
ICANN Transcription

New gTLD Subsequent Procedures PDP WG

Thursday, 28 May 2020 at 2000 UTC

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ANDREA GLANDON: Good morning, good afternoon, and good evening. Welcome to the New gTLD Subsequent Procedures PDP call being held on Thursday, May 28th at 20:00 UTC.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you are only on the audio bridge, could you please let yourselves be known now? And we do have Cheryl Langdon-Orr who is on the audio bridge currently. Thank you. Hearing no further names, I would like to remind all participants to please state your name before speaking for transcription purposes, and to please keep your phones and microphones on mute when not speaking to avoid any background noise. As a reminder, those who take place in ICANN multistakeholder process are to comply with the expected

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

JEFFREY NEUMAN:

Thank you very much, Andrea. Welcome, everyone. Hopefully, your week has been good and productive so far. Today we're going to start with the "can't live with" comments and packages 1, 2, 3, and then hopefully make our way to review the Category 1 GAC Advice and figure out to see if we can make any kind of recommendations with respect to whether or not to adopt that Category 1.

Before we get into that substantive area though, you will notice that a few hours before the call, we sent around a document that we talked a little bit about the last time which was definitions, affirmations of modifications, recommendations, Implementation Guidance, etc. So we'll spend a couple of minutes going through that. But before we do even that, let me ask to see if there's any updates to any Statements of Interest? Okay, I'm not seeing any.

All right. So let's jump right in to the Definitions document. I know we just sent it out a few hours ago, so maybe not everyone had a chance to review it, which is fine. We're just putting this out to get some thoughts now. Plus, you can absolutely just comment via e-mail. And afterwards, if you have something you want to talk about even for the next call, we can certainly do that. Because I think this is one of those important documents that will be used in our preamble to the GAC final report and ultimately in the final final report so that it's clear what we mean when we say affirmation versus the recommendations, etc. You will notice that for some of

it, we did borrow from IETF language but we also did change from a bit as well for various reasons, especially with respect to where it should because in our Implementation Guidance – first of all, I think it’s always better to word things in a positive light as opposed to the way the RFC goes about it in a very kind of negative way. But second of all, I think we mean when we say “should” a little bit more than what the IETF RFC sets forth.

Most of this shouldn’t be too much of a surprise. Affirmations – we start with that. “Affirmations indicate that the working group believes that an element of the New gTLD Program is appropriate, or at a minimum acceptable, to continue in subsequent procedures. Affirmations may apply to one or more of the following.” So they can be an affirmation of Policy Recommendation, Implementation Guideline, or Principle from the 2007 – I think we’re missing some more there. It should be from the 2007 policy, I think. Then the second bullet point, “Existing provisions of the 2012 Applicant Guidebook” or the third type of affirmation could be of other elements. It might not have been in the final Applicant Guidebook but were still introduced in the implementation phase at some point after the final Applicant Guidebook was released.

“In the event the working group was unable to recommend an alternate course of action, the working group operated on the basis that the status quo should remain in place as a default position. This status quo consists of the 2007 policy in addition to any implementation elements that were put into practice in the 2012 application round.”

Any questions? I see Christopher Wilkinson. Christopher, go ahead.

CHRISTOPHER WILKINSON: All right. Thank you for giving me the floor briefly. Vis-à-vis the staff just to say there is still a problem with logging on with the new version of Zoom but that's not for the meeting.

Regarding with what you've just said, I wish to make it quite clear that the reason why one would have to take exception to this little paragraph, if I understand it correctly, relates particularly to Work Track 5. It is absolutely essential that PDP adopts transparent and predictable policy for the allocation of geographical names. Work Track 5 failed to reach agreement. And GNSO on the PDP, as far as I can see in Marrakech, just decided to endorse that conclusion and have no further discussion. For me that is a "can't live with". You must have a policy – transparent and predictable policy for geographical names of all kinds, especially the non Applicant Guidebook names. Thank you.

JEFFREY NEUMAN: Thanks, Christopher. We were aware of those views and the geographic names will go out in package 5, so there'll be a chance to indicate your "can't live with" there. People are saying that my audio may sound a little choppy but I think it may only be choppy for those on Zoom through the computer audio and perhaps not for those on the phone, but let me know.

CHRISTOPHER WILKINSON: Jeff, choppy, no. But the volume on the computer audio is usually much better than what we're getting on the phone. Currently, I'm on the phone because of Zoom has rejected. It's impossible. I don't know. Thank you.

JEFFREY NEUMAN: Okay. Thanks, Christopher. We'll monitor that and see what we can do. Okay, any other questions on the first affirmation. The second one is the Affirmation with Modification, which is "Similar to affirmations, but used in cases where the working group recommends a relatively small adjustment to the existing policy or implementation. In some cases, modifications to the policy or implementation language are necessary to reflect what actually occurred during the 2012 gTLD round."

Go ahead, Anne, please.

ANNE AIKMAN-SCALESE: Jeff, in relation to the definition of the status quo, do you see any issues arising there other than the particular case of closed generics? Are we pretty sure that for everything other than closed generics, status quo has a clear meaning?

JEFFREY NEUMAN: That's a good question. Off the top of my head, I think there are two areas where the status quo has an uncertain meaning. One, as you mentioned, the closed generics, and two is the preference or priority of IDN applications. I'm hoping we actually have a solution like the one we went through on e-mail a few weeks back

but we still have to talk about that topic. I believe that might be on the next call, if not the one after that. I'm hoping that will come to a conclusion on that. But if not then that might be another one where the definition of status quo is uncertain.

Kathy says in the chat – oh, sorry. Go ahead, Anne. Sorry. Do you want to follow up?

ANNE AIKMAN-SCALESE: I was just wondering – I understand the logic behind closed generics relative to the Board resolution and it's quite limited. I was wondering, what's the logic in relation to IDN applications?

JEFFREY NEUMAN: Well, let's have that conversation if we need to. I'm hoping like I said, Anne, the team, we got to a good place on a potential compromise. So if we can't get there on the potential compromise, we'll have that discussion with the IDNs, if that's okay.

ANNE AIKMAN-SCALESE: Okay.

