
ICANN Transcription

New gTLD Subsequent Procedures Working Group

Thursday, 19 September 2019 at 2000 UTC

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JULIE BISLAND:

Good morning, good afternoon and good evening, everyone. Welcome to the new gTLD Subsequent Procedures Working Group call, on Thursday 19th September 2019. 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 all to please state your name before speaking for transcription purposes, and please keep phones and microphones on mute when not speaking, to avoid background noise. With this, I will turn it over to Jeff Neuman. You can begin, Jeff.

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JEFFREY NEUMAN: Thank you very much. Hopefully, you guys can hear me. Hopefully, we'll have a better audio connection than the last time, but just let me know if the connection is not as good. I will warn you that I am in my car in the garage, because my house is very loud at the moment. With that said, the agenda is up on the screen right now and as Julie said before, we have a shortened call today. We'll actually be just a little under an hour so we can give councilors a chance to get to their GNSO Council call. Hopefully, Steve and Cheryl and Rubens and others that have to leave, please [give me the time, keep us rolling here.] The agenda today will be talking about objections. I don't think we'll get to accountability mechanisms, but if we do, that's the next item on the agenda. Whoops, sorry about that.

Next, let me just ask to see if there's any updates, any statements of interest, or any additions to the agenda. I'm hearing my voice is a little crackly. Is that true of everyone?

JULIE BISLAND: Yes, Jeff. It's not terrible, but it's jumping in and out.

JEFFREY NEUMAN: I do have my phone with me, if that happens again. As long as I'm understandable, I apologize for any crackling in and out. I did just try to move the computer closer to me, so maybe that will make some kind of difference.

Let's get started on ... I'm sorry, did I ask? I'm trying to ask if I asked for any updates to any statement of interest? Not seeing any, let's then go to objections. As we wait for that to come on, on the last call, if you remember, we went over the background documentation, the policy goals, and the high-level agreements. There were a bunch of them, so today we are going to ... I do see a hand, so let me just finish this thought, and then I'll get there. Today, we're going to start on the other areas after the areas of high-level agreement. Sorry about that, I didn't have my screen scrolled up, so Kavouss, you had your hand up. Is it still up? Kavouss, are you there? Okay, I don't see his hand up now, so let me know if there is a hand, because Steve said that there was a hand from Kavouss. I'm hoping I'm still here. Can everyone still hear me?

JULIE BISLAND:

Sorry, Jeff. Yes, we can hear you. Kavouss did drop his hand. It was up, but no longer.

JEFFREY NEUMAN:

Okay, I just thought something was wrong with my screen. Thanks, everyone. Let's scroll down to ... I think it's on the next page, now, after the high-level agreements, because we started there. The reason I'm not repeating the high-level agreements is because we're going to end up repeating them all as we go through the outstanding issues. There's issues on the edges of each of those high-level agreements. On the first one, we're talking about comments that relate to all of the different types of objection, whether it's a legal rights objection, a community-based objection,

a string confusion objection, or a limited public interest objection. These comments apply to all of them.

The first one, which is the concept of conflicts of interest. Essentially, this deals with the recommendation that panelists, evaluators, and independent objectors, are free from conflicts of interest. That's from high-level agreement A, above. Jamie Baxter stated that ICANN should make complete information on all panelists, evaluators, and independent objectors public for comment. ICANN should only enter into contracts with providers that agree to these terms. I believe by "these terms", it's all the recommendations that we have with respect to evaluators. INTA states that it's ICANN's role to evaluate the fitness of providers, and using the UDRP as a model is the way that it can be done. The Registries Stakeholder Group ... ICANN states that ICANN should partner with an independent organization to ensure that panelists, evaluators, and independent objectors, are free from conflicts of interest.

These are comments that came in, these are not yet in high-level agreements. If these are topics or comments that we think, as a group, we can get behind, it would be great to hear from everyone. Now, we do have a hand from Kavouss. Kavouss?

KAVOUSS ARASTEH: Do you hear me?

JEFFREY NEUMAN: Yes, I hear you now.

