
ICANN Transcription

GNSO New gTLD Subsequent Procedures PDP Working Group

Thursday, 01 October 2020 at 03:00 UTC

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JULIE BISLAND:

Good Morning, good afternoon, and good evening. Welcome to the New gTLD Subsequent Procedures Working Group call on Thursday, the 1st of October 2020. In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. And I would like to remind everyone to please state your name before speaking for the recording and please keep phones and microphones on mute when not speaking to avoid background noise.

As a reminder, those who take part in ICANN multi-stakeholder process are to comply with the expected standards of behavior. With this, I will turn it over to Jeff Neuman. You can begin, Jeff.

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JEFF NEUMAN:

Thank you very much, Julie. Welcome, everyone. So, we got a pretty good agenda here today. But before we start on the agenda, let me ask to see if there any updates to statements of interest. Okay, I'm not seeing ... Oops! Maybe I should turn on my chat. There we go. Still not seeing any, so thank you very much.

So, I think what we'll do is we'll start out with just some administrative items since today was the due date for all of the comments and then we'll get into the discussion of CPE guidelines and working group recommendations. There's still a couple of topics here.

Then we'll discuss a little bit about the applicant support if there is time. But I do want to raise a point about that a little bit later, but that's only if we have time anyway.

Let me ask. Are there any items for any other business? Okay, not seeing any.

So, just a couple notes before we get into the CPE guidelines. So, first, as you all know and should have seen some of the comments today is the or was the day in which comments were due. We did get comments—at least, I haven't looked at the public comment tool yet to see all of the comments that we've gotten in, and if you try to look at that Excel spreadsheet, it's really difficult to follow anyway. But I do want to note that we separately received comments this week from the GAC, from the ALAC, from the Board and from ICANN Org and I encourage all of you to read. I have not yet gotten a chance to scan the Org comments yet, but I'm told that they are very extensive and I scan through the Board's comments and I am thoroughly impressed with the

amount of time and effort that went into the response and I highly encourage everyone to read those comments, and of course we'll be putting them all into the public comment tool or report that we get back.

So, the next stage is that ICANN staff will be taking the input from the Google ... Well, first they'll be incorporating to their best ability the comments that we've received not through the Google survey form, into the Google survey form, and then they will produce a public comment report basically that breaks down the responses by topic. So don't worry, you're not going to have to take that Excel spreadsheet that you see in the comment page and have to decipher that yourself.

I noticed that there was an article in one of the industry papers that talked about this output. The way that this comment, the survey form is designed ... Well, it's not designed to ... Like our old system of comments where you can read easily everybody's comments that were submitted, but it is in a format that makes it somewhat easier for ICANN staff to pull all the comments and answers or response to the different topics and questions in a format that we will be able to read.

So that will be done in the next few weeks. We'll all get copies of that and we'll also make that document available to the public so they can see much more easily readable format the comments that we received.

So, that's going to take a few weeks. Since the ICANN meeting is coming up in the intervening weeks, what's most likely to happen is that we have asked—Cheryl and I have asked—ICANN Org—

so, Steve, Julie, and Emily—to prioritize those subjects that we think we would like to address at the ICANN meeting during our two sessions that the schedule was posted today.

So, our two sessions ... And those topics should not be a surprise to anyone. The topics that we intend to cover are the same ones that we covered on our webinar a few weeks ago, although this time we hope to incorporate all of the comments that we received into those discussions. So, they'll be prioritizing those subjects, like predictability, private resolution of contention sets and community CPE—all the stuff we've really been discussing.

So, any questions on that before we get started?

Okay. One other thing is that we are not going to do a quantitative analysis of how many responses we got to each of the questions, but rather just a qualitative responses that we got. So we're not going to do—what do they call that? The donut charts that they did for the RPM because we all, when we're considering these comments, need to take into consideration not just the number of specific comments we got in favor or against certain recommendations but who are those or what groups that put the responses in represented. So we need to make sure that we're doing a qualitative assessment as opposed to quantitative.

Okay, I think I've covered the admin items. There may be a couple more. Due to some scheduling issues, usually leadership has an opportunity to meet before our Thursday call but we were not able to do that this week and we're actually—the leadership team—is meeting tomorrow. So if there are any updates from that, we'll be sure to circulate those.

All right. So let's go then to CPE ... CPE guidelines and the links ... Well, Steve has brought up the document, the redline, and I'm sure we'll also put that link into the chat so everyone can go to the Google Doc. And also keep in mind that the At-Large had submitted a redline to this even prior to the draft report—or sorry, had submitted comments to this prior to the draft final report. And then we asked Justine to do a redline of that. So we may refer back to those redlines as well to start a couple of the discussions.

