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**ICANN Transcription**

**New gTLD Subsequent Procedures Working Group**

**Thursday, 11 June 2020 at 2000 UTC**

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JULIE BISLAND:

Good morning, good afternoon, and good evening. Welcome to the New gTLD Subsequent Procedures Working Group Call on Thursday, the 11<sup>th</sup> of June 2020.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you're only on the audio bridge, could you please let yourself be known now? All right, hearing no names, I would like to remind all participants to please state your name before speaking for the transcription, and please keep your phones and microphones on mute when not speaking to avoid background noise. As a reminder, those who take part in ICANN multistakeholder process are to comply with the expected standards of behavior. With this, I will turn it back over to Jeff Neuman. Please begin.

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JEFFREY NEUMAN: Thank you, Julie. Welcome, everyone. Welcome to this call. It's almost the end of another week. The agenda for today is up on the screen. We're going to hopefully just for a few minutes discuss the issue that came up towards the end of the call last time on applicant support, more specifically on the notion of big credits or multiplier, whatever we want to end up calling it and also kind of the ramification of an assignment or change of control. So that was also the issue that there was some e-mail discussion in the last couple of days on, so we'll hopefully close out that issue.

Then we'll go straight to reviewing what the comments that we got in for package 4. Hopefully, you all have gotten as well package 5 that you're busy looking at, making comments on. Correct me if I'm wrong, I think we gave until close of business UTC on Tuesday. Is that correct? So that we can compile those and go over those next Thursday, so a week from today. So once we get through this package, we only really have a couple more subjects left. So for the next call, next Monday when we have our meeting, we're going to go through a draft that we've been working on Leadership and ICANN org on the issue we discussed last week on Category 1 strings. We were asked to put together some sort of straw person proposal, so we'll send that out right after this call. We don't want to send it right before the call because we thought it might confuse people to think we're talking about it today. So we're going to send it right after the call, so you should have it for a discussion on Monday.

Then we'll go into some other issues still remaining with mechanisms of last resort. As I said the last time, we were

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focusing – and the first thing in this call – we’re going to only focus on a very narrow issue of auction and how it intersects with applicant support. But on the next call, we’ll start talking some more about some leftover issues on mechanisms of last resort.

Sorry. Am I cutting in and out?

UNIDENTIFIED FEMALE:                    You sound fine.

JEFFREY NEUMAN:                    Oh, okay. So Monday we’ll go over the Category 1 strings, and then also do mechanisms of last resort. Then next Thursday, a week from today, we’ll go over package 5. So that should be reflected or will soon be reflected in the work plan. I think it is already reflected in there. So that document, which is at the same place it’s always been. So that’s the plan for next week.

Then finally, the week after is ICANN week. We’re going to try to discuss during that week during our scheduled session again Mechanisms of Last Resort and the Predictability Model. Those are pretty much the last two issues unless something comes up during these next couple of discussions, but it’s really only those two things that are left after this, which is good news. It means that we’re not going to have a report out before ICANN but that’s okay because we can then discuss a couple of the issues with the GAC which they had asked for in their initial letter, and then also to give us about a week after the ICANN meeting or so to finalize the draft and get it out. So that’s the plan for the next couple of weeks or for the rest of June.

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First, let me ask if there's any updates to any Statements of Interest and then let me ask to see if there are any questions about what was discovered? Okay, I'm not seeing any hands raised or anything in the chat. Hopefully, the audio is okay on the phone but I'll be checking the chat just in case.

Okay. Where we left off – I believe it's Julie, I don't know, Julie or Steve that got control – with respect to applicant support and bid credits was – right here, actually. What we did is we created some language for our recommendation based on the discussion that we have last time. So if you recall, this topic was covered in the new items but it sounded like from the discussion that we had that the group seemed to support making this specific – I shouldn't say this language because we just wrote it – but this topic, bid credits or multipliers, whatever we want to call it, an actual recommendation. So let's go through it now. This is new language. Obviously, if you have any comments after this call, please let us know via e-mail, plus this is going to go out in package 6, whenever that ends up going out, probably after we get through the last two subjects of Mechanisms of Last Resort and Predictability Model.