KAVOUSS ARASTEH: Can I speak while I wait for a green light?

JEFFREY NEUMAN: Yes, go ahead, please.

KAVOUSS ARASTEH: Okay, thank you very much. Thank you. If this suggestion is agreed, I would like to add that once this evaluation of the conflicts of interest, in fact, lack of conflict, is cleared, it should be publicly available that this is the panelist, and this is a result of the evaluations, and the result shows that there is no conflict of interest. So we should inform the result of this evaluation, if it is agreed. Thank you very much.

JEFFREY NEUMAN: Yes, thanks, Kavouss. Jamie, do you want to provide some more background on your recommendation?

JAMIE BAXTER: Yes, thanks, Jeff. As most of you likely know, the only evaluators that were completely kept behind a screen of secrecy in the 2012 round were the community priority evaluation panelists. I'm not really sure why that happened, or why that was allowed to happen, but I don't think it should happen going forward. I think, with respect to having an independent organization look at conflict of interest,

the concern I have there still remains with the fact that the conflict of interest is going to be best presented by the parties involved in the evaluation.

I don't think that they should be discounted. They should have an opportunity to understand fully who is evaluating them, so that they can raise any concerns prior to it becoming an issue. I think it's important that ICANN only contract service providers who are fully aware and willing to be completely transparent with who they are. Thanks.

JEFFREY NEUMAN: Yes, thanks, Jamie. I'll go to Kathy, and then I have some of my own questions. Thanks.

KATHY KLEIMAN: Can you hear me, Jeff?

JEFFREY NEUMAN: Yes.

KATHY KLEIMAN: Okay, great. Per a lot of last week, as well, it looks like we need to separate out community priority evaluation, CPE. What Jamie is recommending here, I think, would change the way the other objections were done, including the community objections that went through the International Chamber of Commerce. This says, "ICANN should make complete information on all panelists, evaluators and independent objectors public for comment."

Jamie, this would change the way this is done. ICANN outsources on purpose to third parties, to allow them to go through their processes. I think we did the American Arbitration Association, and certainly did the International Chamber of Commerce. They don't publish, they have rules. Of course, they're dedicated to trying to avoid conflict of interest. I'm not sure they publish all their panelists, because a lot of this is done as they're looking for the experts to come in. In the community objection, there was an opportunity to object to the panelists, at the start, if I remember correctly. Once you found out who it was, there was a period of time to object. This idea that ICANN would publish is anathema to the idea that we are outsourcing to independent experts, because ICANN doesn't want to be responsible. Yet, those independent experts are known for the integrity of their processes. Thanks.

JEFFREY NEUMAN:

Yes, thanks, Kathy. I'm on the same wavelength, in that so long as the parties have a chance to comment or to review their potential conflicts of the individual panelists, I think that satisfies the conflicts of interest provisions. I'm not sure, from a privacy perspective, or from others, that this is the type of thing that individuals should be commented on by the community, outside of the parties to the dispute.

I also agree with Kathy that this needs to be separated out from the notion of the community priority evaluation. This would be for community objections, but not for the evaluation itself, or the CPE. I'd love to hear some other thoughts on this, on what I, Kathy, or Jamie said, if anyone's got any specific thoughts.

I think ICANN should make available the outside entity that's providing the service, and potentially, if there's a comment period on anything, it's that outside entity. I don't think, when it gets down to the individual level, it's reasonable to ask ICANN or the provider to post that to the world and then allow comment on them.

Anne's asking a good question, "Who determines the conflict issue once the party objects? Is there an appeal from that determination?" That's a good question. I don't remember the rules completely, but if anyone here on the call was a party to one of the objections, and anyone objected to a panelist, do you recall who that went to? Jim posts a note saying, "There was an IRP proceeding relating to a panelist having a perceived conflict of interest. That's in the .sport case, and that is posted up on the .sport V ICANN webpage. Kavouss, please.