So, on the last call we had started criterion #4, and in fact had talked about 4a, the evaluation of the level of support for a given community application. There were some things that we were discussing which we all felt were important—mainly that if someone had submitted a letter of opposition, which is the main topic of today's discussion—that it not double count[ed] against the applicant for both a lack of support and opposition, that it really, to the extent it will count, really should count in that 4b, the opposition section.

As a reminder, as well, this criterion was worth a total of four points. Two points went towards level of support and two points went to the level of opposition.

And where we left off—if we can actually jump to 4b. And as we're doing that ... Where we left off was starting the discussion on this element but also keeping in mind that we did make some recommendations in the draft final report on the topic of opposition, specifically on the timing of when those letters of opposition should come in and closing off that time period for letters of opposition, because as Jamie has reminded us on many occasions as well as others, that there were many letters of

opposition that were submitted right up until even while the evaluation was going on, so that became an issue.

And, also, in the draft final report, we did make a couple of other recommendations, namely that evaluators can question those that submitted letters of support and/or opposition to understand a little bit more about those letters, and also that when considering letters of opposition, that there is a balancing process between who the opposition letter is from and the levels of that role they have in the community, so that we make sure that a letter of opposition from, let's say, a competitor or someone who submitted a competing application may not necessarily have the same weight as other letters of support from letters that came in from more established groups. And I'm probably saying that all—it's really late for me—in a confusing way. But basically that evaluators should keep in mind and do their diligence on the letters of support and especially opposition that are received. So, there it is.

Thanks, Steve, for saving me from my just talking. So the recommendation we put forth was letters of opposition to a community-based application, if any, must be considered and balanced with documented support for the application.

Jamie, I see your hand is up. Before we actually get into the discussion, Jamie, go ahead.

JAMIE BAXTER:

Yeah. Thanks, Jeff. I think—and you may have said this. I know we've talked about it before. But it's also about the size of that

opposition compared to the scope of that community. In other words, one small segment of a large community really doesn't have relevant in the larger picture and I just want to make sure that that concept is captured in what I believe we've already spoken about and what I believe has already been incorporated in the past.

JEFF NEUMAN:

Yeah. I think that's included in the balance recommendation that Steve put up there, and especially in the discussion behind that. I think we'll, of course, get to that as well, I'm sure, in looking at some of the evaluation guidelines that were drafted by EIU in this call.

So, with that and as one further note of intro, what we are doing here essentially—or just reminding people—that the criteria that was included in the guidebook was certainly known to the applicants prior to applicants applying for or submitting their applications. But the Evaluation Guidelines was a document created solely by the EIU—and I shouldn't say solely. I'm sure that there was some discussion with ICANN Org as well. But essentially from EIU on trying to provide more guidance on how to evaluate the specific criteria. It's these evaluation guidelines that we're really taking a specific look at, at this point in time, because these guidelines were not available to applicants—or frankly the community—prior to submission of applications, and therefore what we are looking at really in these discussions that we've been having over the last couple of calls is do the evaluation guidelines that were drafted by EIU fairly and accurately represent what the AGB criteria—the guidebook criteria—was meant to evaluate?

So, this first one that's highlighted here is the definition of relevance and that comes in if you look at the scoring in the top line that's showing right now on the screen, so then where that opposition was scored, the applicant got a two if there was no opposition of relevance, got a one if there was relevant opposition from one group of non-negligible size, and zero if there was relevant opposition from two or more groups of non-negligible size.

So, the definition of relevance is incredibly important because, as you see there, if just one group submits a letter of opposition and it's deemed to be relevant, then the score automatically goes down a point. And in an evaluation where one needed to score 14 out of 16, that is pretty substantial against an applicant.

So, what the EIU did—or I should say the guidebook defined relevance as referring to communities explicitly and implicitly addressed. This means that opposition from communities not identified in the application but with an association to the applied-for string would be considered relevant.

So, the EIU added in saying that they should consider—or they did consider—these factors in determining whether something came from non-negligible size. So they would consider if a web search may help determine relevance and size of the objecting organization. If there was opposition by some other reputable organization, such as a quasi-official, publicly recognized organization or peer organization, and also if there is opposition from a part of the community, explicitly or implicitly addressed.

So there's a lot of things there added by EIU, so the question out to the group—and some may have addressed this in the comments that we've gotten but the question for this group right now and for us to look at is does these considerations map to what we believe the AGB was meant to cover? And the comments here from Jamie, if we can just expand that, Steve, a little bit ... So, this is back earlier this year when Jamie raised this and I think we covered some of this which talks about the balance of opposition. So I think that first paragraph is already covered in our recommendation—or you all let me know if you think that's covered in the recommendation.

