GNSO
Policies for Contractual Conditions, Existing gTLDs
Policy Development Process (PDP) -Feb06

Rapporteur group A meeting

Friday October 13, at 11:00 EDT, 17:00 CEST.

Attendees:

Marilyn Cade CBUC - Group rapporteur
Temporary chair - Avri Doria - Nominating committee Task Force chair
Greg Ruth ISP
Danny Younger - NCUC

Absent:
David Maher Registries C.
Bret Fausett - ALAC liaison to GNSO Council
Ute Decker IPC
Jon Nevett - Registrar Constituency - apologies
Tony Holmes ISP Apologies
Mike Roberts – CBUC aplogies

ICANN Staff
Liz Williams
Daniel Halloran - absent - travelling - apologies
Glen de Saint Gery Secretariat

Note: The following is the output of transcribing from an audio recording of the PDPFeb06 Working Group A meeting on Friday 13 October 2006. The transcription has not been corrected for language accuracy, nor for correctness of spelling, etc. and in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. This decision was made by the Rapporteur, in the interest of efficiency. 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:

http://gnso-audio.icann.org/PDPFeb06-WGA-20061013.mp3

GNSO Secretariat

October 13, 2006
10:00 am CT

Avri Doria: Sorry, Glen, this is a dumb question. I was taking notes…

Good morning, Greg.

Glen de Saint Géry: We have yourself, Avri, Marilyn, Greg and myself.

Marilyn Cade: And let me just, when I'm - so I'm going to start the call, I'm going to just repeat that I - assuming you're starting now so it's Marilyn Cade as the repertoire, we're going to officially start the call.

And Glen, if you would just repeat again for the record the attendance and note the members who are not present.

Glen de Saint Géry: I'll do that.

So we have Marilyn Cade, Avri Doria, Greg Ruth, Liz Williams, myself, two of us from staff, apologies from (John Nevitt), apologies from Tony Holmes.

People absent: Mike Roberts, Ute Decker and (Danny Younger) and Bret Fausett.

Marilyn Cade: Okay. Thank you.

And what I'm going to do given the absentees which we did not hear from in advance is just do some administrative planning and talk about what my proposal is to advance work on next Tuesday's call and then probably try to

conclude the call in about 40 minutes, by 12 o'clock. Does that seem reasonable to those of you who are on the call?

Man: Sure.

Liz Williams: Marilyn, just a quick question from me. I have a very limited -- not a quick question -- but I have very limited time today because of some things I have to do alter this evening and I have another call at 21:30. So that's going to be tricky for me.

Is it possible to wrap up your admin on email or is it something that we needed to do with you and Greg?

Marilyn Cade: I think we need to do it with me and Greg, if you don't mind, Liz. But we'll…

Liz Williams: Yeah, go ahead, go ahead, just checking.

Marilyn Cade: …do this quickly as possible.

Liz Williams: Sure. Thanks.

Marilyn Cade: I just want to clarify a couple of things that I'm going to do between now and next week. Glen advised me earlier that we still hope to get the transcript and I had noted in the document that I was working some rough notes that I've taken while I was moderating. So, I would expect to fix the documents based on the transcript.

The transcript also included other discussion about questions to staff. And I thought we should go through the status on any of those questions quickly since Liz is on the call. But we'll do that first.

And then, I'm just going to take a brief discussion about what the format ought to look like in the straw recommendations with advised from those of you who are on the call so that my next version of this will be streamlining it.

So let me - is there anything, anyone wanted to add to that administrative agenda?

Man: No.

Marilyn Cade: Okay. Let me just also note for the record that I am going to reach out to the constituencies again that aren't represented in (ASC) if they are going to be able to - Glen, if you'll assist me, I'm going to work with you to send out a note to the constituencies to make sure that people are confirmed for Tuesday's call?

Glen de Saint Géry: Yes, I'll do that, Marilyn.

Marilyn Cade: Thank you.

Liz Williams: Guys, I can save you that job. I've done that and I've been encouraging people. I'm not able to also volunteer or anything else or chocolates or anything, but I have urged the constituencies that haven't been able to attend so far to please send a representative. And I'll send the call details too. So, if you needed anything else then, Marilyn, then go ahead but I've done that behind the scenes for you.

Glen de Saint Géry: Thanks, Liz.

Marilyn Cade: Actually, Liz, I'm sorry, I wasn't meaning recruitment and I know you've done a great job on continuing to encourage people. I want - what I want Glen to do is to individually email the constituency chairs and ask them to please - and the person who's from the constituency and ask them to confirm that there will be someone on the call for Tuesday.

Because I intend to make a number of decisions on the Tuesday call and it's going to be difficult to meet the commitment to provide information into the task force meeting on the 18th if the representatives aren't participating. So I'm just going to take that extra step besides the encouragement that you've done and thank you for that additional encouragement and support.

So let me go to the - there were a number of questions we had about information and you also took a couple of items, Liz, to go back and talk to Dan about.

Liz Williams: Yup, I did.

Marilyn Cade: Do you want to fill us in on any…

Liz Williams: Sure, sure. Dan has been away in St. Louis and he's been quite difficult to get a hold off. I have a call scheduled with him as soon as we finish here but he has been very busy on other things. And I have let him know what we need.

The most particular thing that we do need is the follow up completion of the tabulated comparison of the terms of reference and the consensus policy, the five elements of consensus policy that's on its way.

Marilyn, you asked me to dig out the expert questions which I did prior to the meeting so that should have gone - that went around to everybody before the last meeting…

Marilyn Cade: Right.

Liz Williams: …which was done.

And then I've sent anyone who has asked me for a follow-up documentation and that was Greg and few other people. And that was it for action items for me but I still have to speak with Dan. So I just have not been able to specifically connect with him because of time zone limitations.

Marilyn Cade: Okay. I think there was one more and that is the request that you had from Alistair but I thought it was applicable to this repertoire group as well for expert material on spectrum allocation.

Liz Williams: Oh yes, he's got that. Sorry.