KAVOUSS ARASTEH:

Yes. I have not received any reply to my question, but we have this issue not only in ICANN, elsewhere. Whenever somebody is a member of the panel, or member of a judgment and so on and so forth, first of all, after complying with the criteria, he or she needs to make a declaration, or declare that he or she are faithfully, independently and so on and so forth, and after that, that will be evaluated, and the outcome you told them ... Outcome, I don't say outcome, but maybe output? I don't know. [I didn't say outcome, I put two different words.] Outcome means the performance indicator, output is just results. Should be made available that they know what is the result of that evaluation. That was my question, and I need to have some answer. Plus, at the time of selection or election, there should be some declaration of faithfulness or

independence, and so on and so forth. This is not oath, but is something a declaration. This is something usual with every organization, every member of the panel. Thank you.

JEFFREY NEUMAN:

Yes, thanks, Kavouss. I do believe that there is part of a process already where a panelist has to declare, even before it's made known to the party, that there's no conflicts to the provider themselves. The list of potential panelists, or the panelists selected, goes to the two parties, or multiple parties, whoever's involved, then they get a chance to review and comment. Even before they're presented to a party, they have to declare that they are free of the types of conflicts that are in the terms and conditions.

Anyone else with thoughts? Again, separating this out from the community priority evaluation. What we're saying, essentially, is that the entities that these are outsourced to should be known prior, and potentially comment on that, but not the individual panelists, as that's really a matter between the parties of the objection. Cheryl, please.

CHERYL LANGDON-ORR: Thanks very much, Jeff. This is just an observation to put into the mix. I suspect, although we would need legal advice, here, I think, that we wouldn't, as ICANN, actually be able to impose this type of "thou shalt publish" rule on all possible third-party providers, because the rules of engagement here would be actually the rules of the third-party provider that we're trying to influence. If the third-party provider worked on its own recognizance, on its own

standards, on its own processes, to provide bona fide and accountably, and if needs be, able to be challenged and dealt with, independent panelists, then I'm not sure ICANN could even ... Well, one of two things would happen. They may have problems actually being able to contract that because it would be counter to the third-party provider's own processes, or you'd have a much more limited pool of already fairly limited groups that can provide this service. You do things at arm's length for a reason. You know what I mean? I'm just not sure how much you can impose this type of suggestion. Okay? Thanks.

JEFFREY NEUMAN:

Sorry, I was on mute. I think, as Susan and Anne are talking about this on the chat, the providers already have their own rules with respect to these, and then that's what Cheryl was getting at, as well. We can't really impose extra things on them as to how they do it, but in the last round, and looking through things, if you believe that there was a conflict, it was up to the provider entity to look at that and then decide whether they believe someone else needs to be appointed. There was no real appeal process there, other than using the ICANN ... In theory, you could use the accountability mechanisms to appeal.

I do agree, there's only so much that we're going to be able to impose. We shouldn't be necessarily reinventing the wheel. As Paul said, we don't know the total universe of potential providers, and what their potential conflict should be. As Justine says, ICANN should be able to assess the providers and make determinations with respect to conflicts. I'm assuming, like the last time, the names of the providers were made known to the public. I can't remember

if it was ... I don't know it was before the application period, but certainly before any objections could be filed.

As Jim said, it was the providers that were made known, not the panelists. Right, but the providers being known, you could then go in and research the rules that they have, and how they deal with things like conflicts. They were all able to come up with supplemental rules, that were more detailed, of how this process will be implemented. Cheryl's saying, "But we need to know what, at arm's length, an external independent provision of services actually means." Okay, that's on the Registries Stakeholder Group idea, which I'm not hearing any additional support for. Jamie's in the queue, so Jamie, please.

JAMIE BAXTER:

Yes, thanks, Jeff. I do want to just – not to draw attention or to divert focus on objections – make it clear to everybody that the decision on the service provider was not determined for community priority prior to reveal day. That is one difference that exists from the objections itself, to make that very clear. It sounds like we're making clear recommendations around objectors, but I would like to suggest that that should be for evaluators, as well. I just wanted to point that out.

