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ICANN Transcription

New gTLD Subsequent Procedures Working Group

Thursday, 09 January 2020 at 2000 UTC

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JULIE BISLAND:	Right. Good morning, good afternoon, and good evening. Welcome to the new gTLD Subsequent Procedures Working Group call on Thursday the 9th of January, 2020. In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you're only on the audio bridge, could you please let yourself be known now? Okay. Hearing no names, I would like to remind everyone to please state your name before speaking for transcription purposes and please keep your phones and microphones on mute when not speaking, to avoid background noise. With this, I will turn it back over to Jeff Neuman. You can begin, Jeff.
JEFFREY NEUMAN:	Thank you very much, Julie. Welcome, everyone. Good. We have about 30 people, so that's good. Our agenda today is very similar to the last time. We are going to spend some time today, hopefully, finishing up the predictability framework and then going into string contention mechanisms of last resort. There was a flow chart that

was sent – I think it was attached to the e-mail with the agenda – that attempts to lay out the flow of the predictability framework, at least, as it existed prior to the last call. So if there were changes we recently made in the document as a result of the call then those may not be reflected in the flow chart. But I think it's still pretty much the same.

With that, let me just ask if anyone's got any changes to their statements of interest that they would like to report? Okay. I'm not seeing anyone in the chat and not seeing anyone raise their hand. Okay. And then, if anyone else wants to add anything to the agenda, while you're thinking, we expect to send around at some point next week, hopefully, a revised work plan that has got some more specific dates and things of what we're going to do from now at least until the ICANN meeting and beyond in terms of getting a document out there for public comment and ultimately getting to a "final" final report to deliver to council.

Okay. I'm not seeing any hands raised for any additional items so let's jump into the proposed answers to the open questions document. While that's coming up, this was a document that, for those of you that may not have been on the call last time … What we did is we took the predictability model's larger document that we were working off of and reduced it. Well, we took the open items from that document to just try to focus us on the open questions rather than going through the full document and getting distracted by all of the details in there and to also not cover things that we think are closed out.

Actually, if you could scroll up a little bit? Essentially, we talked about a whole bunch of things with what we're calling "the SPIRIT

team," which is the Standing … Well, now I'm totally forgetting what it stands for. But basically, it's the Standing IRT group that we're creating to provide advice and guidance to the council. We talked about its role, the role of the council, with respect to the SPIRIT team, who can raise an issue. We talked about how instead of raising an issue we are changing it to "forward issues" rather than "raising issues," to avoid the confusion with the Policy Development Process terminology and exactly how these parties that can forward issues to the SPIRIT team can do it.

And then, number five was that once the SPIRIT team has these issues, how does it go about making its determinations? And then, we talked about how the advice/guidance gets to … What the GNSO Council's role is with respect to that advice and guidance, especially in areas where it was not the party that forwarded the original issues. And then, I think where we left off was sort of in the middle of number seven. I'd like to actually start there as opposed to eight.

I should also say that as part of the call last time we did talk about that some of the sources of this information come from different already existing procedures that the GNSO Council or the community have actually done in the past. So it's sort of taking some things from the GNSO Working Group guidelines and other things from how a GNSO guidance process is supposed to work or how … I think one of the things we used as some influence is the Customer Standing Committee. All sorts of inspirations from already existing policies were used to create this.

So with the composition, what we brought in was something that is generally taken from the notion of IRTs themselves, which is that

the SPIRIT team should have at least one participant of the original PDP Working Group team and the IRT, who could provide insight into the original reasoning. There were one or two members last time that raised the question of whether we should encourage more participants or not. That's certainly something we can discuss. We really want to emphasize that membership in this group should be constituted not just of representativeness but also just as important, if not more so, is the fact that the participants have some sort of knowledge, experience, and qualifications to be on this group and tackle some of the very unique issues that it's likely to have.

That being the case, I just wanted to stop here to see if there were any additional comments before we go on to number eight. As Greg points out in the chat, as it says in the current IRT, the GNSO operating guidelines with respect to IRTs, it says a minimum … Or at least one. So it obviously could be more than one. The other thing that I brought up at the very end of the call last time was that we're talking about a standing committee so yeah, the first Standing Committee is not going to be that far removed from the PDP and IRT processes.

But when you get into three/four years our, five years out, this committee is still going to be standing. And at that point in time, do we really need at least one participant from the original PDP/IRT? Should we say something like "for the first five years"? I'm just throwing that out there. Should we say, "For the first few years a Standing Committee should have at least one participant from the original PDP"? I think at some point that becomes no longer necessary, after some period of time.

And so, Greg is saying, "You might want to sunset that after two to three years." I think that makes sense but certainly, we want to hear from others. I see Chris has his hand up. Christopher, please.

CHRISTOPHER WILKINSON: Good evening, everybody. Happy New Year. Jeff, I apologize if I was slow on the uptake during the previous call but it was 04:00 in the morning. I would just make two comments at this stage, having reviewed very quickly the text that you have sent us. First of all, it is not at all clear to me, and might be to others, what the difference is between the SPIRIT concept and the IRT concept. Why do we need both? I don't seek to answer that question and I don't expect you to answer it off the cuff but the documents don't make that clear at all.

Secondly, I'm beginning to wonder what value-added we get from the SPIRIT concept, notably because what you've described are very severe filters between an issue being raised and it reaching ICANN for action. I don't think it's right to set up an organization where the ICANN Board, the ICANN staff and the GNSO Council are in some sense the exclusive of filters for taking any issue up. I think that the main effect of that is to exclude from taking issues up any external parties – external to ICANN or indeed external to the board and GNSO. I just wanted to express my doubts about that and hope that during the course of the next few conference calls there might be some clarification. Thank you.

JEFFREY NEUMAN:	Yeah. Thanks, Christopher. I actually don't think these are difficult questions. The first question of "what's the difference between a SPIRIT and why do we need it when we have this notion of an IRT?" An IRT, an Implementation Review Team, comes into existence after a policy or a set of policies are approved by the ICANN Board from the GNSO or that originally generated within the GNSO. But the IRT's work ends when the policy is actually implemented, which in this case will be when the new gTLD program Applicant Guidebook, in the final version, is published.