He and I have done that behind the scenes. So what my intention is to release an updated draft of the expert materials document to include all the elements that he's included. There are a couple of things from (John Nevitt), there are a couple of things from somebody else, and I was going to do that early next week.

So, Alistair and I have completed our homework on that side of it.

Marilyn Cade: And so, because this repertoire group needs to consider it, we would expect to get it maybe early next week?

Liz Williams: You'll get it before the next meeting.

Marilyn Cade: Fabulous. Thank you.

Liz Williams: Yes.

Marilyn Cade: Okay.

Liz Williams: That was my intention. I just been swamped this week so it's not - have not been possible this week.

Marilyn Cade: I know, I know. Thank you.

Liz Williams: Yeah.

Marilyn Cade: On the (five-verse), the document that Dan owes all of us, the picket fence document…

Liz Williams: Yeah.

Marilyn Cade: …you know, I think I need to be very clear that that document does need to be discussed and you know this already, by both repertoire groups, but also by the task force with Dan participating.

And the question if you would ask him based on (John's) memo and on this document, who are they proposing to have…

((Crosstalk))

Coordinator: (Danny Younger) now joins.

Marilyn Cade: Hi, (Daniel). I'll bring you up-to-date in just a moment.

(Danny Younger): Thanks, Marilyn.

Marilyn Cade: Would you ask Dan the question of -- I don't think it really makes sense to discuss that document separately in the repertoire groups because it affects…

Liz Williams: No, no, no, no, that's a silly thing to do.

What if we aimed for an 18th of October discussion?

Marilyn Cade: That would be my proposal and actually that was sort of what I was edging towards is when Avri and I were talking about what needed to be done, you know, at the full task force versus at the repertoire groups. That would be my suggestion.

Liz Williams: Yeah, remembering that that request was a GNSO Council request. So the response needs to be sent to the council.

Marilyn Cade: Right.

Liz Williams: And then those who are members of - those who are not members of the council of course would be sent a special copy for themselves.

But, I think it that it was a two-week thing. You asked for a two-week turnaround on that and I think that Thursday of next week is the deadline. So that's what Dan and I had been working towards.

Marilyn Cade: No, I think…

Avri Doria: Can I ask a clarifying question?

                   So Marilyn…

Liz Williams: Yeah.

Avri Doria: …you're saying that we should discuss that both in the task force and in the full council?

Marilyn Cade: Avri, I'll comeback to that question in just a minute.

                   Glen, my recollection of the council instruction was two weeks from the council.

Liz Williams: Yeah, which - I'm sorry, Marilyn, I'm wrong. It's the 28th since the council call and that means the 12th. So Dan hasn't been able to turn that around because of his commitments in St. Louis.

Marilyn Cade: Okay.

Liz Williams: So why don't we aim for as quickly as possible back to the council and to make sure we have that ready for you on the 18th of October for the task force.

Marilyn Cade: Right. And then - and Avri, I'll come right back to you. I just want to - that would be fabulous if that's possible because we can't complete, in particular, Item 2. And the picket fence addresses elements in (John's) repertoire groups as well. So that would be fabulous if that's possible.

Liz Williams: Yeah, that's what we're aiming for.

Marilyn Cade: Okay. I'm sorry, Avri.

                  So your question to me was, did I think that this needed to be…

Avri Doria: Was your - basically, I mean, added things to the agenda…

((Crosstalk))

Avri Doria: …is really good. You're making specific request and so, basically, I just want
                  to make sure I understood your specific line of request that the whole task
                  force discuss the picket fence in addition the council's discussion of the picket
                  fence.

Liz Williams: Avri, I could clarify that, Marilyn, if you don't mind; if that's helpful

((Crosstalk))

Liz Williams: Avri, the request is not - if you notice the draft agenda which Bruce just
                  distributed for the next council meeting, it does not include, at the moment,
                  discussion of that particular document.

                  So I imagine that the easy treatment of it would be -- because it was a specific
                  treatment for this task force -- that the council would indeed (unintelligible)
                  from the General Counsel's Office, but that it would be a work material for
                  the February '06 task force. And I hadn't planned on adding that to the agenda
                  for the next council meeting because frankly, it was full enough as it was
                  unless you had a different idea.

Avri Doria: Well, that's just it. If Marilyn is specifically asking for a discussion of this
                   during the Feb '06 task force - I mean, during the 18th task force meeting,
                   because both of the repertoire groups needed to do their work, that seems a
                   reasonable request and then it probably should be set in as opposed to doing it
                   in both and having Dan have to discuss it separately in both.

Liz Williams: The only limitation Avri is that some members of the task force are not
                   council members and wouldn't be on that call unless they were specifically
                   invited. That's entirely possible.

Avri Doria: No. no, that's what I'm trying to clarify.

Liz Williams: Yeah, sure.

Avri Doria: What I'm trying to clarify is do we want to have it on the task force meeting of
                   the 18th or on the council meeting of the 19th.

Marilyn Cade: So, is it okay for me as the originator of the proposal to clarify what I was
                   asking?

Liz Williams: No, Marilyn.

Marilyn Cade: I was trying to get…

((Crosstalk))

Liz Williams: Go ahead.

Liz Williams: I think we're in violent agreement here.

My suggestion is very much in agreement, Liz, of what you were proposing and I think what Avri was proposing. And that is, the document was requested by council as I recall before (support for) the task force Feb '06, but also because the council will need to have the documents later when they consider the report of Feb '06, right?

So, I would propose it'd be added to the agenda for the meeting of the task force on the 18th. And then the question to Dan would be, can he be on the call to explain it and discuss it.

And then if we do that, Avri, for me, that means that my repertoire group will be able to consider it before but still be considering it online before we have our final validation of our report meeting which is the 24th.

Avri Doria: Yeah.

Marilyn Cade: But I think that's the best we can do. That would be available to (John's), you know, (John's) participants in the task force would be able to discuss it then at his meeting on the 19th if he chose to put it on the agenda there.

