

**Policy & Implementation Working Group Meeting
TRANSCRIPTION**

Wednesday 23 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 23 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-20140723-en.mp3>
On page:<http://gnso.icann.org/calendar#jul>

Attendees:

Alan Greenberg – ALAC
J Scott Evans – BC
Tom Barrett – RrSG
Cheryl Langdon-Orr – At-Large
Stephanie Perrin – NCUC
Michael Graham – IPC
Olevie Kouami – NPOC
Chuck Gomes – RySG
Wolf-Ulrich Knoblen – ISPCP
Avri Doria-NCSG
Brian Winterfeldt-IPC
Greg Shatan-IPC
Anne Aikman-Scalese-IPC

Apologies:

Nic Steinbach-RrSG

ICANN staff:

Marika Konings
Mary Wong
Amy Bivins
Steve Chan
Terri Agnew

Coordinator: Your recording has now begun.

Terri Agnew: Thank you. Good morning, good afternoon and good evening. This is the Policy and Implementation Working Group Call on the 23rd of July 2014.

On the call today we have Alan Greenberg, Michael Graham, Cheryl Langdon-Orr, J. Scott Evans, Olevie Kouami, Tom Barrett, Chuck Gomes, Avri Doria and Wolf-Ulrich Knoblen.

Joining us late today will be Anne Aikman-Scalese. We have apologies from Nic Steinbach.

From Staff we have Marika Konings, Mary Wong and myself - pardon me - Steve Chan and myself Terri Agnew.

I would also like to remind all participants to please state your name before speaking for transcription purposes. Thank you very much and back over to you Chuck.

Chuck Gomes: Thanks Terri and welcome everyone to the call. I was pleased with the good progress you made the last couple of weeks when I was unable to join and compliment J. Scott and all of you for great work.

I think you can see the agenda in Adobe Connect if you're there. Avri can't see it there but hopefully you saw it before.

So the first thing we're going to do is go over the Processes Flow Chart that Marika kindly developed in response to a request last week and hopefully each of you have had a chance to look at that. But I'm going to ask her to go over that. And let me preface it, and I'm sure Marika will qualify this as well.

This is a very early look at a possible direction we could go, it's not in concrete. It's high level. But it may provide some context for us as we continue to get down - get closer to making some actual recommendations and so forth.

And I don't know. J. Scott, do you want to - I think you asked Marika if she could get this done by this week. Do you want to just make a comment or two in terms of what the purpose of this is?

J. Scott Evans: This is basically just a document to spur discussion so that - this is J. Scott for the record. I apologize. So that we'll have something to look at that would, you know, cause us to be reactive to something that I find that sometimes that's easier to get our creative minds flowing in one direction if we have something to look at. And we can either affirm or dissect or remove or adapt or revise as we see fit.

So this is merely just a working document, a draft, for discussion purposes, and you know, hopefully will lead us in a direction of recommendations.

Chuck Gomes: Thank you J. Scott; I appreciate that.

Marika, I'm going to turn it over to you. It's all yours.

Marika Konings: Thanks Chuck. And I think - so this is Marika. I think J. Scott already summed up quite well. This is really intended to be a starting point for discussion. So these are just some ideas that, you know, put on paper the kind to capture some of the discussion the rest of us had of some of the feedback that was received of the review at a different processes that the GNSO Council has used in the past as well as some of the principals that we derived from those.

From the basis of that, what you see on the screen looking at the first page basically is kind of what sets out, you know, the moment that either a request comes in or whether, you know, either it comes from the board or from another entity or at a moment where at a GNSO Council itself identifies an issue that it would like to deal with. And the idea is that at that stage, you know, the Council would have various processes it could choose from.

And basically, you know, part of that should be inspired by, you know, what is the topic at hand and what is the desired outcome. If the desired outcome is new contractual obligations from contracted parties, well then there's only one avenue to follow and that's a PDP.

If it doesn't concern or the desired outcome is not creating new obligations on contracted parties, well then there may be, you know, other processes to be chosen.

And as I said, you know, what we followed here is brought out on two potential alternative processes; one that we labeled a policy guidance process, and the idea would be that such a process could be used for requests from either the board leaning to concerns, clarifications or input or advice on existing policy recommendations. But again, where no new contractual obligations are expected or intended to be created.

It could also be indeed if the Council itself identifies an issue or if input from another entity may be requested.

And again, I think the idea is that depending on, you know, what the goal of the Council is or what they would like to achieve at the end game, they could chose one path or the other whereby the policy guidance process would have certain requirements that would need to be met.

But if those are met, it also has, you know, kind of prize at the end that it follows a similar kind of process to the PDP whereby the Board would be required to consider the recommendations and would need a certain voting fresh (unintelligible) to overturn those if it believes it wouldn't be of interest to, you know, ICANN or have secure or stability considerations.

While the other alternative path would be a more lightweight policy input process. And I think it's a little bit similar to what the Council has been using to date in, you know, responding or providing input, for example to, you know,

other groups or reports. And where again, there's some minimum requirements but less stringent or less heavy also from the adoption, and then has a more lightweight kind of response where there's no requirements to adopt the input of more requirements to, you know, recognize or acknowledge input received and ideally also provide a rationale if a group, or the board or whatever, it's directed to deviate from that feedback.

So if we maybe dive a little bit deeper into each of those processes. And again, I just want to emphasize, you know, these are just ideas that we put on the table to review in discussion.