What it says here is "If an applicant qualifies for Applicant Support and is part of a contention set that is resolved through an auction of last resort, a bid credit, multiplier, or other similar mechanism must apply to the bid submitted by that applicant." That is the recommendation language, the [must] language, and then we go to the Implementation Guidance of this recommendation. So what we state here is that "Research should be conducted in the implementation phase to determine the exact nature and amount

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of the bid credit, multiplier, or other mechanism described in the above recommendation.”

Then the next one, this relates to the topic that Susan brought up on the last call, which is also have been the subject of some e-mails and I know there were a couple that were sent just before the call. I think I’m caught up, but I’m not 100% sure. Paul, hold that question. I’ll cover that after I go through this Implementation Guidance.

What we put here is “If the applicant getting Applicant Support prevails in an auction, there should be restrictions placed on the applicant from assigning the Registry Agreement, and/or from any Change of Control for a period of no less than three years. This restriction is in place to prevent gaming of the applicant support program whereby an applicant immediately transfers its ownership of a registry to a third party in exchange for any form of financial gain.” I’m going to skip the next sentence because that’s what we’re going to talk about. So let me go then to “All assignments after such time shall be governed under the then-current Registry Agreement standard provisions; provided that any Assignment or Change of Control after the third year, but prior to the seventh year, shall require the applicant to repay the full amount of financial support received through the ASP (Applicant Support Program) plus an additional 10%.”

Since this paragraph was written, I think Marc Trachtenberg submitted much more simple version that didn’t need that last part, which is all assignments after such time, but basically said that – well, Marc wanted to make it simpler on the e-mail by saying instead of all these just that if there’s any change of control

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in the first five years that they just be forced to repay the amount given, plus some additional 10%, which makes it a much easier provision. It doesn't prevent the assignment. It just says that if we do, we have to pay the money back.

So we have a couple of different options here that we can talk about. Then once we settle on an option, I'll go over the question I put into the middle of the paragraph on legitimate assignments. If we took Marc's proposal, the last one there he said we're not going to prevent assignments but just require a repayment then I guess you wouldn't need necessarily any language on ordinary course of business assignments.

Emily's put in Marc's language. And it occurred to me that Marc may have not included the list on some other language and I think that was an accident because I think sometimes when you hit Reply, it doesn't include the list. So let me go into my e-mail and find that while, Christopher, you have the floor. Christopher, are you there? I think you're still on mute.

JULIE BISLAND:

Christopher, I tried to unmute you but you'll have to unmute on your own. Maybe come back to him, Jeff. Oh, Christopher, you're unmuted. Go ahead.

CHRISTOPHER WILKINSON:

Thank you. I just want it to be on the record on this matter and make two or three very clear points I have. First of all, if an applicant is eligible for applicant support, that to me has to be a signal that ICANN in the community really, really want that

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applicant to get that string and to create that TLD. The idea that we would then submit a successful applicant support application to an auction to me is offensive. Then, as I mentioned in a recent e-mail to the list, particularly as the supporting question is symbolic, if the applicant gets applicant support, it will then have to go to its sponsors and to third party funding to get the necessary capital to implement the registry. These are the third parties.

It is also, from my point of view, offensive to plan, irrespective of the third party support through these procedures, that support would be subject to the outcome of a completely unpredictable auction permitted, if not sponsored, by ICANN. This is completely wrong. We should turn the matter on its head and organize through the staff, through third party funding of guarantees and assurances that the beneficiaries of applicant support really have the funds necessary and the security in the knowledge of the support that they've received. I cannot live with any of this text and I hope that it will be deleted.