But - so my preference would be to do it on the 18th. And just a reminder that I had asked Glen, and I think you probably have already done this, that any new members of the repertoire groups that aren't on the task force be added to that meeting so they can participate.

Glen de Saint Géry: To the meeting on the…?

Marilyn Cade: On the 18th…

Avri Doria: The task force meeting on the 18th.

Glen de Saint Géry: Oh yes, yes, yes, yes, yes.

Marilyn Cade: Yeah.

Glen de Saint Géry: Okay, Marilyn. Yes.

Marilyn Cade: Okay. So, are we okay then on that?

Liz Williams: Yup. And Marilyn, just while you've been talking, I've sent a note to Dan to ask him exactly that. So he'd be available on the 18th, then could we distribute the document prior to that please?

Marilyn Cade: (Danny), to just bring you up-to-date because we're going to loose Liz in a few minutes, she's got another call.

(Danny Younger): Uh-huh.

Marilyn Cade: We're just doing administrative things and because we have you, and Greg, and me as participants on the task force, we're validating administrative things. We're going to look at the draft that I did and come up with suggestions from you and Greg on improvements in my formatting. I'm going to take the transcript over the weekend and fix any errors I made and republish this and Glen is going to call all of the absent members and verify. They'll be on the working call on Tuesday.

(Danny Younger): Okay. Marilyn, one question.

I think you published to the task force's mailing list but not the repertoire group's list. Is that correct?

Marilyn Cade: Check. Oh, well, that is on the record.

                  You know…

Liz Williams: Sugar.

Marilyn Cade: Sugar. That was an error on my part. Glen will (pick) me out immediately
                  after this call.

(Danny Younger): Okay, okay.

Marilyn Cade: My apologies.

(Danny Younger): That's all right.

Marilyn Cade: Okay. So - if I can get rid of this call.

                  The other thing that I think was missing but I think we have - it has now been
                  published is -- no, sorry. The other thing we're waiting on is a time when we
                  will have the input from the registry constituency on the definition of registry
                  data, right?

Liz Williams: Yup.

(Danny Younger): Yes. Marilyn, you were also waiting for the posting of the biz/info/org…

Marilyn Cade: Right.

(Danny Younger): …statements and those have been posted.

Marilyn Cade: Yes, (Danny), thank you. I was just - I had just noted that I don't have a chance to digest them, I'm sure others have them, but we'll come back to that.

But before I lose Liz, Liz, we're reaching the point -- I'm sorry to nag about this -- but if you and Avri could approach the constituency again, we're reaching the point where the repertoire group not able to do its work without this information…

Liz Williams: Yup. I gave them a small blast…

((Crosstalk))

Liz Williams: …was on the call last week, I sent the three council members and to (David Maher), a stern note which was nicely put. Guys you need to, you know, size-up to this stuff. You need to get on with it. You need to do it. This is what's outstanding.

I receive a response from (David Maher) that said his travel schedule was causing him problems.

I will work - and of course (Ken) has, you know, family issues at the moment that he's dealing with. I will follow up again with him first thing in the morning - on Monday morning if I still haven't heard from them to get that information because it's been outstanding for quite awhile now.

Marilyn Cade: Can you…

Liz Williams: But I can't make them give me something they won't give me, so…

((Crosstalk))

Liz Williams: …embarrass them or something.

Marilyn Cade: Okay. Can you go to (Maria) as the chair?

Liz Williams: That's a good idea. Yeah, cool.

                     I'll just been using the, you know, this council…

((Crosstalk))

Marilyn Cade: Yeah.

Liz Williams: But I can flick a note to (Maria). She and I speak regularly anyway, so it's not a problem for me to do that.

Marilyn Cade: I'm going to feel compelled if we did not get a definition of registry data from the registry constituency. I'm going to feel compelled to publish a request to a public list to ask for suggested definitions and…

Liz Williams: You could make one up and see - if you have a minute, you can make one up and post it to the and say, "What do you reckon?"

Marilyn Cade: I don't have a minute and…

Marilyn Cade: Yeah, I know, I know.

Marilyn Cade: And see, this is a valid request to the registry that they conduct the constituency agreed to fulfill. So I want to give them every opportunity to do that.

Liz Williams: Yeah, okay. While you're speaking, I will get in touch with (Maria) now.

Marilyn Cade: Okay, thank you.

                  And then, just to wrap up before you go, is there anything else from your perspective that you wanted to comment on?

Liz Williams: Yes, there is. Everyone will note that I sent out an updated timeline for everybody and that was in the context of the task force meeting next week.

                  I just wanted to make sure that everyone is aware of the timing and the output that you're actually aiming for. What we're aiming for is a task force report when the repertoire groups have finished their work.

                  To my mind, to meet your objective of having a draft task force report ready for discussion for this Sao Paulo meeting, the repertoire groups must complete their work at the latest on the 27th of October to give me enough time to draft that report, get it back out again so that the task force itself can agree it for discussion with the council.

                  Bruce very kindly reminded me that once the task force report is completed, there is a requirement in the PDP bylaws that we must have a public comment period…

Marilyn Cade: Right.

Liz Williams: …which adds 20 days to our schedule. And I had made an error in that and I - that's why I amended the - and corrected the timeline.

So, just to manage everybody's expectations, where we'd be in the process is that by Sao Paulo, I would imagine that we will have a task force - a draft task force report ready. And I would imagine that could be released on the 21st of November if possible after the council call to sign off that task force report and a public comment period will then start and run across the Sao Paulo meeting.

Marilyn Cade: And just a comment on that and then I'll take comments from everyone else.

Just to refresh the memory here, here's my recollection. We do again - attended as an observer on the council call and her request was that we'd be as far along as possible and provide as much information and feedback as possible by Sao Paulo.

But at the time, we were acknowledging that the objective - because the resolution the Council sent to the Board asked them not to make a decision until the Board meeting following Sao Paulo to give us a chance to be as far along as possible.

