ICANN Transcription

New gTLD Subsequent Procedures Working Group

Thursday, 16 January 2020 at 0300 UTC

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JULIE BISLAND: Alright, good morning, good afternoon, and good evening. Welcome to the New gTLD Subsequent Procedures Working Group call on Thursday, 16 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 at this time, could you please let yourself be known now?

Alright, hearing no names, I would like to remind everyone to please state your name before speaking for the transcription. 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.

JEFF NEUMAN: Thank you, Julie. Welcome, everyone. Just looking at the attendance list, it is a little bit light. And out of curiosity, I'm just looking. I think we have only a couple of people so far from the

Asia-Pacific Region. So, thank you. I think we have Gemma and, of course, Cheryl. I always like to look from time to time to just see if this time is good for getting participation from the Asia-Pacific Region. We do have a lot of North Americans. Thank you all for staying up late or maybe you're not going to bed. Anyway, Jim says Heather but I think Heather is enjoying time in the Florida this week. So Heather is on the East Coast U.S. time.

Okay. So, today we're going to continue with the string contention. We're also going to and probably do this up front if Steve has it ready to go, just to talk a little bit about the work plan and then also about next week what we'll cover so we can start preparing for that. Before we get into the agenda, into the actual substance, let me just ask if anyone's got a modification to their Statement of Interest? Let me look at the list here. Okay. I'm not seeing anyone with any updates. Okay, so then let's just jump right into it. Steve, do you have … There you go. Thank you.

Okay, so this work plan document we will put a link to – I know it hasn't been sent out yet. You'll notice the first few pages are things that we've already done, so it looks very familiar. It's from the last version of the work plan. And so where we're at right now is January – although it's 15th in the U.S., still it's actually the 16th when you look at UTC time. So we're talking about String Contention Mechanisms of Last Resort. This section is a little bit weird in terms of dates because it's not chronological because we went back to a few topics. So the next couple of topics is actually, if you scroll down, it would be the 21st and the 24th.

So the next five topics that we want to go through are the ones that you see there. So for those on the phone, that would be the

Applicant Guidebook communication system, application fees, and variable fees. The reason we want to jump to those is we think in the scheme of all of the topics, these are – I'll put air quotes although you can't see it – the easier topics. I should say "easy" but I think topics where we're closer to being final than others. And what we're going to be sending around definitely by no later than Friday, but hopefully tomorrow by close of California business will be the document that we're creating, we're calling it the sandbox document at least among the leadership team, but it's basically the document that really, as we talked about the last time, cuts down on a lot of the background materials and really gets to the recommendations and the rationale, and goes through in succinct forms what we believe the recommendations ultimately will end up being. That's likely going to be the type of document that goes out for public comment.

Part of the reason of throwing these five things in, even though we're talking about some of the bigger topics or we've been talking about the bigger topics, is just to make sure that everyone is comfortable with the format, and so then policy staff can feel comfortable in starting to draft other sections in that similar format while we're continuing on with some of the more meaty topics, I guess I'll say. Sorry. There's some questions in the chat. Just let me finish real quick. Yeah, I know I lost it. Never mind. I'll go back to the chat.

Steve says, "We'll send out the official version. This is a working document for us.

Donna is asking who is currently the leadership team. The leadership team consists of myself and Cheryl as co-Chairs, but

we've also retained those who were previously co-leads for any of the work tracks that we have that wanted to just stay on and just help us as a sounding board and for helping us make some decisions and just helping us with the workload. So that would be Robin, that would be Rubens, Martin Sutton, Annebeth. Of course, also – sorry, I should've mentioned the GNSO Council liaison – so that's Flip shows up to the leadership calls. Elsa is a GNSO Council liaison as well. We basically have kept it open for any of the previous co-leads to join if they want to. Thanks, Cheryl, and Javier. Sorry, I didn't mean to leave off Javier.

I think Cheryl and I have found it useful. Certainly, just so it's not the two of us, so we can get some other really good perspectives. And Christa, yeah. Thank you, Steve. Not everyone shows up every week other than Cheryl and I, and of course our excellent policy staff. But for the ones that do show up, it really has helped us. Cheryl said it stops us from looking at things through a narrow scope. It keeps us in line too. So it's been really good for us.

Okay. What I also want to do is scroll down. This is what gets a little worrisome, at least me as a leader. Because of the pace we're going at, things have been a lot slower than we had hoped. And if we continue on the same pace – keep scrolling down a little bit more – you see that we don't get to delivering a final report to the GNSO Council at some point after the summer. So this is something that the leadership team has been talking about for the last couple of weeks in our leadership meeting because obviously this is a fairly large extension of time, but it has also given us kind of a perspective talking about different ways that we can try to bring things in. But even though this is still a working and very

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much in draft form, and this is not getting sent out to the Council or anything like that, so please just keep this – obviously it's a public document, anyone in the Council can see it – but this is not intended to be a definitive timeline or work plan. If we can cover topics more quickly than what's in here, then we can bring things in. But at the pace that we've been going because things are a little bit slower, this could potentially be a timeline.

We also are exploring potentially whether we can add a day or two as a virtual – can't really call them face-to-face – but maybe virtual work session days later on towards April timeframe to try to cover additional topics. So there are a number of things we're trying to explore that could bring the timeline in and help us catch up. But it's really, at the end of the day, going to boil down to you all and if we can cover these topics, and if part of something that slows us down substantially is the fact that we have to keep going over things multiple times, going over a lot of background and things that we've previously covered. So, hopefully when we start getting out the sandbox documents, we're going to hope and expect that you all would have read that and come to the meetings with comments as opposed to reading every single word for the first time while we're on the call. I think that would go a long way.

Sorry, Cheryl, yes. By summer I meant in the northern hemisphere or winter in the southern hemisphere. Sorry about that.

