Transcription ICANN Durban Meeting

Registries Meeting

Tuesday 16 July 2013 at 10:30 local time

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Man: All right.

Cherie Stubbs: We can start the recording now please.

Man: Yes, recording is back on and we are resumed in Room 3B for the gTLD Registries Stakeholder Group meeting.

Cherie Stubbs: Thank you. And we still have - we have 21 participants on Adobe Connect. And again, a housekeeping detail to please announce your name and affiliation when you speak. Thank you.

Keith Drazek: Okay. Thank you very much, (Cherie). This is Keith Drazek, Chair of the Registry Stakeholder Group. And I have the pleasure of welcoming the members of the Second Accountability and Transparency Review Team -- the ATRT 2. Brian Cute is Chair and Vice Chair is Alan Greenberg, Avri Doria and Lise Fuhr.

So welcome to you all. Pleased that you're with us. And I would also welcome members of the ATRT 2 who are here with us in the room to certainly join us at the table if you like. So Brian, over to you.

Brian Cute: Thanks very much, Keith. And thank you all for your time today. I'll be brief in the opening. The purpose of this meeting for us to listen. We are still in our data collection phase of work.

In terms of our work timeline, we'll be developing proposed final recommendations and a report to be issued mid-October for public comment. We'll certainly take - look forward to your comments then and factor those into our final report which is going to be presented by December 31 of this year.

In terms of inputs, we're running an open process. We know we gave you these questions with short notice. If the stakeholder group wants to provide any inputs to ATRT 2 or answers to these questions and other inputs, we have an open email list on the Web site. I would say if you want that to factored into our initial proposed recommendations that are issued in mid-October, getting that in by mid-September would be timely.

With that, we have some questions on the board. The first six are questions that are becoming top of mind as we're doing our work for us. The balance of the questions after number six are questions we developed after reading public comments.

So they're really focused off and maybe following questions to some degree of public comment we've received. Purpose of this interaction is to hear from you anything that you have top of mind with respect to our work. Don't be constrained by these questions. With that, the floor is open for your comments.

Keith Drazek: Okay, thanks very much, Brian. This is Keith Drazek again for the transcript. We really appreciate the opportunity to spend some time with you today. I will, I think, say that, you know, we certainly view ATRT 2 as, you know, being a critical exercise and very important of the ICANN process.

Having said that, as you can imagine the Registry Stakeholder Group and our NTAG observer members have been consumed by a lot of the work around the new gTLD program. So forgive us if we're not able to respond directly to the questions or to get into a tremendous amount of detail today. But we will certainly commit ourselves to responding with written comments.

That said, I will certainly open it up to the floor and see if anybody has any comments, questions, discussion points. Chuck, I saw your hand and then we can build a queue and then Jeff. Chuck, go ahead.

Chuck Gomes: Chuck Gomes from VeriSign. Thanks again to all of the ATRT 2 team members for all of your hard work. I know how much time you're spending. We appreciate that.

First thing, a general comment before I maybe address a question or two. And I may come back to some other questions later that you have listed.

You received our comments and if - and those were from the Stakeholder Group. e. And Don helped us a lot on those. So we appreciate that.

In a couple places in response to those questions, we pointed out the lack of transparency and accountability with regard to a lot of the I'm not going to repeat those comments. But I would just like to reinforce that I think it's very important that you look at that.

Because it's been kind of amazing -- as your work is going on -- how much lack of transparency and accountability that has been demonstrated by

ICANN staff and in this area. So I just reinforce those. I won't repeat them. I certainly hope you will take those seriously.

I wanted to respond, first of all, to question number two. And this would be a personal response. I haven't checked this with VeriSign, the VeriSign team and we certainly, as Keith said, haven't had time as a stakeholder group to deal with this. But with regards to substantive involvement in the multi-stakeholder model -- and I'll talk about it from a GNSO perspective -- I think it's pretty good with one exception and that is the GAC.

But we're working on that. And I know Jonathan as Chair of the council is working with Heather and I think we're cautiously optimistic. But maybe we can find some ways to engage that -- engage the GAC sooner and better. And I know that comes out of the first review as well.

I've been involved in several working groups and there's really good participation. There are some topics that are of less interest to a broader group, like, for example the Registry Transfer Policy. But that's still working okay.