But the second point, the second paragraph, says, "To illustrate this point, if the applicant has hundreds of organizations around the world supporting an application, and those endorsements represent the voices of tens of thousands of other local and regional organizations, then an expression of opposition from one or a single small and even locally based organization from within the defined community, among the thousands globally expressing support, should not be able to put one of the two CPE points for this criteria in jeopardy."

So, if we go back and we take Jamie's comments, again, which Jamie repeated a little bit earlier on this call, the guidebook does say—sorry, Steve; scroll up a little bit again; sorry; go to the scoring again; I just want to remind people—if there's one entity of relevance that opposes of non-negligible size, then the applicant is automatically docked, a point. So we talk about balance in the recommendation. Do these factors go to the non-negligible size?

Any question on those? Do they sound good? Are they on the right track, assuming we have the balance note in there?

Jamie, go ahead.

JAMIE BAXTER:

Thanks, Jeff. I think, from our experience, “non-negligible” was actually not applied to a small organization that had four employees—not even all of them full-time—compared to hundreds, possibly thousands, of employees working at other organizations. So I think the “non-negligible” is just a tricky way of addressing this. Whether you’re going to look at the number of employees, which is the way the EIU did it, or whether you’re going to look at the number of people that that organization serves, there just has to be a better calculus here because otherwise it doesn’t give the applicant any way of understanding how they’re going to rule on a lot of this stuff. I just feel like this still needs work because “non-negligible” is just a really bizarre definition with no real basis to it, especially given that there’s going to be different types of communities that have different types of association and alignment. I just find that word very complicated.

JEFF NEUMAN:

Yeah. Thanks, Jamie. It is really difficult because it would be impossible for us or anyone that’s evaluating to put a bright-line, quantitative number, but, on the other hand, as you were saying, if you’re talking about an organization that submits a letter of opposition that may have a small base of—sorry, I was going to

say “customers” or “community”—whatever it is, but then, like you said, you have letters of support from really large organizations that represent members all around the world. I use the term “members” in non-economic sense. I agree with you that this is not a satisfying definition, but it would be great if we could come up with some more applicable guidelines that that could be looked at.

Justine’s got her hand raised, so maybe Justine’s got the answer. Justine, go ahead.

Oops. I saw Justine, but I think ... Justine, are you on?

JUSTINE CHEW: Hello? Can you hear me?

JEFF NEUMAN: Now we can.

JUSTINE CHEW: Somebody muted me when I unmuted myself. Anyway, should I start from the beginning? I did say that, unfortunately, I don’t think I have the answer to all these complicated questions. They are important, but we tried to look at it objectively, and it was difficult because, to a certain extent, we are also having to rely on the expertise of whoever the evaluator is or whoever the panelist is to look at the applications and look at the documents accompanying to make a subjective judgement, really. Indeed that’s what it is. So, in that respect, of course as much guidance as we can

provide would be great, but, as we have noted here, it is very complicated. To the extent that we can provide guidance, I'm sure we will, but, of course, we can't really go into the A-Z of everything. What my point is is that who we appoint as the evaluator becomes important. That goes back to At-Large's request to have more community participation in say in who is appointed as the evaluator.

Number two is, now that we have recommended the introduction of the challenge mechanism, there is a remedy. If the parties who were affected find that they've been misjudged in some way or another, they can use the challenge mechanism. So that's a part-safeguard, I suppose.

The third thing is that we haven't actually addressed the role of application comment in totality. It is relevant here. But the aspect that I want to draw a point to is the fact that, with the application comment role—the topic of application comment—if I recall correctly, we did say that, as far as possible, the identities of the commenter would be established—the point being that, if a comment is clearly acting on behalf of a party that is a competitor to a relevant applicant, then obviously that has some impact on the amount of negligibility and relevance of an opposition.

Coming back to the overall role of the application comment, I don't think we have addressed this issue about establishing a fixed period of application comment for the community-based applicant, which should be the same as every other applicant, there shouldn't be a separate call for letters of support or letters of opposition by whoever the evaluator may be, as was done for the 2012 round. I leave that there at the moment. Thanks.

JEFF NEUMAN:

Thanks, Justine. All really good points. We will certainly get back to, when we review the comments, the public comment period issues. Obviously, it is going to be important as to who the evaluators are, and I do recall, I think—I've read so many things now—the GAC who had said in its comments to us—we'll see this again—basically that the evaluators should be experts in communities. And there's a whole list of criteria, I think, that they put in there. So that is obviously related.

