

**ICANN  
Transcription  
New gTLD Subsequent Procedures Working Group call  
Thursday, 14 June 2018 at 20:00 UTC**

Note: 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: <https://audio.icann.org/gnso/gnso-new-gtld-subsequent-14jun18-en.mp3>

**Adobe Connect Recording:** <https://participate.icann.org/p6n9nnte8fh/>

Attendance is on wiki agenda page: <https://community.icann.org/x/-CgFBQ>

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page <http://gnso.icann.org/en/group-activities/calendar>

Operator: Recordings are now started.

Michelle DeSmyter: Great. Thank you, (Chris). Welcome, everyone. Good morning, good afternoon and good evening to all. Welcome to the New gTLD Subsequent Procedures call on the 14th of June, 2018. In the interest of time, there will be no roll call. Attendance will be taken via the Adobe Connect room. So if you happen to be only on the audio bridge, would you please let yourself be known now?

Jeff Neuman: Hi, this is Jeff. For now I'm only on audio but trying to get on Adobe.

Michelle DeSmyter: Thanks, Jeff. Noted. And as a reminder to all participants, if you would please state your name before speaking for transcription purposes and please keep your phones and microphones on mute when not speaking to avoid any background noise. With this I'll hand the meeting back over to Cheryl Langdon-Orr. Please begin

Cheryl Langdon-Orr: Thank you very much, Michelle. Appreciate the great start a couple of minutes late and we do have a lot to do today but I'm sure we'll be able to get through it all the time allocated – well I'm hopeful we will be.

My name is Cheryl Langdon-Orr. I'm one of the two cochairs of the Subsequent Procedures for New gTLDs policy development program, along with Jeff Neuman who will be joining us in the Adobe Connect room when his technology permits him to.

And on today's call, the first part of the agenda, other than reviewing the agenda and to remind you, you have been sent out the sections that we will be covering today which is 1.8 and 1.9 that we will also be taking a moment, I hope, to look at set forward as we go through ICANN 61 and beyond to publishing of our initial report.

But let's first of all ask for any changes to any statement of interest? If anyone has a change to their statement of interest that they'd like to declare now? Not hearing anything let's get onto the substantive part of today's work, which of course is the continuation of the review of the initial report.

Now unfortunately what I'm seeing on my screen is the little circle going around with Adobe presenter on it so I'm not seeing the shared document, staff, Steve or Emily or Julie, can you confirm that everyone but me is able to see what we should be looking at? And magically I'm beginning to see something, excellent. Okay.

First of all, if we can work out what page we're going to, we're – what page is 1.8 on? Can someone help me while it's loading? Oh, okay, you're taking us to it. Thanks. Great, okay.

((Crosstalk))

Cheryl Langdon-Orr: Page 4, thank you so much. And if you can adjust your screens there so you've got a decent view? Mine is something like 40% at the moment which makes it unreadable. We'll start with 1.8, dispute proceedings, which is as I k Christopher's voice told me, Page 4 on your 22-page document for today. Jeff, are you in the room yet? I see you now as a presenter.

Jeff Neuman: Yes, I'm in the room but on my iPad so it doesn't, I mean, I can see the document and everything. I can see some of the chat but you might have to just help me out with people in the chat room.

Cheryl Langdon-Orr: I'm more than happy to manage chat if you want to take over the quick read-through because you set a good pace last week when I – last call when I listened to it and I don't want to jinx our good run-through so back to you and I'll look after chat.

Jeff Neuman: Okay sounds good. And I can't tell maybe because it's my – on my iPad but does everyone have control over the document or is it locked?

Cheryl Langdon-Orr: Jeff, Cheryl here. We have scroll control now; it's just been released.

Jeff Neuman: Okay but I see someone scrolling it for me.

Cheryl Langdon-Orr: In fact it's now changed, when I said, Cheryl, we were fine so it's going to and fro. Emily, will you tell folks what's going on place?

Emily Barabas: Hi, Cheryl. This is Emily from staff. So unfortunately we're not able to unsync documents anymore, it's a new rule for security reasons and unfortunately the document needs to remain synced because of that. So I do apologize, it is unfortunate but that is where we are right now and what we're working with so appreciate everyone's patience and we'll do our best to make sure the document is moving along with what you're doing and it might also be helpful for some to follow along with their own version of the document from the agenda. So again apologies and thanks for that.

Cheryl Langdon-Orr: Thanks, Emily. Cheryl for the record. And can I just express on behalf of what I suspect is everybody's opinion on this call, how extremely annoying that is. I thought it was unsynced because Jeff and I are listed as presenters and I suspect if I push the arrows on my computer -- as perhaps with Jeff as well -- we would indeed be forwarding the document, so my apologies, I thought it was unsynced.

Please feel free, staff, to let the IT people know how un-delighted we are with this new rule. Thanks, Emily, anyway. Yes, Cheryl is grumbling again. Feel free to quote me. Jeff, back to you.

Jeff Neuman: Okay thanks, Cheryl. So I'm going to be going along in my own copy so if you guys can help that would be great. We are on page -- so 1.8.1, we have two sections left. So -- sorry, two overall sections, 1.8 and 1.9. And so 1.8 deals with dispute proceedings so the first part is on objections, the second part is on accountability mechanisms.

So on the objections front, there are five recommendations that deal with the issue of objections in some sort of way and one implementation guideline. So the four recommendations are -- the first one, "Strings must not be confusingly similar to an existing top-level domain." Recommendation 3: "Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law." And then it goes on to cite some examples.

Recommendation 6: "Strings must not be contrary to generally accepted legal norms relating to morality and public order that are enforceable under generally accepted and internationally recognized principles of law." And then that too goes on to cite some examples as well including the Paris Convention for the Protection of Industrial Property, as well as the Universal Declaration of Human Rights.

Recommendation 12: "Dispute resolution and challenge processes must be established prior to the start of the process." Recommendation 20: "An application will be rejected if it is determined, based on public comments or otherwise, that there is substantial opposition to it from among significant established institutions of the economic sector, or cultural or language community, to which it is targeted or which it is intended to support."