Everybody has opportunity to participate. And then there's opportunity to review the reports that come out of the PDP process and so forth in that. So I think that's working pretty well with the one notable exception -- one that you already know about so I'll stop there and I may come back later to some of the other questions.

Keith Drazek: Okay, thanks very much, Chuck. I see Ken in the queue. I've got Jeff ahead of you, Ken. So just bear with me for a second. Anybody else like to get in the queue at this point? Okay, Jeff then Ken.

Jeff Neuman: Hello, this is - sorry. It's Jeff Newman. In some of the - the ATRT team heard some of these comments when I was - made some comments on the GNSO

council. I'm just repeating some of them for the sake of the group here in case it sparks addition discussion.

The two items I wanted to talk about are, you know, the meaningful - or whether the current accountability measures of reconsideration and independent review are actually meaningful at this point in time. And then the second is sort of a policy implementation discussion.

On the reconsideration that the point I made up at the council and we discussed here in this group is that in the last ten years, there's been 15 reconsideration requests and all 15 have been denied. The one that - one of them was denied but they ended up implementing the - what they ask was during the reconsideration anyway.

So the - what basically -- and that was Mike Palage, I think it was his -- reconsideration request which said that there should be a process in place. And the board said, "Well, no. What we did was right but we're going to make the change anyway." And so on that, I think just a review of the reconsideration process, I think, is - should be undertaken.

And on the second thing which is actually a bigger concern on the independent review. And the last ATRT -- and I'm not going to do as good of a job as Becky Burr would do if she were here -- but on the last in the ATRT 1 there was a call for a expert or an independent review of the independent review process or an expert review.

And a group was set up by ICANN years after the recommendation came out. The group made a couple of recommendations. One of - and the Registry Stakeholder Group had actually commented on it.

And basically what we said is that's a recommendation that gutted the entire independent review. Because it made the independent review only look at whether the board acted in good faith. And didn't really look at whether the

board violated the bylaws or whether the board - or whether the substance of the decision was wrong.

This was going on at a time where our new gTLDs were in the process and - well, still are. But everyone's focus was completely away from it. The registries, I believe, were one of the only commenters to this process. And we opposed it. And then almost behind closed doors and without anyone really noticing, the board actually approved the changes to the independent review which it gutted the entire independent review process.

So again, the independent review is no longer at the substance of the issue. But more that's whether they violated the bylaws. It just looks at, did the board act in good faith?

And so I think that is a deep concern to the Registry Stakeholder Group. I'm not sure - I think it may be too late for us to ask for reconsideration of the - what the board did. I think there are timelines built in.

But we would like this team to look at that. And to look at whether the independent review process is actually -- with the changes that they made -- is actually a meaningful accountability measure.

The last one I'll touch on briefly because the stakeholder group is going to talk about policy, implementation and, you know, the recent steps of classifying everything in the new gTLD program that is implementation. And therefore no need to get GNSO or the bottom up process underway.

The Registry Stakeholder Group has always been it doesn't matter whether something is policy or implementation. You still must go through the multi-stakeholder model. It can't be ignored.

There may be different burdens. There may be different steps or procedures if either one is invoked. But still, it's not a way to ignore the bottom up process.

And I kind of want to introduce a third term. This came from a discussion Jonathan and I had -- Jonathan Robinson. I think we're looking at this the wrong way. Because when we had a discussion with the board at a recent council level and we'll have it again today.

The board was pretty much of the view that if it's implementation, it's them. That's it. You know, it doesn't matter. They're the sole - and actually what they said is, "It's the CEO that's responsible for implementation. And the board should just, you know, trust their CEO and the staff to do the job."

But every time we try to define policy versus implementation, there is no line. There is no bright line. There will never be a bright line. Implementation inevitably involves policy issues and from our standpoint, it doesn't matter. They should be bottom up.

I think we need to introduce a third term. That's execution -- policy, implementation, execution. I would argue execution is the sole responsibility of the staff and that's where the line gets drawn. And it's much easier to draw a line between implementation and execution.

And I would agree with the board at that point that execution is the job of the staff. But implementation is the job - is still part of the bottom up process and still should undergo that. Whether there's different procedures, that's fine. Thanks.

Keith Drazek: Okay, thanks very much, Jeff. I had Ken in the queue but I think Alan might have wanted to respond. So Alan, go ahead then over to Ken.