The conference call discussion on the council, Liz, as I recall it included a request from me - a question from me to Dan Halloran asking when the Board traditionally met after the face-to-face meeting. And he gave us information that there'd be one example where they met, again, shortly thereafter but traditionally, they had met the following month. So that would hypothetically or perhaps tentatively put us into, you know, a January early meeting. It could mean there would be another Board meeting following Sao Paulo.

But if we are, if we have a draft ready and we go across Sao Paulo, when would the public comment period end?

Liz Williams: Well, 20 days from whenever you release the task force report. And that relies upon a council meeting taking place to sign it off because there was no council - it certainly wouldn't be ready for the next council meeting.

The next one is on the 16th of November and that will be to sign off the new TLDs report. There was a proposal which is in Thanksgiving week to have a special council meeting and that is only a proposed meeting.

Marilyn Cade: Right.

Liz Williams: So even if the council would have signed it off on the -- let's say, the 21st if it's possible -- I wouldn't release that until the 24th…

Marilyn Cade: Right.

Liz Williams: …because I would need some time to make edits and make sure everything was done properly and do some internal checking. And then 20 days from the 24th of November is -- 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 -- the 16th of December.

Marilyn Cade: Okay, fabulous.

So we hypothetically -- and then what do we do after the public comment period then?

Liz Williams: Take those public comments into account. If we think they're relevant and useful and helpful, then we put them into the final report, the final report draft

comes back to the task force, you'll agree it, send it to the council, sign it off and away it goes.

Marilyn Cade: So it seems to me that if we tentatively can work the timeline as we've just talked about, between December 16 and leading for Christmas Holiday, which might be a bit challenging here, we are most probably into early to mid-January at the earliest to have the final report to the Board.

Liz Williams: Well, that is actually, absolutely true, Marilyn. And for the record, (Michael) and I are getting married on the 17th of December.

Man: Oh, that's terrific.

Liz Williams: We are going on a family honeymoon for two weeks. I am not taking my laptop and there is no telephone at our shack on the beach, so I won't be drafting the final report until I come back, which is about the 11th of January. So, that's fine.

Marilyn Cade: Or, perhaps some work could be done compiling things by someone else so that you could just…

Liz Williams: Oh, I love to compile (unintelligible), Marilyn. I mean, it's just that I'm more anxious about the task forces and I'm just more anxious about the repertoire groups actually completing their work in time to give me sufficient materials to write the task force report. And then I'll be dealing with the rest of it after that.

Marilyn Cade: Okay. Well, this is very helpful. And let me open this up to anyone who has any other questions for Liz on the timeline?

(Danny Younger): This is (Danny) but - no, my question doesn't pertain to that. I do have information however on the registry data definition.

Marilyn Cade: Oh good.

Liz Williams: Oh great.

Marilyn Cade: But are we - does anybody have any other questions on the timeline for Liz?

Okay. Next topic, (Danny) you're up.

(Danny Younger): Okay, fine.

As many of you, a small group (on the call), the original set of registry contracts which are typified by the 2001.com Registry Agreement have a definitions section.

And in Point Number 7 under definitions in the (Com) contract, you will find that it states registry data means all registry database data maintained in electronic form in the registry database and shall includes on file data, all data used to provide registry services submitted by registrars in electronic form, and all other data used to provide registry services concerning particular domain and registrations or name servers maintained in electronic form in the registry database. And then they further go on to define the registry database.

Marilyn Cade: Fabulous. Can you - do you mind clipping that out and posting it to the group?

(Danny Younger): No, no problem at all.

Avri Doria: Fabulous. So does that mean that we can use that as operationally the definition until such time as we're told that there's a different one?

Marilyn Cade: Well, I think we can post it as a contribution from a member of the repertoire group as the proposed and then…

Avri Doria: Right, right. Basically, using that as a forcing function sort of saying, "This is what we're assuming to be unless we hear otherwise."

Marilyn Cade: And (Danny), what I will do is also email it to a technical member of the IETF and IOD and ask them if there is anything in any of the relevant IETF document.

(Danny Younger): Uh-huh.

Marilyn Cade: Avri, unless you want to do that?

Avri Doria: No.

Marilyn Cade: Okay. That would be - that's allows us - I think we've largely covered administrative issues and what I'm going to do for those who can stay on the call for a few minutes is talk about a format approach for editing the recommendations and any other kind of documentation that's going to be needed to support what we've put forward to the task force and beginning to plan for our presentation to the task force which is on the 18th of October. Is that okay with everyone?

(Danny Younger): That's okay.

The only question I would ask Marilyn is, I think took it from the last call that you're intent was to have each of us put forward a proposed recommendation.

Marilyn Cade: I'm inviting - (Danny), what I did is captured from my notes and I said - as I said, I'd go to the transcripts what I did capture from my notes.

Did you - since you - I didn't send this to you, do you have my published document?

(Danny Younger): Yes, I do.

Marilyn Cade: Oh, bless you. Thank you. I'm sorry.

(Danny Younger): That's okay. I tried to stay up at 3:00. I even read through all of the info, org and biz responses.

Marilyn Cade: Well, we'll come to that in a minute.

So if we flip over to - under 1.A.1, under "Presumptive Renewal" where what I did is just try to capture and number the options here. Yes, there should be a presumptive right to renewal.

And then under 1.A.1.1, the presumptive right of renewal includes the following terms to be developed. And then - or it could be 1.A.2, there should be presumptive renewal. A presumptive renewal should be limited to only sponsored TLDs, and again, what are the terms. Or 1.A.3, there should not be a presumptive right of renewal. All registry agreements should be subject to re-bid at a regular interval; 1.A.4, there should not be a presumptive right of renewal. All registry agreements should be subject to re-bid at regular intervals and should include the following minimum requirements.

What I did was just try to capture the option and I am interested in additional contributions or edits on these from the repertoire group members. But what (John) did for his group is draft a - he just drafted a paragraph that described the proposed recommendation.

I have done ours in a two-step way to say, "Okay, let's capture the options and then go back and assess where the support is for these options."