But one thing that occurred to me as, Justine, you were speaking and from Jamie's point of earlier, I do think we need to put in something in the guidelines—essentially something to the extent of, “The determination of whether an opposition is negligible of is”—what's the term they use?—“non-negligible size has to be made in proportion to the overall size of the community that is being represented by the applicant. Maybe “representative” is not the right term, but it needs to be determined in proportion to the size of who the applicant is aiming to serve. I guess that's the point. We do talk about the balance in the recommendation, but I don't think it hurts to put it in the guidelines here to make it clear that the determination of what is non-negligible—I hate using that negative term, but that's what we have—is going to be different ... You can't have an exact objective number, but it has to be relative to the size of the community in which the applicant is purporting to serve. So I think we definitely need to put something like that in the guidelines here where it says, “For non-negligible size, consider”... We have to put something like what I just said.

Justine, your hand is up, so go ahead.

JUSTINE CHEW: Just to set the record straight, I'm not arguing against that, Jeff. I totally agree with that approach. I was just saying that, from an At-Large perspective, we haven't gone into that detail, and perhaps we should look at it again. Thank you.

JEFF NEUMAN: Thanks, Justine. I didn't mean to imply that that's what you were saying. When you were just talking now, it just triggered that thought. Thanks, Justine.

Jamie?

JAMIE BAXTER: Thanks, Jeff. I think what you've said is on point. It's about avoiding making any community an easy target by just having on angry voice that wants to express opposition that is able to take down one of the two points. Your approach to a balance of looking at what is the actual size of the community and then how loud is that voice expressing opposition with that overall community, I think, is certainly one way of determining what is non-negligible, I guess. Thanks.

JEFF NEUMAN: Thanks. I know Steve is multi-tasking right now and taking all the notes and running the screen and everything, but I'm sure he's capturing that as an action item. So we will try to put something in there that represents the concept that we were just talking about.

So that goes to—I'm just looking to see if there's anyone in the queue—the size or “non-negligible,” and it goes to relevance.

Well, let me ask a question as well that always was something I've read so many times. I remember that there were issues with this, I think, but the whole notion of ... If you look at that last part, which says, “If there's opposition from a part of the community that's explicitly or implicitly addressed,” the part that always has at least—this is a personal thought as opposed to from the Chair ... Are we comfortable with the notion of “implicitly addressed”? I do remember questions about certain applications where evaluators said, “Well, we think you covered this part of the community, but you left out this other part that should have been covered. There was a letter of opposition from that part of the community that the evaluator thought you should have covered.” It was just, to me, something that just seemed, when you use terms like “implicitly addressed” ... I don't know. Does anyone have an issue with that, or is that just me overthinking?

Justine, go ahead.

JUSTINE CHEW:

Thanks, Jeff. I don't know if this answers your questions to point, but I'm just having a look at the At-Large contribution. We talked about documented opposition as opposed to letter of opposition, but it essentially means the same thing because documented opposition could also presumably include objections, in our case.

Anyway, we did talk about things like, for example, if the organization or the group that submitted a letter of opposition, for

example, could not have been found to have identified or have an association with the applied-for string—so they really have a remote standing, per se—then that could have impact on relevance on non-negligibility, and also things like whether of opposition contains a description of the process—for example, if it's from an organization or an organized group. Then, by right, it should contain a description of the process and rationale used in arriving at the opposition. So, again, if that doesn't appear in their letter of opposition, then that could account for making it less relevant or more negligible, so to speak. Also we spoke of things like whether the group is actually made up of a group of individual persons or whether it is actually from an established organization [inaudible.] So those are some of the things that we talked about in our intervention as possible factors for determining the questions of relevance and negligibility.

I hope that helps a little bit. I'm not sure it helps a lot, per se, but, yeah, just things to look out for. Thank you.

JEFF NEUMAN:

Thanks, Justine. If we scroll down, a lot of what you were just talking about should fit into this section, which talks about the letters of opposition and their verification in determining relevance. If you look at the right column, where they say, "Is the organization relevant and/or recognized as per the definitions above?" ... I can't remember—if we scroll a little bit more down ... Does this have in it the ... yeah. In the last part—sorry—the last sentence there says, "To be considered relevant opposition, such documentation must contain a description of the process and rationale used in arriving at the expression of opposition. Consider

of opposition is not merely based on the number of comments or expressions of opposition received.” So some of those points, I think, are what you covered. I know you just mentioned the “Is it an established organization that submitted the letter? What was the process that they used to get to that letter of opposition? Is it a vote from their membership, or is it just letter from the staff of that organization, let’s say, but that didn’t get a vote of the membership?” I think all of that is relevant.

I’m trying to think of some other things you had mentioned that may not be in this part. Does anything stand out as something that you had just mentioned that’s not in this section here on the scoring?

And it’s okay. I don’t mean, Justine, to put you on the spot. We can go through this and the redline to just see what it’s missing.

