to end up with is wholesale dissatisfaction because the belief is it is policy not implementation, then you might as well deal with it earlier in the process because it's going to be a problem to you later in the process anyway.

So - and really I mean, that's one of the reasons that we're all here in this working group because it's become a bit of a hassle doing that.

So I'd be suggesting that what we need to do is say we do need to deal with this Question 3 under D and therefore say a triggering mechanism which can be proactive or reactive needs to be in place, and a response to such a triggering mechanism needs to occur.

And now I'll shut up. Thank you.

J. Scott Evans: Okay, Tom?

I'm sorry, Stephanie, I apologize, and then we'll get to you, Tom.

Stephanie Perrin: Yes, can you hear me?

J. Scott Evans: Yes, ma'am.

Stephanie Perrin: Thanks.

I think in a way I'm kind of following up what this conversation has been dealing with. And again, caveat; I'm basing my observations on EWG, which was different and struck to break a log jam, and therefore presumably somewhat different, and on the privacy/proxy services accreditation working group, which I'm told is a typical working group.

But the thing I'd like to point out is definition. In my history, which has been you know on policy development and on standards development, you can spend easily a year arguing about definition. And on both of these working groups, we went ahead and did things using terms that weren't defined. And I'm puzzled - I'm scratching my head about this because I think it's abnormal. You would not get away with that in a - well, let me point to the cryptography policy working group where we had 100 guys show up to fight about definitions. That doesn't seem to happen as much at ICANN, possibly because there is so much emphasis on moving fast and getting things in (unintelligible). Is that possible?

But if you implement something without having agreed on your terms, let me point to privacy and proxy services, then what you're saying doesn't make a whole lot of sense.

J. Scott Evans: Okay.

Tom?

Thomas Barrett: Yes. I guess I have a slightly different take on this, and I - you know, I think if you take implementation separately, then someone is always going to find policy issues within how - if something's being implemented. So I would rather take it differently and first ask is something being implemented consistent with a defined policy?

And if it's not, then are new policy issues arising from that?

So in terms of the consequences about what's considered policy versus implementation, I think we have to first make sure that we - someone is verifying that the interpretation of that policy into implementation is consistent with what people expected.

And then if it's not consistent, they can ask is it being implemented in a way that gives rise to new policy?

J. Scott Evans: Okay.

So in - and this is J. Scott for the record.

Let me pose a question, and then I'll come to Alan, to Tom. Under the GNSO policy for new gTLDs, there was a policy that said that the new gTLD program would contain adequate protections for third party rights.

And out of that came the URS, the trademark clearinghouse, the - and the claims service.

Now you asked your question is this being implemented consistent with a policy recommendation?

Thomas Barrett: Right.

J. Scott Evans: Yes, but there are a great many people who thought that all of those things were policies. So (unintelligible)...

((Crosstalk))

Thomas Barrett: (Unintelligible) very specific - a specific example there, J. Scott, was you know whether the policy was simply as you state or if it was more specific and talked about you know exact rights or exact strings?

And so there was - the question is wouldn't that - when that rights protection was expanded to include strings that were subject to UDRPs, was that implementation or was that making new policy?

J. Scott Evans: Yes. I think as it expanded, but I - so I was just saying that I see that that may be a very simplistic way to go about it because I think an argument could be made by those that that question could be answered differently depending on who was answering it.

I'm going to see Alan and then Marika.

Alan Greenburg: Why don't we let Marika go first?

J. Scott Evans: Okay, Marika?

Markia Konings: Thanks, Alan. This is Marika.

So one of the comments I had, I know we've been talking about you know the Council role in this, but I think the recent reality of you know policy development, the Council has delegated that responsibility basically to implementation to (unintelligible) teams. And they're basically specifically tasked to closely follow along with staff as they implement the policy recommendations to verify that the implementation is conformed the intent of the policy recommendations in the first place.