Alan Greenberg: Not response but a question. Sorry about that. We raised the issue of the reconsideration process and a substantive reconsideration - a reconsideration on substance.

And the initial reaction from this one board member -- and reasonably so -- is if you open something up to substantive review, then every time someone doesn't get their way in a policy decision, it will go to the board. And that becomes both unmanageable. And it's not clear that the board should be making decision on substance. And I'm just wondering how you react to that.

Jeff Neuman: Yes, I believe we can come up with something to mitigate that. I think there are ways to do that. And so I understand that concern.

But I also would argue the opposite. That if there is no way to review the substance, then ICANN is accountable to absolutely no one. There is - and this is a question I asked as - when the council is talking to the board on - and actually to the ATRTs.

What happens if the board just gets something wrong? There's just nothing that anyone can do. And there are a lot of things that in the new gTLD process -- and I've been asked by a lot of people -- what do we do? And the answer is nothing.

There's no court of law. There's nothing that - there's no one that can hear it. There's no one above it. You can't go to the Department of Commerce because it's not within their purview, right? You can't go to - there's no one to go to.

Alan Greenburg: You don't - I don't think you need to convince us there may be a reason. If you indeed have a way of implementing it that you think would control the floodgates, let us know before you write our report.

Keith Drazek: Great. Thanks very much, Jeff and Alan. Ken, over to you. I didn't forget about you.

Ken Stubbs: Thank you, Keith. Ken Stubbs speaking as an individual. I have some concerns about the way that the comment process has been managed especially over the last year.

                   We all are aware -- if you take a look at the statistical analysis -- of the way the comment process has dealt with it. The many of the bodies that comment have to go through a deliberative process in order to put those comments on the books. And I use as an example the IPC and other bodies.

                   And so as a result, you'll find the significant number of the comments tend to come in in the last few days of the comment periods. What has happened over the last year is in the interest of expediency in many cases a proposal is made for whether it's a change in the GAC or whatever it is. And action is taken almost immediately by the party that makes this proposal.

                   And when you come to them and say to them, "Well, now wait a minute. The comment process hasn't even closed yet and already you're moving forward." And they'll say, "Well, we're constantly monitoring the comments as they come in and making our changes or tweaking it." But from a practical standpoint this is not a good way to run this process because what it says is expediency trumps all.

                   And I think we need to take a look at the way actions are taken that are involved in this comment process. Thank you.

Keith Drazek: Okay. Thanks very much, Ken. Any response? And further questions or comments? Any other discussion? Alan, go ahead.

Alan Greenberg: Just one. The specific examples would help us. We'd like to, you know, have hard examples to base it. Not necessarily now (unintelligible).

Keith Drazek: Great, thank you. Any other topics? Sorry Brian, did you have something?

Brian Cute: No, if you (unintelligible).

Keith Drazek: Okay, great. Thanks. Okay, don't be bashful. Don't be shy. Chuck, go ahead.

Chuck Gomes: It's really hard for me not to be bashful but I'll try. On number 11 of your questions, I think it's fair to say that we do review the decisions made by the board. In fact, Jeff just gave an illustration of that.

And we don't always embrace them as Jeff also illustrated in that one. We can go back, also, to the decision that was made to reverse a community decision on unilateral right to amend in the register agreement that we didn't embrace. And that was a community process that happened years before. So that was something we didn't embrace.

The - we thought our opinion had been understood and that the community had reached a compromise. Our compromise wasn't good enough so the board acted unilaterally in that regard.

Regarding 14 -- our working methodologies in the Registry Stakeholder Group are fully accountable. They are also transparent.
I mean, if you look at our statements that we submit you see that we try to be very specific in terms of the participants in the process, who supported it, who opposed it, who abstained. Minority positions are always provided if there are any.

And so we think we do within the Registry Stakeholder Group do that. But certainly if you see some areas where we can improve, we're always open to that.

Keith Drazek: Okay, thank you, Chuck. Brian, over to you.

Brian Cute: Thanks very much. I want to come back to your comment - your first comments, Chuck. And ask some following questions. Particularly with respect to cross community deliberations and working groups in particular.

We've been hearing a lot on this topic. We just came from a meeting with the ALAC and there was a discussion thread around the working group charter for policy versus implementation. And then the decision as to how the working group gets populated is something that resides with the GNSO.