At that point, there is no notion within the GNSO or even the ICANN world of any kind of post-launch implementation advice team. Pretty simply, the reason for this new team is because it is, in fact, new and would be constituted after the policy is actually implemented. So that's the rationale.

And the filters that you're calling are in place because this is a group under the supervision of the GNSO. It's meant to report to the GNSO Council and to the … Essentially, it can issue advice and guidance to the board and the staff but the GNSO Council has a role in that. An oversight role. So this does not exclude any other mechanism of providing advice or guidance to the ICANN Board through any other was that any other supporting organization or advisory committee would normally use to get information up to the board. It's just a tool for the GNSO Council to help it and the GNSO community understand and deal with the issues that arise after the launch of the program.

Hopefully, that's good. If not, there is some more information in the larger document that I'll ask staff to post. And then, I see Kathy and Paul. But if we could stick to this number seven, here, and comment

on number seven as opposed to the whole overall concept of the SPIRIT team, that would be great. Kathy, please.

KATHY SCHNITT: Except I can't. Commenting and following up on Christopher's comment, we're missing an area here, Jeff, about concerns. It has been dropped off over time and I don't think it should. There are very, very deep concerns about this. That it will be because of its length, because of its ongoing work, that this group … And I think we need a new section, frankly, at the bottom, that this will be dominated … The concern is that this will be dominated by contracted parties – people who are paid to be part of this process. Non-contracted parties don't have the time and ability. We've talked about this ad nauseum but it's not reflected here.

I think we need a new section and one where we set out a one-year review or a 1.5-year review, not just by the GNSO Council but by all stakeholder groups so that they can see what advice has been given and what kind of divisions there were. Because now, we're talking about majority or consensus and we're redefining "consensus" as "majority." I think we have an obligation to flag that this is new, that there are deep concerns within the working group, and set out a review process for this, as we did with the URS and other things. I'd like to request that that be added to the end of this document.

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JEFFREY NEUMAN:	Okay. Let me go to Christopher for a quick response and then if there is anyone else in the queue please raise your hand now and we'll move on. Thanks.
CHRISTOPHER WILKINSON:	Thank you, Jeff, for giving me back the floor very, very briefly. First of all, I would suggest that the simplest solution would be just to extend the IRT model. I don't see why the IRT should disappear in a puff of smoke when the program begins. Secondly, this is all very well, advising the GNSO Council, but as most of you by now will have gathered I'm rather skeptical about the GNSO. I think it is a highly partial subset of the ICANN community and the global interest in the Internet and particularly the domain name system. I do not want to see more power given to the GNSO Council to effectively veto or block issues that are inconvenient to them. Thank you.
JEFFREY NEUMAN:	Okay. Thanks, Christopher. I am going to move on. We'll note your comments. There's nothing in here that gives the GNSO any more power. Let me just read Paul McGrady's comment: "I agree with Christopher about setting the SPIRIT up, not because of the reasons that he puts forth but because people could still take their issues to the board/GAC. I don't see what the point of this SPIRIT is. It just looks like another place for people to lobby for post-Applicant Guidebook changes."
	Okay. I'm going to ask Paul if you guys could listen to the last call we were on. I know you guys can't make all of the calls but I don't

want to go over areas that we've already gone over. It's not to dismiss your input but we have already covered these types of things. I note Paul and Christopher's comments. I note that Christine has given a plus-one. However, if you listen to the last call you will hear the things that will, for example, limit the ability to lobby and why we go about saying that this can't be the exclusive place where issues can be brought. Please, do listen to that last one. I'm not going to cover it again. Please read it and comment at that point. We'll keep that on the list.

We are going to move through the rest of this assuming there is a SPIRIT team. The next part is at the end of number seven, which is, "The statement of participation should include all of the usual elements of a GNSO statement of interest. Plus there's additional information that the GNSO Council may see fit, including but not limited to …" And there's just a couple of things in there that we sort of took from … For those of you participating in the Name Collision Analysis Project, there was a more in-depth statement of interest which they called "statement of participation," that they wanted certain information disclosed in addition to the normal statement of interest things. And so, this statement of participation is meant to include those additional elements which are important for others in the community to know about these people that are participating in the group.

Okay. Any questions on that element? Okay. Anne states, "I think SPIRIT is meant to address issues more quickly in some cases." Right. So these things that Anne brings up are things that we discussed on the last call. Please, again, if you have questions

about the stuff that's already covered you should hopefully get those answers from that past call.

Okay. Like all groups that are set up, policy groups, IRTs, or other kinds, there's always some sort of statement about getting additional subject matter expertise. And so this is, I think, something that's generally in the working group guidelines anyway. I don't think it's too controversial, there. But it's something that, again, comes from the working group guidelines.

Now, there are questions. Donna says, "Lukewarm about the notion of SPIRIT but I really don't understand why we're being so prescriptive about things like composition, length of service, etc." Okay. Justine states, "Is it mentioned about observers?" I don't think we are specific about that. I'm not sure we necessarily need to be. That seems like an element … I don't think that there's an issue one way or the other of having it or not. I guess it might come up in the notion when we take about, in a little bit, confidentiality.

Let's put a pin in that one until we're in agreement on the confidentiality or lack of, there, because I think it might relate to that if it's fully open. And, "No, there's no confidential information. It would not be an issue to have observers. But if there are some elements that might be confidential, they would have to factor that in."

Rubens says, "My IRT experience suggests that being prescriptive is good." I think that's right. It's funny because we do these calls and in the past few calls people have said, "Well, we need to really understand the role, the term, who's on it," and now that we've put some specifics around it there are others that say, "Well, I'm not

sure why we're being so specific." I'm not really sure how to address those comments. You can't satisfy everyone, I guess.

Greg says, "In my opinion, the prescriptiveness comes from trying to solve for various problems, including the ones just raised on this call." Thanks, Greg. Yep.