So first of all, looking at the policy guidance process, you know, we've labeled it as a PGP. I know you just follow things as well. So again, you know, the term is open for discussion as well.

So they give a question. The first issue is, you know, at some point the Council decides to invoke a policy guidance process. And one of the questions would be, you know, what kind of role would be required for that. Is it similar as to when a PDP is initiated, you know, is it a simple majority vote? Is it a different kind of weighting? So that would be one of the questions the group would need to consider.

The next step or as part of that step the idea would be that the Council would define the scope of the effort, the mechanisms for developing the guidance; you know, should the drafting team be formed, is the working group, so that individual group of volunteers, that is taking place and making sure as well that that's part of that. It would ensure inclusiveness and representativeness, one of the principles you also identified.

So once that has been established, and again this could take the form of a formal charter. It may not need to be, again, those are some of the details where I think we hope to get some further discussion if the group believes that this may be inappropriate approach to follow.

Once has been established, you know, what the form or mechanism is to develop those recommendations, it would be a requirement on that group, the drafting team/working group or a number of volunteers, to reach out at an early stage to the different SOs and ACs to obtain input on the issues and may also involve experts to obtain input if they would deem that appropriate.

Based on that input, that group would develop policy guidance recommendations following GNSO working group guidelines unless defined differently by the GNSO Council. And again, I think this is also one of the principles we identified that would need to be made very clear how such a group or entity would actually do their work.

But the proposed policy guidance recommendations would need to be published for public comment for a minimum of 30 days. That would, of course, be already communicated and hopefully SOs and ACs and a broader community would provide input which would then be reviewed by the same group and update as deemed appropriate.

I presume as well a similar kind of guidance would be given that, you know, they would need to respond to comments or at least provide a rationale if they wouldn't agree or not follow input provided.

And then the final policy guidance recommendations would be submitted to the GNSO Council indicating the level of support received, you know, according to the designations in the GNSO working group guidelines.

GNSO Council would then review the guidance or recommendations and adopt those. And again, the question here is how would those be adopted? Would that follow similar process as currently the PDP rules would then need to be a super majority vote or are we looking at something else?

Those would then be submitted to the Board because this is assuming that those are input provided to the Board either at its own initiative or in response to specific requests by the Board which then would need to be required to actually consider the guidance for adoption.

And here again, this is a question where, you know, should a similar process be followed as what currently applies to the PDP. That if the recommendations are adopted by a super majority vote, it also requires - I don't know the exact amendment they're talking about but ensuring a level of board votes for that to be overturned if it's believed it's not in the interest of ICANN or harming security and stability.

So that's one, you know, possible avenue to look at a more lightweight process than a PDP but still with having, you know, certain checks and balances in place. That when the GNSO comes at the end of the process, it can say this is, you know, a multi-stakeholder developed advice or guidance that we presented to the board.

Then the process which you see in the page before, we labeled the policy input process, and as I said before, this is, you know, relatively lightweight approach. The Council can decide to invoke this process. It doesn't necessarily need a vote or that's one of the questions.

But I think if we look at some of the recent, you know, input of the Council has provided, that was more kind of the decision on a call, you know, do people object to writing a statement or preparing a draft and move forward. In certain cases, it may be a formal vote but it may not need to be a requirement.

So again I think, you know, there would need to be some kind of scoping of the effort and identifying how it would done similar to in the previous one. You know, the drafting team, working group or a number of volunteers would come together, develop some recommendations.

Here it's optional to have a public comment form. Sometimes there may not be time or there may be less of a need if it's really, you know, a Council position that the group is putting forward. Maybe there's no need to have public comment on it if input is provided through stakeholder groups or constituencies.

Those final input recommendations are presented to the Council, and again, this would include a designation of the support overseen from the people involved in drafting it. The Council would review it, adopt it either through a vote, or possibly no objection.

And I think again, this follows a little bit how we've seen, you know, recent letters that have been written where basically people are asked, "Is there any objections to (Jonathan) sending this letter?" There's not, they go ahead. If there is, maybe more work is done, more discussion is held, or indeed a vote is taken, and you know, the letter identifies what the feedback was or how the voting was done.

This would then be submitted to, you know, the Board or the other entity that would, you know, ask for input. And again, I think as this is a more lightweight process with less requirements, probably come and do either (unintelligible) requirement for others to take this on board as such as the end would be the more acknowledgement of receipt and ideally also, you know, provide a rationale of feedback if the input is not agreed with or not followed.

So those are, in broad lines, I mean some of the, you know, based on what we've discussed, I think what we've looked at, at some of the processes the Council has used in the past. And also very close in looking at some of the principles we identified that any process would need to follow in order for it to qualify for an alternative for the Council.

So this is what we've come up with to, you know, as a starting point for discussion. And I think we look very much forward to hearing your feedback

and these two processes to see where you think that is a possible direction to look at. You know, are we missing something important? Should there be only be one, should there to two, should there be a multiple process that we should be looking at? And I'll leave it at that.

Chuck Gomes: Thanks Marika. Alan, you're up.

Alan Greenberg: Thank you very much. Well first thanks to Marika. This is a marvelous piece of work and there's a lot of clarity and a lot of detail there that I certainly haven't studied sufficiently at this point.

Two scenarios that I want to make sure that we think about as we review these however. One of them is one that's been discussed an awful lot. It's a situation right now that we often at the end of a PDP put in as one of the recommendations that it be reviewed.

