

**Policy Process Steering Committee (PPSC) Policy Development Process (PDP)
Work Team (WT)
TRANSCRIPTION
Thursday 22 April 2010 at 13:30 UTC**

Note: The following is the output of transcribing from an audio recording of the Policy Process Steering Committee Policy Development Process (PDP) Work Team (WT) meeting on Thursday 22 April 2010 at 13:30 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting but should not be treated as an authoritative record. The audio is also available at:

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Participants on the Call:

Jeff Neuman - Registry Stakeholder Group - Work Team Chair
James Bladel – Registrar Stakeholder Group
Tatiana Khramtsova – Registrar Stakeholder Group
Paul Diaz - Registrar Stakeholder Group
Avri Doria - Non Commercial Stakeholder Group
Alex Gakuru - Non Commercial Stakeholder Group
Wolf-Ullrich Knoblen – ISCPC
David Maher – Registry Stakeholder Group
Alan Greenberg - ALAC
Gabriel Pineiro - Non Commercial Stakeholder Group

ICANN Staff:

Liz Gasster
Margie Milam
Glen de Saint Géry
Gisella Gruber-White
Marika Konings

Absent apologies:

none

Coordinator: Please go ahead.

Gisella Gruber-White: Thank you. Good morning, good afternoon to everyone on today's
PPSC/PDP call on Thursday, the 22nd of April, we have Jeff Neuman, Alex

Gakuru, Gabriel Pinero, Tatiana Khramtsova, James Bladel, Paul Diaz, David Maher, Alan Greenberg. From staff we have Marika Konings, Glen de Saint Géry, Margie Milam, Liz Gasster, and myself Gisella Gruber-White, and we have apologies from Michele Neylon.

If I could please just remind everyone to state their names when speaking for transcript purposes. Thank you. Over to you, Jeff.

Jeff Neuman: Thank you very much. This is Jeff Neuman, Chair of the PDP work team of the PPSC. It is April 2 - what is today? Sorry. You said the date, and I just totally - it totally left me.

Alan Greenberg: It might be the 22nd.

Jeff Neuman: It would be the 22nd. Thank you. Good start to a meeting. Anyway, welcome everyone, and we're - just we got a pretty full agenda. Lots of items to talk about. Continue where we left off on the first call.

One thing I do want to note is that in response to a question we had on translation, Marika has sent around a document which I guess she got some statistics on the number of documents that were translated and number of page views. I do not have a - statistics yet on whether people responded in that with comments in any of those languages, but Marika has just posted that up on the Adobe just to show you.

It's a - there's a Word document and then there's an Excel spreadsheet. Probably the Word document, which is the one that's up there now is the easier of the ones to kind of take a look at. And there's not really much to say about it at this point. I think people should just take a look at it and glean whatever they can out of it. So with that said Marika, is there anything else you want to say about the document?

Marika Konings: No. This is Marika. I think I'll go back in and see if they can provide you with some more specific information on public comment periods that were held in other languages. I said I think on the previous meeting, I think there were only a few, and the only one had direct experience with was the one that we ran for the IRTP Part B working group, where we did a little experiment on you know, having the public comment forum and announcement in the other UN languages. But, we actually didn't receive any comments in other languages on that occasion.

Jeff Neuman: Okay. Alan, you have a question?

Alan Greenberg: No. Not a question. Just wanted to let you know the Vertical Integration Analysis Team was scheduled starting in 25 minutes, so I've got to be dropping off of this call at that point. There's no recording of that one, so I don't think I have much choice but to attend.

Jeff Neuman: Okay. Thanks, Alan. And, I'll get on those guys for scheduling a conflicting call. No, I'm kidding.

Okay. So with that said, there are a couple of outstanding items that I have. I was a little detained this last week, so I have some items on my plate. This list of feedback.

One of the other things is that as Glenn - some of you may have heard, but I'll repeat it so that it's on the record. In Brussels, our meeting day is on Sunday, and it's going to be from 10:30 am until 12:30 pm - that's two hours on that Sunday in Brussels at that time. So for those of you planning your trip out there, if you could make sure that you're there for the Sunday meeting, I think that'll be a good time to get together face-to-face. Any questions on that?

Okay, great. Let's jump right in to where we left off, which was -- and I'll give a second for Marika to post it -- we were talking about - this is on the

overarching issues, and we're just trying to go over all the voting thresholds that had talked about through the different pages.

We had left off on - we talked about raising an issue. We spent a lot of time talking about raising an issue, and some of the members of the work team were - had expressed some comments about wanting to possibly increase the threshold, and others were not in favor of that.

And ultimately what we had discussed, which I need to put out to the list because I'd like to get some more feedback, was that there really could be a dependency - or is a dependency on the prioritization effort that's underway with the GNSO. Meaning that you know, you could initiate - you could raise the issue.

You could even initiate a PDP in theory. But the question is then once its raised - once the issue is raised, could the GNSO Council decide to prioritize it in such a manner where it may not be taken up right away due to the fact of a number of PDPs, or other efforts that may not be PDPs are actually being done at the same time?

So, the action item -- because I don't want to go over that ground again -- is I'm going to basically send out some questions to the list to see if we can get some comments in writing.

We talked about the threshold for initiating the PDP if it's in scope, and we left off on initiating a PDP if it's not within scope. And remember, that not within scope means that it's not within the scope of the GNSO or ICANN, or I should say not within the scope of ICANN and the GNSO. It does not mean not in scope of a consensus policy as defined in the contracts with the registries and registrars.

So in other words, something could be within the scope of the GNSO, but not within the scope of the "picket fence", and that would require the lower

threshold. What we're talking about now is something that the Council - that the ICANN Council has determined in the issues report is not within the scope of the GNSO. And for that, we have said that a GNSO super majority vote would be required to initiate a PDP, which means -- as defined currently in the bylaws, that 75% of one house and -- not or, but and -- a majority of the house.

So, is there any discussion on that? I see James has his hand raised, so James.

James Bladel: Yes. Just maybe for my benefit. If I'm the only one that's not getting this, that's fine, but such - could someone provide an example of a type of an issue - maybe Margie can help me here with an issue that would be - that would fall into this category of an out of scope PDP.

Margie Milam: Yes. Actually I can. No, this came up on another call. Somebody asked me the question and I was thinking about. Oh, and this is Margie by the way. Think of a PDP on Fast Flux for example, or phishing, just to say if that were the case. And, a group came up with recommendations that applied to both gTLDs and non - you know, and as maybe as a referral or a recommendation that the ccNSO should pick it up.

So you know, there could be things that are outside the scope of the GNSO, but the GNSO may feel like they should at least you know, address it in some informal way. And so, that was the kind of thing that I was thinking about.

James Bladel: Can I respond to that real quickly Jeff? I'm sorry. I took my hand down.

Jeff Neuman: Yes. Sure. And then I'll go to Avri.

James Bladel: I mean the question is, is that still a PDP, or is that something else?

Margie Milam: In my view as I was trying to think this through, because I've had the same kind of puzzle in my head, it would come out of a PDP. So you know, the GNSO would start on some generic - some high level topic, and then as part of doing that analysis, they might see that (unintelligible)...

James Bladel: (Unintelligible).

Jeff Neuman: You're still here.

James Bladel: Okay.

Jeff Neuman: Okay. Margie, are you still there?

Avri Doria: I guess she's not.

Gisella Gruber-White: Margie disconnected. Sorry. She'll be dialing in shortly.

((Crosstalk))

James Bladel: I don't want to belabor this Jeff. My only question was that you know, if it's - if we're using the terminology correctly is all.

Jeff Neuman: Sorry. So, what terminology are you referring to?