We heard that there are some mechanisms within the GNSO guidelines that afford opportunity participate to the broader community. So this is something we've been hearing and exploring in greater detail.

From two different vectors, can you go a little bit deeper on the mechanisms that provide access for cross community participation in the policy making process within the PDP? And what we have to focus on, too, is the effectiveness of those mechanisms and access which can raise a whole host of other questions. So if you can just give us a little more depth on both those aspects?

Chuck Gomes: Sure, Brian. This is Chuck. There are others here that can maybe can do this even better than me. Jeff chaired the PDP development process.

But one of the things that happens once a PDP is initiated and a working group is formed -- or even before the working group is formed -- the first thing that happens is a request goes out to the different SOs and ACs and within those, the stakeholder groups and in particular within the GNSO, the stakeholder groups and constituencies. But it also goes to the ccNSO, the GAC, the ALAC inviting participants to the working group.

And there's no - there are no particular restrictions in terms of composition. And an individual that's not associated with one of those is welcome to join the working group. Impacted parties are welcome to join.

In the case of the IGO-INGO working group -- the Red Cross and the International Olympic Committee -- IGOs and INGOs have all been active participants in that. And they've been very active and welcome in that.

One of the things that works very nicely within the GNSO is the ALAC's participation because they regularly provide a liaison that communicates back and forth between GNSO activities -- whether it be a working group or whether it be on the council.

And that has worked very well. And I compliment the ALAC in that regard. I didn't want Olivier to hear that but they have done a very good job in doing that. And that really helps when you have that kind of cooperation.

The liaison with the GAC didn't work out. And it's a different situation there so we still need to work on that. But that has facilitated a lot, I think, cooperation from the ALAC side in the GNSO.

Now at different intervals -- and hopefully we'll get better at this -- you know, reports and so forth when they come out on an initial report -- a draft initial report, a final report -- communications go out to the different SOs and ACs as well as specifically within the GNSO to the constituencies and stakeholder groups asking for input and so forth.

There are also calls that go out if we find that we have a particular group that seems to be impacted by a particular process. If we don't have good representation we try and enlist people from that group, sometimes that works. Sometimes we still don't get representation.

So I'm sure that can be improved. But hopefully that gives you a little bit of feel. And others - there are a lot of others here that are involved in this process that might be able to add some things that I left out in that.

Keith Drazek: Okay. Thanks very much, Chuck. Jonathan?

Jonathan Robinson: Thank you. It's Jonathan Robinson. I've got it, in some ways, a follow on from Chuck's point in many ways. I think, Chuck, you mentioned that the GAC liaison didn't necessarily work.

But as you know and as we spoke with the ATRT when they came to see the GNSO council, there are other opportunities to engage. But in a document that you might find useful is one that we've put to the GAC recently which is a tabulated format -- a tabulated form -- of where there are specific opportunities for engagement in the PDP process.

And in fact, with the GAC -- and this really it goes to the theme I've talked with you about before of continuous improvement -- with the GAC, we've put in four columns into that table. Here are the opportunities for engagement. And here are our, you know - how does the GAC feel about those and are those satisfactory?

So I think it's - so I just wanted to highlight that that document is available to you. And we can provide that to you and this point of continuously improving things.

And one other example of that is that with the INGO-NGO working group work - which I think is happening today, is it Chuck? Or is later today that - tomorrow. And tomorrow I mean, because that's a particularly challenging problem, what the working group has done there is tried something innovative and it's bringing some sort of external facilitation to try and get through some of these intractable issues.

And at again, to me, to my mind, it shows a real receptiveness to flex and tweak the model in ways that might innovate ourselves and on an ongoing basis. So I think that's worth highlighting to give that. Thanks very much.

Keith Drazek: Thanks very much, Jonathan. Okay, any other comments or questions so far? I know that - is Becky here? I know she forwarded something of the list. Becky, did you want to talk about your comment on ATRT recommendations 23 and 25?

Becky Burr: (Unintelligible).

Keith Drazek: I knew you said you mentioned it at the GNSO council session. But it might be worth just briefly recapping here.

Jeff Neuman: I don't know if Becky just entered the room? Have you been - were you here when I made my comment? All right, I summarized that comment but you probably would do better in saying the whole thing because I think you could tell the complete story.