One of the possible outcomes of that is we find out it needs to be changed. That is we didn't get the recommendations quite right and a change needs to be made.

And I would like to hope that as one of the outcomes of our overall work, we have a way to address that, preferably without going through an entire new PDP to start it.

It's not covered under the current rules because this would be after the Board already has voted and has implemented but we need some sort of change. Perhaps one that almost all parties agree to but nevertheless we need to have it have the rule of law because it may well be a real consensus policy.

The second one is one that's just come up very recently, and I'll try to describe the generic ones. This is a PDP that's going on right now.

But there's one issue being discussed, which in my mind anyway, it's not quite ready for primetime. You know, it's almost a yes/no decision. Do we do something, do we not do something? And I think the answer is we don't do it right now.

And if the group agrees, then fine; we don't do it.

But it would be nice a year or two from now, if the situation has changed, to be able to change that decision. It would be a one issue relatively narrow thing that I would hate to have to apply the full-issue report PDP process too, but we need to have a way to go forward to make that kind of change.

So I'd guess I'd like in both cases, and they are quite similar, to make sure that whatever we end up with can address those kind of lightweight situations which may need the full weight of a consensus policy, you know, capital C/capital P Consensus Policy, but nevertheless wouldn't want to put a huge effort into doing them. Certainly not the kind of effort and overall timeline that's associated with a PDP.

So just something to think about as we go forward.

Chuck Gomes: Thanks Alan. Cheryl, did you (unintelligible)?

Cheryl Langdon-Orr: Hi, thanks.

Chuck Gomes: Please.

Cheryl Langdon-Orr: Hi, thanks. Cheryl for the record.

This comment builds on what Alan is talking about but specifically to the review part of the process. And again, Marika, this is terrific words and it's fantastic to have something to get juice is running on, and you know, chew out and start working and developing with. And this has certainly done that.

I wanted to also put a placeholder so I can come back to it through our process. And also erase something that I was going to bring up under Other Business but I'll bring it up now with your indulgence please.

In the call I was in yesterday which is the Non-PDP Working Group on Metrics, it was discussed, and I go the action item, to maintain the bridge or watch the brief role between that working group and this one.

That in some of our recommendations as we go forward in the other working group, that it may be the metrics that have measures that have been established early on in a process, possibly even out of issues report point in time, that a future measure will need to come back too to compare to, or the validity and effectiveness of a process or (unintelligible) outcome needs to be measured against at a recommended fixed point in time later. And so we thought that there may be a (nexus) between some of the work going on in the two working groups.

And it seems to me that rather than trip over ourselves, which may do but hopefully not, we want to make sure - J. Scott and Chuck - that we're both hitting in the same directions and working in complementary ways.

Certainly the metrics group is thinking that it's going to be very important to establish baseline (unintelligible) in measurable in a qualitative way very early on in processes regardless of whether they're PDP or non-PDP in fact at the issue report level. And this may work with what Alan was talking about with being out of comeback at a fixed point in future time based on the recommendation, even as a result of the process PDP or non-PDP, and make comparison measure and/or recommendation.

So we might just have another little note. So maybe Marika and Berry need to ensure that they exchange information from time to time or maybe, you know, all of the Chairs need to have a touch point at some point in time. But I think

we need to watch what we're doing with each other here. And I'll stop now;
thank you.

Chuck Gomes: Thanks Cheryl. Let's go to Marika.

Marika Konings: Yes, this is Marika. I want to come back to some of the points that Alan made.

I do want to note that as part of the PDP work team that they developed the PDP that we're currently operating on there. And we did have I think quite lengthy discussion on this concept of what happens after the Board has adopted a policy recommendation and there is indeed a realization that, you know, there is something little wrong or something little that should be tweaked.

Should there be, you know, a short or a different process that can be sued for that. And at that point, I think, I want to say the majority or most or I don't know exactly but there was quite a strong view that it should only be done through a formal PDP process.

However, you know, maybe looking at some of the different processes we're looking at now because and I think especially - and we're probably looking at some of the contracted parties we have on the call because I think the main concern was there that if there would be a kind of lightweight process, could that open the door for, you know, creating new contractual obligations without going through the rigor of a PDP.

So I think then as one of the (unintelligible) potential feedback from contacted parties or whether, you know, they would have a certain comfort level with, for example, a policy guidance process as a potential alternative for making indeed small tweaks or, you know, items that have been discussed but, you know, were put on hold for a while, and (unintelligible) whether there will be a

kind of comfort level with using alternative processes for items that would create new contractual requirements.

One thing I wanted to note as well that of course this doesn't specifically address what may happen when something is specifically an implementation. This does address like if the Board would come back, you know, with a specific question related to potential implementation of policy recommendations.

But I think something will need to or we'll look at as well when we go further into our deliverables is what happens in the implementation phase between, you know, the implementation review team staff and how things get taken back to the GNSO Council. Because I think that's one of the other missing pieces that, you know, we're currently not looking at but probably will, you know, come part of the puzzle. Because we probably will need to address, you know, what happens at the phase where policy recommendations are being implemented.

There is an implementation review team with staff, and you know, two of those conversations, there is a realization that either there is an issue that was missed, needs to be addressed, so how does that get taken back to the GNSO Council. And indeed, once that gets taken back, is there a specific process that would need to be attached to that to fix those issues?