James Bladel: Well, it's something about a scope, and yet we're submitting it to a policy development. You know, and we know that at the outset. Is it still policy development, or are we acknowledging that it's just sort of a working group effort? I don't - you know, I'm just having a tough time wrapping my mind around the idea that there would be this initial and acknowledged contradiction.

Jeff Neuman: Yes. It's kind of interesting because you're - I think the working group - or sorry, the Council could always get around this by just calling it a working

group, but then it's got no - something has to be a PDP in order to even have a chance of being - I see what you're saying. It doesn't - it's a very good question as to whether something that's out of scope is even a PDP or whether it's just a working group.

Marika, do you have something to add on that, or...

Marika Konings: Yes. This is Marika. I'm just wondering at the time that this was written, if that was so under the impression, because we know we had the discussion on the - over the confusion on what's in scope, what's out scope. Is it possible that this clause referred to issues that were not in scope of consensus policies at the time when you know, people believed that policy development could only take place on developing consensus policies.

In that context, it would make sense. Because you say okay, on things on the pickets - with inside the picket fence you need a normal threshold. But if you try to make you know, binding policies on issues that are outside of the picket fence, you would need a GNSO super majority in order to initiate a PDP.

Could that have been the thinking for that clause? And indeed, if we're talking now that - you know, with the understanding that scope is not related to the picket fence and the consensus policies, but it's you know, ICANN's mission and scope of the GNSO.

But that clause might not make sense anymore.

Jeff Neuman: I can only - I can answer that from my perspective when we wrote it, but I can't put myself in other people's shoes. In my mind, it was - there was no such thing as the creation of a working group that wasn't part of - everything was a policy development process. Everything. The whole notion of the GNSO Council creating working groups that weren't part of a PDP process was not something that had ever been done prior to coming up with that - those set of bylaws.

So, I think the GNSO Council kind of changed the game a little bit by creating these working groups, but the point when we were writing it was that the GNSO should not really be getting into areas that were outside the scope of the GNSO. That is should focus on only things that were inside the scope, and there was no bifurcation of working groups and PDP. Everything was PDP, whether or not it was inside the picket fence.

I don't know if that helps, because things have evolved since then, and that distinction may be meaningless. But, that was my thinking in it when we were drafting this a long time ago.

Avri, do you have a comment on this?

Avri Doria: I have a comment both on that, and I had another issue related to the super majority that I was going to bring up before this was put on the table.

Jeff Neuman: Let's start with the comment on this topic, and then we'll come back to it and we'll - Alan, and your (unintelligible). Let's start with a comment on this point brought up by James.

Avri Doria: Okay. Yes. I would tend to believe that as long as what's being done is talking about policy and such, I would actually believe that the policy development process would be a correct name for it. I don't think that there needs to be a process for policy that is in scope, and a process for policy that may be out of scope; whichever definition we're using.

I think there's obviously a different result if do a policy on something that is out of scope in the meaning of not under the (unintelligible) but not under consensus like (unintelligible) picket fence. Or, you do something that some people - you know, that the staff may believe it its outside of the mission scope.

Those obviously would have different results, varying from irrelevant to totally irrelevant, or semi-relevant to irrelevant. But, I don't think that that's a reason to not call it a policy development process, because the perspective of GNSO, what they would be doing was talking about policy and doing some development on policy.

And to define many different processes to handle these things, I think is you know, just creating more work for ourselves (than in the meeting). Thanks. I'll keep my hand up.

Jeff Neuman: Okay. And, I'll come back - yes, keep your hand up Avri. Alan, did you have a comment on this or something...

Alan Greenberg: No, on this.

Jeff Neuman: Okay. Alan.

Alan Greenberg: In the recent past - starting in 2006, the GNSO did a PDP on gTLD contractual obligator - contractual terms that was deemed to be outside the GNSO scope, but it proceeded anyway. There's a higher threshold for approving. There's a higher threshold for the Board refusing it. But it was - it's you know the example in recent memory of a PDP which was not within GNSO scope but was proceeded with anyway.

Jeff Neuman: Thanks Alan. Yes, that should've been one I thought of as I was part of that. But, that's a good example. I don't know if James, if that helps you just to - I'm not sure if you were around at that point, but that was when there were some elements in the contract that some of the constituencies of the registry contract - that some of the constituencies including the registrars wanted to do a policy development process to change.

And, the ICANN Council came back and said that's outside the scope, it's outside the picket fence, and it's outside the - these are private negotiations

or private contracts between ICANN and the (registrars), and these particular items were not necessarily within the scope. And, the GNSO Council voted with its increased threshold to continue on with it.

It turns out what happened is that they obviously weren't implemented against the existing registries, but some of those points did find its way into the new gTLD registry agreement. I don't know if that helps you James as an example.

James Bladel: Yes. That helps. I just - you know, that helps. Thanks.

Jeff Neuman: But, I do think it's a good - and then I'll turn it over to Margie. I do think it's a very good question as to what the distinction is between the creation of a working group and policy development. You know, one could argue that the new gTLD was just the creation of a working group on it and not policy development. But one could also argue the other way, that that - of course that was policy development as well.

Alan Greenberg: Jeff, can I get back in on that?

Jeff Neuman: Yes. Alan, and then I'll take Margie.

Alan Greenberg: Yes. The difference is with appropriate thresholds, this is a mechanism by which the GNSO can force the Board to address something. And, if there's not sufficient cause to refuse it, to force the Board to accept it. Whereas just a working group has absolutely no power to escalate it and cause the Board to address thing.

So, the PDP is the only mechanism the GNSO formally has to bring something to the Board.

Jeff Neuman: That's a very good point, Alan. And Marika, we should probably take note of that in the report to stress that. I think that's a very good point.

Margie, do you want to address that as well?

Margie Milam: Yes. I mean, if we're thinking about this in terms of this would have to apply to anything that the GNSO does, I would probably caution against that, because I think you know, there are situations where you know, the formalities of going through an issues report, and you know, all the steps, and all the public comment periods, it may not be you know, the best thing for the particular issue.

And, I thought one example that comes to mind is you know, as we put together the working group for STI, we had a short timeframe from - you know, in which to come up with a recommendation. And, if we had to go through the you know issues report and all the steps for a formal PDP, you know it just wouldn't have happened in time.

So, I do see value in you know, allowing the GNSO to do things that aren't you know, necessarily following the "PDP rules".

Jeff Neuman: But, I think that...

Alan Greenberg: Jeff, but in that case the Board requested it, so it wasn't an issue of how do we get the Board's attention?

Jeff Neuman: Right. So, I think both of you -- Alan and Margie -- have good points. I think Margie's point is good in a sense of you know, we preserve some flexibility to - for the GNSO Council to get some sort of advice in the less formalistic manner.

And, I think Alan's point is great as well, in that you know the only way to really - unless it's requested by the Board, in the case of like the STI, you know it's really - the PDP is the only mechanism we have to force the Board to address it. Not to adopt it necessarily, but to address it. And then, there are

some limitations or - I shouldn't say limitations. There are some rules and things that the Board has to - they have their own formalities in dealing with PDPs. I think that's a good point.

Avri, next.

Avri Doria: Yes. Okay. The next one. This has to do with something that sort of bothers me with just having super majority vote defined as we do now with the...

Jeff Neuman: Avri, you still there?

Avri Doria: Yes. Yes. I'm still there. I lost my train of thought for a moment.

Jeff Neuman: Oh. Okay.

Avri Doria: I guess what I - I keep looking at the super majority, and look at the needing 75% of one house and majority of other houses.