Okay. Because the SPIRIT team is meant to be a Standing Committee and because they should have some semblance of knowledge, expertise, etc., there should not necessarily be too much emphasis on rapid turnover. There should be some sort of longevity of members that serve on this but we don't want people on this thing forever. Encouraging some level of rotation is fine.

Christine states, "But is it indicative that we're just creating a new bureaucracy and introducing new problems?" Christine, on this one I don't think we're creating a new bureaucracy or introducing new problems. I think we're giving a standing tool or Standing Committee for very specific issues that arise after the program begins. In 2012, there was no process, no group, no mechanism to provide input. ICANN staff just on its own decided how each individual issue was handled and whether it was handled or not.

Frankly, the board, in a number of cases, took several years to just get to certain issues. But this is a group that's meant not to provide any kind of binding advice or binding recommendations. It's supposed to be a tool for the GNSO Council and the community to get quick, efficient advice from those that know what they're doing on the issues to help the GNSO Council understand the scope of the issue.

And if the GNSO Council then decides, "Oh, this is something that's bigger. We should do a PDP on it," or one of its other processes, it certainly can and should do that. But if it's something that's merely operational, that is fairly easy and doesn't necessarily have a huge impact. It shouldn't wait two to three years for the ICANN Board and staff to finally get around to it.

I think there is a ton of benefits. We've talked about this on many calls. I'm just going to leave it at that. If you still have questions after the call, I'd be glad to provide the countless number of comments that supported the creation of the group in the previous discussions we've had on this. And as [Eileen] said, "Because the systems in place last time did not ensure predictability."

Paul says, "Well, wouldn't it be more simple to say 'no changes' and take your complaints in the next review?" Paul, that would be awesome, if we could say that, but we know we're dealing in a realistic world where sometimes there are changes. And also, please keep in mind that we are not talking about running one round, stopping indefinitely for a review, and then going to the next round. We're talking about predictable rounds one after the other in predictable time periods where it is not contemplated that we'll do another big review period in between those rounds. This is another way when changes have to be introduced into the program for advice and guidance from a standing group of experts. There we go.

Kathy is saying, "I think we should reflect the concerns so that future ICANN participants know how new and revolutionary the SPIRIT is." Thank you, Kathy. We'll take that in. I think what we're trying to do is not have a couple-thousand-page final report. But if we do

want to have some supporting documentation and maybe even a memo on this group, that might be something we could think about putting together for if someone wants to read more.

Christine says, "I guess I think we're trying to solve for Y having already amended the guidebook to solve for all of the random issues that have happened." Christine, this is an actual acknowledgment that we know that issues will arise, as they always do, because not everything can be solved for and we're giving a predictable process for issues to go through, which was not there in the first round. I, again, will just urge everyone to go back to the last few calls to catch up to where we are.

Okay. Any questions or comments on the "length of term" section? Again, we're talking about staggered terms as in the second bullet point. Steve, please.

STEVE SHENG: Hi. Thanks, Jeff. Hi, all. Sorry to join late. Just looking at some of the comments in the chat, I guess I wanted to point out a nuance for the predictability framework that maybe some others have noticed. The way that I, at least, recognize how the predictability framework is established, is that there are two pieces. One is the triage mechanism that helps to determine how an issue is resolved, like the severity of the issue and what manner in which it should be resolved.

And then, the second piece is who wields that sorting triage mechanism. That's what I think we're looking at now, which is the SPIRIT in front of us. I'm not sure if that's a helpful distinction that

are potentially two pieces. There is, "How do we determine how an issue is treated?" versus the secondary thing that we're looking at now, which is the SPIRIT, who I envision – and I think everyone envisions – as the party that is utilizing that framework. In my head, when I came to that realization it was a little bit of a helpful revelation. But I'm not sure if everyone is clear on that so I just thought I'd share that thought. Thanks.

JEFFREY NEUMAN: Thanks, Steve. That is helpful. This is part of that larger document that we've taken these open issues out of. It certainly is a helpful way to think about this. Okay. All right.

We're going to be moving on to the next one. There was some discussion over the last several weeks about when someone serves on the SPIRIT team, are they doing it as a …? They may be appointed through a representative fashion. We may say that members of each group should participate. But are they appointed or serving in a representative capacity, or in their independent capacity?

I think, for here, when we have to assess the level of consensus it will be to represent the formal position of their stakeholder group, not their individual user positions. This is similar to the ePDP charter that currently exists. Okay. Someone's got their line open. If you could mute their lines if they're not speaking?

Conflicts of interest. Now, because of some of the … Oh, I actually see that Alan's got his hand raised so let me go to Alan and then I'll go into conflicts of interest.

ALAN GREENBERG: Thank you. I'm on number ten. I think we need to be clear when we're saying they are representing the formal positions. Does that imply that those organizations must make formal statements and take formal decisions, or that they are deemed to be presenting and therefore it's up to their organization to make sure that they have a process in place to make sure that they feel represented? There's a difference. And we want to make sure that we're not adding bureaucracy to the process if it's not necessary.

JEFFREY NEUMAN: Let me turn around that question and say that I know that you're in the ePDP. How does it operate there?

ALAN GREENBERG: It doesn't. In matter of fact, you regularly get people saying, "Make me a comment which is different from some of the other people in their group," and it does happen. Now, if we're coming to a formal consensus call then they are supposed to be representing it but there's no verification done. There's nothing. As an ALAC member, I may or may not go back to the ALAC and ask the specific question.

Now, the ALAC may put me in trouble if I don't do that. But I'm just a little bit worried saying it must be a formal position of the SO and AC as opposed to that they are expected to present the formal representative positions of the AC and SO. Maybe I'm making a big thing out of something that other people don't care about but I just worry that we've seen times in other groups, including but not limited to the ePDP, where someone has challenged proof that the

ALAC or the Registries Stakeholder Group made that decision. I think we want to avoid that if we can.

JEFFREY NEUMAN: Yeah. And I think, Alan, that that does make a lot of sense. I may propose that … I think this is in here to say that where there's a difference between how the individual member feels and how a stakeholder group [inaudible] feels on where it differs from a known position of the group, that the person serving on there is expected to represent the known position of the stakeholder group or constituency. I don't think it was intended to say that they're always required to get the formal position.