Heather's point is important as well that there are comments now on the budget. However, I will note that the budget this year like the last year intentionally leaves these projects off until they are formally approved by the Board and the community gives the instructions to move forward. So the fact that it's not in the budget

is not as concerning to me at this point because the Board knows that this is coming up. The Board is figuring out ways to fund the program through existing sources, but they can't really put it into a budget until this gets moved to the next stage. So I think there is a contingency part but there's also other areas that have been explored.

Let me just go through some of the other comments here. Anne states that "Regarding the ICANN budget, is it the case that every ICANN budget contains an item…" Yes. There is a contingency in there but that's more like the variable for every other project or the projects that are not committed for already.

Donna is saying, "Is it possible to make an argument for dedicating significant more face-to-face time at ICANN 68, particularly given it's a policy meeting?" Yes, Donna. We've made that case, we'll make it again. I'm sorry. We've made that case in previous years, we'll obviously make that point again. But even so, that's more in the June timeframe. I think it's a really good idea, especially if we are where this work plan [thinks] we're going to be at that timeframe. It would be a lot better if we could be a little bit further ahead and maybe even if we can move, considering the public comment into that meeting, that would be very helpful if we can do that. We're also exploring something like a day zero at that policy meeting as well.

Rubens says, "At least one item that has some overlap is NameCollisions and that's funded." Well, I'm not sure about that, Rubens. Rubens says it's funded out of the com agreement. I don't have any information that that's the case.

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But moving on, Heather says that, "Flip as GNSO Council liaison should be pushing the leadership team, who will develop the schedule for Cancun?" I meant [inaudible]. Yeah. Flip has been in the leadership meetings and Flip has, of course, volunteered to take anything we'd like him to take to the Council. So we will absolutely make use of that. And once we get this work plan a little bit better shape, we do have to present it to the Council. We do want to present it to the Council actually next week while they're in their retreat. When I say "present," I don't mean that we're physically presenting it, but that hopefully we could send the document to them. And of course, Cheryl, can maybe present it there, but obviously make them aware for their offsite planning session the schedule and maybe come up with ways that we can bring stuff in.

Rubens has a link there. But again, let me just … Sorry, Cheryl, you're not included in the Council retreats. Sorry about that. But there will be people there that can after we sent the document, Steve, I'm sure and the policy staff can help us present that as well.

Okay, any other questions on this? And if you have any ideas, please do continue to submit them. Send them to us. But like I said, a lot of the pace that we go from here and out as co-Chairs, Cheryl and I can help steer the discussions and stay on focus, but it's really going to be up to working group members to have a spirit of collaboration and wanting to compromise, come to a consensus, all of that is going to help us to get things moving in the right direction.

Okay. Sorry, I've not actually been looking at the queue. I apologize. Sorry about that, Jim.

JIM PRENDERGAST: That's alright. Good morning. Can you hear me okay?

JEFF NEUMAN: Yes. Thanks, Jim.

JIM PRENDERGAST: Great. Just a couple of points. One, when you do send out the format for what the potential final documents or public comment documents may look like, can I just ask that we get sufficient time during business hours to review that? And it's not something that's dropped late on a Friday and we've got a call on a Monday. I've realized a lot of us do work over the weekends but that's not ideal. So having enough time to review those documents prior to our call, having days, not hours, I think would be ideal. That way, people can come to the calls with some questions and some feedback as opposed to just dealing with them on the spot.

Secondly, you had mentioned the potential for day zero at the policy meeting. I know that seems like that's far off, but I know a lot of folks are already planning travel for that meeting. I know we're not even at the Cancun meeting but if in fact that is what leadership is pushing for, I think you need to make a decision that that's what we are pushing for so that people can plan around that for travel purposes.

Then finally, I would just say that, to me, it seems like the timelines that we've had in the past have not necessarily been worse case scenarios, they've been aspirational best case scenarios. And I think going forward, I think we want to adopt what is a worst case scenario timeline and hopefully we can improve upon that. I think we've had too many timelines that have gone, the Council had gone out to the working group that were aspirational in nature and if we can get through everything quickly and, the reality is, we just haven't been able to do that on a consistent basis. So I would highly recommend that anything that does go out to Council factor in delay as opposed to factoring in efficiencies as we go through. Thanks.

JEFF NEUMAN: Yeah, thanks, Jim. We certainly want to be realistic, and so all of your points are well taken. Yes, it's going to be our goal to try to get the sections out well in advance of the call to have days and not hours. That's one of the reasons why on Friday, we're going to send out five of the topics. We're not obviously going to get to all five on that first day. So, hopefully you will have some days with respect to most of those topics. How we work the public comment, that certainly will go out. It will be much more definitive weeks before the public comment period actually will be scheduled for. So, all those points are very well taken.

With all that said, let me just do a last call for any questions or comments. Okay. So let's go then to where we left off, and in the spirit of not wanting to go back over areas that we went over, I will give a very short update.

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What we are trying to do – and this also goes into some of the e-mails that were sent around between the last meeting and this one – previously we've spent a bunch of time looking at the proposed mechanisms for last resort for resolving string contention. The last call, what we did is rather than go look directly at the mechanisms was to look more closely at the goals that we have been talking about all throughout these discussions to determine whether these are actually still goals for whatever mechanism is ultimately selected, and today hopefully get into some prioritization of which goals seem more important than others and that will hopefully help us in the best of all worlds to choose a mechanism going forward, because now we have some criteria and goals to measure that proposed solution against. In an e-mail or a couple of e-mails, there have been several people that have made or had questions of, "What if we don't get to a mechanism, what are we going to do?" I had sent around response saying, "Look, this is the ultimate goal to come up with a mechanism. But at the end of the day, if all we could come up with are the goals then those goals will become part of the policy and it would be up to an implementation team to consider those goals and ultimately the mechanism."

That's not our first choice. It is not our desire to have an implementation team pick a mechanism. It is our preference to hopefully get to a mechanism ourselves. But I want us to focus on these goals without worrying about the mechanism at this point. But as Cheryl says, it is a fallback. It's an alternative if we can't come to some sort of a consensus on the chosen mechanism. Does that make sense? Okay, Donna, please.

