
ICANN Transcription

New gTLD Subsequent Procedures Working Group

Tuesday, 07 January 2020 at 0300 UTC

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ANDREA GLANDON: Good morning, good afternoon, and good evening. Welcome to the New gTLD Subsequent Procedures PDP call held on Tuesday, the 7th of January, 2020, at 03:00 UTC.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you are only on the audio bridge, could you please let yourselves be known now?

Thank you. Hearing no names, I would like to remind all participants to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise.

With this, I will turn it over to Jeff Neuman. Please begin.

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JEFF NEUMAN:

Thanks, Andrea. Hello, everyone. Happy New Year. Hopefully you all were able to take some time off and get some rest and relaxation and be ready to start this new calendar year off running. I know I'm ready to go – hopefully you all are as well – so we can get back on track. 2020 will be the year that we get this done, or at least get our part done and get it over to the council and Board. So we're going to do everything we can to get moving.

With that said, let me first ask if there are any updates to statements of interest. Then I'll go through the rest of the agenda. Seeing how it's a new year, I don't know if anyone has got anything new that they want to report in terms of statements of interest.

Okay. Nothing new. Please do remember that our statements of interest are all located on the wiki page and it's our obligation to make sure that they are up to date with all current information.

That said, what we intend on covering today is to spend some time initially talking about at least what's going to go into our revised workplan and cover where we are and where we're going, with the understanding that we'll produce a much more detailed workplan hopefully by the end of this week but certainly by the beginning of next week so that you'll not only know what topics we're going to cover for the next couple calls but also for the weeks ahead so that you can make sure that you are on the calls that you would like to be on. We'll talk a little bit more about that.

Then we'll go into some more of the predictability framework. There are three documents here, although only two at this point have been provided. So we'll go through that at that point. If

there's time, we'll go into the string contention mechanisms of last resort. Then we will carve out a couple minutes because Jim has asked a question on e-mail about a call that was held towards the end of last year between the leadership of this group as well as GNSO Council leadership, the GDD senior team, and two of the ICANN Board members. So we'll spend a couple minutes on that.

Is there anything else that anyone would like to add under Any Other Business?

Okay. All right. Good. So let's then dive in. The latest workplan – or then latest one that we had from last year – is obviously a little bit out of date in terms of the subject matters that we had been covering towards the end of the calendar year last year and certainly had some things in there about us doing a public comment period at the beginning of this month and turning over a final report by the end of Q1 this year. I think this won't be a surprise to most of you: that delivering a final report by the end of Q1 with another public comment period is not very likely. And I'm putting that mildly.

So what we're in the process of doing is updating that latest workplan. I think Jim has linked to the latest one that was sent out to include a faster pace of covering some of the subjects that we will be going over yet again in terms of that these are ones that we've covered several times and—

UNIDENTIFIED FEMALE: My God!

JEFF NEUMAN: Wow.

UNIDENTIFIED FEMALE: [inaudible]

JEFF NEUMAN: Ha-ha. Okay. Sorry about that. Not sure if that was a comment on this group. It was probably outside. But that wasn't here. Anyway—

GREG SHATAN: Apologies. That was from my domestic site. It's Greg. Go ahead, please.

JEFF NEUMAN: Thanks, Greg. Okay. Hopefully everyone is okay over there.

So with the workplan, we're creating these documents on each of the subject areas, very similar to the ones that you will have seen that we're going over now with the predictability model and the string contention resolution, and really narrowing down documents and getting to the substance of what we believe is agreed upon and any open areas of discussion with the intent to get to draft final recommendations. Each of the subject areas that we have previously covered several times we'll produce that kind of summary document for with the intent of finalizing draft recommendations so that we can go to the next public comment period. I'm trying to be a little bit careful in how I phrase this.

The intent, as we had talked about last year, is that we will have another public comment period. With the leadership team, we've been discussing how we could structure that public comment period in line with a number of comments that we've gotten not only from the formal letters from the GAC and from the ALAC but also just discussions that took place within our group.

What leadership is recommending at this point – we'll come out with more details as we get closer – is that we're going to make all the draft recommendations available during that public comment period, but we're going to seek specific public comment on certain areas that have not yet been out for public comment previously or were the result of, let's say, hybrid solutions that would not have yet been available for others to comment on. So everything will be available to give those commenters context for the big picture and for all of the items and all the recommendations, but we're going to specifically ask for comments on certain areas. Now, obviously, we can't stop anyone from making comments on other areas, but we're going to be clear that our focus is with respect to only those areas that we set forth for comment. So I think it's hopefully a solution that is in line with the expectations of the group and also will address some of the concerns that the community has come back with.

So I think that that's what we're going to recommend. We're just trying to figure out the logistics of doing something like that and how we present that. In terms of the concept of how we envision doing that public comment period, the leadership team is pretty much in agreement that that's the way that we should go forward. But we did want to, of course, have this discussion with you all in

terms of whether that would be a good compromise/solution between putting the entire thing out for public comment and taking comments on everything but also not just putting out certain areas where the community is not given the big picture or all of the context. So hopefully that approach will work.

Any thoughts or comments on just the concept of the public comment period and what we're going to do in terms of the next few months and leading up to that comment period? I know it was pretty quick and it wasn't a huge amount of detail.

What I should also say is that, for this meeting, we're going to go over the predictability framework and then maybe start the string contention. We'll likely continue that string contention on Thursday, maybe even the following the Monday, depending on where we get to in that discussion.

As staff and leadership are drafting these summary documents with the draft final recommendations, we thought one way to help us with these draft summary documents with the draft final recommendations would be to take one subject either next week or the following week – I'll put in air brackets an easier subject – where I think there aren't too many open issues, show you all the format, get a buy-in from our group as to that being a good format to move forward, and present for public comment during the public comment period. Once the approach is agreed upon by the group, we'll go back then to some of the larger open areas to go over some of the more thornier issues before we get to talking about each of the sections in that summary document format. This way, it'll also give some guidance to ICANN staff and leadership who

are drafting these summary documents as to if we're going in the right direction or not.

Justine says, "Sounds like a plan." Thanks. Great. I don't know if anyone has got any other questions or any other thoughts on that.

CHERYL LANGDON-ORR: You've got Jim and Anne.