I also think that the community should give a much higher priority than we have been doing to date to ensure that the next round results in a high degree of geographical, cultural, and international diversity. I think it's quite wrong to, in effect, provide here the rules and procedures whereby a successful applicant for applicant support can have its application grabbed back by some unpredictable and unknown auction participant. This is completely wrong, Jeff. It will do ICANN great damage if it goes ahead. Thank you.

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JEFFREY NEUMAN: Thanks, Christopher. I'm trying to figure out – what we're trying to do here I think is in line with what you're saying, which is we're trying to make sure that anyone that gets applicant support that gets through the system has the – isn't it for the long haul and is not in it to just flip it? Let me go to Donna and Susan. Donna, go ahead.

CHRISTOPHER WILKINSON: Jeff, you're not listening to me.

JEFFREY NEUMAN: Hold on, Christopher. Maybe I didn't get it, so that's right. Donna, go.

DONNA AUSTIN: Thanks, Jeff. Donna Austin from Neustar. I have some sympathy with what Christopher is saying here. If I understand him correctly, what he's saying is that if we're serious about providing applicant support to those that are in considerable need and aren't in the same level of equity, I suppose, or whatever it is with others that are well-resourced. I think what Christopher is saying is that the applicant support should never be in a position of being in a contention set. I think that's what Christopher is getting to.

I don't think this is anything that we've really discussed. Somebody who gets applicant support, the string that they apply for, there should be – this is probably where I disagree with Christopher – but we do need to give some thought to the string. So we're talking about the applicant support and they will set a



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criteria or a benchmark for what they need to meet to be able to get some kind of support to progress their application, but we haven't really spoken about the string. Now, in my mind, I've always assumed that the string would resonate in some way with the applicant. It wouldn't be necessarily a generic string. It would be something that ties it back to the applicant. But I could be way off base in that thinking. I mean, if the entity that's applied for applicant support is thinking of a TLD as a way to raise money for their community, then they may well want to go with the generic. So I don't feel that we've had that conversation and I think that's probably what Christopher is getting to. Thanks.

JEFFREY NEUMAN:

We absolutely had a conversation about this a number of years ago because remember, we started this thing in 2016. I think at that time, it was Work Track 1 and there was not interest in any way tying the string to any additional – neither giving it priority nor is there interest in limiting what they could or apply for what they couldn't apply for. I mean, it was a long, long time ago. I think it's a little late in the process at this point to start talking about that. Well, let me go to ... Sorry, Susan, go ahead. Sorry.

SUSAN PAYNE:

Thanks. I suppose what I was going to say and it's sort of related to the point that Donna raised and that you were touching on. It's just that I think we have to bear in mind that this is going to run in parallel or going to operate in concert with the other provisions that we have such as the advantage that a community applicant is given so that if a community reaches the necessary community

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status then there is no auction. They take priority in any contention.

So if we have an applicant here who is making a community application and they qualify for the applicant support then the scenario that Christopher is concerned about doesn't come to pass at all. So we're really only talking here about other strings, that applicant who needs additional funding because they can't actually afford a TLD themselves and they meet the necessary criteria. We're then looking at a way to try to somewhat even the balance if they happen to be one of many applicants. That seems to me to be reasonable.

I personally am not actually in favor of that multiplier or bid credit because I feel there's a scenario here where this applicant does not have the financial wherewithal to run a TLD, but I recognize that many other people on the last call do support it. So with that in mind, I was trying to find a way to make that bid credit or multiplier work with a minimized gaming. But I think Christopher has forgotten that we also have the community provisions as well.

JEFFREY NEUMAN:

Thanks, Susan. None of this operates in a vacuum. We have a whole applicant support section which I think was in package 4 that we'll be going over or package 5 that just went out – I'm trying to remember. So let's not view this in a vacuum. This is in a case where an applicant gets applicant support, they have not either applied as a community or they have not succeeded as a community, and so there's [a contention set] and question is can

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we help an applicant that gets applicant support in that auction process? On the last call, as Susan said –

GREG SHATAN: Jeff, you're fading.