JEFFREY NEUMAN: Kathy has put down brands as an issue, and I don't think that is an issue with the status quo. I think it's pretty clear that that fits into the element of – "in addition to any implementation elements that were put into practice in the 2012 application round." That's different than the case of the closed generics because in the case of the closed generics, the Board specifically said it wanted our

views on the policy. So I think with things like brands, even the Registry Agreement that was produced after the fact, the lottery, the random draw, all those kinds of things I think are considered part of the status quo.

Okay. Sorry, Anne, is that an old hand? Yeah, okay. Kathy, go ahead.

KATHY KLEIMAN:

Hi, Jeff. Brands weren't an implementation element in the 2012 round. They were policy created after the Applicant Guidebook just as closed generics were. So I think we should acknowledge them as that. Thanks.

JEFFREY NEUMAN:

So should we then change the affirmation or the status quo consistent to 2007 policy in addition to any implementation elements. I'm sorry, what did classify? Or other policy –

KATHY KLEIMAN:

Brands and closed generics were both policies created – sorry to interrupt – as we were going through the new gTLD applications. That's why I find differentiating between them so unusual. But it seems to me they follow not the exact process but the same process and they went out for public comment and they were reviewed. Then the Board created guidance. So that's different than implementation. But what we did put in here, I'm not quite sure. Thanks.

JEFFREY NEUMAN: Okay, thanks, Kathy. Greg, go ahead.

GREG SHATAN: Thanks. I think that's apples and oranges comparison. The closed generic of policy declaration by the Board was explicitly self-limiting. It's in a class by itself. It is self-declared, not the going forward status quo, and they want some other solution. Brands, which of course is not one thing, I don't know if you're referring to Spec 13 but let's assume you are, there are a number of things that happen over the course of time and that became part of the package. That's not brands ... or let's say Spec 13 and closed generics not developing the same way in any way, shape, or form. So I think trying to give brands – or whatever you're calling brands – a kick toward a lack of status quo-ness by trying to tie them to the unique status of closed generics is not going to work. It's not correct. So if we want to look at everything and how it happened, we certainly can and there certainly is a lot of that going on. A lot of things happened between 2007 and 2012 that were interesting. But closed generics is sui generis.

JEFFREY NEUMAN: Thanks, Greg. I think that's right. I'm not sure we need to get into discussion about brands because according to our discussions, it seemed like there was consensus within the working group and the community to declare brands that's an official category, so we're not relying on an affirmation for that particular topic. We actually make recommendations there. So I'm not sure we need to

get too much into the weeds as to defining what brands were in terms of the last round because there are affirmative recommendations with respect to that. Paul, your hand is raised.

PAUL MCGRADY:

Thanks, Jeff. Yeah, I just echo what you said, which is I think that we're going not end up getting all the way through this document which should be fairly easy thing to get through if we start throwing in a bunch of examples and start re-litigating substantive issues. So if maybe we can set aside brands and even set aside closed generics and just plow through this example-less and see if we can get it done. Thanks.

JEFFREY NEUMAN:

Thanks, Paul. I appreciate that. In line with that, let's go to definition of a recommendation: "The working group expects that the ICANN Board will approve and implement all recommendations set forth in this final report, and ICANN org will work closely with the IRT to ensure that implementation takes place in line with the working group's intent. Recommendations often address what the working group recommends takes place, as opposed to how it should take place. Recommendations typically use the term 'must,' indicating that the recommended action is required to take place and/or necessary for the New gTLD Program."

Also, I got a note that someone – I don't know if they still are – is logged in as Internet Committee 2. If that person could identify themselves, that would be great. Thanks.

Sorry, let me go back to the chat then. Anne says, "I disagree that we have to get through this document without providing examples. Definitional documents are extremely important." Anne, I think what Paul is saying is let's go over this now and then you could take this back, look at it. I think what he's saying is let's go over these documents and you all haven't had time to really digest it. Not that this is going to be the only discussion we have on this topic, although, Paul, I don't want to put words into your mouth.

PAUL MCGRADY:

Maybe I should've said let's not get bogged down with examples and then arguing the substance of the examples. If an example is exceedingly helpful and exceedingly non-controversial then I don't want to preclude that, but I just don't want us to start picking our favorite pet issues off the wall and make a run at them in this call because we're not going to get to the other stuff on the agenda. Anyway, I don't mean to be overbearing. Thanks.

JEFFREY NEUMAN:

Thanks. The next Implementation Guidance – this is where we deviated substantially, I think, from the RFC definition of "should" because we want to make it a little bit stronger. So what we say here is "The working group strongly recommends the stated action, with a strong presumption that it will be implemented, but recognizes that there may exist valid reasons in particular circumstances to not take the recommended action as described. However, the party to whom the action is directed must make all efforts to achieve the purpose behind the recommended action even if done through a different course. In all cases, the full

implications must be understood and carefully weighed before choosing a different course. Implementation Guidance commonly refers to how a recommendation should be implemented. Implementation Guidance typically uses the term 'should' indicating that the working group expects the action to take place, noting the caveats above.”

I'll stop there. Hopefully that's more clear than just the optional language that is sort of associated with the RFC “should” language. Anne, go ahead.

ANNE AIKMAN-SCALESE: Thanks, Jeff. I'm going to raise an example because we're reviewing this language and I think that we were looking at Justine's suggestion on the “can't live with” about the communication of the program six months before applications are due, and so just applying this particular meaning to – was that a recommendation, that language that Justine was looking at, or was that an Implementation Guidance? Because it almost looked to me like that the logic of our document here would be that if it's a recommendation, it's a must, and if it's an Implementation Guidance, it's a should. So I had written back on the list about that but I'm not sure that that's consistent throughout in the document as it stands.

JEFFREY NEUMAN: As we go though that – I mean, we tried our best to be consistent but it's certainly worth pointing out. It's also worth pointing out again there were some areas that we may have classified as

Implementation Guidance that some of the comments we got back on the packages felt that should have been a recommendation. So we'll get to those examples. Let's hold that until we get to our specific example, which we should get through very shortly.

ANNE AIKMAN-SCALESE: Are you generally thinking that recommendation equals must, Implementation Guidance equals should?

