Transcription ICANN Buenos Aires Policy and Implementation PDP WG Update

Saturday 20 June 2015

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Chuck Gomes: I don't know what time frame is it. They generally have a public comment period too that's open to everybody and so forth. But you're identifying something really important and that is - and the working group -- and I'm sure I'll see nodding heads for those who were involved in the work group - throughout the completion of our work this year we just see over and over again connections to where we're going and kind of reinforcing the direction that we ended up at.

So I absolutely think there's lots of applications. You also know that there's a Cross-Community Working Group going on right now developing principles and guidelines. Come on up here J. Scott please. I think there's a seat on the other side of the table here.

There's a Cross-Community Working Group and there's a session this week on it, on developing guidelines for cross-community working groups. So all of these things gel together, and certainly there would be no reason why some of the principles here, if they're applicable, using them even before they're

approved if the working group supported. That would be great. Thanks. Thanks for the question.

J. Scott Evans: Sure you don't want your own place over there? Go ahead.

Chuck Gomes: Okay, I'll continue.

J. Scott Evans: Anyway they don't always take dollars so make sure you have (unintelligible). That's why I'm here now.

Chuck Gomes: Thanks J. Scott. And for those that didn't figure it out, J. Scott is the one I referred to earlier as co-chair of this working group. So I'll let him jump in and make some comments here and maybe take over. I'll let him think about that. If he wants to just pick up on the presentation I'd be more than happy for him to do it.

It's been - I've been in a lot of working groups over the years and I've chaired a few, but I really liked being able to co-chair, the flexibility that creates, the ability to bounce ideas off of a co-chair and in our case two vice chairs as well is really beneficial I found. So...

J. Scott Evans: And it allows, you know, as you manage this it also allows with busy travel schedules the work of the committee to continue when people (unintelligible) or there are other work obligations they have that are outside of the ICANN sphere that allows you to continue to push the work forward.

I think Chuck found that out because as my duty as president of INTA I sort of dropped out of the picture for the last six weeks or so because I was so busy with INTA stuff. But because Chuck was there, we were able to continue to get work done and make sure we stayed on schedule to get (unintelligible).

Jonathan Robinson: So thanks both. Chuck, just to highlight with you that queue is there and visible to you. So I'll leave it to your discretion as to when you...

Chuck Gomes: Let's go ahead. As long as you're okay with me doing it that way, Jonathan, let's go to Volker.

Volker Greimann: Thank you Chuck. Volker Greimann speaking for the record. Just two clarifications -- you said when presenting this process that it would mainly be used when the board is asking the GNSO for advice. Would it also be used when there's no such request for advice in the GNSO field like it needs to provide a certain point of advice for the board?

And the second part of the question is when the board has a certain majority to reject this advice is there also a requirement on the majority needed in the GNSO Council to provide that advice?

Chuck Gomes: First answer is yes. This is - it's just an example if the board requested advice. The GNSO Council could at any time decide to use this process for an issue that they felt warranted this. As long as it's not something that requires policy development.

We have a PDP for that, and the third process that we're going to recommend relates to that. We'll come back to that. Did you want to add anything there?

J. Scott Evans: Yes I think as Chuck probably laid out in the introductory slides, a lot of our work took looking at things the GNSO had done historically over probably the last five years to deal with issues. And we've categorized those into three major groups.

But if you see application for this I think the first two processes are much more fluid than the third process because the third process is tied to the PDP.

And we want to keep that tied to the PDP because that is a process that requires policy development, that requires the registered parties to - the

contracted parties to adhere to the policy, which is far different than providing input and/or advice, which is sort of I think the way we broke them down.

To the board or to any other group it's a way to formalize developing a position that all parties feel like they understand what their role and participation is. They understand how that was developed so that when there's a final output from the GNSO everyone understands it went through some sort of process that people understood how they could plug into that.

Whereas I think before some of the ad hoc things there were some different ways they were done. Some people felt more comfortable with, some people didn't feel more comfortable with. And so it was sort of trying to just have some way that people understood how they could fit into the process, that they could look at a document and understand how it works and what the flow of that is.

So there would be a little bit more certainty with the output, the eventual output. But there is certainly - with the first two processes at least - much more fluid. The last process is much more rigorous because it ties directly into the PDP. Because it has consensus policy that comes out of there, far more formalized I think...

