

**Policy Process Steering Committee (PPSC) Policy Development Process (PDP)
Work Team (WT)
TRANSCRIPTION
Thursday 01 October 14:00 UTC**

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Participants on the Call:

Jeff Neuman - Registry c. - Work Team Chair

James Bladel – Registrar c.

David Maher - gTLD Registry Constituency

Tatiana Khramtsova

Wolf Knoblen - ISCPC

Brian Winterfeldt – IPC

Alan Greenberg - ALAC

Gabriel Pineiro - Non Commercial Users Constituency

Paul Diaz - Registrar c.

Mike Rodenbaugh - CBUC

ICANN Staff:

Marika Konings

Margie Milam

Gisella Gruber-White

Glen de Saint Gery

Absent apologies:

Zbynek Loebel

Jeff Neuman: Okay, thank you very much. I'm going to turn it over to Gisella to do the roll call or Glen or whoever's got that.

Gisella Gruber-White: Thank you, I'll do it. This is Gisella. Good morning, good afternoon to everyone. On today's call we have Jeff Neuman, Gabriel Pineiro, James Bladel, Alan Greenberg, Paul Diaz.

From Staff we have Marika Konings, Margie Milam, Glen de Saint Gery, myself, Gisella Gruber-White and we have apologies from Zbynek Loebel). If I could just remind everyone please to state their names as well when speaking and David Maher has just joined the call now as well. Thank you.

Jeff Neuman: Great. Thank you very much. This is Jeff Neuman, the Chair of the PPP work team. It is October 1, 2009. The first - there's a lot of noise so I'll...

It's the first official day of the rest of ICANN's life being a free entity. I offer my congratulations on that. And so I believe is this the first recording of - under the new ICANN or has there been another work team call?

Alan Greenberg: It's my first.

Jeff Neuman: This is the first. Anyway welcome everyone to the call and just as a reminder we're going to be having weekly calls this week - or one call per week this week, next week and the following week. And then we are all going to meet in Seoul.

Alan Greenberg: Will there really be people available the following weeks?

Jeff Neuman: That will be the 15th, October 15.

Alan Greenberg: Oh, I'm sorry. I was looking one line off of the calendar.

Jeff Neuman: So it's the 1st, the 8th and the 15th. Today what we're going to do is we're going to go over - for the first half of the call we're going to go over the survey that most - or many of the people on this call have actually - have filled out and go over those results.

That's on the Stage 2 and then we're going to spend the second half of the call going back to Stage 3 discussions. So with that said is there any other questions?

The goal - sorry, I should say that the goal of going over this survey is to give us more information so that we can go back and write the draft document, the text that goes around Stage 2.

So by the meeting in Seoul we'll have a document on Stage 1, Stage 2 and hopefully at least survey results on Stage 3, which should take us halfway through the six stages for our work.

So we are making progress. I know we've been together a long time but we are making some progress slowly but surely. I think these topics are not very easy.

They're not - they require a bunch of abstract thinking and hypothetical situations of what could be the policy development process, or what could be the different policies going through in the next several years and how applying those to getting a good process down.

Is there any other - any questions on the agenda and any other items that you want to - anyone want to add? Okay, so with that Marika has posted the survey results from the nine people that filled it out.

And we can start going over some of the questions. I think the time we have Marika if we could try to keep it - I know there's a lot of questions so try to keep it - if we can keep it to 45 minutes. I'll ask for comments after each question and kind of keep an eye on the time.

Marika Konings: So you want me to run through different questions?

Jeff Neuman: You know, I could start and then maybe if you want to add anything to the - if you summarize the comments - so all the comments, I'm sorry, let me ask a question I probably should have asked before.

All the comments that are written in the responses there, the full comments - they're not reworded? They're exactly what people wrote?

Marika Konings: Yes, that's correct.

Jeff Neuman: Okay.

Marika Konings: If I could just make one comment. Compared to the previous surveys it's a bit disappointing to see that, you know, very great for all the people who have submitted comments but most of the ones that provided their input are the ones that also participated on the call.

So the group might want to consider how to get input from those that, you know, are members of the Working Group but have not provided that input on this particular stage, because I think on the previous round I think we had 14 or 15 people participating and now we only had nine, which of course is a pity, you know. We really want to get broad input at this stage.

Jeff Neuman: Okay, I agree with that. And Marika is the survey still open in theory for people to go in and fill it out?

Marika Konings: Yes, I haven't closed it so presumably people can still go in and, you know, we can provide an update on the results if people still want to complete it.

Jeff Neuman: Yeah so I think there is a few people that have - are on this call actually that have not completed the survey. There's probably at least three or four people on this call that haven't done it yet.

So if you can please go in, try not to be influenced by - or maybe you want to be influenced by this - the discussion today. But we really want your candid thinking even if it goes against - even if there's a question in here that eight of the nine people voted in one way.

Please do not be swayed necessarily by that. You kind of apply your own independent judgment to the question. So why don't we do that. We'll keep it open for another week or so and hopefully email - send an email out to some of the members of the work team that are not on the call.

And maybe Marika you and I can talk afterwards as to who those people are so we can send them maybe some targeted email in case they, you know, have a lot on their plate and are not really reading the full work team emails.

Marika Konings: Okay.

Jeff Neuman: So the first question on the - the first few questions deal with how to maintain flexibility on launching a PDP process and the first question was, "Within which timeframe should the Council decide whether to initiate a PDP or not? Should the same timeframe apply for an issue raised by the Board?"

If there's a seam in this - in these, I think most people have the opinion that there should be some flexibility for the Council and I think some people have responded a certain amount of days.

Marika, does these numbers - the responses correspond to the people or were they kind of - were they randomized? So like the people with name affiliation?

Marika Konings: I think it does follow if there are nine comments but in those questions where there are less and it's only from those who had responded so then there's no order.

I think - I would need to double check and, you know, I'm not 100% sure but I think when the nine answers it follows the list of responses but if they're less than nine it's impossible to say.

I mean, of course I could look back if there's real interest to know who said what but it's more difficult to deduct it from that.

Jeff Neuman: Okay. So again I think most of the people had said there should be some flexibility but the number of people - and a lot of people had - some people had said 16 days is clearly too short.

Some people have put in definitive timeframes saying that 45 days or some have said 60, some have said 90. So I - no one has said greater than 90 although some people have actually not put in a timeframe.

So those that - those - or I'll open up this question to anyone on the call, especially I guess some that answered the survey that didn't put in a timeframe.

Is there a drop-dead date where you think that either there should be some motion by the Council or some decision point by the Council or it should be dropped? Like some of it in terms of meetings, some of it in terms of being expelled. James?

James Bladel: Yeah, I just - it looked like you've already pulled that out but my response was rather than counting in terms of dates that we count in terms of how many - put a limit on how many GNSO meetings can occur where the issue is deferred before it has to come up for a vote.

So I think I limited that to two and then three if there's an actual ICANN meeting in the interim.

Jeff Neuman: Okay. Alan?

Alan Greenberg: I'm uncomfortable with the time if there is something going on. I mean, if the Council decides it needs to do some additional work for us before it can vote or to accept or reject, then I don't have a great problem with it.

I do have a problem with it being deferred from meeting to meeting without, you know, some rational process going on at the time. I don't think it should just expire because they didn't vote. I think it ultimately has to be voted up or down.

James Bladel: Right. At that point it becomes like a pocket veto.

Jeff Neuman: And that was James on the last comment.

James Bladel: Sorry. That was James.

Jeff Neuman: That's all right. Paul?

Paul Diaz: Yeah, I would say I agree with both James and Alan and to Alan's point I would just add that the Council - if they're going to defer there should be an explicit reason made why so that you don't run into a pocket veto situation.

If somebody's trying to put off the vote for whatever reason I think they should have to be explicit as to why. What is the issue that they're grappling with? Why did they need more time?

