ICANN Cartagena Meeting
Policy Development Process Work Team Meeting
TRANSCRIPTION
Monday 6 December 2010 at 0730 local

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Coordinator: Please go ahead, the call is now being recorded.

Glen de Saint Géry: Thank you very much, (Jim). Shall I do a roll call for you Marika? In the room here today we have Avri Doria, Tatyana Khramtsova. I think each one is going to say their own names.

Jeff Neuman: This is Jeff Neuman.

Samantha Eisner: Samantha Eisner.

Marika Konings: Marika Konings.

James Bladel: James Bladel.

Paul Diaz: Paul Diaz.

Alan Greenberg: Alan Greenberg.

John Berard: John Berard.

Glen de Saint Gery: Is there anybody on the line except for Rafik? And we've got Rafik on the line, Rafik Dammak.

Jeff Neuman: Hey, good morning everyone. My name is Jeff Neuman. I'm the Chair of the Policy Development Process Work Team. We are here in Cartagena, Columbia during the ICANN meeting. And this is actually a working session so unlike some of the other sessions before we're going to - we're not doing a status report as to where we are; we are actually continuing our work.

With that said one of the first things I want to cover, Marika has been nice enough to do some slides for us if we are able to schedule a time with our own constituencies or stakeholder groups. I know the registries will spend a few minutes talking about it and I'm hoping that the other stakeholder groups slash constituencies here have some time on their agenda to possibly present these slides.

This is a very dense amount of material, a lot of material and a lot of important material that's going to affect our work for - and our work being the GNSO community's work for years to come. And I think certainly when the council did a prioritization exercise this showed up as one of the highest priorities.

And so even though there's some motions now that are pending about trying to speed up the work or put in another standing committee we'll work that out at the council level but even those councilors that are proposing those motions still feel that this is a important piece of work that we need to make progress on and hopefully finalize in the next several months.

With that said I don't know if we just want to go - start, Marika do you have control of the slides or? Okay so I don't want to like discuss all the materials; I kind of just want to flip through these slides quickly to give you kind of an idea of what's in them to present. So I'll just wait for - sure. I wonder how far that goes?

So there are two parts just while Marika is setting up. We're going to go through the slides and then we're going to go back through our outstanding

issues document just to remind some people maybe who haven't been here in a while.

The outstanding issues document we had a public comment period after our initial report. There were a number of substantive really good comments that we got that had a lot of material. We went through those public comments. We responded to those public comments or at least, you know, talked about our responses to those comments.

And then there were some issues that were - we kind of pushed off and said look these are some big outstanding issues; let's deal with them later. And now we're in the process of dealing with them later. And the goal of all of this is to put out our draft final report out for comment.

The reason it's a draft final report as opposed to a final one, which you've seen in other groups, they would do an initial report, comments and then a final report. This is a draft final report being put out to comment because of the fact that there was a lot of substance that was in the comments and a lot that we've added since.

And, you know, we feel like we still will need public comment on a bunch of aspects. And we'll talk about those through the slides. So obviously the first slide is just an overview, I think you all know this, we can just flip to the next one.

Approach is pretty self explanatory. Okay and then, you know, just a reminder of how we got here and how we did the initial report; we divided into five stages then we just kind of go really quickly through these.

And kind of a general background on what our recommendations covered. Some are really to codify existing practices. Some were to recommend new approaches. Marilyn.

Marilyn Cade: Jeff, I was thinking about this new practice - I think it's a new practice where we have now a PDP procedures manual. While the councilors I think are very familiar with this new approach that is being instituted of an operation of an operating procedures manual - operating - I'm trying to think of what they do.

I'm thinking - is that something that you think most of the members are - those are documents that members don't always even see. So I'm not saying this is not an excellent idea I'm just noting that like the work coming out of the OSC for instance generating the administrative procedures manual and whatever I'm not sure that those documents are actually documents that our constituencies regularly see.

So the reason I flagged that is maybe just to comment to staff that one other thing that ought to be easily accessible on the GNSO Website probably just ought to be those kinds of documents.

Marika Konings: This is Marika. I think ideas - they will become part of the GNSO operating rules. But as a, you know, chapter standing on its own so the idea would be that, you know, whenever a working group is formed that that specific document would, you know, the first thing that would be sent to all the members of the group so that they can read and see what the process is, what the requirements are, what the different steps are.

And I think, you know, what we would like to do as well once the new process is in place at the start of every working group, you know, staff can provide a presentation or, you know, we record that so people can listen to that at their own time to take them through the new process.

And I think the idea would be as well at that stage once it's adopted to do that probably as well as an ICANN meeting or to the different constituencies to make sure that everyone is up to speed and knows what it is this new process.

Jeff Neuman: Right. And this is in a later slide but when you're explaining it to your stakeholder groups or constituencies, you know, the important part that we all discussed very early on was that there's a lot of detail in this whole policy development process.

And they all can't be in the bylaws and to take those areas that we believe - we all believe should - there should be more flexibility on, put those into the manual and then to take those that we really feel strongly that shouldn't be changed very easily even from a perception standpoint because I - even changing the operating rules is not the easiest thing in the world.

But certainly from a perception standpoint changing the bylaws are a lot more difficult. And so really those areas that, you know, contracted parties, for example had said are very important to them are tied down into the bylaws.

Yes, Avri?

Avri Doria: You've actually said that a couple times but changing the bylaws is harder than changing the procedures. Changing the procedures takes GNSO going through a process, making a recommendation. It's going to the board, it's getting an external review, etcetera.

Changing the bylaws requires the board having an idea to change a bylaw, putting out a review and changing the bylaw. I'm not sure that changing the bylaw is actually harder than changing operating procedures. You may prefer it that way but I think the argument that it's harder it only requires one phase as opposed to two or three phases of work.

Jeff Neuman: Yeah, I think, you know, one of the points - one of the things I just said though is just perception, right? So perception is reality...

((Crosstalk))

Avri Doria: Yeah and that's why I was trying to comment on the perception being
                   erroneous.

Jeff Neuman: Fair enough. Yes, Samantha.

Samantha Eisner: Just to clarify from the bylaws changes amended in 2009 regarding the
                   operating rules, the operating rules require a 21-day public comment period
                   but do not require board approval. That 21-day comment period allows for
                   people to have some sort of, quote/unquote appeal mechanism to allow their
                   voices to be heard for the GNSO to consider when making the changes.

                   But I'm not trying to say that the GNSO internal procedures are any less
                   onerous - to me was what Avri was saying. But they do not require board
                   approval.

Jeff Neuman: Thank you. Okay if we want to move onto the next slide. Okay so here we
                   have our list of some of the, you know, what we pulled out as being kind of
                   key recommendations. There's obviously a lot of recommendations we have
                   in the initial report and then we've talked about since.

                   These just cover some of them. Let's flip through these quick because the
                   point is not really to go through all of these.

((Crosstalk))

Marika Konings: ...basically they followed like the previous one with the issues report, initiation
                   to PDP (unintelligible) tried to take out the...