JEFFREY NEUMAN: What they do is, at least in the US spectrum auctions and in other [inaudible] as well where they give bid credit or discount or something like that.

GREG SHATAN: Jeff, did you walk away from your computer?

CHERYL LANGDON-ORR: Jeff, your audio has faded almost totally. You're going to have to say it all over again.

JEFFREY NEUMAN: Yeah, sorry about that. My audio by its own went from my earplugs back to the phone itself. Sorry.

Okay, what I was saying was – this section should not be viewed in a silo. We also have everything – an applicant support and communities –that should all be taken into consideration. On the last call, it sounded like there was support for giving a benefit to applicants that qualify for applicant support if there is any contention, which would happen, as Susan said, if there was

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either they didn't apply for community or they weren't successful, as Jamie pointed out, in getting a community. So this is similar to what's been done in spectrum auctions in the US. I think Rubens said it's similar to Brazil in some of the auctions that they've run. So that's the goal here.

Let me go to Alan and then Christa. And then Christopher as well.

ALAN GREENBERG:

Thank you very much. I'm sympathetic to what Christopher is saying but I really don't see a way to fix it. The multiplier or a credit is awkward but, ultimately, if we end up with community support for TLD or for a string that is not community or in fact if we have two successful community applicants for the same string, we haven't come up with anything else other than an auction which can address it. Now, if you're an applicant support applicant, if you're smart, you're going to try to pick a string which won't have contention to avoid the situation. But if you look in the past, what happened in the first round, we had applicant support for .kids which was the contended string. You can't avoid it if you're going to fix something common and you sort of have control of your destiny by deciding whether to pick something that is likely to have multiple applicants or not. But as much as I don't like the idea of saying someone is poor and we're going to get them support and then they have to go into an auction, which is in auction history says it can cost millions of dollars, significantly more than the cost of operating the TLD once it's live. We haven't come up with anything else other than that. So I'm not quite sure where we can go. As undesirable as it is, if you follow the paths where we don't control the strings but the applicant does, we may end up with

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contention situations on a lot of cases where we're hoping they have not. Thank you.

JEFFREY NEUMAN: Thanks, Alan. I'm going to try to get us – I know Christa is in the queue and then Christopher – I really want us to try to focus on this narrow issue as opposed to just auctions in general or communities in general or applicant support in general. But, Christa, go ahead, and then Christopher.

CHRISTA TAYLOR: Hi, can you hear me?

JEFFREY NEUMAN: Yeah. We can. Welcome back.

CHRISTA TAYLOR: Thanks. I see where one is going with this. I think some of the concerns is generally anything that goes to auction, we're talking usually pretty big amounts of money, and without setting a ceiling to it, that limited pot of money that is available to applicant support and perhaps the volume on that the money can go to could be significantly impacted by, say, one applicant.

If there was some type of ceiling – I'm just going to throw in a number – if it max down to the million dollars, that's very different if there's no maximum and if say one string went for ten million because the number of applicants that would be impacted by that could be pretty significant. The other part is I guess that funded

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pot of money, especially for applicants, is very limited or I'm going to guess it's limited, so I guess there's a concern there on the multiplier. So for me, I would think there's either A, some type of ceiling to it or just throwing out other food for thought there. Maybe there's some kind of payback mechanism that they do really well to help refund the limited pot of money. Just a couple of ideas. And perhaps avoiding all strings.

JEFFREY NEUMAN: Thanks, Christa. I think what was discussed the last time was not actually that money needed to be paid out by ICANN. But if you offer let's say a bid credit, it means that let's say a million and let's say the bid credit is 25% then the applicant would be responsible for only paying three quarters of it. So it's not like ICANN is actually paying out any money to the applicant that wins, it's just that the applicant itself would be paying less. Does that make sense?

CHRISTA TAYLOR: Can I respond?