If we word it in that kind of way, where it's not that they have to go back to their groups, it's just that where they know or have reason to know that their position may differ from what the stakeholder group or constituency, or whatever they come from, is different, then they're expected to represent the known position of those groups as opposed to their own individual one.

ALAN GREENBERG: Isn't it simply sufficient to say that for consensus calls the SPIRIT presumes that people are presenting the positions of their group and that it's up to them to decide how they have to do that and up to their own sending body to decide how they want to manage that? I think SPIRIT needs to presume that this is a position. If you're there as a registry representative then you're presenting the positions of the registries. I think it's reasonable that SPIRIT can presume that and I think that's what we need to say. How that's

managed by the group that sends the person, I think, is up to them and what rules they put in place.

JEFFREY NEUMAN: Yeah. Okay. Thanks, Alan. I'll go to others. I put my hand up but then I accidentally took it down. I'm not sure why it came down. Putting on my own personal view, I actually had wanted people to be independent in this group. But it seemed like the last time we had this discussion I was overruled by that. It's one thing you could put people on from different groups so that they represent different interests but to make it more independent judgment that you're putting people on there because you know they're experts and they're trying to solve the issue.

ALAN GREENBERG: And if your group wants to put you on and give you free rein, that's up to them.

JEFFREY NEUMAN: Right. That, from my individual, personal perspective, was the way to go but it seemed like I was overruled a bunch of calls ago. I'm happy to go back to that originally held position. Let's see what Donna … She's in the queue.

DONNA AUSTIN: Thanks, Jeff. Donna Austin from NeuStar. The representative nature will create some problems. Alan mentioned that if somebody is there to represent the Registries Stakeholder Group then they

would represent all. And experience tells me that that will be near-impossible in something like the next new gTLD application process. We have considerable diversity within the stakeholder group now and it's going to be difficult to have somebody that represents all of us.

I think my preference would be for subject matter experts to be part of the SPIRIT team if we're going to go ahead with this because I think that would be a better option.

I'd also note that in order to be a member of the Registries Stakeholder Group, you have to be a contracted party with ICANN. And what we had previously, before 2012, was the Registries Stakeholder Group allowed potential contracted parties to be part of the new gTLD applicant group, which was part of the Registries Stakeholder Group. So we need to ensure that applicants who don't actually have a mechanism to be a stakeholder at ICANN yet can have access to this group as well or can represent on this group as well because they certainly would have a very important voice if there's a discussion about changing the manner in which an application is to be processed. Thanks, Jeff.

JEFFREY NEUMAN: Thanks, Donna. I think that's important. It's interesting. If there is a group like the NCAG again, that would be a fairly easy way to find someone or get a procedure in place to appoint someone. In the absence of that group, I'm not sure how someone could be appointed but I do think that that point of view should be represented on the group.

I guess the question I have is, are people more in favor of acting as individual contributors on this group as opposed to representatives but they're appointed there by the representative organizations? Again, that was my original take on this. I'd love to hear from others. Alan and then Christopher.

ALAN GREENBERG: Yeah, thank you. I made my comment in light of just refining the words that are there, not addressing the representative or independent judgment. If we're going back to that question then I tend to think that we should be putting people on here who understand the new gTLD … The gTLDs understand new gTLD process and understand policy. Because really, what we're trying to do here is that this group almost becomes a mini PDP. You need some level of representation, which I think comes from where they're appointed. But you really want to put people there who understand the issues.

I tend to side with putting independent experts appointed there by the various appointing bodies. And don't necessarily say they are representing the views because, as Donna pointed out, in some cases you're going to have very mixed views. There wasn't necessarily going to be an easy process by which you can address those and try to come to a single position. I tend to say to appoint someone you trust and let them do what they believe is right for the process, assuming we're reopening that question altogether. Thank you.

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JEFFREY NEUMAN: Yeah. Thanks, Alan. Let me go to Christopher and then Anne.

CHRISTOPHER WILKINSON: Thank you. Jeff, first I think I owe you a personal apology because by asking two simple questions we seem to have absorbed 40 minutes of the call. That was not my intention. First of all, I agree with Donna and Alan's conclusions towards independence for the members of this entity, though I still see no practical distinction between extending the mandate of the standing IRTs compared with creating a completely new system.

But finally, I think, as some of you have already gathered, that I'm very skeptical indeed of allowing incumbents to determine the policies for new entrants. This is not an appropriate model and it's not used elsewhere in economics and certainly in communications. Be very careful that incumbents are not entrenched in their power to determine the rules for new entrants. Paul McGrady, please note. Thank you.

JEFFREY NEUMAN: Okay. Some comments on incumbency. I think we've gotten all of these points. Okay. Let me go to the conflicts of interest. With the understanding that the role of this group is to issue guidance or advice to the staff and the board but that the GNSO Council is the supervising body over it, it could certainly choose to remove a subject from the SPIRIT team and handle it through one of the other processes because of all these things and the non-binding nature of the advice. It was determined that it was not going to be possible to find completely conflict-free members of this group and we

wouldn't necessarily want to exclude those with the knowledge and expertise involved in these issues.

But you have this catch-22. Someone who has the knowledge of the issues may also be conflicted in that they may be an applicant, provide financial support to an applicant, may be a consultant to applicants, objectors, or to those that provide public comments. You name it. If we had strict conflict of interest procedures we would have no one left to participate. All that being said, the focus then becomes just applying the ICANN bylaws and making sure that the statements of participation are up to date and have all of the information that the community deems necessary to be in there and that they're all disclosed and there's knowledge of where everyone is coming from. Of course, to follow the expected standards of behavior, as well. Oh, I'm sorry, Anne. I'm sorry if I skipped you. Anne, please go ahead.

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

JEFFREY NEUMAN: Yeah, we can hear you.