JEFF NEUMAN: Yeah. Thanks. Sorry. I was scrolled down on the list. I see Jim and then Anne.

JIM PRENDERGAST: Great. Thanks, Jeff. Glad to hear that the draft recommendations are to be put out. I think that's really important, obviously for context but also for just giving folks an overall picture of where we're going.

One question I have for you I'm still concerned with based upon how you described it – I realized we got the shortened version of it – is, in the event that you get comments coming in from either the Board or the GAC or SSAC – folks who really haven't been into this day-to-day, like members of the working group have been – in sections that "you're not looking for comment on," what are we going to do in that situation? To me, I think you run the risk of – say we don't want comments and they come in and you just table them – disenfranchising folks who are participating in the process

and frankly could be providing valuable feedback that can make the overall product better.

So I'm curious. Have you thought how you might handle a scenario like that? Thanks.

JEFF NEUMAN:

Thanks, Jim. Yes, we've thought of initially that happening. That was one of my big concerns of putting everything out and then having people comment: we don't want to disenfranchise anyone by not reading it. So I think what will happen is it'll have to be a judgement call at that point in time. ICANN staff will be doing a matrix on all the comments we get in, but they're going to focus on the areas that we're seeking comment on. I think it's going to be up to leadership and others in the group to at least give a read over of the other comments that come in and then really raise it to the rest of the group if it truly is something hasn't been considered and really needs to go through another layer of analysis. But it's going to be a much stricter scrutiny. So, even if it comes in from the Board or the SSAC, if it's something we feel like we've already addressed and moved beyond, we'll have to indicate that. I think what the thought process is is that the detailed comment analysis and the detail that we're required to do after we get public comments is really going to be focused on those areas where we're soliciting comments.

The best thing I can say right now it it's going to be a judgement call in terms of what other comments we get in. Obviously, if you're like me, you'll probably read all the comments anyway. It's going to be up to us as a group and leadership as well to make

sure that we're not just ignoring comments that are very helpful if they cover areas that really we haven't considered before or, for whatever reason, is new information that might change the direction of the group.

I know it's not a great answer, Jim, but it's the best one at this point without seeing what comes in.

JIM PRENDERGAST: I agree. Okay. Thanks.

JEFF NEUMAN: Thanks, Jim. Anne, please?

ANNE AIKMAN-SCALESE: Hi, Jeff. Can you hear me?

JEFF NEUMAN: Yeah, I can hear you now. Thanks.

ANNE AIKMAN-SCALESE: Okay. I just wanted to mention that, recently, Auction Proceeds put out a proposed final report in which everyone is free to comment on. [I believe] that is a shorter report than what we'll be putting out.

But they also took the approach – maybe you're already aware of this from ICANN staff – that there were three specific questions

that they asked that they said, “We’re very interested in getting your input on the following,” on.

So it may be worthwhile to look at that report in terms of what you’re trying to do. You wouldn’t be able to do it just, I think, as one whole approach, but, on a section-by-section basis, there might just be one or two questions that we’re really wanting that input on for each section of what we’re publishing, or to say we’re not really seeking a lot of further input at this time. So that Auction Proceeds might be helpful to what you’re trying to do.

The only other thing I would say is I do get a little bit concerned when you talk about, “Well, if there are areas we’ve already covered,” because, actually, by the time we put this thing out, sure, there’s plenty of areas. We’ve already covered these areas. So I’m not sure how you’re going to distinguish between areas we’ve already covered versus what you’re saying would be new areas or new issues. I don’t know how you distinguish between those two. So it seems like that’s got to be almost more than a judgement call. It’s going to be, “Well, we don’t want to get back into this,” versus, “Well, we do want to get back into this.” That’s subjective, so that concerns me a little bit. Thanks.

JEFF NEUMAN:

Thanks, Anne. I was not aware of that with the Auction Proceeds. I have not been personally paying huge amounts of attention to that, but that does sound like a similar approach. It is also similar to one of the EPDP comment periods. It might have been the first one they did, where they asked very specific questions, although they may have done it on Doodle poll or something like that. I

can't remember exactly how they did it. We're not going to do it that way. They did say they wanted specific feedback on certain questions. They didn't say you couldn't provide other feedback. In fact, I think you could, but they were really trying to focus the answers in certain areas. I'll go back and I'll read the Auction Proceeds one. It sounds like a similar approach.

On the judgement call and the areas, I guess I was being a little bit too broad. What I meant was that, if we take an example like, let's say, the group has come to a determination that we're going to a set of fixed rounds and we've already talked through not doing a first-come-first-serve because of all the issues and then, let's say, someone files a comment saying they still believe that first-come-first-serve is the way to go instead of doing rounds, that would be the type of comment where we would probably go back and say, "Look, we're not going to reconsider the first-come-first-serve. We've already been through that and we've already picked out solution. And it seems like we have agreement within the group on that solution." So that's really what I meant.

Avri puts down here, "It's really new perspectives on issues that had not been considered." We would certainly look at, even if the issues have been considered ... But if it's just rehashing what they previously submitted and what we had already agreed as a group on as our solution, then that might be something we may not pay as much attention to yet again. So hopefully that makes it a little bit better-worded, but let me go back to the comments because it's equally as probable that someone has said it a lot better than I have just set it.

There's some discussion back and forth. Justine says, "I'd be keen on looking out for new suggestions which no one raised or considered before on prior consulted topics." Kathy is asking me what I mean by hybrid responses. Hopefully I've gone through that. Jim says, "Agreed, Justine, especially in areas where we just ask open-ended questions and had no previous recommendations." Obviously, for the questions that we specifically ask for comment on, we're going to consider those thoroughly, regardless of whether it just states what we've gotten previously or not for all the specific questions that we ask. So it's only with respect to areas which we did not ask a specific question but we get comments anyway.

Let's see. There's more conversation on this. Anne says, "Comments. We should clarify which sections we are not really seeking further public comment on and do so section by section." Anne, I think we'll do it the other way. We're going to specify which sections we are seeking comment on. Then we'll provide the appropriate language on the other sections as to what and how those will or may or may not be considered.

Kathy, please?