Chuck Gomes: Thanks J. Scott. And you know I realize as he's talking there that I neglected something at the beginning very, very important. And everybody says this. I think because of the great policy team that we have supporting us on staff and in our case it was not only the regular policy team but also the GDD staff were also in the room here.

I see Karen over to my left and Mary and Marika over here. Just fabulous policy support so forgive me for not mentioning that at the beginning when I thanked the rest of the team. So I appreciate that. Bret?

Bret Fausett: Thank you Chuck. Bret Fausett for the audio. Chuck I really like where this is going. I like the recommendations. On the GTP I was curious though as to how far back this can look. I assume that most of the GTP processes will be on recent policy recommendations but, you know, could it look back 15 years to the UDRP? Is there any limitation on how far back you can go to provide guidance?

Chuck Gomes: I would put that on the shoulders of the managing body of the policy group, the council. I think it's really - it really - we tried not to be too rigid in terms of specifying things like that because - and we actually did talk about the fact on several issues that the council as the policy management body should have the flexibility to make decisions with regard to a lot of his issues.

                  So I think that's one - and I'll let J. Scott jump in too - that we didn't specify. We intentionally didn't get that specific because we think it needs to be flexible. If the council sees an issue that warrants attention, it doesn't matter too much whether it's 15 years old or five years old or one year old if it's something that - a process is needed to discuss.

J. Scott Evans: Yes I think our whole purpose was not looking so much backwards but as forwards. So when an issue comes up and it's going through either the ICANN process and you're either asked a question by the board which has happened I think more in line with the new gTLD program probably than any other program.

                  But when you're asked a specific question by a body, but there's nothing to stop you from looking at issues and you haven't been asked a question but the GNSO feels like its input would be valuable in the debate and it wants to speak with one voice, we tried to give you a process that we thought you could use to coalesce that one voice so that people understood again how they plug into helping develop that.

Whereas before when it was more ad hoc, people who are constantly paying attention to every issue are more plugged in but those people who sort of heard about it and then wanted to plug in didn't know how to fit in.

They didn't know if they were excluded because they weren't as active. And so we're trying to give you a process where people can understand how the GNSO is developing that and how they can participate in that.

And so we saw it more when you see issues going forward but if you think there is an issue that existed that's still lingering in the ether that needs a GNSO position that hasn't been specifically requested or isn't involved in a PDP or you'll see isn't an issue that's come up within the PDP which is our third grouping of issues that we haven't gotten to you yet, that you have a process that everyone understands what that process is for coalescing.

I don't know. Jonathan I see you shaking your head. I know as chair it must be difficult sometimes to feel like how do you coalesce people into focusing onto develop a position. And we were just trying to give you something that you could point to that everyone could see that is laid out there that then you could follow, sort of an easier way to manage developing positions.

Jonathan Robinson: For the avoidance of doubt, my sense is I'm very receptive to this. I think it's very helpful to give the council a toolkit of options with which to work.

And I think one of the challenges we face with the new gTLD program and perhaps some other issues was what are the - which is what kicked this off really is - what are the processes and options available to us outside of seeming like we were very rigorous in saying, "Well we only do this. It's black and white. We only do this or that. And if you want us to do something between, well we might be able to make it up as we go along but we're not very comfortable doing it." So I'm very encouraging of this. It will be great to see the third option as well (unintelligible).

J. Scott Evans: And just for those online or listening over the telephone lines, Jonathan was shaking his head in the affirmative, not the negative. Do we want to move on to the...?

Chuck Gomes: (One more). It's Chuck again. I just want to re-emphasize what I said at the beginning on the principles and requirements. I really - we don't have time to go through those one by one but they are critical to this whole effort so I encourage everybody, not just counselors but everybody else in the GNSO to read those and understand them because they really are the foundation of the report and of moving forward in this because if those principles and requirements are followed, it will make a huge difference on the effectiveness of these three processes. I'm going to let J. Scott pick it up from here. Next slide please.

J. Scott Evans: So this is the one process that is probably more restrictive than any of the others with regards to how it's applied and how it's used by the GNSO. And this is an EPDP (unintelligible). This is to be used when there would be development of additional policy that would bind the contractual parties. So it's a consensus policy development tool.