JEFFREY NEUMAN: Yeah, please. Go ahead.

CHRISTA TAYLOR: Yeah, I know it does except when it's a third party auctioneer that's not ICANN. In which case, you are actually paying up money.

JEFFREY NEUMAN: You mean the admin fee?

CHRISTA TAYLOR: No. You would like in a third party auction, there's money going out. It would have to be paid real cash. A credit won't work with a third party auctioneer. So unless there's something that says it's very limited to the ICANN auction, it would change that, the calculation. And you're talking about dollars.

JEFFREY NEUMAN: Sorry, yes. Sorry about that, Christa. Yes, this would be limited to an ICANN auction, yes. Sorry. Now I understand. Yeah. Okay. Okay, Christopher's back in the queue. Christopher, go ahead.

CHRISTOPHER WILKINSON: Okay. Thank you. What to say? First of all, I would draw attention to the detailed comment in the chat from Justine Chew about applicant support. I think At-Large seems to be going in that direction so that's important that that's on the record and that you take full account of it in the Staff and Leadership discussions about what you put in this text in the future.

Secondly, I have the impression that some of you are still thinking in terms of one, two, or three beneficiaries of applicant support. I would like to see a hundred beneficiaries of applicant support. Let's turn this on its head. The last round was extremely unfair and produced scores, if not hundreds of strings, which are

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meaningless except to the applicants of that particular string, as far as I can see, mainly in the North American market because in Europe I've only ever seen two or three of them in my life.

And I rest my case. You cannot possibly, on the one hand, say that you want to support the diversification of the DNS in countries and communities which could not possibly afford the kind of dollar figures that some of you have been talking about and which I suspect some of you have paid, and at the same time threatened – yeah, that's the word "threatened" – the successful applicant support applicant with an auction which might require a payment that far exceeds the benefit that the applicant support provides. Jeff, this is completely wrong. Thank you.

JEFFREY NEUMAN:

Okay. Thanks, Christopher. Okay, I take note of your comments and the At-Large. We can absolutely forward back the comments that were made during the initial report and prior. For applicant support, you'll see that there was no support for giving priority to an applicant who gets applicant support.

Paul asks, "When do we get to talk about how scary this idea is without a cap?" So, Paul, if you'd like to discuss it, go ahead. Again, what we're talking about is it may be one of those mechanisms where it's just a discount off of the final price, either in percentage which could be capped or in some other manner. But really, what we're saying here is that research should be done. Again, draw your attention because we do not have the expertise to decide what a cap would be, how much it would be, all of that. That's why we say, "Research should be conducted in



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the implementation phase to determine the exact nature and amount of the bid credit, multiplier, or other mechanism described in the recommendation,” and we could add something in there about to research a cap as well. Would that be okay, Paul? Let me just ask the question.

PAUL MCGRADY:

Thanks, Jeff. I definitely think that the research needs to indicate that there should be a cap on this. Percentage discounts are less scary than multipliers that are less scary than bidding credits. So as I raised on the last call, there’s nothing in this recommendation or in the Implementation Guidance that would prohibit ICANN from giving each of these applicants a \$200 million bidding credit so that every other applicant starts at zero and these applications start at \$200 million of credit. I know that people have assured me that that’s not what we’re talking about but I don’t see any language in here indicating that that’s not what we’re talking about. So I do think this is a scary idea if it has absolutely no caps, no guardrails, nothing around it to keep it from really disadvantaging other applicants who may have a perfectly good reason to be in an auction. What if somebody applies for a string that corresponds to somebody’s trademark? That other outfit may have a very good reason to be in an auction even though ICANN is supporting the applicant. I just am really worried about this. It’s a big old blank check. Thanks.

JEFFREY NEUMAN:

Thanks, Paul. I think we’ll put a note in there to make sure we have language in that “Research should be conducted in the

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implementation phase to determine the exact nature and amount of the bid credit, multiplier, or other mechanism,” and then add some language in there about as well as capping or as well appropriate – I don’t want to create words on the fly but we’ll put something in there. If we can just put a note in the comment attached to it to make sure we reference maximum amount or cap or something similar to that.