KATHY KLEIMAN:

Thanks, Jeff. Happy New Year, everyone. Let's look at something concrete, if we might. For areas where we've spent a lot of time and really have something fairly new to present, like the predictability framework and like the challenges and appeals that we put together, what are you proposing in terms of that? I would think we would put them out in their entirety so that people can

see the whole framework that we're proposing and let us know if there's any side effect or impact that we hadn't anticipated. But I thought I'd ask you on those two examples. Thanks.

JEFF NEUMAN:

Thanks, Kathy. Absolutely. On areas that are new like that – like the predictability model, like if we come up with something new for the contention resolution – that will be put out in its entirety. Well, everything will be put out in its entirety, but there'll be focused questions specifically on those areas, as well as the ability to provide other kinds of input into those areas. So that's the type of thing we will be encouraging comments on.

The other areas, like the one example I mentioned on whether to do first-come-first-serve or rounds – I think that's been out for comment so many times that most likely we may not ask any specific focused question on the concept of doing rounds.

Now, if there's something new in that area when we get to it, then, yeah, we may ask a narrowly focused question on that, but, again, it's hard now because we're talking in generalities. It'll become hopefully much more clear as we produce these summary documents and get closer to that comment period. But, hopefully, the general approach makes sense.

Steve has got his hand up. Please, Steve.

STEVE CHAN:

Thanks, Jeff. I just actually wanted to comment on the development of the, as you call them, summary documents. I

guess I would call them more like draft policy recommendations plus the rationale and some of the background.

I guess what I wanted to clarify is that, for things like the predictability framework there, they were developed as discussion papers. Really, that's an aptly named thing. It's intended to facilitate a discussion because we know there's open discussion and questions that need to be answered.

So the idea is to try to draft the draft recommendations for the working group to consider. The model that we've actually followed will hopefully be familiar to some or many of you because it's similar to what we've done for Work Track 5, and that is a much heavier emphasis on the rationale for the recommendations, whereas, for the initial report for both Work Track 5 and the full working group, the intention and the way that it was captured was more about ensuring that the deliberations were captured in an exhausted manner. So whether or not there was support for the arguments made in those deliberations was not weighed or assessed but was captured in a pretty exhaustive fashion in both initial reports.

So, as a sneak preview, the idea is to try to capture the draft recommendations and then focus more on the rationale rather than deliberations.

The exception to that is where there was extensive discussion after the public comment period, where there are new topics raised and discussed by the working group. That's also captured in these documents.

So, as Jeff said, you all get a chance to see this. To give you some level of comfort, it should follow then Work Track 5 model pretty closely. Thanks.

JEFF NEUMAN:

Thanks, Steve. That's important. Yeah, it's not really a summary document. I just couldn't come up with another name for this thing. But, yeah, absolutely it follows that Work Track 5 format and, as you said, focuses more on the recommendations and the rationale, whereas the initial reports and the supplemental reports focused a lot on deliberations and background materials and all of the different things that were raised. This new document will focus on the recommendations and even recommendations of affirming what may have happened in the last round. So it's going to be much tighter and more narrow. Hopefully that will result in not as long of a final report.

Anne asks, "Does focus on then rationale mean we won't publish the predictability framework for public comment?" No, Anne. The predictability framework itself is part of the recommendation, so we will be publishing that. What Steve is focusing on is a lot of the discussion as to why we need the framework in the first place and what the problems were in the last round. We spent a lot of time in the initial reports and supplement report talking about the background as to why this was needed. Some of that will be cut out, but certainly all of the solution will be in there.

Justine asks, "Will the list of CCT recommendations assigned to this working group be rereviewed and/or addressed within the topics on which leadership/staff thinks each should fall under?"

Thanks, Justine. You gave me a good segue. So what we have done – you all have seen it because we went over this chart on the last couple of calls before the break – is we went over the CCT recommendations and there was a chart that we had sent around and asked for final feedback on. In that chart, which we still need update a couple of things on, it will say where we've moved that topic or where we're covering that topic. So you'll see that the recommendation from the CCT Review Team that deals with PICs. That will be included in the section on public interest, where we talk about PICs and other things like that. So, yes, we will be covering each of those items. That chart that we went over on the last few calls towards the end of the year sets forth the state of the discussions we've had so far. We'll also if not already state where we're moving that discussion into.

With that context in mind, we do want to focus in the coming discussions on the open areas to the best we can. What we're trying to do in these discussions – you'll see today with the predictability framework – is we went back through all the action items and the notes, and, with predictability, we come up with a list of what we believe are all the open issues and the proposed responses to those open issues for discussion. So we're going to try to do that with a lot or all of the different areas so that we can send it out before the call so that everyone can read those proposals before the call and be prepared so that we're not spending too much time going over things that we've gone over many times in the past.

So, in future calls, we're going to expect that you are all caught up with the documents and that you have read the documents going

into the calls. So we're going to try to move discussion along. We recognize that we can't cover each of these subjects again the way that we've done it the three, four, five, or six times before. We're not going to be able to spend several calls on each section/area. We've already been through a lot of that, and we're really going to focus on the areas that we believe are still open. Like you'll see with the predictability model, as we go through that, we believe we've captured all of the open areas. If we send out a document before a call and you believe there are other areas that are open, we would hope that you would send something to the list prior to the call with a note saying, "Hey, we think you missed this issue, which we think is still open," so that we're not just spending time during the call debating whether something is open or not.

Hopefully that all makes sense. I know we're spending a lot of admin time on this first call, but we did want to cover all of these different things before we get talking a little bit about the substance.

So why don't we then pull up what we have right now for the predictability framework? We're going to start from the summary document that you will have already seen. We have been using this document now for several calls. We're going to go quickly into the open issues. I'm just using this document now to get us back in the mind frame since it has been several weeks since we've had a call and since we've covered this subject.