So to qualify for this particular process, an expedited PDP, you would have to be addressing issues that are really narrow policy issues that were probably identified while you're implementing a broader policy that's come forth.

And I think the - this is spurred on by the new gTLD program basically because as they began to implement the policies a myriad of issues came up which in implementation required changes to some understandings within the various parties and created contractual obligations that would be for the contracted parties.

And so the idea is you don't want to have to go through an entire PDP because that's just - that's unworkable because it bogs down the implementation. But because it does require there to be new policy

developed that will put contractual obligations on the contracted parties, it needs to be a bit more formalized and tap into the previous work and tied to the previous work that's been done by the PDP.

So you see here that it's a narrowly defined, that it's scoped after there's been a policy recommendation that the board has already adopted for implementation. And this is additional policy work that needs to be done based on issues that have come up during implementation.

So we have examples here. If the issue was already scoped and an issues report for a possible PDP that was never initiated just because it fell to the bottom of the work pile or as part of the previous policy development process that was never completed or through other products such as the GDP that we've discussed earlier, I see that we have some hands up. I think first is James Bladel.

James Bladel: Hi thanks J. Scott. James here for the transcript. You know I'm cautiously intrigued by this idea. I know that for some of you that were on the - oh help me with the acronym Marika - PP, PSC PDP? The group that reformed the PDP about two or three years ago. Mr. Neuman was their chair. Avri I think was on that group as well.

One of the challenges that we discussed was the idea that expedited PDP was, that it generally one of the things would be that it would take over and that it would then become the new PDP process because every idea was either a derivative of previous policy or a previous issue report or could be tied to something that was done previously.

So again I think this goes back to something that was raised earlier. Is there a cutoff of something, how old something is? Can I go back and reopen like (casings) or something that happened quite a while ago and want to modify that? Are there sufficient safeguards in this to prevent things that - perhaps

issues that didn't obtain consensus during the first time around from being reopened and redeliberated?

You know, I just - I'm a little - I'm interested because, you know, as someone who throws a lot of their free time into PDPs I'm interested in anything that can speed it up and make it more efficient. I just want to make sure that it's properly scoped and safeguarded to prevent it from being used as a kind of a trap door PDP.

J. Scott Evans: My first comment would be is along with these processes comes an obligation on the managing body to manage, which means that you all are going to have to have some criteria that you all use when you push something to one of these processes.

We can't define every one of those. It's unobtainable to do. I think what we were more thinking about is that it is a process where you're implementing policy and an issue comes up but the deciding factor is you all decide that any solution is going to require more policy development, you're going to put it through this because the underscoring policy has already been decided, right?

So you're going to put it through this so you don't have to reinvent the wheel on 90% of it. You only need to focus on the one implementation that's requiring new policy. That's the first way we see it happening.

I think another way is let's say that there's - (for tasting) for example - that a policy has been developed but technology changes. And because the technology has changed, it's created that additional issue which to find a solution's going to require additional policy.

But the baseline policy with regards to the solution has already been resolved, okay? So I think we state in our opening paragraph that this is not to be used for that exact purpose, and that is to open up areas where there

wasn't complete consensus but we move forward with a policy. It's not to be used to scrape the scab off old wounds.

It's to be - and it's a management tool. So it's going to require that the policy body manage how it's used and exert its management control when it invokes these processes. I think it's impossible to say, you know, anything that was (unintelligible) 15 years ago needs to go through a full PDP when it's a very specific solution and you saying, "We don't have to deal with this one issue yet because it requires new policy, let's try the EDP for this one."

As opposed to this is not really anything new. It's basically just rehashing the old issues and we're not going to do that. And that's something as a managing body you have to make those calls for. Chuck.

Chuck Gomes: In response - Chuck speaking James, it's - and J. Scott said this. I want to re-emphasize it. This is not a process for a second bite at the apple, okay, if you didn't get what you wanted the first time around, and the report is very clear on that.

Now I'm going to suggest that J. Scott go over 2 and 3 -- because they're really critical - in a little more detail before we continue the queue because it really relates to your question. There are specific criteria that have to be met. Not only does it have to be a policy issue but 2 and 3 have to be met there.

J. Scott Evans: Right, and as I said before, it's after the adoption of the GNSO policy recommendations. So if the policy recommendations, there's not been any adoption of a policy recommendation, this is not the process.