And again, maybe it comes back to the same flow chart that we have here, that in certain cases it may need to be in the PDP, in certain cases it may be a policy guidance process that applies, or is there something else that is specifically tied to implementation review teams and how, you know, they may either do part of that work or whether an alternative group is created.

So I think again, you know, whatever we come out with at the end of the day of deliverable one, I think we definitely need to make sure that, you know, we are clear that we will come back, once we've looked at some of the other

items because it will all need to neatly fit together in order to have indeed a complete picture and not (unintelligible) all the different aspects of policy development and implementation that we're looking at.

And I think that's all I wanted to say at this stage.

Chuck Gomes: Thanks Marika. Alan.

Alan Greenberg: Thank you; two points.

I think Marika focused to a lot of the complexities of what I was suggesting. That yes we are talking about changes to contracts which currently the bylaws require if full PDP for.

And I was expressing a hope that we could find a way to go forward where something is small enough that it really seems almost abusive to go through the full PDP process for it because the outcome is relatively small. But we still - you know, we don't want to shelf it forever because it's not big enough. You know, it seems to be incorrect to not do something at all because it's too small, and that's the situation where we conceivable could be in. But there are hurdles that we have to pass to get there.

In regard to what Cheryl was saying, and Cheryl's voice, at least on my line, was very faint and I couldn't make out everything she was saying.

But one of the things that strikes me - and she may have said this, but it strikes me that as we go forward looking at metrics and reporting, we may well come to the situation where everyone realizes that it would be a good thing if registrars or registries reported X on a regular basis to ICANN. Yet that may well essentially be a consensus policy. And like the other ones I was just discussing, requires the strength of a consensus policy to require them to do that, even if everyone agrees it is a good thing to do.

So it's yet another example of a lightweight change that we need a lightweight process to adapt, to adopt or to reject, but nevertheless to consider. Thank you.

Chuck Gomes: Thanks. And note the agreement by Cheryl in terms of a couple of things you said there Alan.

I want to - this is Chuck by the way. Coming back to your original suggestion there of a couple other needs that need to met, if I understood correctly, and I think Marika and others pointed this out, they still require a PDP to be able to enforce the requirements.

So the question is a couple of ways in terms of Marika's diagram that that could be done. You could obviously instead of having three processes, you could four or five.

Or under the PDP or as a part of the PDP box in the existing flow chart, you could have the decision whether it's an easy PDP or a hard one to keep it very simplistic. And we could as a working group, recommend that a streamline PDP be developed under certain criteria and several of you have mentioned those.

So I don't think we need to resolve that right now. I think Alan's points are very well taken. The question is how would we do that in the process.

From a contractual point of view, I think the cases he gives still need a PDP, but how do we do that in a way that doesn't take a year-and-a-half or two? So that's certainly a really valid issue to consider.

Marika.

Marika Konings: Yes this is Marika. And you know, just quickly thinking about this, I mean something we could look at for example because I think indeed, you know,

what the specific scenarios that Alan is talking about and I think you are referring to as well Chuck, are those issues that, you know, have already been scoped, have been discussed; there's already a lot of information, you know, available.

You know, what you may want to do is indeed have an alternative process that basically starts at the initiation. We skip out the whole, you know, preliminary issue report phase, but actually have something that starts, and again, have some of the minimum requirements that apply to the PDP, but you can maybe map out what those are. And also what would be the process for the Council to be able to invoke that.

And again, you know, maybe, you know, I think parts of the policy guidance process as described here, you know, may fit what could be plugged underneath the PDP as maybe a lightweight alternative.

But again as I said before, I think this is something as well where we really need input from contracted parties to see whether that's something they, you know, would feel comfortable with and how we can make sure that it's as well shaped in such a way that it's not used as a short cut. That indeed it's only used for those cases where there has already been, you know, there have been policy recommendations. And you know, as part of a review, it has been identified that there is certainly small tweaks that need to be made.

Or the question that, you know, was discussed but people want to come back to it because new information has been made available, and you know, people have a different opinion.

So I think again, that's where, you know, we need some further discussion and input from people to see what would be acceptable and indeed workable.

Also too, I think Anne's point asking for, you know, broader input, I think that's what we're looking at at least on the policy guidance process. But we say that

one of the required steps would be, you know, for the drafting team working group or the group of volunteers or whatever, the Council would identify as the mechanism for developing those recommendations, to reach out at an early stage.

I think just to note as well, you know, specifically to the GAC, you know, we're actively looking or the GNSO is working for the GAC on looking for ways to get them engaged earlier. And you know, once again I think we get to a stage where we may have some concrete recommendations made but that should also go back to that group just to make sure that the GAC is aware that some of these alternative processes are being developed and make sure that they have an opportunity as well to provide input or make clear why they believe they fit in or why they currently don't fit in and what may need to be added.

And one of the other points that Anne made as well on deciding between policy implementation, I think at least from my perspective, I think the whole desire is that that is no longer, you know, that doesn't need to be the question. I think the question is, you know, what is the objective or the desired outcome the Council has with regard to a certain issue, and on the basis of that it will choose its process.

And everyone knows at the outset, you know, what are the required steps, what the outcome will be at the end of the day or what the requirements will be. And on the basis of that, decisions are made and it's no longer this argument over is it policy or implementation because hopefully it's no longer relevant. Because once you know what the different processes are, you have a conversation on, you know, what is the desired outcome.

So if the desired outcome is for to force the board to, you know, acknowledge our input and take a decision on it, well then you follow the policy guidance process.

