

**ICANN Brussels Meeting
The New GNSO Policy Development Process (PDP)
TRANSCRIPTION
Wednesday 23 June 2010 at 1400 local**

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Jeff Neuman: Everyone welcome to the Workshop on the New Policy Development Process. The - we're here to solicit input, to go over the initial report with some of the recommendations in the initial report, but also more importantly to take your input on the report if you've read it or if you have any comments listening to what we've been talking about.

This is a work team that is part of the entire GNSO reform or GNSO improvements process that began several years ago. And last year we were formed as one of the work teams within the Policy Process Steering Committee.

As we're getting the slides up - it's on Adobe so if people would want to log onto Adobe. All right, we've got it. Yes.

Man: (Unintelligible).

Jeff Neuman: Perfect.

Man: No, it did it on the wrong screen.

Jeff Neuman: It did it on the wrong screen. Okay, not perfect yet. Okay. The role of the Policy Development Process Work Team - we're responsible for developing the new Policy Development Process that incorporates both working - the

working group approach as opposed to the old task force approach. Yes, I'm seeing hand raised. We're trying.

Man: We're trying.

Jeff Neuman: We have some technical difficulties. We are working on that. Thank you. So the Board Governance Committee came out with a report several years ago which laid out the whole foundation for the GNSO Improvement Process. We've already completed a portion of the review process that deals with the structure of the council, and that's already been reformed.

And if you've seen the council, either at today's council meeting or before, you'll notice that there are two houses, the Contracted Parties and the Non Contracted Parties. So that was really the first priority of what was accomplished.

Now we're onto the second stage, which is the whole reformation of the Policy Development Process. You've also seen the other element, which is the working group work teams report, the final report that was released at the end of May, which incorporates the working group approach.

So I'm going to read in the slides - we'll get up there eventually at some point. We're working on it.

Man: (Unintelligible) have them on your screen? Or I can - we can put them on your computer (unintelligible).

Jeff Neuman: Okay, so I'll just keep going through it. They'll work it out. So what we did is we formed last year in February of 2009. And the approach we took - basically we were told with pretty much an open slate - your job is to look at the entire Policy Development Process from the beginning and adjust any reforms looking at the Board Governance Committee Report on some

suggestions that they had on improving the efficiencies of the Policy Development Process.

But also, you know, looking at issues of what's gone right in the past, what hasn't gone so right in the past, and what kind of approaches that the council and other working groups have taken in order to accommodate some of the issues.

I think this morning, for those of you that were in things Council meeting, there was a reference by the GNSO chair to - dealing with some of the timelines that are in the bylaws which set really the Policy Development Process.

And, you know, the timeline said everything from initially the report needs to be generated within 15 days after the council votes to initiate the - votes to initiate the process, and (timelines) like that while very useful to set timelines in order to keep work focused, were rarely if ever met.

And so in order to reflect past practices, improve the efficiencies of the Policy Development Process, and to - not just the efficiencies in terms of the timelines but in quality of information and quality of output.

So the Policy Development Process Work Team, which we abbreviate PDP WT in the tradition of having a lot of abbreviations - what we did with the breadth of this entire subject - we divided ourselves into five stages and then some overarching issues which really permeate throughout the entire process.

And the next few slides will go over what those five stages are. But we've really done a lot of work in the last year and a half or since February 2009. We've had weekly calls - every single week - on Thursday afternoons for us on the East Coast time or Thursday mornings here to discuss and address each question that's come up.

And as we've also done online surveys for members of the work team on each of the different stages and then we've recently released at the end of May an initial report that contains some draft recommendations.

And if you've picked up a draft recommendations from the back or Glen has found you to give you one, the executive summary or the recommendations itself is 24 pages and the entire report's probably close to 150 or so. Really a lot of stuff in here.

And for those of you that heard me earlier at things Council session, this is really the key of what the GNSO does. When you boil it down, it's the development of the GNSO community as a whole. It's the development of policy and how that's done.

And in fact for the contracted parties - for the registries and registrars - this is the process by which consensus policies are created. And consensus policies are essentially amendments to the registry and registrar contracts - the gTLD registry and gTLD registrar contracts.

But there was always a presumption that by a number of people in the community that the Policy Development Process is only about the development of consensus policies. Well, we're all here to tell you that that's not the case. In fact, there are a large number of outputs of the Policy Development Process.

You could have everything from what we talked about before which is the consensus policies or you could have for example a recommendation of best practices. Maybe it's just guidelines. Maybe it's a registrar's bill of rights. I mean it's a whole bunch of things in theory that could go through a Policy Development Process.

How do we - you got control of this? Okay. Thank you. We'll go to the next slide. So the goals of this session is to provide a very short overview of what's in the report and some of the new items that are in there. And really to highlight those items that - where we solicit your input on.

There are a number of items that have - I was going to say two sides but really in reality there could be five sides of the same issue. And, you know, as a work team we recognized these issues. We offer possible approaches but we didn't necessarily at this stage come to any kind of conclusion as to what a proper way of that particular element should go.

So we're really pushing it out to the community to get your feedback and also to remind you that there is a public comment period that is currently set to end on July 21st so we really need your comments by then.

I think with everything else going on, I hope I'm not being too presumptuous to say that we - there's a good chance that we'll probably extend that. Really the goal is to get feedback. And so we don't want to constrain it because of the fact there's so many other reports out there that people are responding to now.

So I think this is not the right slide that's up there.

Woman: (Unintelligible).

Jeff Neuman: We're going to try to get back to the right presentation here. Okay, we're on the next slide. Yes. Okay, so the five stages we divided the PDP into were - the first stage being planning and request for an issues report, the second stage being the council review of the issues report and initiation of the Policy Development Process.

The third stage is actually where the working group's doing the work on the particular policy and the fourth stage is voting and implementation of the

policy and finally a look back at the policy effectiveness and compliance which also includes not just a look back at that individual Policy Development Process but also a process by which we could look at overall PDP process.

One interesting thing I'll note here is that when people in the GNSO community use the term PDP - and when it's used actually in the bylaws currently - it's very confusing. It's actually used to refer to two different elements.

It's used to refer to the council requesting an issues report. In the bylaws it says to initiate a PDP this is what you need to do. But it's also used in connection with the third stage as up here which is the initiation of the formal process of the Policy Development Process by giving it to - in the old bylaws - the task forces - under the new regime, more of a working group.

So we're - although we slip up from time to time, the goal is that when we use the term PDP it's really for the initiation of a working group - sending the work to the working group and which is separate from the planning and request for an issues report.

So one other item I'll note here before you see this very daunting slide up there - what we did is we looked at not only what should go into a new bylaws - right now the PDP process, the entire process, is defined in the bylaws as an appendix or an annex to the bylaws. I believe it's Annex A.

What we did though is realize that there are a number of elements of the Policy Process that should stay in the bylaws but a number of elements that should really be moved to the Rules of Operations of the GNSO Council and even more elements that should be more of a guideline, not a mandatory approach but a guideline as to different things a working group could do or different things that could be done to initiate the process.

What you have up here is a PowerPoint slide that shows you the different stages as we've defined them and different elements of each stage that we talked about - everything from - and I'm not - I understand that you - most of you probably can't read that.

But if it should be in the handout - I'm hoping I'm not talking out of turn - yes, it's in the handout towards the back. If you want to look - to keep looking at that as we go through the stages. But it deals again with everything from the initiation of the policy process to ultimately with certain types of policies a board vote and implementation.

So we'll just jump to the next slide but keep going to the back of the executive summary and looking at that if you ever get confused as to where we are. So overall there are 45 recommendations included in the report that link to different stages.

Some recommendations actually affect multiple stages and you'll see them twice. Some of the recommendations codify what's been going on the last several years in the policy process.

Some recommend a completely new approach, and some as we talked about recommend the least flexible options, which are those things that go into the bylaws. And then some which are recommended to go into the Rules of Operation which are more flexible where unlike the bylaws, which have to be approved, go through a very formal process, has to be approved by the board of - the ICANN Board of Directors - changes to the Rules of Operation for the council are voted on by the council and the board does retain the right to review that, but there's no formal approval that is required by the board.

All of these different elements - all these different recommendations are going to require your input as well. Now with Stage 1 some of the key recommendations that came out of it, some of them are not, you know, so

novel. But certainly things that need to be codified. It's a modification of the time frame for the creation of an issues report.