Now, there's another way of translating what used to be super majority, and that was two-thirds of the Council. Now, I know this is not likely to happen these days, because at least within the contracted party's house, voting is by a block. And so therefore, that skews the way things are. But, that is not necessarily predicated to always be the case, and it's certainly not written in any of the bylaws or Council documents.

So, it occurs to me that if no one was constrained to vote, and especially as registries and registrars get much bigger and get more diverse. No one - no single (goals) or group is constrained to vote as a block for all time. So, it could be possible that we would end up in situations where you could have a super majority of each house, or you know - but not have a super - a 75% threshold in any one house.

So, you still reach a - what is - and by all accounts a super majority, and as two-thirds have gone for it and et cetera, and be proportional to (unintelligible) two-third have gone for.

So, I'm wondering whether we shouldn't also include a proper super majority, where you don't have to have 75% of one house, you've got 66% of both, or you know what have you. So, that's the concern I've got is - and, I know that you know, with people voting as a block it makes it less of a concern. But - and, it is only one vote either way. But, I wanted to put that on the table. Thanks.

Jeff Neuman: So, if I could just summarize. You would have a either/or situation, where it would be defined as either the 75% of one house and a majority of the other, or 66% of both houses.

Avri Doria: Yes.

Jeff Neuman: Does anyone have any thoughts on that? I'm just trying to think at this point, that you have four stakeholder groups - Alan, you have a comment?

Alan Greenberg: Yes. I mean, going back to how this was derived, we were trying to find something which was roughly equivalent to 66% of the entire Council, and - but not requiring - you know, but still allowing a reasonable decent, and this is what we came up with.

I think if someone had suggested what Avri's saying at that time, it probably would've been accepted, when we came up with this. You know, it's another slight - it's a slightly different flavor of moving the balance slightly away of a variation between the houses, but still about 66% across-the-board. So, I would have no problem with it. It's a subtle case. I'm not sure we'll - you know, it'll show up all that often, but I would have no trouble adding it.

Avri Doria: This is Avri. If I could add something. When we were talking about that - Alan is right. What we were worried about was how to keep it from being blocked if somebody didn't want it. More than, what does two-thirds mean? Although, we did talk about it, and it was a 30-day cycle. So - and, that's why - because every time I see it, that's what's been concerning me.

Jeff Neuman: So, does anybody have any other thoughts on that, or you know has something to put out - at least put out for comment to the list. I don't think it - at this point in the structure, I don't think that really changes. I'm just trying to see if - how many people - so you know obviously; we have a different number of Councilors in each of the houses, right. Whereas the contracted party's house has only seven Councilors, right. There's three registry, three registrars, and one non-(unintelligible)...

((Crosstalk))

Avri Doria: It's (unintelligible) of one person. It's one vote more or less.

Jeff Neuman: So, you would need five of - so, you would need...

Avri Doria: It's five at 75%, and you need four at 66%.

Jeff Neuman: No. I think it's five at 66% and six at...

Avri Doria: Oh, okay. If we're rounding up - I forget how we round. But yes.

Jeff Neuman: Right.

Avri Doria: So, it's a one person difference.

Jeff Neuman: Right. So, you would just need one - so if it was the registrars and they wanted it let's say, you would need the nominated Committee and one registry, as opposed to the nominated Committee and two registries.

Avri Doria: Right.

Jeff Neuman: And for the other house, I think it would follow...

Avri Doria: It works out the same.

Jeff Neuman: Yes. It's just double the members, but it's - Alan, do you have a comment?

Alan Greenberg: Yes. I think it has some merit. I think it could well have been there using the logic we used if we had had more time, so there's no reason not to put it in. Presuming we're going to be ending up recommending some bylaw changes, I would think there's no reason not to put it in at this point. We can always reject it.

Jeff Neuman: Okay. Why don't we put that in as an option, and certainly put it out for comment. You know, it's something that there may be some others that were on that initial working group that came up with that compromise. They may have something that they thought of. So, I don't see any issue, and I'm looking at - you know, there's a lot of people on this call that haven't made any comments.

Thanks Alan. I know you're dropping off.

Alan Greenberg: Okay. Bye-bye.

Jeff Neuman: So, we'll put it out for comment on the list, and absent a strong opposition from people on the list, I think it's something we could certainly put as an option in the draft on this issue.

Avri, you have a...

Avri Doria: Yes. I just wanted to add one comment to that. This is not something that I suggested that got rejected previously. I just want to mention that. It's just something that never came up.

Jeff Neuman: Okay. Why don't we then jump onto Number 3, which is the vote to approve the charter? This is something we added that was not part of the bylaws at all. This is something we added through our discussions, although there obviously are votes by the Council to approve a charter.

The - what our general rule was that we had proposed during the discussions was that the threshold for approving the charter should be the same as the threshold for initiating the PDP in the first place. That if it so instrumental that if it was greater than the threshold - in other words, right now you only need 33% of the Council members of each house if it's within scope.

If it was greater than that, i.e. requiring a majority of the Council, then you could essentially have it easily blocked. If someone didn't want it initiated, they could - they don't have a choice on the initiation, but they could block it at the charter stage.

Conversely though - so, I think that was basically the rationale why had this creating the same standard. Does anyone disagree that the voting on approving the charter, and I'm not going over the next question, but we will go over the next question in a second. But, this is just on the approval, not modifications.

So, on the approval of a charter, does anyone have an issue with the same threshold as it took to initiate the PDP in the first place?

James agrees with it. Anyone disagree with that?

Okay. Seeing no disagreement, and obviously people can file comments on the list. Now the question is what about modifications to the charter. This is

not something we really delved into, but we certainly discussed the concept of - you know, the charter is approved by the Council, one of the items that's usually discussed by a working group is you know, are there any changes that the working group wants to make to the charter if - or recommends to the charter? And if there are, that goes back to Council.

So, my question to everyone is does the same standard apply as approving the charter in the first place? In other words, does it need -- if it within scope - - 33% of the Council of each members, or more than 66% of one house, or do we just go with a straight regular majority vote in that circumstance?

The proposal on the table is to have the same standard as the approval of the charter, but let's hear some comments. So James.

James Bladel: Yes. So if I'm understanding the correctly, the working group has been approved, it's been chartered, and then at some point later on in that course of the life span of the PDP comes back to Council wanting some changes to the charter and we're trying to set what the voting threshold will be for that. Right?

Jeff Neuman: Yes.

James Bladel: Okay. So you know, my feeling is that that should be an extraordinary circumstance and require a super majority in all circumstances, regardless of what the threshold was to get the thing started, and to get the charter approved.

But, it also opens an interesting question in my mind, which is at what point does an amendment or a tweak or an adjustment to a charter mean that you're really kind of rebooting the whole PDP effort, and you should really start back at square one.

Jeff Neuman: That last point is a really good one. Do you want to maybe distinguish between things that are material and not material, and obviously have the Council in a position of determining whether its material or not?

James Bladel: You know, I don't - you know, I'm not sure I want to wade into those waters. But, it sure seems like - you know for example, we've seen a couple of examples, let's say where things are held up as adjustments, or modifications, or amendments, and then when one puts them under a microscope, they turn out to be you know, really wholesales changes to something. And, I just want to make sure that we're not creating the mechanism by which PDPs you know, start off as an apple, and midway through change into an orange.

I don't really know how to state that elegantly, but I'm just concerned that that's what we're - that's the vulnerability we're creating here.

Jeff Neuman: Okay. I'm going to go to Margie, and then Paul.

Margie Milam: Yes, Jeff. I wanted to go back to the vote for approving the charter, because this actually came up in the earlier versions of the VI charter - Vertical Integration. And essentially what happened there is it got really confusing, because if you apply the 33% standard, you could have that vote apply to two charters, and- because you know, you don't need a majority to do that. So, if there's two conflicting charters that are possible, you could have 33% of the Council vote of each house for one, and then 33% of the rest of the members vote for the other.