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DONNA AUSTIN:	Thanks, Jeff. Donna Austin from Neustar. Sorry that my name has "Chair" written next to it. I haven't changed it since the Registry Stakeholder Group call this morning, so my apologies.
	Just a procedural question. I noticed that Justine has made some comments in the document itself and I had made some comments in via the e-mail list. So what's the better mechanism if I want considerations to suggestions that I make? Should I put it directly into the document or will they be considered if I just put it in e-mail? My thinking was, if I put in an e-mail, people could think about it and then we could decide whether to add it or not. But it's just a procedural point. Thanks.
JEFF NEUMAN:	Yeah. I think it's a great question. I don't think I thought about that in so much detail. I think you're right, in a sense, that if you put in the e-mail, it can certainly be available for discussion. I believe Justine's changes here are more towards the language and not necessarily concepts, although there may be a couple exceptions. But yes, to the extent, we would like to see an e-mail so that people can talk about it. We're not going to change language if it's a quote from the Board. One of the issues is that we don't always preview all of the revisions prior to the meeting when it starts. It is probably more effective to put in an e-mail so that we can all read it before the call.
	But Cheryl says often it is helpful if it's a question to maybe do both. Put it as comment in the document, and if it's something you think that really should have group discussion, put in the document and in an e-mail.

Donna states that she suggested different language for 3. Let's finish 8, 9, 10, and 11, and then we can go back to ones where there were questions or comments from e-mail or in the document.

Anne asked a question. Anne, at this point, I see the question, I think it's a good question. I want to spend the time looking at the substance here and hopefully get to a point where we are selecting a mechanism so we don't necessarily have to worry about your question, but understood, and it's the same question that you asked from an e-mail. But I don't think we need to address that at this moment.

Cheryl has got her hand raised so, Cheryl, please.

CHERYL LANGDON-ORR: Thanks, Jeff. Just to Donna's point, I have other work groups I've run. We've managed to treat what happens in e-mail or what happens in a Google Doc equitably, and I think it's important that if we allow people to operate in whatever system they're most comfortable in that their comments are equitably considered and treated. So the same as one would be able to make a counterpoint or a suggestion in a Google Doc as one can, of course, in e-mail. If one is devoted to that particular methodology of communicating then I think they should be treated equitably. We just need to make sure that things like your text proposal are captured and put in to the Google Doc as well. I'm not suggesting, however, that Google Doc commentary ends up in e-mails because I, for one, will stop reading them and I suspect others might as well. So let's not do death by e-mail. It's a bit like death

by PowerPoint, a terrible way to go. But should something going to e-mail then I think it's vital that we make sure it is put into the scratch pad sandbox or indeed eventual drafting document. Thank you.

JEFF NEUMAN: Thanks, Cheryl. We're not perfect, so if we miss something, please know it's not intentional. There are a lot of e-mails that we all get and we're doing our best to capture everything. But if we forget, please do remind us.

Okay, so going back to Goal 8 which was, "Encourage new entrants into the field." This was one that we started some discussion on. This was also one where we talked about in the last call that if you had this as one of the goals, you could certainly make it easier to implement multipliers if that was something we ultimately end up doing. But also, we did have some discussion as to whether this was appropriately in a goal for the mechanism we choose or rather this was an overall goal for the program itself and whether that makes a difference.

Thoughts on this goal? After we go through each of these, we'll go back to ones that have questions and then ultimately try to prioritize some of these things.

Okay. Thanks, Anne. We got your note. Donna, please.

DONNA AUSTIN: Thanks, Jeff. So we're talking about #8, "Encourage new entrants into the field"?

JEFF NEUMAN: Yup.

DONNA AUSTIN: So my thinking on this is that this is a capital P Policy decision. So if we decide as a group to give prioritization in some way to a new entrant then I'm not sure that that … I guess that comes in a contention set resolution in the same way that a community applicant would. But there has to be some kind of preferential treatment given prior to any contention set resolution discussion. So I'm not confident that the multiplier suggestion would work in an auction process. I think it's a decision that has to be taken prior to the contention set resolution. So whether it's afforded some kind of priority similar to community, then that would have to be addressed there. So to me, this is more of a capital P Policy discussion rather than – and it might flow through to contention set resolution, but I think we have to agree that if a new entrant should be given some kind of preferential treatment then that has to be decided within maybe the evaluation process before it gets to contention set resolution. Thanks.

JEFF NEUMAN: Yeah. Thanks, Donna. We will certainly entertain the multiplier discussion later on when we talk about applicant support and other elements. When you talk about encourage new entrants into the field, I think this was a way of again looking at different mechanisms of last resort and whether certain mechanisms would be more preferential to incumbence versus other mechanisms that

may be more preferential towards new entrants – directly or indirectly. So, I think your point about whether we choose to give multipliers is, as you said, a capital P Policy, absolutely. But right now, our discussion is just looking at the mechanisms themselves and whether we should in our discussions think about or use as a factor to select the mechanism, whether one mechanism is more likely to favor new entrants as opposed to favoring incumbence.

Okay. So maybe we'll discuss this a little bit more when we talk about prioritization of these goals, which goals are more important than others. There's a lot of discussion on Board text, I think. It's interesting but – I'm sorry, I'm just reading through it. Let's go through the actual text that's written here and then we can talk about when there is or if someone has made a revision, whether it's appropriate or not. But I do see the comments that are made there.

Sorry, Donna, is that a new hand or –

DONNA AUSTIN: Yes, Jeff, it is a new hand.

JEFF NEUMAN: Okay.

DONNA AUSTIN: I think it's important for us to understand what we're trying to do here, and this goes to the question that I asked you on the list about what are we doing here with the goals? I think it's important

to remind people that what we're actually doing is discussing these goals in the context of whether they help make a decision about the contention set resolution options because, you know, your wrap-up of what I said reminded me the reason we're talking about these goals is specifically related to seeing if there's a way to differentiate between the two options that we currently have on the table for contention set resolution. So I think that's important for us to keep in mind.