ANNE AIKMAN-SCALESE: On the conflict of interest topic, since you have just read that one – and I'm not sure I'm seeing the text clearly – we had stated, I think more than once, that this group should require a more specific conflict of interest statement than the general SOI for ICANN. That it would be more important to have additional questions with respect

to conflict of interest. I mean, things such as, "Are you an applicant?" That kind of stuff is going to be relevant to disclosing conflicts of interest in this context. I mean, I probably agree with the concept that disclosure is the way to go, especially that you need people who are knowledgeable. But you're going to need additional questions. We've talked about that more than once and I don't know if that's reflected here.

The other thing I was going to say on the earlier topic is that I agree with Greg's comment in the chat that if you have a representative-type appointment going on from various groups it's really up to that group and its representative as to how they want to operate on the SPIRIT and how much communication …

I mean, Alan observed this before. You don't really have a problem when you say that somebody's going to be represented and appointed. You don't have a problem about how because that's accountability as between the organization that appoints them and the individual. Lastly, however, it does not account for what Donna talked about where we need representation from people who are not members of particular stakeholder groups or constituencies. Thank you. I've tried to stay in my time limit. Thanks. Bye.

JEFFREY NEUMAN: Yeah. Thanks, Anne. We'll reflect all of that. I'm just also looking at some of the chat. Heather says, "Well, why can't we just create a council Standing Committee?" Again, this goes back a few months, Heather, so I'm sorry to … But there were many members that didn't want this to be yet another group of the council, and that the

councilors are not put on the GNSO Council to have this kind of expertise or to issue this kind of advice.

The committees you mention are all committees of councilors and only open to councilors. We specifically did not want that to be the case. The council is supposed to be managing the policy process. This was more for subject matter expertise, much like and IRT is before the policy is implemented. So there were some very strong concerns of not having councilors on there.

I'm just reading some others. Okay. "There are some committees that aren't councilors." Okay. Heather, you have the queue. Thanks.

HEATHER FORREST: Thanks, Jeff. I wonder if there has been a big misunderstanding, here. I wanted to check with Steve before I stuck my foot in it. I thought I knew the answer beforehand. The Standing Committee on Budget and Operations and the Standing Selection Committee, at least while I was on council, were populated by mostly non-councilors. So it's certainly the case that there's a possibility of folks who were not on council being on there.

And in fact, for example, the Standing Committee on Budget and Operations is generally made up of the treasurers or the folks who are interested in that sort of subject matter/expertise from within the SGs and Cs. I'm just wondering, as I said in the last call – and I appreciate that the last call wasn't the best time for Europe and so on and the membership wasn't super fulsome at that call – before we get too far down this road we can think about using an existing

mechanism rather than creating something new and bespoke for this if we don't need to. Thanks.

JEFFREY NEUMAN: I'm not sure I necessarily see the difference here between constituting this type of committee and the other council committees. I'm not sure. In the operating procedures for the GNSO Council, is there a large section that deals with how committees need to be set up, who could be on them, or just gives the right for the council to create such committees, which is what I thought was the only thing prescribed in the operating guidelines? There's very little guidance given from what I remember.

Anne is correct. Public comment was strongly [in favor] of having something more like a Standing Implementation Review Team as well. There may actually be not much of a difference between the council creating this committee or us creating this committee. At the end of the day, it's going to need rules and processes. And I guess what we're doing is just recommending the overall scope of this group and we're prescribing certain things which I think need to be in there, especially because this is all towards improving predictability, as opposed to, let's say, leaving it up to whatever the council chair and the councilors are at the given time in which the final Applicant Guidebook is published.

I'm not sure we're talking about things that are very far apart. But we'll make it an action item to go back and look at all of the operating rules in the GNSO about the creation of new committees. My understanding is that there's not much in there in terms of guidance as to who can be on these committees and anything like

that. It's solely up to the council at that point, which would eliminate all of the predictability, here. Sorry, I accidentally muted myself and closed the participation list. I did not mean to. Anne, and then Cheryl. Anne? Oh, Anne's on the queue. Cheryl.

CHERYL LANGDON-ORR: Thanks, Jeff. My only concern … And thank you for the people who put the reference to the preference that we did see out of public comment for this sort of Standing IRT that we're discussing in almost glorious detail at this stage. But my one hesitation – and here I am not speaking as a co-chair but rather as, probably, more the liaison to the GNSO Council from the ALAC, actually – is my concern that if we only look towards existing infrastructure design then the augmentation which allows beyond the GNSO interests to be represented, can perhaps be lost. And that would bother the advisory committees and, I suspect, the other SOs, as well. Just watch what we're doing. We're probably creating the same thing in many ways but there's probably good reason for doing so. And now, I'm putting my hat back on. Thank you.

JEFFREY NEUMAN: Thanks, Cheryl. I don't know why my participant list keeps closing. Steve, please.

STEVE SHENG: Thanks, Jeff. I guess it's just a couple of thoughts. It's on my list of things to do, which is to read the GNSO operating procedures again. But from what I recall – and Heather, Donna, and maybe others who are also quite familiar with it, and Anne, might be able

to correct me – I don't think it talks about Standing Committees in any real specific or prescriptive manner. It's one of those things, I think, where there are some flexibility afforded to the council in the way it constitutes them. That's the first thing.

And then, I guess the second thing is that the comment that you made that there may not be that much of a difference between a Standing Committee within the council versus the SPIRIT. Maybe the takeaway is to perhaps concentrate on the principles that should be adhered to. To your point, even if it's a Standing Council Committee, it still needs rules, operating procedures, and guide rails.

To that extent, maybe the more direct way to achieve what you're trying to do with the predictability framework is to concentrate on what it should do rather than the exact body. Whether it is this Standing Predictability IRT or if it's a council committee, whoever does it, this is how they should do it. Hopefully, that helps. Thanks.

JEFFREY NEUMAN: Yeah. Thanks, Steve. I think you said it better than I did. There are very few rules on how a council sets up a committee. Ultimately, at the end of the day, you're going to have to deal with all of these issues. So rather than leave it up to the council at that point in time, we here are defining, to make things more predictable, how that committee …

Whether it's a formal committee of the GNSO or whether it's its own thing, we have to look to see whether there is some sort of thing in the … If it's a committee [inaudible] what the rules are there,

whether it has to be members or a certain percentage. Either way, these questions still have to be dealt with. That's what we're focusing on. So whether it's a council or a committee, we're still going to have to deal with conflicts of interest. We're still going to have to deal with staff's role. We're still going to have to deal with all of this, so let's deal with it.