And also, specifically outlined in the PDP manual there's a - you know, a training mechanism by which an implementation review team can actually go back to the Council and advise that the policy is actually not being implemented as was intended, and you know staff is either going too far or not far enough in line with the recommendation.

And, that again has a triggering mechanism that the Council can initiate by going to the Board and basically asking the Board to hold off on implementation until there is clarification on what is going on.

So I think to a certain extent as we're looking at implementation review teams, you know as one of our deliverables, I'm expecting actually that part

of that conversation will actually happen in that context because what is at the same time also very true is that there is not a whole lot of detail or rules around implementation review teams.

For example, we haven't specified anywhere whether - you know, should there be a consensus at the implementation review team level before something gets deferred back to the Council? Is it one person that can raise their hand and say, "Hey, I think this is you know actually policy what staff is making instead of implementation."

So I think that's where probably more on this conversation will happen as well. And you know one of the questions actually asked in the preparatory call is - and as - you know, as one of the objectives of course of this working group is to have clear processes and frameworks in place.

Doesn't that in the end of the day still matter whether something is policy or implementation as long as we also conform (unintelligible) all the processes in place are you know based on multistakeholder, you know, bottom-up conversations and input hopefully at a certain point in time and don't need to comment anymore on this is it this or is it that? But exactly which process are we going to we going to use and do we (unintelligible) that all stakeholders can have their views expressed and we follow a clear path that is you know predictable and transparent for anyone that is either affected or impacted by the issues that are being discussed?

J. Scott Evans: Okay, thanks Marika.

Alan?

Alan Greenburg: Thank you.

A couple of things. On the issue that Stephanie brought up on definitions, it may well be that the expert working group proceeded to talk about words

without defining them. My recollection is in fact it did do some definition, certainly on - well, I may be wrong on that. That's my memory.

PDP working groups that I worked on over the last couple of years have either blundered into doing definitions or being led into it or required to do it based on the leadership. Certainly, this group at - and I was the one who pushed in that way, did do a lot of definitions.

The locking PDP that I was heavily involved in did definitions. We realized that we would - I mean we realized as we went along that we were using words that were not defined, and that was one of the problems, that people were implementing them different ways because they weren't defined.

And so I think we're starting to understand that definitions are critical and have to be worked on. So there may well be cases where they're not being done properly, but I think that's something that we're on a path to fixing.

And certainly going back three, four years, definitions have been a very significant part of the work that a good number of PDPs have done.

On the issue of - you know, going back to the elephant in the room, the new gTLD requirement that there be adequate protection, and we don't define the adequate, has led to pretty much everything that we've - that's blown up over the last little while, or at least much of it, including the existence of this working group itself.

And I think it becomes critical that the gTLD PDP very, very clearly did not try to define things in detail and left it as implementation.

As a result, the - as J. Scott said, the trademark clearinghouse, the URS, and all of that were developed as implementations. The special - I don't remember the name, the STC?

J. Scott Evans: STI.

Alan Greenburg: Yes.

If you go back to the report that it generated on the first page, it says this is not policy. It is the implementation, and therefore everything that followed out of it was implementation.

So the discussion of whether the Trademark +50 was implementation or not, which again led directly to this working group, was something that people did not think about because if that STC working group or SCI working group, sorry, had in its wisdom said Trademark +50 is one of the things you can put in the trademark clearinghouse, it would've been cast in concrete as an implementation practice.

You know, that group didn't make that decision, and therefore it caused a lot of problems.

So the new gTLD process consciously set the level differently than normal for policy versus implementation. It consciously walked away from it and said, "We're not going to set things in more detail than this." That may in retrospect have been a bad mistake and we probably won't do something like that again.

J. Scott Evans: Thanks, Alan.

So then I'll - moving to the next question, why does it matter, or something policy or implementation, from listening to what Alan just had to say -- this is J. Scott for the record -- what he said at the end was you know if this group had made that determination, there would've been no question about it if the STI had.