JEFF NEUMAN: Yeah. Thanks. Exactly, Donna. As you said, when we go through the different options, I know you said there are two, there could be different variations. But as we go through them, we're going to say, "Okay," I'm just throwing this out there, "We thought Goals 1, 5, and 8 were the most important, but we look at this model and those don't seem to enhance the goals that we thought were most important or this other model does." So, that's exactly right. We want to use these as factors to consider when we talk about the specific mechanisms.

Okay, #9. This one came up as a result of talking through the mechanisms and what it was, was that we thought some of the mechanisms had as a byproduct of choosing those mechanisms, it actually could have the effect of increasing efficiencies in application evaluation. So that was something that came out of those discussions. In other words, I'm not saying we are picking it, but if you did something like the Vickrey model and you only evaluated the application that came in at the highest bid, if you only evaluated that and then held the other applications, unless and until that first application doesn't make it through, then you

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may be saving the evaluators time and the applicant's money if you're not going to evaluate every application. That is a goal that came out sort of as a byproduct.

What does the group think? It makes sense too as we talk about the different mechanisms to talk about that – that I call it byproduct – and maybe it is a factor that weighs in favor or maybe against a particular solution.

Jim states that "It helps not only with efficiency but in many cases, unsuccessful applicants could see much larger refunds." Right. Yes, absolutely. So it's an efficiency in evaluation but it's sort of efficiency in – I don't know if that's efficiency – but applicants getting refunds, absolutely. Also, applicants will know sooner in the process where it stands as far as likelihood.

Steve says that "Some of these goals we sort of backed into to examine some of the models under consideration. Number 3 is in that category as well."

Donna is saying, "I think it's simply increase efficiencies in application evaluation. I don't think the additional text is required." I think that's right. Do we know where that text – the rest of it? I think it is right to just say "increase efficiencies in application evaluation." I'm not sure what the by way of understanding the contention set really adds to that. So I think that is right, Donna. Great.

Alexander points out to a byproduct, an unintended consequence that could happen if there are higher refunds or sooner in the process.

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Number 10 is "Increase creativity in the resolution of contention sets." So this goes to the underlying question of whether we want to encourage private resolution and contention sets. Now, I think where we're coming out on where the comments came out are that most of the people and groups that made comments did say that they thought allowing changes to applications potentially changes the strings, potentially changes to address concerns, all of those types of private discussions and resolution could actually have a positive benefit on the program. And so while many of these groups may not have been in favor of private auctions, most of the comments did favor some sort of private resolution amongst the applicants if there were the ability to do that.

Sorry, Paul. I did not mean to skip over you. So, Paul, please, and then Kathy.

PAUL MCGRADY: Thanks. Going back to #9, "Increase efficiencies in application evaluation," that's a fairly targeted goal. Is there a more umbrella thing that could be said there? Increase efficiencies in the [role] delegation or something like that because the increase efficiencies in application evaluation – I don't really know how that applies in – it's difficult to determine from that alone what then mechanisms we would pick. So, for example, say we moved the what we have now, the ICANN last resort option up to the beginning of the process, then we could have somebody who wins the auction but ultimately is knocked out by a complaint under the rights protections, or is knocked out because they're not really a community application even though they're claiming to be, or is knocked out by timely GAC advice or something else. And then

what do we do? Do we then run another auction? Is it default to the next person who is in second place? Do you know what I mean? So I think we're trying to capture – the concept is efficiency in the overall process, not just the evaluation because the evaluation process may be before or after whatever mechanisms or mechanisms are selected here. Thanks.

JEFF NEUMAN: Yeah, Paul, I think you're exactly right. I think it might be too narrow. I do think that the potentially certain objections and other things might not need to be heard if in certain types of models if one applicant is selected as the top bidder, and that applicant doesn't have an objection. So I think increase efficiencies in the overall application review process or something like that, but I get your point and it is more than just the actual what people think of as the evaluation.

Let me go to Kathy, and then I'll go back to some of the chat comments. Kathy, you might be on mute.

KATHY KLEIMAN: Indeed, I was. I was wondering if you wanted to do the chat first because we seem to be somewhere between 9 and 10 right now, and then I'll comment on 10 when it's appropriate.

JEFF NEUMAN: Sure. Okay. Let me just look at the chat then at some of the comments, going backwards or last two first. I see Paul suggested text for #9 and I think it's actually a really good text. I shouldn't say

it that way, Paul. You always have good text. I did not mean to say I'm surprised. That's really good and cool.

Let me go back. There's some discussion still on the Board stuff. Jim states it helps with – oops. That was an old one. Steve, Alexander – this is after the high refunds. Donna disagrees. Okay, there's some fee discussion and I'm going to skip the fee discussion because we're just discussing the goals right now, not the priority of these goals.

Donna states, "My understanding is that these goals would be used similar to selection criteria that would enable us to do some kind of objective assessment of the options for contention resolution." That is the intent, Donna.

Then there's some questions of Alexander, Alexander's comment, and this is all relating to the higher refunds comment.

Paul is blushing, which I've never seen actually happen.

Donna likes Paul's text.

Alexander Schubert says, "I say we can't have a low application fee plus super high percentage refunds."

Alright, this is an interesting discussion on the refunds. I would ask that when we get to fees, we certainly bring this up again. But I think it's a little bit off-topic from the goals. Jim, do you have a question on the chat or on #9? Because I know Kathy is in the queue to discuss #10.

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JIM PRENDERGAST: I'm on #9. Sorry, I'm a little slow this morning.

JEFF NEUMAN: It's okay. Go ahead, Jim, and then, Kathy, I will get to you.