But I don't like, at this point in time, Heather, changing it to "the council should form a Standing Committee," because that's not necessarily what's in line with the public comment. But when we set this up we'll take additional commenting. That may be a question we ask.

All right. My participants group keeps closing and I am not actually closing it. I'm not sure why that's a bug in my system, here. Greg, please.

GREG SHATAN: Thanks. I do think we are at risk of over-engineering this. But on the other hand, there are risks in the other direction, too. I don't know that there is an ideal solution to trying to control as many knowns as possible. The known knowns and the unknown known, whatever they may be. One solution is to think that perhaps we are getting too much into implementation and not thinking of this at the level of policy. We might want to make a series of policy-level statements about how this group should function, sort of like … Maybe it was in Work Stream 2. I can't quite remember. We did some first-principles sort of drafting before we got into any work. That may have taken way too much time in that group.

But in any case, the idea would be to take this up a level and, rather than create board game rules, talk about what the spirit of the game is in some fashion if it feels like we're getting into too many little weeds and rabbit holes, here. I'm not sure if that sigh was agreeing with me or disagreeing with me.

But in any case, I don't necessarily want to punt on these. I think the heart is generally in the right place on these. But if we phrase them a little bit more broadly and less prescriptively we might be better off. I guess the question then is, who does the remaining implementation? Well, that could be the IRT. It's just a thought. Thanks.

JEFFREY NEUMAN: Yeah. Well, I'm trying not to get into the policy versus implementation debate here so we won't. I understand your comment. I think at some point these issues will have to be tackled in the depth that it is now. If we can't agree on all of this then perhaps some of this may be, like you said, just high-level principles. But to the extent that we can get agreement on this, we should. Okay.

These questions then came up with confidentiality of this group and how it operates. Again, this is in an in-the-weeds question but it has got to be tackled at some point. I think it was according to the discussions we had on … I think this was actually at ICANN66 or wherever we were. There was a strong presumption and preference that the activities in this group are completely open but that there be a way, as is stated in the … I'm trying to remember where, exactly. Maybe it's in the CSC charter or in other groups where it

says that there is this mechanism if, in the extraordinary event of a need for confidential for this group, to actually do that. But the presumption is that everything is open. Anne, please.

ANNE AIKMAN-SCALESE: Yeah, Jeff. I was just getting off mute. I tend to agree with the chat comments from Justine and Rubens, that less definition now just results in a bottleneck and more problems later. I'm a little bit concerned here. There will be public comment on this issue for sure. But the group has been working for a couple of years – and it's kind of funny that I'm the one who's now saying this – and public comment was in favor of a Standing IRT and now we are talking about a lot of other things that are not the Standing IRT.

I think people will know that if somebody wants to appoint a councilor to this SPIRIT group they're certainly free to do so or they can appoint somebody else. There needs to be a way for other people in the community to be represented on the SPIRIT group because the basic principle of what we thought we'd come to public comment on was that this thing needs to look like a Standing IRT. I agree with Justine and I agree with Rubens that the trouble of defining things … And the way that staff and you have gone to draft those things is helpful. It's helpful for that work to be done right now and we'll get additional public comment on that. Thanks.

JEFFREY NEUMAN: Yeah. Thanks, Anne. One of the things I would like to do to stimulate comment is to be as specific as we can on a lot of different areas and not just leave open-ended issues. Even if we're not fully

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decided that one way is better than another, we pick one way to see how the public feels about that in the comment rather than leaving things open-ended and then later be criticized for it. "Well, I didn't know you were going to pick that solution, so now you've got to put it out for comment again." It's much easier to comment on things that are much more specific. If you go back and read the comments, which yes, I have, you will see.

And, "I don't know about this group. It depends on all of the details. I can't really assess whether I like the group or not until I see all of the details, including all of the rules, who can be on it, and how it operates." Please do go back and reread this. This is not a "Jeff Neuman wants to create this committee and be very specific." There's a lot behind this and all of the work that's done behind the scenes to review all of these comments and things. There are a lot of comments where they said, "We'd like a Standing IRT but we're not yet sure how we feel about it because we don't see all of the specifics." We're trying to help with that kind of thing.

There may be some things – and Cheryl's saying it, here – that we're being too specific on and we should take a step back. That's okay. We should just figure out what areas those are. This might be another place we're being too prescriptive or too into the weeds, which deals with the ICANN staff role in participation. Someone had asked a question on what ICANN's role would be in this group and so we came up with a proposed answer.

I think that what we have here makes sense. It says that "SPIRIT will provide guidance and/or validation to ICANN Org as well as make recommendations. Therefore, ICANN Org will play a supporting role. ICANN will provide staff liaisons from ICANN Org

GDD and legal and policy support." I think that makes sense. Anne, your hand is raised but I'm not 100% sure if that's a new one. Nope? Okay.

Now, again, this one might be too much into the weeds but we're talking about the leadership of this group. This just goes from the … I'm trying to figure out which charter this comes from, Steve. I know the notes are on the side but for some reason, I can't see which note belongs to which comment on here. Okay, this is from the working group guidelines. That's where we took this one from. It should look fairly familiar. This has a concept of up to two vice-chairs, which I think is in the charter. Yeah, the CSC charter. Okay.

Now, this one I know people have brought up as a newer issue at Montréal, which is, "What is the role of public comment, here?" This was an answer that was drafted which says that "Recommendations really relate here to operational issues. They're normally not subject to public comment unless they're agreed to by a consensus within the SPIRIT." [They ought] to change that with the way that we've changed the notion of how the SPIRIT operates. It doesn't need to just operate by consensus. It's supposed to give its advice on the issue but also set forth whether there's a consensus or not and allow all of the different views to be presented if they can't get a consensus. That's what we decided on the last time. This one, we probably need to go back and modify with however we come out on that other issue.