JUSTINE CHEW:

Sure. Thanks. Yeah, I would appreciate that because I’m looking at what’s on the screen from the working group’s draft and also the redline that I produced. It’s actually getting a bit complicated, per se, because, as I said, we move things around as well.

Just to answer your question, I think the bit about whether there is a direct or remote connection between the group opposing the string being applied for may not be captured in the existing document. I could be wrong, but I think it’s not. Thanks.

JEFF NEUMAN: Thanks, Justine. We'll add a note on that. I think you're right that, if it is captured, it's not clear. You would think that that should be in to determine relevance.

Is this the end of 4B, by the way? Pretty sure—yeah.

I know that Justine had brought up, at the end of the call, a desire to go—at the end of the last call; sorry—back to some overall principles that were brought up by the At-Large comments. We'll take a look to see if it's mentioned in other comments as well. So, Justine, I'm going to give you the floor for a couple minutes to just talk about what are some overall topics in the At-Large comment that you think are important. I think you had started to go a little bit into a delineation that the At-Large made between economic communities and non-economic communities. So I think you had started to talk about that, but the call then ended.

JUSTINE CHEW: Yes. Thanks, Jeff. If I may, yeah, I requested to just go back to Criteria #1 (community establishment) and to highlight ... I should have done this in the earlier call, but I think I joined the call quite late, so you had already gone through this section, but I just wanted to raise the At-Large intervention with respect to community establishment and going to the point of trying to address this bias that, yeah, you [inaudible] in favoring more structured[-trait] organization-type communities.

So what we did was we said that the less-structured and less-delineated communities shouldn't be disadvantaged compared to business and trade organizations—clear membership-structured

organizations. So what we did was we introduced, in terms of for the scoring, for example, for point of [inaudible] ... It could be a reasonably delineated community rather than clearly delineated. So there's a bit of flexibility there.

Also, in terms of what I said before to counter the bias to what's one economic group as opposed to human-rights-based grouping, we did say that the human-rights-type grouping should stand at the same par/level as any other economic grouping. We also attempted to introduce community expertise into the fold by suggesting that, for any reasonably delineated community that is recognized by, say, for example, the United Nations or maybe any other international organizations, or subject matter expert with international or regional standing, if they recognize the community as existing, then it should score high. That community should, by right, feature quite highly.

So those are some of the things that we tried to introduce. We also had more detailed guiding questions for the section of delineation, for example, to address what I tried to explain just now, which is that, if it's an economic grouping, you score high and, if it's a human rights grouping, you also score high, so long as they are clearly delineated or recognized by an international governmental organization or some expert of reasonable standing. If the grouping is less clearly delineated, it could still score one. The factors will have to be taken into account by the evaluator. It's only if the definition of the community by the applicant is vague, dispersed, or clearly unbound when it wouldn't score. Thanks.

JEFF NEUMAN:

Thanks, Justine. I read this and found it really interesting. I had some questions. The first one is—this is just because I am not a community expert, admittedly, so this could be out of just plain ignorance ... I obviously understand the notion of an economic community, but why then is the second grouping, instead of saying “a non-economic community” ... Why do you use the term “human rights”—it’s not on the screen right now—specifically as opposed to just ... I’m not sure what a human rights community encompasses. Does that encompass all of the communities that wouldn’t necessarily be a common economic interest? So I’ll direct that question to Justine and then to Jamie because Jamie’s got his hand up.

JUSTINE CHEW:

Sure. If I may try to answer that question, well, this is based on input from some of my other colleagues. The concern that was raised when we were discussing this was a clear distinction between economic groupings and non-economic groupings. But, in particular with the non-economic groupings, they would encompass mostly human rights themes, really. The point about human rights themes is that ... Well, the argument was made that some groupings you may support but you may not be allowed to declare support for the grouping. For example, certain human rights are not really human rights in certain countries—for example, being gay. Being gay can be illegal, or declaring that you’re gay can be illegal in certain countries. So that would prevent people from being members openly to that grouping, but the grouping itself shouldn’t be disadvantaged because it doesn’t have clear membership like an economic grouping would have.

JEFF NEUMAN:

Thanks, Justine. I guess that was one of my concerns: that you can certainly get into battles as to what is covered by human rights, and that could differ from country to country, as you said. So my real question is, do you really need to say “human rights”? Can you just say there are two types of communities—those that are based on common economic interests and those that are not? I guess the question I’m asking is, are there certain non-economic communities that the At-Large was seeking to exclude, and that’s why it specifically chose to use the term “communities advocating for human rights”?

Let me go to Jamie.