JIM PRENDERGAST: Steve sort of alluded to it in the chat here – #9 seems to me not necessarily a goal of contention set resolution, but rather #9 seems to me to be a benefit or proposed benefit of one of the proposed contention set resolution mechanisms. I don't know if that's … Now, increasing efficiencies and application evaluations may be a goal, but I'm not necessarily sure it's a goal for this particular topic. Does that make sense?

JEFF NEUMAN: Yes. I understand. You might be right. You're classifying all these things as goals, but I do think they're going to help us weigh the different solutions. You're right, this could be a benefit of one or some of the different choices that we have and that benefit may push one solution over the top or over others, so perhaps the term goal is not correct. These are all really I think factors to consider. Is that better if we just call them factors, benefits?

JIM PRENDERGAST: I think so, but I reserve the right to further examine that.

JEFF NEUMAN: Okay. Thanks. Alright, Kathy, #10. I'll come back to you.

STEVE CHAN: Jeff, this is Steve. Can I get on 9 first?

JEFF NEUMAN: Well, I guess, if it's you. Yeah, no. Sure, go ahead, Steve. Sorry.

STEVE CHAN: Thanks, Jeff. You're so nice. This is Steve from staff. I just was hoping to, number one, fall on the sword for the poor text I wrote. But as Jim is noting, this was a goal that was sort of backed into from looking at one of the models. The way that it was designed and one of the underlying assumptions is that if you understand who is the winner in contention earlier in the process, you can potentially gain efficiencies by only evaluating that applicant, the winning applicant. So that's why it was worded in that really odd way, to increase efficiencies by way of knowing what the contention set is. So if you know the lay of the land for the contention set and including the winner, that potentially gains you efficiencies and front loading and evaluating just a single application. But I think what was possibly seen is by doing so, it creates a number of additional complications.

So you can call these goals or factors but at the end of the day, that's a goal. It doesn't necessarily have to be a primary goal. It could be a lower-end goal that the working group thinks as maybe not as important as some of the other ones. So hopefully that helps in understanding how this got added in the first place and why it was worded so poorly. It was me. Sorry about that. Thanks.

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JEFF NEUMAN: Thanks, Steve. That does help. Paul had a question a couple of times now. But, Paul, if you look at the flowcharts, Steve is right in the sense that it may create some efficiencies by only evaluating that one application, but some of the models create increased complexities because you may have to wait until a number of other things are completed before you can actually do that evaluation, so you might be talking about having to do all of these objections or only those objections related to the one application. So when you look at the flowcharts that were submitted, which we're not going to do right this second, you'll see the added complexities and where things like that you brought up – legal rights objections and challenges – where we would see that fitting in, but it does add a number of complexities.

Let me go to Kathy who's been so patiently waiting. Kathy, thanks.

KATHY KLEIMAN: Good to hear a good discussion. Thanks, Jeff. I'd like to ask staff to just move up by – can we take the timer down? Because I need to read #10 and also I'd like to read #2, so if it's possible to go up a line or two.

Number 10 says … we're not going to be able to do it then? Oh good, thank you. No, we need #10 too. We may not be able to do it. I've got it copied, I can read it. So can we look at #10 please, staff?

"Increase creativity in the resolution of contention sets." This looks like it's a new addition. It also seems to be creating tensions with

some of the other goals that we've created that are pretty well established, Jeff.

So, #2, which we can't read fully but let me read it to you, "If there is no mutual agreement," then it talks about community, but then it says, "If there is no such claim, and no mutual agreement an auction process will be put in place to enable efficient resolution of contention." So we've defined that in some ways as the efficient resolution of contention. Increase creativity in the resolution contention sets, without defining it fully is going to run at risk of #4, which is reduce the risk of collusion , profiteering, and/or speculation and a number of the other things that we were looking for, including transparency.

Also, it leads to things like what you said, Jeff, where you said we agreed on changes to strings. We didn't. There was huge disagreement on that, so much so that it's very narrowly defined right now. The changes to the strings, I believe the only agreement we have is because changes in strings were not allowed in the first round that we'll have it in case of kind of a Delta Airlines and a Delta faucets kind of scenario, which is not the vast majority of them. So this creativity is already creating tensions and I'm not sure this is a high-level goal for us. Thanks, Jeff.

JEFF NEUMAN: Thanks, Kathy. Some of these goals will conflict with each other and that's why after we get through talking about these goals, there are going to be certain goals that may be prioritized over others. So that's something we'll have to talk about because of the

potential conflict. And your point about whether increasing creativity, is that something that we do are striving for, because as you said, increasing creativity could increase the risk of some of the things that we don't want to see. So that's precisely the kinds of comments. This was added during the last call, I believe, and it may have been because of comments. I think maybe Paul was one of them and Kristine talked about that we spend a lot of time focusing on some of the negatives associated with it, but if we could have all applicants satisfied with some sort of creative solution that may have a benefit for the community, then why is that something that we should shun? That was the point that Paul and Kristine were making on the last call. And maybe that's what Paul's got his hand raised. Paul, please.

PAUL MCGRADY: Thanks, Jeff. Thanks for reminding everybody that and I don't want to belabor the point, but we do have this mentality coming out of the 2012 round, seven years ago, that the only real way out of the contention set seems to be some kind of auction, private. Last resort, others have suggested the Vickrey auction. There may be all kinds of ways out of contention sets that are very good for the marketplace and the way that it's set up right now is that the only way out is to exchange money where instead it could be there are ways out where people could run TLDs together. Maybe two applicants that apply for the exact same reason will be wonderful joint venture partners, but there's really not a mechanism for that. That's a quick way to resolve a contention set. I understand ICANN won't make you money on that because it will result in an auction. But I don't think the default setting

should be that our primary goal is to make ICANN money in auction. So I do think this creativity point is an important goal. I think we should keep it and I think we should let the implementers have a chance to consider making this part of ICANN's business more like a real business. Thanks.

JEFF NEUMAN: Thanks, Paul. You said it a lot better than my summary. So, thank you for jumping in. Jim, please.