And the finally, Implementation Guideline P: "The following process, definitions and guidelines refers to Recommendation 20." And so there are some process ones. We are now on the next page, which is Page 5, I believe, although I'm not sure why the Adobe Connect is on Page 20. But we are on Page 5 of the document.

The principles are: "Opposition must be objection based. Determination will be made by a dispute" – excuse me – "resolution panel constituted for the purpose. The objector must provide verifiable evidence that it is an established institution of the community," and then it says, "Perhaps like the RSTEP pool of panelists from which a small panel would be constituted for each objection."

Guidelines – the relevant guidelines: "The task of the panel is the determination of substantial opposition." And then it goes on to define those terms. There's a definition of substantial, definition so significant portion, definition of community, and this one's important. It says, "Community should be interpreted broadly and will include, for example, an economic sector, a cultural community, or a linguistic community.

It may be a closely related community which believes it is impacted," so it's a very broad definition there. Then definition of implicitly targeting, established – and finally an established institution.

It says that, "Exceptional circumstances include but are not limited to a re-organization, merger or an inherently younger community." And then

following ICANN organizations are defined as established institutions, so we have the GAC, ALAC, GNSO, ccNSO and ASO. And then there a definition of formal existence as well as definition of detriment.

And I was wrong, there is one other implementation guideline, which is Guideline R, which states that “Once formal objections or disputes are accepted for review there will be a cooling off period to allow parties to resolve the dispute or objection before review by the panel is initiated.”

Any questions on the background from the 2007 policy plus the – well what we’re going to get into now is how it was implemented. So any questions on the policy, the original policy?

Kavouss Arasteh: Hello, do you hear me?

Jeff Neuman: Yes, Kavouss, please.

Kavouss Arasteh: Yes, this is Kavouss. Yes I’m on audio bridge unfortunately I am not connected to the system after a lot of waiting and so on so forth. So I have one question to raise. I understand that the cochair does not want that anyone raise any question whatsoever because they said that the purpose of the meeting is to verify whether the report reflect the discussions, no additional question, no clarification should be made because they should leave that for the public comment, is that right?

Jeff Neuman: So if they are purely – sorry, this is Jeff Neuman. If they are purely questions of clarification, in other words, I don't understand what's written there, I don't think – I don't think that's what we discussed or I don't understand it, that is perfectly appropriate, but if we are giving our opinions on whether we like or dislike what's there or whether we think something new should be added, those are the things we're trying to avoid. So I don't know, Cheryl, you want to provide any additional guidance, but that's the guidance that I would give.

Kavouss Arasteh: Yes...

((Crosstalk))

Cheryl Langdon-Orr: Jeff, if I may? It's Cheryl here. Yes, I also just wanted to follow up with what you said, that is what we've been requesting all along. But we do note that when people have put substantive comments in – added them to the list, that these are the sorts of comments that we will be seeking through public comment.

We are taking note of those; we are accumulating those, we will record those as they are writ simply as a capture to make sure that none of those inputs are lost. And Jeff, I don't know whether you can see it but after Kavouss responds again, you also have Christopher with his hands raised.

((Crosstalk))

Jeff Neuman: Okay...

Kavouss Arasteh: But your text it doesn't say that. Your text say that the purpose of this meeting is to examine or verify whether the document reflects the discussion in Work Track 1, 2, 3 and 4, any other questions should be taken or should be raised during the public comment or through the email reflector, but not at the call.

This is what I understand. I'm not objecting, I'm not doing anything; I just want to understand that this is what you put in written form at the beginning of the text of the invitation to the call?

Cheryl Langdon-Orr: Kavouss, Cheryl here. Yes, that is correct. That was written that way.

Kavouss Arasteh: Thank you. Thank you. I don't want to waste your time. Thank you very much. I'm now listening, thank you.

Jeff Neuman: Okay. Thank you, Kavouss. And thank you, Cheryl. Christopher, please.

Christopher Wilkinson: Thank you, Jeff. Thank you, Cheryl. Christopher Wilkinson for the record. I'm just unmuting and I think I'm online with you all. I understand Kavouss' frustrations. It's not quite but I don't want to make issue about that this evening. Steve's invitation said very specifically that please submit your comments to the working group mailing list, which I have done. And you've got it.

My only point just now is that the cochairs and the coleads I think need to do a little bit more than they've done to date about the coordination of issues and discussions between the different work tracks. I've come across several instances where one work track is saying one thing and another work track is saying something quite different. Somebody somewhere whether it's Steve or whether it's the cochairs I have no opinion, but somebody somewhere needs to improve the coordination between the discussions in the different work tracks.

From my personal point of view, what you have seen in my comment there is a general issue between Work Track 5 and the extensive discussion here of objection procedures. There's a significant point of view, which I share in Work Track 5, that objection procedures are completely inappropriate for geographical names.

And that we wish to see a significant shift towards prior approval or non-objection for applications for geographical names. This is not the place to go into this in any detail but I think we need a caveat or a qualification somewhere up front on this document that the objection procedures do not necessarily apply to all categories of new applications, subject to further work in the competent work tracks concerned. Thank you.

Jeff Neuman: Thank you, Christopher. I would – just trying to think about that suggestion. And I almost think of it as kind of the opposite way because Work Track 5



hasn't gotten this far in their work. To put something in there, I mean, I'm fine with putting something in there that says that – and we are essentially that Work Track 5 is not, you know, this report doesn't include the recommendations from Work Track 5 on geographic names and therefore they may have different outcomes with respect to a number of these areas that may overlap.

But I don't think it's a good idea to put something very vague in there saying that this doesn't necessarily apply to anything because then it's very vague as to what it does apply to. So let's – we'll take that question back and figure out a way in which we as kind of Rubens says in the chat, we can't really have a conflict with Work Track 5 considering our initial report's not yet out, so we understand there's discussions going on so we will make it clear that the material we're putting out is only with respect to – is with respect to everything but geographic names at the top level.

Kavouss Arasteh: Excuse me, can I make a comment please?

Jeff Neuman: Yes, please Kavouss.