And then, you get in this like situation on well which motion goes first? It's really a weird situation, and what we ended up - the way we looked at it for that vote a few months ago was a charter wasn't required at all. That we you know, viewed that you could always just proceed with a PDP without a charter, and ended up applying the majority standard because there was a

potential for having a conflict. You could have you know, both votes pass for two conflicting charters, and then what do you do?

Jeff Neuman: So, I think now we are requiring a charter. So now, it really becomes a big issue. Okay, well let's - Paul, I'm going to come back to you, because I do want to tackle this that Margie has just brought up, because it really goes to the threshold of the 33% on approving the charter.

Do people have thought from that? I think that's an interesting issue.

A different...

Avri Doria: Yes.

Jeff Neuman: Avri.

Avri Doria: No. Paul had his hand up? I was just sort of saying yes, but I got to get my hand up. Sorry.

Jeff Neuman: Okay. Paul, do you have a comment on this, or...

Paul Diaz: No. I want to go back to what James said. Still trying to think of an answer for this question that was just put on the table too.

Jeff Neuman: All right. Let's continue with this one, and then we'll come back to James' point on the modification. So, Avri you have your hand up now.

Avri Doria: Yes. Sorry. And, I shouldn't have bumbled. Yes.

I guess I actually think that's a really good point, and perhaps approving charters - because once the PDP is approved, then there's actually no reason that a charter shouldn't be a majority based item.

Jeff Neuman: So, it then - so then the other complicating factor is one could present the charter along with the imitation of the PDP, right? I mean, it's not always at a separate point in time.

Avri Doria: But, we can require that it be a separate...

Jeff Neuman: Right.

Avri Doria: ...I mean, a separate motion. That's easy enough to sort of say - and in fact when I was you know, playing in the role of Chair, I always was confused by when it got bundled, because it made it a very - whereas you might want to disagree with aspects of charter, but you want to agree to the PDP in principle, it makes it a harder discussion to hold.

So, I think that first you initiate a PDP and then you vote to approve a charter. Voting - approving the charter could be made something that was just simple majority like most things in the Council are supposed to be, because you've already gone through the effort of you know, making it an official action. So, that's just my thought on it. But, cutting the bundled is always confusing.

And Margie's right. You know, when I noticed on VI that there was two competing charters or such, and how does that happen when can have one charter and (send an) amendment that it's clear how the process needs to run. First you vote amendments if they're not friendly, given you know, GNSO's interesting notion about friendly amendments, and then you know, you go with the motion (unintelligible). Thanks.

Jeff Neuman: Okay. Paul let me know if have a comment on this issue, or it's just a placeholder for the next one. Margie and then James.

Margie Milam: Yes. Again, we really went - wrangled on this issue with it came up in the VI, and I think the reason we ended up having problems with it being majority vote for a charter is that now you're increasing the vote.

It's the concern that you know, we've potentially lowered the threshold to start a PDP at 33%. And so for the folks that didn't - you know, between 33% and 50% that didn't want the PDP to proceed, they could gain the charter vote so that we'd never have a charter that got passed, and therefore the PDP couldn't proceed.

And so the reason we were okay with majority was because we came to the conclusion, well charter is not required, so if - you know, if it turns out that we don't get majority vote, so what. We'll just proceed in the (unintelligible) will have no rules.

But, if you require a charter and you require a 50% vote you're essentially having conflict with that lower threshold to start the PDP, or at least there's a potential for that. And so that - you know - so, that's just something that we kind of grappled with when we were dealing with that voting issue.

Jeff Neuman: Let me go to that initial question in that, and throw it out to the group. Make sure we're all on the same page. We have discussed often times in this group that a charter is essential. That group must have a charter, must have a scope that's within a charter, and must stay within that. You know, obviously a little bit of flexibility, but is there anyone that wants - you know, Margie raised a point of well, maybe you could just have no charter and then the group continues.

Does anyone agree with that approach, or do people generally agree that a group must have a charter. Because, then we could throw - then we can work you know, down the line if we all agree on that aspect.

Marika Konings: This is Marika. Can I just add something?

Jeff Neuman: Sure. Because just on that notion, I mean looking at the bylaws. I mean, maybe a reason as well why you know, a working group doesn't require a

charter currently in the bylaws is that on the task force it actually does require a charter. So maybe, the assumption was of course when the bylaws were drafted that the task force would be the guiding model, and you know that might be a reason why it actually was in there.

If you would now move indeed to a situation where the working group is a dominant model, I would assume that you then as well take that - you know, the element that is currently in the bylaws that talk about the charter or terms of reference, that you would follow that practice so - to provide some additional background on that.

Jeff Neuman: Well, I think - but, I think that's different. You see the task - the way it was initially created was a working group was a working group of the Council. It meant that it was really comprised of Council members as opposed to a task force which was made up of community members.

So, I think right now we're talking about working groups made up of community members. I don't think you're comparing apples to apples now. I think - we've kind of made hybrids of each in order to avoid the formalities of the PDP - of what's in the bylaws for task forces.

But really, we are creating task forces - all working groups really mostly now are task forces, they just - we just worked around the existing bylaws. Paul, you have a comment on this?

Paul Diaz: Yes. Thanks Jeff. I mean, isn't that sort of the problem? And isn't that why we're here today, you know because we didn't stay within the rules over time, things have evolved to a point where there's confusion and we get ourselves into these kind of dead ends you know, where we're not sure what we're doing, so okay - we just make it up as we go.

To answer your question, I think that you know if we're going to follow this through, working groups since they are treated like the historical task forces

in practice today, let's call it what it is and apply the rules that we're working on to the groups that we have today.

And basically, put whatever is there historically, it's being moved aside. That's what this working group - what this PDP is all about is trying to bring the guidelines that we operate within - operate under up into the reality that we work with today.

Jeff Neuman: So - and, I think that's right. Is there a way to - in order to prevent the kind of - the gaming that Margie was talking about -- and Marika, if we all agree that it should have a charter -- is there any way to basically say, "Look, the PDP is initiated, but we really need to force the Council members to work together in order to approve a charter"? And that's just one of the inherent risks, is that it may be held up for awhile.

But you know, if you've - I don't know I'm - we're just trying to talk here. Come up with something - is there anything we could do to prevent the gaming that was discussed, or is that gaming actually kind of helpful in a certain way? That it forced the parties to work together?

James - I'm sorry, Paul.

Paul Diaz: Yes. Thanks Jeff. You were thinking out loud exactly what I wanted to get to when I had my hand up earlier. All of these concerns as you start thinking about one thing - you know, you're peeling an onion here. I mean, there's so many layers.

This concern about gaming. If a working group determines after some period of time that the original charter is not appropriate to the task at hand, they go back to Council. The question that you and James raised earlier, if there's going to be some form of material changes, that - going to necessitate restarting the entire process. Or, what's the voting thresholds there?

And, if it does require a restart, is that an almost unintended consequence, or the rules say you know, it's way to game the system that you can't move forward. My question would be if we set a high threshold -- I think James had offered a super majority vote to change. All right, that's the highest threshold. Not even a majority. You know, the lowest level I guess would be the 33%, again assuming it was in scope.

What happens if you know, they come back and the Councilors they can't reach whatever level of support we've approved? Is that working group now is some sort of limbo and they can't move forward, they can't get their charter changed. What happens? And I'm kind of - I'm glad you raised the point, and I'm just trying to echo what you've just said, Jeff, for the group discussion and perhaps on the list to get more inputs as well. I don't know. I mean, it just seems like there's a tremendous opportunity for gridlock if not gaming.