Jeff Neuman: Okay, so what if - so in taking those points and taking James' comments of, you know, would it be a recommendation of this group, could we say that it should be voted on within two meeting - two GNSO Council meetings unless there's an intervening ICANN meeting in which case it could be three?

And if not voted within three meetings there needs to be explicitly stated reason why and why it was not voted within those three - two or three meetings. And sorry, Paul you said - I'm trying to just see if I can word that.

What you were saying was that the reason should include something like, you know, they need - or what the issues are that they're still grappling with as to why they can't - they couldn't have decided it within those three meetings.

Paul Diaz: And not to be overly parochial but using the example here in the States a Senator can put a hold on a measure and the Senators do not - U.S. Senator does not have to even identify themselves.

I think to avoid the potential of a pocket veto let's not give the Council so much leeway rather whomever needs the time must explicitly say, "I need it for whatever their reason is."

Jeff Neuman: So it needs to be maybe to file a motion of someone on the Council to defer it with the stated reason and maybe even a pathway forward or a resolution path so it's a timeline forward so they can't just indefinitely say, "I want to defer because I don't have enough information on this issue."

They would have to provide a clear path forward as to when it could be decided or how they would get to that point?

Mike Rodenbaugh: Hey Jeff, it's Mike Rodenbaugh.

Alan Greenberg: And Alan.

Jeff Neuman: Okay, so let me go to Mike first and then to Alan.

Mike Rodenbaugh: Yeah, it's on this point obviously. So on Council right now we have like I don't know if it's a rule. It's not really a written rule anywhere but it's certainly a rule that we all abide by which is that if any Councillor or any constituency

wants to defer any vote they can do so for one meeting for any reason or no reason basically.

But, you know, it typically - one constituency will say, "I haven't had time to address this in my constituency yet." And so it could be put off for one vote, but no longer. So that's the possible - we could possibly write that into the rules.

Jeff Neuman: Okay, let me go to Alan and anyone else who wants to tell us reasons with what Mike just said. Alan?

Alan Greenberg: Yeah, the current rule is as Mike says, although I'm not quite sure if a - if the next meeting a different constituency says something could we defer another meeting at that - for that reason. I don't think the situation's come up recently.

Pragmatically however if I look at the last PDP that we approved on post-expiration I think that was the last one, it was deferred at least once because constituencies weren't ready.

It was deferred another time because we ran out of time at the meeting and other PDPs in the past the Council has decided that some active work had to be done which might have taken several months.

So I think we need to be flexible. I think the - as Mike pointed out the current practice is we don't need to vote on it. Obviously we could have a vote on it on deferring.

That might, you know, I don't know how a vote on deferring would work because then some constituencies could override the one that says they don't - they're not prepared.

Mike Rodenbaugh: Yeah but I think we just would allow it to be deferred for one meeting for the reason of, you know, needing more time basically. But no more than that

and then you can't pile on and have, you know, the business constituency do it once and then the IPC do it the next time.

Alan Greenberg: Trade back and forth.

Mike Rodenbaugh: Right.

Alan Greenberg: But I think that deferring for cause and where their cause is you ran out of time at the meeting which does happen on occasion or the group has decided to take some action other than a vote, I think you need to allow that.

Jeff Neuman: Okay.

Alan Greenberg: My recollection is we've had situations in the last year or two where there was very significant time taken between the issues report coming in and the Council vote because of the need to investigate something or other.

Jeff Neuman: So what I'm hearing essentially and then I'll go to Marika is that pretty much as a right anyone, any Councillor could make - could ask for a vote to be deferred. So the issue should be brought up within the first meeting.

Any Councillor could ask for it to be deferred for one meeting with or without any reason and without a vote. But at the second meeting it sounds like if it's not up - upon motion by a Councillor they need to state a good reason or a reason and then that should be voted on by the Council. Is that kind of what you're saying Alan?

Alan Greenberg: I wouldn't have said a reason. I would have said action.

Jeff Neuman: Okay so it has to have - well it has to have a reason and action plan or...?

Alan Greenberg: Well yes, I mean, you want to understand the methodology by which sometimes you're going to have - be in a position to vote. So it's either

seeking more information or, you know - Mike, I'm not sure how you categorize running out of time at a meeting but...

Jeff Neuman: Well I just - I don't think that should ever be an issue. I think the PDP should - well I don't think we should take consideration of that. I think the Council needs to figure out, you know, how to adjust its own schedule to make sure that those things where there are rigid rules should find a way to fit that in.

Alan Greenberg: And indeed the last time that happened the next meeting it went on the agenda at the beginning but it did happen despite our best intentions that it would not.

Jeff Neuman: Okay let me go to Marika then James.

Marika Konings: Yeah this is Marika. Because I just want to recap so I think I'm hearing at least two things. One is indeed the request just for a deferral needing more time to review it and the second one - the second action will be more if the Council decides that more needs to be done which...

And then I would presume would have the formal motion identifying what needs to be done, how much time that would take and expected delivery of results of that additional research or answers to questions or whatever is required.

So we're talking about two different tracks for possible deferral on the day of the vote. Am I correct?

Alan Greenberg: Yes.

Marika Konings: Okay.

Jeff Neuman: James?

James Bladel: Hi Jeff. Real quickly I have two points or questions and I'm not sure if they're maybe just related to this issue but I don't want to take us off track.

But one question is if we go too in-depth here in terms of setting timeframes and limits do we run the risk of stepping outside of what we're supposed to be doing with the PDP and stepping into a little bit of how the Council operates and governs itself?

And I just - if the Councillor's on the call I think that there's no danger in that or that's what we're supposed to be doing then I'll drop the issue. But I just wanted to point that out.

And then the second thing was just a thought that if we are setting maximum time limits before something can be voted in the interest of balance it seems like if we're going to put that constraint onto the Council then there should be some sort of corresponding constraint over...

I wanted to say how many - I'm trying to think of the other side of this where you couldn't overwhelm the Council with issues reports in an attempt to gain this a little bit and have someone violate that.

And I was thinking that it's - for example if an issue was rejected how long must it stay dormant before it could be raised again or how many issues can be submitted by a particular individual or constituency in a given time or do we even want to look at those issues just to balance out any limitations we're putting on Council?

Jeff Neuman: Let's start with the first question and Marika is that the one that you wanted to address? Or you have your hand up. I don't know if it's...

Marika Konings: Sorry, I still had my hand up but James did raise an interesting question that I don't think we've addressed in, you know, before on what if an issue gets voted down?

Should there be any limitations on when it gets brought back again? That's something maybe the group at some point needs to consider. I'll take my hand down now.

Jeff Neuman: Okay I want to put that issue to the side because I think we could get bogged down in that and maybe that's one of our come back to. What I want to address first is James' question of is there any other group who'll be stepping into the Council matters.

I think - and maybe some Councillors can step in if they disagree, but I think that that is one of the things in our mandate. I think - I don't think any other work team has got that on their plate.

We are supposed to be deciding timeframes as to how long a PDP should take and this is one necessary step within the PDP. We can go back and maybe Marika can talk to Ken to see if anyone on the operations side has looked at this yet. But I think absent that I think we're okay in making this recommendation.

Alan Greenberg: I think we're - it's right in the middle of our plate.

Jeff Neuman: Okay.

James Bladel: And it wasn't that in particular, it's if we start putting rules about, you know, how they manage their agenda from meeting to meeting and how things are carried over, just that was the issue.

Mike Rodenbaugh: Well I just remembered James...

James Bladel: It could be PDP, it could be anything.

Mike Rodenbaugh: But these are only recommendations that this work team is making up to a steering committee which that has to be approved by the Council so I don't think we should worry too much about that at this point.

Jeff Neuman: And it just - that in the end I think this would go into the rules of operation which in theory could be changed by the Council at any time. I'm not sure - well, actually I shouldn't have presupposed that.

Maybe it is something that's formalized in the bylaws but I guess we need to talk about that - push that to the side too. Alan?