So it looks like that is the importance of being policy or implementation who makes the decision? Is that the importance? Is that why it matters?

I ask that to the group.

Marika, is your hand up?

Markia Konings: Yes.

J. Scott Evans: Please.

Markia Konings: So this is Marika.

It's partly as well in response to what Alan was saying before, because I think as well the whole conversation that happens, for example in the Trademark Clearinghouse +50 -- and again this is my personal feeling -- is it completely distracted by the question of is it policy or implementation. If the Council believes that it was policy, they should have just initiated a PDP instead of actually debating whether it was policy or implementation.

They could've just said, "Look. We're going to initiate a PDP and do policy development on this one because we believe that this is a policy issue that we want to address."

But instead, I think everyone got distracted by actually the chicken/egg conversation. While I think again, and it's coming back to the point I made before, if we had clear processes in place, hopefully we don't need to discuss anymore whether its policy or implementation. Council will just define, you know, this is the process that we're going to use to interact with this question.

You know, whether it is policy or implementation, we have a clear path that we're going to take and we don't need to debate starting out with that whether something is policy or implementation because I think as many people have

said, it's sometimes in the eye of the beholder. And you know what the answer the question may be. But as long as there is a clear path that can be taken to address various questions that indeed all of them have this component of everyone being able to express their views, there's a you know component of public input, consultation, opportunities for others to provide input, a way of you know confirming or endorsing that result at the end and a certain response or reaction that comes from the Board; hopefully, at that stage it doesn't matter anymore.

Indeed, whether - you know, but the question is that you have a framework in place to deal with that.

J. Scott Evans: Okay, thanks Marika.

Alan?

Alan Greenburg: Yes. I was drifting in the same direction.

If we're talking about post this PD - this working group, and assuming the outcomes of this working group are adopted and accepted, then it almost doesn't matter because we're saying the community must be involved in the implementation also.

However, the difference comes in whether it's policy implementation in terms of the depth, and the detail, and the rigor that we put into making decisions.

So it's going to matter, but it won't matter nearly as much as before. And, I think Markia hit it on the head that if indeed everyone on the GNSO thought it was policy, then it should've had a policy process around it. Unfortunately, the GNSO was rather divided and it's not clear what would've happened if we had gone down that path. It may well have become a policy process because it - the threshold's pretty low to do that.

I may be glad that no one thought of it at the time.

J. Scott Evans: Okay, thanks Alan.

All right, let's move to the next question, which is -- this is J. Scott for the record -- under what circumstances, if any, may the GNSO Council make recommendations or state positions to the Board on matters of policy and implementation as a representative of the GNSO as a whole?

Looking at - this is J. Scott. Looking at what's been done in the past is it was - when we were asked specific questions - the GNSO Council was asked specific questions and the Council provided a written response, that the Council developed consensus around. Is that not what we saw when we saw that - when we went through the specific chart with regards to this and came with our lessons learned, Marika?

Markia Konings: Yes, this is Marika. Again, I think there were some nuances around where we had certain positions where indeed there was disagreement, but I think indeed - in general, this is the kind of situation where the Councilors that are on the Council, they're representing their stakeholder groups and constituencies.

I think part of the assumption is that in certain discussions that indeed if there are no objections raised or made to a certain position, that reflects the view of the GNSO as you know Council members are there representing the different groups.

And we in instances why people had raised a flag and said, "Okay, we're not going to follow-up with this yet. We need to discuss this with our groups or either come back with suggestions."

But we did see as well one example where indeed there was disagreement. There definitely was no unanimous consensus, and I think in the end there

was a vote on the - I don't remember which letter, but a certain letter where I think in the letter the opinion that everyone supported it.

So I think in those circumstances the question is indeed, you know, does that then - can the Council speak on behalf of the GNSO or indeed if it's clearly reflected what the level of support was and just follows the same rule as on any other motion that is voted on, you know where in certain cases that simple majority and you know it passes.