So what is the issue we're trying to address? Really, what we've talked about is, how do we address changes that are introduced after the next round of the New gTLD Program? And how can we

deal with unanticipated issues that might arise? And what mechanism? So we've come up with this list of goals that we've talked through extensively on the last several calls. Just to refresh everyone's minds, the goals that we've come up with that we're seeking to accomplish is that, after the application acceptance window commences – actually, this is one of the areas, too, so we should really bracket that because we do need to solve this issue. We're talking about changes to the program. I believe it's really changes after the release of the final Applicant Guidebook as opposed to after the application window commences. I don't know if someone is taking notes there because I believe we did correct that below. The goal is, to the extent that issues arise after the final Applicant Guidebook is published or approved – yeah, that's better – that may result in changes to the program and its supporting processes, that those issues must be resolved in a manner that is as predictable, transparent, and as fair as possible to the impacted parties. The second one: To promote the predictable resolution of issues, the community should rely on a predictability framework specific to the New gTLD Program that guides the selection of mitigation mechanisms. The third bullet: In the event that significant issues arise that require resolution via the predictability framework, applicants should be afforded the opportunity to withdraw their application from the process [and] receive an appropriate refund. The next one: The predictability model intends to complement the existing GNSO processes and procedures and it not intended to be a substitute or a replacement for those, nor should the model be seen as supplanting the GNSO Council's decision-making authority. In fact, the GNSO processes and procedures are incorporated into the predictability framework

explicitly. In the event of a conflict, existing GNSO processes and procedures, including the GNSO [input] process, the guidance process, and EPP, as conveyed in the annexes to the GNSO operating procedures, take precedent.

So we've been through this a number of times. So what are we proposing? If you can scroll down a little. So the proposal – I'm not going to go over each bullet point because I do want to go to the open questions, which will take us through a lot of this stuff, but, essentially, we're recommending the creation of a Standing Predictability Implementation Review Team, which we call SPIRIT – not SPRT but SPIRIT – to be formed – this is where the definition is actually right – after publication of the final Applicant Guidebook – we should just decide whether it's approval or publication of the final Applicant Guidebook; we should just be consistent – to review potential changes to the program. The GNSO Council will be responsible for oversight over the SPIRIT group, and they'll review this. We'll talk a little bit more in detail because some of the open questions deal with this.

Why don't we do that right now? Let's go to the open issues and then we can come back to this overall document. I'll give a second to just open the open issues. Again, just as it's being pulled up, this is the kind of thing that we'd like to create before each of the coming calls as to what we think the open issues are and a potential solution. Now, this is just going to be a proposed solution that leadership and staff think is a potential proposal, but that doesn't necessarily mean that this is automatically the working group's solution. But we do want to throw out proposals so that

we're working from a proposal as opposed to just working from open areas.

The first open area is to provide a good definition of the role of the SPIRIT team. We created this short definition of the role, which is to provide advice and/or guidance to ICANN staff, the GNSO Council, and the ICANN community on issues regarding the New gTLD Program after the launch of the next round. Again, we'll have to come up with the common terminology instead of saying "launch," with different things each time. We'll make that consistent.

Anne is saying, "We might want to modify "launch."" Right. I agree with that. We will make sure that this is consistent. It's either with "approval" of the final Applicant Guidebook or "publishing." We will be consistent. I think "approval" is the right trigger point, I think, that we should be consistent with.

The role of the GNSO Council. Now, this is the first bullet point [inaudible], so there should be no real discussion on that first bullet point. The second one is, with respect to the SPIRIT, the GNSO Council shall maintain a supervisory role over the SPIRIT.

Steve, please. A quick hand up. [inaudible]

STEVE CHAN:

Thanks, Jeff. Just to note, I think there's a little bit distortion on your line, or at least that's what I'm hearing.

I just wanted to make an overarching comment before we you got too far into the details of this document. Just to note that, as an

outcome from the last call, I think, last year, one of the discussions was about whether or not the IRT deadlines or maybe the CSC charter might provide guidance for this document. So the idea in preparing this proposal, which is of course subject to discussion and revision and edit, is to try to pull inspiration from various documents where it seemed applicable for usage here. So, to the extent possible, we've leveraged charters from the CSC, as well as the EPDP and, in some cases, the IRT guidelines, the GNSO operating procedures. In many cases, we've been able to find examples. Some of this paper is going to be specific to the SPIRIT. But, to the extent possible, we've tried to use references to existing mechanisms in then community, so we have something to leverage and not start from scratch.

Like I said, before you got into details, I wanted to provide that overarching comment. Thanks.

JEFF NEUMAN:

Thank you, Steve. That's a good point. I should have brought that up. Yeah, absolutely, we're, in a lot of these cases, borrowing from already existing processes. I think some of this stems from a discussion, as you said, before the end of the year. I think Anne was the one who had brought it up: sticking to as much of the established procedures that we have. I think it makes a lot of sense.

Justine says, "Number 2, second bullet. "With respect to" seems to be redundant." Yeah, I think that's right. I don't think we need those words. Good. Cool.

All right. The third one: Who can raise an issue to the SPIRIT? We've had a bunch of discussions on this subject. As some of us

were going through this and figuring out how to use other examples or existing procedures, we thought this made some sense as to what we've come up with: that issues raised to SPIRIT should be subject to thoughtful analysis and have an impact beyond a single applicant. As such, issues can be raised by ... We've limited it to the ICANN Board, ICANN org, or the GNSO Council. A number of us went back and forth in the discussions as to whether an advisory committee should be able to directly raise an issue or another supporting organization or even a constituency. At the end of the day, I think this makes sense, but, again, it's just a proposal. The rationale for just these three would be: Although any SO/AC may raise issues regarding the New gTLD Program, then issues must be vetted through one of the following entities in order to be taken up by the SPIRIT. The reason that other SOs and ACs may not request that an issue be taken up by the SPIRIT directly is because (here's the rationale) the SPIRIT is under GNSO supervision. We want to avoid lobbying efforts to have the SPIRIT take up issues. Nothing here is intended to serve as a substitute for or replacement for any of the mechanisms set forth in the bylaws for providing advice to the ICANN Board. So, if any SO or AC is not able to convince, let's say, the GNSO Council, ICANN staff, or the Board about giving this issue to the SPIRIT, that SO or AC does have mechanisms to provide its own advice to the Board as to what it thinks should be done. So it's not as if the SOs or ACs are left without anything. They still have other ways to raise issues. Rather, the creation of the SPIRIT is intended as an additional tool for the ICANN org, Board, and GNSO to address issues that arise after, again, the approval of the Applicant Guidebook.

Hopefully that makes sense, but I'd love to hear more comments. Jim and then I'll go to the chat. Jim, please?