Kavouss Arasteh: Yes, my comment is as follows. There are four work tracks, not everybody was able to attend in all these four tracks. This call, our invitation for similar calls was the only opportunity for those who have not been able to attend all of these four track when listening to the introductions of the report, whatever you call them, preliminary or whatever, or progress, raised the questions it is not expected that the cochairs said your question could be raised during the public comment or your question could be raised to the email reflective. We believe or I believe that this is the only opportunity for those who have not attended the four track when listening to the report raise their questions in order that the problems be at least clear for everybody. But unfortunately, it seems that this opportunity does not exist. And it is a pity.

Jeff Neuman: Okay.

Kavouss Arasteh: It is really a pity. Yes.

Jeff Neuman: Thanks. Thanks, Kavouss. We understand your feelings, we understand that people can't attend every single work track. There is a public comment period coming up and then afterwards we will be analyzing all the public comments and so for those areas that you are able to pay attention to and that you want to make sure you're involved in please make sure that you're involved in those discussions as well. But we do have to move on because we do want to get through all this material.

So I have now rejoined Adobe Connect from my computer. I see that Greg is in the queue so, Greg, please. Thanks.

Greg Shatan: Thanks. Greg Shatan. Just briefly, I actually want to agree with Kavouss on the last point and it's part of a broader concern about the work being done in the work tracks versus being done in the working group and a concern that the preliminary report is essentially treating the outcomes of the work tracks as working group preliminary outcomes subject only to clarification and proper expression of those terms.

And I think that is – we need to clarify if that is in fact the methodology or the working group as a whole is really whether the work is going to be brought back to the working group.

And I think, you know, it's one thing to deal with it at this point in kind of the public comment stage and this is a very preliminary, preliminary report, it's all kind of a almost like a test bed as opposed to a preliminary report. As I've said before, it's probably the report before the preliminary report.

But at some point we're going to have either clarify that the work tracks are dispositive and that if you're not there you're not in the right place, or that the work tracks are reporting back to the working group which is going to then

deal with those at the working group level which might include, you know, rejecting the work of the work track or significantly changing the work of the work track.

We need to be very clear on the hierarchy and methodology that we're doing here. And it's one thing to put out the preliminary report, which is very preliminary and could change significantly, but I think after that point we really need to know where the rubber hits the road because like Kavouss, I don't want to be spending time on calls where I have no influence really on the decisions being made and missing calls where the decisions are being made. Thank you.

Kavouss Arasteh: Yes, but I'm very, very sorry that I missed all these opportunities. I have been waking up at midnight or very early morning...

Jeff Neuman: All right, guys.

Kavouss Arasteh: ...and was not in a position due to the process or procedure not to make a comment on the spot and I was referred back to the discussions on the public comment or after the public comment. I thought that still I am on a strong belief that this is a good opportunity that everyone or anyone was not able to attend the four tracks, to raise the question and receive reply to the question but not to be addressed to the public comment. This is the process that I am not convinced it's correct. It is not correct. Thank you.

Jeff Neuman: Thank you, everyone. Thank you, Kavouss. Thank you, Greg. Thank you, Anne, for your comments on the chat. We have noted your objections. In fact, the objections have been noted many times. But that said, it also has been discussed many times that this was the process we were following. This is again, just inputs to the preliminary report.

We are – when we send out the revisions, making it clear that these are work track – that the individual recommendations are work track recommendations,

not full working group recommendations so that will be represented accurately. And the point is to get some things out there for public comment.

I will save a few minutes at the end of this under AOB I guess, well, I guess we have another section, next steps, to talk about our thoughts on how we handle this going forward. But with that I really want to get to the substance of this, your objections are noted, we understand them, but if we can move on because now we're almost a half hour into this and have not really gotten any questions on the substance.

So moving back to 1.8.1b, how was all of this implemented in the 2012 round? In the final report, "the GNSO recommended that "Dispute resolution and challenge processes must be established prior to the start of the process." In the GAC Principles regarding New gTLDs, Principle 3.3 states, 'if individual GAC members or other governments express formal concerns about any issues related to new gTLDs, the ICANN Board should fully consider those concerns and clearly explain how it will address them'."

"In support of the guidance from the GNSO and the GAC, Module 3 of the 2012 Applicant Guidebook defines the following processes. And so Section 3.1 describes GAC advice on new gTLDs, that's a process intended to address applications that are identified by governments to be problematic, for example, that potentially violate national law or raise sensitivities. It provides that the GAC Advice must be filed by the close of the Objection-Filing Period. According to the Guidebook, GAC Advice could take one of 3 forms."

And so there's the three forms that are on there, either that a – that there's consensus that a particular application shouldn't proceed, which creates a strong presumption for the ICANN Board that the application should not be approved. The second kind, is that the GAC advises ICANN that there are concerns about a particular application. The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.

And the third is that – sorry, the GAC advises ICANN that an application should not proceed unless remediated. Which raises a strong presumption for the Board that the application should not proceed unless there is a remediation method available in the Guidebook such as securing the approval of one or more governments, that is implemented by the applicant. And there are some cites to those.

There is a Section 3.2 that describes the Public Objection and Dispute Resolution Process, through which parties with standing can file formal objections with designated third-party dispute resolution providers on specific applications based on the following grounds. So we have the String Confusion Objection, the Existing Legal Rights Objection, Limited Public Interest Objection and a Community Objection.

In order to bring these Objections, Objectors not only had to meet the substantive requirements for the applicable Objection type, but they also had to satisfy certain standing requirements to have their objections considered. A description of the substantive as well as the Standing requirements are set forth in on pages 3-5 through 3-8 of the New gTLD Applicant Guidebook.

As a result of a number of discussions between the ICANN Board and the GAC in 2010-2011, a newly created role was created called the Independent Objector . Section 3.2.5 describes the role of the Independent Objector, who is in a position to file objections when doing so serves the best interests on the public who use the global Internet. The Independent Objector was supposed to not act on behalf of any particular persons or entities, but solely in the best interests of the public who use the global Internet.

The Independent Objector was to file objections against highly objectionable gTLD applications to which no objection has been filed and was limited to filing two types of objections, either a Limited Public Interest Objections or a Community Objections. The Independent Objector is granted standing to file

objections on these enumerated grounds, notwithstanding the regular standing requirements for such objections.