If the desired outcome is just to provide input, well then you use the other one. It doesn't matter whether it's policy implementation. I think it's only the question of where you ask on policy implementation like are you creating new, you know, contractual requirements, then you'd definitely need a PDP.

And as I said, you know, some of the policy implementation questions may still come up when you look at the workings of implementation review teams. And there, you know, we may need to have additional processes or frameworks around that conversation.

But again, I'm hoping as well that we can also move away from having end the debate on whether something is policy or implementation, but instead have processes in place where people know, you know, what the different steps are and requirements and what the end outcome of such processes are and decisions are made on that basis instead of arguing whether it's black or white.

Chuck Gomes: Thanks Marika. This is Chuck again.

Now before I give it to Alan and to Anne - or excuse me. I guess it's just Alan that has his hand up.

I want to point out our objective today is not to try and put in all the details and perfect this flow chart. I think we've captured some very good issues that we need to deal with as we move forward on processes like we're discussing right now. So let's not - I'd like to move on to other items in the agenda so we get those covered.

But all of this is really good stuff as we begin to get closer to specific recommendations. And even with respect to this flow chart, as we begin to additional more detail to it. So let's keep that in mind.

Let me turn it over to Alan.

Alan Greenberg: Thanks Chuck.

First off, you know, I think triggered by these really good flow charts and Marika's presentation, I think this has been a really good discussion; we're feeding on each other and coming up with good ideas. And I think that's one of the better discussions I can remember in a PDP teleconference.

Something Marika said as she was talking made me realize one of the possible answers to what I was suggesting. And I bring it up with great trepidation given the discussions that are going on in the GNSO right now, but I'll bring it up in this group anyway.

Although the metrics issue doesn't quite fit this one, those two other examples I gave fit it exactly. Since in both cases we're talking about issues that were already part of the PDP, were already scoped out in an issue report really we're talking about restarting a PDP after the board has voted on it, after it's completely closed.

And I would say reconvening because it may well be a different group of people two years later. But we're really talking about reopening a PDP to further consider some of the issues that either were considered and we now recognize were incorrect.

Or things that were deferred or decided to put aside during that PDP. That may well - coming up with a detailed process for how to do that may well allow us to significantly shorten the whole process but still have the weight of a PDP.

So again I don't think we need to discuss how to do it today. But just the concept I think changes the dynamic completely and may well be worth considering. Thank you.

Man: Thanks Alan. And I assume at least one of the things you're talking about is the IGO/INGO issue.

Alan Greenberg: Well that's the current one. But that's reopening a PDP before the board votes. It's not the process we're talking about here.

Man: Yes.

Alan Greenberg: But the - but since -- as Marika - what triggered it is Marika was talking about things that already were scoped out in an issue report and already discussed in some detail. That's where I recognized that we don't need to start all over again.

It's really a matter of saying oops, we didn't finish that PDP as much as we should have. Let's go back and do it better this time.

But being able to bypass many of the steps because they were already done.

Man: Thank you. And the - so I think everybody - at least I haven't seen anybody disagree, everybody agrees that that policy development box does need to be refined to deal with these different scenarios. So let's accept that.

Be - Marika do you have one more thing to say before we go onto the next agenda item?

Marika Konings: Yes this is Marika. I just wanted to clarify for those that may not have been following the conversation on the IGO/ING.

But indeed they were looking at some specific recommendations that have not been adopted or considered yet by the board. And the PDP manual does foresee a process for changing recommendations before the board has adopted those.

And that was I think a compromise that was reached in the PDP work team where people thought that after the board has adopted them it should be possible to make changes unless you go through a new PDP.

I think there was a recommendation that, you know, maybe between council approval and board approval there is some new information, either, you know, through public comment or, you know, through, you know, as we see the current conversation that may warrant at least a consideration of whether changes may be made and a specific process for that is outlined in the PDP manual.

Chuck Gomes: Thank you. Now I'd like to - this is Chuck. Would like to go to agenda item three which is to continue the review of deliverable one.

And most of item D, capital D was done last week. But there is one question still under D, it's question e, small e that says can we answer these questions -- referring to the questions that were discussed mostly last week. So the definitions of policy and implementation matter less if at all.

And so I'd like to open up discussion on that and you can look up at those other questions if you need to. If you need me to read them I can.

But what do you think? And Marika already made a comment about this a little bit with regard to policy versus implementation.

But let me reread question e -- can we answer these questions so the definitions of policy and implementation matter less if at all. And I'd just like to open up discussion on that.

Anne Aikman-Scalese: Chuck it's Anne.

Chuck Gomes: Hi Anne.

Anne Aikman-Scalese: Can I get in the queue?

Chuck Gomes: Yes you're in.

Anne Aikman-Scalese: Yes thank you. Thanks for your tolerance of my driving situation.

I - question I wanted to raise is about items which may not in fact be brought to the attention of the GNSO in any formable way. But which they might think actually involves policy issue.

I like Marika's summary of, you know, using these processes in a way that makes it, you know, really not matter whether it's policy or implementation. What really matters is the board, you know, meeting guidance on the issue and getting involved on a rolling basis in sort of the continuing policy and implementation effort in order to make ICANN, you know, the most effective organization that it can be.

The only question I want to raise there is that if there is no trigger mechanism then it can be a matter of certain constituencies learning that a decision has been made. And yet feeling that it's not - that it should have been addressed as a policy matter and was not.