(Danny Younger): Marilyn, I think the only confusion I had was with the choice on sponsored and I just wanted a clarification as to why you limited it only to sponsored us as opposed to, let's say, perhaps restricted or any other, you know, appellations that we've been using as of late.

Marilyn Cade: So when I look at Dan's very helpful chart, presumptive renewal, I'm looking at past practice. My own view and I've expressed this as a councilor before is that in many cases the staff should have come to the council and ask for a guiding policy. And instead, due to a variety of circumstances have begun to make policies of contract. And that has been a topic of discussion at the council level.

The General Counsel himself in his three-paged memo acknowledges to us that it is going to be helpful he believed to have policy recommendations on the series of subjects to which ICANN currently does not have -- uniform policy and then…

(Danny Younger): Uh-huh.

Marilyn Cade: So I looked at past practice, (Danny). And what I saw is that the past practice about presumptive renewal prior to introducing this topic through the

renegotiated (dot Com) agreement was to have presumptive renewal on sponsored but not on the other forms of TLDs.

Presumptive renewal was first introduced on the unrestricted and the restricted at the time of the (dot NET) and then the (dot Com) negotiations.

(Danny Younger): Uh-huh.

Marilyn Cade: That was my rationale.

Marilyn Cade: Okay. No, I'm not questioning it. I just wanted to follow the train of thought that led to that conclusion. That's all.

Marilyn Cade: Okay.

Liz Williams: Marilyn, would you mind before you move off, I just want to clarify something about the registry data stuff.

Marilyn Cade: Uh-huh.

Liz Williams: May I do that now?

Marilyn Cade: Please.

Liz Williams: (Danny), thank you very much for reading that definition within the contract. However, the term of reference I think in a more general discussion was not about necessarily registry data as a function running the DNS, it was traffic data with respect to running the operations which was broader than the definition of just materials and information, for example, about registrants in

managing a registry service. Now, that is what I wanted clarified from the registries.

And Marilyn, I thought that was you were looking for rather than that definition of registry data. As it said, this is fairly straightforward to know what needs to be going into the DNS or into any of the WHOIS information, but what was a broader question was the traffic data. And did I get that wrong? Have I misunderstood you?

Marilyn Cade: So let me go back and clarify something.

Originally, the community strongly objected to the use of traffic data. In many of the comments, we're using the term traffic data. Traffic data is not a - it's a term of art and no one knows what it means.

Liz Williams: Yeah. Well, I think that's where we probably have come on stuck, so, yeah.

Marilyn Cade: So, if you go to Terms of Reference 5, Uses of Registry Data, it reads as follows.

Registry data is available to the registry as a consequence of registry operations. Examples could include information on domain name registrants, information in domain name records, traffic and traffic data associated with providing the DNS resolution services associated with the registry. The 5A says, "Examine whether or not there shouldn't be a policy regarding the use of registry data," which is a broad term and has all these sub-elements.

Liz Williams: Yes. Okay, good, good, good. That's fine.

Marilyn Cade: Yeah.

(Danny Younger): The registry data, Marilyn, is also going to include information on non-existent domain names. So, I think that's one example that…

((Crosstalk))

(Danny Younger): …has illustrated.

Marilyn Cade: Would you tell me what that means?

(Danny Younger): Sure. Let's say that I decide to type in my browser at www -- and I don't know, throwing (67) letters at random.

Marilyn Cade: Right, right. Okay. I'm with you but keep going.

(Danny Younger): Okay. At the root level, the request will go up to find out whether that name exists in the DNS.

Marilyn Cade: Right.

(Danny Younger): And eventually the response comes back, "No, it doesn't." But that request has been noted…

Marilyn Cade: Right.

(Danny Younger): …at the registry level. And that certainly provides an opportunity to market, a tally of all such queries which would allow for a new form of direct navigation practices to emerge.

Marilyn Cade: Right.

(Danny Younger): If that data were sold at auction to the highest bidder.

Marilyn Cade: And if the - and I saw a filing from somebody to the Board of Directors that raised a concern about a combination of making that data which you have access to by nature of your sole source authorization to manage the registry. No one else has access to that data. The combination of taking that data, mining it and then being able to differentially price domain names could begin to lead to significant conflicts of - between the registrars and the registry and then you add to that, the request from registries to be able to directly act as a registrar or sell names and price names individually, you would begin to get the sort of manipulation, if you will, of the market was the statement that I saw…

((Crosstalk))

(Danny Younger): I remember that one as well, Marilyn.

Marilyn Cade: So basically, the term traffic data is associated with providing the DNS resolution services, (Danny), I would say includes that data about non-existent domain names.

(Danny Younger): As would I.

Marilyn Cade: Okay, all right.

Liz Williams: Marilyn, would you mind? I'm sorry. Can I just ask (Danny) one follow-up question?

And (Danny), presumably this goes to the heart of your other research and discussions on domain name testing and speculative market.

(Danny Younger): Uh-huh.

Liz Williams: What is going to add richness to this particular discussion of this term of reference is if you bring in that discussion in the context of the repertoire groups' work because I think that what has been missing here in the discussion is why this is so relevant.

(Danny Younger): Let's point to the…

Liz Williams: Yeah.

(Danny Younger): …recent biz, org, and info responses.

Liz Williams: Yes.

(Danny Younger): Actually yesterday, we put out a statement that indicated that registry operator shall not impose any variable pricing model on renewal of any active info domain name registration. And then it goes on to say the restrictions shall not apply to, Number 3 for example, to any active info name registered through any new registry service approved to the process, et cetera, et cetera.

The bottom line is they are pointing to active registrations which leaves open the possibility of variable pricing for inactive registrations as in the types of registrations that could be collected by way of traffic data on non-existent domain names.

Liz Williams: Okay. That's fine.

Marilyn, I wonder if you would…

((Crosstalk))

(Danny Younger): …sort of what you were looking for?

Liz Williams: Yes, it is. And you and I can come back and have a further discussion about that.

(Danny Younger): Okay.