Jeff Neuman: What about if - what could you say -- I'm just throwing this out there. It may be an awful idea -- but could you say that if there are multiple charters passed by the Council, that it ultimately goes to the working group. The working group by a majority of the working group decides on or recommends to the Council what they believe the charter should be, and then asks if any kind of super majority or an even a majority of the Council, that then becomes the charter.

In other words, fine. If the Council can't do the job, and you're going to have conflicts, then it's left to the working group. The working group makes its recommendation, and then only if there's a majority that opposes that recommendation of the working group can the Council actually change it. Again, that's kind of radical. It may be a dumb idea, but just trying to throw it out there.

Does anyone have a thought on that one?

James Bladel: Yes, Jeff. This is James.

Jeff Neuman: James. Okay.

James Bladel: Yes. I just - I know we're brainstorming here, but that idea scares the heck out of me. So...

Jeff Neuman: It does?

James Bladel: A self-chartering working group is kind of - you know, I think what that - and, I don't want to belabor this a little too much. I think another radical idea Jeff, and maybe one that's a little safer would be the idea of once a charter is - after a drafting team is approved by Council, that's it. You're only options are to proceed with the charter you have or terminate the working group.

Jeff Neuman: I think - but, I think James - I think the issues is even on the approval of the initial charter, right. This is what we have in VI. You had 33% of the Council support one version, 33% of a Council support another version. And in theory, you could've had the other 33% supporting a third version. So now, you have three technically approved - well, actually you can't have - sorry. You have two technically approved charter, and what do you do at that point?

James Bladel: You're saying that they approved at 33%?

Jeff Neuman: Right. So, you could have 33% of the Council - 33% of the members of each house may support one version, and 33% of the members of each house may support another version. So...

James Bladel: Okay. You know, the - going back to my former days in math, I'm going to say that you'd need to design the voting threshold so that that doesn't occur. A working group should have - if it's a working group that's been authorized or a PDP that's been authorized, it should have one and only one charter, and then that charter should eventually be static, barring some very unusual and extraordinary circumstances.

Otherwise, we get in this situation that you're talking about, or we get into a situation where the drafting team's recommendations are essentially thrown out the window and the working group or the Council you know completely transformed the charter. Or, we get into a situation where people join the working group with their stated goal - or maybe not a stated, but with their intentions to get the charter modified from day one. And, I just think that that sanitizes the whole process.

Jeff Neuman: Or, you could have one house - 100% of one house vote - 100% of the contracted parties support one version of the charter, 100% of the non-contracted support another version of the charter. So, it's not even math. I mean - well, maybe...

James Bladel: Well, then you don't have a charter, right?

Jeff Neuman: You'd have to basically say that. You'd have to reconstruct all the values in order to make sure that that couldn't happen.

James Bladel: Right. I mean, the resolution of a problem or a lack of consensus on the Council is not to push that down to the working group where it's only going to get worse. You know, that problem has to be resolved at the Council level, or it needs to be - you know, I just feel like you know, taking a problem in one body and moving it to another body rarely results in a better approach to the problem. And typically, you know it makes it much worse.

And I think some other folks here have been on working groups where the charter is a very tenuous and very weak, but it's really the only anchor we've got. And so, I'm thinking if you take that away from some of the working groups, or you make it so that the charter is in doubt or in question, or open for debate, or fluid, or it can be going back to the council multiple times for modification. I think these working groups really lose whatever direction and guidance - or they have becomes completely ungrounded.

I'm sorry to use such strong language, but this is just - this is - I think we're building a time bomb into this process if we're not careful.

Jeff Neuman: So, okay. Margie, you have your hand up.

Margie Milam: Yes. I agree with a lot of what James is saying. Because if you throw it down to the working group; remember the participation in the groups you know, varies, and is not consistent with what the Council - you know, its framework is. And so you may have over representation of one group and not others, and that might skew where the charter should go. And so that's my first point.

And the second point, I just wanted - you know, I know I mentioned gaming, but I didn't believe that that was happening in the VI group at all. I think there's legitimate times where you know, various stakeholder groups have just opposite opinions on things. And to say we'll just work it out or something, they'll just have to work it out. Sometimes it's just not practical because the people are on you know, opposing side legitimately, because it effects their business in different ways.

And so, I still come back to the notion that I was comfortable with, so we don't necessarily need a charter. I mean maybe - you know, maybe that's the approach is we recommend that they do the work and try to come up with a charter, but that if in the end there is no agreement, the PDP will just proceed. And yes, that you know awkward and everything, but you know at least that gives people incentive to try to have some parameters for a charter and try to work together.

Jeff Neuman: I think what you're hearing though Margie from the group, and what's come across is that I don't - well, let me - I'll throw it out again if anyone disagrees, but I don't think people in this group agree that a group should not have a charter. In other words, I think what people are saying here is that unless there's a charter, you really can't proceed. And you know obviously, there

had. So maybe I'm wrong on that. That's just been the discussion. So, let me - Avri, on that point.

Avri Doria: I guess I believe it's a little looser than that. I certainly believe that a group should be able to start, even if it doesn't have a completed charter. I think that given bottom-up nature once the PDP has been initiated by the managers in the GNSO, I certainly think that it is quite reasonable for a working group to basically have - to negotiate their charter. And, I think we have to be careful to not bind things so much.

So yes, the Council still needs to approve that charter, but if a group starts without a charter and just the motion, and instead of spending a month with a draft PDP trying to create a charter, the new way that tends to evolve is that the PDP sets the basic condition, the working group is created, and the working group negotiates its charter with the Council becomes a method of working. That shouldn't be prohibited. That shouldn't be something that can't happen.

Again, yes. The Council is always the manager. The Council is the one to make sure that the work items are eventually agreed upon. But to say that you can't have a working group without it having an approved charter I think would be going too far to sort of limiting the flexibility of this (sensitive) working group, and remove its bottom-up nature.

Jeff Neuman: Okay Paul, do you have a comment on this?

Paul Diaz: Yes. I do Jeff. Thanks.

Jeff Neuman: Okay.

Paul Diaz: I'm not just sure Avri - while I'm sympathetic to the idea of providing flexibility to the people actually doing the work, I'm not sure that that's really going to play out the way we want in the real world. What I was going to add in

echoing something Margie said. You know, there will be instances where there are PDPs that get underway and the composition of the group that's dealing with the work may be skewed in a particular way.

And, if you give that working group - if we give that working group too much flexibility in crafting the charter, you might wind up having the situation where the working group - because you know, you've got a whole bunch of people who are very passionate about a particular point of view, they may basically vote to kill it off before it even gets started.

I mean, I've got an example in mind of a working group that's underway right now. Unfortunately Alan's off the call, but you know it's his group on post expiration, domain name recovery. You know, the group - you know, this PDP got started - the registrar stakeholder group voted against it, we've shown up - registrars have shown up en masse. You know, there's - in the regular participants, I'd say 80% are registrars.

Quite honestly, most of the people in my group would like to kill this thing off completely. You know, they never wanted it in the first place. If they had had that sort of flexibility in crafting the charter, I can almost assure you it would've gotten back to Council with a vote to shut it down. So, I think if we are talking about moving forward without the Council approve to charter, and sort of like here it is; live with it. If you have a big problem, you come back.

And, that brings us back to what are material changes and how do we handle them. But, I think if you push it down too much - it may sound nice, but I think the reality is that you've created an enormous gaming opportunity where people who are pushing very hard for a particular position can basically stack the vote, and you know, we're going to create a lot of problems.

Jeff Neuman: This - it's a difficult issue. I want to go to James and then Avri.