JAMIE BAXTER:

Thanks, Jeff. I think Justine is touching on something that [led] to a really good discussion here because, as the score was put down for delineation, I always found it a little bit strange that it was an evaluation for something that is already understood. By that, I mean, if you look at the United Nations, there are various protected classes. So there’s a distinction in delineation, in a sense, for how some communities are perceived and how they’re identified—some of those being human-rights-related, but not necessarily all of them.

So I think the opportunity here is to allow an applicant to show how they’re delineated based on existing standards or prior identifications, whether they’re classes or whatever, and that it how they established their delineation. I just feel like what EIU did

was just do structured and so non-accepting of anything outside of what they wanted it to be. I think what Justine is touching on, which I think is important, is just a re-discussion of how re-delineation gets calculated in this scorecard because I think there's so many other models that would allow communities to present themselves differently that perhaps need to be considered.

JEFF NEUMAN:

Yeah. Thanks, Jamie. We certainly did talk about, on the first call that we had on this, the economic bias—or I should say, the bias towards economic communities that the EIU had and that we certainly wanted to make it clear that there are other types of communities that really are not delineated in the same fashion that economic communities are. Not all of them—we talked about this on the first call—are membership organizations, for example, and not all of them have the standard bylaws and other organizing documents that you would expect to find in a common economic interest community.

So we're certainly going to have some notes to that effect in the guidelines. The question is, what else can we do to make it clear ... I'm still not seeing—maybe I'm a little bit slow—a reason why we call out communities advocating for human rights as opposed to just saying that any distinction, using this language that's up there, let's say, now on the screen, between a community based on common economic interest and a community not based on a common economic interest should not serve as a basis for preferring one or the other. I think, to use a term like “communities advocating for human rights,” in and of itself may unintentionally

exclude the types of communities that, Justine, you put in the chat right here, which are marginalized, minority, linguistic, cultural, ethnic groups, and traditional knowledge in indigenous communities. Maybe they are covered in community advocating for human rights. Like I said, I'm not an expert in any of that. So I just want to make sure we're covering all of our bases.

Justine, were there other elements that you wanted to cover in this section or overall? Justine, go ahead.

JUSTINE CHEW:

Yes. I think I mentioned this the last call. I think I'll reiterate the point that there needs to be guidance or at least some form of distinction between each criterion and sub-criterion and that they be evaluated and scored independently of each other. There should be no linking between criterion and sub-criterion across criterion.

The other thing that I should mention at this point in time is that the At-Large has looked at a couple of select cases from the 2012 and came to the conclusion that the working group should consider recommending lower the threshold for prevailing in CPE from 14 to 12 points. Thanks.

JEFF NEUMAN:

Thanks, Justine. I have a feeling that there may be some other comments we get in about the scoring and lowering the threshold. So that's probably going to be a separate conversation. That's my guess.

The question I have there and what we'll need to give some thought to ... It's one thing to say that, if you get a 12, you pass, but how does that, as just an example, let's say, work its way down the line? For example, you could get a zero on something but still get a 12 in theory. Should that still be allowed? Or, even if we did lower the overall score, should we say, "Look, you at least need to get a 1 on everything because, if you get any 0s, that should exclude you." I think it would be weird to have a result where you got a 0 in one category—whatever it is. In fact, in theory, you could get a 0 on an entire criterion if you got a perfect 4 points on every other criterion. I don't think that's something that we would all consider to be community.

By the way, I brought this up ... There were some other ... Like I said, we're probably going to get comments from some groups lowering the threshold. I guess my overall comment is that's great. That's fine. If the group wants to do that, we certainly can do that. But we need to think about how that flows through to the sub-criterion, like getting a 0 in something. Those are the kinds of things that we need to think about.

Does that make sense?

Justine and then Jamie.

JUSTINE CHEW:

Thanks. If what I said earlier about delinking the sub-criteria for each criterion so that they are all evaluated independently ... Then what you are suggesting as a possible outcome could come into play, in which case I'm quite happy to bring that question back to

At-Large and see if they have an opinion on that. If the delinking does not happen—well be disappointed if it doesn't—then the possibility of what you're suggesting is actually very low. Thanks.

JEFF NEUMAN:

Yeah. I think it's definitely a good point, and we certainly should note that each ... I liked your comment on the independent delinking of the criteria. I think that that is certainly important. We did talk about it at least in one case the last time and the beginning of this call, where we talked about letters of support and opposition and getting double-penalized, but it certainly happened in other areas. So I think that's a good comment, and I think we should put that in there. Then I just think we all need to give further thought on, if we do go down the road of wanting to lower the scoring and encourage more communities, that then we need to just follow that logic all the way through.

Jamie, go ahead.

JAMIE BAXTER:

Thanks, Jeff. I think that makes sense. I certainly [feed] back what Justine said about ensuring that there's no linkage of the criterion.