Alan Greenberg: Yeah I think if we start worrying about what happens if the agenda runs out without completing everything which happens in every Board meeting and every other large meeting that I've ever participated in in my life.

I think that goes into the rules of operation, you know. If something essential is missed do they have to schedule another meeting within seven days or whatever, you know, an extraordinary meeting.

That's under rules of operation of the Council and I think that's outside of our bounds. It's going to happen. We know it's going to happen. If they choose to consider it, fine, if they don't that's fine also.

Jeff Neuman: Okay. Okay thanks. Let's jump to the next question which was basically what other flexibility which is a pretty open question, what other flexibility would be desired when launching a PDP?

And we had a number of comments from categorizing reasons for PDP initiation which I think would be in the issues or should be in the issues report.

Anyone who's got any comments just jump in. I'm going to go over the answers here. Ability for Council to request additional data. Seek the advice of other SOs, ACs, commission reports from subject matter experts and open

the proposed PDP for public comment. So what are some thoughts on that one?

This is when the issues report is now final and I - presumably we did have a recommendation in Stage 1 that an issues report should go out for comment and should reflect those comments.

That there was the option after the issues report was drafted for the Council to recommend more - or subject matter experts for more information. I think that's reflected.

The third comment was the requester should present as much information as possible to try to justify why the issue needs a PDP. I'm jumping back and forth here.

If anyone wants to jump in on any of these comments, if you wrote them you want to go into more detail?

Alan Greenberg: I'm not - it's Alan. I'm not sure what three means because the requester requests the issues report but doesn't participate explicitly in the process after that other than perhaps as a - one of the voices in Council.

Jeff Neuman: The Council needs to be sensitive to existing workload on community and take into consideration before approving new PDPs. I'm not sure who responded that but hearing the silence we'll just take that as a comment.

Alan Greenberg: Jeff, did you not hear my last comment or am I on mute?

Jeff Neuman: No I heard it.

Alan Greenberg: Oh okay. Sorry.

Jeff Neuman: Well, right, so I was waiting - there's no one on - the person who gave that answer is either not on this call or not...

Alan Greenberg: Okay. Sorry, I just wanted to make sure I wasn't muted.

Jeff Neuman: No, no, no, you're fine. I was kind of hoping someone would raise their hand and jump in if they made that comment but seeing none I'm just going to go on to the next one which says that there may be times when issues reports requires something to be handled or responded to as it is recognized as a type critical issue and thus needs a shorter timeframe of higher priority.

I'm going to take that comment and we'll discuss that I think in a later question which talks about kind of the emergency situation or a faster time track.

So I'm not ignoring that comment but I think it's important but we address it later. Let's see, sorry my phone is actually ringing. If I turned it off that should help.

Again we have an expedited exceptional circumstances before taking a decision Council should begin flexibility to request more details and information which we have.

And then there may be cases where issues report identifies that more information is needed. Okay. So I think the common themes in there are prioritization of Council work, maybe moving things up in priority and requesting - the ability to request additional information if Councillors are not ready to approve a formal PDP at that point.

And then we have the additional comments which the two additional comments are very important to have a fixed timeframe otherwise the process can be delayed.

And Council is not to be put in the position of rushing a PDP without a narrowly defined scope and a concise quantification of the harm to registrant's community DNS.

Any shortcuts taken during this process will impede or even invalidate the work of the subsequent PDP.

Alan Greenberg: Jeff it's Alan. I think the comment on fixed timelines and the additional comments and the end of mine on targets in regular reports is important. Some of these additional processes may take a long time but I think they can't be forgotten. So we need reasonable timelines and in parallel with that regular reports.

Jeff Neuman: Okay that was Alan.

Alan Greenberg: Yep.

Jeff Neuman: Okay let me go on to the next topic and like I said if anyone's got any questions raise your hand or speak up. This is the appeals mechanism. These are questions about the appeal mechanism.

And the first one is shouldn't appeals mechanism be developed in case GNSO decides not to initiate a PDP on an issue raised by another SO or AC? And I think we're kind of split here.

So there's really no consensus here. I will note that one person - or there's one more person that says no then that says yes but two say there's no strong view.

I'm not sure what to take from this and maybe some people that voted in either direction can speak up. I think I was one. I'll speak up. I was one who voted no and I'll just give the reason why I voted no which was essentially

because GNSO is tasked with dealing with certain things and SO can deal with an issue and send it to the Board.

Alan Greenberg: Exactly.

Jeff Neuman: And they have their own mechanism to deal with that. I'm not sure what the At-Large can do directly but maybe someone could educate me. But if it's an SO they have their own process and the GNSO doesn't - if it's - if - GNSO doesn't really need to be involved unless the SO is trying to make some policy that affects people within this or entities within the GNSO.

So Alan, you got your hand raised so maybe you can help me answer that question.

Alan Greenberg: Well in answer to the question an AC is an advisory committee to the Board so we always have the option of a passage to the Board although in honesty I'm not quite sure how that's different from anyone else writing a letter to the Board given that at the moment the Board doesn't necessarily respond.

If you look at the rationales for the three yeses they're all really, unless I'm misreading them, that you can appeal to the Board, you can appeal to the ombudsman.

And my answer which is the third one is if there's a substantive reason that is the issues report failed in some reason we've already said in an earlier stage there should be a mechanism to get the issues report fixed before it comes to Council for the final vote.

And subject to that it's appeal through the Board or some other mechanism that's outside of our jurisdiction. So I think we're all agreeing even though the numbers - the people voted yes and no.

I think the rationale seems to be the same for some of them. No one is saying there should be an appeal within Council other than my comment on making sure the issues report is on target.

Jeff Neuman: I think that's a good observation. Is there anyone that - else that voted yes that disagrees with Alan's assessment? Or how about people that maybe voted with no strong view. Is there - have any of these discussions persuaded you to have a stronger view one way or the other?

Okay then Marika what I think - what I'm hearing at least from Alan who voted yes and in reading those comments I think Alan's interpretation was right.

I think we should have a recommendation that the group - obviously the group's going to get the comments on this but at least in the first draft to have a recommendation that the group does not believe that there should be an appeals mechanism - a formal appeals mechanism to appeal a decision of the Council not to initiate a PDP with the caveat that if a PDP is voted against because it needs more information or that, you know, there's just not enough to go on, that's not really an appeal. That's more of a let's fix the issues report and bring it back up for a vote.

Alan Greenberg: I think when we were talking about issues report we included that stage of a preliminary version coming out which could be commented on I think. I don't remember for sure.

Jeff Neuman: Yeah I believe we did and if not we'll certainly go back and make sure it does contain that. Additional comments, let's see. Council should not reject out of hand but give guidance if there could be a revised proposal that would be successful.

I think that's kind of in line with what we were talking about basically saying that look if it's voted down there should be a reason stating that's why it's voted down.

If it's acceptable for a reason to be we just didn't want to do a PDP on it and you don't have to explain how it could be cured. I don't think - well let me ask that question.

I read that as - I read that comment in two different ways actually. You could read that comment as saying Council should never just vote no. They should always give a reason as to how you can get yes or you can read that comment as you just need to provide a reason whatever that reason is.

Alan Greenberg: I don't- I'm not sure I understand the concept of Council providing a reason when the Council vote is made up of independent votes.

Jeff Neuman: So in other words - well, I mean, people who vote no should provide a reason I guess is what they're trying to say. Or constituencies that vote no are - or sorry, stakeholder groups that vote no.

Alan Greenberg: I'm not sure I support that but...

Jeff Neuman: And why is that Alan?

Alan Greenberg: I guess it's pretty counter to in general how we do things, that stake, you know, Councillors either vote as they're instructed by their constituency which may be for sound, rational reasons or maybe emotion where we don't have control over that.