JIM PRENDERGAST: Thanks, Jeff. I guess a couple of questions. One, Paul, you and I are going back and forth in the chat. I still don't have clarification though on increasing creativity. That does not include private auctions. That includes other resolution mechanisms as you outlined in the chat as opposed to auction. Is that correct? I just want to clarify that because that, I think, is a big issue.

                     But also, do we know, going back to the 2012 round, why ICANN had a specific prohibition on the ability for applicants and contention of forming JVs or things like that? Because it was specifically called out and prohibited, I'm just wondering why that was the case and are we going to run into that same rationale or reasoning going forward? Thanks.

JEFF NEUMAN: Jim, that's a good question. I have some recollection but I think if Karen – without putting Karen on the spot, if she wants to jump in,

is she still on? Yeah Karen is still on. Yeah, please. Thanks, Karen.

KAREN LENTZ: Hi, Jeff. Thank you. I'd have to look back to make sure I was giving a complete answer, but I think it had to do with forming a joint venture at that stage of the process would've meant creating a new entity, and the entity that was evaluated for financial and technical and operational capabilities would not be the same one that ended up signing an agreement. So I think that was one of the key reasons why that was there.

JEFF NEUMAN: Yeah, thanks, Karen. Also, just to add, to also mean things like reopening up potentially objections or warnings or just public comment periods if those changes were allowed. Now, we've talked about all of that with respect to application changes and we have in those sections talked about if someone wants to form a JV that that does need to go out for public comment and there does need to be some period of time for potential objections and things like that. So I think we're accounting for that in the section that we do talk about making changes, and the creation of a joint venture would be one of those types of changes and also accounting for the fact that it could cost a little bit of additional money and evaluations on background screening, things like that. But that was not accounted for in the last round and I think there has been a recognition within this group and within comments over the past few years that that may not have been the best path forward to allow certain types of changes.

There are some comments about ICANN getting funds. I think that's a little bit of a distraction. By forcing everything into an ICANN auction, I don't think we're saying it's our goal to give ICANN money, it's basically saying that it's a predictable mechanism that has been tested and is one that has been decided by the community as being the most fair and efficient way to resolve a contention set that otherwise is not resolvable.

We should stop, I think, using terms like it's to give ICANN money because ultimately at the end of the day, we don't know where that money – I mean there's a report out there and there's comment that's outside this group as to where that money is going to go, but I don't think it's fair to say that everyone that favors an ICANN auction is doing so because it wants to give ICANN money.

Okay. As Justine says, "It's a consequence if ICANN auction takes place, it's not a goal."

Kathy and then let's go on to #11. Kathy, please.

KATHY KLEIMAN: Then let's define #10 more narrowly because it is introducing a lot of new … It does seem to be second guessing a lot of work that's already been done and a lot of goals we've already reached. So if the idea of creativity is joint ventures then let's put that in. But it could be interpreted under cut a lot of other things. So how do we write #10 much more narrowly to reflect the more general agreement? Thanks, Jeff.

EN

JEFF NEUMAN:	Yeah, sure, Kathy. Paul might have a suggestion, so I'll put Paul in the queue. Paul, please.
PAUL MCGRADY:	Thanks. Again, we're not increasing creativity if we are going to try to sit here and think of all the various ways that somebody in the next round or rounds may come up with an idea of how to quickly resolve a contention set by making peace rather than simply engaging in an auction in which ICANN – I'm sorry but if it's the only option and ICANN ends up with the money, it is what it is. We can't pretend like it's not. We could say joint venture but then if we write down here "joint venture," does that then preclude two parties in a contingent set that both good actors both apply for the same thing? They both want it, they're both great corporate citizens, and they come together, and they're not going to have an auction amongst themselves for one party to pocket all the money. They're going to appoint a charity between the two of them and they're going to have an auction and they're going to give the money to that charity instead of to one or the other. That's creativity. It doesn't take a lot of creativity. It's late at night here and I've not actually done any brainstorming or whatever kinds of creativity there are that are out there. But, folks, we can't put together a list of one or two things and say this is all the room for creativity. That's not creativity, that's us dictating to parties in the future about how they might be able to peacefully resolve these things amongst themselves without engaging in an auction where the money goes to ICANN. Thanks.

JEFF NEUMAN:	Yeah. Thanks, Paul. So one thing we could do is if we connect this to Goal #4 then you could say that you want to increase creativity in the resolution of contention sets in a manner that also reduces risk of collusion, profiteering, etc. In other words, in theory, we could say that so long as it doesn't amount to speculation profiteering, etc. then we would encourage other types of creative solutions other than private auctions or things like that. So there are ways to kind of connect those.

Rubens says, "Perhaps non-competitive resolution of contention sets." Kathy likes that and it offers a middle ground. So, thanks, Rubens, for that language. We can refine language so we don't have to make the language perfect, but I do think Rubens's language is getting closer to where we want to be. So we can put the language in now and we can think about that in terms of at least as a concept.

Sorry for the background. I have a dog that I need to let out.

Paul states, "Rubens, what if the CEO's decided to resolve it over a chess match?" Paul, the language is not perfect but I think the concept is there and we can work on specific language. Essentially, it's tying 10 and 4 together, so you're trying to come up with solutions other than ones that we encourage speculation or purely financial – I'm not using good words today but essentially, it's tying the two together. We can work on words later as long as the concept is understood.

Paul says, "Let's wordsmith this week." Rubens sword fighting … no comment. I think we should have like a bakeoff, whoever can cook the best cake.

Anyway, #11 was the Board's comment, where the Board states that application should not be submitted as a means to engage in private auctions including for the purpose of using private auctions as a method of financing their other applications. Let me just ask, was that the exact words of the Board? Because I know this gets too what other people were saying. If that's the exact text, that's good.

Kathy, when I was saying 10 and 4 could be tied, I wasn't saying that we eliminate one in favor of the other. It was more that you don't view 10 in a vacuum. You would look at 10 but not necessarily violate 4 in doing that. That was the intent. But you're right, they are separate concepts.