JIM PRENDERGAST: Thanks, Jeff. Just looking at the attendance on this call, there are several what I would call GNSO Council experts, so it's aimed towards them: Does the GNSO Council have a mechanism in which they can provide feedback or provide a heads up in a rapid fashion – something that doesn't take six weeks or two months at a time to actually make the SPIRIT team aware of a program – or do they still have to go through the full ratification and wait for a meeting, etc.? Thanks.

JEFF NEUMAN: Jim, great question. Hold that question because I think the next subject area (#4) deals with how these groups can raise an issue. Part of that is to hopefully address timing. Like you, that is one of my deep concerns as well. I think that, if this type of thing gets approved, then the GNSO is going to have to come up with operating procedures for dealing specifically with this group. They may have to tailor some of their existing procedures. So I'm not sure that they have that at this point, but I think one of our recommendations is that they develop that.

Heather, please?

Oh, Heather is saying, "When we get there, I'd like to respond to Jim's question." Heather, is it okay if we go to how each of these can raise the issue to the SPIRIT and then I'll come back to you?

Heather, I can never forget about you, so don't worry.

Let's see. If we accept the fact that those are the three groups that can raise an issue, then the ICANN Board – I would propose that that would be fairly simple; that that would just be a letter from the Chair of the ICANN Board or the chair of an applicable gTLD board community. So, if they create a new gTLD program committee or, for whatever reason, the chair of the board is recused from that decision or whatever, I just want to make sure that's accounted for. For ICANN org, I think it's just a letter from the CEO or the head of the Global Domains Division and/or his or her designee. Finally, I think the more – actually, before we get to the more controversial one or the more difficult one that's open, does anyone disagree with the two approaches for the Board and the org?

Okay. Not seeing any. So now let's go the GNSO one. How does the GNSO raise an issue to SPIRIT? There are a ton of different options here. In fact, on the last call before break, there was at least one person on the call who actually was a former councilor that thought it should be: if one council raises an issue, it should go. Another option is one constituency of the council. Another option would be, instead of constituency, you require the stakeholder group. Another option would be it should be the same threshold as raising an issue for a PDP or – I just added this just before the call because I noted there was a different process for raising an issue for a GNSO guidance process – an affirmative vote of more than one-third of each house or more than two-thirds of one house. So whatever mechanism we select here will also have an impact, of course, on timing, which was the issue Jim

raised and to which I'm going to Heather first to see if this would be a good point to raise your comment. Heather, please?

Heather, are you still with us?

HEATHER FORREST:

Hey, Jeff. Sorry about that. I had trouble getting off mute. Here's my thoughts on this. To Jim's point and to yours, Jeff, you know I'm not a fan of developing new processes just for the sake of developing new processes. What I think can happen is this: there is nothing to stop, in the GNSO operating procedures or otherwise, chairs of a PDP or PDP leadership team, whether it's through the liaison or not, from going back to council and saying, "Council, we have a question and we need your guidance (quickly or not) on this." I think that's probably a good first place to start. In terms of the concerns raised in the chat about how quickly can that happen, I think that it really depends on how it's communicated to council. There's no reason that council can't be nimble. Council is not, by its definition and set up, restricted from acting in a reasonably timely fashion on something.

So I think I don't think we need to create new processes or new vehicles for this. I think it's really just a matter of working at who best to communicate with council, where we're just, I think, finally coming to understand a bit better the scope or the role of the council liaison. Certainly, it seems to me that, within that newly drafted framework of what a liaison does, that's a tool that's probably been underutilized.

So those are my thoughts. Happy to answer any questions anyone has.

JEFF NEUMAN:

Thanks, Heather. I think that's right. I'm not sure it's going to be someone from the SPIRIT group coming to the council to say, "We want to take up an issue." I think it's more likely that someone from the community would come to the council and say, "Hey, we think the SPIRIT team should take this up." It would be for the council then to decide under its power to raise an issue with the SPIRIT team whether it does so. So I think it's from the point that someone in the council, a councilor, becomes aware of an issue it wants the SPIRIT team to address.

The question is, what is the threshold to raise the issue to the SPIRIT team? The guidance process does talk about a threshold of an affirmative vote of more than one-third of each house or more than two-thirds, but that's actually greater than a threshold just to raise an issue for PDP purposes. That's probably because, in the guidance process, you're actually going to constitute a group, not just raise the issue for an issues report.

So this group is unique. It's closer to implementation than it is – well, not closer. It is implementation more than it is policy, so it is a little bit different. It's this hybrid between the guidance process and an implementation team because, technically, under the existing operating procedures and bylaws, once a policy goes into effect, there is no implementation team. The implementation team is done. We're creating this other group to help the GNSO, ICANN

staff, and the ICANN Board with issues that arise after the program. So it's not exactly within one of the existing models.

Anne, please?

ANNE AIKMAN-SCALESE: Thanks, Jeff. You can hear me, right?

JEFF NEUMAN: Yeah.

ANNE AIKMAN-SCALESE: Okay. I think we do need to distinguish between two different points. I think Heather's point on keeping things informal really goes to the timing of just raising an issue because a lot of the bullet points under this question of raising an issue relate more to voting on where the issue should be handled. So raising an issue should just be informal, as Heather described, and could, I would think, be brought up by any GNSO Council member.

But the question of a vote on how the issue should be handled and whether it should be the SPIRIT team and what percentage it takes and whether it should be or whether it should go into an input or guidance process or EPDP is a different threshold question.

So there are really two issues here. One is who can raise an issue. Maybe it can be dealt with informally, as Heather described. The other is just making sure that we don't create a system that, in essence, results in a bunch of conflicting motions at council and

somebody moves it and it goes to the SPIRIT team and the other person moves it to go to the input process and another person moves it to go the guidance process. We have to make sure that these existing annexes are taken into account and how they interact with what we're proposing. There are two points in time. One is raising an issue (and raising it informally, as Heather said). The other is what it takes to get it to the SPIRIT team by way of vote. Thanks.