So that is how the Guidebook implemented the recommendations in the final report in the GNSO. So I see Christopher Wilkinson has his hand raised. Remember, this is how the Guidebook was supposed to handle it; not whether we agree with what they did or disagree, but this is a description of how the Guidebook handled that advice. Thanks. Christopher, please.

Christopher Wilkinson: Okay, Jeff, I'm following you with some difficulty because all the clauses that you refer to are not in the document that's in front of me. I want to make two very simple questions. For all the participants who don't know me, I do not represent the GAC in any sense whatsoever. But for historical reasons I may have a certain sentiment as to what their view might be.

I'm on Page 7 and 8 of the document. I don't think it's remotely possible to ask objectors worldwide to bear the cost of their objection. As well I don't think – I'm in the second bullet of paragraph little C. Steve, it would be really nice if you could number all the paragraphs.

The – bearing the costs accordingly, out of the question, brothers and sisters. Please don't entertain illusions. And secondly, on Page 8, I see why the second bullet speaks about obliging people to shut up about categories and only query individual applications. Who is going to enforce this? The chances of the chair of the GAC or the secretary of the GAC, I don't even know whether Tom is on the call, being able to discipline 150 governments, to respect that second bullet, it's remote. Please could somebody go through this with a significant degree of political and administrative experience and try and avoid total fantasies? Thank you.

Jeff Neuman: Okay. Thanks, Christopher. Is there anyone else that wants to get in the queue, that wants to comment on the background on Section B, because we

are not yet on Section C. Okay, not hearing anyone else that wants to comment on B, we're moving onto C.

"The Work Track seeks input on the following preliminary recommendations." These are, again, so the work track, we're trying to be clear, it's not the working group, so here is the first preliminary recommendation.

"A transparent process for ensuring that panelists, evaluators, and Independent Objectors are free from conflicts of interest must be developed." Second one, "For all types of objections, the parties to a proceeding should be given the opportunity to agree upon a single panelist or a three person panel - bearing the costs accordingly." The third one is, "ICANN must publish, for each type of objection, all supplemental rules as well as all criteria to be used by panelists for the filing of, response to, and evaluation of each objection. Such guidance for decision making by panelists must be more detailed than what was available prior to the 2012 round."

Third recommendation, "The quick look mechanism; it currently applies to only the Limited Public Interest Objection, but it should be extended to all objection types. The quick look" is designed to identify and eliminate frivolous and/or abusive objections." And the last recommendation "Provide applicants with the opportunity to amend an application or add Public Interest Commitments in response to concerns raised in an objection."

Are there any questions on those recommendations? I'll see if anyone's typing anything. So Justine asked – Justine Chew asked, "The first bullet, did the work track consider who would administer the process?" For the first bullet, it says, "A transparent process for ensuring that panelists, evaluators and Independent Objectors are free from conflicts of interest must be developed."

I see Karen on the call. Trying to scroll down to see if Robin's on the call. No, so Karen, I don't know if this was one of your sub parts or whether this was one of Karen's but do you have answer to that question?

Karen Day: My apologies, Jeff, my attention was diverted elsewhere here in my office. Could you repeat the question again and I will be glad to.

Jeff Neuman: Sure. So the question was, did we consider – did the work track consider who would administer the process of making sure that the bullet 1, panelists, evaluators and objectors are free from conflicts of interest.” Did we get into that much detail?

Karen Day: We – in the discussions we did not spend a lot of time on that. We just discussed that during the selection process whomever was appointing the panels – excuse me – the panels – should take care to make those assurances whether it was going to be staff, ICANN Org, choosing vendors through RFP processes or, you know, Board appointments, we did not go into whose responsibility it is.

But just it was a general statement that whomever is tasked with appointing whichever panelist, evaluators or the Independent Objector in the next round should be obligated to ensure that there is freedom from conflict of interest and that you know, everything is stated up front as to where the interests like of those evaluators. Does that help?

Jeff Neuman: Yes, I think that does help. And Justine says, “Can we pose that question for feedback?” Did we already pose that question? If not, Karen, what are your thoughts on including a question of who do we see as administering a process for ensuring a lack of conflicts. Okay, I'm not hearing any objections...

((Crosstalk))



Jeff Neuman: Oh sorry. Karen, go ahead.

Karen Day: No, my only comment to Justine's question was I don't have any comment – I don't have any problem including that as one of our asks for feedback. But I was going to defer to you or Cheryl or staff, someone that was involved earlier on if there are certain delineations already made that we may need to be aware of that we are not as to whose job that would be. So would that ask be appropriate.

And, you know, should we point to the mechanisms that are existing, that were used last time to pick these evaluators, panelists, the IO, and then ask, you know, are we needing more?

Jeff Neuman: This is Jeff. I mean, I certainly think it would be an appropriate question to ask about who would administer the conflicts of interest process, I think that was the question. So I don't have an issue with adding a question that says something like that. Cheryl is typing.

Okay, I know I see still that Anne is typing on what is in the Guidelines, the PDP Manual so, yes, Anne, we're all fully aware, the leaders are fully aware of what's in the PDP Manual. We're fully aware that it says "should" and the leaders met and agreed that we were not going to include level of consensus for a number of reasons we've discussed on past calls. Be happy to discuss it again. And we will write something about that in the preamble, which you all should see shortly.

Okay, any other questions on the bullet points on Section C? okay, and I'm not sure why – so it says, "What are options," I think these were meant as – I think these next parts, it's under Section D, but I think it should be on Section E, I think it's in the wrong place, but – because there's questions here on GAC advice and early warnings, but I think that was supposed to be under Section E as opposed to D. Can someone confirm or am I just seeing it weird on my screen? Just waiting for someone to type.

Cheryl Langdon-Orr: Emily, go ahead.

Emily Barabas: Hi, Jeff. This is Emily. I have my hand up. This is Emily from staff. So I think that we did indeed put them under D not because these are alternatives of one another but because they're potential recommendations that could be considered but are not necessarily at the level that we – that the leaders felt like they were recommendations to put forward under C. So they can be moved elsewhere but that was the rationale for putting them under D. Thanks.

Jeff Neuman: Thank you. Yes, you're right, Emily, thanks, okay. So just to repeat that, these were other items that were discussed but didn't quite rise to the level of recommendations but we are seeking feedback on them so these are the concepts in Section D.