Or in some cases Councillors are free to vote as their heart desires as it were and I'm not sure we, you know, we demand a reason for abstentions. I'm not sure we want to go into the business of demanding a reason for a no. But that's a major issue that's wider than just PDPs I think.

Jeff Neuman: Well let me just play devil's advocate for a second and if anyone wants to jump in please. We do require or at least the bylaws have required if the

Board votes down something that's passed from the GNSO to the Board we require them to say the reason.

Mike Rodenbaugh: Isn't that only if there's a super majority or is that in all cases?

Jeff Neuman: That's a good question. I'm not sure of the answer to that.

Mike Rodenbaugh: Well not that it's ever happened anyway but...

Alan Greenberg: I thought they had to give a reason if they send it back to Council but not if they just reject. But we can check that easily enough.

Mike Rodenbaugh: I don't think they've ever formally rejected anything the Council's done, at least not in the last three, four years.

Alan Greenberg: They've ignored.

Jeff Neuman: We'll strike that from the record. Okay well so let me go on to some other questions or some other comments here. It says requester should determine why the issue failed and try to recraft proposal to gain broader support.

An appeals process will bog down the already taxed Council. Another comment said one could come up with a requirement that the GNSO reconsider without new information but that seems to be a rather cumbersome process.

And you cannot force a policy organization to deal with an issue it does not have an interest in dealing with. Special issues within the PDP are fairly low. Any thoughts on those comments? I think they're pretty much in line with what we've been talking about here.

Alan Greenberg: Jeff it's Alan. I'll go back on what I said and I was wrong. In the vote on Council it says if a super majority is not reached a clear statement of all

positions held by Council members, each statement should clearly indicate the reasons underlying for each position and the constituencies that held the position.

So there is in fact currently a requirement to state why if you're rejecting at least that's the way I read that line.

Jeff Neuman: It's not rejecting - I don't think it's - this doesn't apply to rejecting a PDP. I think that's rejecting a report or a...

Alan Greenberg: No, no, this is at - you're right, I'm sorry. I - you're right. On the final outcome, not initiating the PDP. You're correct. But there is a precedent.

Jeff Neuman: Yes. Okay, any other questions on that? And I'll try to go through quick because I want to get through some more of this and then go back to Stage 3. So what point of the process does the charter end? At what point in the process should the charter be developed and by whom?

And I - just also the caveat here that the Working Group work team has issued a report - Marika is that - it's not out publicly yet, it's just out for the work team?

Marika Konings: They have - this is Marika. They have finalized a first draft where there's some sections that still need completion. It's viewable on their Wiki.

Jeff Neuman: Okay. Well they talk about what should be within a charter and they talk about - like I said their main thing is what should be in a charter and I guess the process of coming up with a charter and things like that.

So here - this question is more at what point of the process should the charter be developed and whom. We have a number of comments here. Everyone put some comments in which is that Council liaison should be the person to communicate changes to the GNSO.

GNSO Council approve of the charter or Working Group prior to the Working Group being constituted. So Marika does that go against what the other work team has recommended? It says the Council must approve a charter prior to their Working Group actually being constituted.

Marika Konings: I think that's the assumption of which they're working. That you might have a drafting team of some kind that is - or the chartering organization that's developing the charter but I think the assumption is the Working Group is only formed once the charter has been approved.

Jeff Neuman: Okay but they are talking about the creation of another group called the chartering organization that's tasked with writing this.

Marika Konings: Yes, yes. They refer as it is applying to, you know, Working Groups across the GNSO. I guess in most instances it will be the GNSO that is the chartering organization but it might be here as well, for example the PPFC that is the chartering organization for the PDP.

Jeff Neuman: And did they give any opinion on whether the Council should vote on initiating a PDP before the chartering organization creates a charter or did they not even touch that?

Marika Konings: They don't even touch that.

Jeff Neuman: Because here I think we have some conflicting comments. At least I'm reading them to be a little bit conflicting and that's - some people are saying that the charter needs to be created prior to Council even voting whether to initiate a PDP.

And others seem to be saying well the Council should vote on the PDP and then a chartering organization should be tasked with coming up with the charter.

So there's kind of two different comments here and we need to get the feeling as to what most people expect. Because remember we're talking - before we said that the Council should vote on initiating a PDP within two meetings unless there's some, you know, we talked about that whole thing.

So does that conflict as well? How do you get a chartering organization up drafting a charter prior to when the Council has to vote?

Mike Rodenbaugh: It's Mike Rodenbaugh. I just don't think you can ask the Council to vote until you've got the charter. What would the Council be voting on?

Jeff Neuman: Alan do you want to answer that or do you...?

Alan Greenberg: Hi. My recollection and maybe I'm getting senile is we normally vote to approve a PDP. If you go back to the formal bylaws rule we then would vote whether it's a task force or a Working Group and we're eliminating that step.

And then we come up with the charter. I think that's the order we've always done at least when I've been around unless I'm starting to lose it. I don't think...

Mike Rodenbaugh: I won't comment on that Alan but...No I think maybe we've done it both ways because I think definitely we have had drafting teams do the charters before we approve - I guess maybe because we've sort of abandoned the task force notion the last couple of years and moved exclusively to Working Groups.

But when we have - before we voted to commission those Working Groups I believe we've had charters drafted and on the table.

Alan Greenberg: I think the only time we did that was for the domain tasting and there was a drafting team or a something team formed to decide how to go forward.

Mike Rodenbaugh: Yep.

Alan Greenberg: And the drafting team of which we were both two parties in decided to say the way to go forward is after you start the PDP and here's the charter de facto. We're putting it in your face. There was a lot of kick - push back on that.

But that is what we did but I don't think it was required by Council. I think we just unilaterally did that and ultimately it succeeded.

Jeff Neuman: So Mike, if I can just go back. A few meetings ago, maybe even a month or so ago, we talked about having Council have another vote on the charter that it could be simultaneous with - vote on - so in other words it could be on the same vote as to initiate the PDP.

So it could be in there. But if it's not we wanted the flexibility to have the charter come back up to the Council who would vote with the same threshold as it took to initiate that PDP in the first place. So in other words...

Mike Rodenbaugh: To me that's just duplicating effort. It would be easier, I mean, I guess we could debate how the Council would have done it in the past. That's not so important. Probably won't help when we do this in the future.

It seems to me it would be better if we had a charter at the time we voted on a PDP. But on the other hand that could very well delay the vote on a PDP but does it really matter because the Working Group can't start without the charter anyway? So, you know, what's the difference?

Jeff Neuman: I think we're just preserving the flexibility that they could do it either way. If they want to present it with the motion for the PDP they can and it can be voted on at the same time.

If they want to develop the charter afterwards because they just want to put a stake in the ground that they want to do a PDP, then they could submit the charter to the council for a vote which would be the same threshold as the original initiation of the PDP threshold.

Mike Rodenbaugh: Right. I mean, you know, speaking personally I really don't like the idea. I think you're just causing two fights possibly when you only need one. Also I don't really understand what it is the Council would be voting on if, you know, we're just voting yes or no on whether to initiate a PDP. What does that mean?

I mean, to me the PDP means you're starting a Working Group which means the working group has to have a charter. So why don't - it seems to me that the charter ought to be agreed at the time we agree whether to go forward with the PDP.

That would help really with the scoping issues that we've heard a lot from their R&Rs in response to a couple of more recent PDPs. They just head for the Council's - the PDP without a defined scope. So the way you define the scope is in the charter.

Jeff Neuman: Well, so Alan's got a comment. I'll just step in and just say I'm not sure you necessarily that without a charter you don't have a scope. I think the issues report is really responsible for defining the scope.

And the charter's more responsible for defining how the group - how a group would work towards achieving whatever the milestones or whatever the outcomes are. I'll let Alan jump in if he's got another comment.

Alan Greenberg: Yeah, I - it gets a little tough. I'm at the office today and in for Mike on this one. I think the decision to initiate a PDP is a binary decision, yes, no, and should not involve debate over the words of the charter which sometimes can go on for a long time.