Okay, as far as the Board goal, which I also think has some relationship with #4, the Board comment, again is there a concern with the speculation or financing using funds from the loss of one auction to fund another application, I think, was concerning to the Board in its comment.

Okay, so now that we've gone over the goals or whatever term we're using, now it comes time to look at the different mechanisms that are currently on the table to see – I'm sorry, not the mechanisms – to look at the goals and to which ones do we think are most important to us, which ones if there were a conflict do we think would take priority of others. From the discussions, if there's a way to view all 11 at the same time because I don't remember 1 and 2 off the top of my head. I'm not sure there's a way to do that. Certainly #1 is having a pre-established timeframe. This – going back to the last discussion – was if we believe that private resolution negotiations are coming up with some sort of way other

than an auction, is that something we still value? Again, this does relate to #10 as well. Because this was one of the goals that came out of the GNSO the last time, our recommendations, that's one of the reasons also why ICANN put in this 90-day period before an ICANN auction would take place.

So I don't want to go through every single goal here, but it seems to me that #1, 10, and 4 seem to sort of relate to each other. Or at least #1 and 10 relate to each other because if you're going to allow a period to privately resolve, you could also be encouraging creativity. I'm sorry. I'm just reading some of the comments here. I think there are people talking about ways to game it, which I think is important but not yet to discuss.

I'd love to hear just thoughts as to what would be prioritized? The reason I say that offering some time period for parties to work things out, that was one of the recommendations from the 2008 GNSO Policy. Most of the comments that we got and seem to still favor that as being a high priority as well as – and that would also relate to #10 that we have on here. Again, that does not necessarily mean a private auction that you could do all of these sorts of things, have a period to resolve but not allow private auctions. That could still all be part of the solution.

I don't want to be the only one talking here. And I'm not talking yet about ranking order. Steve is saying maybe high, medium, low. Yeah, we don't have to say, "This is #1 and this is goal #2 in terms of priority." But yeah, high, medium, low is a great way to do it as well. So let me ask the question. Do we think it's a high priority to encourage applicants to resolve contention between themselves

before having to resort to some sort of auction? Donna, would you say that's high, medium, low?

DONNA AUSTIN: I guess I was thinking about this in a different way. I wasn't necessarily thinking this as assigning a priority to any of these goals but as a collective group. So if you're doing a selection process, you have 10 selection criteria that you rank candidates against, so you would go through and have a look at whether the candidate met all 10 or 8 or whatever, and then you would make a decision. I understand why there might be a preference to rank some of these now, but I wonder if it makes more sense to think of this as a collective group and establish the extent to which the contention set mechanisms that we've identified made any of these goals. That's how I thought of that because I think if we get into this high, medium, low, then we'll just extend this conversation for another two weeks maybe as we try to look, because we've got nothing to baseline this against. Unless we start saying 1 is more important than 11, 2 might be a little bit less important than 11 but higher than 3. So I don't know. I just think we get into a bit more confusion than perhaps solving the problem here.

JEFF NEUMAN: Yeah. Fair enough, Donna. I think ultimately we could say that each has equal weight. The issue is that some goals may conflict with other goals. For example, if we're saying that we're encouraging parties to talk amongst themselves to figure out a solution, that may be at odds with increasing transparency even of the outcomes if not everything is forced to be disclosed.

EN

But I think your point – it's not just going to be like a score sheet. This mechanism got 6 and this one got 5, and therefore, we check the one with 6. Ultimately, we're going to have to prioritize it in some way, but I think you're right in terms of maybe discussing this without a baseline. So we could go to discuss the models now and start with those and see which goals they advance and at least then we can put them up against each other and then determine which goals or which outcome seem higher priority than others.

Why don't we then do that? Sorry, there's some chat going on about … If we looked at the two models that we currently have on the table – and there could be slight variations even if we go with those models – are the Vickrey auction and the status – what we did in 2012. So if you look at the 2012, the way that happened, if we go back to the goals, if we scroll up, did the 2012 model encourage resolution of contention sets within a pre-established timeframe? I think the answer to that is yes although … Sorry, Donna's got her hand up. Okay, Donna.

DONNA AUSTIN: Thanks, Jeff. I'm really sorry. I don't intentionally mean to slow this down but I just wanted to note that I'm not sure that we've agreed on the goals for 3 and 4, and I say that because I suggested some text to replace 3 and 4, so combine them with text to replace what we have there and that hasn't been discussed. I note that Justine has put additional language in there that I don't believe we've discussed. So I understand we want to move on from this but I don't know that we've actually agreed on the text for 3 and 4.

JEFF NEUMAN: Yeah, thanks, Donna. Thank you for the reminder. That was my fault. I did say we would get back to that. On #3 … the red language that's in there now … well, actually, Donna, why don't you take the floor because you understand these changes a little bit more and, Justine, if you want to respond as well.

DONNA AUSTIN: Jeff, none of these changes are mine, because mine was provided over e-mail. I made a recommendation to change 3 and to combine … because I think 3 and 4 are trying to get to a similar thing. So I had language that was intended to combine 3 and 4.

JEFF NEUMAN: Let me ask, is there some way to – I know Steve is sort of running a lot of this. Steve, is there a way that you can display that?

DONNA AUSTIN: I think I've put it in chat.

JEFF NEUMAN: Perfect. Okay.

DONNA AUSTIN: And I think that incorporates … Kristine had some changes to it, so I think that's the combined language from Kristine and I, and the intent is that it would replace 3 and 4 as a current we've used.

JEFF NEUMAN: Can you maybe just spend a minute just talking about what you're trying to get at and hopefully cover what – I'm not sure Kristine is on the call – but certainly to the extent that you modified the language, if you could just take a minute and explain that.