Keith Drazek: Yes. And before Becky gets started, just to note that we're going to wrap up this session at 25 after the hour. So we've got just a little bit over 20 minutes if we need it. If we don't need the entire time, then we can break a little bit early. Brian, I'll leave that up to you.

Becky Burr: I believe that the Registry Stakeholder Group will be submitting this as a formal comment to the ATRT. But just to summarize and I - with apologies to Brian who I know has heard it before.

                ATRT 1 recommend - made a recommendation with respect to ICANN creating an experts panel to evaluate the accountability mechanism and contemplate how they could be beefed up. ICANN essentially sat on that recommendation until August of 2012.

It made a call for experts -- picked the panel which was indeed a very qualified panel. But empaneled them four weeks before the October Toronto meeting. Two of the members of the panel came to the Toronto meeting and met with a couple of handpicked people in the community.

There was a working meeting on the issue that was held at 8 o'clock in the morning and that was completely devoted to an issue related to reconsideration. And then the experts panel was required to submit its report two weeks after the Toronto meeting which meant that this group of highly regarded experts had six weeks from beginning to end to learn everything that they needed to know about ICANN. And write a report on its accountability mechanisms.

They came out with some procedures. ICANN issued those for comment. And we all will recall that what was going on in December of 2012 in relationship to the new detail. These people were pretty preoccupied here.

There were only two comments on the report -- one by the Registry Stakeholder Group and one by Alejandro Pisanty. In particular, the recommendation included among other things a change to the bylaws that modified the standard under which independent review requests were reviewed to essentially eliminate any substantive review of the facts. And only evaluate whether the board of directors acted in good faith.

The registry stakeholder constituency comment said, "Thanks. Good start. But we feel that in general this report was an effort to check a box by ICANN. Not an effort to really address a problem. And that it was such a serious issue that the amount of time allowed -- which happened to coincide with the deadlines -- was very disturbing.

And we also indicated that we objected to the bylaws changes. Nothing happened. Nobody said anything. And in Beijing on consent with no discussion the board passed and adopted the bylaws recommendation.

We think that in light of the work that the ATRT did - ATRT 1 did. But this is a very important, you know, sort of cold fact about how the recommendations are being handled. And we hope that you will look seriously at this."

I have sent a write up - I'm sending a write up to Brian at - just so that it's there. But we will submit it as a formal comment to the ATRT.

Brian Cute: Thank you, Becky.

Keith Drazek: Thanks very much, Becky. Okay, any other questions, comments? Olivier, yes, thank you.

Olivier Crepin-LeBlond: Yes, thank you. Thank you. I'm Olivier Crepin-LeBlond, ATRT 2 member. I've heard earlier about the well-known position of liaisons and how some worked and some didn't work.

I wonder whether that Chuck and Jonathan and the others actually could share any points of view as to why these do work or don't work. Why the liaison function does or doesn't.

Jonathan Robinson: It's Jonathan Robinson. I mean, my direct experience of this has been specifically in discussions with the GAC and their engagement or early engagement with the PDP process. What I understand is that they find it difficult within their structures to have a single liaison represented to the GNSO or the GNSO council because of the way in which they form opinions and work.

On the other hand in our ongoing discussions with them, there is an active and positive proposal to have a GNSO liaison to the GAC -- a so-called reverse liaison which I know rubbed some people up the wrong way. But nevertheless the principle is that while the GAC would like to have a - take advantage of a liaison, it doesn't work in the way that it seems to work for

them. And therefore something which achieves a similar effect may be possible.

So that's - I hope that's a clear enough - or at least some way to explain it. Chuck may have more to add.

Chuck Gomes: My answer is going to sound kind of simplistic. But I think it's true. The reason the ALAC liaison works is you have a liaison regularly participating or - and if not the liaison, you have other participants from the ALAC who participate in working groups.

And they regularly participate. But that doesn't just mean they attend meetings. They provide input back to the ALAC and the broader At-Large community.

And then they bring back the positions of that community to either the working group or the council or whatever the particular case may be. So I mean that's why it works. They really provide a liaison function going both ways.

Keith Drazek: Okay. Thanks, Jonathan. Thanks, Chuck. All right, so open the floor. Any other comments, questions? Yes, Jordyn.