And how that - how does that scenario fit into, you know, potentially invoking one of these procedures exactly? It's a question.

Chuck Gomes: Thanks. Let me turn it to Marika.

Marika Konings: Yes this is Marika. And, you know, going back to the flow chart I think that's one of the specific boxes we identified that indeed may not necessarily be in response to the board or another group asking for something.

It may also be the own initiative of the council. And again that is probably one of the items for further discussion that need to be held.

You know, would it then follow, you know, along similar lines as initiating a PDP or requesting an issue report? Is there for example a very low volume threshold that would apply for a council member or stakeholder group or constituency to invoke such a process?

Does it need a higher threshold? Would it need to be, you know, a super majority decision of the council to go down that path?

So I think that is one of the specific items that, you know, could need to be further considered, you know, should the group believe that, you know, we're on the right track with looking at a process that we've, you know, outlined and broad lined. And but I think it definitely foresees as well the option of own initiative by the council either through, you know, council as a whole or through specific council member stakeholder groups or constituencies.

And again, you know, one of the other questions if you look at the model of the PDP is, you know, should anyone else outside of the council have a right or an ability to request the initiation of such a process? Maybe another item to consider if that's worth.

Or is that maybe purely the agreement of the GNSO council to invoke an alternative process. Or, you know, could an advisory committee also have a kind of standing in doing so similar to what the PDP does.

So think those are some of the questions. And it may be good to start, you know, again, you know, I think we're looking for some feedback on the process.

But if people indeed feel in broad lines it may be going along the - in the right direction or along the right lines what we could do as well is start identifying some of those specific questions that would need to be, you know, addressed or answered in order to have indeed a really kind of robust topic that

eventually we would, you know, be putting out presumably for input from the broader community.

Chuck Gomes: Thanks Marika. I want to reiterate something that Anne said. I also like the idea that if we spend less time worrying about whether it's policy or implementation and instead work together to come up with solutions that work and are supported by the full community, that's really what we want.

It seems to me that we spend an awful lot of time sometimes worrying about process and definitions and so forth. And those are important things.

I don't want to minimize those. But we - what we really want, I think all of us is to be able to make some progress and come up with solutions -- whether they be implementation or policy -- that improve what we're doing and are implementable.

So I think that's the goal really is to - whether it's policy or implementation is to do either or both in a way that improves the processes that we have and the results that we get.

Avri Doria: This is Avri. Can I get - comment in the queue?

Chuck Gomes: You sure may?

Avri Doria: Am I in a queue now or can I comment?

Chuck Gomes: You're in the queue.

Avri Doria: OK.

Chuck Gomes: I'm sorry, you are the queue.

Avri Doria: OK, great.

Chuck Gomes: You're up. I'm sorry I wasn't clear on that Avri. This is Chuck, OK.

Avri Doria: OK thanks. I'm sorry that I'm not online. The point I wanted to make is in terms of what we name the various phases -- and even if we stop calling them policy and implementation, it will still be project phases.

And they'll have names. And as long as we never get to the point of saying this is Phase X and therefore you guys don't have a say I don't think we have to worry about.

So I think I'm very much endorsing what you said. I don't think that we can strictly get rid of the notion of the policy formation stage and the implementation stage and the deployment stage and the testing stage.

As part of project management those things will always exist. Even if we give them new names.

So but I think that the approach that we're taking is that at all of those stages we are all working together in some sort of balance and the balance changes. I think we're fine.

But I guess so to answer the question up front -- can we do this without speaking of policy formation and implementation? I think so.

As long as we're clear that we're saying at various stages, you know. And we don't have to name the various stages. Thanks.

Chuck Gomes: Thanks Avri. This is Chuck. Very well said. Anybody else want to weigh in on this question e can we answer these questions so the definitions of policy and implementation matter less if at all?

Any other comments on that?

J. Scott Evans: This is J. Scott. I think that the answer to that is looking at history.

I don't think we could ever answer the question in such a way that they wouldn't matter at all. and I think that's a point that Avri was just saying by the mere structure of the way the process works, whatever you call it, whether it's oh that's not policy, it's implementation or whether that's the kickoff phase and you move into the, you know, whatever term we give it people are going to find -- if they're dissatisfied, the way to object.

I think what I'm hearing from the discussion today and what I saw from the flow chart is -- and I think I heard from Avri was if there is an ability to make a process whereby there is inclusiveness in all decisions and where there are safety valves for when there are disagreements and/or re-categorizations from whatever - for whatever reason that that can be done. But so I would say the answer to this is I think we can design a process that makes that distinction less important.

But I'm not so sure that we can ever answer the questions in such a way that they don't matter at all.

Chuck Gomes: Thank you J. Scott. This is Chuck. Well said.

And since you're not an Adobe Avri let me give you a chance - are you in agreement with what he said there?

Avri Doria: Yes I am, thanks.

Chuck Gomes: Thanks Avri. (Stephanie) you're on.

(Stephanie): Yes Hi. Can you hear me?

Chuck Gomes: Yes.

(Stephanie): Way back several minutes ago I started thinking about whether logic models would help clarify some of these issues. And I agree with what was just said about the definitions.

This shouldn't be important but if people are inclined to fight they'll fight over - - like argue about whether something was policy or implementation. This speaks of failure in the process somewhere.

So if you - would it help to talk about outcomes and to measure -- getting back to (Cheryl)'s point about the metrics. Are we measuring the effectiveness of the process in here as well as the outcomes and the procedures?