Jeff Neuman: The five stages.

Marika Konings: Yeah the key ones relating to the different elements and then especially
                   those that either, you know, change or are new compared to current
                   practices.

Jeff Neuman: Right. So this is just again just for those that maybe just listening this is just flipping through those different recommendations. And then the review about, you know, what we talked about review an individual PDP versus reviewing the entire PDP process.

And then this is an important one which, you know, is really the issues that we're kind of - we're talking about - we've been talking about in the last few weeks and we'll be talking about for the next few weeks being optimistic.

The - so here's the list of the outstanding issues. And it'd be great if we can get some feedback because these are the ones we're - at least some of them are ones we're kind of struggling through, you know, talking about a need for expedited procedures in case of a emergency PDP or something of that affect.

Voting thresholds is something that we've kind of talked about. We've added one for raising an issue but really have not strayed too far from where it's been although, you know, it's interesting because one of the things I hear constantly over dinner chatter are some people feel like raising an issue is too - even the way it exists now is too low of a barrier; others feel like it's too high. So it's something that people do still talk about considerably.

And in fact came up yesterday, I think, either yesterday or the day before in council discussions about prioritization and the - how that interacts with, you know, it takes a fairly low number to raise an issue but then can you use a prioritization exercise to put that down very low on the priority which in essence is almost the same thing as voting it down.

So if you only require a certain percentage of a house - of one house to approve raising an issue then if you require a lower threshold to kind of - or I should say if you require - so - I'm not saying this very well.

If it's a low threshold to raise an issue but then it's fairly easy to put that on a very low priority then you've kind of got this inherent conflict of okay, yeah, the issue is raised but we're going to just push it all the way to the bottom so it effectively never comes up.

So that's being discussed a lot in the hallways I've heard and certainly in the council session so it may be one of those issues you might want to flag for your individual groups.

And then determination of a PDP which is something that's really never been done. Kind of - a PDP is only really terminated by almost fizzling out as opposed to the council deciding, okay, you know what we've had enough; it's not really - we just want to end it before there's some kind of concrete outcome.

And Marilyn has got a comment on that.

Marilyn Cade: I'm sorry but as the queen of history of PDPs we have terminated PDPs before, bringing them to a conclusion and recommending policy.

Jeff Neuman: Yes I was talking about prior to any recommendations coming out. So if a group is not functioning very well or is just, you know, the issue fizzles out for whatever reason, I mean, VI is a perfect example of one that was kind of taken over by external circumstances and then the council is left kind of in a position of going - well the working group itself discussed well, you know, now that one of the real reasons we were doing this was talking about VI and new TLDs and the board pretty much has made a decision on that what do we do with the group?

And so that's kind of an issue that's really never been broached before.

Marilyn Cade: But I would - it's Marilyn speaking again. I actually would just say I think what we need to put into context there is with the change of the council's role and

function during - and that has been actually not that long ago, right, roughly a year ago I think, right?

I think the problem is, Jeff, you're quite right, the council has not yet established what its procedure will be both to evaluate the progress being made to assess what the additional resources or support is that a working group needs or - and I think distinguishing between managing the process versus jumping in and doing it yourself.

And sometimes councilors are still choosing to wear both hats by necessity perhaps. So I accept what you said but I want to put it into context of I think where we are in the development cycle of developing that process by which the council is going to have to be able to come back and say now we're going to step back and we're going to neutrally assess work and progress as opposed to outcome.

Jeff Neuman: Right and I think the working group work team has some recommendations on the role of a council liaison to hopefully keep the council informed and to serve as that neutral liaison between the working group and the council. And so that's hopefully going to go to the council in a final report very soon. Marika.

Marika Konings: Yeah, this is Marika. I mean, I think we didn't discuss that outstanding item yet in detail but something, you know, the work team might look at is that it can only be terminated if it's also with the agreement of the working group. For example it's not the council itself that can say look, you know, we're going to shut it down while the working group says, well, you know, we haven't finished our work and we're willing to complete it.

But it might be a process where you say well if the working group comes with the recommendation saying look we don't think there's anything left to do and - or we're (unintelligible) and we see that with, you know, because of outside

circumstances there's no role for us anymore. And that might be a process to consider.

Jeff Neuman: Yes, Avri.

Avri Doria: I agree completely but wouldn't that be sort of they would put out even a brief report that said that was the statement sent up for termination? So in a sense that would be terminating one as one is always terminated or...

Marika Konings: Well if you look at VI for example...

Avri Doria: Yeah.

Marika Konings: ...because normally the termination is that they fulfill their charter.

Avri Doria: Okay.

Marika Konings: They've delivered that initial report, they've done the final report. And I think with VI they said well we haven't done anything in our charter; we haven't really don't a final report and we want it stopped now...

((Crosstalk))

Marika Konings: ...so it's basically you don't have to go through all the motions. That happened in instances where working groups indeed have produced reports saying, look, we don't have consensus, this is what we have; this is our final report, you know, here you go. Thanks very much.

Jeff Neuman: Right. And so this is obviously because it's on the list of outstanding issues is something we'll be talking about in the next few weeks as we kind of wrap up the initial - the draft final report.

And I think, yeah, and then the one area that we really haven't talked much about is the transition of okay now that we've kind of developed all these new procedures how do we - what do we do with the existing PDPs that are underway and how do we kind of transition all of that to the new process? And it may be pretty easy. You know, it may just be okay let's just start anew but it's something we really haven't talked about.

And then of course here's the next step - sorry, Marilyn, you want to...

Marilyn Cade: Yeah, just one question though, Jeff? I do think this group ought to briefly talk about the discussion that councilors had about the councilor's view. And again I would say councilors as managers as opposed to councilors as active participants or advocates for particular issue positions.

But the topic was should the PDP rules include a sunset at the end of every year or what other process, you know, in terms of - maybe it wasn't PDP but it was the issues, you know, being sort of like closed down at the end of every year.

I will just say for the record that actually I thought there was a bit of a misstatement about closing bills down in Congress if they haven't been enacted at the end of the year and having to reintroduce them. It's actually every two years I believe because Congress doesn't sit year by year.

But I also would not think that the US would be the only model should someone wish to look at a legislative body. And my final point would be I was under the impression ICANN was not a legislature but a policymaking and standards coordination body. So I might think there were other places that should be examined as well.

Jeff Neuman: Marika.

Marika Konings: Yeah and I think indeed if the council is going ahead with, you know, exploring that option I think it might be worth pointing out as well that of course in the context of a PDP so just it might be - delay it as long as you can because you know at the end of the two years the slate will be wiped clean.

So if, you know, if it's in your interest not to make any changes or, you know, have any consensus policies on a certain issue you just need to drag it out which is not difficult in PDP-land these days. So I think that's something that would need to be taken into account if such a system would be - come into play.