In the current bylaws, the recommendation right now is that a bylaws - I'm sorry - the bylaws require that an issues report be delivered to the council within 15 days of the initiation of the process.

With some of these issues, if they're narrow enough that may not have been such a big issue for the community and for ICANN staff that's responsible for putting together the issues report.

But for a number of the issues that we've dealt with recently, whether it's vertical integration, whether it's the - what's known as (PEDNIR) which post expiration deletes - which Alan, who is up here is the chair of that group - or many other issues that are just really complex. And to deliver a complete issues report takes a lot longer than - could take a lot longer than 15 days.

So our recommendation on that was to set the maximum time frame or - I'm sorry - the two options, the couple options we put forward is to reset a maximum time frame, because you don't want the initiation phase to take - or the issues report to take such a long time period that the process keeps dragging on and on and on.

So one option is to set a longer time frame than what's in the bylaws, something like 30 or 45 days. Or the other option is to when the GNSO Council wants to initiate the process and get an issues report is to ask ICANN staff directly, "Look, here's the issue we're thinking of exploring. Here's some of the things we noticed were already the issues that need to be reflected in that report. You come back in a couple days - come back to the GNSO Council mailing list. Let us know how long you think it will take." And then the council could then make a judgment.

And by the way, this is open for comments. The people up here are members of the work team. There are some members out there. I have James Bladel and Alan Greenberg and of course I have Marika, who's the ICANN staff policy person. So yes, Alan?

Alan Greenberg: This is one of my standard refrains so you're now hearing part of our teleconference. What Jeff just said is correct or should be correct if the GNSO was requesting the issues report.

If the issues report is requested by an advisory committee, presumably staff will get back to the advisory committee.

Jeff Neuman: Yes, I'm glad you made that point. There are actually - and the report goes into this. There's three ways to - there are these three different bodies that could - I should say there's more than three.

There's three different ways that an issues report can be requested. It can be requested as what we see most often - I would say it's most often - is through the GNSO Council itself requesting the issues report.

Alan, who's a member of the ALAC - there's - the second approach is for an advisory committee - the ALAC, the SSAC or the GAC - the Government Advisory Committee - can also request an issues report for which there's different procedures that go around.

So Alan's correct where if an advisory committee asks for an issues report then the second option that I read which is asking ICANN staff how long it would take would not go to the GNSO Council but would go to the referral body. In that case it would be the ALAC or the SSAC or the GAC.

Of course if the board recommends an issues report, then, you know, that will - that will be discussed between ICANN staff and the board.

Another recommendation we had out of that report is for a public comment period after the publication of the issues report before the GNSO Council actually votes on whether to initiate the formal PDP and set up a working group.

This is not - at this time this is not required in the bylaws. But with a number of the issues reports that have come out with the complexity of the issues, the work team discussed this at length and thought that the comment period after each report would be something that could be a really good idea, even if it takes a little bit longer to get to the council, it really could get those opinions other than ICANN staff, whose task was writing the issues report. Marika?

Marika Konings: Just to add something to that. I think you're probably thinking from a staff perspective this would be if there's normally a very, you know, limited amount of time in which an issues report can be drafted and, you know, staff only has so many resources at its disposal.

And that public comment period would also be intended to, you know, correct any data that's incorrect or add any information that, you know, staff wasn't able to find or obtain.

The alternative as well because as the issues report only provides a recommendation to the GNSO Council on whether or not to initiate a PDP as a specific element as well as to provide advice on that.

I think and a link to a recommendation that will come up I think in the second round where there's also a public comment period, currently after the initiation where information can be gathered that if those two would mandatory it might make sense to focus this one actually on the issues report and not so much on debating the question but actually providing input on the actual issues report - is there any factual inconsistencies? Any information missing? And a specific question on initiation on ops.

Jeff Neuman: So if anyone - I just want to remind - if anyone has questions or we're speaking too fast in foreign terms here because if - I - this is very dense. Please, you know, come on up to the mic, ask your questions. We certainly want to get your feedback.

The last issue which actually is pretty controversial is - at least was a topic we talked about at great length. Right now under the bylaws there's only one PDP process that has these long time frames associated with them.

And there's really no mechanism in the bylaws to deal with something that is what somebody called an emergency, or something that needs to be decided on a much faster track.

And what's really interesting is when we started talking about this in the work team last year, there hadn't been many or if any issues that kind of fell into this category.

Well, you know, at the beginning of this year we did have an issue that's come up, which is the issue on vertical integration. And became an issue that people wanted to address on a faster track because of the fact that the draft applicant guidebook was being developed and we did not want to slow - in fact it was a requirement of the GNSO Council resolution that the PDP not slow down the new TLD process.

And we realized there really is no process in the bylaws or in the rules of operation to have a faster track PDP. And I will tell you that this generated a lot of discussion in the work team because we couldn't think of - on our own - necessarily certain criteria that would justify the - certain objective criteria that could be applied that would justify a Fast Track.

It became a lot easier once the vertical integration PDP came. But so we're looking for input from you all. We all know that there are issues may - or situations may arise which a Fast Track is necessary. And we're looking for

your feedback on that. And Alan, you want to address that? And then
(unintelligible).

Alan Greenberg: Yes, I think that this discussion shows some of the fun in this group. The term Fast Track is used in a number of different ways. Jeff has given one of them. I tend to use it in exactly something exactly the opposite end.

That is something which we know we need consensus policy to fix but it's not particularly controversial the answer is clear. There is currently no rules right now. For instance in the domain (tasting) policy we said we will have some reports and we may revisit it.

But there is no process to revisit and make a minor tweak or change even if everyone agrees to it other than starting off with an issues report and going through the whole process.

So there are certain things where it's easy to get consensus. We know what the answer is but there is no process to do it without spending a year and a half and an awful lot of people resources.

And from my point of view that's one of the real needs of a Fast Track. I worry a little bit about vertical integration be considered Fast Track because it's a real critical issue and I'm not sure we want to fix that.

Man: Maybe we can go to the mike first and then I'll chime in if you don't
(unintelligible).

Man: Sure. And if you could state your name.

Bill Smith: Bill Smith with PayPal and at the risk of beating a dead horse, could someone walk me through what happened this morning in the GNSO Council in establishing the drafting team for the DNS search and how that applies or what path through this was taken?

Jeff Neuman: And actually we're just about to get to the when we talk about the next slide, we're going to talk about drafting a charter. And I'll go through what I observed happening and others may weigh in but it brings us actually to the next recommendation I want to - let me get James' comment on the Fast Track and then I'll go right to that.

James Bladel: Yes, and just briefly there was a lot of discussion as Jeff mentioned regarding Fast Track and this is now day 4 of this marathon series of meetings. And one of the subjects that keeps coming up in just about every session involving the GNSO is the concept of how it manages its workload.

And I think if we recognize that the GNSO has limited resources in terms of how many PDPs it can focus on in a quality manner at any given time. Then, the Fast Track which we all agreed needed to exist implies that some other work must have to suspend to make way for an expedited Fast Track PDP or an urgent PDP.

And I don't think that we really identified that there's a mechanism to do that either so I think that's just some of the complexities that we've had to explore while we were discussing this topic.

Jeff Neuman: Thanks, James. And actually what I want to do to answer the question that Bill has and I didn't really do a good job of explaining this at all. But if you go back to the chart, there are a number of different actions that the GNSO Council can take.

One of them is this formal Policy Development Process which is really a very formal process which could result in the consensus policy meeting and changed to the contracted parties agreement or the development of best practices.

But it's really something that when the council initiates that process and it goes through the policy process it's meant for the board. And the board has to do certain things which we'll talk about a little bit later with a formal PDP. But the GNSO Council can also initiate other types of policy processes that are not the formal Policy Development Process.

Which is what happened this morning was the concept of setting up an informal working group to work with the CCNSO on GNS CERT that was the proposal.

It wasn't something that would result in this formal Policy Development Process or necessarily the recommendation to the board or binding policy, I'll let Marika also touch on that.

Marika Konings: It's just it's actually correct because what you currently see in the bylaws, there's only a provision provided for what should happen in a Policy Development Process.