And in other cases it may be super majority, so should that work the same way in developing these kind of positions? You know, do you have a simple majority voting threshold and that flags the GNSO position? Or, do you need something else in these kind of circumstances?

J. Scott Evans: Okay, Alan?

Alan Greenburg: Thank you.

As rules stand right now, the - I think the answer to this is under what circumstances? Circumstances is all circumstances except when the recommendation is a Consensus Policy, capital P, capital - capital C, capital P, and (alterous) contracts, in which case the bylaws mandate that you must go through a PDP.

In all other cases, I believe Council has the right to do this, and Marika you know made it pretty clear that Council is simply composed of, with exception of the Nom-Com appointees, representatives of the various stakeholder groups.

Now I think one could ask further however should it be able to do that. And if so, with what kind of majority voting? Is simple majority sufficient? Does it have to go out for public comment on certain classes of decisions? Those questions I think are fair game.

But certainly as it stands right now, any recommendation of the GNSO Council is a recommendation of the GNSO, and you know that's why the GNSO is there to make formal decisions that have the weight of the GNSO behind them.

J. Scott Evans: Okay, thank you Alan.

I think the question of -- this is J. Scott Evans -- what voting threshold is an interesting one, and it's one we should consider, because I do think - you're talking about speaking for the entire GNSO. And you know, when there's not unanimity, you may want to have a pretty high threshold you know in those instances.

So let's do one more question for today. I think we've already - I'm sorry, Marika, I didn't see your hand. Go ahead.

Markia Konings: Yes, this is Marika again. There's just one point I wanted to make to this specific question because I think it's a valid one as well as we're looking at you know developing this policy guidance process, and I think we just spoke about it before indeed, is that if we develop a process that creates certain obligations as well on the Board to respond, what indeed would be the appropriate voting threshold?

Are we looking then as well you know at a super majority vote? You know, something in between simple majority and super majority? Or, is this also just a simple majority vote? So I think it's an important question that everyone probably should give some thought. And as we you know start probably mapping out how - what such a process should look like, indeed think as well about what would be reasonable you know in light of that you know such a process would potentially trigger you know the kind of reaction or response from the Council - from the Board.

So I think we do want to make sure that its seen as something that does indeed have a certain weight and indeed represents really the voice of consensus at least of the Council versus something that may just you know slip through because it has the - just enough people on board to get it passed.

So I just want to flag that. I think that is one of the issues where we kind of do need to get back to it at some point and you know have people start thinking about that.

J. Scott Evans: Thank you, Marika.

So let's do one more, and I think we've already discussed this. This is J. Scott for the record. And a couple of times earlier. Question D, how do we avoid the current (morass) of outcome-derived labeling for - that is, I will call this policy because I want a certain consequence.

And as I've heard in our discussions today, it seems to me that the way to do that is have clearly defined processes, and in each of those processes it be set out that there's a - you know, an ability for community input into those processes so people don't feel like they've been left out of the consideration process and eventual recommendation.

Michael?

Michael Graham: Michael Graham.

J. Scott, I agree. I think it's essential that there be established processes, and I think at this point, too, this is an excellent place where something like an IRT can form an essential role.

I think at the same time, we will probably - as long as we have differing ideas and such, and different goals in the processes, we will never get away from someone claiming this type of thing.

But I think by putting in as a matter of course requirements and the ability for the community to take part in those, that we address it in a way that is answerable going forward.

J. Scott Evans: Okay. Thank you, Michael.

Cheryl Langdon-Orr: Hey, J. Scott sorry, I'm driving. Cheryl here. Sorry to jump in.

J. Scott Evans: It's all right.

Cheryl Langdon-Orr: I just want to agree totally with what's just been said. As one of the reigning queens of process, I'd be delighted to hear where this conversation's going. I really do think that process is the answer here and it needs to be pre-established and clearly defined with a lot of common understanding. And that's very much where I'm assuming this work group will start making Guidelines together, and that should be again capital G Guidelines strongly recommended to follow, if not actual rules.