James Bladel: Yes. Real quickly. I just wanted to disagree with Avri - what she had said earlier. I think the charter is really a very relaxed and casual way to set some boundaries around working groups. What topics are under discussion and what topics are (off) discussion.

Because let's face it; everything is independent - or interdependent on everything else. And you know, I'm concerned that the idea that a working group would go forward without a charter or with multiple charters, I think is recipe for a dysfunctional group you know, from step one.

So, I think that you know, the guiding principle here should be one group, one charter. And conversely one charter, one group. You know, when we mentioned that you know it's possible that we had two charters supported by different aspects of the community, you know you could essentially that you've got two working groups. They're sharing the same teleconference, but they're really two separate working groups. So, I think that that's a situation also that should be avoided.

And, I think that you know the bottom-up principle is important, and you know- but we need to have some level of appropriateness of where do we say that you know the bottom-up process has - you know, is every decision at every level open to every person in the community to revisit that? Can I join Alan's post expiring call and start talking about a WHOIS policy?

You know, it's very, very loose and casual the way it is right now, and I'm afraid if we remove the last illusions of boundaries, it'll turn into a free-for-all.

Jeff Neuman: So, I'm going to turn it over to Avri to answer that, and she's next anyway. But, if I heard Avri correct, I don't think she's saying there shouldn't be a charter. I think what she was saying was that you could have the working group, and the working group would then work on the charter with the ultimate goal of getting the Council to pass it. But ultimately if the Council didn't pass it, then the working group couldn't go any further than that.

But, Avri is that what you're saying, or is it...

Avri Doria: Yes. Thank you. I was afraid that I had spoken extremely badly. So, yes. In (talking) about flexibility first of all, yes. If the Council wants to write up a charter and sent it down and allow just a little bit of questioning and then - they do that. But, that requires that they're using the this drafting team mechanism in the middle to write the charter, because the Council itself doesn't actually sit there and write a charter. They put together a drafting team which looks very much like the core of a working group anyway.

But, the ways the organization structure - and, it takes about a month to put together a working group fully and getting everybody in on all of that. But, all I was saying is that it could allow for a working group to take the resolution that says a PDP is going to resolve A, B, C, D, and ask the working group to propose a charter that fits within the - but then the Council has to approve/disapprove. And that you might end up with a negotiation back and forth.

And exactly as Jeff said; until such time as you have that charter agreed to by the Council, you do not have work items. And if at any point that negotiation stalls, the Council can just say, "Okay. Here's the charter." But it's just basically a way to open it up - the flexibility. And remember, it's absolutely everything in ICANN can be gamed. There's no way we're going to invent a set of rules that someone cleverer than us isn't going to figure out how to game. That's not a reason to not do things. We just have to be careful.

Jeff Neuman: So with that said -- I see Paul laughing -- it doesn't sound like Avri and James, your position is that far apart, or is apart at all. It sounds like you know, what Avri is saying is just look - you know, let's not foreclose the opportunity of creating the working group, because maybe the working group could help broker a solution to something that Council has not been able to

solve itself. And - but still, the Council has to approve it before the working group does its substantive work.

Would that mean then that we'd be in favor of making the approval of the charter 50% as opposed to the 33%? Or, do we still need to go back - or, I should say greater than 50%. A majority. How's that? A majority. Avri?

Avri Doria: Oh. Sorry. My hand was just left up.

((Crosstalk))

Jeff Neuman: Oh. Now Margie.

Margie Milam: Yes. Actually I had a different topic. It was - try to propose maybe a different alternative approach. If there's a deadlock you know, and you can't get a charter approved on whatever the threshold is, that you have a select group of people that will resolve the difference.

So in other words, it might be the Chairs and the (NCA)s or something. I'm just you know, throwing out you know, kind of like a deadlock rule, which is not uncommon in the corporate world where you've got voting agreements set for ownership. So, it's a little - just a different approach.

Jeff Neuman: So okay. To have some sort of - just have some people which may or may not be Council members, but some sort of group that could help broker deals. Okay. Paul do you have a comment on that one?

Paul Diaz: Yes. It's actually more of a question for Margie's question. A question for the whole group. You know look, what are we dealing with here? We're dealing with the PDP, policy development process. A lot of times, these disagreements are over a fundamental disagreement between parties about whether this could or should lead to policy.

You know, we talk about in scope and out of scope and all the rest, but you know, there are a lot of issues that get developed as policy work, or get addressed under some form of policy work, and you know when they're started, we kind of go into it with a question mark. Will this even - is there a realistic chance this is going to lead to any sort of policy or best practice recommendation?

And I think - you know, you have used these very strong disconnects, and you know, just suggesting that maybe we have some you know extra group that can help arbitrate. It's not that simple. The disagreement exists because there's this fundamental difference of view about what ICANN should be doing, you know, the limitations on its mandates, et cetera. And you know, I just kind of - I mean, I've always viewed PDPs - any time one gets initiated, it should be reserved for the big issues, and something meaningful should come out of it.

It shouldn't be 18 months of debate and then you come out with some wishy-washy - you know, there some agreement and some disagreement. You know, and that's just my view. But you know we're trying to scope things out here. I just would you know, caution when you have these very strong disagreements. I think it's often because it gets to a core of whatever the issue that's been put on the table and it's being pushed by a particular minority you know that met a threshold according to the rules. But you know, there's a big block that says, "No. We disagree."

You know, that needs to be accepted for what it is, and it can't work it out both in the charter and then in a functioning working group. Accept that for what it is, that this issue - there's nothing that's going to come out of it.

Jeff Neuman: Margie, you have your - is that new or is that left up?

Margie Milam: Yes. It's new. I guess (unintelligible) to Paul. I get that for issues that are maybe new, but there might be time constraints that will force people to work

together regardless of the fight on the charters. So whatever happens on the charter, and again VI is a perfect example.

You know, we went through a month of debate on the charter, and it really you know, deferred because the working group worked for awhile unnecessarily when people were trying to shoot for a specific deadline. Maybe the deadline belongs is a new gTLD program. Maybe it's something that ICANN is doing you know, where there the - you know, it's something else, but there's a time constraint.

And so you know, we got to a point where we finally agreed on a charter. You know, I think that once it's done, people they've got this other pressure. We'll work together -- I mean I'm hopeful -- and come up with a consensus position. So, I was just pointing out that the dispute over the charter may not necessarily mean that we can't reach a consensus.

Jeff Neuman: All right. Let me - oh, could - Alex, is he up?

Alex Gakuru: Yes. I'm - I was just wondering, what if we get them at the rate we are proposing of one house at 33%, and then in view of the possibility - scenarios of gridlocks, we create another condition where we can say the event of this happening, then we invent the circumstance under which maybe the Council would have to act so that we simulate (in a low) threshold for entry of something like PDP. But in the event that like VI scenario repeat itself, we create a different set of rules on how to resolve that. Thanks.

Jeff Neuman: Yes, Alex. I think that's good. I think I was going to say something similar. Could you have this threshold. But in the event of more than one charter being proposed that could obtain this vote, then the Council must approve one of the charters by a majority of both houses.

So in other words, the general rule is it's the same as initiating the PDP, but in the event of a conflict where there's multiple, then it must - then it requires a majority. Is that a solution? I mean, that's kind of what Alex was saying.

And Margie, does that solve the issues? I mean, you still. You still have a little...

Margie Milam: I still think you have the same problem, because if you can't pass it by 33% and others know that there's that possibility, then they just - I mean, it just won't - I mean, I don't - still think you end up in the same situation, you've just got an extra step.