Jordyn Buchanan: Where's the microphone?

Keith Drazek: I've got a microphone over here. Anyone else like to get in the queue? All right, Jordyn. Go ahead.

Jordyn Buchanan: Thanks. Do you hear me? Yes, there we go. Hi, Jordyn Buchanan. So one comment I would make and I think, you know, Chuck and I have been working on the policy of implementation drafting team.

It's possible that's - that working group that hopefully the council will instantiate in the near future can take some of its work as well. But, you know, Jeff alluded, I think, earlier to the fact that in a lot of - you know, the discrepancy between implementation and execution, policy and so on.

I'll make the general point that I think it's incredibly unclear today -- other than the consensus policy process that the PDP results in or whether the PDP is intended to create even though in theory could do other things -- other types of policies as well. Other than that specific function of the GNSO, anything else -- whether it's creating a policy statement or policy guidance, whether it's implementation -- there's just no predictability about any of those processes at all.

Like, if were to ask the GNSO, like, whether - what is policy other than the consensus policies that are enumerated - like, ICANN does have a page where they enumerate consensus policies that have not only been adopted, but have also been implemented. They wait until the implementation to even document them.

But other than that, there's no catalog of what GNSO policy exists or looks like. So it's not very discoverable. There's not any - when we talk about implementation, there's no defined process for what happens once the policy has been adopted.

There's a reference in the new PDP handbook at least to - that there's even implementation teams. But what they do is not defined. And so I think there needs to be, I think, quite a bit of work done in the community to better define everything other than the PDP just so we have better, more predictable processes.

And I think that would make a lot of these discussions a lot easier because today, you know, you have people fighting over whether something is policy or implementation. Because, you know, there's a perception that the PDP

doesn't work that well. And so some people will try to push things into the PDP because, you know, the perception there is, like, "Oh, that means you don't want anything to happen," which is clearly not the case a lot of time but people think it's the proper instrument.

And the other side of that to Jeff's point, if it falls into what's being called implementation, that means it's up to the board and staff to just do whatever they want. There's no recourse or process at all. And if we had an implementation process that was defined and we understood what the multi-stakeholder input was in to that, I think there would a lot less debate over which side of the line it fell into.

And so I just think we just need to get much, much better as a community to have predictable, repeatable, efficient process in order to get all this stuff done, not just the PDP. And the PDP is a very heavyweight tool and on purpose because it obliges contracting parties to do things.

But there's a bunch of stuff that we do that doesn't necessarily need to come with that level of obligation. And there should be ways of working through that that are just as well defined.

Keith Drazek: Thanks very much, Jordyn. That's very well said. Thank you. Any other questions, comments, topics for discussion? Anyone in Adobe? Yes, (David). Go right ahead.

(David):   Jeff, you were making a distinction between implementation and execution. And I'm not sure that I fully understand what that distinction is that you were making. Can you clarify that?

Jeff Neuman: So I think - this is Jeff Neuman. I think it's something we'll need to work on defining the specific words. In my mind, implementation is taking a policy and figuring out the how best to achieve the policy goals whereas I view execution as just doing it. The actual act of doing whatever it is that it called for.

So for something like transfers -- so let's take that as an example. The policy of transfers revolved around the insuring the portability of domain names between registrars and certain other tangential issues related to that. The implementation is - are all of the mechanisms on how the - that process is to work, right?

And so back in 2000-whenvever it initially started, a policy was set. And immediately after that, an implementation team was comprised of members of the community to actually put that policy into defining the mechanics of how to do it. And even now we've established review implementation teams to look back at what went right, what went wrong and what improvements could be made.

Whereas execution -- and that's all been done by the GNSO -- the bottom up process. Not just the GNSO, the ALAC and others. And that's all appropriate.

The execution is now in the hands of staff which says, "Okay, now we need to put it into your agreements. Draft the legal over language around the agreements. We need to set a start date or when transition must be done by. We need to get those notices out to the registrars and we need to ensure compliance, right?" So that's the actual execution of it.

We need to define that better in words. But that's kind of the separation in my mind.

Keith Drazek: Okay, thanks, Jeff. Thanks, David. Jonathan?

Jonathan Robinson: A very brief follow on comment. It's Jonathan. I guess another way in which I envisage that is when and if it comes to designing the implementation sometimes that might seriously impact on the policy. And therefore, one almost needs some form of iterative feedback loop between policy and implementation through that design phase.