Jeff Neuman: Right so we'll discuss that. I don't want to cut off discussion on this topic it's just that's one of our outstanding issues that we will tackle in detail. And so finishing up kind of this slide presentation that's available to present to your stakeholder group or constituency or advisory committee.

These are the next steps of the work team which are to finalize the draft final report, open the public comment period - sorry, open the public comment forum to review those comments, update accordingly and then finally to submit a final report to the PPSC for consideration.

There's a lot of talk in the council of whether there will be a PPSC to submit the report to or whether it's directly to the council. I suggest us not worrying about that as a work team and just focusing on the work and getting that final - final-final report done and submitted to whoever that ends up being.

Yes, Marika?

Marika Konings: Yeah, I don't know if you want to talk at this meeting as well about timeline and deliverables?

Jeff Neuman: Yeah, that was one of...

Marika Konings: Because I just wanted to note, you know, I guess a target might be the San Francisco meeting because I think, you know, if indeed we have a draft final report out it's good to present that to the community and have an opportunity to explain to people what is in there and what they're expected to comment on or which elements they might want to pay special attention to.

But I also want to note that actually to the number of meetings that are left if you look from January we would meet on a weekly basis to the San Francisco publication deadline is eight which is relatively short. So if there is a desire to try to meet that deadline I think you need to put together a work plan and we might need to meet more often or, you know, commit to do more work on the list or say we're not going to meet that deadline and we're just done when we're done.

Jeff Neuman: Yeah so let me go to Avri and then Marilyn. That's an important topic of talking about timelines and how we get to this final.

Avri Doria: I just want to understand the timeline; the timeline would be the submitting to the PPSC in San Francisco or submitting - and the PPSC endgame is what, at least a month, so it's at least four of those meetings would be PPSC consideration time?

((Crosstalk))

Marika Konings: No I think San Francisco would be the publication of the draft final report...

Avri Doria: Okay...

((Crosstalk))

Avri Doria: ...submission to the PPSC?

Marika Konings: No because I think we would still want to...

Avri Doria: Oh okay.

Marika Konings: ...review the public comments before...

Avri Doria: Thank you, okay.

Marika Konings: ...submitting them to...

((Crosstalk))

Avri Doria: So it's still a long time yet. Yeah.

Jeff Neuman: Correct. Sorry, I thought there was a - was it Alan? Oh, Marilyn, okay, sorry.

Marilyn Cade: I think maybe my question was answered which was the startled look on my face of how could it be January the 8th but it's because of their working schedule as well.

Marika Konings: No it's eight meetings. So the publication deadline for San Francisco would be the 21st of February. So counting - we would meet once a week from January it would be eight meetings if we would continue meeting once a week.

Jeff Neuman: Right so one of the things that I'd like to talk about is - and I know we did it once last quarter I think it was or somewhere around there. We had a longer meeting one of those weeks. And if that's needed then I think it's something we should consider.

                   But, yeah, one of the things the council is asking is for is such a work plan to be delivered to them with definitive dates as to when we think subject to externalities that we may not be able to control. One of the plan deliverable dates for things is that we can determine. Marika.

Marika Konings: Yeah because I think, you know, in addition to the outstanding issues that we're going through I think it's very important as well that everyone review the draft final report as it is posted on the wiki because there are other changes in there as well that have been made based on the discussions we've had, based on the review of the public comments.

And I think, you know, if people can review that now and highlight which are the issues that they think are, you know, incomplete or not changed as we discussed so we can add them to that list and we don't, you know, have to have various cycles of lists of issues that people though are not happy with.

So it would be really helpful if people can review that and then share those on the list. And we can just add them to the list of outstanding issues so that we - after we've gone through all the outstanding issues based on the issues we haven't discussed in detail but also those that people identified based on a review of the draft initial report then after that we might be in a good position to produce a draft final report to everyone.

And they can still read through but then it might just be, you know, edits, commas, you know, spelling mistakes that need to be corrected instead of opening other substantial issues for discussion.

Jeff Neuman: Okay. So again there's a lot in here. And, you know, one of things that council has been talking about are some - all the misunderstandings or whatever it was with the OSC and maybe there were parts of those reports that people didn't realize were in there.

You know, we do have some time before our draft final report is released for public comment. It would be great to just review some of these recommendations with stakeholder group slash constituency slash advisory committee so that nothing comes as a surprise.

You know, obviously we can't count on everybody reading every single word of every single document but really relying on you all as kind of the representatives of your groups to make sure that you're stakeholder groups are well informed.

Okay is that the last slide I think? Of course here's everyone's name. This is kind of a - this is important too because you see there's a lot more names up there than are actual people that show up. So to the extent you see any of these people - to the extent that you can convince them to come back or to rejoin us that would be fantastic. Marilyn.

Marilyn Cade: Yeah, sorry to ask you this but I actually need some - I need a specific page copied for the BC member meeting, just this page. I need 25 copies.

((Crosstalk))

Jeff Neuman: Yes, Alan?

Alan Greenberg: Just to note in my - there's at least one name there that's an alternate, Cheryl, in this particular case; there may be others in that situation.

Jeff Neuman: Sure. But these are all the people I guess that would be on the mailing list. Is that how we got them?

Marika Konings: Yeah, these are all that are subscribed to the mailings or identified as members. And I can double check with Glen but I'm not aware of anyone that has actually said that they want to be removed or are no longer members. But I'll double check that.

Jeff Neuman: Avri.

Avri Doria: Just making the reminder that being on the list and following and speaking up when you have an exception to what's been done is considered by many a perfectly valid way to participate in a group.

And in fact I think we even wrote that in the working group recommendations that if you want to follow something just, A, to know what's going on and, B, to raise a flag every time there's something that is a problem for you or your - whoever it is you're representing that there's nothing invalid about that way of participating.

Jeff Neuman: That's correct. And I just, you know, it'd be nice to see some sign of life from some of these, you know, to actually make sure that you're a certain - I shouldn't say a certain - to make sure that what you're saying is that they actually are paying attention because I'm not convinced at this point that some of them are being those passive participants. Again that would be helpful to know.

Yes, Marilyn.

Marilyn Cade: I have a different question. And I'm not - in the old days of the Internet we used to call that lurking. But things have improved since then. But my question is different, and that is who gets to vote? Because if people are there - I am there as an individual member; the BC has two official participants and we'll decide about whether we're going to change that at this meeting.

But who gets to vote? Because if you're - you know, because I think - I have no problem with observers to any group but I think either in working groups or in PDP groups or whatever were saying I just would like to understand the rules because if I'm electing from my constituency, if I'm electing someone to represent us then I have certain rights to expect participation in voting.

If individual members show up as observers on their own, which I'm not objecting to it all, I think it could be a good thing, I would not expect them to have voting rights on behalf of the constituency. They may be individual members and how they vote according to that but if they're there as observers...

Jeff Neuman: So let me just clarify. So there is no voting that goes on, right? It's a consensus call. And then it's - when we get around to that consensus call one of the important things for the chair to do, you know, one of my important jobs is to understand what their perspective is and how they are responding to the consensus call and then to, you know, make sure that - and this is something the working group work team discussed in detail and is constantly being discussed in PDPs. And I know Alan wants to talk about those because he's certainly faced this issue a lot in the (Pedner) group, right.