JEFFREY NEUMAN: In general, that's right. Yes.

ANNE AIKMAN-SCALESE: Okay. Then the follow-up question is about the text that I put in the chat, which talks about make all efforts. Now, of course as lawyers, we're used to seeing the "make all efforts to achieve the purpose." It's really the purpose part of this that I'm trying to nail down how the team determines exactly the purpose. Is it with reference back to the goal section of the final report? Or should we even specifically reference those when we say achieve the purpose?

JEFFREY NEUMAN: We may have suggested one way of doing something. It may turn out that that one way is not feasible or may cost too much, whatever it is, but if they can still achieve the goal of what we're trying to achieve with that specific Implementation Guidance then that should satisfy the requirements.

ANNE AIKMAN-SCALESE: I know what you're trying to get at but I think that it would be good if we could be slightly more specific about how we refer folks to the defined purpose. In other words, we have at the beginning of this section I think a set of goals or purposes rather than leaving it to talk about what each different person might think was the purpose.

JEFFREY NEUMAN: Hopefully that's covered in the rationale section of each of the Recommendations and Implementations Guidance. Hopefully it's clear in that section what the working group is trying to achieve.

ANNE AIKMAN-SCALESE: So can we say as expressed in the rationale or something that really ties it to the work of the working group?

JEFFREY NEUMAN: So the suggestion is somewhere in this paragraph – and I'm looking – where is it? "Make all efforts to achieve the purpose behind the recommended action," and maybe somewhere there either parenthesis or something as added or as described in the rationale. Something like that?

ANNE AIKMAN-SCALESE: Yes.

JEFFREY NEUMAN: Okay.

ANNE AIKMAN-SCALESE: So there's not a lot of speculation about, "Well, I think the purpose was ... no, I think the purpose was..." But it should be exactly as you're saying, parenthetical, as expressed in the rationale.

JEFFREY NEUMAN: Okay. So we will find a good [inaudible]. I think that makes a lot of sense. Justine and Paul give you a plus one on that, so that's good. We'll add language in that sentence that makes it explicit that the purpose is set forth in the rationale. But what I'm going to ask each one of you to do as well then is to go back through whatever sections you're most concerned about to make sure that you believe the purpose is set forth in the rationale or whether we need to beef that up a little bit. So we can put that language in here but we should also then go make sure that the rationale actually conveys that.

ANNE AIKMAN-SCALESE: Yeah. Hopefully it does if we've done our work, otherwise, implementation gets harder.

JEFFREY NEUMAN: Exactly. Okay. Then we have this last "no agreement" which fortunately has not been used too much. In fact, only in the cases of – without wanting to discuss the examples, we so far only have that, I believe, with closed generics with the priority in applications.

I believe – it’s premature to say this – but hopefully we’ll get to something on auctions and how they are conducted or mechanisms of last resort. But actually, I shouldn’t say that. We may not agree ... that wouldn’t be no agreement, sorry. Mechanisms of last resort – that would be more of a status quo thing. It’s really only with closed generics as we’re talking about closed generics and their priority where status quo is not understood. So forget what I just said about the mechanisms of last resort. That wouldn’t have a no agreement. Sorry for adding my own confusion there.

Anne, I don’t know if you have a question on the no agreement or if that’s just hand left up.

ANNE AIKMAN-SCALESE: Sorry, Jeff. I think I had a question about the no agreement that I put to the list in relation to how it’s similar to or different from consensus. This is a little bit of the question that Paul had raised in the last call. I apologize, I’m super tired, but the no agreement thing looks like – I don’t know if it’s meant to be no consensus or if it’s meant to be in some other level.

JEFFREY NEUMAN: We can discuss that when we actually do the consensus call after the public comment period. Because we’re not doing a consensus call now so we just thought no agreement more properly reflected where we were at this point in time. But that may at some point become something like a no consensus depending on whether or not we do get a consensus on a solution. So at this point, for the

draft final report, I think it will stay as no agreement just because we don't really get into the whole ... then we take a consensus call discussion.

Paul asks, "For auctions, would it be no agreement for changes to the status quo?" It would likely be more of an affirmation.

Okay. While they're going through the package 1 through 3, I think it was Justine that mentioned or maybe it was Anne that it's important as we go through these packages in the "can't live with" to have those definitions in your mind, again please we know we just provided that document a few hours before the call, went over it now, so if you do go back and have any comment afterwards, please do send back to the list. If there's something in particular you want to readdress during the next call, please do bring that up.

Okay. Steve has just put the link to the Production document for package 1. Actually, this is the Production document that will contain all of the packages. But for now it just has 1, 2, 3. And you've just received, by the way, package 4 several hours ago. In accordance with our process, you will have seven days to review that and to give us your "can't live with" comments. We are now in the process of preparing package 5, so once package 4 is done, we'll go to package 5.

Okay. So if we can scroll down, I think we covered the first set of changes with Justine. I know we added a footnote there. For this Implementation Guidance, we started talking about and then I think got a little bit sidetracked on the must versus should definitions, which I hopefully made clear about now. So the basic

question here is whether we want to make this a recommendation in terms of the “must” language or is this “should” stay at should, keeping in mind that should means that it’s a strong recommendation and that they should adopt it unless there are valid reasons why to not do it. But in either case, they need to achieve the purposes as set forth in the rationale.

Justine, does that put the comment in a different light or still –

Donna is saying she prefers should.

I think Paul on the last call said he had preferred should. Again, Paul said should.

Is there anyone else that have any comments apart from that?

Martin prefers should, especially given the definition.

Anyone else want to weigh in on this? All right, so it does not seem like there’s any kind of movement from the group. Justine still believes it should be must. I think, Justine, maybe in the public comments that’s something that At-Large might want to put in their comments but I think at this point, given that there didn’t seem to be a huge amount of people in favor, we’re going to keep it at should.

ANNE AIKMAN-SCALESE: Hand up.

JEFFREY NEUMAN: Sorry. Scroll down, sorry about that. Anne, go ahead.