Liz Williams: Marilyn, I'm terribly sorry. I do have to go.

Marilyn Cade: No, I know.

Liz Williams: I'm sorry. Are there any last minute things you needed?

Marilyn Cade: There's none. I'm just going to conclude here in the next (open) minutes with help from (Danny) and Avri and Greg on format and we will have a transcript.

Liz Williams: Super. And I'm sorry I have to desert you all.

Marilyn Cade: Liz, thank you.

Liz Williams: Okay. Happy weekend, everyone.

Marilyn Cade: You too.

(Danny Younger): Thanks for…

Liz Williams: Okay. Bye.

(Danny Younger): …about the wedding and congratulations.

((Crosstalk))

Marilyn Cade: I am going to ask from you if you don't mind. On Term of Reference 5, would
                  you be able to do an (EEG) for us? Right now, the examples of registry data
                  could include information, blah, blah, blah.

                  If you just posted an email to the list that captures the non-existent domain
                  name data as another example. So, you know, this reads, "And traffic data
                  associated with providing DNS services associated with the registry." If you
                  could post a follow-up to the full Repertoire Group A noting that traffic data
                  would, for example, include the data that you just mentioned…

(Danny Younger): Okay. Marilyn, are you talking to me?

Marilyn Cade: Yeah.

(Danny Younger): Okay, okay, fine.

                  Yes, I can do that but my time constraints are such that it will probably
                  happen after the weekend.

Marilyn Cade: That's okay.

(Danny Younger): All right.

Marilyn Cade: The point of this is I will try to capture it but I want to be sure that there is a follow-up from someone with a more sophisticated development of the point.

(Danny Younger): You're referring to me? Okay.

Marilyn Cade: I'm referring to you.

Okay. That was very helpful in terms of broadening my own focus here.

Can I go back to the - and quickly walk us through - we'd really like to fine-tune the recommendations. I have under 1.A.1, "Presumptive Right of Renewal," et cetera, are you guys generally in agreement with these four options or do you think there is a fourth straw - a fifth straw recommendation I've missed?

So there should be presumptive right of renewal and here are the terms. Yes, there should be presumptive renewal but only for sponsored and here are the terms. No, there should not be presumptive right of renewal for anyone, all registry agreements should be re-bid. There should not be a presumptive right of renewal based on all the re-bid and here are some guidelines.

I take silence as "I've captured all the…

(Danny Younger): No. Marilyn, just take it as "I'm exhausted." I mean, I was on (John's) group also and, you know, trying to…

((Crosstalk))

Marilyn Cade: Yeah.

(Danny Younger): …some work there. Frankly, I'm just going to need to touch more time to, you know, finalize.

Marilyn Cade: Okay. That's fine.

                  But are you generally okay with the format I'm using?

(Danny Younger): The format is fine. No problems at all with that.

Marilyn Cade: Are you okay, Greg?

Greg Ruth: Yeah, yeah.

Marilyn Cade: Okay.

((Crosstalk))

Marilyn Cade: If I go on to 1.B and I'm saying the options are all mutually exclusive, I didn't do that for you guys but for others who will be reading this, right, and they're going, "What's the string of things," because I didn't - and so they're all mutually exclusive.

                  1.b.1, the conditions for registry agreement, right of renewal should be standardized. The standards need to be developed. Or the conditions to not be standardized that can vary based on the category of TLD and that could be based on the characteristics of a class or type of TLD.

                  And (Danny) there, I did - I didn't just say sponsored, I just said based on the characteristics.

(Danny Younger): Right, I noted that. Uh-huh.

Marilyn Cade: Yeah.

1.b.3, right of renewal should not be standardized. It maybe that 1.b.3 and 1.b.4 are the same thing. I wasn't sure. Registry agreements can be negotiated on an individual basis which is what's been going on so far.

And in 1.b.5, there should be no policy. And I say that because if we make a policy, there is no policy. That's different than saying there is a policy that says you can negotiate staff, you can negotiate on an individual an individual basis.

(Danny Younger): Okay. And I guess that's a little bit different than saying - well, I'm trying to understand the registry point of view because even the most recent submissions from biz, info and org has pointed out that they're in severe disagreement with whether we have got a right to move forward as other constituencies to define a policy that would effectively govern their immediate constituency. So they're still posting it as an issue Marilyn in spite of what Dan posted.

Marilyn Cade: Two lawyers dancing on the point of a pen can disagree about whether the point of the pen is sharp enough, right?

So I'm not surprised that the job of the repertoire group and the repertoire is not to make a judgment on whether or not they're right or wrong or the council is right or wrong. As far as I'm concerned, the job of the repertoire and the repertoire group is to do their job and note objections when they're submitted from any relevant party and document that in the report.

So if the registry representative chooses to and make another submission, then…

(Danny Younger): I guess the reason that I'm focusing on this so heavily, Marilyn, is I've been trying to understand whether our agreement as a repertoire group is to present what we view as a consensus or to present clearly documented minority and majority considerations.

Marilyn Cade: When - so two things. Consensus is a term of art at ICANN that is determined by the council. What we've devolved to in the task forces and will extend into the repertoire groups, I'm assuming, is the concept of determining the level of support.

So we've pioneered this. This worked very well in some other task forces. And the concept of when we do the - that's why I'm going to try to streamline the options, we will go through the members of the repertoire group and ask them if they strongly support, they support, they do not support each of these options and we would show what that support is.

One option would be for a member of a repertoire group or a task force or the council to state on the record, "I'm abstaining from comment with the following objections." That would need to be documented and put forward.

Avri Doria: We also allowed for minority objections.

Marilyn Cade: Okay. Not minority objections, minority opinions.

Avri Doria: Minority opinion seemed different, but yes.

Marilyn Cade: I think I covered minority objections by (Mike Applebaum). Our minority
                     opinion to elaborate on that for the record and for the transcript would be that
                     a constituency or a group of constituencies, let's say hypothetically that we
                     did a straw poll for - and we got strong support for rights of renewal should be
                     standardized but can differ based on the categories, hypothetically, let's say,
                     there's strong support for that and there are six -- I'm making these numbers
                     up as an example -- there are six votes for that and there are two votes
                     opposing. Those two votes opposing could each individually submit a
                     minority opinion that would necessarily be in agreement.