But, you know, obviously the chair has to make a determination based on so if one group is flooded with one type of participant, you know, the chair needs to take that into consideration. And then obviously it's a discussion between - in the BC for you while as to how they respond to the consensus call whether they're acting in their individual capacity or acting in a capacity as representative of a constituency.

But Alan let me turn it over to you because you've had much more experience in this.

Alan Greenberg: Well I've had some experience and I also have some views that are not necessarily driven by that experience. The working group model was passed down to us from on high and mandated and we haven't had a choice. What you're identifying is one of the major problems.

We're not supposed to vote; these days we tend to be taking straw polls and then the chair using whatever divine wisdom is provided to all chairs of course is supposed to try to figure out how that maps to consensus and

partial consensus depending on who the people are, what color their hair is and we don't know what else - how tall they are is always important in our - in business issues.

I don't - there is no good answer because I think the model to be honest is somewhat flawed. In our desire to get inclusivity and get everyone involved we've ended up with a model which is very hard to make decisions if we cannot reach full or almost full consensus. And, yeah.

But by the way for whatever it's worth we went through a discussion - not we but a discussion has been held in terms of working groups that - where people objected saying how dare you tell me I cannot vote in a poll or participate in a poll just because I never participated in any of the teleconferences. And you can't tell if I ever read the documents. That does not disenfranchise me.

And my understanding of memory is that the working group rules ended up saying yes, that's correct, that is we will never necessarily hold any poll that counts on a teleconference. And you cannot stop someone who is a member of record from participating period.

Jeff Neuman: Okay on the list I have James and then I have Avri and then I think Marilyn wants to speak but - so I'll go to James then Avri.

James Bladel: Hi, very quickly, and maybe this is something that I missed very early on in the beginning of this. But this group is not a PDP and so I don't know if, you know, on day one the PPSC implicitly agreed to adopt PDP operating rules or if we just assumed that was the case. Or, I mean, if we wanted to vote I think we could. You know, if we agreed to it, there was a consensus to vote, I know it sounds kind of - or if we voted to have consensus.

I mean, we could probably, you know, mix and match those tools and come up with something. But - and I want to make sure that the transcription and

recording is going. I 100% agree with you, Alan, about the working group model. It was handed to us. It is, to me, in my opinion - I think I've expressed it on this group - is a very efficient engine at deferring decisions and moving action, you know, to other bodies and to other groups. And that's one of my issues with the working group model.

And one of the questions - and I kind of wanted to save this to the very end of this process. But one of the questions is by putting together this report of all the really great things that we're recommending need to be fixed in the working group model are we implying that we think that the working group model is the way to go and that it is an improvement over what came before it?

You know, my understanding we're kind of in a beta test of this working group model and are we saying we bought it?

Jeff Neuman: I have to go back on the mic. All right let me - on that point I saw couple hands raise so Avri I'll go - you're next on the list. You want to...

Avri Doria: And I'll cover that among...

Jeff Neuman: Okay so let me go to - I got Avri, I got Marika, Marilyn and Alan.

Avri Doria: Okay I think that the last little bits of conversation - thanks - we've conflated three issues. We've conflated the PPSC notion of having representatives who are voting on things. We've conflated the working group - working team model and report with the PDP working group report.

                 I've personally seen the working group model works superbly for over 20 years at producing real near or rest or what we define as ICANN consensus; most of the people with a few disagreeing voices.

I think in terms of Alan's point of the people who participate passively in the Doodle polls - first of all I think polling is something that should also be banned but that's a personal opinion. So I think polling is voting however you want to pretend that it's not; it is voting.

Is that - the working group indications are very clear about even if you come into a group at the end, which you should still be able to do, you should - you have an obligation of having read everything, of not bringing up new issues that hadn't already been discussed.

Now you can say well but you weren't there to discuss them; that's beside the point. It's the working group's responsibility to try and cover all the issues as they are proceeding. And if the issue somehow or other documents it is appropriate that it take a step back.

But working groups do drive towards conclusions; I think we've even seen some. We've seen some task forces in the past that couldn't come to a conclusion on things. If there are, you know, constituency slash stakeholder groups that want to dig in their heels on something they heels are dug in and you're not going to get to a conclusion no matter what methodology you use.

Working groups being imposed from on high perhaps but the GNSO starting using working groups before the on high came down with them because we found that the task force model wasn't working anymore. So we had already evolved into using working groups before anybody said we must do it; we were already doing it and they were just basically blessing what it was we were doing.

So to step back now and say oh my God, this is on high, this was top down when it's something we originated while they were talking about it I think sort of confuses the history. I truly believe they work. But like every other method here it takes the goodwill of the people to make them work.

If we've got an oppositional notion of politics here that always says if A wants it B doesn't then no, no method will work other than swords and shields at dawn. And, you know, I don't think we want to go there so. Thanks.

Jeff Neuman: Okay and then after these next few people then I do want to cut it off and get to the - some of the outstanding issues. So I got Marika then Marilyn and then Alan.

Marika Konings: This is Marika. Avri already made my point on the representativeness because I think it's a PPSC issue where people are indeed there representing their stakeholder group or constituency then have voting rights based on that and their participation is not - is an issue.

On the issue of whether working groups (unintelligible) I recall the ALAC submitted a comment in relation to that. And I think it is covered in the draft report I think in a way of saying, you know, this - the PDP assumes that working groups are the model for now but, you know, shouldn't be precluded at any point in time a different model was chosen that these rules could apply or wouldn't be adopted as well.

I don't know if we go so far in the report to say it might be good at some point to indeed review whether the working group model is working or whether other models should be explored or hybrids or different options should be posted. We need to check that but it might be something that work team might want to add to the report.

Jeff Neuman: Okay. And then Marilyn.

((Crosstalk))

Marilyn Cade: ...like Avri I know I can't have (unintelligible). And we've been evolving our process. But decisions made here are not just technical standard decisions. That's one of our challenges is that they represented sort of a Vin Diagram of

bringing together policy challenges (unintelligible) not only contracted parties
or potential contracted parties, business users, others, but also a vast
number of other Internet users if they affect the use of (unintelligible)
implications for the organization.

I am a big believer inclusiveness on gathering information and in debating but
I do think that it's going to be important for us to assess if people are - if the
group is composed without some kind of balance of representation without a
vote I'm not sure that people will feel obligated to show up and participate.

And I'm just raising it as a - and take accountability for their input. So I'm just
raising it as a question that I think we've got to come back and think about
more because I agree with Alan, I personally did not - do not consider - yes it
was handed to us but I wouldn't use the term from on high.

Jeff Neuman: Okay, Alan.

Alan Greenberg: A couple of points. First with respect to James's issue of what rules are we
working on I believe we did agree to use the interim working group rules as
they were at the start of this group and that may even have implied that as
the working group rules change we would change with them. I'm not sure
about that.