JEFF NEUMAN:

Anne, we're trying to look at this issue from the SPIRIT team perspective, not the GNSO Council perspective. There's already two ways that an issue can be brought to the SPIRIT team. One is by ICANN staff directly. The other one is by the ICANN Board directly. If the GNSO Council wants to bring an issue to the SPIRIT team, that's what we're starting with the assumption with: that the GNSO Council wants to bring an issue to the SPIRIT team. How does it do that? So we're already past the notion of where the GNSO Council wants to send it. There's going to be deliberations within the council as to whether it wants an issue handled through its guidance process, through a PDP or whatever. But what we're now saying is that, for whatever reason, the GNSO Council believes it should raise this particular issue to the SPIRIT team.

I don't want us to get into the politics of infighting within the GNSO as to where they think the appropriate place is. I think we need to start from a place where the GNSO Council wants to raise an issue with the SPIRIT team. Otherwise, we're going to get way caught up in forcing the GNSO to pick one method or another. I

hope that makes sense. I don't want to get into the politics of whether the GNSO decides to raise it with SPIRIT or someone else. I want to start with the assumption that the GNSO wants to raise it to the SPIRIT team. Hopefully that makes sense.

ANNE AIKMAN-SCALESE: Just to follow up then, Jeff, you'd have to be specific then that council has elected not to invoke one of the processes that is stated as being in first place because you'd have to then state that the council at this point will have already determined that one of those processes is not going to apply because what's really going to happen as a practical matter is that somebody is going to raise it at the council level of a discussion and then there will be differing opinions about which way to go on it. I don't think that's talking about politics. I think that's being clear about procedures and being practical about how issues will come up. Somebody will raise it, it'll come up for discussion, and people will talk about should it be one of the annexes or should it go to the SPIRIT team – this practicality of it.

JEFF NEUMAN: Yeah. Thanks, Anne. That's right. They will talk about that. The way it needs to be presented to the GNSO Council is that the SPIRIT team is experts on the implementation of the New gTLD Program, and, if the council wants to refer to them, it's a tool that they have.

ANNE AIKMAN-SCALESE: Okay. Then we just need to rephrase this as how does council send an issue to the SPIRIT team because it says “raise an issue.” So maybe it’s just a semantics things. Or, “How can each of these groups send an issue to the SPIRIT team for ...” We have to distinguish between council just discussing the issue and council sending the issue to SPIRIT. Thanks.

JEFF NEUMAN: Yes, Anne. I think that does address it. I think that’s right. So it’s really, how can each of these groups submit an issue to the SPIRIT? Then we don’t have to talk about—

ANNE AIKMAN-SCALESE: Yeah, that makes sense.

JEFF NEUMAN: Okay. Heather?

HEATHER FORREST: Hi, Jeff. Now I have a thorny question, which is – Steve, I’m going to leave you, because I think you’re driving, right there at #5 – in the questions there around council, I can see this with the very recent experience of having dealt with how the GNSO carry its responsibilities as an Empowered Community member. There are some really hairy questions around the mechanics of how issues get raised at council. These options that you’ve got here – one councilor, one constituency, one SG threshold, and so on and so forth – are tricky. I think we need to have a thought here as to the

relationship between SGs and Cs and the Council (the relationship between, let's say, councilors that represent an SG or C) – in other words, a pure mechanics question. If you have a question that comes from a constituency or a stakeholder group, is there a reason to differentiate the two? Does that happen through a councilor who represents those groups, or does it happen through any individual? If so, do they do it too? Do we send up an e-mail address to the Secretariat? How does just anyone who's not a councilor know how to communicate with the council? And so on.

So I think there are all kinds of issues here. I know it sounds like getting into the weeds, but I think, just based on recent experience with this stuff, to the extent that we are going to specify, there's probably no halfway house, Jeff. Either you leave it open and you let council figure out for themselves or you draft it done pretty precisely. Sorry if I've gotten us off track with real specific stuff. Thanks.

JEFF NEUMAN:

Thanks, Heather. These are options that I think, again, are just going to go into our recommendations. These are just the different options that were brought up.

Now, if I take off my Chair hat, just as an individual, I think, to say any one councilor could submit an issue to the SPIRIT team I think is not going to resolve the concerns we have, which is making the SPIRIT team susceptible to lobbying and overworking and things like that. I think there needs to be some sort of threshold for the council to forward over an issue to the SPIRIT

team, but I don't think it should be incredibly onerous because we do want the SPIRIT team to be able to provide advice on these issues. Now, again, it's non-binding advice. It's only advisory in nature. We'll talk about what happens once a recommendation is issued by the SPIRIT team. You'll see it's not very binding. So hopefully the fact that it's just advisory in nature makes it a little bit less of an issue in terms of the politics of it.

I think, as Cheryl is saying, the recommendation ... We don't really need to be too specific as to the design of council process, but we do want a process that's agile. It's timely. It's transparent. There's accountability. So I just think we need to, as a group, come up with a decision. I don't think going the one-councilor route is going to address some of the concerns that were raised the last time about making the SPIRIT team susceptible to lobbying.

So I lean personally towards one of the last two options, but certainly I think we do need to provide some sort of recommendation. Of course, this will be one of those questions in the public comment period saying, if we can agree on one, "This is the one we think. But what do you all think?"

Anne's hand is raised. I don't know if that's new or ...

ANNE AIKMAN-SCALESE: Jeff, I would agree with you that having one councilor be able to send an issue to the SPIRIT team is probably overkill. I think that it's a good idea to put this out for public comment. I think it might make sense to say that there's not really a difference between

saying one constituency and then one stakeholder group. Those aren't separate options. That would be one constituency or stakeholder group. Could you clarify that a little bit?

JEFF NEUMAN: Yeah. Those are all "or." We could say one councilor or we could say one constituency or we could say one stakeholder group or we could say the same threshold as raising [inaudible] [PDP] or we could say the same threshold ... I'd like us to propose one and then put it out for public comment to see if there's agreement. I don't want us to send, to the extent possible, open-ended questions. I'd love for us to take a position.

ANNE AIKMAN SCALESE: The issue I have with your "or" is, for example, that I[P]C is a constituency but registries are a stakeholder group. If you take that approach, it could be either one constituency or one stakeholder group, right?

JEFF NEUMAN: Yeah.

ANNE AIKMAN-SCALESE: One would not exclude the other. It'd be either one constituency or one stakeholder group. It wouldn't be one or the other of them. That wouldn't be an "or."