So in other words if consensus was never reached, there's a group that believes that there should have been some sort of policy recommendation, it never happened, this certainly wouldn't be the appropriate way. So it's not a vehicle to keep something on the agenda perpetually or to use some sort of expedited process to loop out of the PDP.

So in other words if there was a process that did not come to consensus and someone wants to reopen that process it would have to go to a full PDP because the answer to that was no policy. It got an answer. It may be an answer people didn't like but it got an answer. I think that that's really important to understand.

And secondly that it's been substantially scoped and that there's a lot of information that already exists. In other words this is a way to build on previous work rather than reinvent the wheel every time something comes up.

So if in its implementation, the detail for example, something comes up and all the underlying work with regards to most of those issues has been handled but there's one specific issue that requires tweaking because nobody saw that issue, it's not answered in the underlying work, then that's something you would use this for.

As opposed to, "We didn't get the answer we wanted with regards to that and so we want to open it up and try to put it through this expedited process."

James Bladel: I have a couple of other questions but I'll wait for you to get through this slide, and I put myself at the bottom of the queue Jonathan. So whenever we resume the queue...

Jonathan Robinson: Thanks James. I'm just flagging with J. Scott and Chuck. We've got to - this is tricky because this is substantial and impactful and it's a lot of work. But we do have some time constraints so just to try and manage that balance. Go ahead.

Chuck Gomes: Bret?

Bret Fausett: Thank you. Can I make a recommendation? And I apologize if it's in the details of the report that I have not seen. If there is - if we do adopt this and

there is an EPDP, can we have a requirement that notice goes out to the affected contracted parties via the notification queue at whatever the notification contact is in the contract?

For example if it's going to be something that is going to require a course correction for registries it would go out to the contact information in the contracts between ICANN and the registry.

Similarly if it's a registrar issue notice would go out, sort of an alert that there's going to be an issue here that affects you. Pay attention to this because this could potentially happen very quickly. And you wouldn't want something to fly under someone's radar, all of a sudden have them, you know, have to have an implementation obligation.

J. Scott Evans: Marika?

Marika Konings: This is Marika. It maybe something important to clarify in relation to the EPDP that the only real difference is that there is no issue report. So the idea is that because the issue has already been scoped as part of a previous PDP or GDP or some other effort, there's no need to do, you know, issue report which takes 45 days, 40 days for public comment kind of thing, you know, 30 days to produce final issue reports.

So that's why you could caught up like two to three months. All the other steps are the same. The idea is of course that if it's a right-now issue and you're talking about, you know, changing policy recommendations from 50 days to 30 days, that you may not need a year for a working group to deliberate.

But all the other, you know, checks and balances are in place, so the initial, you know, vote at the council, working group is required to reach out to all the stakeholder groups and constituencies to ask for input on the issue, public comment on the initial report, the final report.

So in that sense (unintelligible) take away the impression that this is something that, you know, someone can quickly vote on it and a week later you have new requirements on contracted parties.

That's not at all the idea behind this because I think the group thought was very important to -- and as well to James's point -- the previous discussions where they also tried to figure out can we do it quick or say well we don't want to, you know, take away too many of those steps because then you really take away the multi-stakeholder element of it and the due diligence part of the process.

So just want to clarify that the only real difference is that there's no issue report phase as part of this. There's an issue scoping document, so it is scoped what the PDP is expected to look at, and that is what the council votes on. But all the other parts are still in place.

It's just the expectation if it's really an issue that already been dealt with before or if it's a very narrow question that the group is expected to look at, it will likely go much faster than a typical PDP that looks at a very big broad issue.

J. Scott Evans: I appreciate there are still processes here and there's going to be comment periods, but I still think that anything that's going to be expedited that's going to put a burden on a contracted party to implement, you need to send a notice to them saying this is happening. We have initiated this. It is expedited.

You know, then they can pay attention to it or not but I'm relatively plugged into ICANN and a lot of things still fly under my radar. I would not want something to happen here that, you know, suddenly people have to implement but they don't have notice of.

Jonathan Robinson: Okay so I'm conscious of where we are in this process. I think we've got an opportunity to discuss the motions element as part of this later in the day. We've got time constraints so I think we should hold that queue. We should let - see us get through the content here as rapidly as you feel comfortable doing so that we can keep this moving and we'll come back to the queue.