There's no other information. All that kinds of processes that, you know, do happen in practice - I mean they're joint working groups. Ad hoc drafting teams that meet but they don't have a formal prescribed process in the bylaws.

And I think part of what we're trying to do here in this chart by making that distinguishing there that first up on like are we looking at a policy issue? Do we think that, you know, consensus policies might be a potential outcome.

Yes. If so, then we move into the Policy Development Process. But if not, there you have the drop-down button that says then other GNSO processes that you'll find on - I'm trying to find which page - on Page 20 of the outline you find a little drop-down menu where we've highlighted some of those other GNSO processes that are currently being used.

And I think the idea would be that I don't think it's for this work team to prescribe what these groups can do and how they should work, but maybe in the future that some guidance might be provided on those kind of groups and the rules of procedure to provide an indication of what kind of different processes the GNSO can use to pursue some of its activities that are not strict Policy Development Processes.

Jeff Neuman: Right, and to add to that, there are things that could be done in the informal process by the GNSO that at some point they realize, "Oh, wait a minute. We think this may result in a - or we may want it to result in a consensus policy."

And at that point in time they would have to leave the informal process and try to find an input or a way into the formal process so that it can result in that.

So we - and I understand this is actually a subject that you know for the first getting into this whole ICANN world or the GNSO world is kind of a very complex.

And it takes a little while to get used to but essentially the - what Marika was talking about was try to reword if it helps and I'll move on if it doesn't - is a consensus policy that registries and registrars right now are bound by their agreement.

The principal way to amend those agreements are through the development of a consensus policy. And if there is a development of a consensus policy that will act as an amendment to the registry and registrar agreements. But not everything that the GNSO Council does is meant to amend the contracted party agreements.

So for example, when you enter a policy process like for DNS CERT. They're entering into that - if it's not through the formal process a number of them are entering into it to explore the issues that are involved. I'll give you another example that's going on right now which the final report was released for the

RAPP, the registration abuse policy passports, which was to recommend future PDPs right.

Their role was initiated by the GNSO to explore the issues that are out there, to do some research, to do some fact finding, to figure out and possibly recommend to the GNSO Council whether PDP is formal, PDPs should be conducted.

And one of the recommendations of that group was to establish a PDP on a review of the UDRP. Now, it's up to the Council at this point as to decide whether or not they are going to initiate the formal PDP process. But that was not one of the outcomes of what the RAPP group was set out to do. And Phil, if you have a comment you want to add or...

Philip Sheppard: All right, I can give a less - I believe a correct interpretation of what happened earlier if you like. The question was about the DNS CERT drafting team being set up.

Jeff Neuman: Right, right.

Philip Sheppard: Our first observation I think it was under the old rules and not the new rules that you're currently drafting.

Second, I think my take on it was the council did not want to have the discussion about the merits or otherwise of the issue at council and deferred it to a drafting group to at least shape any subsequent argument.

And the third observation is that the history of cooperation between the CCSO, the GNSO has been a rocky one. And I think if the GNSO shocked out of hand a hand stretched from the CC's on an issue I think that would have been politically naïve and I think that was probably a third element of what happened as well.

Jeff Neuman: Thanks, Phil.

Alan Greenberg: Two quick comments, in terms of DNS CERT, the comment was made that there was a comment period and the comments were out were uniformly negative, so why are we still talking about it?

And part of the answer is because ICANN itself is still talking about it and there are potential budget items regarding it so we feel we cannot drop it at this point.

In terms of the more general discussion we were having, ICANN really likes to use any given term in at least four different ways. And, you know, so we'll find the term consensus used multiple ways, stakeholder group, working group, and by definition it's confusing.

Jeff Neuman: Okay, thanks, Alan. I want to jump on back to the policy process just for a second because I don't want to rehash that debate. It's certainly an interesting debate and certainly one that will keep going on for months to come I'm sure.

In Stage 2 of the Policy Development Process, once the council has voted to initiate the process, and then has voted to - the issues report is out, all the facts are before - in the issues report and that has been put out for comments. Now the GNSO Council has decided, okay, we are going to create a working group. We're going to initiate a formal Policy Development Process.

In the bylaws right now, although we've been doing this for the last many years, we've been developing charters to govern the work, if you will, of the working group. It's actually not a requirement in the bylaws that a charter be developed.

There is no requirement at all. I think with the way we've been operating and if you've read the - any of the recommendations from the operational steering committee and you've also read the working group work team, I think right now most people agree that a charter is an essential element of a working group so it can keep the working group focused.

There - a charter can be developed in a number of different ways and the council has done this in several ways. A charter could always be proposed by the entity of the party that - or parties - that want a policy process under way.

Or, as the GNSO Council has done, once it decides to initiate the formal process, it could then issue an immediate call for a drafting team to develop this charter.

Again, this is not a requirement currently in the bylaws and so we all believe that this is a good development and should be something that is recommended from our Policy Development Process Work Team to have that charter. Marilyn, do you have a comment?

Marilyn Cade: My name is Marilyn Cade. I suffer from having been a former councilor. And in the days when I actually - and I enjoyed it greatly and feel that it was a fantastic experience along with Philip Sheppard, who spoke earlier, I think that one of the interesting things that I have observed in being a part of this working group is that we seem to have lost our racial memory.

And I don't mean the working group, but those of us who participate have lost the racial memory. The - we were - we were having to - because we started at a flat start, we had to invent processes that made sense. And one of the things we came to realize is we had to have a charter because we had to establish parameters for what we were going to focus on.

So the interesting thing to me is in the pre - more mature stage of ICANN, we actually understood we had to have a charter. So I was actually quite

surprised when we - when we reached this point where we were trying to say, do we need to mandate a charter or not?

And I'll just say my personal view is that scoping exercise is very important. And my personal view, both within the working group and external to it is it's got to come as early as possible, including understanding what the group will do and what it won't do.

Jeff Neuman: And actually, I'm going to jump to the fourth bullet here because you brought up the question of in scope. And that's an important question, and one we actually had to talk about considerably in the work teams.

We found that in talking to members of the GNSO community, I think there was several different understandings of what the word in scope means. So in the bylaws right now, to go back a step, it basically asks in an issues report - it asks the General Council's office of ICANN and staff to produce a report and make a recommendation as to whether that particular issue is quote "in scope" or not.

And there was really no guidance given to what in scope meant. Several years back, I could recall that contracted parties had one view of what in scope meant and non contracted parties had another view of what in scope meant.

And there was really no guidance in the bylaws to say which one of those is the correct interpretation. So the work team got together and we discussed and it went back and forth.

And I think the that the work team realized that really when you're talking at this stage of whether something is in scope, because the Policy Development Process is not only about developing consensus policies - in other words, it's not only about amending the contracted parties contract but also about a

plethora of other things that in scope in - for this - for the PDP process, means is it really in scope for the GNSO and ICANN?

And I think that's a little bit of what the debate you heard this morning if you were at the GNSO Council, there was a debate as to whether the particular issue you're talking about is in scope of the GNSO or not.

No resolution on that, but I think when they were talking about in scope in that session that was going back and forth, they weren't talking about whether it was in scope of the contracted parties, they were talking about is it in scope of the GNSO or is that something that - is that policy? Is that something the GNSO should be addressing?

So the work team pretty - I would say a consensus of the work team agreed that for the PDP process at this stage, when you ask when the General Council provides advice as to whether a particular issue is in scope, is actually - or should be providing advice on whether it's in scope with the GNSO as opposed to whether it's in the scope of what's to be amended in a registry or registrar contract. Phil?

Philip Sheppard: I think it's a good clarification that you're trying to make. I think you're probably right. I think when we first had drafted that I think the board had thought that it was probably to do with our consensus policies in amending contracts because that lets you kind of off the (unintelligible) just tossing it off somewhere else.

But my serious question is your current phrasing is with in scope of ICANN's mission and more specifically the role of the GNSO. Have you tested that out with the - with ICANN counsel yet and are they happy with it?

Jeff Neuman: We haven't at this stage.

Philip Sheppard: Okay. I mean I think I'd advise perhaps doing that as the next stage mainly because it strikes me a slightly woolly in terms of the role of the GNSO and (unintelligible) the critical bit.

And I think actually that goes back to the question we just had about GNS CERT. I think you're on exactly the right track, just a question of choosing the words that legal counsel's going to be happy about in terms of how they interpret.