And so that's - and only when that iterative loop has been through a cycle a couple of times -- which possibly should happen earlier in the process. I mean, one of the key themes that seems to be emerging is that they shouldn't be sequential. And that they should be parallel iterative processes.

And then finally having been through that washing machine cycle if you like a few times, the implementable policy is ready for execution. Thanks.

Keith Drazek: Great. Thanks, Jonathan. Avri?

Avri Doria: Thank you. Avri Doria speaking. I actually like to continue asking the clarifying question. If a third segment is created -- the execution -- I guess I wonder, A, why is it when you said before that the multi-stakeholder process should really extends to everything that ICANN does. Why execution should be exempted from that notion?

And B, how would you -- again, admitting that there are no bright lines -- how would you foresee avoiding having issues that used to be implementation become execution?

So I understand. I think the point but does creating an extra - how does creating an extra work segment actually solve the multi-stakeholder bottom up participatory accountability issue? Thanks.

Keith Drazek: Okay. Thank you, Avri. Anyone want to respond to that or shall we take that for consideration as we develop our comments? Go ahead, (Larry).

(Larry Strickling): Well, maybe this is just an additional question to what Avri asked. But I guess as someone who hasn't actually experienced the PDP, I guess I'm trying to understand.

Since you all - or since the GNSO controls the scope of the PDP, why is this even an issue? In other words, you say that there's no bright line between policy and implementation. Then why aren't these issues being dealt with in the PDP to begin with? Jeff?

Jeff Neuman: Yes. I think they are being dealt - in fact, if you looked at the - they are being dealt with. If you look at the PDP language now, there are - there is language in there that says that the PDP should include implementation. It's very specific.

(Larry Strickling): So then how - what is the environment in which these questions get raised after the fact as opposed to being dealt with in the process themselves?

Jeff Neuman: Right. So in a formal PDP, the mechanism - if something - that's a good question. I'm just trying to think of the exact portion of...

(Larry Strickling): I mean, at what point does somebody say, "Well, we can't go any further. This is as far as we go." And then - and so you leave all these unresolved questions that then somebody...

Jeff Neuman: Well, it's a...

(Larry Stricking): ...calls implementation later on and says, "We don't have to go back." If you had dealt with them in the PDP, this wouldn't be an issue, right?

Jeff Neuman: Right. I guess the point was to send - the whole intent was to send - you can't contemplate every single issue that's going to come up, right? So when the policy is put out, sometimes in that - in the policy process, the working group will recognize that these involved implementation issues and a separate team should be created to address that.

Sometimes, like in the new gTLD process, there were a lot of issues that just were never contemplated nor could be because there were other inputs. You

know, from whether it's from the GAC or whether it was from the ALAC, it just never came in to the original PDP process.

The thinking was that that should come back to that same - and there's provisions in the PDP now that says that if issues come up from the comments or from the board, it should go back to the PDP group. Or if that PDP group were no longer around and it was impossible to convene it, that a new group should be created.

Keith Drazek: So I've got a queue building. I saw Jordyn first, then Chuck and then...

Jordyn Buchanan: This work? So I'll take a stab at answering this question maybe in a slightly different with both Avri's questions as well as (Larry's).

I think - and I'll actually make a brief -- I'll (unintelligible) on the phone for a second -- I'll make a brief reference to in the - when the ICANN did a recent public comment period on policy versus implementation, Google submitted a comment on this that's going to make a much more eloquently the points I'm going to attempt to allude to. So I encourage folks to read that.

But there's certainly a time at which we go from the GNSO and the community sort of deciding here's the general framework on the how we would like things to work to a point where you need the implementer which is the staff, right, to become more involved with that process. And think about what the details of - like, how would this actually work on the ground?

And so I think that there's an important function where you go from the community to sort of saying, "Here's the shape of what we'd like to do," versus ICANN staff sort of saying, "Well, yes, you know, you need to think about this. Or here's the, you know, exact steps that we're thinking of going through."

And, you know, (Larry) is from government so he knows. You know, we, in the U.S. at least, we have - we go from, you know, Congress passing a law to potentially, like, rulemaking that agencies will do. And yes, if Congress can - sometimes will provide a lot of detail, but that doesn't mean that agencies that are implementing things don't need to go through their own rulemaking process as well. And often in that rulemaking process, you'll need to get public input because it does affect the obligations of third parties.