The first bullet point says, "GAC Advice must include clearly articulated rationale, including the national or international law upon which it is based. Future GAC Advice, and Board action thereupon, for categories of gTLDs should be issued prior to the finalization of the next Applicant Guidebook.

Any GAC Advice issued after the publication period has begun must apply to individual strings only, based on the merits and details of the application, not on groups or classes of applications."

Third bullet point, "Individual governments should not be allowed to use the GAC Advice mechanism absent full consensus support by the GAC. The objection" sorry, my throat here, "The objecting government should instead file a string objection utilizing the existing ICANN procedures." Christopher, you have a question, please.

Christopher Wilkinson: I'll pass for the moment. Carry on. I'll come back.

Jeff Neuman: Okay, I was having a coughing fit so that's why I was hoping you would ask the question while I could just grab something to drink but okay. Cheryl, do you want to take over for one second, let me just grab some water real quick.

Cheryl Langdon-Orr: I certainly can. I don't want to hear you expire live to air, Jeff, that would be very, very problematic. Christopher, Cheryl here. Is that hand old or is it put up fresh? Okay, thanks, Christopher, appreciate that.

Okay, so we're looking here at the moment in the question of the section D part. Emily has explained what the rationale was. She also opened up the option that if it is the view of the plenary we could in fact combine it all so what I'd like to do while Jeff recovers is ask you to let us know in chat or put your hand up to make your opinions known on how you feel about the split between the Section D and Section E at this stage. And I realize you're on the fourth bullet, Jeff, but you didn't actually I think – yes, find out whether or not we needed to roll them together.

So let me ask a relatively clear question, I hope, and that is is everyone comfortable with the current split between what we have under Section D and what we have under Section E? And if you have a problem with the current layout you could let us know in chat. So we'll note that. And if it comes in in chat, to a significant extent, we will look at making those changes.

So now coming to the fourth bullet point, and this screen is so tiny on my laptop it is a strain for me to read, but anyway, it is the following, "The application process should define a specific time period during which GAC Early Warnings can be issued and require that the governments issuing such warnings," lost my thing, "to include both a written rationale or basis and specific action requested of the applicant.

The applicant should have an opportunity to engage in direct dialogue in response to such warning and amend the application during a specified time period. Another option might be the inclusion of Public Interest Commitments

PICs,” in brackets, “to address any outstanding concerns about the application.”

And it is a shame that Jamie Baxter isn't on the call today because I should note for the record that he's had a lot of input into, if memory serves, this particular matter. So comments on that? Not seeing anyone, if I can, without making everyone dizzy, move my screen, which will move all of yours to the next section, which is – dear me.

C? I think it is E – E, there we are. “What specified questions are the PDP working group seeking feedback on?” And here we have our questions which, if you have any additions to make, please do so.

The first one is, role of GAC Advice. And it is as follows: “Some have stated that Section 3.1 of the Applicant Guidebook creates a veto right,” in inverted commas, “for the GAC to any new gTLD application or string. Is there any validity to this statement? Please explain.”

The second point is, “Given the changes to the ICANN Bylaws with respect to the Board's consideration of GAC Advice, is it still necessary to maintain the presumption that if the GAC provides advice against a string, or an application,” in brackets, “that such string or application should not proceed?”

And the third point under the role of GAC Advice is, “Does the presumption that a string will not proceed,’ in inverted commas, “limit ICANN's ability to facilitate a solution that both accepts GAC advice but also allows for the delegation of a string if the underlying concerns that gave rise to the objection were addressed? Does that presumption unfairly prejudice other legitimate interests?”

And with that hopefully Jeff has survived and hasn't been driven further into unfortunate coping mechanism as I'm reading in the chat as well and we can ask for any comments on those questions. If there are any other question that

you'd like to suggest we raise at this point specifically with the role of GAC Advice.

But we believe that these three points reasonably and effectively pick up the issues that the work track was interested in. Jeff, I'm going to hand back to you if you are in a condition to do so, and open the queue while we switch across.

Jeff Neuman: Thanks, Cheryl. Hopefully I am better but we'll see. I have some – basically a jug of water here now so in front of me so if this happens again I will down it and we'll see what happens. So I think you ended up at the end of the GAC Advice questions, the three sub bullets there?

Cheryl Langdon-Orr: Correct.

Jeff Neuman: So okay, and I don't see anyone in the queue at this point. I see some typing in there, there is – Christopher says that these parameters need to be negotiated with the GAC. I doubt the GAC would recognize the authority of a work track to create conditions. Response by Rubens, "That's why the GNSO PDPs have many pieces of early interaction with the GAC through the GNSO GAC liaison."

And just to point out, though, that these are just questions that are going to be asked of the community so whether they can be changed or not is a whole other question that we're not addressing at this point nor did our – nor is it appropriate for us to address, we're really just getting is feedback from the community on their thoughts. Justine says that the second bullet, "Can we add a footnote to reference the exact changes to the ICANN Bylaws that are being raised?" I think that's a good question. So the second bullet, we are talking about the section of the Bylaws that talks about when the role of GAC – or the role of GAC Advice so we can put a reference in there.

Okay, anyone else want to get in the queue? Okay, the next section then, and I know we have a lot to cover here, there is a bunch of questions on the role of the Independent Objector. So “In 2012 there was only one Independent Objector that was appointed. For future rounds, should there be additional Independent Objectors? And if so, how would they divide their work? And should it be divided by subject matter expertise?”

The second bullet is, “In the 2012 round, all funding for the Independent Objector came from ICANN. Should this continue to be the case? Should there be a limit to the number of objections?”

In the 2012 round, bullet 3, “there was a requirement,” sorry, Page 9, “that the Independent Objector could only object to a string if that string had no other objection filed against it based on the same grounds. Should that continue to be the case?”

Last bullet in this section, “Should the Independent Objector be limited to filing – to only filing objections based on the two grounds enumerated in the Applicant Guidebook?” So it’s basically saying should there be additional grounds for the Independent Objector to object?

There’s a set of general questions. “Some members of the community believe that some objections were filed with the specific intent to delay the processing of applications for a particular string.” And it’s asking whether the community believes that this was the case, and if so if they can provide specific examples or details about what can be done to – sorry, specific details about the objections they feel were filed with that intent, and what can be done about it?