I think Council needs a stake in the ground and Jeff in your words you said they could bring it to Council. I'm not quite sure who the they is because the issues report may have come from out in the left wing from an advisory committee or from the Board - or not from the Board. That doesn't count in this case.

And Council is making a decision, do we start on this process or not? And so I'm not sure who the they is who would do this unless Council charters a drafting team to draft a hypothetical charter for a working group which may or may not come into existence.

Jeff Neuman: There could be a group that self-organizes that behind, let's say the ALACers behind the domain casings, PDP, right? So the ALAC could submit a proposed or a few people the (A lack), could submit a proposed charter that they want Council to consider in conjunction with considering the issues report and voting on the PDP.

Alan Greenberg: They could. Of course someone on the Council would have to make that motion because a liaison cannot do that. And in fact the issues report request may have come from another organization that isn't even present on Council even in a liaison condition.

Jeff Neuman: Right.

Alan Greenberg: So.

Jeff Neuman: I take your point. I guess I was thinking more of the line of who really wants to initiate it, but so is there anyone else on the call who wants to address, I mean Mike is on one end of the spectrum, Alan is on the other. Waiting to hear from some other people who maybe haven't spoken on this.

Okay. Let me go to -- trying to see where a good breaking point -- all right let's see question 10 which are, "Are the elements outlined in the ICANN by-laws relating to the charter still relevant?" And we have pretty much either, there's one person that's no. Five said yes and three had no strong view.

If you answered no, then what elements should be added and since timeframe should be more realistic. So I'm not sure if the person that said no is only voting on the basis of the time or realistic, are the other elements still relevant. I'm not sure what that person would have voted.

Alan Greenberg: I'm not sure what the 10 days is. I'm sure there is a time delay in the only time is 15 days, I think.

Jeff Neuman: There are some -- let's see, this is on my charter. You're right. I do believe it says ten. You're right. It's either ten or 15. Ten days to vote on getting the issues report. Fifteen days to get the issues report. There is a 10-day time.

Man #1: Okay. Sorry.

Jeff Neuman: And then additional comments we have requesting any needs should play major role in helping to draft charter, must be honest regarding whether in or out of scope and any existing data gaps, they should be addressed by something other than a PDP.

Is to be cross-checked to the results of working group teams, implementation of charter drafts and guidelines, the comments in addition to the rules should clearly state that the charter may not restrict the types of outcomes. And number four, not entirely sure what elements in the by-laws are referred to in this question.

Alan Greenberg: Fair enough.

Jeff Neuman: Okay, any other questions on that and then I kind of want to jump back to number three or stage three cause I kind of want to move forward with that as well. Marika?

Marika Konings: I'm pulling up the other documents.

Jeff Neuman: Great. So on the last one, page three, now we're talking about the work phase and we've had questions on maximizing the effectiveness of working groups. We talked about face-to-face meetings. We talked about communicating with different departments of ICANN staff, including legal compliance.

We talked about linking the (unintelligible) process with strategic planning and budgeting and talked about timing with respect to soliciting input from stakeholder groups.

I want to jump to -- I don't know if we finished covering that issue. So just give me one sec here. Back to my notes.

I think we covered that and we were just getting into public comment period cause I think there was a transition cause we talked about the stakeholder groups putting comments in.

Now, we need to talk about the different stages for the workgroups work that public comment periods will be introduced. Now and Marika help me keep me honest here -- this is again not a topic that the working group or the people address because they're really dealing with their internal workings of how they deal with these issues or are they supposed to cover this as well?

Marika Konings: No, as far as I recall they haven't done anything on public comments.

Jeff Neuman: Okay.

Marika Konings: And I need to check cause I think maybe the OSC they might have some elements on how to enhance public participation, but I don't think they are specifically looking at public comment period for PDP.

Jeff Neuman: Okay.

Marika Konings: I think it's more of the Website and how to use those kind of tools to enhance public participation, not public comment period as far as I'm aware.

Jeff Neuman: Okay. Let me actually -- I'm going to take a little (unintelligible) here and I want to go to question ten, cause I think that might help us with the public comment period.

And the reason that might help -- I think it's ten -- might actually be nine. Hold on, sorry. Maybe Marika you can help me find it. At some point here it talks about that the outputs are and in the by-laws currently it states that there is an initial report and a final report. And those are pretty much the two outcomes. And we could talk about -- and that obviously I think, has an effect on when there are public comment periods.

Marika Konings: That's question ten.

Jeff Neuman: What's that?

Marika Konings: That's indeed question ten -- working group output.

Jeff Neuman: Okay, good. So I was right. So if the only two outcomes or deliverables of the working group are an initial and final report than it might be easier to talk about when the public comment periods would fit into that.

But let me ask a more general question. Are those the right key outcomes? I mean, should we mandate that in the by-laws that there must be one initial

report and one final report and that's it. Or should it be more flexible? Should there be other types of reports?

I just want to do a standing check as to whether people believe that those are really the two, the key outcomes. Marika you have your hand ready?

Marika Konings: Yeah, I just wanted to point out that I think what as it states now the difference between the initial report and the final report is that the final report incorporates the public comment.

But I think what I seen happening more in practice is that the working group produces an initial report and puts some options on the table, they have been discussing a potential recommendations. They use the public comment period to get some input on those and then continue their deliberations to come up with their final conclusions and recommendations.

So there's a bit more difference in practice, I think, what happens between the initial report and the final report as it's currently described in the by-laws. So I just wanted to put that on the table.

Jeff Neuman: Okay. I think that's an excellent point and just to add to that, I believe in the current by-laws, it is really not anticipated for a workgroup to do anything after an initial report.

Technically, what the by-laws states is that there'll be an initial report. There's public comments and it's up to the staff actually, collect those comments and incorporate those into the final report.

Technically there is not role for a working group after the initial report. Now, we've never done that. That's not the way it's ever worked in practice, but that is what the by-laws state and we should consider whether to revise that and if so, how. So I'll turn it over to Alan.

Alan Greenberg: There's two things. In terms of the work product, I would prefer to see something like a work group must produce one or more interim or draft reports. And I use those words carefully because some of those might just be bullet points that say where we're going. And some of those might be here are the actual words we plan to publish. We'd like your comment.

And if you look at other processes within ICANN, you know, internal, the external reviews and things like that -- is there some way we can fix this line?

Jeff Neuman: Yeah. I was just thinking the same thing. It seems like it went away.

Alan Greenberg: It seems to have gone away. If you look at the external review process and things like that, there may be one or more reports. Some of them may be in summary form, some may be here are the words we plan to publish. You know, speak now or forever hold your peace.

And I think we want to use something like that here that it gives the work group the flexibility of telling the public where they're going at strategic places. The last one has to be this is the graph we plan to publish.

In general, it would be nice if there was an opportunity for public comment before the words were cast in concrete because it's always hard to make changes at that point. And I think we need to consider -- and I don't know what the right words are -- what the process is for integrating public comments.

The new agreement signed yesterday makes reference to, you know, that we must provide rationales for why we reject public comments and things like that.

On the other hand, you can have a group of 20 people, from representing all sorts of voices, coming to what they believe is a rationale conclusion and

then one person making a public comment. Is the report supposed to change because of that?

You know, we really need to define more how this process is going to work. And I'm not sure it's our job. But someone needs to because we do want input from, during the public comment periods, but there has to be a reasonable process for integrating it. And just at the last moment, I think is the wrong place to start seeking input.

Jeff Neuman: Your words were one or more draft interim, no, no, one ore more interim or draft reports.

Alan Greenberg: That's correct.

Jeff Neuman: Okay. And then obviously, well maybe it's not obvious, there would be a final report.

Alan Greenberg: Yes.

Jeff Neuman: Right. All right. It seems obvious, but I just wanted to.