But in our charter we did make reference I believe to a set of rules. So we are
basically a functioning working group like it or not. I don't know whether we
have a charter or not; maybe we have one.

Avri Doria: We do.

Alan Greenberg: In terms of that handed down from on high I wasn't saying that the Board
Governance Committee came up with the concept; I was saying that they
very explicitly said we shall use working groups as currently conceived of

within ICANN as opposed to it is one of the tools in our tool bag which was the previous situation.

As was noted the GNSO did evolve the current workgroup model because the task force was not viewed as being the perfect model. I very strongly believe we need to have that flexibility to evolve to a third model sometime in the future if we can conceive it.

And I do not - would not want to see working groups as currently conceived tied into the model because we may decide that there are better ways in doing it, maybe.

And lastly as I implied before there were a few people, some of them on that list, who very vociferously said that I shall not be disenfranchised just because I never participate in any way that you can observe me doing. And my recollection is the working group work teams said yeah.

So again it's one of those things handed down not from on high but laterally via a detour of on high that we are sort of stuck with at the moment until we can get a consensus however we get to that consensus that we need to change it.

Jeff Neuman: Okay thanks Alan. So why don't we - I'm looking around, anymore comments on that? Why don't we go then to - if we could post the latest version of the issues that we're here to discuss?

By the way on the Adobe list, the attendee list, there's someone by the codename IDN gTLD Fast Track. Do we know who that is? Kind of where we left off. Oh there we go. Okay so we're on the - okay so we're on Number 4, that's Page 6 of the outstanding issues document.

And so we do want to get some good notes on this so we can finalize this area in the report. This is talking about the agreement of council - it's

Recommendation 41. And we've discussed whether the voting thresholds might need to be reviewed that we haven't arrived yet at a possible recommendation in relation to this issue.

We said that we wanted to get further input and - from the public comments period. The public comment period basically didn't really - there weren't too many public comments that addressed this. I don't know if it was because it was opening up a really thorny area that was the subject of a lot of compromise early on that gave way to the new council structure or it was that people were completely satisfied with all the voting thresholds.

So just to kind of review - and I don't know, at one point we had a chart of the different thresholds and it's probably in the report. But the only voting threshold that we really added from the ones that we were kind of handed with the new structure was on the raising the issue. And Marika is looking at me so I'm thinking maybe I'm incorrect.

What's that? I'm sorry on the charter. With the both of them that we added or - right. I'm sorry it was charter, approving the charter. Yeah, thank you Marika. It's early. So we added it back in and basically the outcome of that was essentially it's going to be the same threshold as the threshold for approving the PDP in the first place.

So it's not really - it's adding a threshold in the sense of you're adding another vote that you're not adding a different threshold. And so let me throw it out to the group. We need to come to a final decision on this. Do we want to touch any of the existing ones? Do we want to make a recommendation that, for example, thinks that you've heard in the hallways? Is the threshold too low for raising an issue?

Is it too low for - or high for initiating a PDP? Or is this something that the group feels like let's just leave well enough alone in this version and have it reviewed after a certain period of time? So, Alan.

Alan Greenberg: This is been going on for a long time and my memory is fading on some of the early discussions. Maybe Jeff or Marika can remind me. I remember on - with regard to one of the voting thresholds - and I cannot remember which - we came to a conclusion pretty early in the process that there should be another variation of it.

In other words, you know, I don't remember what it was; it was the majority of one stakeholder group and a - 1/10th of the other and we said or some other combination. And I can't remember which threshold it is and what the numbers were. But we had a pretty extensive discussion on it and said we would defer it but it looks like we probably should change it.

((Crosstalk))

Alan Greenberg: Did I imagine it? It's possible.

Jeff Neuman: ...in the report.

Marika Konings: I just need to check...

((Crosstalk))

Marika Konings: ...coming off the old report and seeing because I do recall that we did but I don't know if it was in relation to that. I think it was another voting threshold where we just said like - I think it was raised to a super majority that it might mean this and could also...

Alan Greenberg: Yeah.

Marika Konings: I think it was more that - I think in discussions on the voting threshold especially when we discussed the initiation or raising an issue that we had

indeed some views saying well it's really low and something well it needs to be low...

Alan Greenberg: Yeah.

Marika Konings: ...because otherwise nothing gets raised.

Alan Greenberg: No, no, I don't think it was this one; I think it was another one or may well have been a super majority definition. I'm just trying to make sure it wasn't this one.

Jeff Neuman: I think it was in the super majority definition. I think and we had agreed to that. It wasn't a new threshold or anything and that's in the report. Marika, you found it?

Marika Konings: No I didn't find it but I did want to make a comment. Indeed especially on raising the issue because I think that's where most of the concern is that, you know, issues are just raised left and right and, you know, for staff but as well the council to work on issues.

                    And I know we discussed as well the (unintelligible) idea or should there be, you know, if you raise an issue you need to come with a bunch of volunteers that are going to do the work.

                    But I'm wondering as well on raising the issue because if the voting threshold is so hold now especially the kind of requirement that, you know, maybe it should at least be supported by two constituencies or something that at least it's showing some kind of support.

                    I don't know, thinking of some ideas that there might be something where you say like, look it's not just one person that comes with an idea and, you know, as are her constituency just go to long because they always support each other and there is, you know, zero support from anyone else in the council or

- I don't know if that's a construct that could be explored that there at least needs to be kind of level of support that warrants as well that there are volunteers to actually work on the issues and participate and get stuff done. (Unintelligible).

Jeff Neuman: Right, so let me just remind everyone about the threshold for raising the issue accounts for - there's - everyone recall there's three ways of raising an issue, right, it's not just from within the council.

So if the board - the board may initiate a PDP, you know, they don't have to - it's not just the council then at that point it's pretty much - it happens if the board raises it.

If it's an advisory committee and it's the advisory committee that raises the issue and then, you know, the GNSO Council has to still vote to initiate the PDP but the issue is raised if the advisory committee wants it raised.

Talking about now specifically with the council and this is, you know, on the council on its own initiative if at least 25% of the members of the council of each house or a majority of one house.

So in theory what you could have is you could have - so if it was 25% you could have one stakeholder group on each side and not a majority of - like 25% of the members of each house. Yeah, so you could - you could easily - you already would have two, I think. I don't think it would be a possibility to have one, I think they kind of figure that into the threshold when they were initially discussing it.

But yeah, it could be different members of different groups without one stakeholder group or one constituency as a whole agreeing to it, yes.

So you know this has been a subject that's discussed regularly around the table, is it too easy to raise an issue and then are we left with all these issues

being raised and no resources, time and then we have to put into the prioritization exercise.

Again we have t put this issue to a close. Which could be we're just - you know we could easily say look, we're working with the thresholds we were given out of the restructuring.

We've added one with respect to a charter because that seemed like a hole that was never filled. But you know there's nothing in the report that has to say that there aren't necessarily the right ones and they shouldn't be revisited.