JEFFREY NEUMAN:

Yes, thanks, Jamie. I think we had talked about that, at least with respect to the technical, financial and operational backgrounds, or evaluations. We talked about knowing who the evaluators were, and I guess the same would apply to the CPE, so that is different.

Paul states that the policy would be all panelists for providers would be free from conflicts of interest, and there would be an appeal mechanism should a party believe that a panelist or a provider has an unresolved conflict of interest, and then that could just be implemented. The appeal mechanism, Paul, just to make sure I understand, are you talking about an appeal mechanism with ICANN, or an appeal mechanism internally at the provider level? Either or both, okay. I suppose we don't need to make that decision at this point. Kathy?

KATHY KLEIMAN:

Actually, I think we do. The appeal mechanism that was used, created, or bootstrapped, in the last round, was unfair to the other party, to the proceeding, to the objection. The party that wasn't happy with the independence, or lack thereof, and alleged conflict of interest of the panelist went to ICANN through an IRP, and then it was ICANN versus that party. They alleged that ICANN hadn't supervised properly the third party, whereas, really, you want ... What happened was that the other party to the proceeding was left out. I would put the appeal within the third-party arbitrators, within the International Chamber of Commerce, the American Arbitration Association. If they have to set up new proceedings for appeals, I'm sure they can do that, and I'm sure they've heard it before. I would keep it ... As Cheryl said, we put it at arm's length for a reason, and then keep it there. That way, all parties can continue to be involved in the process. Thanks.

JEFFREY NEUMAN: Yes, thanks, Kathy. Steve says it's worth looking at section 2.4.3 of the guidebook again, which talks about the code of conduct guidelines for panelists, to see if we really have a delta that needs to be resolved. Paul says, "Kathy's point is important. Why set it up to where an aggrieved party is automatically sideways to ICANN?" Yes, and I'm not ICANN's in the best position to make a determination on those conflicts, anyway. I believe most providers have, already, the ability to hear that appeal. I'm not sure whether it involves both parties to the objection if only one of the parties believes that there's a conflict. I suppose that's something that we'll have to work out through implementation, because we don't have a list of providers at this point. Kathy, is that an old hand or a new one?

KATHY KLEIMAN: Old hand.

JEFFREY NEUMAN: Okay. Let's see. Kathy says, "Building on Paul's suggestion, appeals on panelists' conflicts of interest within the third-party arbitration organization," and states she's not aware of appeal mechanisms among providers that could occur prior to the process proceeding. Paul says, "It puts ICANN Org in a weird place of having to defend third party actor and actions." Right.

The next topic has to do with whether a single panelist, or a three-person panel, if we go to ... Sorry, can you scroll up to high-level agreement B, real quick? Then we'll come right back. Thanks. It says, "For all types of objections, the parties to a proceeding should

be given the opportunity to agree upon a single panelist or a three-person panel, bearing the costs accordingly.”

Going back down, the ALAC had a comment that says that the overall cost of filing and seeing through objections must be much more affordable to communities and nonprofit organization objectors, disallow a wealthier party to a proceeding from dictating terms to insist on a three-person panel, and prejudice the challenge of its less wealthy opponent. Susan, please.

SUSAN PAYNE:

Again, I think we’re in danger of trying to reinvent the wheel, here. There’s a really well-established precedent here, in the UDRP. Obviously, it’s not the same type of procedure, but it’s akin to the same sort of process, where the party that’s asking for the three panelists is the one who’s picking up the cost for it. I don’t see why that’s an issue that we really have to be concerned about. It seems entirely appropriate to have a similar sort of process, here. Therefore, the wealthy party, if they want three panelists, well, then they pick up the cost.

JEFFREY NEUMAN:

If you remember, Susan, a lot of the objections were “loser pays.” If the wealthier party chooses a three-person panel, and the other party loses, what portion of those costs were borne by the losing party, and what was borne by the wealthier party for having the extra panelists?

SUSAN PAYNE: Are you asking me to answer that question for the last round? I have absolutely no idea. Obviously, in the UDRP, the [poor] successful party in the UDRP doesn't get their costs back. I agree, it's not entirely on all fours in that respect.