Recommendations that are directed towards GNSO Council will normally not be subject to any additional public comment period beyond what is normally envisioned by relevant operating procedure. If there's an issue that is referred to the GNSO Council

and the GNSO wants to take that issue further through a PDP or guidance process or something else, that's when the GNSO will consider the role public comment will play.

Okay. That's the last section of the official drafted document. I will note that Kathy has added a section in here. This was not drafted by leadership or by staff. These are Kathy's comments, which might be what Kathy was referring to at the beginning as some sort of explanation. It's Kathy. Kathy, are you on the line? Do you want to just go through this real quick? Kathy might not. Are you still …? Okay. Kathy's not on here. I haven't looked at this. I'm looking at it at the same time as you all. If we can just italicize this and [inaudible] with how people look at it after this call? Okay. Let me just see. Any thoughts or comments before we go onto the next …? Okay.

I think we should move onto the mechanisms of last resort unless I'm missing something, here. Nope. Okay. Just wait for someone controlling the document that could pull up the mechanisms of last resort. Oh. Sorry. There is a flow chart. We don't have to go through that flow chart right now. It's really just for people to review. We might have to revise it based on how we came out on some of these discussions. But do note that in your e-mail with today's agenda – and I'm sure it will also be in any notes from today's call – there's a copy of a flow chart. Okay, cool.

So where we stand on this … And I understand we only have a few minutes during this call to talk about this item so we'll do the bulk of the discussion on the next call, which is on Monday. Essentially, what I want to really focus on here is, if we scroll down, there's a section here on policy goals.

What we found in going through goals the last time is that people sort of nodded their head and said, "Yeah, these sound like the right goals," but then when we got to talking about the different implementation mechanisms of those goals things started to jump out and become much more clear, that certain solutions either were prioritizing certain goals over others or were detracting from certain goals in favor of other goals. We realized that it's not necessarily possible, for example, to implement solutions that enhance every one of these goals. As we go through them again, you'll see why that's the case using examples from different methods.

We spent most of last time discussing this on the specific mechanisms. I want to actually spend more time now on the goals. There are nodding heads in this group saying, "Yeah, that sounds about right," and talking about the priority of which goals, or which goals are more important than the others. And then, we have some sort of more objective test when we go through the different implementation mechanisms and can say, "Okay, well, if we do it this way it's better for …" If we use the [victory] model then that enhances goal number one but it's really terrible for goal number ten. Justine, please. Yeah. A quick question. Justine, I'm not sure … We can't hear you.

JULIE BISLAND: Justine, it looks like your mic is open but we can't hear you.

JUSTINE CHEW: Can you hear me now?

JEFFREY NEUMAN: Yes.

JUSTINE CHEW: Okay, cool. Yeah. Just before we go into the section, I had a quick question about the previous section we just did, predictability framework. Did we actually have any discussion on the categories of changes in the other document, the one that deals with the minor changes, not-minor changes, and possible policy-impact changes?

JEFFREY NEUMAN: Yeah. I'd have to go back into which days those were on the agenda but we did have discussions on all of those.

JUSTINE CHEW: So we have gone through those?

JEFFREY NEUMAN: Yes, several times. It doesn't mean it's all agreed upon but yes, we've gone through those. I think we're going to summarize after. Now that we have all of this and have gone through these discussions, we're going to use that as the basis for our draft final recommendations and then, if there are any items still open, we'll raise them at that point in time.

JUSTINE CHEW: Okay. Thanks.

JEFFREY NEUMAN:	Okay. Yeah. There are some discussion as to, "One of the other things that makes this different from an IRT is the leadership." Yeah. That's also one of the other differences.

Okay. Going back to the subject on mechanisms of last resort. The goals that we had come up with start in the section where you see the red line that says "possible." It started with "possible" but now it says "other goals include." If you scroll down? Yeah.

There were seven goals that we had come up with. I'll just go through what they all mean. We'll save the bulk of the discussion for Monday. Essentially, the goals that we had come up with were that we wanted to reduce the risk of bidding wars in which the winner ultimately overpays for the TLD. I understood that there were some e-mails back and forth on this subject as to whether that is a risk, that there are some that don't necessarily agree with that risk.

The second goal was an effort to reduce collusion, profiteering, and/or speculation, especially as it relates to financial transactions external to the program. Note that all of this is not an explicit goal for the mechanisms of last resort. It has been discussed as a motivation for altering the auction mechanism.

There was a goal of increasing transparency in the contention resolution process. A goal of resolving contention more quickly. A goal of increasing predictability. There's a goal in there about encouraging new entrants into the field and a goal of increasing efficiencies in application evaluation by way of understanding the contention set.

Now, this is not listed in any kind of priority order. These are just listed in an order in which it was taken [at the meeting]. Now, please don't put any value in the order in which it appears on here other than that this was just some random order of a list. Sorry, I just took a drink.

If we can scroll down just a little bit more? Okay. Sorry. I just wanted to see if there were any extra things in here about goals. There's a note in there that says that some of the terminology will need to be further defined if the above goals are adopted. We didn't really focus on the exact words. It was more "concepts." And then, we'll have to agree on what our specific objectives are.

I think there have been some good e-mails, probably in the last month. I know it was over the holiday season. But to the extent that you can go back and review, a good discussion amongst the beliefs of some as to why there is a potential for a financial windfall or a concern that there was a potential for financial windfall off of private auctions. But on the other side, there were also some views that have been expressed of not seeing this as an issue or asking more appropriately, "What are we trying to solve for?" And that's where these goals fit in.

I went back and I took a look. The board is obviously concerned about this. The board specifically noted this in their comments to us on the supplemental initial report. They are concerned about the black eye that they get from making it look like some will enter this just to profit off of losing applications. I think there was a question about "what evidence do we have?" and so I went back and looked through the annual reports of one of the public companies.

I could provide links. But this company reported in 2013 a gain of 4.12 million dollars from losing auctions, 37.5 million – sorry, these are pounds, not dollars – pounds in 2014, and 7.9 million pounds in 2015, which according to my very poor math is somewhere around 50 million pounds of money that they made from losing these auctions and that they reported as a public company.