Jeff Neuman: Yes. But I think a majority of the PDPs - most of the PDPs if you go back in history, I would say 90% of them you have no issue. 90% of them, people just vote for it, or you get much more than 33%. Very rare that you don't. So I kind of - it almost sounds like - and some people have expressed that, that look, the Council needs to kind of grow up a little bit, and it needs to work these issues out. That's what the meaning of consensus is.

And you know it could initiate the PDP, but it's got to agree - like people need to take some responsibilities, and if they're just gaming, then perhaps you know, there's a problem with the structure of the GNSO as opposed to you know, this process. We're not going to solve the gaming issues. It's going to happen, but it just seems like to me that you kind of going to force these people into a row and say, "Look. You got to agree on a charter."

And, you also need to get people to get responsible too, so the people that opposed it should not be using it as a political tool to refuse a charter. That they should grow up and understand that look, there is going to be a PDP on this, and we need to force ourselves to work together to come to some compromise.

Kind of like what Paul was saying, which is you know, you don't want to set the threshold so low to initiate a PDP, which it is pretty low now, but not be able to have something that's implementable in the end because you're not going to have a working group that's going to work together anyway.

James, your thoughts?

James Bladel: Jeff, I just wanted to endorse what you were saying there just a minute ago. It's - you know, making a decision, making a call. ICANN is a very elaborate engine for deferring decisions or passing decisions around without actually you know, making a call. And, I think that that's - you know, part of what - one of the things that frustrates some folks.

You know, but I think that there's some chat going on between Paul and I and the list here, but the idea is that we're running into a collision between the idea that we should be a bottom-up an (enclustable) organization with everybody having input into the process, versus the idea that consensus governs.

And if you don't have consensus, you don't have an issue, you know. And, I think that's really what we're getting down to, is that you know, it doesn't matter if we want to continue to allow additional voices to come in and provide input into the process. That if there's no consensus the process can't proceed. So, that's what we're bumping into, I think.

Jeff Neuman: Anyone that hasn't spoken have any -- or even if you have -- have any thought on that? Essentially, what we're saying is the proposal is that the threshold for approving a charter is as we've recommended, that 33% of each house or more than 66% of one house, or in the event that there is multiple charters or options that fall within that standard, then at that point we need a majority of the Council to approve the charter.

Avri Doria: Let me get my hand up.

Jeff Neuman: Avri.

Avri Doria: Yes. Sorry. I had to get my hand up. I hadn't spoken before because I'm getting confused. I think maybe it makes sense to use the majority to discriminate between the options, but if you're going - I guess I really don't understand how this voting is going. And, I can't from what's been said already say, oh. Okay. Then in this situation this is what they would do.

Jeff Neuman: Yes. Let me give you an example. That might help, okay. So, let's say we had an issue like VI. And, let's say that 100% of the contracted parties supported one version of the charter, 100% of the non-contracted parties supported another version of the charter, right. So, now we've - sorry, let me take a step back. Let's do the easy case.

The easy case is, which is 90% of the PDP - it's a charter that meets the threshold and there's usually not a competing charter. And the threshold here is 33% of the Councils of each house, or more than 66% vote of one house. Okay. That's the easy case. There's no problems. There's no conflicts. That's great. This is the same as initiating the PDP.

But now, take the example I gave like VI, where you could in theory have contracted party support - 100% of the members support one version of the charter, 100% of the non-contracted support another. In that case you meet the threshold and you have two charters. At that point, do you have two charter? Now you have to have - now you go back to square one and say - okay, one of those charters needs to be agreed upon by a majority of both houses.

Avri Doria: But, since you can't vote on two things at the same time, you could actually - I mean it could happen. We're talking about the Council here. It could happen that you would have to vote on one. It would get it - the threshold, and then you'd have the vote on the other and it would its threshold.

And then to - I mean yes logically, you would say, "No. No. No. That could never happen," but we're talking about the Council. We're talking about people sometimes making a vote based on agreement and other tradeoffs. We're also talking about perhaps spacing and time between two votes where we don't know the conditions that (unintelligible).

So in essence, you can have two of them that would also get the majority. I...

Jeff Neuman: Yes. I think that's probably going to be less likely.

Avri Doria: It's less likely, but what we've done by - again, anything that can be gained will be gained. Any rule we make can be gained. I could see people playing that. I can see if somebody wanted to force a stalemate and you got two or three people from each of the houses to agree that they wanted to force a stalemate, they could do that.

Jeff Neuman: Well, the Council...

Avri Doria: This is the Council we're talking about.

Jeff Neuman: But, if the Council Chair allows two motions to be raised, each of them gets majority support, then the Council Chair needs to go, "Okay guys. We have two - we need one. We need to work this out or otherwise we don't have a - we don't - we can't do any further work."

Avri Doria: And, that's why I'm thinking that perhaps that (through) defining a system, we perhaps need to define one that prevents that prevents that up front. And perhaps what we need to sort of say since we have this notion of majority, is that if there are two - and it's not going to be that there's two separate charters generally.

Like in the VI case, there was one charter where two of the items were not agreed upon, and therefore were sent back to the Council. So, the Council could very well do a majority vote on anything that is questionable. And before voting on the charter, like you do with amendments, you vote on options using majority, but the charter gets approved at that level. And if you can't get a majority for either of the options, then you do exactly what the Council did this time.

You put in a third option that punts it back to the group, and it says, "You know, we couldn't agree either. Therefore, your first task is going to be this." That gets approved by majority. That gets stuff in the charter. And then the charter gets approved by whatever group that - group approves them. Because what we're talking about when we have options on the charter is amendments to that charter that hasn't been agreed to.

So, I don't know. I think the other option as it's been described can lead to the same sort of static (standoff). Okay.

Jeff Neuman: Okay. Wow. So, what I think might be helpful Marika, is -- and then I'll go to Margie -- is if we could write kind of a synopsis of just this issue. Kind of a summary of the problem, you know options we've talked about, the pros and cons, and put that out for the list. I think there are some commonalities.

I think that the group does agree that without a charter, the working group is not really going to have a task. If the working group is created to help develop the charter, that's okay. But, if the charter is not approved by the Council -- one charter -- then the working group is not going to have any deliverables; and therefore, really not going to progress in the PDP process past that charter phase.

It does sound like (in) general where there's not a conflict, the standard on approving a charter should be as we kind of recommended, or where there's a conflict on any part of the charter or the charter as a whole, there needs to

be some mechanism to come out of that process with one version that will guide the working group. And, it sounds like a majority of the Council will probably be needed - a majority of both houses will probably be needed for that one version.

How we get there is something we need to finalize, but it sounds like that's where we're heading.

Margie, you have a comment?

Margie Milam: Yes. A different approach maybe is to flip it and have the majority vote be the priority of the motion to the various charters. So if you get the majority vote to figure out which motion goes first, and then you use the lower threshold - voting threshold to decide on that first motion, you know (unintelligible). Because I think that's part of the problem is just trying to figure out which one goes first, and that was some of the complexity that we faced.

Jeff Neuman: Well, I mean if both motions go through, then you're left with the same situation of you have - you don't have one charter. And then, you have to go back with one charter with 50%. I think we can't - my own personal opinion, so you could please feel free to disagree. But, it sounds like we're babying the Council, and I think the Council Chair is going to have a little - in basically saying, "We can't have two charters. We've just approved two charters. Both motions went up. We got to try again, and we got to keep trying until we get it right."

It sounds like - I hear what you're saying, Margie, but it's almost like we're babying them in a sense.

Margie Milam: Yes.

Jeff Neuman: And maybe...

Margie Milam: Yes. I don't...