Jeff Neuman: Thank you, Philip.

Marika Konings: I think the intention behind it was that, you know, scope of GNSO policy making is (willing) to detail these instead of (unintelligible) these or anything else, so. But absolutely I agree that that should be verified.

And I think that's the idea as well of course going forward. Once we have a better idea of the different elements that go into the Annex A or the new Annex A then of course we'll work closely together with legal counsel to make sure that we get the language right and that it fits well I think.

Man: I've got to go Liz and then Bill - or it was Bill first?

Bill Smith: I was just going to offer - Bill Smith, PayPal. I was just going to offer the clarification for scope is in my opinion it should be as defined in the bylaws.

Jeff Neuman: I'm sorry, (unintelligible), I apologize.

Bill Smith: Clarification for scope...

Jeff Neuman: Yes.

Bill Smith: ...is quite simple. It should be as it is defined in the bylaws. The bylaws have a statement about what the GNSO is supposed to do. Or it - certainly for me. I'm a relative newcomer, but I come in, I read documents.

What's in - what I am attempting to say, this should be in scope, that shouldn't be in scope. That's - what I'm hearing here is yes, we should have charters. I think the GNSO has a charter. Obvious what is in scope and what is not in scope. In this case scope does refer to the bylaws that are the thing that actually empowers the GNSO to do anything.

Jeff Neuman: Yes, I think the classic example of where this came up was in February 2006 when there was a Policy Development Process that was initiated on amending the contractual amendment or contractual conditions, I think it was called.

And it was the GNSO was looking into certain provisions in the registry agreement and whether to modify them. And as I - I don't know if I just took your comment, Liz, but...

Liz Williams: (I have another one).

Jeff Neuman: Okay, so I'll go through this one, then you can bring up the other example. And in fact I was on the other side arguing that the GNSO shouldn't look into this because it was out of scope.

Why did I say it was out of scope? Because it was out of scope of the contracts themselves didn't allow the GNSO - this was my view at the time - but didn't allow the GNSO to look at these issues because it couldn't have been implemented even if they wanted to.

In other words, even if the GNSO Council came out with a recommendation the GNSO community came out with a recommendation that says that this clause in this contract to be changed to this wording.

My view was that that could never be enforced because the contracts wouldn't allow them to be. And I think the general council at the time had clarified look, it's in scope. It may be within the scope of the GNSO but the outcome that some people had wanted may have been out of scope of the particular contract.

I think the debate kept getting confused including on my part. I mean I'm willing to admit I was a little wrong on some of it. Although, right on the outcome. But you know I was definitely one that was arguing that it was out of scope for the PDP and that's where it really got clarified kind of like exactly what you said it, right it should seem obvious but at the time it wasn't. So Liz, another example.

Liz Williams: Thank you. Thank you, Jeff. My name's Liz Williams. I was the policy development person who was responsible for the PDP February 06 which was what Jeff's referring to and I have to tell you the biggest waste of energy was an argument about scope.

So I would urge you not to take on any project that is outside the scope of the bylaws it is a rabbit hole that you do not want to go down and it's a (hang) of a bunch of trouble. The issue is that even if in scope within what you roughly think the GNSO is capable of doing you are precisely right and I am sorry I don't know your name.

Bill, thank you, Bill, thank you Marilyn, I mean. The issue is that if you're going to spend a lot of resources with very busy people in a very crowded calendar you must only focus on things that are within the picket fence scope of the capacity of anything to be amending a contacted party's contract.

Now, you and I, Jeff, had a very, very long set of conversations for about 18 months on the February 06 PDP and I was in the middle of the analysis going back to the general council.

I was in the middle of parties that disagreed with you and it makes life extremely difficult for now for people like Marika and others to be involved in PDP's that there is doubt about the scope.

So I urge you only to focus on things that are constrained by the bylaws and be very, very clear that when you're writing the charter for a (extension) of the PDP but everyone knows - and most of us in this room and anyone who comes into it can pretty much guess where it's going to end up and then you have to deal with (weighted voting).

Then you have to deal with the contracted parties and the implications of the contracted parties and non-contracted parties. So you know bottom line is be really, really precise and I agreed with the comments this morning that you know the GNSO might be interested in doing this but it is not within its remit.

And the counterbalance to that is a constant complaint about we have too much work to do and we have not enough resources and one way of constraining that is being very, very precise about what you can work on. Now it's not all sexy and gorgeous but you have to focus.

Jeff Neuman: I agree with those comments and I think that focusing on the scope at the beginning is helpful in the sense that if, you know, it comes up all the time. I mean even now there's arguments or debates in the registrar accreditation agreements, you know, as to, you know, it certainly may well be within scope to discuss the issues in the agreement but the amendment itself may or may not be out of scope.

So it's possible and again I am not offering an opinion as to whether it is or it isn't but the point is that it's possible that a topic could certainly be within the scope but the implementation or certain forms of implementation may not be in scope for a particular contract let's say.

And I think that's as Liz was saying, it's important if we could when you start the policy process if you could know that upfront and not waste a lot of energy on arguing whether something is in or out of scope and then, you know, really focus on what the possible outcomes are.

I think that's very helpful, I know that James and Alan have to go to another meeting at this point so it will just be the two of us up here. Oh, you wanted to...

Man: I just wanted to say that this has been a very, very long process and I just wanted to offer my compliments to Jeff and to Marika for keeping us on track for the last year.

This has - as mentioned this stuff is a really good lullaby here not very, you know, over-caffeinated properly to deal with it on 8:00 on a Thursday morning and so I appreciate both of your efforts and sorry that we have a conflict.

Jeff Neuman: Thanks, Bill, do you want to...

Bill Smith: Sure, Bill Smith, PayPal. While I haven't been party to these discussions I also know how hard it is to do these things so. But be sure you know that I understand that.

I guess I would offer for recommendation 24 that we consider clarifying scope, that the definition just simply be that the scope shall be as defined in Article 10, Section 1 of the bylaws.

There it names a supporting (organization) description. There'll be a policy development body known as the Generic Names Supporting Organization, GNSO, which shall be responsible for developing and recommending to the ICANN board substantive policies related to generic top level domain. Very clear.

Jeff Neuman: Kind of circular in that clear way. But I think you're right. And the wording in the bylaws may say that but we may put in the rules of operation some guidelines on how to interpret that. So again those are guidelines for - the definition you read is a little bit circular.

Bill Smith: That's fine. The bylaws - bylaws speak very loudly. Okay, if not, then this organization is being run in a very ad-hoc manner. That's my suggestion, okay. I'm a relative newcomer, somewhat an outsider.

What I'm seeing is some scope (creep) and it's (unintelligible). So I'm suggesting is this recommendation is this group should consider saying the scope is as defined in the bylaws because that's where scope is defined.

Jeff Neuman: Okay, Marilyn, you have a comment on that?

Marilyn Cade: ...Cade and I was heavily involved in the PDP '06 as the catalyst who challenged an interpretation by staff and that went to an interpretation by the general council.

But I'd like to support what Bill just said because I think the way that Bill proposed it does leave, you know, capacity to bind by the bylaws that may mean it still gets interpreted and that interpretation would take place if challenged, I think, right, Bill?

That would be - that you know for those of us who have worked in big corporations and many of you have and in multi-lateral organizations. The fewer words you use, the better off you are. And I was just thinking in response to your comments that actually it should say the scope is as defined by bylaws - by the bylaws.

If the bylaws change, then that would change the scope. That probably - I hadn't thought about it before - but I think Bill's suggestion might actually be very helpful to us.

Jeff Neuman: Yes, I think that's right. And I just want to just make a distinction here as to you know one thing we're trying to do is to revise the process and reflect that in the bylaws where appropriate.

And in this case, obviously would be appropriate. But I think another thing we're trying to do is, one of the missions of the group is to really to create some sort of - I'll call it a handbook for lack of a better term because just to guide counselors when they got on the council.

Just to help them understand what it means. It's not legally binding, it wouldn't be intended to be the legal definition, you know. It would have this caveat or this disclaimer at the end that says, you know, these are just interpretations of our handbook but for the official language look back to the bylaws.

Right, so what we're saying is in the Annex A it could say, submission is as defined or the in scope is as defined in Article 10, Section 1 but when you come on to the council and you're a new member you really want to understand or want some handbook that tells you or tries to provide you some guidance on what that means. You know, most of the people on the council are not lawyers.