So people can add to the queue by all means but I think we need to try and move this forward a little.

J. Scott Evans: Okay I just want to, you know, re-emphasize this as Marika pointed out, Number 4, that the issue is already scoped. So you don't need an issues report. That's what we're doing is we're cutting out about 2-1/2 to 3 months just because you don't have to issue a new issues report.

And it could also be used as part of a previous PDP that wasn't completed but again we would expect that that issues report had already been done. So you're just cutting out front end work that has already been completed. It's not being not done or circumvented. It's already been completed. There's no need to build that time in.

And my answer to James would be there is nothing preventing you as a management body from deciding that when you want to use this process that you will send out a notification. There's nothing - I don't - I mean I'm happy for someone to amend the motion to add that as a requirement but there's nothing preventing you from doing that.

You're the management body and so you can do whatever you feel is necessary to make sure there is parity and awareness and acknowledgement between the interested parties because that's what you do as the management body. That's your decision of how you implement it.

You want to go to the next slide? I don't think we have many more slides. So here's a few - you know, there's a lot of information in this report. You can't

just read the report. If you have specific questions about something I would go to the annexes that are appended to the report that are referenced in the particular section regarding the particular process because you may find that that annex contains the information that you're looking for. So I would explore that first.

I also - we need to make sure just for people going forward and newcomers that we get the operating procedures amended accordingly so that when someone comes in and they know what the role of the GNSO is with regards to this it's laid out for them clearly so they understand what the role is, so a new chair or a vice chair that comes in or a new GNSO representative for one of the constituencies or NomComm appointee can look to a process, can self-educate themselves on what is to be expected.

So that needs to be put in the operating procedures so if you do that, we strongly encourage that you take the time to interwove that into that document so it's part of the process and everyone clearly understands.

Next slide. So just to let you know that one of the things we did as part of this group is we worked with staff and the GDD group to understand what happens on their side of the equation when policy is implemented. It goes from the development to implementation.

And we tried to understand exactly what they were doing to make sure that the processes we developed jibed with what is going on internally within their processes in order to have a work flow that I think has a few stumbling blocks in it as the hand-off occurs as possible.

So you see here - this is all laid out in the report. In Annex J you'll see the timeline that has been worked up. So - and I think that it's all we're trying to do here is formalize things in the hope that some formalization will add to efficiency.

Yes. Chuck said you can't read but the word is this is a framework and it's in the small text there. Next slide.

So implementation review is mandatory. So you see here that we have the PD needs to be manual. The manual needs to be modified for creation of an implementation review team. We believe that it should be a formalized step that that is always done, that there's always the implementation review team that assists the implementers in dealing with issues that may come up during implementation.

But we felt like if there are certain circumstances there should be flexibility because as a management committee, as a management group, you may feel like this is so well scoped there is only one answer. It's something that's so quickly and easily done you don't need to go through that step.

So we wanted to alieve you some flexibility that in exceptional circumstances that you can articulate and explain to the community transparently that you wouldn't need to have an implementation review team but the default is to have one. But you have flexibility not to do that.

You'll see again we have the principles that should be - they're spelled out in (Excel) that should be applied to the IRTs. Again the principles form the basis of the integrity of all of these processes. And you need to have a clear commitment and understanding of those principles in order for this to I think function as it does.

And as the management body, we look to you all to be the ones that endorse and embrace those principles because you're managing the system.

Next slide. So here this is in all the information. We have links to everything you can see. I think one of the things that I want to really thank staff for that I think made our work a lot easier and I think hopefully when people look at it as they review these materials is the public comment review tool, which is a

tool that I think shows how we ingested the public comments that we received and how we dealt with those.

And I think that that has been - at least in my experience - one of the biggest frustrations of this whole process is that outsiders or people who are reading the report never understood what effect if any public comment had. And explaining that and showing how it was ingested and dealt with I think is something - and I want to thank Marika and Mary for leading us through this tool because it made it very valuable. And I think it made the work go faster.

So and with that I think the next slide is, you know, feel free to review any of these materials. Chuck and I are around. Marika and Mary, our staff liaisons, are around. We hope that we provided a motion and preprocesses and some work that you call can endorse and adopt that will lead us to doing better work for the entire community in an open and transparent way. Before I shove off I want to ask James (unintelligible).