ANNE AIKMAN-SCALESE: I know. You just thought it was an old hand, didn't you? This is an area where I think it's kind of important when we look right above there and we talk about purpose and what the meaning of should is. It says, "The plan must include a communications period commensurate in length to achieve those goals." So there you have a must and you have a purpose that's based on a recommendation. So it would appear to imply by our definition of should a very strong obligation as long as we are referring back to the plan must include a communications period commensurate in length to achieve the goals. So I think that's the importance of adding the language about the purpose referring directly to the recommendations if we're going to stick with should in the implementation phase. Thanks.

JEFFREY NEUMAN: Yeah. I think that's right. You know, this could work either way. The Board could say, "You know what, we want at least an eight-month period." So they may disagree with our – maybe that's not disagreeing because I guess at least implies it could be anything more – but they could change this if they felt like it. That word you would think still meet the same goals of the New gTLD Program. By the same token, they could say five months is enough to achieve what we set forth as what needs to be achieved in this program. Again, the important thing there is achieving the goals of this section as well as the New gTLD Program. Okay, so we'll leave that at should at this point.

Yes, of course, Justine. Justine says, “Can I have some time to revisit the rationale?” Absolutely. I think we want to make sure that especially now that in the definition we’ve included the reference to the rationale. Please do look that over and see if maybe we can resolve some of the issues in there.

Okay. If we can then scroll down to the next one? There it is. Justine proposed the addition of this new text. Sorry. Justine, can you click on that to make sure that that goes with the same thing? Yeah, okay. Good. Justine proposed having this new text, “Proposed change does not impact rationale but instead adds necessary clarity by addressing omission of a dependency to the Role of Application Comment section.” So this is a dependency, and so Justine would like to add “The impact of comments collected through the comment forums referred to in Implementation Guideline C is addressed separately,” and that’s in the Role of the Application Comment.

When I was going through this, I did not think that there was an issue in adding that last bullet, but obviously I want to throw it to the working group to see if there were any concerns. Paul is saying, “What does it mean?” If you go through the whole section, the section itself, not the dependency but the entire section – can we scroll back up? It talks about communications plan, it talks about – sorry, scroll down. Implementation Guideline C. “ICANN will provide frequent communications with applicants and the public including comment forums which will be used to inform evaluation panels.” That’s one of the affirmations. Now when we go back to Justine’s dependency which states, “The impact of comments collected through the comment forums referred to in

Implementation Guideline C is addressed separately the Role of the Application Comment.” Justine, do you want to say anything else? Because you’re probably the best to help explain what you meant.

JUSTINE CHEW:

Yeah. I thought I was sufficiently clear. It is something of a dependency that we didn’t consider before but I think it’s because mostly we dealt with this section on communications prior to talking about application comment. So I think that’s the effect of it anyway. Thanks.

JEFFREY NEUMAN:

I think it’s really just a statement to say that we make some recommendations or Implementation Guidance in connection with the comment forums and how there should be, for example, the way I interpret it, Justine, was that – I think it was in that section you talked about potentially being notified about other comments that may be filed or responses that may be filed by an applicant to the comments that you may have filed so that it’s basically helping the communications with those that have filed comments I think. That’s the way I take it. Is that right, Justine? Yes? Okay.

Donna is asking, “Should it be the impaction of comments made on applications collected through...” Sorry, Donna. Can you – oh, your hand is raised. Good. Go ahead.

DONNA AUSTIN: The only change is to call out that the impact of the comments made on applications so we're being specific about what comments we're talking about.

JEFFREY NEUMAN: Justine, are you okay with that addition?

JUSTINE CHEW: Yeah. I think that's fine because it specifically referenced the role of application comments. Thanks.

JEFFREY NEUMAN: Okay. Good. I think that adds some good clarity as well. Anyone else have any comments on that? Thank you, Justine. Let's move on then to the next comment. Sorry, we're asking ICANN org to type in while we're going through these and to scroll down. I think they do an amazing job, so thanks. I think that's Julie today, right? Okay. This is interesting. Oh, Steve? Sorry. We always get around. Okay. Thanks, Steve.

The original language – and this is what's in the bullet point – we say here, this is about the auto-fill of information that allows an applicant to say, "It's going to be the same answer to number..." If you can scroll down a little bit so I can see an actual example. Question on let's say 18 was the purpose of the application, so 18(a). Or saying here is that these sections that are specifically listed are ones that we did not want applicants to be able to copy from one application they do to another. So the implication is that all other questions, the answers to all other questions should be –

an applicant should be able to say yes. So the answer to number 5 is the same for all my applications. But the answers for these in particular were ones where we thought as a group that they should not be able to copy. So I think we all agreed on 18(a), 18(b), 19, 20, 21, and 22 – one of the comments we got was to be specific in footnote as to what the question is asking. We paraphrased what the question is asking in the footnote because if we were to state the whole questions, they would take up a lot more room, so hopefully that's okay. But then there was a comment from – the first one is from Anne, I believe, if I'm reading this right. Anne is saying, "It should not be possible to auto-fill Registry Voluntary Commitments." So wherever we put that question, that's interesting because it doesn't have a question number because that was not something that was asked in the 2012 round. So I think the material thing there, Anne, unless I'm missing something is that last sentence which is that you'd like any Registry Voluntary Commitments to not be able to be copied. Anne, am I stating that correctly, that that's the only difference at this point at least in that first paragraph?

ANNE AIKMAN-SCALESE: I'm not sure the Voluntary PICs – is Kathy on the phone? My issue was Question 23, the additional services question because I think that status quo is that all intended services have to be described. And I'm not sure the definition with additional services – is that defined in relation to pre-approved services? I just think that you shouldn't be able to auto-fill the answer to Question 23 because the registry is supposed to be describing all the services that they intend to offer.

JEFFREY NEUMAN: Yes. I know that you disagreed with at least the majority of that Work Track 4 way back when, and then in other discussions. But I'm not sure that the other people agreed with that because what we're talking about here is – I'm sorry, let me go back. For additional services – yeah, we're talking about in addition to what a pre-approved. In the pre-approved ones we talked about in another section. And of course, the rest of the application talks about how a registry is going to perform the regular services. So it's not like they're not mentioning them at all. So it's kind of to figure out what differences in here in a language you're proposing.