But we just made assumptions here and are moving on. So we need to close it, we need to close the options if that's what we want to do.

I'm going to go to Alan.

Alan Greenberg: The refrain you've heard from me before. I still think we are over reacting to the amount of administrative work we took on with the restructuring.

And I think council is overreacting to the number of PDPs it initiated. I suspect the number of issues reports staff creates is maybe two a year over the last number of years.

I don't think it's much more than that. So I don't think the volume is that high and this low, low threshold does not generate a lot of PDPs.

So let's react to real problems, not a long list of things. I mean even if the list - if we counted all the administrative things we're doing, if council calculates the number of man hours that this group generates a month, it's not all that many because not many people work on it.

So the load other than the load on our staff for (unintelligible) people which is moderately high, I think we're overreacting and I don't think we need to change it based on that overreaction at this point.

Jeff Neuman: So I think one of the things that the council's going to discuss hopefully at the (unintelligible) and I think there's a lot coming down the pike that could easily come up. You know there are some reports like the registration abuse report that's got a whole bunch of recommendations, kind of like transfers where there could in theory be a whole bunch of work coming down the pike like PDPs or best practices.

But - so I hear what you're saying Alan and I'm sure it's a different view point. Let me do a quick one and I'll let James and Marika.

James Bladel: Just quickly and I know RAP is a good example, we shouldn't assume one issue's report translates into one PDP. The ratio is sometimes much higher.

Alan Greenberg: But we can serialize. And that can be worse.

Jeff Neuman: Okay let's - so let me go to Marika and then I want everyone to think the ultimate question here is what do we want to do as a group? Do we want again the options are we could revisit this and discuss all these.

We could basically say look, we can note some of the things that we've talked about but really state that we did not get into discussing whether the existing thresholds are right, we just kind of worked with those assumptions.

I see these primarily as the two options at this point. Let me go to Marika and then I want to get a sense for where everyone is.

Marika Konings: This is Marika, I think it not only to consider the initiation of a PDP because maybe you're raising an issue it's like well that should be a high or low

threshold because it should be part of (unintelligible) issue, you know get it in front of the council.

But of course the voting threshold for the initiation of a PDP is also very long and I've seen in the past several instances where there's very little interest in the council to move it forward.

Whereas staff said as well you know this is not a good issue for a PDP, further work needs to be done but it will get voted on anyway and move ahead. Working groups then struggling with actually trying to figure out what they're supposed to do because the issue is so broad, I'm talking here about Fast Flux for those that didn't read between the lines.

Very few volunteers are willing to do the work ending up with you know three, four die hard members of the working group finishing off the report. Landed on the shelf of the council with all the recommendations that are implemented, ignored, nothing to be done with them.

You know personally I find it you know really bad as well for the volunteers that invested the time to do that work. The council wanted to go ahead, they called it a low threshold. It moved forward.

But at the end of the day with a warm product no one's interested and no one wants to do anything with it.

So I think you know I don't know how that can be built into the consideration of the PDP but I believe it's a concern and something the group should think about.

Jeff Neuman: Just as a little point of clarification I think when the council was restructured the threshold went a little bit higher in the sense of where we were with Fast Flux because right now it's 33% of both houses or 66% of one house.

Which is much higher I think thank the 33% of the overall council which is what it used to be with Fast Flux.

So that may be a difference and another reason you know why one of the - I'll put on my personal viewpoint here is that at this point I think we might want to allow a little more time for the council, the PDPs to come up before we touch that threshold kind of as a review period.

But let's not as a group at this point change some of the thresholds because we really haven't seen it that much in action that the council was just restructured and I'm not sure how many PDPs have been initiated since the new structure.

But I have to believe that VI we're the only ones right, that really came about but it may be a little premature for this group to make recommendations that differ from what we just put in place a year ago.

But again that's a total personal view point, not even a registry or certainly not a chair view point, that's my own personal view point. But let me - I actually do want to kind of go - I mean Alan you had your hand raised, I don't want to miss that.

Alan Greenberg: Just really quick, we were put in place to decide on the new procedure. I think an issue of the voting level for this kind of thing is very much a council decision.

And the balance within council I think counts at that point. So I would like to think council would do it based on information of the type you're talking about based on real history.

You know for instance we debate continuously on what the threshold should be. My recollection is most PDPs that have gotten initiated when I've been around have been initiated with a much larger threshold anyway.

You know there are not many that have squeaked through with barely the right number, maybe Fast Flux is one of the, I don't remember.

But I think very much it's a council decision and it's going to require the balanced debate and preferably with information. And so I think we shouldn't be spending a lot of time on it.

Jeff Neuman: So with that said and Avri, okay.

Avri Doria: Only if you're still asking you know if Alan's right and we're not able to talk about it then I don't have a view.

Jeff Neuman: Well actually and so my question is - let me throw out the option. Where the option is we as a group basically say that we're adding the one threshold because we thought it was a gaping hole and it certainly came about when the vertical integration.

The one thing we're adding was the voting of the charter and that as far as with respect to all of the other thresholds we as a group just didn't really address changing those - well we addressed it I guess - but we're not opining on whether to change those, we just kind of took those as ones we're working with.

And we're not saying one way or another as a work team as to whether they should be changed or not be changed, it just something we were kind of working with.

So that's a recommendation I'll have to throw out so that we don't discuss whether these are the right thresholds or not.

Avri Doria: I won't discuss whether those are the right ones, but I do agree with that approach, so okay.

: I mean I've always had on the one we've had in terms of the charter I've always been sort of bothered by the charter and the approval of the PDP not being a single automatic sense.

I think approving a PDP without knowing what the charter, what the working group that's going to work on it is kind of very incomplete.

The fact that those two aren't bound continues to trouble me. That they - that if they are not bound then they are separated, you need a threshold for it seems obvious and you know.

But the fact that they're not bound at all struck me as problematic.

Jeff Neuman: Yeah, I think I know the report does reflect the - that we do talk about there's certainly the option of presenting them together but we didn't want to cut off the - we didn't want to make it inflexible and so we do provide that option, provide it separately.

And in that case you would have the same threshold.

Avri Doria: And that's one where I think it should be confrontable. I think if we don't know what we want to do then why are we voting for a PDP? If we don't know what the goals are, what the - you know if just - so I don't see how they could be separate.

Jeff Neuman: But I think it's a legitimate question for council as well, I mean council may not want to deal with an issue until there's a charter presented. Yes Margie?

Margie Milam: Yeah, the only instance that I recall was a vertical integration where the PD was approved and took several meetings to get the charter finally approved and even that required several steps.

So that's one example of where that was split up. I don't know that that's an ideal situation, but it certainly did come up and (unintelligible) that probably a good clue to part of the problem with splitting them up is all of the sudden you are committed to a PDP and so you must come up with a charter, otherwise you already failed and so you keep - as opposed to you know knowing up front what it is and approving the whole thing.