                     For instance, two people - one person could say, "I don't support 1.b.2, I
                     support 1.b.1 and here's my minority opinion." Another could say, "I support
                     1.b.5 and here's my minority opinion." Both of those would be put forward.

(Danny Younger):   Okay. Now, let's get back to time frame for just a second, Marilyn.

                     This entire project is to culminate by when?

Marilyn Cade: We're going to do that straw poll. We're going to conclude the drafting of our
                     work as much as possible by next day and we will do a very rough straw poll
                     on at least one and two. And then we will conclude our - right now, we're
                     scheduled to conclude our work at a meeting on the 24th and document a
                     straw poll and put that forward by the 27th to the staff.

(Danny Younger):   Okay. This is the 24th of October, correct?

Marilyn Cade: Yes.

(Danny Younger):   Okay. So we are talking how many days? This is 11 days, right?

Marilyn Cade: Right.

(Danny Younger): Okay. Which means that as an example, I might have to go back to my
                 constituency and say, "I'm anticipating that our view may be regarded as a
                 minority view on the following points.

Marilyn Cade: Uh-huh.

(Danny Younger): I need you within the next 10 days to properly articulate a minority statement
                 for the record."

Marilyn Cade: Oh sorry. So actually, let me talk a little bit about minority statement.

(Danny Younger): Okay.

Marilyn Cade: The concept of a minority opinion that goes forward to the council is the
                 ability to put forward a whole complete alternative approach. Here, what we
                 would be looking for is what you described as a more of a minority statement.

(Danny Younger): Okay. I'm just concerned about the time frame because…

Marilyn Cade: Right.

(Danny Younger): …I understand that my constituency has got issues with timely response,
                 participation and volunteerism.

Marilyn Cade: Sure.

(Danny Younger): I really don't want all of this work to fall on my shoulders. So, I'm just
                 musing, but you understand my concern.

Marilyn Cade: Well, I think all the constituencies do.

So I'm going to ask the three of you on the phone right now to help me a little bit on 1.b.3, 1.b.4 and 1.b.5. I'm assuming we need to keep 1.b.5. There should be no policy governing rights of renewal as an option. Can I merge 1.b.3 and 1.b.4?

So where rights of renewal should not be standardized/registry agreements can be negotiated on an individual basis by staff and the relevant registry. Is that what it is?

Greg Ruth: I think they're the same.

(Danny Younger): I agree with Greg.

Marilyn Cade: So, Avri?

Avri Doria: Yes.

Marilyn Cade: So I'm just going to merge them. So now we only have four options which are helpful, okay?

Speeding on here so that we end very, very shortly, I'm sorry I'm just taking…

The next one is 2.a.1, consensus policy limitations are appropriate. And the second option is no. There should be no consensus policy limitations. Consensus policy should apply to all registries.

Our third option is they should be applied to all registries. However, on an individual basis, during the contract negotiation, the registry could present a situational analysis and justification posted for public comment for an exception or modification from a particular consensus policy due to unique circumstances of how a particular policy would affect that registry. And that name to me is an example of a registry who came back and did that.

The fourth option is there should not be a consensus policy. Consensus policies should not exist and we advised that GNSO should be limited to advice.

(Danny Younger): Well, it is an option.

Marilyn Cade: Well, it is an option to some people, right?

Avri Doria: Obviously.

Marilyn Cade: I'm sorry…

(Danny Younger): In terms of Decision 3, Marilyn, it's the right way to handle it.

Marilyn Cade: Okay, Avri?

Avri Doria: I was just saying yes. It is obviously an option to some people.

Marilyn Cade: Then I gave an example of elaborating on 2.a.1. So consensus policy limitations are appropriate. The picket fence approach, and we have to put the picket fence approach in here, we should stick with the present picket fence or the present picket fence is too broad and should be - is too broad and I guess should be modified. So 2.a.1 and .2 and .3 could be merged, right?

(Danny Younger): Can we change the…

((Crosstalk))

(Danny Younger): I'm sorry.

Greg Ruth: Go ahead.

(Danny Younger): I was asking if we could change 2.a.2 to simply read, "No, consensus policy limitations are not appropriate."

Marilyn Cade: Hold on, fine. No, consensus policy -- wait a minute. What? Which one?

(Danny Younger): I'm saying 2.a.2, I would like to have it changed to the (adverse) of 2.a.1 so that it basically reads, "No, consensus policy limitations are not appropriate."

Marilyn Cade: Oh, thank you. Got it.

(Danny Younger): I just think it makes the choice a little clearer.

Marilyn Cade: Thank you. That's exactly what I was looking for. Okay, I'm going on.

Greg Ruth: So, 2.a.1.2 and 2.a.1.3…

Marilyn Cade: Yes.

Greg Ruth: …just drop 2.a.1.2 and not say - not…

Marilyn Cade: Yes, got it. Yes. It should be modified as follows, and then we draw a big blank and ask we do that. Okay?

Greg Ruth: Yeah, right.

Marilyn Cade: I'm going now to the repertoire comments on - in the rapid - when I read this, the term sponsored gTLD operator means the holder of the string and is not - does not mean the back-end operator. And that's not defined here so I've defined it.

                  And then, I go on to say that we're not debating here what a sponsoring community is since that is being discussed elsewhere and this is not our job to say whether existing sponsor names are fully representative of the community that they serve or not.

                  I had - I did agree to send out the emails and I see they're sitting here and not gone so I've got to do that. Liz is following up with Dan. And then, the options are, 2.b.1, certain policy making responsibility should be delegated to the gTLD operators.

                  And this is an example of what I've been able to glean from reading .jobs and .travel…

Greg Ruth: Thank you.

Marilyn Cade: …of what's delegated right now on those two.