JEFF NEUMAN: Well, why not? Again, there's-

ANNE AIKMAN-SCALESE: Because if a stakeholder group is the only choice, that would mean that every constituency is locked out from raising it. But you don't really mean that, do you?

JEFF NEUMAN: I do in the sense of ... Again, I'm not picking a solution here. These are the different options. One, we could say that the IPC alone, for example, could raise the issue, or we as a working group could say, "That's not enough. We think it should be the whole Commercial Stakeholder Group (or the whole Non-Commercial Stakeholder Group, or the whole Registrar Stakeholder Group, or the whole Registry Stakeholder Group)." I understand that the registries and registrars are stakeholder groups that only have one constituency, but I'm not suggesting what the answer should be. I'm just putting out options that the working group could pick. Anyway, don't expect an answer right now, but do think about it so that we can come up with a proposal.

All right. Then we move on to #6—

ANNE AIKMAN-SCALESE: Anyway, I did just want to say that I agree that it probably should not be just one councilor. Thanks.

JEFF NEUMAN:

Okay, thanks. So the decision-making process of the SPIRIT team. Keeping in mind – it’s important – that the SPIRIT team is only intended to be advisory. It’s only providing guidance to either the org, the Board, and the community, such advice and/or guidance shall not be binding on any party and does not replace any other method of providing advice or guidance under the bylaws.

So, keeping all of that in mind, we could say that the Chair, in consultation with any Vice-Chairs, will assess – or not “could say.” We should. This is the proposal. Sorry. The Chair, in consultation with any Vice-Chairs, will assess the level of consensus within the SPIRIT using standard decision-making methodologies outlines in Section 3.6 of the working group guidelines. I think we talked about that last time.

Now, where this deviates a little bit from the working group guidelines is this third bullet point, which states that: Though the SPIRIT shall strive towards achieving consensus on all advice and/or recommendations from the SPIRIT, so long as the level of consensus/support within the SPIRIT is reported using the standard decision-making methodology outlined in Section 3.6 of the working group guidelines, consensus shall not be required for the SPIRIT to provide input on any particular issue raised.

In my own words, what we’re saying is that, even if the SPIRIT team is not able to get consensus on an issue, they should still report how it came out on an issue to the GNSO Council or to the Board or whoever is asked the question. We shouldn’t prohibit the group from issuing its advice along with an accurate report of the

level of support for it simply because it doesn't achieve consensus. So that's where it deviates a little bit.

Anne agrees with that. So I hope that makes sense because, in the past, what we've said is that certain working groups shouldn't even make recommendations unless it's got a consensus. I want to be clear that this group should be issuing its guidance and/or advice regardless of whether it's got consensus, so long as it accurately reports the level of support.

Kathy, please?

KATHY KLEIMAN:

We're putting this out for public comment, which is great. Jeff, I think your summary in your own words is much clearer than what the bullet points says. I think, if we put out this bullet point, people will ask what it means. That was the question I had when you read the text. So I think we have to clarify what's here and include, I think, the divisions. If there is not consensus, I think we should require more than just reporting the division but rationales so that whoever gets the recommendations knows why there wasn't consensus and for what reasons. Thanks.

JEFF NEUMAN:

Thanks, Kathy. I think a lot of that is in Section 3.6: the working group guidelines. There's different designations in there. It's not just unanimity and consensus or rough consensus. There's also majority support. There's other levels that are defined in there. So I think – we'll go review it – that section does specify that certain

views should be passed through if those are the levels of designation. But we'll go through that—

KATHY KLEIMAN: Can I follow up then?

JEFF NEUMAN: Yeah.

KATHY KLEIMAN: We're different from the working group here because, with the working group, we're talking about recommendations. Here we're talking about something much less formal. This is an IRT. So a working group would go out, it would get public comment, and it would seek input. This SPIRIT group may not be doing any of that. So I think it's all the more important that this group, if it is divided on its advice – that's what we're talking about (if it doesn't have consensus) – has to be very clear about why because it's not coming back then with advice. It's coming back with a split recommendation.

JEFF NEUMAN: Thanks, Kathy. We'll look at Section 3.6 and send it out and see if we need to put something else other than Section 3.6 if it doesn't adequately cover the rationale or enough explanation about the division. So we'll do that.

Now the questions is, now that we've come up with this guidance, who should get the guidance? Because, if the issue was

forwarded – I’m trying to use that terminology now – by the ICANN Board or ICANN org, should it always go to the GNSO, or can it go straight to those organizations that forwarded the issue? So this is what a proposal ... It depends on who forwarded the issue. So if we can just make that change where it says “raise that issue” in all places to “forward an issue.”

So the first bullet point here: In general, all advice/guidance issued by the SPIRIT should be delivered to the entity that raised – it should be “forwarded,” right – the issue under the above section. Where an issue was forwarded by a party other than the GNSO Council, the GNSO Council should be provided with a draft of the advice/guidance prior to such advice/guidance being delivered to the party that forwarded the issue.

Then the question is, what is the role of the GNSO Council where the issue was forwarded by a party other than the GNSO Council? So this was, let’s say, from the Board or the staff. Upon being provided with a copy of the draft advice/guidance, the GNSO Council shall, within no greater than 60 days – again, this is just a proposal – approve the delivery of the draft advice/guidance to the party raising – or forwarding, I should – the issue. The GNSO Council could raise issues/concerns regarding the advice/guidance for the SPIRIT to address prior to delivering the advice/guidance to the party that initially forwarded the issue. Or it could elect to remove the advice/guidance from the SPIRIT process in favor of implementing one of its own policy processes under the GNSO operating procedures.

In other words, it could say, “We don’t like how the SPIRIT team did this. We think it’s more appropriate to address within an

existing GNSO process. So thank you for your work, SPIRIT team, but we're going to take it from here," and then, of course, let the party that forwarded the issue know the rationale for its decision.

Justine, please?

Justine, are you there?

ANDREA GLANDON: Justine, this is Andrea. I see that your mic is open, but we are not able to hear you.

JEFF NEUMAN: Yeah. Justine, if you could maybe type in your comment. Sorry.