Alan Greenberg: Yes, I was focusing on what comes before it and just one draft report I do not think is sufficient, but then we also need to talk about the process of how we integrate comments.

Jeff Neuman: Okay, so James?

James Bladel: Yeah, I'm not sure if this is the appropriate time to weigh-in on the method or integrating comments, but we adopted something -- I think it's -- you know, a little lengthy perhaps in the past fortune group that was modeled as to the method that I can describe for integrating comments from the draft-happy guidebooks.

So, you know, if and when we come to that point, we can discuss that a little bit further.

Jeff Neuman: Okay, let me, James, you want to comment on -- would you be comfortable if the by-laws were to say something like Alan had said that there needs to be at least, or there should be one or more interim or draft reports by a working group.

Alan Greenberg: By the way, sorry Alan, the implication was that after each of those there is a public comment period.

Jeff Neuman: Well, I want to separate that.

Alan Greenberg: Okay.

Jeff Neuman: I understand that.

Alan Greenberg: That's what I meant. Sorry to interject.

James Bladel: And this is James. I guess the only issue I would have with that is the or more.

Jeff Neuman: Okay, so. Okay, so can you, sorry I'm just thinking about how to ask this question. So I understand you're concerned with or more and probably that you wouldn't want it to go on forever and have all these draft reports?

James Bladel: Right. I wouldn't want it to be an interim process, but essentially just continue to evolve because I think ultimately what the focus needs to be in these working groups is the issue queue will circle back and you will start to revisit old ground again.

And you know, I think it is important to have some of the, you know, in my opinion, and I think I brought this up -- Marika and Paul can maybe help me

here -- I think I brought this up in the IRTP, working group when we were transitioning from IRTP-A to IRTP-B, the idea that trying to get additional issues moved up into IRTP-B because the true delay or the time assumptive issues or processes in PDP are sending things out for public comment and then having them come back and then really doing justice analyzing those public comments and incorporating them in their report, making sure their addressing the report.

I think if you get yourself into a situation where you're just continuously doing that, you know, PDPs could drag out indefinitely.

Jeff Neuman: So, how do you, so Alan is there a way to still have, to address your concerns with having only one draft report?

Alan Greenberg: I think one draft report is almost always the wrong answer. I think there should be something which says what the direction the working group is going in before they issue what could be the final report subject to comments.

You know, I just think you want to solicit comments at an earlier stage where there's still opportunity to, for it to mold the thinking of the group. That's one.

And second of all, I think we have to be careful not just to focus on the kind of PDP we've been doing in the last year or so of tight, narrow scopes. If you look at the new GDL PDP, it's a huge issue. I don't remember how many public comment periods there were, but there were several.

And you want several in something, in a larger issue because you don't want to just come out with the words from the mountain that are being passed down.

So, I think Council needs to be flexible and a working group needs manage their process. If they see they're starting to go in loops and they're on the

10th loop, then something's wrong and Council has to take action at that point if the working group itself doesn't.

Jeff Neuman: So in essence though, so can we say, and James, can we give that flexibility to the working group? Obviously under the supervision of Council, but in essence we just say a working group must have at least one draft report where comments are provided and integrated and a final report.

James Bladel: It's essentially up to the working group. If they're abusing the process or just, you know, just getting out of hand with timeframes, it really is up to the Council to kind of rope them in. With something like that, Alan, instead of one or more, basically saying at least one.

Alan Greenberg: I think that those parts are the same thing to be honest.

James Bladel: Yeah, I agree. This is James.

Alan Greenberg: I like my wording more cause I think we want to encourage an interim before the draft report, but maybe that's a matter of style.

Jeff Neuman: Sorry, James, you said you agree with what, saying the same thing or that would be all right.

James Bladel: I agree that they say the same thing.

Jeff Neuman: Okay, but your still uncomfortable with that?

James Bladel: Well I think, you know, Alan has a good point that you know, we have to trust the working groups to exercise some self-governance and not allow themselves to be, not continuously go back for different reports.

I did raise my hand earlier because of the characterization that we have lots of PDPs with tight, narrow scopes. I think that in my experience has been the exception.

I think that what we see is that the working groups start off with kind of the, a little bit of wiggle room in the scope and then they expand as we go along, so I just, I wanted to put that out there.

The other concern or thought I wanted to get on the table was this idea that the timing of the public comments prior to a draft, a draft report, and you know, I'm struggling with this a little bit, Jeff, and maybe you guys can help me here, but it seems like, you know, the first order of business when -- and maybe this is built into the PDP and I'm just not understanding it, but it seems like they're soliciting public input into a PDP very, very early in the process.

Even before, in my opinion, before the working group has necessarily done any material work on the issue. So if that's by design, then I'll just go and re-educate myself a little bit and get a little smarter on the process, but it seems if you've already had the issues report released for comment, there's some probably deliberations or discussions on the Council, it seems like then charter a group so they can issue a public comment period right away. It just seems very duplicative in my mind.

Jeff Neuman: We did talk about on the last call, number four, if you scroll up to number four. We did talk about keeping, it seems like the group still wanted to keep the initial comment period when the working group was formed to give the working group some guidance on the work that they're doing, leading up to a draft report.

No, I don't think anyone suggested that we get rid of that, so we still have that comment period built in when you start the working group.

Then the question is, do we leave, Al's recommendation is that the working group should have the flexibility to have one or more draft reports to solicit public opinion, comment, sorry, on the direction the group is heading. Maybe the working group is going to solicit input on what proposed recommendations are or the working group puts out a draft report with its recommendations in order to get comments on its recommendations.

So it seems like, I think that should be an option we should leave open or flexible according to Alan so we can get that more public input.

Marika Konings: Jeff, I have my hand up, so that we can.

Jeff Neuman: Okay. The music.

Marika Konings: I'll wait for my music to finish.

Jeff Neuman: Rap music? All right, Marika?

Marika Konings: Cause I just like to point out that James already raised as well cause the point that he wanted to you know, get in there and to mold the thinking of the working group. I think that's part of the role of the comment period that you have in the beginning when the PDP starts.

And also wanted to point out that there's nothing preventing a working group to put out a certain issue or question or proposed work approach for public comment.

Just because it's not mandated in the working by-laws, doesn't mean that a working group cannot go out and do that. I would have some concern as well if you would put, for example, look at the Fast Flux report, if we would have put out every neck version with changes in there out for public comment, you know, we would've been working on it for, I don't know how many years.

So I would have a concern if you have too many versions and who decides, you know, what changes warrant another public comment period.

You might run into a situation where you have a lot of public comments, review of public comments, integrating again a new public comment period, so I would like to caution for that approach and just point out that working groups do have the flexibility to put out specific questions, you know, apart from mandated public comment periods.

James Bladel: Jeff, can I get back in?

Jeff Neuman: Yes, yes.

James Bladel: I don't think we're saying something very different. What I was, we know that working groups always have the flexibility of putting out any sort of interim report and calling for public comment.

I was just trying to introduce something into this, into the process which reminds people that they don't just have to draft a report in isolation ever since the first public comment period and then suddenly get a barrage. There are options.

I don't think anyone's requiring that every version be subject to public comments or any version of its deliberations be subject to public comments until the draft. Just reminding people that there are options.

Jeff Neuman: I think you asked the question, Marika, who makes the seat on the chat, who makes the determination of when something's final. I think you kind of have to trust the working group to do that. And again the working group's got a liaison to the counsel, the counsel should be monitoring that if the working group just takes too many jobs.

So I understand your caution. I think it's right to have that caution but is that something we need to predefine? I mean I do think - I kind of agree with Alan in the sense that I think that the bylaws are currently a little restrictive, basically saying you have a draft report that goes out for public comment and it doesn't really allow for anything else

Although we've - I heard the statement that you could always put something out for public comment, actually the bylaws don't really allow that. They don't disallow it they don't allow it either.

And so one in theory could make an objection because that's not in the bylaws. So it probably should be something that we codify that the working group has the flexibility to seek additional public comment period on a report or individual questions that they may have.