Do you see what I mean? Because maybe that would help if we also -- and I'm - and I think those diagrams were wonderful.

But if you made this on a logic model and you exploded it into the various areas it might help show up some of the sort of decision points. And the points where you need metrics.

And the points where you need a, like a recycle back to the other enabling bodies that authorize these things. Thanks.

Chuck Gomes: Thanks (Stephanie). And again as we begin to refine the flow chart to the extent that we follow it and recommend it that way I think we'd be able to get into those sorts of things.

And even point out where measuring some criteria would be good at certain steps. And certainly for evaluating the process for going forward.

Let me - if there are no other thoughts on small e I'd like to move onto large E, capital E which is what options are available for policy, consensus policy or

other. And implementation efforts and what are the criteria for determining which should be used.

And I'm going to jump right to the sub questions. And the first one is a, are policy and implementation on a spectrum rather than binary?

I kind of think my own personal assessment that we may already agree on the answer to that, but let me find out. Based on things we said and principles we've developed and so forth my guess is that we would answer that question as a yes.

Am I correct in that assessment?

J. Scott Evans: I'm sorry Chuck I missed you. This is J. Scott. Could you repeat your question?

Chuck Gomes: Sure. The question is are policy and implementation on a spectrum rather than binary? And I suggested that based on things we've done and discussed to date in this working group that I would predict our answer to that is yes.

Now I've got a couple people in the queue so let me let them jump in. Alan?

Alan Greenberg: I'm not sure of the answer because I'd have to go back and look at what our definitions were of the two. I'm sure we could define - if that was our target we could define implementation such that it is binary.

Chuck Gomes: Implementation itself is binary?

Alan Greenberg: No, no, such that the difference between policy and implementation is binary. In other words if we define implementation as that part which has no impact on users and no impact on the various parties but is purely a mechanical decision on the specific details on how to implement it then we could make it binary.

I don't think we were that rigid in our definition of implementation. And therefore I suspect the spectrum is the right answer.

Chuck Gomes: Thank you Alan. Well said. This is Chuck again. Greg you're up.

Greg Shatan: Hi it's Greg Shatan. I think they are in a spectrum but only up to a point in the sense that if something is policy even if it is kind of, you know, a change to existing policy or clarification of policy that's still something different from implementation.

And the ultimate goal of trying to determine whether something needs to go back to some form of a policy process, whether it's one of the kind of three routes that Marika diagrammed for us earlier or possibly even something else, or whether it is, you know, firmly to be left with the implementers, you know, does require there to be kind of a binary element to it. So I think there's a point at which something is really - it's policy and not implementation or at least policy elements prevail and so create, you know, considering it a spectrum I think creates a - may actually muddy the issue rather than clarifying it.

Thank you.

Chuck Gomes: Thanks.

Avri Doria: This is Avri. Can I get in the queue?

Chuck Gomes: Yes. You're in the queue after Michael, Avri. So Michael go ahead.

Michael Graham: Yes in thinking about that, you know, I think it's an interesting approach in that there are two ways to look at it as far as my understanding. The two are

part of a continuum and a spectrum when we look at them as parts of a process that has a particular beginning and a goal.

And these are part of the process of getting from that initiation to the goal. However in looking at them, at their functions on that spectrum then I think they're binary.

In terms of our understanding what they are and how they relate to each other. And to that process.

So, you know, I hate to say it's a mixed bag. I wouldn't say that they're merely a spectrum because they are so different in what they are focused on doing I think.

Chuck Gomes: Thanks Michael. Chuck again. And let me let Avri in the queue.

Avri Doria: Yes I actually think I'm agreeing with a lot of what has been said. Normally I'd say therefore I won't say it.

But I'm not sure I'm agreeing. IUN terms of - and I think we have basically overloaded terms is part of the problem.

I think when using them as the names of stages no they are indeed different. But when we're using them as ways of looking at the problem -- so at a certain point we're looking at the problem much more in it's policy aspects with just a little bit of the implementation aspect.

At another stage we're looking intensely at the implementation aspects but there's still always a little bit of policy aspects going on. So in terms of it really depends -- and as I said they're overloaded terms.

In terms of the terms being policy activates, implementations activities or policy concerns, implementation concerns yes they're on a sliding scale. But we also -- and that's the problem with overloaded terms.

We also use them as the names of stages. So in that particular configuration the stage is separate but the concerns are the sliding scale.

So and I think that matches bits and pieces of what others have said. And if it doesn't apologies.

Chuck Gomes: No very good.

Anne Aikman-Scalese: Chuck can I get in the queue? It's Anne.

Chuck Gomes: Yes I'll put you in the queue Anne. There's a couple people ahead of you.

Great discussion guys. And I won't comment until I give everybody the chance to talk on this.

Greg is that a new hand?

Greg Shatan: I'm sorry.

Chuck Gomes: OK I guess it wasn't. So Alan you're up.

Alan Greenberg: Thank you. I think as we're talking I've decided that the question isn't right. You know, clearly and Avri caught the substance we're using the terms in multiple ways.

We're talking about phases and then we're talking about conceptual situations. And we use the same words for them.

Clearly during the implementation timeline there are aspects that are policy related, you know, things that we do not trust staff to do on their own if I may be blunt. I'm not sure that makes it a spectrum rather than a flip flop mode that we have to move between.

So I'm not sure - the question may be worded such that it's going to be very difficult to have a clear answer to it. But I think we're all agreeing on the substance.