JEFFREY NEUMAN: Yes, so we'll have to do a little bit of research on it, because it does make it a little bit different in the case where it says "a loser-pays model." In general, we all agreed as a group that it seemed like the costs of the public interest objections and the community objections were incredibly high. Paul, I don't think this is going to require us to define what a wealthier client is, I think the point here is to look at the cost distributions for the party that does not necessarily want the second and third panelists, that would be happy with a single panelist. If it loses, it knows that it's going to have to pay the costs. I think we need to do a little bit more on this one, simply because I'm trying in my own mind to figure out how it relates in a loser-pays model.

KATHY KLEIMAN: Jeff, should we talk a little bit about what these proceedings cost, so people know what we're dealing with, and what we're tripling?

JEFFREY NEUMAN: Right. I don't know if we're tripling it, Kathy, because I think the ...

KATHY KLEIMAN: One panelist to three panelists. We're tripling the panelist cost, and that's most of what it is, here.

JEFFREY NEUMAN: I actually think, though, that the high costs of those objections ... I think those types of objections were three panelists, from what I remember. I'm not sure anyone opted for, or was able to opt, in those types of objections, for one panelist.

KATHY KLEIMAN: Jeff, may I?

JEFFREY NEUMAN: Yes, please.

KATHY KLEIMAN: At least in community objections, it was single-panelist, and it was tens of thousands of dollars, and more. I don't, of course, have the figures in front of me. What happened was, both parties put in some portion of money, and then it was loser paid, so one party got the money back. We are tripling, because the panelists are the major cost, and the panelists are paid what seemed like full freight. I think we were well above \$50,000, in at least one of the proceedings I was in.

I do think we need to think about the implications of that for who can bring objections. Maybe we want to do a process, or think about a process, where the two parties have some input into who the

panelist is, perhaps based on some lists within the third-party arbitration group.

JEFFREY NEUMAN:

The recommendation here is that the parties could agree to do one or three in those areas. The parties would then know, going in, what the costs would be, or should be. They don't have to agree if it's ... The default would be one panelist, if they don't both agree to three.

Limited public interest had to be three-panelist, and the community objections had the option of one-panelist. I remember with three panelists it was several hundred thousand dollars, and there was a lot that had to be fronted. Then, there was an administrative fee that was never refunded, even if you won. That part was always lost.

Jamie asks, "Did panelists get paid by the hour?" I don't think any of us know that answer. I think we leave it to the provider to decide everything about how the panelists get paid. Kathy says, "Okay, if both parties have to agree to go to three, then that's okay." Alexander is saying, "Hundreds of thousands?" Yes. Alexander, I do know that there was at least ... For community objections, I do remember one objection I was involved in, where ultimately the cost was well into the six figures. It was extremely expensive.

Paul's asking if we're married to the option of a three-person panel. Paul, I think we're married to the option of there should be a choice. If both parties agree to go to the three-panelists, then they should be able to have the three panelists. They would know, of course, upfront, that that's going to be a lot more, and hopefully know exactly how much more.

ALEXANDER SCHUBERT: There's a hand up.

JEFFREY NEUMAN: Yes, Alexander, sorry. Thank you.

ALEXANDER SCHUBERT: Hi, I have two remarks. Remark number one was, if there would be such a situation that a community that is not exactly wealthy, and that would be happy with one objector because of the cost, and the opposing entity would want three objectors, hoping that that would end the objection process, what we could do here is that that other entity would have to agree that they bear the costs, even if they're winning, so that they do not get recovered the extra cost for the two more panelists. That would be one idea.

The other statement I wanted to make is ... I have to bring Work Track 5 in here, even if this is not Work Track 5. In Work Track 5, we get told again and again that once someone is applying for some [proposed] city, and the city doesn't like it, well, they could object. If this costs hundreds of thousands of dollars, I don't think that cities necessarily will object, because it's not viable. You cannot shell out \$500,000 to object to an application. We probably might have to find a way that certain communities get a cost reduction, or maybe free, of course. Especially if it is for the common benefit of whatever, for example city communities. To say, "Don't worry, if someone is applying for your, for example, geo entity, fear nothing, you can object later." That's what we hear from the brand lobby all the time.