DONNA AUSTIN: Yeah. Thanks, Jeff. What I was trying to overcome, this particularly relates to the language that we use. There was concern about using words like collusion, profiteering, speculation. I think Greg has suggested rigging or something. I guess what I was trying to do was have an all-encompassing language which was really unfair practices. We all seem to have a sense of – there are certain things that happened in 2012 that we don't want repeated like what the Board has provided. We don't think collusion is fair or unnecessarily profiting from the program. So what I'm trying to do is just to encapsulate that.

There's also some concern – it's just certainly a concern that Kristine and I had all along, and we've agreed that the value of the TLD is very subjective in that only the person or entity bidding for it can have a sense of what that is, what it means to them and what the value is. We had a concern that – and this is one of the reasons why I don't necessarily support the Vickrey model because the sealed bid has to take place at the time of the application. It's hard to encourage applicants to bid the true value of the TLD in a vacuum. So what I've tried to put in there is that there's some indicator of information that would be helpful to applicants to establish what it may be worth to them, and just

simply knowing how many applicants are in the contention set might be enough for that. So that's what I was trying to capture there.

So I appreciate that some people don't think that this would replace 3 and 4 but that was the intent, just to have broader language in there so we didn't get stuck on what do we mean by collusion, what do we mean by profiteering, or whether speculation is better than [inaudible] things like that. That's all I was trying to do. Thanks, Jeff.

JEFF NEUMAN: Thanks, Donna. Looking at the chat, maybe, Kathy, I see you say, "I don't think this replaces 3 and 4. Perhaps it's something new?" I do think it would replace #3. I think that there are some added things in #4 that aren't necessarily encapsulated in that language but, Kathy, please.

KATHY KLEIMAN: Sure. I think #3 speaks for itself, and I think it speaks for itself very clearly and succinctly. I wouldn't replace it. It would reduce the risk and unintended consequences of bidding wars, what could be clearer and what could be more in sync with things that we've been discussing for months and months and months, and also what we've heard from the Board and what we've heard from the community.

To Donna's language, reduce the risk of applicants or third parties engaging in unfair practices. That's also a term that will need to be defined. That would manipulate – that's also a term that would

need to be defined. The outcome of a contention set resolution or require applicants to decide the market value of the string absent relevant information. So if the goal here is to find out how many people, how many companies are in the contention set – we talked about that, actually, and there is a way to incorporate that in the Vickrey sealed bids. But again, I don't think this language replaces and I think it introduces a whole new set of questions of its own. But if that's the goal is to get that particular piece of information, let's talk about that particular piece of information as we have in the past. Again, the number before you submit a sealed bid, you might want to know, without knowing who they are, the number of companies or the number of other applicants for that contention set. Thanks.

JEFF NEUMAN: Thanks, Kathy. I think both the existing language that's in the goal as well as the suggested one, both of them are vague and both of them are subject to interpretation depending on how you look at it. Jim states in the comments, perhaps if there's a certain type of activity we want to call out as we shouldn't allow it, then why don't we just spell out that particular activity? I do think that makes some sense because I'm not sure that we necessarily have agreement as to whether everyone in this group feels that certain conduct should be banned. There were comments during the last call and in the public comment period that were not against private auctions if every applicant agreed to do a private auction, but there are others that are opposed to it, and this language does not help us in determining whether that conduct is allowed or prohibited. I think if it is our intent to exclude certain behaviors, we

should try to be as specific as possible so we're not just leaving it to ICANN or the Board to make a subjective decision.

I know we're sort of running out of time and I'll put this as a homework assignment is to really think about the types of activities we don't want to see occur as specific as possible so that we're not just drafting vague language that needs to be interpreted later on. This is not the topic we're going to start with or get to next week because we want to take a little bit of a break and go to the subjects that we talked about at the beginning of the call. So it is something we should continue on the list. I think being direct as to what we do not want to see occur is going to be important. That might take some time anyway, so we'll give this as sort of the homework assignment.

Donna asks, "Will these goals actually see the light of day?" At this point, it's intended for our internal use as you say. If we're unable to come up with a solution or a mechanism, if we're unable to agree on a mechanism then we will, as a working group, need to decide the next step. Do we forward the goals if we agree on the goals to the Implementation Team and say, "Look, we didn't have consensus on the exact mechanism but here were the goals we discussed as being important to us in a mechanism," or do we just say, "We're unable to reach any sort of agreement and therefore have no recommendation at all"?

I think that's down the road. I would hope that we can make a recommendation and this will be part of the rationale, the goals that we have. But if we can't, then we'll have to convey that as well.

Justine wants to clarify "The intent in changing the text in #3 is limited to removing winner ultimately overpays for the TLD as a goal." Justine, thanks. That is consistent with what we discussed on the last call and I think we had agreed to get rid of that language because ultimately what a bidder chooses to pay for the TLD … Because they're voluntarily paying for it and have voluntarily agreed to a price, then it is not technically overpaying.

Donna is saying, "If the goal may see the light of day, then that changes the intent of this discussion." Donna, before it sees the "light of day," that will have to be a further working group discussion that's not going to be decision made by myself or the leadership team. So I think at this point, the goals are for our internal use unless and until it's otherwise determined by the working group.

Okay, we have reached the end of the call. The next meeting, the next call is Tuesday, the 21st, at 1500 UTC. The reason it's not on a Monday is I believe there's a holiday for a number of people at least in the United States, and so that's why the call is moved to Tuesday. Rubens rightly says it's Martin Luther King Day. So the next call is Tuesday. We're going to try to continue the discussion on the mechanisms on e-mail, but remember we're going to start these new subjects – not really new – we're going to start these other subjects that you should see the material tomorrow or Friday at the latest.

Thanks, everyone. I appreciate the participation. Good night for those in North America, or a good start of the day if you're in Europe, or a good rest of the day elsewhere. Thanks, everyone.

CHERYL LANGDON-ORR: Thanks, Jeff. Bye for now.

JULIE BISLAND: Bye, Cheryl. Thank you, everyone. Have a good rest of your day or night.

[END OF TRANSCRIPTION]