And I think that's generally the standard where you talk about execution versus implementation. Is that, are third parties affected by this as well? And if so, then you need to continue to get the input of the community because it's affecting other people in that process.

Whereas there's others sort of purely procedural changes that don't, you know, don't have any significant effect on third parties. And staff should be able to do that stuff without consulting us because otherwise their jobs would be really, really hard.

And - but, you know, they should give notice so you know about it. But, you know, they don't have to have a multi-stakeholder dialog every time they want to, you know, change who their provider is for the - as long as the rules are the same, right? That would be fine. It doesn't affect our obligations.

So I think, you know, there are, I think, bright lines that we can draw. And I don't know that we necessarily propose the right ones. But there's certainly a spectrum and there's a certainly a utility of moving in phases through this as opposed to trying to get an abstract policy making process to figure out all the details before you're able to launch it. Because you need to launch early and iterate.

Keith Drazek: Thanks very much, Jordyn. Loud on that one. Okay, I've got Chuck and then Jonathan in the queue. And then I think we're going to need to wrap up. And

I'll leave the last couple of minutes to Brian for any sort of concluding comments. Chuck, go ahead.

Chuck Gomes: Thanks. Chuck Gomes. And thanks for the questions from - and comments from both Avri and Larry.

One of the things we need to recognize is that every PDP is not the same. It's easy on some to draw bright lines between policy and implementation. And I would say to Jeff that most of the time it should be easier to draw a line between implementation and execution.

But that won't always be possible either. It depends really on how much implementation direction is given in the policy when you go to implementation. And then in implementation, it depends on how much policy implementation - excuse me -- execution detail is given in that process. And that will vary depending on the topic.

Then of course we're all familiar with the -- as Alan calls it -- the elephant in the room, the new gTLD process. It took us a year and a half to develop that policy. It was intentionally very general. And there are several reasons for that.

It would have taken us probably till now at least if we had tried to get consensus on the implementation. But also there's another factor. Sometimes it's not possible to get the right people or enough of the right people involved in the policy process itself. And that was the case there.

What we saw as we got closer and started working on implementation is that new people all of a sudden got interested. And issues were articulated more and then other groups were formed and so forth.

So that was a very complicated one. And it's different than, for example, the registrar transfer policy. We've been able to do that and give a lot of

implementation guidance. There might be a little bit of implementation work, the implementation team and so forth. But we have to be careful not to think that they're all going to be the same. They won't be. Okay.

Keith Drazek: Okay. Thanks, Chuck. Jonathan?

Jonathan Robinson: Thanks, Keith. It's Jonathan. I would say two things really. I think one -- all three, Jeff, Jordyn and Chuck -- have made some substantial points that I'm substantially in agreement with. I think that they framed things well. So I'll be very brief.

I think in terms of this whole issue of policy and implementation, I think there's been a substantial learning based on the new gTLD program. And so from my mind, it's going to throw these things into much sharper focus in future. There's a greater awareness of all participants to pay closer attention to it.

And then going back further to Avri's question about whether this policy implementation and execution is a solution. It may not be. Although Jordyn's third party impact test is a very good one, I think.

But nevertheless it tightens the noose, if you like. It's - it makes smaller the box from out of which the potential deviations from what is intended or what was intended than the policy can be made.

So it may not be the solution. Because you said, how does it solve it? But it might improve the likelihood of succeeding coherent with the policy. Thanks.

Keith Drazek: Thanks very much, Jonathan. I think this conversation certainly points to the interest that the community will have around policy and implementation and maybe execution as well. So I think this is going to be an interesting conversation for months to come.

Brian, let me hand it over to you. I know you all have to leave to go to another session so any concluding remarks?

Brian Cute: Thanks very much, Keith. Thanks everyone for all the input. Very informative.

Just basically please get us any inputs by mid-September or roughly at the latest if you want it factored into our draft recommendations that we'll issue in October. There'll be then public comment and a second bite at the apple, if you will.

Very much appreciate your time today. Thank you.

Keith Drazek: Thanks very much, Brian. We appreciate all the work that you all are doing on the ATRT 2 work. So thanks everyone.

END