I fear that those objections will just not happen for those extreme and unknown costs. Thank you.

JEFFREY NEUMAN: Yes, thanks, Alexander. Just noting from the chat, Jason states that the costs are very unclear. Kathy likes the prior idea that unless both parties agree to three, the three-person panel does not go forward. Rubens states, "ICANN offered to pay one objection per government. I believe Argentina took that offer in the Patagonia objection." Steve, please.

STEVE CHAN: Thanks, Jeff. I was just trying to remind myself what the AGB looked like in this regard for the selection of panelists. Because of that, I have a clarifying question. As you noted, for limited public interest objections, it was always three experts. It seems like this high-level agreement is to give the option of the two parties involved in the objection the option of selecting one or three panelists for all of the objections.

In this case, it seems like you would extend that option to string confusion and community objections, maintaining that existing ability for the legal rights objection. The part that I wanted to clarify in particular was, if that would end up being a change to the limited public interest objection, where, as you said, it was already three. In this case, it would actually potentially reduce it to only a single panelist, if mutually agreed to by the two parties. In looking at this, I just wanted to clarify what the group was intending. Thanks.

JEFFREY NEUMAN:

I think what we put out in the comment period, and the comments we got back, and the reason why we grouped it in this way, is because these comments were meant for all types of objections. The answer from the comments, and from the recommendations, was yes, it would give a choice of one or three, with the default being one.

I guess the default for limited public interest could, in theory, be three, but then we'd have to talk about the loser-pays model. Steve's saying, "Right, just wanted to make sure the implication was understood." I think it's understood, but if anyone doesn't, then raise your hand.

Looking at the next issue, this goes to the notion of being able to draft supplemental rules ... Or, not being able to draft it, but having to publish, for each type of objection, all supplemental rules, as well as all criteria to be used by the panelists. ICANN Org stated that this recommendation was unclear. It didn't follow what guidance for decision-making referenced in the preliminary recommendation. The grounds for filing objections, procedures for filing objections, and for dispute resolution, the dispute resolution principles/standards were provided in the Applicant Guidebook. Any supplemental rules and procedures established by dispute resolution providers were made available publicly on the provider's website, as well as at the link.

I think what ICANN Org may be forgetting is that those were not published on the site until well after the reveal, well after the Applicant Guidebook, and without any sort of upfront knowledge by the community of what they were allowed to do in the supplemental rules, and what they weren't allowed to do. Things like costs, and

breaking down the cost by administrative fee, and other fees, and then requirements above and beyond what were in the guidebook. Those are the types of things that we're trying to understand before applicants are revealed, and certainly before someone can file an objection. Jamie, please.

JAMIE BAXTER:

Yes, thanks, Jeff. I brought this point out in the e-mail chain the other day, but it also applies here. I just don't understand why supplemental rules or documents are even produced after applications are received, especially since the materials that were to be used in crafting your application were the guidebook itself. It happened in the 2012 round, it should never happen going forward.

There's no purpose or reason for having service providers come into the game late and reinterpret or restate what the guidebook says in their own words, because that information wasn't available to the applicants when they crafted their application. I would think that any reasoned interpretation by the applicant of the language that's in the guidebook is what should move them forward.

All of these panelists, service providers, they must work against what is printed in the guidebook without reinterpreting it in a way that either simplifies it for them, or makes it easier for them, or in any way changes the intent or the content at all. I think that's an incredibly important point in order to level the playing field and make it fair, make it more predictable, and be much more transparent. Thanks.