James Bladel: Thanks. Yes thanks. James speaking. And I had some additional questions. I think you covered some of them in the interim so I'll just say that when we have our discussion of the motion on Wednesday to the fellow counselors here, Chuck and Scott and this group - J. Scott - are giving us a very sharp knife here with the EPDP.

(Unintelligible) very carefully and look for situations. I know I've got a couple of situations in mind where we've gone to implement just transfer policies and during the course of implementation we've run into some huge road blocks that were not considered - just completely missed by the PDP and multiple comment periods.

So it happens. Okay I get that. I just - I see that it's also, you know, it's a sharp knife and you want to make sure you're grabbing it by the right end. So something that we should discuss as part of this motion and something we should maybe - (unintelligible) putting some procedural controls into place --

like higher voting thresholds or whatever - to make sure that this is used appropriately. Thanks guys.

Chuck Gomes: Thanks James. And in addition to talking to either one of us or Marika or Mary this week, feel free to talk to your representatives in the working group. We had very good representation from all of the stakeholder groups, constituencies and the ALAC. So those people are also very good resources - use them.

And then Jonathan if it's okay with you this will take me about one minute. I want to emphasize three - I want to close with three principles. There are just three of all of the principles and requirements that are in the document.

But one of them is implementation should be regarded as an integral and continuing part of the process rather than an administrative follow-on.

And then another one I want to emphasize. While implementation processes as such need not always function in a purely bottom-up manner, in all cases the relevant policy development body must have the opportunity to be involved during the implementation. That's directly related to the council.

And then last of all policy and implementation are not two separate phases entirely but require continuous dialogue and communication between those that develop the policy and those that are charged with operationally implementing it.

Jonathan Robinson: Okay thanks very much Chuck. And Marika go ahead.

Marika Konings: Yes this is Marika. If I could maybe make a last point, and I'm hoping that that may reassure James because actually that is something the working group already thought of and to initiate an EPDP you need a supermajority vote of the GNSO council. So I think that they've got it built in to ensure that indeed

only - you can only initiate it if indeed almost everyone agrees that an EPDP is the appropriate way to go, so...

And I think in several cases the voting threshold has been built in to ensure that for example in a GDP it's only in the case of a supermajority vote that it's passed on to the board, again to kind of - that it only passes the board if it represents the consensus of the GNSO.

So I think if you look at that I think the working group did pay quite some attention to ensuring that it couldn't be easily, you know, initiated and off you go and while most people didn't even thought it was a good idea. So I'm hoping that maybe covered in the report and addressed through those.

Chuck Gomes: And to follow up with what Marika is saying, the Policy and Implementation Working Group really tried to apply what we're recommending in there and what we discussed. And so because of limited time today, like for example we didn't talk about the voting thresholds for these.

All that kind of detail is in the report including recommendations for how the GNSO procedures need to be modified including recommendations for possible language changes in the bylaws. All of that is in the full report. So even though we didn't cover it today, we tried to live by what we're recommending and do as much, give as much guidance for implementation of our recommendations as possible.

Jonathan Robinson: Okay so it's clear that we had a series of painful experiences that led us to believe that the work of this working group was a requirement. My sense is that this has been led by and contributed to by people who really know and understand both the background and the consequences of what's going on.

I accept we need to be reassured as counselors in reviewing this, that it has been done in that comprehensive way. But my sense right now is that we are

being provided with both a very powerful toolkit but also a responsibility to use that toolkit which is I guess to some extent your point James.

We have to act responsibly, although these subsequent remarks have also indicated that there are some natural constraints built into it. So that was very, very helpful and I think it's a potentially great step forward. We do have an opportunity to discuss it further as part of the motions.

And I'll remind everyone that there is a Tuesday session - and this is really important because we haven't had to use this in earnest for a while - there's a Tuesday session at the end of the constituency days when you've had the opportunity to socialize this work or any other of the motions amongst your groups to come back together as a council and/or with representatives from the groups to discuss any other prior concerns prior to going into the Wednesday meeting.

So I'll remind you of that again but for the moment let's thank very much the co-chairs, the vice chairs and the working group for this comprehensive work. And we'll look forward to seeing more of this as we go through discussing the motions and indeed this being a formal item on the council general on Wednesday. Thank you very much.

END