I just want to highlight Criteria 2. Were you able to even get a score of 1? Because that might throw a monkey wrench into what you were suggesting. For some reason, I thought you could only get a score of 2 or 3, and then you could get the bonus point. Can we just double-check that real quick?

JEFF NEUMAN: Thanks. Steve, you can scroll to that. I think you're right. I think it was a 2, 3, or 0. So, yeah, the right way to say it is not that you would need to get at least ... You just can't get any 0s. I think that's the point I was trying to make, as opposed to that you need to ... Yeah, Steve. There's a Criterion 2. I think there's on of the elements where you can get a 2. You can get a 3, a 2, and then a 0. There's no one.

JAMIE BAXTER: For the first part of it, yeah.

JUSTINE CHEW: Yeah. [On the] nexus. [2A].

JEFF NEUMAN: Nexus, yeah. So the point was that, if you got a 0, you shouldn't be able to pass the overall evaluation. Like, use this as an example, right? You get a 0 here, but let's say you get the maximum points in every other section. You now get a 13 out of ... 16, right? But would we be comfortable saying that that would pass, even though you're unable to show any nexus between your string and the community? I think that would not be the result that we would want to see, I think.

JAMIE BAXTER: Yeah. I guess I was just saying that, if the rule, [inaudible]—it sort of came out of your mouth when we were just talking about—is that you had to get at least 1 in each category. That just wouldn't

apply to Criteria 2 because it's you can't actually get 1 point. So it would have to be written so that people don't think that, if you get 1 point there, you actually could get CPE [inaudible].

JEFF NEUMAN: Yeah. The rule [is] you just can't get a 0 on anything.

JAMIE BAXTER: Right.

JEFF NEUMAN: Steve has a note in the chat. Let me read it. "I know that the double-counting this was considered, although perhaps not as effectively implemented as the working group would like to see here. The sequence of the criteria reflects the order in which they will be assessed by the panel. The utmost care has been taken to avoid any double-counting. Any negative aspect found in assessing an application for one criterion should only be counted there and should not affect the assessment of other criteria."

Thanks, Steve. That's in the guidebook, or is that in the guidelines? Where did you get that language? Sorry. I know you can't raise your hand. Oh, the guidebook itself. Okay.

Well, I think that we can expand that a little bit, or maybe that is the right language. Maybe we just need to emphasize that we're not convinced that that was followed.

Jamie, please?

JAMIE BAXTER: I think that's the question. It's just making sure that the EIU guidelines that were created after the guidebook don't actually have conflict with that because I know that that was challenged quite a few times and certainly rejected by staff and rejected by the Board. And they stuck with these guidelines and said they absolutely line up with the guidebook, which we're now discussing. In full transparency, they really didn't. So I think that's the double-check that we're looking for here: just to make sure that the additional layers that the EIU point on this don't actually conflict with the Justine that Justine's raising. Thanks.

JEFF NEUMAN: Thanks. So maybe it is just making sure that that statement finds its way into the guidelines as well as the guidebook.

Also, in thinking about the scoring aspect—I may be off-base—somewhere I thought that I read that there was only application that got a 12 or a 13. Every other application either got much lower than that or qualified. So, if we did lower the score to 12, does that really make a difference? Maybe it's lowering it to 12, but, combined with everything else we're talking about here, would make a substantial difference.

Jamie, go ahead.

JAMIE BAXTER: Yeah, Jeff, I think that's the point: if you were to strip out all of these extra scrutinies that the EIU put on to the applicants, the

scores would have probably been much higher. But it is the combination of those two things. So I don't think we can look at the 2012 scores and make that assessment. I think you would have to reevaluate the 2012 applications based on the revisions that we're suggesting and the stripping-out of the extra layers that the EIU put in there and see what those scores are before making that determination. Obviously, that's not going to happen, but we need to be mindful of that because I think scores would have went up if we had rolled back some of these extra scrutinies that the EIU layered into this.

JEFF NEUMAN:

Thanks, Jamie. I think that's going to be really important in our rationale if we decide to go down the path of lowering the scoring because the comment I just raised is probably one that others may ask a similar question [about]: why go through all this fuss to lower the scoring when only one additional one would have qualified?" So we need to make your point, Jamie, strong. We need to make that point in the rationale that, with the combination of a lower scoring to qualify and all of these changes and improvements we're making to the guidelines itself—with all of that—we believe it would make a substantial difference in ensuring that we were finding that legitimate communities get that community status.

Justine, please?

JUSTINE CHEW: Thanks, Jeff. I just wanted to throw my support behind what Jamie said. It's also the At-Large position that is a combination of improving all these scoring criteria as well as the lowering of the threshold that would give the best improvement to CPE. Thanks.