JEFFREY NEUMAN:

Yes, thanks, Jamie. Supplemental rules do have a purpose, and it's not really supposed to touch the substantive policy or decision-making, but more on the procedural aspects like, "Okay, we know the cost is \$15,000. How do you make that payment? Where do you make that payment? How do you get a receipt for that payment, or a purchase order?" It's supposed to also go into, "Okay, and this service provider uses XYZ content management system for you to enter your case information into, and this is the e-mail address, and how it will notify you of any updates to the proceeding. This is how our process for selecting panelists works."

There's lots of terms and conditions that aren't part of the policy, but would be part of the supplemental rules, that are legitimate. Like I said at the beginning, it's not supposed to be, "Well, we're going to make a decision to define criteria four of the community priority evaluation in this way," but more like, "if you want to submit documentation for number four criteria, this is when you do it, this is how you do it, this is who you send it to," things like that. There is definitely a role for non-substantive, more procedural rules that each provider may deal with uniquely.

I do take notice of your comment that says, "But supplemental rules and documents did extend beyond that for specially perceived CPE, and I warn that, without addressing it here, it may happen for objections going forward."

Other than stating that the supplemental rules may not conflict with any of the policy, what else do you think we can build into the protections, to make sure the supplemental rules are appropriate, and are of the type that I was talking about before, generally non-substantive, much more procedural on the mechanics of how these

things are done? Or, maybe it's just as simple as saying something like that.

Anne's saying, "Sounds like Jeff is talking about appropriate role for supplemental procedural rule, versus substantive." I'm trying to do that, Anne, although I know that there's always, when you get into procedural versus substantive, a difficult subject. Lots of people interpret things that others may believe are not sub-substantive, they may believe are very substantive. It's supposed to be nothing that changes the policies, but more on the mechanics of carrying them out.

Kathy's saying, "Can we bring CPE as a special case?" Yes. I think, Jamie, going forward, when we're talking about objections, let's keep the CPE out, but still talk about community-based objections. The CPE is an evaluation process, as opposed to an objection. There's generally not two parties to a CPE, it's generally only the party applying for community status, and the evaluator, as opposed to the party providing the analysis. It's some other adverse third party that objects to something in the application. I agree with Kathy that we should, at this point, separate it out. We're not saying, Jamie, that we forget about CPE, but we do understand that some of those issues can creep into the objections if we're not careful.

ALAC states that, to limit the risk of divergent views for panelists, particularly divergent determinations, give panelists substantive guidance related to definitions of ... Okay, this is specifically for community and public interest. Allegations of conflict of interest on the part of objectors ... Look at the purpose and use of an applied-for string, as opposed to just the term itself.

I think that's what the guidebook tried to do. Hopefully, with the changes that we're recommending to the guidebook, that will certainly provide much more information than the last time, as we keep learning more about what went well, and what didn't work well. I think that is in the plan. INTA states that perhaps there should be examples or case studies to show how examples of criteria to assist panelists, how the registries suggest a small adjustment to the recommendation text by stating, "ICANN must publish as part of, or contemporaneously with the Applicant Guidebook, for each type of objection," and all these things. I think that makes sense.

I do want to get into the next part. For those of you that may recall, there was a quick-look mechanism for ... I believe it might have just been for limited public interest objections, but there's a recommendation that we have, as a group, that it seemed like it had support within the community to create some sort of quick-look for all the types of objections, so that potentially frivolous or arbitrary types of complaints could be dismissed or dispensed with for much less cost, if they have that quick-look.

The quick-look is not supposed to be substantive in nature. It's supposed to be more like what the US Lobby call a 12(b)(6) motion, a motion to dismiss, where even if what is alleged in the complaint is true, there's still no claim there, or not basis to uphold the objection.

I think that was used in one, although it did pass the quick-look, I remember, in the .health objection, the limited public interest and community objections, there was an argument made by all of the .health applicants that even if the independent objector was right, or you took his facts as being true, that still wouldn't violate the

Applicant Guidebook, and that was the argument that was made for a quick-look. I'll note, it didn't succeed in the quick-look process, but they certainly raised that argument.