Alan Greenberg: I could support that. I think we're going to subject to public scrutiny a lot more than we have been in the past and I think we need to be...

Jeff Neuman: Marika is any...

Alan Greenberg: ...about how we do this.

Jeff Neuman: I think you're right Alan. I think - Marika is there anything else that we can put in here to give some comfort - I mean you've raised some legitimate concerns and I don't want to dismiss those but is there something we could put in or is there something...

Marika Konings: Well I think that the point you made of at least one - I mean I find that a little bit more reassuring than the one or more where you're assuming more that there are going to be more versions. And, you know, it might mean the same thing in practice because of course you can still have more versions in both options

But at least one I think opens that door. It also says like, "Well at least once you can just have one and, you know, leave it up to the working group to decide if more is needed."

And indeed with an added clarification maybe in the context of public comment saying that, "Well these are the mandated ones but if the working group, you know, deems it appropriate or necessary in order to conduct their deliberations, you know, they can decide to, you know, have an additional public comment on a specific question or issue or, you know, whatever." I think that addresses that.

Jeff Neuman: Marika would you be happy with saying one - saying at least one interim or draft or would you just use the word draft?

Marika Konings: I don't have a specific opinion on that. I mean to me those sound just the same. But it might be me as I'm not a native English speaker so...

Alan Greenberg: I guess I'm differentiating then, it may be my own invention. The implication is a draft really is something very close to the final whereas I was using the term interim as something much earlier in the process.

Jeff Neuman: Yeah. I mean we could if - well let me see if anyone objects to that. I mean I think - I think you're right Alan I think draft has a specific connotation that's more final than an interim. Is anyone uncomfortable if we change the term from draft to interim? Hearing none.

You know, so here's another concept I kind of want to introduce is that a lot of times - there needs to be a document that goes out that has the recommendations - that has initial recommendations of the working group.

What's happened in the past and this is in the long past so maybe things have gotten a lot better - well things definitely have gotten better in the last few years. But what used to happen was that the working group would define

issues, put it out for comment, then all of the sudden they would include their recommendations in a final report.

And the recommendations never really went out for comment until after the report was deemed final and then the board, you know, the board may put that out for comment for the first time if it went straight up.

This happened - I'm trying to remember which PDP this was. This goes back awhile so I can't remember which ones they were now. Do we want to make it clear that the recommendations of the group need to be included in those interim reports to get comments on it?

Alan Greenberg: Well I - I - it's Alan, I would have thought that one of the concepts of an interim report is that it might not have recommendations but it may be simply reporting where the working group is.

Jeff Neuman: So under that - under that though if a final - if a report is final technically it means it doesn't go out for comment after that unless the GNSO wants to put it out for comment, or they might. But then it's away from the working group right? The working group is technically done in theory.

Alan Greenberg: Yep.

Jeff Neuman: So my concern at least as an individual has always been that if you don't see the recommendation there may not be an opportunity for you to comment on it and for it to be changed on those recommendations. For it to be changed prior to it going to the counsel. So the counsel is voting on really the final report or whether to send it, you know, is voting yes or no to the final report or sending it back.

Alan Greenberg: Well I don't understand the concept of a draft report which doesn't have the recommendations. I mean when it comes down to it that's the report, the rest

is background as to why you reached those conclusions. So I would assume the term draft report has to include conclusions or it's not a draft report.

Jeff Neuman: Well you've now changed it to interim report.

Alan Greenberg: No. No. I - well I, was - that's why I had said interim and one or more interim or draft. I think there needs to be a final - a draft report showing the conclusions, showing the recommendations subject to change from the comment period. I was claiming there may be a need for an earlier one which is not in that level of detail or format.

Jeff Neuman: Okay. So I think you're saying something different than what I interpreted which is fine - which is good.

Alan Greenberg: Okay.

Jeff Neuman: So you're saying there should be a draft report but there may be additional interim reports prior to the publishing of a draft report and those...

Alan Greenberg: Interim - interim or draft. I mean it depends on the, you know, what the group is thinking at that point. I could live with interim without the word draft for the earlier ones, yes.

Jeff Neuman: Because I think in that way we can distinguish it whereas a draft report is one that has recommendations that go out for public comment, an interim report may or may not have recommendations.

Alan Greenberg: Okay. So you're saying there must be a draft report which implicitly includes comments or maybe explicitly - or recommendations or maybe explicitly and there may be prior interim reports.

Jeff Neuman: Correct. That's - that's what...

Alan Greenberg: I thought that's what I was saying originally but I'm certainly happy with that wording. Others may not be.

Jeff Neuman: Anybody have thoughts on that? Marika - so I think the way I'm distinguishing between the interim and a draft report - and we might come up with different names if that makes it easier, but what we're saying is that a draft report would actually have recommendations that go out for public comment before there's a final report.

Whereas an interim report may be questions that go out. May be - may contain recommendations, just testing the waters but does not necessarily have to.

So it could be in theory like - let me give an analogy to our group. Although we've been calling our things draft reports perhaps each - on each stage they're really interim reports. We're going to combine them at some point into a draft report. The draft report will need to go out for public comment. But if we felt like it we could send any of these individual stage reports out for comment - if we felt like it. We'd have that flexibility.

Alan Greenberg: I think that's a fair analogy.

Jeff Neuman: Does that make sense Marika?

Woman: I don't know if Marika's on. She may have just gotten dropped.

Jeff Neuman: Oh okay.

Marika Konings: I'm back again but I didn't hear what was just said. Sorry.

Jeff Neuman: So I was creating an analogy. We were talking through interim and draft reports. And I think what I had said was that in my mind I'm distinguishing between an interim and a draft report where a draft report has

recommendations of the work group that goes out for public comment and then the final report is what incorporates those public comments, may change the recommendation, you know, basically to do anything with those essentially to incorporate the public comment.

Whereas an interim report may be - it may contain recommendations but does not necessarily have to. It may also be an issue that you want to throw out in the interim to get some public comments on without having any recommendations - it could be a survey, it could be essentially anything that the group wants to put out for public comment.

And the way I've kind of distinguished it is that in theory we could put out a - we have in our PDP right - in our PDP work team output we have divided our work into six stages. In theory we've developed interim reports of each stage or we will have developed interim reports of each stage.

We could, at our own discretion, put each of those individual reports - interim reports, out for public comment if we felt like it or we could just go to a combined draft report and put that out for public comment. A draft report would have recommendations.

Marika Konings: This is Marika. Just one comment to make is that for example in the Fast Flux working group they didn't put out any recommendations in the initial report, they put out some ideas for consideration where they wanted public comments on. So they didn't feel restricted by the fact that it was called - well not an interim but an initial report. They just put some ideas out there and worked from those to develop recommendations.

Jeff Neuman: And did they put those recommendations out for public comment or did it go straight to a final report?

Marika Konings: It went straight to a final report but, you know, they took the initial ideas and, you know, tweaked them a bit and ordered them because there wasn't that

much feedback specifically on that. So, you know, they let them, you know, they made some changes but not a whole lot. It wasn't something that they came up with completely different recommendations than what they had been talking about.

Jeff Neuman: Right. But had they put those recommendations to for public comment? It may not have been different - so I guess my question is that there have been some groups in the past that have operated that way, that have just thrown a report together without recommendations, put it out for public comment then developed recommendations and put that into a final report.

Whereas I think what Alan is saying and kind of how at least in a personal capacity I feel is that the recommendations themselves should go out for public comment before you can call a report final. Which is a different philosophy than what's been going on in some groups.

Marika Konings: Because then you basically would have a public comment period just before releasing the final report. So...

Jeff Neuman: Yeah I...

Marika Konings: ...your idea would be to have an initial report that, you know, might or might not have recommendations but once the group then deliberates and might make changes to those recommendations then have like a kind of final call before they call a final? Is that...