JEFF NEUMAN: Thanks, Justine, and thanks, Jamie. I think the last thing I'd say about this is that, if we as a group were to make this recommendation on the lowering of the scoring, would, in theory, have the impact of increasing the number of applicants that pass CPE. That would be the intention. So we need to make sure that the working group is on board with that. I don't want to take that as a given because there are a bunch of people on this call but not many people speaking and dozens more on the working group list. So we just need to make sure that this is understood by the working group and something that the working group can get behind. So I think that that's going to be important. When we're reviewing the comments on communities that we get in, we'll get back to all of this. I think we need to make sure that we as a working group are all on board with that. Certainly, if you look at the GAC comments, which have been pretty consistent throughout the entire process, as well as the ALAC comments, I would certainly say that that is a goal that they would like to see. But we need to make sure that this is something that the rest of the community wants to see as well.

Alan, please.

ALAN GREENBERG: Just to be clear, I'm silent because I'm agreeing with things. It's late in the day and, if I don't have to say something, I won't. But I suspect that's true for some other people on this call also. So silence does not necessarily mean we disagree and probably means we agree, at least certainly for some of the people on the call that I know are vocal when they want to be. Thank you.

JEFF NEUMAN: Yeah. Thanks, Alan. I figured, if someone was really bothered by something, especially with this group, they would certainly say something or would put it in the chat. But I don't want to make assumptions.

ALAN GREENBERG: Most of us have to enough to do in life that we wouldn't be on a call at this time of day—for me, anyway—if we didn't think it was important. So thank you. [inaudible]

JEFF NEUMAN: Thanks, Alan. I'm not sure what that says about me, but thank you. Yeah, I do appreciate it's late, and I know we're coming up to ICANN meetings and everyone is now getting into that ICANN mode.

Let me just see: are there any other comments or questions on the evaluation guidelines and what we were discussing about today? Like I said, we will come back to it when we address comments. I'm making an assumption that there are a bunch of

comments on communities, but ... Yeah, I'm making that assumption.

Okay. Because it's late, and because I think starting a whole new topic on applicant support just doesn't make sense today, especially because we got a whole bunch of comments in that probably discuss this topic as well, I am going to make a proposal that we end the call a little bit early and not go into the next subject.

The other thing I want to bring up for the next call is that we got some substantial comment from the Board, as we as others. Sorry, I don't mean to exclude others. The Board asked some really good questions, some of which are rooted in the bylaws and ask questions about ICANN as a non-profit. They're different enough from probably what we'll see in other comments, where, if it's okay with the group, I think it would make a really good topic to talk about on the next call—some of those areas—because they are things that we haven't really given a huge amount of thought to, and they are things that I know we're going to need to address that are not likely brought up in other comments. Now, I may be surprised and they may be, but, I think, for our next call, it would make some sense to delve into those. If the group thinks that this is a good idea, then what I can do ... First of all, the Board comments went to everybody, but we can, after the leadership call tomorrow, specify which of the comments we want to take a look at in particular for the next call on next Thursday.

Alan, go ahead.

ALAN GREENBERG: Thank you very much. That letter was substantial enough that I didn't make my way all the way though it. Clearly, the Board or a subset of the Board—I'm looking at Avri's picture right now—put an awful lot of effort and time into that, and I completely with you completely: there are things there that I really don't think are going to be addressed, to a large extent, by anyone else. Even if they are, coming from the Board, I think they have particular relevance. So getting a head start and looking at some of those—some of them are not ones that are going to be particularly easy to address, especially the ones where the changes we're recommending may not be implementable without significant other impact ... So, yes I strongly agree.

JEFF NEUMAN: Okay. Thanks, Alan. I know it's a little bit of a turn, since we we're going into applicant support next, but that applicant support topic is certainly something I know that other comments will delve into. And the Board delves into that as well. But I think, like you said, Alan, some of the ways in which the Board approached these topics, including applicant support, are higher-level comments than what we'll likely see from other groups. So, with your indulgence, we will send out the agenda tomorrow after our leadership call with the specific sections of the Board letter that we'll discuss. So the next call will be—I'm waiting for someone to post it; great—Thursday, October 8th, at 15:00 UTC for 90 minutes. The agenda for that call we'll send out after our leadership call, but it will be based on the Board comments that we received today.

Any last questions before we adjourn?

Okay. Thanks, everyone. I appreciate all the work. We're going to start to kick it in high gear, especially after the ICANN meeting to get all this done by the end of the year. So I'm thanking you in advance of all the work that we will be doing. Thanks, everyone.

[END OF TRANSCRIPTION]