While we're waiting for Justine to be able to get in, does anybody think that there are any other options for the GNSO? Again, this was an issue that was forwarded by the Board or the staff. The reason why we're proposing it goes to the GNSO Council first anyway is because the GNSO Council does have this supervisory role and should be able to step in if it feels like it should handle this through one of its own processes or if it's got concerns for the SPIRIT team to do some additional work.

Justine, are you in yet? Or are we still having issues?

Okay. Justine is saying, "Don't want to break up the momentum. I wanted to go back to Point 5 and say a remark before the bullets with respect to timing being of the essence." I think that is helpful, Justine. I think Anne raised that as well in terms of putting

something in to make sure that this is intended to be done expeditiously.

Can we go to #8? I see that we have a time check, but I do want to see if we can – sorry, not 8 but the second part of 7. Then we can stop after this and go to AOB. The second part is: If the GNSO Council was the party that forwarded the issue in the first place, then essentially SPIRIT team will just provide its advice and guidance to the GNSO Council, and the GNSO Council just does whatever it normally does with information it gets. So it basically can do whatever it wants, I guess.

Does that make sense to everyone?

I'll take that as everyone is exhausted or it makes sense. We will start with #8 on the next call. There's only a few questions left. These are important so please do comment on the list on these questions so we don't have to take the full time on the predictability model on the next call.

Jim raised a question on the list about a call that the working group leadership team – Cheryl and I – had with Goran, Cyrus, and – I can't remember if there was anyone else. There probably were other members of the GDD team on that call. Council leadership was on the call. So that was Keith, Rafik, and Pam. Or at least there were all invited. So I'm not sure they were all on the call. Then two Board members: Avri was on the call, as well as Becky Burr.

Essentially, it was really the first call of what I think will be become a series of calls with the leadership of the council and the

leadership of the working group team. Ultimately, once the working group team is done, I guess the IRT leadership team [will] just discuss where they believe they are on the different items to help with planning for the next steps to make sure the Board is aware of any particularly thorny issues that may come up during the discussions to flag the timing as to when the Board is likely to get certain issues. I think, as we get closer to finishing our work, you do see the Board getting more letters from different advisory committees and supporting organizations and other interested parties. So this is really just a way of opening up communications between the leadership of the PDP/IRT (when that's formed), the Council, and ICANN, who has created an executive team to start the planning processes for implementation of the next round.

So there wasn't really much of anything on substance of the issues. I don't think there will be much substance discussed on these issues unless we want to flag something. Let's say, for example, we see that this working group is going to come out with a recommendation that we think is at odds with GAC advice. We may want to flag that for the Board so it's aware and not surprised when it sees that final recommendation. Those are the types of things I think are really just to help coordinate the activities, as Cheryl says, and to just flag any issues so that we're in closer communication.

Jim, does that answer your question?

Let me open it, though, to Cheryl and Avri, if Avri is still on the call, if Avri wants to add anything. Actually, I think Avri might have dropped. Oh, no. Avri is still here. Sorry. if anything else wants to add anything ...

Jim says on the chat, “So no issues were discussed on this one but maybe on future calls?” Yeah. This was a planning meeting to set up this coordination call. I’m not even sure I asked the question earlier to staff as to whether another call was set up already. I don’t know. As Cheryl says, it was a starter call. Even if issues are discussed in future calls, it’s going to be more for the purpose of trying to flag issues in line with what we discussed. But, to the extent that anything of note comes out of these calls, Cheryl and I will absolutely bring it to the attention of the working group.

One of the items, I think, that we will discuss – I can’t remember if we discussed it on this call or not, but Cheryl and I did discuss with the team our current thinking that we just went over now on the public comment period because obviously the letters from the GAC and the ALAC went to the Board. So it wanted to know our current thinking on the comment period that we’re going to have. Cheryl and I reported back that we would discuss this issue with the working group, get buy-in on the approach, and then let the Board know how we were going to conduct that comment period.

CHERYL LANGDON-ORR: Avri’s hand is up, Jeff.

JEFF NEUMAN: Great. Sorry. Thanks. Avri, please?

AVRIA DORIA: Thanks. [inaudible] by you almost, and Cheryl encouraged me to speak up. I guess what I wrote in the chat was really, “So we can avoid as many surprises as possible.” The Board and GDD and other execs have started looking forward to this thing that’s coming. How do we get ready for it? You guys are in the process of pulling it all together. So it really seemed a good time to start communicating, talking, and making sure that both sides understood what was going on without getting surprises. Thanks.

JEFF NEUMAN: Thanks, Avri. I agree. I think that benefits everyone: if we can avoid surprises.

One thing to note, too, is we did have a request the GAC – I’m sorry. I’m forgetting the name of the small group that they had set up. During the last ICANN meeting, they also wanted to know, as we got closer to final recommendations, if we could help the GAC understand where our recommendations may deviate from their advice. They did ask us if we could give them a heads up. We haven’t started really looking at that or working on that, but that is just something that the GAC did mention to us as well.

Anne, please?

ANNE AIKMAN-SCALESE: Jeff, I just thought that the limiting language about at least one participant was a little too narrow and that it should just say, “should include participants from the original PDP, WG, and IRT.”

Steve is pointing out to me that normally, if taken from the IRT guidelines, that says at least one participant, I guess. But I think the emphasis should be on including people with the background and the knowledge on both. Obviously, the IRT will do things. It shouldn't be one or the other. It should be both. And I think it should be members from the original PDP, WG, and IRT, not just one. Thank you.

JEFF NEUMAN:

Thanks, Anne. We'll actually get into this on the next call, but one thing to just keep in mind as well is that this is a standing committee. So two years down the line or three years down the line, the people that were on the original PDP may or may not be relevant to the work three years from now. Just something to think about. We will absolutely get into this in more detail on the next call, which is Thursday. We're going to start at #8, which is the composition.

I'm just waiting for someone to post the exact time. I don't know if they already did that, but you should have the calendar invite. So hopefully you have the calendar – 20:00 UTC. Thanks, everyone.

Thanks, everyone, for a good call. Let's keep the dialogue going. Let's keep it on e-mail as well. Let's look forward to making progress and getting the year kicked off and running. Thanks, everyone

[END OF TRANSCRIPTION]