Going back to the chat, Emily ... Let me make sure I've got all of these, from Emily. I just lost it on the chat. Let's see. "High-level agreement extension of the quick-look mechanism, which currently applies to only LPI, and apply that to all objection types." Right. Sorry, you were just restating what we had for high-level D.

Kathy states that limited public interest objections were treated differently, and required three panelists. Before we change that, I think we should look more carefully at this. Kathy, I do think that the Work Track 3 did look carefully at this. We can go back, or provide you those materials, but that's where the recommendation came from, which is to allow a one-person, to reduce the costs of the LPI, as it was hundreds of thousands of dollars to get an objection through. Some did not file objections because of that extraordinary cost.

There are some suggestions on the quick-look. There are some suggestions for improving it and what the criteria should be. Although it's listed as criteria for the quick-look, in the top bullet on this page that we're on in Zoom, it really is that the mechanism should be extended, is what INTA states, but there should be guidance that's published, so the parties know what could be considered a frivolous or abusive claim, where it would be kicked out under the quick-look.

Some suggestions. Jamie supports making the improvements that we talked about. The objector should be responsible for covering

the initial cost to establish standing, and only if standing is confirmed should the applicant be required to respond. I think that's the way it was for the limited public interest, that response. Actually, no, I take that back. I think the response was due, and you can make an argument that there's a lack of standing, but the applicant that was objected to still had to file their full response.

ALAC talked about analyzing objections from the 2012 round that were found to be frivolous. I don't think there were many at all. The last comment from the registries states that ICANN should develop clearer criteria to assist a dispute service provider in accurately identifying abuse, and develop additional appropriate sanctions, including financial penalties, and the loss of an ability to make additional objections.

I know we have to go really soon. I would like, though, to see if there are any additional thoughts on this notion of developing clear criteria. I think that that sounds probably like something everyone would presumably support. More importantly, on the next part, which talks about potentially having sanctions, and/or financial penalties, and the loss of the ability to make additional objections for an objector that's found to file an abusive claim, I guess, is what they're saying.

There's a new message, so going down to that ... My computer keeps jumping up to the beginning of chat. Rubens states that a good number of objections were weaponized to win contention sets, but I wouldn't call those frivolous, even though they were biased. Any other thoughts on that?

Before we end this call, if you could just scroll down? The next one deals with change requests, which, we've talked about in a previous subject in this recommendation, is in line with the previous discussions we've had on allowing changes to agreements. Certainly, public interest commitments to respond to objections, if the parties agree, is something that we did support. Before you say, "Start here on the 23rd," I'm not sure we need to start there, because this was talked about as part ...

KATHY KLEIMAN:

Jeff? I think you do need to start there, because it's very different to amend an application versus putting in private parties' changes into the public interest commitments, that then ICANN and the ICANN community would be responsible for enforcing. They're still in objection to voluntary public interest commitments from the Non-Commercial Stakeholders Group.

JEFFREY NEUMAN:

Fair enough. Let's start here, then, on the next call, which is September 23rd. Thanks, Steve. That's for 90 minutes at 14:00 UTC. I know the councilors have to go to get on their council call, and so thank you, everyone. This is a difficult subject, and lots of little elements, but I think we are making progress, and so that's good. Thanks, everyone.

Just as I do every week, I want to remind you that even though I think the block schedule is out now for ICANN Montreal, and it may say, still, "Work Track 5 meeting" on the first day of the meeting, that is actually going to be converted into a full Working Group

meeting, where Work Track 5 will be presenting its findings, its recommendations, to the full Working Group. Please do plan on being there on the first day. I believe that's Saturday, if I'm not mistaken, in Montreal, starting, I think, right about that time, the first meeting in the morning.

I'm glad you liked the 60 minutes better than 90. We have been, for most calls, going less than 90 minutes, because we end up, usually, in a good stopping place. I will take that on, and see if we can move through some of these topics quicker. Thank you, everyone, and enjoy your council call, for those getting on that. Thanks, everyone.

JULIE BISLAND:

Thanks, Jeff, thank you, everyone. Have a good rest of your day or night.

[END OF TRANSCRIPTION]