The next one is, “How can the quick look mechanism be improved?” And then the third one is, on the funding for objections filed by the ALAC, it was funded by in the 2012 round, should that continue to be the case?” Should ICANN – if it does continue, what limits should be in place, if any, on the funding?

And the last sub question there is, "Should applicants have the opportunity to take remediation measures in response to objections about the application under certain circumstances? If so, under what circumstances? And should this apply to all types of objections or only certain types?"

Anne, please.

Anne Aikman-Scalese: Yes, just very quickly regarding Independent Objector, again, it's just a housekeeping thing, Jeff, I think that all the way back on Page 18, and this is probably more of a note for staff, there's that question, "Are there other activities in the community that may serve as a dependency for future input to this topic?"

And we mentioned there the accountability work in relation to human rights but there was a whole section in accountability about the Independent Objector and unless I've got it completely wrong, and I think Cheryl will correct me if I do, there should be some possible impact coming out of that Independent Objector work on this IO section. Okay, it sounds like I'm talking to a wall. Does anybody remember all that stuff about the recommendations...

((Crosstalk))

Jeff Neuman: This is Jeff. I know that there were recommendations about independent review in general, but I don't recall anything about an Independent Objector for new TLDs.

Cheryl Langdon-Orr: Jeff, Cheryl here. Anne, you're not talking to a wall, I just didn't get off mute very quickly. Yes, Jeff's got it right there. There's the independent review process went into great details but the IO, Independent Objector, per se, as relating to new strings and TLDs, we didn't make any particular recommendations.

Now that said, I would think that in the section on disputes, there is a great deal, and I believe that the work track was cognizant of the outcomes of the accountability work as well, a great deal of foundational work that we could then draw on from their independent review process and independent dispute resolution processes as they discussed those, things like the diversity of a panel, the requirement for clear and transparent processes, the requirement for fair and due abilities without huge (impulsive) costs, all those sorts of things are enshrined in those recommendations from that CCWG. And that means that hopefully our recommendations later on in this section will be well founded on those better models. Does that help, Anne?

Anne Aikman-Scalese: Hi, it's Anne again really quickly. Was there, Cheryl, coming out of the – gosh, I remember all this discussion about whether there should be more than one Independent Objector, and what – all of that that came out of that work that you guys did. And I was – I don't know, I was on a few of those calls but is that work codified somewhere? Is it done? Is it...

((Crosstalk))

Cheryl Langdon-Orr: Well it's not codified yet because our final meeting isn't until the Sunday prior to the ICANN 62 work.

Anne Aikman-Scalese: So see that's what I'm referring to, Jeff, is that there's work going on there that is parallel on the IO, that was all in accountability.

((Crosstalk))

Jeff Neuman: We'll take that offline and...

((Crosstalk))



Anne Aikman-Scalese: And that's page 18, sub G, sub paragraph G is where – just for staff.

Jeff Neuman: Okay.

Anne Aikman-Scalese: Yes, thanks.

Jeff Neuman: All right, thanks – thank you. We'll take that – we'll do some research offline and if it is we'll cite that in there. Christopher Wilkinson please, trying to get through this document so...

((Crosstalk))

Christopher Wilkinson: ...very quickly. Another illustration of the fantasy world, there's the question here as to whether or not an objection is supposed to delay the decision making process. Ramifications to that question, of course, the whole point of making an objection is to delay the process.

I think that question is misformulated. Off the record, this is Christopher Wilkinson speaking, off the record, I think the Independent Objector has a marvelous job provided the job comes with a bulletproof vest. Thank you.

Jeff Neuman: Thank you for that, Christopher. Okay, if we move on then to community objections, these are the questions that were documented by the work track. The first one deals with – dealing with the same entity applying for and – applying for a TLD and filing an objection on the same TLD for another application for that TLD. So there's a question of should that continue to be allowed?

The second question is – deals with the costs that where there's a perception that the costs were unpredictable and way too high so what can be done about lowering the fees and making them more predictable while at the same time ensuring that the evaluations were both fair and comprehensive.

And then, in the work track there was a proposal to allow those filing a Community Objection to specify Public Interest Commitments they want to apply to the string. If the objector prevails, these PICs become mandatory for any applicant that wins the contention set. What is the view of this proposal? So that proposal is mentioned in the deliberation section below.

Okay, when it comes to string confusion objections, the Registry Stakeholder Group put forward a proposal to allow a single String Confusion Objection to be filed against all applicants for a particular string rather than requiring a unique objection to be filed against each application.

And then under the proposal, “An objector could file a single objection that would extend to all applications for an identical string. Given that an objection that encompassed several applications would still require greater work to process and review, the string confusion panel could introduce a tiered pricing structure. Each applicant for that identical string would still prepare a response to the objection.”

“The same panel would review all documentation associated with the objection. Each response reviewed on its own merits.” And then the final point of the recommendation was, “The panel would issue a single determination that identified which applications would be in contention. Any outcome that resulted in an indirect contention would be explained as part of the response. Do you support this proposal? Why or why not? Would this approach be an effective way to reduce the risk of inconsistent outcomes.”

And then finally there is a question on legal rights objections. “Is it appropriate for the Legal Rights Objection to be based on an infringement analysis, as was the case in the 2012 round? Or do you believe it would be more appropriate to change the standard to one based on bad faith? Please explain.”

And then it talks about a work track member submitted a strawman redline edit of the Applicant Guidebook which proposed changing the standard from existing legal rights being infringed to being abused, which is based on bad faith. The proposal is available at that link. And then asks what the view is of the community on those edits and the new – the new standard for the objection.

Are there any questions on these questions? Gg says, "I posted a comment to the list regarding string confusion resulting from exact translations of existing TLDs," Yes, Gg, if you can just if I could put you up in the queue if you can just quickly go over what the comment was and what the question to be? Thanks.

Gg Levine: Sure, do you want me to do that right now?

Jeff Neuman: Yes, please.

Gg Levine: Okay so the comment was in regard to some concerns received from the community that were shared with the work track and that specifically said that exact translations of existing strings in highly regulated sectors that don't employ the same safeguards should be the foundation for – or for an objection based on string similarity.