ANNE AIKMAN-SCALESE: I'm not sure that that's my proposal just below there. I think my proposal probably was to delete but only if additional services are specified. In other words, that limitation – because what I see – and maybe for a registry, this makes sense is what you do, you get your application real quickly as you just put the pre-approved services in answer to Question 23, and then even if you intend to render other services and you get yourself be on the public comment period, you then go into an RSEP process in relation to the additional services. Because I guess your application through to contracting faster and that process is not as carefully watched as just your basic applications are. In the realm of “can't live with,” that personally can't live with the idea that we're going to change the requirement that all services intended to be rendered as of the time of application are specified in answer to Question 23. So there shouldn't be an out that allows just to say we're only going to do pre-approved services because everybody else say that.

JEFFREY NEUMAN: Right. I think this is going back to a very old debate. From what I recall and as what Rubens as the team lead for that had recalled that that I think you were one of the only ones to disagree with the recommendation or you were one of the only ones to have that view that you have to state every service you intend to offer forever in that application. That's why you have an RSEP, which is a public process. Maybe people don't as closely watch that but they can if they wanted to, and I think that was the view of the work track. I think you'll see some comments here.

Kathy says, "I have the same basic proposal."

But Elaine says, "Please don't make it painful to add text to the application."

Susan says, "But what does that have to do with auto-fill?"

Elaine says, "Curse you SubPro."

Look, I think that's right. Ultimately, the registry cannot introduce a new service without going through a public process. Whether that's through the initial application or through an RSEP, at the end of the day, it's going to be public. Basically, all you're doing is forcing a registry to put it all in a Word document and copy and paste each time, which just seems like you're sort of punishing an applicant or a backend registry operator, just trying to make things more difficult than it is. As we discussed many times, it doesn't really serve a goal because they're going to do it anyway.

Paul says – and then I’ll get to Kathy – “We are really talking about data entry convenience here, right? If so, I think we can just agree with Anne and move on.” Paul, Anne is saying that everything you put for Question 23, you are not able to copy and paste. And for those of you that go back and look at Question 23, it’s all the same depending on who the backend provider is.

I’m sorry, Kathy. Go ahead. Sorry about that. Sorry.

KATHY KLEIMAN:

I think I may have a resolution here. To my question which is the pink box below Anne’s, there are two pink boxes, I was just trying to – actually, if you can go up a little bit rather than down to the original paragraph. This discussion has been really helpful to me in understanding the ambiguity that I had. So let me read the text which is in the main – “It should not be possible to auto-fill responses to questions corresponding to the following questions in the 2012 Applicant Guidebook.” We point out some really, really good questions where you have to talk about mission and purpose, and if you’re going to do a community then it’s a series of questions about a community-based TLD, ditto for geographic TLD. So I was confused by the parenthesis after 23: “but only if additional services are specified.” So quick question for you, Jeff, and then I’d like to come back because I think I see a resolution here. That parenthesis, does it only applies to 23, not to the other 16, 18(a), 18(b), all of that?

JEFFREY NEUMAN:

Yes. That’s correct.

KATHY KLEIMAN: Okay. Can we clarify that because it can be read as applying to all of them, which doesn't make sense because we definitely want 16, 18(a), 18(b)? You know, we talked at length about those not being auto-filled. So if the parenthesis is only to 23, I think we can clarify that, maybe putting it before the footnote or something like that, or as applicable to 23, only if additional services are specified? But Anne points out something really important and I'm not sure it would go into 23 or where it would go, but the Registry Voluntary Commitments should not be auto-filled, I agree. But those aren't the same thing as whatever 23 is – registry operational issues. So let's just add those to the list – 16, 18(a), 18(b), 19, 20, 21, 22, 23 with the additional services, and any RVCs that are submitted.

JEFFREY NEUMAN: Yeah, we do have that last sentence because it didn't correspond to a number because it wasn't asked in the 2012 application. So we do have that last sentence which says, "It should not be possible to auto-fill Registry Voluntary Commitments." The reason we called that out separately is because it didn't have that number.

Let me first suggest – the first point I think, yeah, if we can make it more clear that the parenthetical only applies to number 23, I think that's fine. So we'll figure out the best way to do that. I think you mentioned one way, which I think is fine. But you don't think that calling it out separately in that last sentence is good enough?

KATHY KLEIMAN: I'd love to know why it doesn't answer Anne's concerns.

JEFFREY NEUMAN: Anne's concerns – then I'll go to Maxim – are that Question 23 – if you can scroll down to where that footnote is, so it's footnote 23 I think, which is a good coincidence, right? There you go. "This question asks the applicant to provide the name and full description of all the Registry Services to be provided." In the last round, it was centered around – basically, what everyone put in there was the basic registry services which are described in pretty much every other technical question that follows Question 29. There's Question 30, 31 which describes how you're going to do SRS, WHOIS, or RDAP I guess it will be, how you do your escrow and all the critical elements. What the work track talked about was that we don't need you to actually have to restate again what we're talking about in the entire rest of the application. Plus, we don't need you to describe fully if there's a service that you already do that's already been approved like a registry lock or – I'm using the Verisign terminology so I apologize if I'm infringing on any IP – but essentially what Verisign calls consolidate, which is the ability to consolidate all of the registration end date into one, things like that which are fairly standard practice now in a lot of registries. We're saying that you don't need to list those. But really, Question 23 is intended for new services that are the more innovative stuff that people need to look at. Yes, Anne.

ANNE AIKMAN-SCALESE: Could we say then at least that only non-preapproved services are specified? This term “additional services” is quite vague. But only if something more than basic services are specified.

JEFFREY NEUMAN: Yeah. I’ll go to Maxim in a second. I think what we can do – I can’t remember the term we used in that specific section – we will line that up. I don’t remember if we call them pre-approved services or what we call them.

ANNE AIKMAN-SCALESE: The second question is, does it depend on which services are specified or which services are intended to be rendered?

JEFFREY NEUMAN: I guess it’s only if there’s additional services that a registry wants to list in the application. Let me go to Maxim and get his comment because he’s had his hand up for a while. Maxim, go ahead.