Most of the people on council have other types of jobs and you know a handbook in helping them deal with council issues or deal with if a question of in scope comes up to help them understand kind of like an FAQ if you will, as to what that means. Not legally binding, it wouldn't set the legal precedent but something that helps them.

Marilyn Cade: Sorry, I am just going to do a response here, so I think you're explaining what might go into the narrative that says for example and...

Jeff Neuman: But bylaws don't have narratives, so there's a difference.

Marilyn Cade: I understand.

Jeff Neuman: So if it's in a report yes, or in a handbook yes.

Marilyn Cade: Okay.

Jeff Neuman: It'd be kind of a – I wouldn't even put it as a rule of the procedure, right. We were talking about, basically, three different outputs.

Marilyn Cade: Right.

Jeff Neuman: Changes to the bylaws. You have our rules of procedure.

Marilyn Cade: Right.

Jeff Neuman: And then you would have more of a handbook, guidebook, something to help like a council (101).

Marilyn Cade: So Jeff, I think it'd be possible in the - in the handbook to say, for example, there have been times when a councilor or the council has asked for a clarification of this. In that instance, this is what you would do.

Jeff Neuman: Right.

Marilyn Cade: So I think that's different then having very clear language that says, in scope - as that scope is defined by the bylaws.

Jeff Neuman: Right.

Marilyn Cade: I'm not defending with these - I'm not disagreeing with either one of those sayings.

Jeff Neuman: Right. Okay, let me - yes, Ray.

Ray Fassett: Just a real quick question. I'm Ray Fassett, by the way. A real quick question on this issue of scope. It kind of dovetails into an idea of where the rubber really hits the road.

Is it a consensus policy, capital (CP), or is it not? (Unintelligible). Does it fit within the scope that way, because it's as though maybe to Bill's point you have the bylaws that says this, and then it branches off from there into one of these other two buckets. How are you looking to educate the council members on this point?

I think this was one of the positives that came out of February '06 PDP, was a more educational process that there is a difference between what is absolutely beneficial, which could be a best of practice recommendation, versus this is a capital C, capital P (unintelligible) policy that has potentially ramifications upon contracted parties. And that - I think that came out - that was one of the benefits that came out of it was this education process.

But, so - in that - in that spirit, have you considered how or you know when council members as they come in and turn over, how they will understand - as it relates to scope? The idea of consensus policies versus best of practices. Because - and then I'll just finish with one thought.

But then we ran into the problems. We went to - in that February '06 process we went to ICANN staff, particularly counsel looking to get some guidance up front before a lot of work was starting, only to find where they really couldn't give an opinion until there was output, to be able to make a decision on, which made a real chicken and egg thing and a lot of work for everybody and a lot of effort. So that's my question, is how are you looking to address that part?

Marika Konings: Yes. This is Marika. You made a very valid point you made, and I think something that we encountered as well in some of the recent issues report, where we need to look at scope and where you look at very broad issues.

It's like well → it's impossible like to define scope as the narrow → like is it → could it be consensus policy outcome or not? Which is basically impossible and often something that becomes clear at the end of a Policy Development Process.

But in response to your question, how can you educate councilors and inform them on that? We have actually, and Margie Milam, who actually just left, has a presentation on that that we've been giving on various intervals now.

And I think (exactly) a link on that would be included in any kind of manual or guidebook that we would develop on that discussion on, you know, what is the difference between, you know, the consensus policy and other discussions.

And which topics or which elements are part of you know the picket fence and could have as a potential outcome near binding obligations on contracted parties. Because we've encountered that even on various occasions where (unintelligible), you know, even from a staff perspective (unintelligible) the difference and how that works. It's a very complicated process. So I think further guidance is definitely helpful.

Ray Fassett: So to follow up, it appears your working group has spent some time - quite a bit of time on this particular issue. That was really my question. Thank you very much.

Jeff Neuman: Thanks, Ray. Yes, we have. And, you know, it was definitely debated back and forth as to - just like you said. There was a lot of frustration in that, because some people in the February '06 really had a feeling on that.

But we noticed this is the output that's produced that's not within the quote "what they call the picket fence," or it's in the definition of consensus policies within the contract.

And so a number of people said, well, why would we go through this entire process if we know that the output that certain people want is not going to be in scope of the contract? And it's definitely attention as Ray was saying, because the general counsel's view, which is correct, is how can we make those determinations if we don't even know definitively what the output is going to be? So we certainly spent a lot of time and several calls discussing that one in particular.

The other issue that came up with the work team before we jump to Stage 2 that I want to point out is priorities of PDP. So right now in the Policy Development Process there are very strict timelines that have to be followed regardless of what else is going on in the council, or in the GNSO community at the time.

And that's not just PDPs. Other PDPs that maybe could be going on, but other items. Whether it's other working groups or just other larger issues like Internet governance – whatever else is going on in the community that people have to devote resources to.

In the bylaws right now, there are very hard timelines. You start at PDP, within 20 days you get certain kind of input. Within 35 days, you have to get constituency statements.

Within 15 days after that, or whatever it is, you have to have an initial report. Within 30 days after that, you have to have comments submitted. After that, you have to have a final report. And it's all within, I would say, a 90 to 120 day period.

It doesn't consider at all anything that's going on in the council or in the community, and that's a problem. It's a problem because, while the GNSO community may want a Policy Development Process on particular topic, you know you're faced with the decision, if I initiate the PDP now, it has to be done in 120 days or 90 days, but I know that's not possible.

So do I just delay the vote on initiating the PDP, or is there some other process where the GNSO Council could prioritize which PDPs are going on? Initiate a PDP, but have it put back in terms of priority if it's not number 1. Or alternatively, if there are PDPs already underway, how to move that PDP up or down in priority.

And we were kind of relying on the GNSO Council's priority process that's going on. It's taking a little bit longer. So in our report when you read it, it's really just kind of punting the issue or deferring what the council comes up with.

And I think this one, we're hoping the council comes up with something in the next couple of months that we can just incorporate into our reports. So we want to jump onto the next slide.

The Stage 3 is the stage that deals with the actual work that's being done with the working group. And the mandate of our team was not to recreate all of the work that was done by the working group work team, which is to talk about how, you know, what goes into a charter, statements of interest, how members of working groups elect a chair, a vice chair, how they, you know, relate with each other.

That was not our - our role was to do basically everything kind of around that issue. So if you look at, for example, recommendation 28, which is the duration of a public comment period on an initial report. In that recommendation or in the bylaws today, it's basically a fixed timeline.

You release the initial report. It's 20 days to respond, and it really doesn't say, and it doesn't leave any room for flexibility. And so we obviously made a recommendation in our report to give a little bit more flexibility or a little bit more time to respond to a initial report.

One thing I'll jump in here, which is actually an overarching issue, is the whole issue of translation. And where it plays here - what I was talking about is okay, let's say you have a 30 day period.

Well, that's great if the report comes out in English and you're an English native speaker and you're able to reply in English, you know, 30 days may certainly be enough time, but what if you're not.

And, you know, what if it takes time to get a report or parts of a report translated and to have the capability of receiving comments in those other languages. You know really is 30 days enough?

And so all of these issues - again, that's an overarching issue that's - with translation that fits in many different stages - or in all of the stages I should say, and something that needs to be kept in mind when we do create timelines. And you know the more strict we are, the harder it is to get those translations and get comments in other languages.

One other one I want to highlight here - oh sorry, go on.

Man: So I've worked in other fora that allow work groups basically to form where the language of the work group is stated at its initiation, the language that things will be conducted in, and translations are done after the fact. They're not requiring simultaneous translation. Basically documents let you along, but the work goes on in the native language (unintelligible) the group.

Jeff Neuman: Right. And I think...

Man: Something like that I think could be used here.

Jeff Neuman: And actually that is in - I believe (Rick) and you can correct me if I'm wrong. In the working group work team report, the final report they did recommend that, just like ICANN states, that the language that things will be done in is English.

The working group work team in their final report made the same recommendation. However, even if the work of the working group is done in English, you're right, after the fact you do need to consider translating that and providing ample opportunity for people that speak languages other than English to provide feedback.