And I think it would be app to include a question for public comment on whether it makes sense to have that mechanism in place recognizing that as a situation leading to string confusion.

Jeff Neuman: Thanks, Gg. So we have a queue developing. So Anne and then Christopher, please.

Anne Aikman-Scalese: Thanks, Jeff. It's Anne for the transcript. This is very minor requested change, but important at least to trademark lawyers I think, I don't know. Infringement was never the standard for legal rights objection; I think

everybody pretty much knows that infringement is about violations of rights that result in damages, money, payments, that kind of stuff that – and when you've prove infringement that's a different thing.

The – as the WIPO rules make clear, there are three possible grounds for a legal rights objection, that are based on unfair advantage gained by the reputation of the string or a likelihood of confusion or a passing off analysis.

And so in order to be clear with this question, that would need to be changed. And this was mentioned in the work track at the time and these discussions when the bad faith proposal came up.

And it needs to be changed to strike infringement and say either, you know, say unfair advantage of likelihood of confusion because that's all about, you know, registration, that is not about violation of rights that comes along with infringement. And it was raised in the work track.

Jeff Neuman: Yes, thanks Anne. I think that's the point of the question. So in the Guidebook, the Guidebook uses the term "infringed." And I think that's what Paul McGrady when he made his proposal was talking about changing the word "infringed" to "abused" if you click on that proposal. So I think what it says here is moving it from infringed to abused, yes. So let's go back...

((Crosstalk))

Anne Aikman-Scalase: Yes, I probably should just be correlated somehow to the actual rules which don't use either of those words, but the rules state three grounds so, you know.

Jeff Neuman: All right let's – we'll take that one off as well. We'll look at it and then I think we'll check also with Paul because I think it was his proposal that we're addressing so we can do that. Going to Christopher, please, and then Karen.

Christopher Wilkinson: Thank you, Jeff. This is Christopher Wilkinson for the record. I have in front of me four very short points. First is with my limited knowledge I think Anne is right about the problem of the word “infringement.” There are other circumstances where there are problems arising but not necessarily that one.

Secondly, for your information, I know that this is shocking to some of our participants, for your information I believe that many of local communities, even governments, who would defend to their utmost their rights to control the use of their geographical names even if they do not have by Western standards, formal legal protection.

Thirdly, question of competition for different strings for the same domain, this can be readily resolved by at least for geographical names, by the appropriate authority conducting a request for proposal and submitting a single proposal to ICANN. So I think that’s enough for now. But I repeat my general exception, this whole discussion on objections is not what some of us want to see at all as applied to geographical names. Thank you.

Jeff Neuman: Thanks, Christopher. And that’s important to discuss in the Work Track 5 is to make sure that the coleads are making that part of the discussion. Anne, your hand is raised. I know, Karen, your hand was raised but Karen, did you take your hand down?

Karen Day: Hi, Jeff. This is Karen for the record. I was responding – I was going to respond to Anne verbally but I responded to her in the text as to where the term “infringement” came from, why we’re using it in the text and that we are working on adding some explanatory language around it but we’re not going to change that word because it is directly from the Recommendation 3.

Jeff Neuman: Okay thanks, Karen. I note that Anne has cited something from I guess that’s the rules or the criteria of what is being used to determine an outcome and legal rights objection. Okay. Moving on then there is a fairly lengthy

deliberation section, this is important because a lot of the subjects that, you know, a lot of subjects were discussed in this deliberation – in the deliberations of Work Track 3 and so hopefully they're all represented there in some way.

Justine, please. Justine, are you there? You might be on mute.

Justine Chew: Just trying to connect to my microphone. Justine speaking. So I put some questions in the chat but I think because of the conversations that are going on in the chat so it may have moved off your screen. My first question was, in relation to the general questions section, the third bullet, in the middle of the paragraph, I was suggesting whether – or was asking whether we could use a bit more neutral language on the sentence that reads, “If this does continue, what limits should be placed, if any, on such funding?” just to make it more neutral to say if it does continue, should limits be placed? And if so, what?

Because, you know, when you ask what limits you're sort of suggesting that should be considered that I don't think necessarily that that is a neutral stance. Thanks.

Jeff Neuman: Okay, thanks Justine. I think that's a good point. And I will check with the coleads but I don't think there's an objection to make those wording changes. Okay, anybody else with questions? Kurt asked the question “@Karen, if this is a PDP, can it not change the previous GNSO policy?” Yes, Kurt, what we're – the question itself, if you look at the question that's being debated with the word “infringement” it's basically asking, should the infringement analysis be changed?

So I think that's what we're asking. I think the whole debate was whether we should have used infringement analysis or something like that because some view that the analysis they did was not an infringement analysis at all.

Okay, I think we need move on to 1.8.2 which starts...

Cheryl Langdon-Orr: Jeff? Cheryl here. Sorry, yes, just really thinking we might cut here at 1.8.2 and I'm as devastated as I'm sure you are, that we didn't get through all of 1.8 and indeed onto communities of 1.9 at today's call but that's why we have one next week. But we really need to look at the work plan because it's going to respond to some of the very important conversations and interactions that went on in chat today. So I know you probably haven't been able to watch the Skype chat but, yes, I think it's probably worthwhile breaking now and leaving 15 minutes for the work plan discussion. Thanks.

Jeff Neuman: Thanks, Cheryl. Why don't we – okay why don't we pull up the work plan, although it's sort of based on the fact that we would get through 1.8 and 1.9 today. But if we can pull that up or Steve's actually saying okay, just click on that link, okay that's another way to do it.

You'll see that the hope was to basically that now that you have all the sections out of the – for the initial report, at least for the substance, the meat of the report, that we are going to basically be sending out – if you look at the timeline which needs to be updated a little bit, given what we did and didn't do today, that we are going to start sharing with you all sections of the revised report.

And when I say "revised" you'll see redlines comparing the version – the new version to the version that you've already reviewed and those revisions are based on the comments that were submitted during the calls or email on those specific sections.

Now, it is hoped that we're not going to through yet another round of revisions, but that we can basically have this as our final version of the initial report language unless there are strong objections to something that was changed, in other words, that it shouldn't have been changed based on the discussions so it's a very – we're not intending this to be a whole other round of discussions on each of the sections.