Chuck Gomes: Yes and this is Chuck. And by the way Alan I think you came to a very good conclusion.

The question is the problem. I've been - as I've been listening to the great discussion I say it's not a yes or no answer question.

It's more nuanced than that. And I don't need to repeat it because people have said it very well.

(Cheryl) your hand went down. I guess (Stephanie) you're up. And then Anne.

Anne Aikman-Scalese: Yes Chuck I may have to drop off. So but I'll...

(Stephanie): You want to go ahead?

Chuck Gomes: Is that Anne? It sounds like (Stephanie)'s comfortable with you going ahead so go ahead Anne.

Anne Aikman-Scalese: This is just very, very brief. I agree that the question is not really the right question.

I think the statement that needs to be made is that reasonable people may differ with respect to whether certain implementation plans accurately reflect

policy. And that that is consistent with what we're saying about we don't care quite as much when the question arises whether it's defined as policy or implementation.

We just want to have a solution. And I think it's important to recognize that reasonable people within the community may differ as to whether implementation accurately reflects policy.

And that's all in terms of what the real question is.

Chuck Gomes: Thanks.

Anne Aikman-Scalese: And I'm sorry that I have to drop off.

Chuck Gomes: Yes thanks Anne. Very good. This is Chuck again. And if I can use the term that Michael used, you know, regardless of whether we differ on what's policy and implementation they're both part of a continuum where we want inclusiveness and decisions that reflect the best interests of the total community, not any one interested party.

(Stephanie) you're up.

(Stephanie): Yes and I'm afraid I can't think of a perfect example for this. But I just want to repeat something I said in the chat that it seems to me the distinction is less important as long as there's robust public consultation checkpoints as you go along.

So that if it appears to someone or a constituency that a major policy decision has been actually made under the guise of implementation they can then comment and call it out and basically have that revisited. Now how you go back and how you sort of - where the roots are where you go back and redo that.

But I'm thinking of an example that's coming up in our privacy practices working group. Whereby the is of who's going to pay for serving snail mail papers on privacy practice customers is coming up.

And if all of a sudden that becomes the responsibility of the registrars that strikes me as a fairly major risk decision that's being made by that group that will have policy implications rippling across the entire ecosystem, right. That is a big policy decision.

So how does that get consulted? Surely not at the very end.

And so those are the sort of jumping off points. Rather than try and figure out some kind of a definition it'd be more to the point to have jumping off points where people contest a direction that you're taking because you haven't gotten a policy precursor.

Does that make sense? The other - only other point is I'd just like to put in a plea for regulatory impact discussion kinds of assessment of these things because we don't do enough of it, just like we don't do enough good risk assessment.

So that you - the measurement of the impact or the outcomes has to be done at some point before they become final.

Chuck Gomes: Thank you. Let me tell you I'm so impressed with the way people are wording things. And I appreciate staff being so good at capturing these things because there are some really valuable points that have been made.

J. Scott?

J. Scott Evans: You know, I appreciate everything that everyone's had to say and I agree for the most part with it. What concerns me is -- and I think one of the frustrations that has made this dichotomy or this division of what is what so important is

one of timeliness and the perception at least by one group or another that a process is hijacked.

And so no resolution is ever made because it's mired in this process. And so I would just hope that whatever we decide to recommend understands that while users are an important part of this -- and I would argue as a user a very important part -- this is in the end of the day decisions many times that deflect a business.

And so we cannot be so mired in process that we never get to a resolution.

Chuck Gomes: Thank you very much J. Scott. I'm with you all the way on that.

I think I made a comment like that in another meeting today. Anyway this is Chuck and let me give Greg the last word because we're out of time.

And Greg to respect people's time and that our hour is up or just about up please be as brief as possible.

Greg Shatan: I'll be brief. I think that, you know, going back to the previous question kind of looping it in with this question of what J. Scott just said that, you know, one of the things that we can do to both, you know, put policy and implementation in a sense on a spectrum or to, you know, put - to a degree that there are times when implementation may invoke policy to an extent but not be the same as, you know, major Policy is to create these more lightweight, nimble systems for dealing with a question of policy within implementation.

So that the - somebody calling out policy can't become a method for hijacking a process or stopping a process. And on the other hand making sure that implementation isn't used as a cover for trying to, you know, accomplish, you know, very substantial things and trying to avoid the hijacking.

Perhaps, you know, by, you know, implementation review teams as well. So I think those two things go hand in hand and really all kind of wrap together to make the distinction less important.

WE need faster ways of dealing with policy and within implementation and faster ways of identifying policy when it's taking place during implementation. Thank you.

Chuck Gomes: Thank you very much Greg and thanks to everyone. This has been a very productive discussion.

And I think there's a lot of meat in what people have said that is going to help us going forward. We're a little bit over time, I apologize for that.

But I'm going to bring it to a close now. We are meeting next week same time.

And we will be continuing off where we left off here. If people need to discuss this particular question, just question A further we can or we can pick up and continue.

Again thank you very much for the participation. My apologies again for going a little bit over.

But it's been I think very productive. Have a good rest of the day.

Man: Thanks Chuck.

Woman: Thank you bye-bye.

Woman: Thank you.

Woman: Good call guys.

Man: Thanks.

Woman: Bye.

Man: Bye all.

Coordinator: Once again that does conclude the teleconference for today. Please disconnect all remaining lines.

END