MAXIM ALZOBA: I have two comments. The first is about Voluntary PICs. Effectively, they were not voluntary. All registries were forced to accept basically a page of text if they want to be a registry. So a lot of TLDs, they don’t add anything. So basically, it’s the same field. It’s empty field. So we should be careful about demanding something unique there. Maybe some registries add one space or two spaces but no text.

The second thing is because the task is quite complex, usually it's some kind of text prepared before entering the same text into the interface of ICANN. Last time it was really lousy. So to be sure that you use the correct bit of text, after all, not anyone is typing it right away. It's all prepared and then cut and paste from the original. So we need to ensure that cut and paste is not forbidden because if it's forbidden in the interface, it's going to be a hell – a lot of mistakes because of not perfect typing, etc. We don't need to make life of the applicants miserable. It's about making things better, not worse. Thanks.

JEFFREY NEUMAN:

Thanks, Maxim. I'll do the first part and then the second part. When we talk about PICs – and we're going to get back to that section I think in a call or two – we're talking about two different things now for this new round. There's going to be the mandatory PICs, which as he said, registries are going to have to do no matter what. I'm sure there'll be a question or two on that. But then there's also – if a registry wants to commit to other things because they want to satisfy, maybe they know that there might be a potential objection or something like that that they want to commit to additional things. That is what we're not calling Registry Voluntary Commitments.

On the second part, we've been through this discussion of the auto-fill for a long time. There were a number of people that favored exactly as Maxim has said that everything should be able to auto-fill. But through a number of the discussions, there were also people that felt that there were certain sections – and these are the sections that are listed – that they wanted to make sure

registry wasn't just cutting and paste text that they were thinking about each registry standing on its own, and so they did not want that possible to auto-fill.

But to respond to Justine's comment, "Do we need to auto-fill at all?" the answer is yes. As Maxim said, it was really difficult for those that filed several applications – lots of mistakes made which were just not necessary, and then questions asked about inconsistencies. And for those – and I'm one of them, putting on my data entry hat – these were not easy applications. What it essentially meant is what I've said before is that we did a Word document and we copied and paste to a Word document into the system each time. It was just an unnecessary hassle, so there were lots of comments from lots of different people, especially applicants that if we can make that a more efficient and better system, we should do so.

As Elaine says, when it's at \$185,000 in application, it's not that people weren't thinking about what they needed to put in.

Kathy says, "I think we're there." I think we are as well.

Can you scroll down to the footnote 8 and footnote 14?

8 is about the description of any issues with the applied-for gTLD string. Most people just put in no known issues, but if we don't want to make that automatic auto-fill, I didn't see any comments against that.

Then 22 is describe the measures for protection of geographic names at the second and other levels. Those are bracketed because it was suggested and I don't think we've reached final

resolution. I think to put this to bed, I think if we just took the brackets off, left those two in there, I think we're okay. By "okay" I mean nobody is specifically thrilled with everything. Susan, go ahead.

SUSAN PAYNE:

Sorry to ask this but I thought I completely understood what this section said and I'm now starting to be slightly concerned. This is not saying that you can't type the language in a Word document agree internally with your many stakeholders, and then cut and paste it, is it? This is only about the notion of copying across from one application to another. I want to be sure that that's what we're saying and also that when this is read by people who aren't us, who know what we're talking about, that that's really clear to them. Because if this is interpreted as to mean that you can't agree offline outside of the ICANN probably very clunky system and then copying, then that really is ludicrous. I don't think that's the intent but I've now lost certainty.

JEFFREY NEUMAN:

Yeah, that's not the intent. There's no way to feasibly stop someone from doing a Word document and cutting and pasting text. So, no. This deals with the ability – this is under systems. This is talking about whether the system itself should allow you to auto-fill by saying, "Take the same answer from application 1 and just auto-fill it in to application 2." That's all it's saying. If we need to clear a word, Susan, then we should add that in there. This only deals with the systems.

Okay. Can we then go to the next? Okay. Let's go down. Application fee. So there's a couple of substantive things in here which I think we need to address. So the first "can't live with" is introduced by Kathy. Kathy wants to add this parenthetical, which is really substantive in nature. Ultimately, we discussed this topic a number of times. And although it's true that in the middle when we were discussing this, there was a concept of being added and removed from this list. The working group ultimately came to the conclusion that there didn't need to be a process of removing applicants from the pre-evaluated list, because just like in the regular application process, there was no way to revoke the approval of your registry once you pass your evaluation, that there shouldn't be a way to revoke you from being on the pre-evaluated list. It didn't make sense when it's very limited in function. All you're saying now to the community is, "I went through an ICANN evaluation and I passed. I've been pre-evaluated."

So I think Kathy's change here goes back to the notion of introducing a new element that we don't have in the pre-approval process and that is the – sorry, in the pre-evaluation process, which is a removal process. So I think there's two issues here. One is that this comment is probably in the wrong section because here we're just talking about fees and not the pre-approval program. But the second thing is even in the pre-approval program – sorry, pre-evaluation program. I keep misstating. Even in the pre-evaluation program, we're not contemplating a removal or revocation of passing your pre-evaluation. So Kathy, go ahead, since this is your comment, and then I'd like to hear from others.

KATHY KLEIMAN:

Great. Thanks, Jeff. Here I just want to clarify. I don't think the vast majority of the highlighted text is mine. If I remember correctly, the brackets, everything that's not in bold. So for example, if the technical evaluation fee portion of the overall application fee is \$25,000 blah, blah, blah, for the pre-evaluated registry service provider and then I've added, as you noted, if it hasn't been removed from the registry acceptance list. I thought we were going to ask some questions about this and I thought we were going to get some more information to find out what the ICANN process would be on that. We did talk at length that people would rely heavily on these lists especially. It could be a significant savings in the application fee, particularly for small registries. So I thought we were going to get some more information about how that process was being handled and how backends basically are being monitored and whether a process has been created by which ICANN do credits backends. Thanks.