So I think that as an example.

Jeff Neuman: Sorry. Let me - Marika and then let's try to wrap it up.

Marika Konings: Yeah, this is Marika, I mean if we would go down the road of linking the two together we would need to look at the timing issue as well because I think now we've built in some kind of timing that there can be kind of deferral on the issues report on the actual report on initiation.

But then for the development of the charter a drafting team is formed, then there's a call for volunteers, they need to meet. In some instances it goes very fast but in certain cases it might take some time.

So if there would be linkage it would need to be factored in, into the timing on the vote of the initiation. So even if we are making that an option we need to make sure then that in the timing on the vote or the initiation vote that there is this margin for if the council indeed decides that it wants to forward at the same time on the charter.

And on the initiation of the PDP that sufficient time is built in to allow for the development of that charter.

Jeff Neuman: Okay, you want to put that in the notes section? Okay. Any other comment on that, anyone disagree with the approach that I had mentioned of you know we're adding the one threshold and on the others we're basically saying we're working with what we were given.

And we're not saying one way or another whether those thresholds are the right or wrong ones? Okay seeing no disagreement on that, if we move on to the next one which is talking about - this is number five, right, this is what it means to act.

And just as a reminder so obviously the board has given direction, if the GNSO approves a policy by super majority, then there's thresholds that the board must adopt unless you know there's thresholds for the board.

But it also says that it only needs in the paraphrasing, but well no I don't have paraphrases in there, 13F says in the bylaws in any case in which the council is not able to reach GNSO super majority vote, a majority vote of the board will be sufficient to act.

And there's always been kind of a - you know what does that mean and we've discussed this many times as a group and we have not proposed at this point any language to clarify that, at least in the initial report we didn't.

But now there's if you look at the notes section it's kind of hard to read up there, it's kind of small, but we added in the draft final report language that says if the GNSO council is recommending a consensus policy, that's capital C capital P, as defined within the ICANN contracts, the board can only approve a consensus policy that was approved by the required GNSO voting threshold.

So that's something that needs to be discussed as a group. Alan?

Alan Greenberg: The form of that discussion or part of the form of that discussion was you perhaps among others saying that we don't know what the formal interpretation of these words is but if ICANN interprets it as such and such, we would disagree, we as a registry.

It would be useful if we can hear from ICANN legal counsel as to what their definition is. It may be the same, and we can then just clarify the words.

If it's different we need to thrash out this and not just set ourselves up for court battles. It would be really nice to get...

Jeff Neuman: I guess Margie's volunteering.

Margie Milam: Actually I did check internally and they just have no experience with this section and we're not - you know we're going to try to come up with an interpretation of it.

But they've never been faced with this particular issue so that was the best I could get from them.

Jeff Neuman: Great non-answer. So - but I'm assuming - well no I shouldn't assume. Can we check to make sure that there's no disagreement if we write this in, that it's not going to go - here's my fear is that the - we'll write it in there, they'll go to the board with it.

They'll in private and board papers and in redacted legal advice to the board, because this will be legitimately something that will be redacted right, is legal advice to the board and then just reject it.

And this is part of the openness and transparency and working together that we really need to do and I think my reaction is share this group and looking at Alan's face and some others around here that that's just not an acceptable answer for us.

And we need something better and we need them to get some stake in this and to say yes, this is the way we would interpret it or no, or we need some dialogue. We can't be in a vacuum here.

Margie Milam: Yeah it's Margie, I completely understand that concern and too bad (unintelligible) is not here any more to at least get her thoughts on it. This is one of those we may have to go back and consider and I can ask them for specific input on this language.

I didn't ask this language, I just asked what's their interpretation of the existing language. And so I don't know where they would fall on this particular issue.

Alan Greenberg: Okay, let me go down, if there is no experience and no one is around who wrote the words, maybe we don't need a legal opinion, a legal council opinion of what it means.

Maybe the board has to discuss what they think it means and how they would interpret it and how they want to interpret it. Essentially this is asking is if the GNSO does not have a super majority does the board feel that with some voting threshold they have the right to make it a consensus policy, capital C capital P.

If the answer is yes then there needs to be some dialogue and maybe some lawsuits, but you know that remains to be seen.

But I don't think if it's not something which legal counsel can interpret at this point then it needs to be a board discussion. And one way or another we should end up by the time we finish this whole process with clarity.

I understand why bylaws and legislation sometimes is vague but this shouldn't be one of them.

Jeff Neuman: Let me make a request actually. Even without the legal counsel because legal counsel may not want to offer an opinion but possibly recommending a meeting with the board governance committee directly with this working group to talk about this particular issue.

Because the board governance committee, one that would discuss these types of issues and it's certainly the ones that refer all of this to us and I've got to tell you if there's - if they refuse that is a huge accountability and transparency problem that will need to be addressed way beyond this work team.

But - because this is a crucial issue for contracted parties and others and if the board's got a different view I would almost say that not really relevant to the contracted parties because at that point you know a unilateral interpretation of a contract provision is basically meaningless to the other parties unless you go to court and fight it out.

So James you know.

James Bladel: Thanks Jeff, James speaking and maybe I've lost my handle on this and it's importance is not rubbing off on me the way it should. But if you know in those cases first of all I mean if we haven't encountered it yet, great.

This is the opportunity to fix it. You know if we've spotted some sort of a vulnerability or a defect that needs to be corrected. But you know if it says something to the effect of if I'm understanding your synopsis earlier Alan, that you know that in this case act would be action in the absence of a super majority vote of the consensus policy.

Well doesn't the board have some existing temporary mechanisms that it can use? Why wouldn't it just essentially fall into that bucket, you know if they need to proceed in the absence of - and then finally you know are the bylaws the only place where a consensus policy is defined?

I mean there are context that we have that define what a consensus policy is and what it takes to create one and if it doesn't align with what's in the bylaws you know I think there may be some gaps there too.

Jeff Neuman: It's somewhat of a circular to say it is as defined in the bylaws.

James Bladel: And then the bylaws say...

Jeff Neuman: This which is - right? So - and I do see this you know it hasn't happened
                 before but I - with the higher thresholds and the voting in the GNSO I could
                 easily see a situation where let's say there was out of registration abuse
                 where you have just a majority of council that may vote in favor of something
                 but you can't get a super majority.

                 And the board says well I want to approve it anyway, and now the board
                 could take the view that this is acting, it's forced on all the contracted parties
                 without ever having a super majority.

                 It hasn't happened before and I think we can knock on wood for that, but it is
                 something that I could easily and other people are shaking their heads, I
                 could easily see this happening.

James Bladel: So I guess my question is what are our options going forward for this? Can
                 we say that this is what we think it means as this group?

Jeff Neuman: We could pretty much say whatever we want.

James Bladel: I mean we fixed the problem, I mean we found a problem, can we fix it?

Jeff Neuman: We can certainly recommend a fix to it, certainly and the council could then
                 approve that in the final report. What the board chooses to do with that is
                 completely outside of our control.