                  So, I think I ran out of documents here. Hold on a minute.

So, this next option is, yes, certain policy-making responsibility should be delegated to the sponsoring entity but must be uniformed or policy-making should be delegated to the sponsored gTLD operator but variations can be made based on the characteristics of the sponsored community. That is what's happening right now -- (.tac) and (.asia) and I think .mobi are a little different than - there are some consistencies but I've got to see what Dan comes back with.

And then the alternative is policy-making should not be delegated to the sponsored gTLD operators. And the final option is it depends and staff can negotiate on a case-by-case basis.

If we could get it down to fewer options, I would like that. So can I ask you guys to think about that and maybe post if you could think about whether that can be streamlined a little bit?

And then I'm going to modify the repertoire comments and update this to show that - what's going on and talk about Terms of Reference 5 to show (Danny) has provided some - a resource and that the staff is going back to follow up with (Marie).

Is that generally okay with everybody?

Avri Doria: (Generally).

Greg Ruth: Yeah.

Marilyn Cade: Okay. Any final comments any of you want to add?

(Danny Younger): Yeah. I think we need to definitely clarify that last section, so I'll do some thinking on, you know, slightly…

Marilyn Cade: Okay.

(Danny Younger): …for more streamlined wording.

Marilyn Cade: Avri, any closing comments?

Avri Doria: The only comment I've got is - and this will come out more when we've heard from Dan. But I think we confuse ourselves when we talk about the (unintelligible) contracts as a unitary notion.

Marilyn Cade: Okay. You're going to have to elaborate on that so let me come back.

Avri Doria: What I mean is there are many varieties of picket fence.

Marilyn Cade: Actually, let me…

Avri Doria: Nuances between the picket fences and the different contracts I think makes them slightly different. So - but I want to wait and see what Dan comes up with because that's just sort of my first - when I look at the contracts and I look at descriptions of what we term a picket fence, they all look somewhat different to me.

Marilyn Cade: Which was - I think I'm with you here which is why the council asked Dan to explain how the picket - so the picket fence is standard as a list of topics but it's been applied differentially.

Avri Doria: Yeah.

Marilyn Cade: Is that right?

Avri Doria: Essentially, yes.

Marilyn Cade: Okay. I…

Avri Doria: So I just want to see what happens with that. So I'm just sort of, you know, mentioning that…

Marilyn Cade: Yeah.

((Crosstalk))

Avri Doria: …picket fence notion a little confusing sometimes.

Marilyn Cade: Okay.

                  Greg, any comments?

Greg Ruth: No, not now.

Marilyn Cade: Okay.

                  Glen, any comments?

Glen de Saint Géry: None, Marilyn.

Marilyn Cade: Okay. Then I'm going to thank all of you. I do have one question.

I went into the bylaws and clipped out the section on Annex A because it drives me nuts every time I get a reference on the (T) and I get a 77-page document because it's a PDF file.

So what I send out to everyone just as a - in the event you were interested was just the clipped Annex A with no changes at all in it. And I just wanted to clarify why I've sent that because it's a very useful tool to have and I can't bear getting 77 pages at a time when I go looking for the PDP.

So I hope that was at least a little bit helpful. Okay?

Greg Ruth: Okay. Thank you.

Glen de Saint Géry: So the next call is on Tuesday at the same time.

Marilyn Cade: It is on Tuesday at the same time. And if you will spend a minute with me, we will figure out what we're going to do as an enticement to make sure we have attendance from people because I'm going to be taking votes.

Glen de Saint Géry: The call or on the 24th?

Marilyn Cade: I'm going to take straw polls next week.

Glen de Saint Géry: Okay.

Marilyn Cade: And…

Avri Doria: Yeah. And it's better to call - I think it's better to call them straw polls than votes.

Marilyn Cade: I think I've been doing that except for that last slip. Thanks.

Avri Doria: Yup. It's just all of a sudden I heard the word "vote". And I was…

Marilyn Cade: Yes. Okay. Actually, (Danny), you've read all these documents?

(Danny Younger): Uh-huh.

Marilyn Cade: And I have a posting from a BC member I see here who is - have to have something forwarded to the list on the…

(Danny Younger): Probably (George).

Marilyn Cade: Yeah, yeah.

(Danny Younger): Okay. Go ahead.

Marilyn Cade: So what I'm going to do is encourage people to post comments about the…

(Danny Younger): And I think we should probably refer to him as the general assembly member in this particular instance because that's where all the discussion is transpiring.

Marilyn Cade: Okay. But on the topic of the response, we had as a discussion item the feedback - the responses from the registry operators.

                  So I will put that on the agenda for Tuesday's call, and I think I'm going to actually invite (Maria) to figure out how the - actually, I don't - let me think about how to invite the constituency representatives who are involved to

respond if they wish to to question because I don't want to put (David) in the position of having to debate responses that come from fellow registries.

But I'll give some thought to an appropriate way of balancing that so that we don't get overwhelmed by just focusing in on this one topic.

(Danny Younger): Marilyn, we could just pick up the phone to (Jeff) and to (Ram) and to ask them to join the call, correct?

Marilyn Cade: That's what I'm going to do…

(Danny Younger): Yeah. Okay.

Marilyn Cade: …in a little bit, yeah, yeah. But I'm probably going to go back to Dan because the same issue applies here. There are going to be questions about this from the other task force as well. And it may be -- sorry -- the other repertoire group as well. And I don't know it's time effective to ask them to do two different calls.

(Danny Younger): I understand that.

Beyond that, Marilyn, I have not yet had the opportunity to the (.asia) document that also went through him. So I don't know whether that would be perhaps I need to - perhaps one of their representatives as well participating if that was the case.

Marilyn Cade: Okay, that's helpful. Thank you.

Okay. Thanks everyone.

Greg Ruth: Okay.

Marilyn Cade: Bye.

(Danny Younger): Okay. Bye, Marilyn.

Avri Doria: Bye.

Greg Ruth: Bye.

Glen de Saint Géry: Bye.

END