So even if the work in the working group is done in one language you know it doesn't - it's not necessarily saying you shouldn't, as you said, translate something after the fact to get as broad of a - to get as broad feedback as you can.

The other - one of the other recommendations is - at this point the by-law states that the only deliverables of a working group are a - an initial report and a final report. Doesn't address things like surveys, doesn't address other reports that may not be initial or final.

I mean you know you kind of take a look at - what can that be? And I'll use the vertical integration working group as an example. In that working group, we were all working as best we could to come out with officially, what is an initial report.

But we realized at Brussels as this meeting got closer, that what we - at best what we were able to produce didn't - wasn't really an initial report. It didn't have recommendations, it had discussions of what the issues are and I don't even think these documents made it.

But at the time that the working group was discussing it, there was, you know, a matrix of different options. There - but there were no real recommendations. And so that's not an initial report, it's certainly not a final report. What is it?

And so the work team discussed this and just basically the recommendation is to leave it very flexible. You could have as many different types of (unintelligible) that you want, so long as the bare minimum is an initial report and a final report.

But anything else, the work - the work team, or the working group wants as deliverables they're free to release that, to distribute that to get feedback on as they see fit.

Marika Konings: One of the open questions are still, if you look at the bylaws you know it describes in the (unintelligible) issues report - it describes some elements that an initial report should have.

And the question will be you know is that - should that information be in the bylaws or should there be - should there be something in the rules of procedure and there should be more flexibility around what a working group would (send) there.

Or are there certain elements that should be required for - for example, as Jeff said, for example, should an initial report always have draft recommendations, otherwise it's not an initial report. And for those other questions as well, the group is looking at input on.

Jeff Neuman: Marilyn?

Marilyn Cade: Good question, I guess, from having been involved in so many of these before. And again, I'll go back to the idea that we debated the question of if we were leading a conclusion by putting draft recommendations in an issues report.

The difference between having an issues report that scopes the issue and is more of a white paper about the issue, including background, how it's relevant to ICANN and I could use a few examples about - and therefore, and how that's particularly been - that issue's particularly relevant to the GNSO policy process.

One thing I might just say would be helpful for all of us if we were distinct in the use of our phrases and understand that the GNSO is the GNSO supporting organization, and the GNSO Council is the council that according to the bylaws only focuses on policy management.

And I say that because something could be of broad interest to the GNSO, but still doesn't belong in an issues report being developed by the policy council. And so that brings me to this - now I have to leave the microphone and go look at this - (unintelligible).

I want to focus on Recommendation 31 - the working group input on issues related to implementation. We fought this battle pretty hard about - at some point we finish policy and we handed off to staff for implementation.

And the idea that the working group might pre-identify issues related to implementation and might provide their insight if they, in fact, are based on information and fact about implementation I think is something to think about.

But I think, Jeff, we may need to really think about, you know, you turn something over to the staff for implementation, it cannot be overseen by the policy council.

So do we actually have a provision for when a sub-element is determined not to be final -- or not to be finished in terms of its policy implementation and that sub-element needs to be returned to the policy for further work. And I don't think we addressed that.

Jeff Neuman: Well, I think in a later recommendation and I'm not sure it's the one we've highlighted...

Marilyn Cade: Okay.

Jeff Neuman: ...in this slide presentation, but we definitely do have a - okay, it is in -- yes, Recommendation 42 - we do actually state that - sorry, I'm stepping ahead here - that we do recommend the creation of a working group implementation review team, which would be responsible for reviewing that type of implementation issues.

Now that review team can be the exact same as the working group, initial team, you know. We kind of left it up to the council to decide whether those are the exact same teams or whether they create a new team comprised of the community, because some people may not have an interest in an initial working group in working on the implementation. I find that rare, but it could happen.

So the short answer is yes, that we believe that there should be oversight by the GNSO community as opposed to the council, but whether that's the exact same work team or whether like in the transfers there was actually a different working group work team, although comprised of many of the same players, it was actually a different work team, or working group.

Marilyn Cade: Well, maybe I've had rare insightful moment since we were - this was being thought about, but I'm really thinking out loud about the issues of conflicts of interest, which the Policy Development Process may provide safeguards, because the discussion is about policy development.

And that are - there are certain anti-trust safe harbors that can be taken advantage of when you are talking only about policy. But things get very complicated - and I apologize, this is - really this has just occurred to me now.

If competitors are moving into oversight of an implementation process which affects their business interests - and I might just say, Marika, I'm sorry I didn't think about this, but maybe this might - you might take this up with the council about this issue of if the working group is going to and somehow oversee implementation and be able to influence the implementation, well meaning though that may be, there may be - there may be something different than just declaring interest in the policy - in the Policy Development Process.

Marika Konings: Yes, I think - I mean, we've had quite a few extensive discussions in the work team on this issue as well and with the question (like could be), how could you avoid you know gaming of that kind of system.

Where people suddenly go, you know, maybe they didn't like the policy outcome that much, but when they see the implementation - or people have changed and they want to go back on the issues.

How to avoid and be that such kind of process wouldn't be used as an option just to, you know, change the policy or, indeed, have influence over the implementation that, you know, that doesn't really follow that - the policy recommendations.

And I think one of the options that was discussed there that actually should be the council, like, maybe on the recommendation of such an implementation review team or of an issue that's you know brought by the community that actually is the decider of saying, well, you know, we really see that this is a policy issue that is being addressed through implementation and it doesn't follow the actual recommendations.

But you do have a kind of system in place that is just not the working group saying, hey, we don't really like the implementation and, you know, we actually thought the policy wasn't that great to start with, so maybe we'll use this process as a back door to, you know, make some changes now.

So the group has discussed it and I'll think you'll find it - I don't think in this recommendation, but maybe in the notes if it - you know, what the thinking was and the kind of, you know, the safeguards you need to build in such a process to make sure that you avoid that kind of gaming of the system as you described.

Jeff Neuman: Yes...

Woman: (Unintelligible),

Jeff Neuman: and I think that - I think that always a balance - a balance always needs to be struck and I definitely think that as ICANN matures as an organization they should certainly be - there are plenty of other organizations where competitors come together where they're given the - we call it the sermon, the anti-trust sermon, where there's someone that the organization retains to remind those participating about the rules and what would constitute those types of - or would create some of those types of issues. So I want to get - I understand what you're saying and...

Woman: (Unintelligible)

Jeff Neuman: ...and a balance definitely needs to be struck, because you can't on the one hand say, those guys can't be part of the implementation because they're probably the only ones that can tell you how - or in certain circumstances how it can be implemented. On the other hand, you're absolutely right, that that could present certain competition issues.

Marilyn Cade: Let me just say for the record, that this looks to me - and perhaps I just didn't catch it before - this looks to me like the volunteer stakeholder community is supervising the implementation.

And that I think, we would have to draw the line at, because the accountability for implementing policy is not in the hands of the stakeholders. It is in the hands of the staff. That's the clarification I'm just trying to strive for.

Jeff Neuman: Right, and I think the terms we use are you know the implementation review team which would be responsible in dealing with as opposed to what you - what - maybe I - maybe it was a mistake that I said, actually, earlier on when I said the word "oversight".

It really - I think it was - I probably - I used that - shouldn't have used that term. What we say in the report is actually in dealing with, but certainly, I think a clarification of what you're saying it should be addressed.

Man: So I share Marilyn's concern about the differences there, in particular, the anti-trust implications. I think also, possibly (not the wording in there) the executive summary's more accurate, maybe also than the narrative you just gave, Jeff, when you said maybe the same working group would transform into this information review team.

I think actually, there are very good reasons for that not being the case. And in fact, you should advise against it being the case. One is the one we discussed in terms of potential anti- trust.

And I think it would help that by the time you got to implementation review, anyway, that you have a new team and therefore, a system where statements of interest and declarations of interest are really made.

But also, I think, probably, just from a practical point of view, you probably want a smaller size team ,anyway, in terms of the second one rather than the first which might be much broader. But I think there's good reason for keeping this to (staff).

Jeff Neuman: Yes, and I think those are - those are excellent points and what we have in the report - it's really, is the flexibility of the council to determine the size - to take into consideration the size of the review team, the - which different - you know, we left it pretty flexible so that we weren't setting the rule that this is - has to be the composition of the review team.