And then moving on, we have a full working group meeting on the 18th, and then on the – on Wednesday it was our hope to share the initial – the full initial report on the wiki and although I am trying to push for Monday, July 2, I notice that staff put in Tuesday, July 3, I'm still going to try to get them to move that back to Monday, July 2, to officially publish the initial report for public comment. We're going to send correspondence to the Board inviting them to submit public comment and then send an email to ICANN.org as well to invite them to submit public comment as well.

The intent is to have a approximately 60-day public comment period, that's 6-0 so to end the public comment period around September 3. That is a Wednesday, that gives 20 more days than normal in a public comment period but that also recognizes the fact that it is summer in the Northern Hemisphere and a lot of people will undoubtedly be on vacation. September 3 is a Monday, okay then my calendar is off, I was looking at the wrong thing. Let me see. I'm sorry, Karen, you're right, 3rd is a Monday, it should be the 5th, Wednesday, I'm sorry, September 5.

All right, Steve, do you want to jump in for a second while I am getting a drink of water?

Steve Chan: Sure, Jeff. Thanks. This is Steve from staff. Just to I guess add a couple other points to what Jeff is saying, the intention is to – so the level of detail in the – I guess the work plan just for the initial report is fairly high detail and it tries to show a clear path of how we can accomplish what we're trying to accomplish and by what time.

And so the intention after we get things published for public comment or the initial report is to try to develop a work plan on the other side about how we get to a final report, you know, a meeting by meeting description of what topics we want to talk about and try to give everyone a clearer sense of how we're going to get to the end.



I think part of that discussion and I think this will be part of the agenda at ICANN 62 is to talk about how we organize this working group, whether or not there are sub teams of some sort again or whether or not it's a full plenary or whatever the case may be.

I think the idea is to put forward some proposals of how we could organize our work afterwards and then get some insight from the working group members and the rest of the community about how it makes sense to organize.

And then once we get a sense of how that is going to take place then we can of course try to develop a more detailed work plan that hopes to provide clarity. Jeff, I don't know if you're able to speak again, but that's about what I wanted to add.

Jeff Neuman: Yes, no, thank you very much. So are there any – Justine, you have your hand raised but I think that's an old hand. Anyone else that's got any questions on this work plan at least to get us to ICANN and beyond? No? Okay, everyone's perfectly good with that. Christopher says that we need the CCT report and Work Track 5 report before the PDP can put forward a final document for public comment. Okay. We still want to see the CCT Review report so there's no debate there.

And we could talk about the other part about Work Track 5 I think later on this year when we see what their path is and whether that notion is true that we need to have a Work Track 5 report before we can have a final document on these issues. So we will obviously be paying attention to that but we'll test that theory out, Christopher, a little later this year.

Anne, please, you have your hand raised.

Anne Aikman-Scalese: Yes, thanks Jeff. I'm not sure what you were asking about in terms of is everyone okay with that? I was curious as to when we'll be discussing 1.9?

Jeff Neuman: So there is a call on Monday so we will get through that on Monday as well as a host of other things.

Anne Aikman-Scalese: Okay. Oh okay what's the host of other things?

Jeff Neuman: So we're going to put out the revisions to all the sections so that we're going to ask for any comments or objections on the revisions to each of the sections and we'll also have a draft for – of a preamble letter that you all will see so we still have some work to do...

Anne Aikman-Scalese: Okay.

Jeff Neuman: ...next week before everyone leaves for Panama.

Anne Aikman-Scalese: That's great. Just really quickly, I know Karen is on the call and Karen, I would like to ask that you review the post that I put to the list about reflecting the conversations that occurred in Work Track 3 on more than one occasion about my concerns that we are getting into the area of content when we talk about which type of community applications should be eligible as communities and my concerns about freedom of expression there.

It would be extremely helpful if you could take a look back at the transcripts about those concerns and that they might be, you know, reflected a little bit more emphasis given to that freedom of expression issue? Thank you.

Jeff Neuman: Thanks, Anne. And Karen's in the queue so Karen, please.

Karen Day: Sorry, my mute button got buried. I need three monitors with having to open my own document and all this stuff. Anne, I just wanted to say Robin is on

vacation this week but we have already been emailing, and working on language so yes, we're on it and hopefully we'll get through 8.2 and get onto 9 on Monday. Thanks.

Anne Aikman-Scalese: Thank you so much, Karen.

Jeff Neuman: And technically we still have five minutes, I could get through 1.8.2 in five minutes but...

Cheryl Langdon-Orr: Oh go for it, Jeff, try and get through 1.8.2 in five minutes?

Anne Aikman-Scalese: Not today. Everybody needs a drink. Let us go.

Jeff Neuman: Yes, anyway just please review these sections, 1.8.2 I'm not going to really start but just say that there is a discussion in there about an appeals mechanism which we had a discussion about in Work Track 3. And this relates to whether or not an action or inaction of not just the Board or the staff but evaluators on a particular application should be reviewable from a substantive viewpoint or procedural viewpoint, so please do read that.

It is something that is very new and that will need quite a bit of work and one of the questions or topics we may talk about in ICANN 62 is if we did develop this appeals mechanism what kinds of questions and what kinds of things would we need to consider in developing that appeal.

So I think it is – it's a new concept, it's something that I think is very interesting and valuable and so please come to the call ready to discuss that issue as well as 1.9. The next meeting is Monday as was just posted, June 18 at 1500 UTC for 90 minutes so we have a lot of stuff to do.

And thank you, everyone, I know that this was a long call, lots of stuff covered, but we're – there's a light at the end of the tunnel at least for the initial report. So thank you, everyone, and for those on the East Coast, have

a good night; for those in Europe or Asia, have a good morning and the rest of the day. Thank you, everyone.

Cheryl Langdon-Orr: And thanks, Jeff. Thanks, everyone. Let's power through on Monday, all of our objections have all been duly noted; I trust we won't have to go over them again on that call. Bye for now.

Michelle DeSmyter: Thank you so much. The meeting has been adjourned. Operator, please stop the recordings and disconnect all remaining lines. Have a great day, everyone.

END