                 And I think what we'd want to know going in is because we - I think we should
                 have a dialogue with them, it would be good to understand what exactly their
                 interpretation of this provision is.

James Bladel: Okay and I'm sorry Jeff, but one more question because like I said I may have lost a handle on this one. So we've assumed that this is you know an issue or recommendation, you know we think we should have ice cream on the last day of ICANN meetings.

But it doesn't get super majority on GNSO but the board decides to get us ice cream anyway. And that is a positive you know adoption of a policy but I'm trying to invert this a little bit.

I mean is it possible that they could by the same recipe ignore a recommendation based on - I've got to work on that one a little bit but do you see where I'm going with this?

If there's a gap here between what's coming out of - what's crossing a certain threshold in the GNSO versus what the board is doing then I think that there's a fear that that could be also turned around.

But that they would substitute something in its place, instead of ice cream we get pumpkin pie or something.

Jeff Neuman: I mean it def - you know Margie's definition of what it means to act is very broad.

Margie Milam: Yeah, had a lot of issues here. My first point was that if you want to deal with the board governance committee, remember the issue we had about sending them letter to the board, it was some issue in the past. So I want to make sure we go through the GNSO council, there was a number that was procedural, I can't even remember what it was.

It was some outrage that we had sent some question to the board, was that what it was? It was - no, it was something. Anyway, so I want to keep the

procedural thing, if we're going to do this go the right way, go to the GNSO council, the GNSO council talks to the board and we have this dialogue.

I think this is an important dialogue. I think James' observation is probably similar to my observation that what's in the bylaws isn't going to trump what's in the contract.

The contracts are what they are and then you have the bylaws. So you know there's certainly that - you know there's always that question as to what - you know how you read those two together.

And if there's a gap I think it's up to us to suggest a change so that it gets fixed. I mean I'm not saying that we should keep the - if there's legitimately a gap and there could be an interpretation, I think that's something that needs to be you know clarified.

The thing I want to caution though is remember the board has you know a fiduciary duty to act on behalf of the corporation. The GNSO council does not, so you can't do things or at least I would encourage not doing things that tie the board's hands because the board has to be able to exercise its discretion and its business judgment or whatever it is in California.

But that's something that you always have to keep in mind and even in today's bylaws in an Annex A there is no obligation that the board has to adopt the GNSO recommendation.

They always have the discretion to take it or not take it. If they don't take it I think there's steps on informing the GNSO council why they didn't take it.

I mean I think that there's some language in the bylaws that address that but I just want to clarify that I don't think you'll ever get to the point where you're going to require the board to adopt the GNSO council recommendations.

Jeff Neuman: Right, but this is so narrow in the sense, this has nothing to do with fiduciary duty, right? It's only - it's not saying the board can't act, it's just saying that the board can't oppose it on a third party which has nothing to do with a fiduciary duty to itself.

So I hear what you're saying but I think as constructed this is very narrow.

Margie Milam: I would disagree with that because ICANN is contracts. I mean that's the entire - the only way we do what we do with you know in this industry is through contracts.

So if it involves a fiduciary duty issue I don't think you could tie their hands. But I'm not sure.

Jeff Neuman: But this is not - I don't want to get into this debate now and then again this is not as chair, sorry. This is not - this is imposing some obligation on a third party as opposed to on itself and as part of it's own duty.

So it's a capital C capital P - it's nothing the board can task something, that's not saying the board can't take action on it's own right. What it's saying is the board can't impose something on a third party that it otherwise wouldn't - it's governed by a contract, not by corporate or fiduciary duty.

So in other words a corporation could always interpret on its own a provision of a contract, but that doesn't necessarily make it binding on a third party. Totally different. But I understand what you're saying and we've got to have this dialogue.

Margie Milam: I agree there needs to be dialogue.

Jeff Neuman: I would recommend Marika if we could just to get around the procedure - not get around, comply let's put this in the slide presentation for Wednesday when we go over this with the council.

Maybe not slides or make sure I have it in my update. Make sure I mention it. Remind me later please, remind me later to raise this during the update that there may be an issue or two that we want to discuss directly with the board governance committee and - to make sure the council's aware of that.

So I think that's it on this particular - Alan you want to do a closing remark on this and then I'll close up the meeting.

Alan Greenberg: I just wanted to clarify, the board currently under the bylaws does have the ability to unilaterally squash a consensus policy recommendation approved by the - by a super majority of the GNSO. It just takes a super majority of the board to squash it.

There's no debate about that, so the board is not bound by any GNSO requirements, that's already there. The registry's contract simply refer to consensus policy as defined in the bylaw.

Now your lawyers may not have interpreted it the same way as someone else's lawyers, that might end up coming to court, but it's ICANN's right to define consensus policy in its bylaws and presumably even change those bylaws.
Your contract may say that the bylaws must never change from the day we sign the contract. So I think the right is - the issue is there but we want to make sure how it is being interpreted or how it would be interpreted.

And I'll note this is a registry issue today only because the registrars are bound by this convoluted arcane definition of the RAA, of consensus policy in the RAA which may change with this coming revision.

There has been some discussion that maybe we should get in line and make it clear as opposed to the unimplementable version we have right now. But currently it's just a registry issue, not a registrar issue for better or worse.

Jeff Neuman: I think that's correct, that there are different definitions in the registry and registrar and some have discussed bringing it in line. Okay, with that I do want to just as far as a timeline I think what are we doing as I'm looking over at Marika as far as remaining calls for this year, if we're going to do any.

Marika Konings: We actually haven't discussed, there's of course options to have a call next week and the week after but then we're getting very close to Christmas, I think it's the 23rd.

Some do, and then of course the question is in the first week of January as I'm assuming that people are taking time off between Christmas and New Years. So the question is are people available next week, the week after? Should we do a little poll and get people to check if they can make calls the next week, the week after and the first week of January to get a sense if people are available?

Man: They're giving us a holiday next week.

Jeff Neuman: what's that?

Man: I vote for giving us a holiday next week.

Jeff Neuman: I'm just looking....

Man: I just know that there's some very important stuff that my wife and young children would really want me to focus on this during the upcoming Christmas.

Jeff Neuman: Yeah I think - so let's do the poll just to see who can make it to the 23rd, we'll give people a week off and then also for my own reasons.

So it would be the 23rd, the one after that would be the 30th which is probably going to be rough for some people I would assume, especially if you're in Europe because they like to take some weeks off there.

And ICANN's closed so yeah, apparently ICANN has a forced week of vacation. And then the one after that would be the 6th which is the same as the council call so that might be a rough day too.

Different time, but I don't know, so we'll look into that and see what times those are at. Alan?

Alan Greenberg: I suggest we reconvene in April.

Jeff Neuman: See everyone in San Francisco. Okay guys, thank you for showing up, we'll do a poll as far as next meeting and appreciate the hard work and we'll just keep going. Thanks.

Glen de Saint Géry: Operator you can stop the recording please. Thank you.

END