JEFFREY NEUMAN:

Way back when we did actually send a lot of information to the list about all of the incidents, and in fact, I remember Jim Pendergast had asked questions about it and we supplied a whole bunch of information on EBERO events and other things, but this has kind of evolved to not a discussion of pre-approval but rather all you've done is be pre-approved – sorry, or pre-evaluated. I got to correct myself. All you've done is gone through the evaluation process prior or at a different point in time than the actual process. So that is what everything has morphed into or has evolved. And there's plenty of discussion in the system testing section and other sections that talk about monitoring and other aspects. But just as

there wasn't in the 2012 round, let's say, you're judged on your application and you're judged on any tests that are applied but you're not judged on past performance even in the normal evaluation process. The way to deal with that is if a backend operator is not living up to its service levels, then the frontend operator is the one that gets the penalty in terms of violations of SLAs. And that's just the way it works because document providers do not have contracts with ICANN.

Okay. So we're going to just keep the language the way it was without that new parenthetical. As Kathy said, I think the beginning part is the same as what's above.

The next part is – this is an affirmation that talks about we add – essentially what we're saying is that what we added here was that application fees may differ for applicants that qualify for applicant support. So the added language here states – again, I think the beginning part is the same but then it says, “The working group believes, however, that for subsequent procedures the only historical costs that should be part of the cost structure in determining application fees are those actual and anticipated costs of implementation and subsequent administration of the New gTLD Program including but not limited to costs arising from new legal compliance and/or policy development processes that may be required.”

So this has come from Anne, I believe. In looking at this, I think there's an issue with that added text in that these are only supposed to cover costs up until, at the very latest, the point in which a TLD is delegated. Everything after delegation is covered by ongoing registry fees. So there's a clear demarcation point. But

what you've added there, Anne, says "costs arising from new legal compliance." When I think of legal compliance, I'm thinking of compliance after a registry is already delegated. So I don't think that that belongs in there and I'm not sure what's meant with "and/or policy development processes that may be required." Anne, go ahead.

ANNE AIKMAN-SCALESE: I guess what I was thinking of just is that in the 2012 round, there was a lot of stuff that arose subsequent to that round that represents real costs associated with administering the New gTLD Program and not the least of which was something like the current EPDP. I mean, are we saying that ICANN cannot have funds that are attributed to costs that really they spring up only because of the program's existence? It's not just the application process that incurs costs. It's everything to implement and direct and address issues that arise subsequently. I don't see how an organization like ICANN can survive with the cost structure in this kind of – cost plus arrangement is limited to just processing applications. There's so much other stuff that's got to go on. We've talked a lot about enforcement mechanisms when there are PICs, we've talked about setting up the SPIRT. We've talked about a lot of things that go well beyond the application process. How could ICANN run without being able to cover those costs as well?

JEFFREY NEUMAN: Anne, what we're talking about now is historical cost, not future costs. Remember, ICANN collect a minimum of \$25,000 from every single registry. So at 1,200 registries, ICANN is getting \$30

million. The point of ongoing costs or ongoing fees is to cover all of the ICANN work. Element one is talking about historical costs. Element two is talking about the operational cost to implement the evaluations and objections and all that other processes. And element three is the contingency fee. What we're just saying here is this is what the historical costs should cover. I hope that makes sense. The whole purpose is to cover the cost of the program, not costs of gTLDs forever. Just from the point of implementation to delegation. Period.

ANNE AIKMAN-SCALESE: I don't get it because it seems like subsequent administration would be very important to ICANN. We know, for example, that they have to take money out of the – that reserves were considered inadequate and that they had to take money out of auction proceeds related to the administration program. So I think this is going to attract Board attention.

JEFFREY NEUMAN: I don't think it's going to attract Board attention. I think what we're doing here is defining what is meant. I think, in the last round, there were a number of applicants that were not thrilled with paying for – for example, the GAC requested an economic study; that was at the request to the GAC. And there were other elements of ICANN that requested all these things that weren't necessarily contemplated by an applicant. So ICANN spend money and spend money and it was all figured in and labeled as historical costs. What the group talk when they were talking about the fees said, "Look, if what we're saying is this program should

fund itself, then we really should hold true to that.” Not collect just because one group may want to spend millions of dollars on economic studies which were never contemplated by the original application process – and there’s a lot of examples of that – that that should not necessarily be taken out of the applicant’s funds. ICANN has a predictable budget that they get every year from fees paid, they get \$25,000 minimum from every registry, plus the registries over 50,000 names, they get an extra 25 cents from .com, they get so many millions of dollars because they get per registration and that’s only from registries. They also get stuff from registrars, who I would argue potentially are more impacted by things like the EPDP than the new gTLD. So the rationale for this was that the applicants and the comments we got back so that they did not want everything that ICANN did that could in any tangential way refer to a gTLD be booked against the application program. This was also important for setting the initial fees. So if ICANN contemplate that it’s going to use a bunch of funds to cover other things that are only tangentially related to the program, then we’re really not sticking to the notion of a program funding itself and using the funds only for the program itself.

As Donna says, there’s still excess of \$70 million or whatever that is still left over. That’s the point.

Let me just throw it out there. Does anybody want to also speak out in favor of these changes? Okay, I’m not hearing anyone. I think at this point, we’ll just leave the language the way it was and then move on to the next one. I know we’re running up against time.

Donna states, and I think this is a good point, it's one that we didn't intentionally ... wait. I'm trying to think if this is the one we're talking about. Donna had asked the question and I think this is where it was. If you go to the comment above, Steve, I think you're ... yeah, that one. So Donna says, "Is this only limited to the next round or is this supposed to continue on?" I think the intention was always that this should be not just for the next round, but for every following round. I don't know what we need to do to make that clear but it is intended to apply on an ongoing basis. So we'll kind of look through that and see if maybe we can make that a little bit more clear at the very minimum. Well, we do say a reassessment should take place prior to every round. So I think it is kind of implicit in that. Donna, was your comment that you thought this was only appropriate for the next round and wanted to just do it then, or are you just bringing up a question because it may not have been clear that this was ongoing?

DONNA AUSTIN: I made it – different comment.

JEFFREY NEUMAN: Donna, sorry. It's really hard to hear you.

DONNA AUSTIN: Sorry, I had to – Is that better?

JEFFREY NEUMAN: Yep, absolutely.

DONNA AUSTIN: Okay. Your comment is up on the screen at the – I’m getting double feedback here.

JEFFREY NEUMAN: You sound okay, Donna. Just keep going.

DONNA AUSTIN: I meant, from what you’re talking about.