That's something that there is certainly a concern with much of the community and the board about, that there will be players now that will strictly apply to get into some of these auctions to just make money and that if there were [NVs] that would do that, that could not look good for ICANN as a non-profit organization. I think that's the rationale for the board's statements and a number of the comments that we got.

Donna is saying, "Jeff, can you tell us how much they actually paid for any TLDs that they may be operating?" Only for the ones that they won via the ICANN public auction, sorry. I'm not sure. I looked quickly. I know that they separately reported their gains because it was important to their shareholders that their stakeholders knew that I was a one-time gain and not a reoccurring source of revenue. So what you would see as revenue on the books for a public company was not … The point they were making is that it's not something you'll see on the books for a gain every year. It's much more important to disclose the amount you made from the auctions as opposed to the amount you're paid, which could be deep within the capital expenditures of the financial results. It might not be as easy but I can look.

Okay. I know we're getting up to the end of the time. Are there any other goals that people could think of before we get into the process

of weighing or prioritizing these, or deciding what is more important? Did we miss something? Are there things in here that don't really seem like they should be goals? I saw that Paul has got his hand up. Paul, are you going to raise the question you asked on the chat?

PAUL MCGRADY: Yes. I'm worried about the word "collusion." I don't know what it means. I'm afraid that it will have a chilling effect on people coming up with creative solutions. Not everything needs to be a binary where one party gets rich, another party gets rich, or ICANN gets rich. Instead, there may be all kinds of ways to work these things out. And the last Applicant Guidebook simply lacked creativity in that space. I would like for us to look at the word "collusion." What is it that we're actually trying to prevent, there? I know it's a sexy word right now because of US politics but what do we mean in the ICANN gTLD context? What does collusion mean?

I'd also like for us to add a goal that we increase the role of creativity in the resolution process because as more people – especially from various industries – come into the ICANN world, they're going to bring their creativity with them. We don't want a system that suppresses that. Thanks.

JEFFREY NEUMAN: Okay. Thanks, Paul. I don't know where the term "collusion" came from or whether that's a reference to a specific comment. Let us take that back and figure out where it came from. I totally understand your concerns. And also, we're putting down, as you

can see, number eight: "Increasing creativity in the resolution of contention sets." That's in there.

One thing that's not in here in the goals but, interestingly, was in the original … Maybe scroll up. Maybe it is and I'm just forgetting. If we scroll up a little bit more? It's not explicitly worded in this way – sorry, no, down a little bit – in the implementation guidelines. But in the first round, there was a [small] emphasis on private resolution. Not in, necessarily, auctions, but in resolving the contention sets prior to get to an ICANN auction.

To the extent that is still a goal, which from Paul's comment it … At least, in certain people's minds, it's still a goal we should talk about. If it's not a goal, where we think, "Why do we even care about having private resolution at all? Let's just go straight to auction …" I mean, there are two ways to look at it so we do need to put that in as a possible goal.

Do we want to encourage private resolution of these contention sets? Because if we do then, as Paul says, we need to get creative. We might want to get more creative. If we don't want to encourage private resolution then maybe creativity is not a high priority.

I see Susan and Justine in the queue so let me go to them, quickly. And Christopher. Then, we'll certainly take it up from here on the next call. Susan.

SUSAN PAYNE: Yeah. Thanks, Jeff. I'm hoping you can hear. I put my hand up and, actually, you started touching on the point I wanted to make. I think that maybe, because of the way this is expressed in the document,

we have what the existing policy was that you just talked about and is referred to above this goals section, and then we have this section that's called "other goals." And the very fact that it's called "other goals," to my mind, acknowledges that we still have maintained the original goals.

But because of the way it is expressed as a list, the whole time you were talking about this when we talked about this previously we forgot all of the other goals or ignored all of the other goals, i.e., that that's resolving of contention by the parties reaching agreement.

And we focused in on these new ones that we listed. They are the new ones. But I don't think anywhere in our discussion during this PDP we've dispensed with this notion that it's an important concept and goal to have the parties attempt to reach resolution. And I'm strongly supportive of Paul's new addition about increasing creativity in the manner of resolution.

But I think that because of the way it's expressed, I would argue that we should be ensuring that we don't overlook what were previously goals and which were referred to above in the previous policy … I can't see the terminology, but the previous implementation language. It may be that we need to, therefore, slightly change how this document refers to this section and reiterate what we've been continuing to acknowledge as being goals of this process.

JEFFREY NEUMAN: Yeah. Thanks, Susan. I think that makes a lot of sense. I think that what we should do is produce one set of goals, not called "other"

and "some." We can keep the first iii, like the small Roman numeral, i, ii, and iii, in that list, and note that those were from the original. But instead of starting again at i, this actually becomes iv, v, vi, vii, viii, whatever, down the line. Because we do, as a group, need to decide which of those should be "goals" and "more important." I do think you're right. We sort of forgot about the original ones and only focused on the "other." We need to do a better job in the next conversation.

I know we're getting to the bottom of the hour. Justine and Christopher, you are the last words here.

JUSTINE CHEW: Thank you. Just in terms of goal number i, as you have it – I agree with what Susan said earlier, too – I'm just wondering whether we should consider making it a bit more vague. Perhaps, reduce the risk of unintended consequences from bidding wars. I'm not quite sure that overpaying for a TLD or preventing that should be a stated goal for this group. It's up to parties to decide whether they are overpaying or not. It's not the concern of this group in that respect. Thank you.

JEFFREY NEUMAN: Yeah. Thanks, Justine. Absolutely relevant for a discussion of whether we ultimately have these as our goals and, if we do, which are more prioritized than others. Okay. I see there are no more hands in the queue so if someone could post the time for our next call? I know it's on Monday. There we go! Monday the 13th of January, 2020, at 15:00 UTC. Please do try to be on there. Look for

some more documents on the list. And please, do continue to comment. Thanks, everyone.

JULIE BISLAND: Thank you, Jeff. Thanks, everyone, for joining. This meeting is adjourned. You can disconnect your lines. Have a good rest of your day.

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