Jeff Neuman: ...maybe it's some commentary from our part to say, "Look. You know, we realize this could happen," or, "We expect a strong Chair and leadership within the Council to avoid this, and the approval of two conflicting charters is no better than not having a charter at all. And so, you got to come back with one. So, keep trying."

Maybe I have a little bit more faith in even the people that like to game the system.

So, can we write that up and then throw it out to the list Marika?

Marika Konings: Yes.

Jeff Neuman: Yes. The last point -- we have ten minutes left -- so assuming we can get to one version, let's say there are modifications - legitimate modifications to the charter, where the working group has started its - I'm sorry. I'm reading James' comment that says, "Probably should push it and put in the word 'baby the Council.'"

But, so now the question is through legitimate work of the working group, you know it's been working and then all of the sudden, you know wait a minute. We uncover something as part of the working group that wasn't in the charter, but the working group feels - you know, consensus of the working group feels like the charter should be amended to encompass that extra area. And so, it wants to recommend that to the Council.

James' comment was that may require - his recommendation was well look; it should require a super majority because we don't want to necessarily reopen the whole process. So James, do you want to - did I summarize that right?

James Bladel: Yes, Jeff. And that's correct. And again, I don't think necessarily this is about gaming. I think that the series of higher (GP) charters is a good example, whereas we get going through you know, the first incident - on our (TPA) in which Paul was the Chair, we found that there were some issues that we could move around from let's say C into D, and we could defer some issues down into other charters.

So, I think that you know there is a perfect example of where the flexibility worked. But you know in those situations, it's pretty clear that it's going to enjoy strong consensus, strong support you know to move those things around. If they don't, then you know I think that they should've stayed they - you know, if there was a controversy in us doing that, I think that they should've stayed the way that they were originally approved.

So you know, I think that having a high threshold here would ensure that you know, you still had that flexibility to move work items around in a way that's more efficient or relevant, but yet doesn't mean that people go into the working groups - and I don't mean necessarily in bad faith, but people joining the working group with the intention to get the charter changed.

Jeff Neuman: Well, so you would suggest that the super majority - is that maybe too high? What about just a regular majority of both houses?

James Bladel: I don't know. I feel like this - that almost begs it to become more commonplace, and I think that that's the other extreme we need to be wary of. If it is extraordinary and it's for situations that you know enjoy broad support, I think that having the super majority should not be a barrier to those types of situations.

Jeff Neuman: Okay. Alex says super majority minimizes leader. Gaming can't...

Does anyone disagree then with a modification being a GNSO super majority? Or, do we distinguish between administrative modifications like the

one that you were talking about James, and you know sustentative ones -- which is always a tough one.

Avri's got an X. I don't know if that was to my idea or to James'. Avri, which one is that an X to?

Avri Doria: It was an X to require super majority to change a charter. I think...

Jeff Neuman: Okay. Can you...

Avri Doria: I think we're just pouring too much concrete here, and we're just making things much too stiff and at every turn we're being so afraid of what people might do that we're limiting flexibility, and limiting flexibility prevents the ability to get work done. So, I just think it's a problem.

Jeff Neuman: Okay. Paul.

Paul Diaz: Yes. Thanks, Jeff. I think I agree with Avri, in that a super majority is probably too high a threshold, because there's a question I posed earlier; what happens if the request goes back and the Council can't reach a super majority threshold. Then what do you do?

You know, I agree with James. I don't want requests for changes to be made willy-nilly. You know, you basically should have an issue that's pretty obvious to folks, and you know once the charter is drafted, you get down and work and do it. And if you find that you know there are changes that need to be made, and there the good consensus for it, you know my guess would be a majority would be enough of a threshold. But, perhaps that's even too high.

I just - you know, I think Avri's right. We need to maintain some element of flexibility, but not so much. And she's already clarified for us earlier you know, that you don't create you know, these sorts of unintended consequences. I just think super majority will be too high a threshold.

Jeff Neuman: Okay. James.

James Bladel: Yes. Just to respond to Paul and Avri. I think if you can't get a super majority of support or consensus for changing a charter, than you go forward with the one you have.

I'm concerned that future PDPs will see one side of a controversial issue you know, taking this avenue - if we make it too easy, taking this avenue to restructure the charter in a way that's favorable to their side of the - you know that issues, and it will become kind of a default mechanism to try and resolve those issues.

And, they will now suddenly have competing charter amendments in front of the Council with nonexclusive voting thresholds so that the Council doesn't have to choose between one or the other, or neither. The Council essentially could you know approve both. You know, and then we're back into the situation where we have the contenting charters. So, I'm just trying to look down the road and how this is going to play out a little bit, and maybe I'm a little cynical. Sorry about that.

But you know, I think that contrary to something I think Avri said, which is that you know, we're putting in some structure here and it's going to impede the amount of work that we get done. I think that too much flexibility can have the same effect, and you know, you can essentially get into a position where groups are in kind of a deliberation paralysis and nothing ever really advances.

So you know, I would stay with the idea that there should be a super majority to make material changes to a charter. You know if I'm alone on that, then that's fine. I just wanted to get that idea out there.

Avri Doria: A quick question. I'm away from my machine to put my hand up.

Jeff Neuman: Okay. Avri.

Avri Doria: Would you include - for example one of the most common changes that come out of working groups is this version (unintelligible) and we need to change the date. Would you require -- and that has to be approved by the Council as well -- would you require those sorts of things to have that same super majority?

Jeff Neuman: Avri, you were cutting in and out. Were you saying like a change of dates? Is that what you were saying?

Avri Doria: Yes.

Jeff Neuman: Okay. James.

James Bladel: What - you know, I think really what I'm focusing on here Jeff is the charter questions themselves. You know, the dates, or the timelines, or you know those types of issues I think would fall under what you earlier - and I think you were just kind of brainstorming. But you know, the idea that you had that there were administrative changes versus substantive changes.

I think when you change the charter questions by adding, deleting, or modifying the language of a charter question, I think you fundamentally alter the topic of the working group and the policy, and then you probably invalidate a lot of the deliberations and public comments that had been received up to that point. Because, you've essentially established a new context.

So, I think that you know date - you know, moving work items around between related working groups, I think those are more administrative changes, but when you start talking about adding, deleting, or modifying the

language of a charter, then that should be an extraordinary circumstance, and should only proceed if it have super majority support.

Jeff Neuman: What do you think of that, Avri?

Avri Doria: Yes. I think that's probably okay.

Jeff Neuman: All right. So Marika, then can we -- you're still on, right Marika?

Marika Konings: Yes. I'm still here.

Jeff Neuman: Can you summarize that one as well? Basically, by saying look, with respect to modifications to the charter, we discussed on the call the option of having administrative changes -- and give examples of timelines or moving work between work groups -- require a majority of the Council support - that would be the majority of both houses.

Whereas, a substantive -- and there's probably better words for it but you know -- substantive changes - or substantive or material changes to the actual questions requiring a super majority. And, let's get some viewpoints on the list on those.

Marika Konings: Okay.

Jeff Neuman: I know we - I wasn't expecting this much conversation, but I think it was very helpful, especially in light of you know, the fact that we had the VI (unintelligible), and that was just you know, last month or a month and a half ago, which was very instructive. So, I thank everyone for this call. We will - next week - next Thursday, jump on - I'm hoping Number 4 and 5 are a little less controversial and we can breeze through those. But you know, we'll see in the next call.

And in the meantime, we'll get those questions out and move forward. Thank you everyone. We had good attendance. Thank you.

((Crosstalk))

Marika Konings: Thanks, Gisella.

Gisella Gruber-White: Thank you.

Marika Konings: Enjoy the rest of your day. Thanks. Bye.

Gisella Gruber-White: Thank you. You too. Bye-bye.

END