You could also, in theory, set up a review team where you have some players that are participating in the sense of providing input or facts or descriptions of their systems or whatever it is, but may not be - I'll use the word, although we hate using it in voting - you know they may not be part of how you determine whether it's consensus, but you may be drawing on them for their expertise.

And I know we're running short of time, so I do want to go to Stage 4 and an interesting thing that we pointed out. And this was kind of controversial, at least within the work team. And controversial issues are good, because they're actually more fun to talk about.

And so in the bylaws right now, it basically states that you need a - after the policy - after the working group acts and they come up with recommendations and they send it up to the council and they follow all the right processes, at the end of it the council does vote.

And there are certain requirements of how the council votes in order to pass something to the board. And what the bylaws - and I'm paraphrasing - but essentially, they say that if there's a super majority and they pass that - you know super majority approval on the recommendations of the report, whatever it is they send up.

At that point in time if there's a super majority, then the board must - they have certain responsibilities or they have certain limitations. So they have to approve it unless a certain percentage of the board disagrees and if they do, then there's a process for them to follow.

If there's not a super majority within the council, all the bylaws state right now is that a majority is sufficient to act. It is sufficient for the board to act. What does that mean? And that's going to interpret it differently by different players, especially if it relates to a consensus policy.

The contracted parties have argued that, okay, the board can get the recommendations, that's great, so they could - you know, you don't want to stop the GNSO Council from passing it to the board, and the board can possibly endorse those recommendations.

But the contracted parties take the view that that can't be enforced against the contracted parties as a capital C, capital P, consensus policy. That only if you have a super majority can the board actually force that on our contracted parties, because it fits within the definition of a C, a capital C, consensus policy.

The non-contracted parties argue that that isn't the case, that the by-laws - if that were the case the bylaws would say that and a majority's sufficient to act. From some non-contracted parties within our work team have argued that too should be binding on the contracted parties, because the board is acting.

And so I think that it's an open issue. It's one that, fortunately, we haven't had to address yet, but it's one that I could easily foresee us addressing at some point in the future. And you know I encourage everyone to think about it.

It certainly - you know taking off my chair hat - it's certainly important. As a contracted party myself, it's certainly important to have clarity on exactly what that means. I think that's actually important, not just for me as a registry, it's important for everyone in the community.

And so there are different viewpoints out there and I'm - I think that's something that people should comment on - and Bill, do you have a comment?

Bill Smith: Yes. I appreciate you - Bill Smith, PayPal - sorry. I'm just reading this section of the bylaws, and it's very - I find it very strange, basically. Because what - I believe what 13e and f combine to do is to say that if a policy recommendation comes through the council...

Jeff Neuman": Yes.

Bill Smith: ...with a super majority vote, the board then has to have a super majority vote. If the - if a (unintelligible) to a firm I believe...

Jeff Neuman: No, no, it's actually - it's actually the opposite.

Bill Smith: Oh no, it's not in the (interest), okay.

Jeff Neuman: Yes, the board has to approve unless a super majority...

Bill Smith: But if - right, but if a super majority can't be obtained below, than only a majority of the board can act? But it shouldn't - it shouldn't even be passed to the board.

Jeff Neuman: It's very - it's very - well, so - I think in interpreting - I think what they - and this is again, all in interpretation, but I think what they were trying to do - and I was involved actually, in that, early on.

What I think we were trying to say is that if it didn't have a super majority, but had a majority, we still felt that the board should get the report and see the recommendations.

Take it out of the consensus policy process, forget about amending contracts - let's just talk about other types of policy development where it could be the development of best practices, for example.

Or it could be development of guidelines or a whole host of other things. We didn't want to say that that couldn't be forwarded to the board if we didn't have a super majority. That doesn't really make sense if all you're talking about are best practices.

However, if you are talking about a consensus policy - in other words, if there's a recommendation from the community and approved by the council by a majority and all it says is, we think these should be recommended best practices for registry, that they should be doing X, Y and Z. We didn't think at the time that that should prevent us from going to the board simply because it didn't get a super majority.

However, if the report said we believe that the contract should be amended and that registries must view these practices, at that point in time the contracted parties say, yes, you can forward that to the board.

And maybe the board can convert that to best practices or can say that's how - and thank you for the report. It sounds like that's a good idea, but the board couldn't empower the staff to put that into the registry agreement because it didn't reach the super majority level.

So that's - I mean, all of these things, whether my interpretation is right or other's interpretation is right - never been tested, but certainly needs - we need comments on it to figure out which is the right way, or which is our recommended way.

Bill Smith: If I could...

Jeff Neuman: Yes.

Bill Smith: ...in listening to what your description there, it suggests to going back to scope again would help, all right, because what I'm hearing - as somebody's who done a fair amount of process, is you're trying to make a distinction

between stuff that is in my opinion, clearly within the scope of the GNSO, okay. Capital C, right, policy, consensus policy...

Jeff Neuman: Actually...

Bill Smith: ...and then you were talking about guidelines and other things and you wanted to treat those distinctly, yet the bylaws are only talking about one type of vote. So if you have a problem from a process standpoint in that, I believe that the bylaws as I read them are talking about you know consensus policy, capital C, capital P.

And what I'm hearing is the GNSO as an organization is also trying to figure out how we deal with all these things that aren't actually consensus policies, and what voting mechanisms do we use for those. And that's getting very confusing.

Jeff Neuman: I agree with you. I think it is very confusing in the existing bylaws. And one of the outputs of this group is to make recommendations on changes to the bylaws so that we can try to clarify those items.

I think over the years we've realized that there are other possible outcomes and - other than consensus policy, other than capital C consensus, capital P policies that are defined in the Agreement. And so what we're trying to do is to figure out how the GNSO - how this process can allow for those multiple types of outputs.

Bill Smith: Right, and I'm just suggesting that you need to - and I heard it before, there needs to be a clear distinction. If you can do both, the distinction needs to occur early on. That'll determine which path you take through whatever process you are using. But if you try and keep it together the way it is, at every stage you're going to have a fork in the road to worry about.

Jeff Neuman: Yes.

Marika Konings: Just to comment, I think that in theory that's - that will be the perfect approach, but often the problem is that, you know. it doesn't become clear until the end of the process or the end of the PDP what the actual recommendations are and whether these are indeed changes to contracts or not. And sometimes your elements are linked, that you have best practices but certain elements are actually going to be part of Consensus Policy. So...

Man: How come (unintelligible)?

Jeff Neuman: So let me go to, let me go to...

Marika Konings: I'd be happy to discuss you know further after this session.

Jeff Neuman: Okay. Let me go to Philip and then to Marilyn.

Marika Konings: Before you leave your (digital), really like to strongly recommend you two to submit some of those comments to the public comment forum so that the whole work team can you know review those as well and then discuss them in further detail. And again, you know anyone wants to join the work team, still plenty of opportunity to provide input, too. Thank you.

Jeff Neuman: Come on in.

Philip Sheppard: All right, for me the question we're discussing is, has a little bit of historical context there because previously the Board got a recommendation from the then (DNSO) and could more or less do with it what it chose.

Jeff Neuman: Yes.

Philip Sheppard: And the intent of the last reform was to say that if the bottom up process had worked satisfactorily and the community speaks with a sufficiently unified voice for me to find out by simple majority, then essentially the board is

obliged to act upon those recommendations. Which left open the question, what if it doesn't speak with such unified voice?

I think I agree with you. (Unintelligible) an area that is still a little bit grayer than it should be and I think. Again what output, what useful output is to say let's have some clarity there. But I think that's how we got to where we are as (unintelligible) as it sounds.

Jeff Neuman: Yes, I think that's actually real helpful because I had forgotten some of those details. And so I do definitely appreciate that background.

Philip Sheppard: And if I may, I have another question about any discussion you might have had on Recommendation 13, which is the concept of between the issues reports and kicking off the PDP on Page 8. You had the idea of an impact analysis being requested which could be an option for counsel to decide upon that.

Now that sounds like a potentially good idea. My only concern is did you have a discussion about the fun that could be had in terms of gaming that? And certainly we have experience in the past on council where essentially if you don't want the PDP to go ahead, you're looking at the only possible obstruction mechanism.

And to my mind saying, "Hey, let's call for a study", to wit, is of course a great delaying tactic. So, you know, are you introducing a sensible, you know, point of analysis here or are you introducing a possibility for delay would be my open question there?