JEFFREY NEUMAN: Sorry, Donna, you just entered now so we missed whatever you said. Start again, please. Sorry.

DONNA AUSTIN: Sorry. The comment that’s on the screen now is a different comment to the one that you are talking about, so I’m a bit confused.

JEFFREY NEUMAN: Okay. What we’re reading here is you said – and maybe it doesn’t apply to this section – but what we got from your comments was, “In reading the whole section it is unclear to me whether the application fee floor can be used in the next subsequent procedure or only in rounds that follow.”

DONNA AUSTIN: Right. What's not clear to me, because we're not clear on when the application fee floor can be used by ICANN. In reading it, it seemed to me that what we were saying is that for the first subsequent procedure, the fee floor would not apply. There would be no application fee floor. But for subsequent rounds, it could apply. Wouldn't necessarily apply, but it could apply. So it was unclear to me whether our intention was that the application fee floor was to be excluded from the next round that we have in the universe or it goes beyond that. I think it's in reading through the whole lot of this, Jeff, that it became unclear to me about what our intent was.

JEFFREY NEUMAN: Okay. That's a good comment. We'll go back. The intent was to start with a fee floor in the very next round. This part was only to talk about a reassessment prior to each subsequent round after that, but I think we'll go back and make sure it's clear that the concept to the fee floor was to start with the very next one.

DONNA AUSTIN: Okay, thanks. Because it was certainly ambiguous to me and I've been trying to follow this for a while now. Thanks, Jeff.

JEFFREY NEUMAN: Absolutely. If it's unclear to anyone in this working group that's been following it, it's certainly won't be clear to others that are picking this up for the first time.

Okay. And then the next comment. Sorry, if we can scroll down. This section, we benefit from Implementation Guidance that requires ICANN to be transparent and how they arrived at the application fee amount for subsequent procedures in all rounds that follow, particularly where there has been determined for a fee floor, and one of the challenges we had for 2012 was lack of information.

I'm sorry. I'm trying to figure out, Steve, what we did here. Is this added language that we did based on that comment?

STEVE CHAN:

Correct. I think what you're seeing is the rationale. You're seeing the verbatim text that Donna provided and then in the comment is the rationale.

JEFFREY NEUMAN:

Great. Okay. I think this sounds like a good addition but I may leave it open. Does anyone have any issues with adding this Implementation Guidance which talks about the transparency with all cost assumptions explained and documented? I think it makes a lot of sense. It sounds pretty non-controversial. Martin seems to agree. I'm not seeing any disagreements or plus one. Okay, good.

All right, let's get down to the next one. This as our last one here. This was a comment that we had as it should. So it was an Implementation Guidance: "In the event that there's a fee floor, excess fees received by ICANN should be to benefit one of the following items."

Justine would like that to be a must as opposed to a should. Again, if you think about this in terms of the new definitions, Justine, if you want to go back and read the rationale to make sure it's good. Does the should actually make sense?

JUSTINE CHEW:

Donna has her hand up, number one. And I believe she also made the same proposed amendment as I did. But just to answer your question, I'm trying to read the definition for implementation guidance in the document that was circulated just before the meeting or a couple hours before the meeting. I am not convinced yet. I mean, because it talks about the working group strongly recommends the stated action with a strong presumption that it will be implemented, but recognizes there may exist valid reasons in particular circumstances, to not take the recommended action as described. So that bit of it is a bit fuzzy in relation to what we're talking about now because I'm a little bit concerned about the nature of the text in Implementation Guidance rationale for allowing some discretion over the funds that's supposed to be used or the fee.

JEFFREY NEUMAN:

Thanks for pointing it out that the Donna also made this comment. I'll go to Donna now. Donna, please go ahead.

DONNA AUSTIN:

Thanks, Jeff. My hand was actually up because I shared something in chat that I don't agree with but I think it would be helpful to understand whether there's a common agreement on

something that he said. But on this one, I believe it should be a must because one of the concerns we had from the last round is that ICANN set the discretion to use the excess funds as I see fit, and that's not what we want moving forward. Well, I think we agreed that's not what we want moving forward so it's a must, not a should. And that was not in the context of the definitions that has been put up around must and should.

JEFFREY NEUMAN:

Okay. Thanks, Donna. So given that there's two proposals to include it as a recommendation, let me ask the question, so would anybody object to us making this a recommendation as opposed to a Implementation Guidance? I'm not seeing any objections. All right. We do have to stop here but seeing as how it did not seem like there was any objections, we'll make it a must. We'll go back – Donna, I'm sorry, I missed Phil's comment in the chat. So I'll try to tackle that online after this meeting. I will look at Phil's comment or we'll look at Phil's comment, post it again and make sure it's covered.

All right. Thank you, everyone. We did get through a bunch of material. We are falling a little bit behind but the good news is there's not as many comments in the rest of package 2 and 3 as there were for 1. So I think we'll get through that and get started hopefully after the first 15-20 minutes on the Category 1. Please do come prepared for that and just to introduce that topic now, what we have in one of the areas, there's a recommendation that GAC provide advice on categories prior to the start of the next round in order for us to really be able to consider it and could lead to more predictability for applicants. I think with the exception of

the governance, there's certainly agreement from a lot of members of the working group on this, but I want to point out that there is certainly a lot of advice already issued by the GAC on categories. And the only way I think we can credibly ask the GAC or credibly address the GAC concerns is to actually address their advice that they've already given. And so Category 1 seems to be the one that's left out or that we haven't finalized yet. So please do review the Beijing Communiqué or Category 1 was discussed. Also review what we have in the global public intersection so we can have an effective conversation.

The next call is ... I was hoping someone from ICANN would've posted the time as I was stalling for them to do so. But the next call will be Monday at ... That was the cue. Come on, Steve. All right. It should be on your calendar. I believe we have set all of the June because it will be June. I'll just say Monday at the appointed time as Mr. McGrady has said. There you go. It's actually Tuesday, although it will be Monday for some of us 03:00 hours. Thank you, everyone, and have a great weekend.

ANDREA GLANDON: Thank you. This concludes today's conference. Please remember to disconnect all lines and have a wonderful rest of your day.

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