To be honest, GNSO (unintelligible) probably can see looking at these as rules rather than guidelines, although I know that they are GNSO rules.

And now I'll go back onto mute again.

J. Scott Evans: Okay.

Well with regard to that, I'm going to suggest that we ask staff to do something that we'd talked about in our London meeting, and that is to put together sort of a decision tree that we can begin to look at that would sort of

pass this through a flow - a work flow and - that we can look at with regards to this, and then we can begin to then refine.

And then from that, hopefully develop a recommended process for this that hopefully will take into consideration many of the concerns (and) answer in a positive fashion, or at least in a more efficient fashion some of the questions we've been asking ourselves today.

So if that is something that we would - everyone would be willing to you know let staff take an additional - and I don't mean additional - an initial draft for us to consider so that we can then begin to spur our conversations off something a bit more concrete?

And then once we are you know satisfied with the decision tree, then begin to build a process that works off that, and describes and clarifies how each step in that process would work. Does that sound like - I see that Stephanie is agreeing with that.

Stephanie Perrin: Yes. Yes. Yes.

J. Scott Evans: Okay. And Michael.

So that's what I would suggest. And then I think that we can do that.

Now lastly, I want - we're not going to have time to do it today because I want to hold us to our timeline, but we have received comments from three groups. Received comments from ALAC, from the registries, and I can't remember the third group. I'm - and we just discussed it in the call before, but there were three groups - oh, the ISPCP. We all received - we sent out some questions to them. We received some feedback, and I'd like everyone to consider teams of two or three that would agree to look at these comments and see if we have - go through these questions and see if we have answered - you know, they - we've considered the things they've raised or if we need to

incorporate them into this document as things that we should remember as we move forward?

And, I would like you all to think about that for our next call so that we can do that if we - so that we can move this work forward.

And hopefully, Markia, do you think you could have an outline for the beginning of a decision tree for us by next week?

Markia Konings: This is Marika. I definitely hope so.

J. Scott Evans: Okay.

So that's where we'll start. I'd like to start next week with assigning those groups and then to start looking at this decision tree.

Is everyone...

Cheryl Langdon-Orr: J., you've got Cheryl here. You're going to put that assignment of groups - teams of twos to the list aren't you, because you don't have a whole lot of people here today.

J. Scott Evans: I'm sorry, Cheryl, I didn't understand what you were saying.

Cheryl Langdon-Orr: I was saying with the assignment of teams of two to the comments review, you're going to put that to the list aren't you because you don't have (unintelligible)...

((Crosstalk))

J. Scott Evans: Absolutely. That will be to the list. That will be to the list. And I would ask you all to be considering it as well, yes, because there are only - we're -

unfortunately I'm a little disappointed in our turnout. But again, it is heavy vacation season again, as I mentioned at the beginning of the call.

Alan, I see your hand.

Alan Greenburg: That's in error. I'm not sure when it went up, but I will make a snarky comment. I didn't think vacations were allowed from GNSO working groups?

J. Scott Evans: Oh, ha-ha-ha.

So that's where we are. We'll meet again, and this same time next week. I thank you all for your time.

I want to really thank everyone, especially Stephanie who's new, to attending on a regular basis, for jumping right in and asking hard questions and making us think through things that we may have already felt were thought through. It's always good to be challenged.

And to Alan and Cheryl for their input, and Michael.

And let's look forward to next week on starting to hammer out outlining a rough outline for a process and considering the comments we've received from the various groups so we can wrap that into our work and then move this to the next step, okay?

Stephanie Perrin: Thanks, J. Scott.

J. Scott Evans: Thank you all.

Woman: Thanks. Bye.

Man: Thanks. Bye.

Woman: Thank you everyone. Bye.

Terry Agnew: Once again, that does conclude today's conference call. (Marcella), if you could please stop the recordings.

Coordinator: Certainly.

Terry Agnew: And thank you everyone for joining today's conference.

END