Jeff Neuman: Yes. I think I understand what you're saying and I think we have to think about it in terms of preventing the gaming. And however it could also - I mean the other side of the coin is an impact analysis, and not just on the contracted parties but on - you know we make it very clear on the community, needs to be done just so - you want to know going in if what you're recommending or

what the potential outcome is so costly or just way out there, you want to also be able to know that as well.

But yes, you're right. I mean it has been used in the past, it's being used now as delay tactic. I think by different members of the community and people need to hopefully see through that from whoever does - whoever is trying to gain that. And I think you're right.

If I could jump to Stage 5 and then we're almost done. We're almost out of time here. What's that?

Oh yes. Well, this is more - Stage 5, the importance of this is this is not at all in the bylaws at this point and it's never really been done, which is to go back and review the individual PDP and then also on a more long term basis, to review the entire PDP process.

Now in some PDPs, there's some of the reports that have been adopted like domain tasting, there is actually a call in the report that says that this should be done.

We thought that's a really good idea, that should probably be institutionalized and you should have - or we're recommending that working groups consider whether there's an assessment - or how the assessment is done, how do you measure the success of the individual policy involvement process or of the outcome of that?

And so we think that that's a - it's been implemented in recent PDPs where they've suggested that and we actually have seen, kind of interestingly enough with domain tasting the policy was so successful that people got tired of receiving the reports every six months.

In other words, in that case, it called for every six months you need to issue a report on how the limitations that we set out, the domain tasting have worked.

Every six months a report's been delivered and now the council's like okay, enough already. We see that it's working, but it could have gone the other way and so obviously these assessments are extremely important.

If I could jump to the overall issues. These were the toughest ones for the work team to address, especially the - well we didn't even address the fifth one which is you know once we do come up with this final new PDP process, how the heck do we transition to that? What do we do with all of the existing Policy Development Processes that are underway or about to be underway?

So we didn't really get our heads wrapped around that one because we thought, well let's decide what the new process is. But we certainly want feedback in you have any thoughts on it.

With the other, I would say the top three of those, really the - and I guess the top two for now, is really timing. The issue of timing permeates throughout every process. How many days do you get to have this deliverable? How many days until the next deliverable? How many days for public comment?

Constantly comes up and we constantly hear the complaint now that it's too, that everything's too short in the bylaws. It's too short to - for public comment period. It's too short for an issues report.

So, on the one hand we certainly want to extend those timelines and provide flexibility. On the other hand, we don't want these policy processes to go on for years.

What's the appropriate balance? How do we deal with those issues and in certain sections of the report, you will see where we do recommend certain timelines and we do recommend at the same time flexibility around those timelines for certain issues that come up.

So we're looking for your help to make sure that we can have effective, efficient Policy Development Processes that do not drag on forever, but that also allow enough flexibility to make sure you're getting the right input into the process and to make sure you get the best possible outcome.

So with that said, you know, the documents, the places we want to point you are the initial report and draft recommendations which are on the - the site's up there right now.

It's also on the main ICANN page I believe in the announcements section and you know obviously there's a public forum, a comment forum that's underway, tentatively to close on July 21.

I've already made it clear that I'd like that extended and I don't think because interestingly enough our process is not a PDP. In other words, the process to determine the new PDP is actually not a PDP itself. So we're not actually bound by any timelines.

With that said, we don't want it to drag on so we are planning on increasing the timelines to get feedback. Very important to get all of the stakeholder groups, all the constituency, all the advisory committees to get reports back to us as soon as you can. It's really going to help our work and really help us answer these questions that we've kind of tossed around.

And if you want to see a lot of the background, you have an interest and you want to hear some of the - or see some of the transcripts, not transcripts, but hear some of the recordings of the past calls, you can go to the workspace that's set up at that address there.

This slide presentation is going to be available on the ICANN site, is available on the ICANN site under this particular, if you go to schedule and you go to this particular work session it'll be there.

And really I want to offer a lot of thanks. I think the next slides to all the people on the committee. There are a lot of us and it's a lot of work, it's a lot of issues. And you know look, I'm up here as the Chair, but really the work's being done by all of these people and, you know, I'm just trying to kind of steer them along and make sure they're getting the work done. But these are the people that are doing the work and so they're the people that really deserve a lot of the credit.

And actually I really want to thank Marika because she's the one who helps compile all the information and helped put it into the report. It is a 150 page report which I understand is extremely long.

But really the part that you were given when you came in - the 24 pages - that's the heart of the recommendations. And if you want to look into how we came to these recommendations and a little bit of insight with notes and background, you know, you can read the rest of the - you should read the rest of the report

So with that said, is there, you know, we've been taking questions throughout. Does anybody have any additional questions or comments? I'll let Marilyn - maybe I'll define a word.

Woman: Maybe.

Marilyn Cade: When we - years ago, far away, in the earlier days of ICANN, the council did a self review in which it determined that the (problem) with the PDP was a number 1 priority.

The council then began to actually call for that. And I am talking years ago, right? Then we had a review. We called for an update of the PDP, et cetera, et cetera. I think the PDP really forms the heart - and I want to make a distinction and I might ask, Marika, if we might think about how we capture this.

GNSO is not the council and the council is not the GNSO. The council is the body by which we manage the Policy Development Process within the GNSO. And when people began calling the council the GNSO they do both a disservice.

So I understand sometimes it's shorthand. We all do it in the community but I'll make a pledge to have a pin made and handed out saying, "Remember it's the council not the GNSO."

But I make that point to make this point. In order for the council to be effective at its job of managing policy, the PDP process and the working group processes have to be in place. You - otherwise the council is unable to move to its management role which we may be seeing a lot of evidence of.

So how soon could we get even a prototype PDP out there, do you think, Jeff? And if we were successful in recruiting Bill and the other people to be active members, would that help?

Jeff Neuman: I think that's a very good question. You're putting me on the spot. You know, the comments should come in and hopefully we'll have enough comments to answer a lot of the questions.

The more people that participate in the call and can help us do that, the quicker we'll go. I mean it is our goal to have a final report and recommendations by, you know, certainly by the next meeting in Cartagena.

Marika Konings: One (target) that maybe as this report just outlined the recommendations and not the actual new PDP yet. One question the work team probably would need to ask is once it comes up with the almost final recommendations and proposed bylaw language, whether that should first be turned back again to the community before it actually hands in its final report to the PPSC?

That's a consideration (group) I want to make. (Orne) might say well, we hand in our draft final report to the PPSC and it leaves it up to that committee to run it on a public comment period and take it from there, so that's a consideration the group might want to make as we don't provide for example drafts, bylaw language in this document yet.

Marilyn Cade: Well, one of the things we've talked about quite a bit is not embedding detailed language in the bylaws - that's a - generally a bad idea. Generally high level language saying there should be a Policy Development Process establish blah-blah-blah that allows you to, you know. That the PDP would have to be in the procedures of the council, it seems to me.

But let me ask a different question. So I would assume once the recommendations are in - the final recommendations in and I, you know, I would ask you but also ask others in the audience who are experienced on this, that the staff would then draft a PDP process as opposed to a working group drafting the PDP process? Which I was just looking for clarification on that.

Marika Konings: Yes, actually the original idea was to have already something, you know. We've already been talking to legal counsel to do something for this report but because of the short time frame and we still had discussions quite, you know, quite, you know, toward the end and needed publications (that line) but the idea is already, you know, I think once we have the public comments and this report back to legal counsel, work with them on, you know, building that language, taking it back to the work team just to say look, does this match what, you know, you actually recommended? And have that as one package rather than hand down to the PPSC and going forward.

Jeff Neuman: Yes, I think one of the points Marika was raising is that there are some holes in this report. And to the extent that those holes seemed significant enough when we do have recommendations - and it may not be called a draft final report. It may just be an interim report on some of those items. I mean it's

options that we could do to get community feedback on those items that we have not yet addressed.

I want to thank everyone for attending the session and I'm sure there's another one following it that has probably gone over into. Oh, they actually had a break? Okay, good. So the next session here starts at 4:00? I don't know what it is, but I see Carlos, so my guess is that it's about gTLD. Just a guess. I guess we can stop the recording now. Thank you, everyone.

Man: The next session's transcribing.

END