((Crosstalk))

Jeff Neuman: I think it's that there does not necessarily need to be an interim report that goes out. There may or may not be. That's at the discretion of the work group - or the working group. That may or may not contain recommendations, it can contain whatever you want. Right? Whatever the working group wants.

But at some point there needs to be a draft report and that draft report should contain recommendations of the work group. That must go out for public comment.

Marika Konings: So what is the difference then with what is called currently the initial? What does that mean for you? Is that more of the interim or a draft - or somewhere in between?

Jeff Neuman: Well I - what the counsel's been doing with initial reports is kind of not really consistent. It hasn't been consistent. Some have contained recommendations, some have not. So I think what we're saying is that you must have a draft report - at least draft report that goes out for public comment that contains the recommendations of the group.

You may or - you may have additional interim reports prior to the draft report that go out for public comment just for any reason that the working group deems appropriate.

Marika Konings: So how do you deal then with - the group puts out the recommendations for public comment and they make changes to them based on those public comments? Should they then go out again?

Alan Greenberg: Oh that would go on forever.

Marika Konings: Yeah that's what I - that's why I'm confused. When do you then draw the line and say, "Okay, you know, the group has made changes, you know, based on either their discussions or new information." When do you say, "Okay, even though there are things different than when the report was put out for public comment, you know, this is now final and no more public comment."

((Crosstalk))

Jeff Neuman: So - to answer the comment I would answer that question - I would say that it's up to the working group to declare it final, I do think there should be some flexibility. If because of the public comment period they get some really persuasive public comments that dramatically changes the recommendations in a material manner then that probably should go out for public comment again.

But if the changes are more of a minor nature to clarify or to - then I think you're right it shouldn't go out for public comment. But that's a personal opinion, I think it's up to the working group. I think that if you're going to dramatically change something then it should probably go out again. But let me turn it over to James and then Alan.

James Bladel: Hi Jeff. Thanks, it's James. And I'm just naive enough or possibly arrogant enough to think I might have a way out of this. And that is to define four types of reports that could come out of a working group and be subjected to public comments.

First would be an initial report that is put out before the working group does any work at all and is meant to kind of set the path on the charter questions and frame the deliberations on the group. The second being an interim report which may or may not have initial recommendations for the group. The third being a draft final report which contains the recommendations and is at the end of the process and it essentially gives the public comments an opportunity to weigh in prior to - prior to the working group concluding and then the last report being of course the final report.

Now that said I don't believe that every working group or PDP needs four reports and I think that perhaps they could look for opportunities to combine attributes of those different reports or determine whether or not one is even necessary or warranted, you know, based on the situation on the ground.

But I'm just trying to make a distinction based on some of the working groups that I've participated on. Some that have been I think very successful, some that I think that have drug out and trying to pick and choose a few of the better elements of that.

Jeff Neuman: So you said - but are you saying, just to clarify that the last two the draft final and the final would actually be required. The other two can be combined, there's flexibility with those two.

James Bladel: Would be optional and would not necessarily need to have both you could combine them.

Jeff Neuman: Let me go to Alan.

Alan Greenberg: Yeah I - just to comment on what James said first, I would assume though that for the interim one and the draft final there could be more than one version. As Jeff as you pointed out if the comments result in a substantive enough change to the draft final you may want to go for another alliteration. Now that's not saying you have to but the working group should have that discretion. But...

James Bladel: Yeah it's possible, yes.

Alan Greenberg: Yeah. But I'd like to go back to one of our basic principles. We're saying the counsel is now not the body creating, crafting policy but is a management body and I think we're talking about counsel taking responsibility for that part of it's life.

If for instance a draft report or a final report comes out from the working group and counsel looks at that and says, "You didn't factor in all of those comments, you didn't rationalize why you ignored them. We're remanding it back to working group." I mean normally working group is dissolved when counsel thanks them for their good work and moves on.

So one can imagine these processes changing because counsel is taking it's management role seriously and saying, you know, "We don't have a defensible position." And as I said I think we're going to become more answerable on these things, not less. Partly due to the dissatisfaction in the last couple of years of how public comments have been ignored very clearly in some cases. And simply because of the new contractual arrangements I think are going to force it more and people are going to be watching more.

So counsel may well remand things back to a working group and say, "Go do it again because you didn't justify why you ignored all those comments." So I think the process has to be inherently somewhat flexible.

I mean what James is suggesting I can live with. I think it's a bit too much a level of micromanaging but I can certainly live with it.

Jeff Neuman: Okay. So let me ask - to continue this topic and before we close up the call - timeframe - how much time should we give the public to comment? I think this is a - you know, there's been anywhere between 21 and 30 days. Sometimes it's been extended. What are your thoughts on that?

And when you do put out any one of these things for comment - maybe it depends, maybe if it's an interim report you provide less or if it's a draft final. But what are the thoughts about how long the public should have to comment?

Alan Greenberg: I like the words typically and give discretion. You know, for instance, I would like to see a formal rule in ICANN saying comment periods are halted during ICANN meetings. I think it's ludicrous when we have comment periods expiring or starting during ICANN meetings which are not really times that many of the interested participants can do their - can act on them

James Bladel: This is James. I agree with that. I think that, you know, leaving some flexibility but the times during ICANN meetings should be considered to, you know, exist in some sort of a parallel dimension where there is no calendar. Because, you know, having things due, coming due during an ICANN meeting or having things starting up during an ICANN meeting shouldn't count into the time.

Jeff Neuman: So if I - if we just state then typically should last 30 days but we recommend those time periods may be extended if the comment period falls during regularly scheduled ICANN meetings.

James Bladel: I would say that they can be - they can be extended at any time based on, you know, based on if there's sufficient request from the community to do so. But that as a general rule comment periods should not be opened or closed on dates that are during the week of a posted general ICANN meeting.

Alan Greenberg: That should be a rule for ICANN not just PDPs.

James Bladel: Yeah that, well, yeah. That should be a rule for pretty much most business that isn't central to the ICANN meeting.

Jeff Neuman: Okay. I think I've got notes on that. Marika you good on all that? I think...

Alan Greenberg: I'll - just one quick comment, I'll point out that that rule cannot always apply. For instance budgets that are voted - the ICANN budget is voted on on the last day of an ICANN meeting and I would not want to see the last five days not - one isn't allowed comment because it's not really a comment period. So one has to word this carefully.

Jeff Neuman: Okay.

Marika Konings: And this is Marika. I think there was already an agreement I think two ICANN meetings ago where that same comment was made. And I think they did

incorporate it or what, you know, accept it as at the time from ICANN meeting basically counts in addition to any public commentary that's running.

Alan Greenberg: And then ignored...

Marika Konings: I think the PDP...

((Crosstalk))

Alan Greenberg: ...and then ignored it at the last meeting.

Marika Konings: Well - but I think for the PDP that probably will need to be clarified. Because they have their set timelines where I guess for some of the other public comment periods is more that, you know, indeed I can decided whether it's 30 days or 20 days while some of the PDP public comment periods are prescribed. So that would need to be adjusted.

Alan Greenberg: And Marika next time we have a chance to talk I can show you a to do list of things that are coming due during ICANN meetings. It's - it's not - they're not PDP related so I won't raise them here but it is a challenge.

Jeff Neuman: Yep. All right guys I think we're good. Let's send the (unintelligible) around for next weeks meeting. I think we could finish Stage 3 at the next meeting and hopefully get a survey on Stage 3 out so that we can go over that survey in Seoul at the meeting. Hopefully have a draft second Stage 2 report as well out for everyone by Seoul so that we can say that we're wrapped up with the stages by the end of the Seoul meeting and get into Stage 4 and 5 after that.

All right.

Alan Greenberg: Thank you Jeff Neuman:

Jeff Neuman: Thank you everyone.

((Crosstalk))

Man: Thank you.

Jeff Neuman: Thanks ICANN staff.

END