Christopher, sorry about this. Is this a new hand or an old one?

CHRISTOPHER WILKINSON: That’s actually an old hand. You’ll be glad to know. So we’ll do something about that.

JEFFREY NEUMAN: Thanks. Kathy, go ahead.

KATHY KLEIMAN: Jeff, would this be a good time to talk about the highlighted text about legitimate assignments?

JEFFREY NEUMAN: I would love to, yes. Thank you.

KATHY KLEIMAN: Okay. Here I just thought we should expand the text a little bit. Organizations like many other groups have mergers, name changes, entity restructuring, and the type of renaming that you

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would want to change, probably do some kind of token to change to the Registry Agreement just so it would actually reflect the current name of the organization in whatever its new structure is. So I just want to note that nonprofits like everything else kind of change their names, go down to their acronyms, stuff like that. Thanks.

JEFFREY NEUMAN: Thanks, Kathy. I was trying to cover that type of thing, legitimate – when I said “legitimate assignment” so I know the word, I was just trying to get some policy language as opposed to legal language. But exactly what you’re talking about is what I was thinking about covering in that. And I would rather have us focus on the policy language and let the Implementation team work on the specific legal language. But that’s what I was trying to cover, Kathy, so we can certainly put that in –

KATHY KLEIMAN: Great.

JEFFREY NEUMAN: Paul, I guess yes. Death and retirement normally refer to natural people but I’m thinking if there’s a natural person that owns more a majority and it’s a privately held family-run entity and that person dies, then presumably that portion or percentage would/could then go to its estate and whoever manages the estate, which is in some jurisdictions could be considered an assignment. So understood that corporations but we’re not talking about corporations necessarily here and we’re also talking about

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international entities which may have completely different things that I don't know about. Anne, go ahead.

ANNE AIKMAN-SCALESE: Thanks, Jeff. Regarding this language, I'm a little bit bothered by the use of the word "legitimate." Do we mean good faith? The word legitimate doesn't – I don't know that that has determinable meaning but something –

JEFFREY NEUMAN: Yeah. Right. I was kind of looking for a better word. We should really say "good faith" because transferring it to a completely new party could absolutely be done in good faith. So yeah, I don't know what that word is.

ANNE AIKMAN-SCALESE: I'll think some more about that and maybe suggest something, but I wanted to actually move to a little bit different comment in terms of being able to implement this. My question there relates to the fact that I'm not sure how this raises all the many recommendation coming out of an IRT or whatever in this [irenic] could be something other than policy. I'm trying to figure out how we phrase this or put it in the context of predictability framework or whatever in a manner that allows it to proceed to be codified in the Applicant Guidebook. Because I think you potentially have a whole bunch of procedural objections from people who don't like the multiplier that the IRT comes up with or whatever, and I wondered if you reflected on that.

JEFFREY NEUMAN: Well, this gets us into a much bigger debate or what's truly policy versus implementation. At this point, I think what our goal here is to lay out the policy principles behind the implementation. If the policy principles are that research should be done to set this amount of whatever we're calling it, bid credit, whatever, then the results of those would be considered implementation. Even that is going to go out for public comment. So yes, it's not our policy development group that's deciding it but any guidebook is going to off for public comment so –

ANNE AIKMAN-SCALESE: No, I'm definitely not opposing this, Jeff. I'm just trying to see if there's any way it can be worded so that it sticks hard rather than being challenged on policy ground.

JEFFREY NEUMAN: Okay.

ANNE AIKMAN-SCALESE: I'm really trying to figure out a way to make it very enforceable that the IRT can develop this formula and to cut off arguments to the contrary. But I maybe I need to think more about that as well.

JEFFREY NEUMAN: Okay. Thanks, Anne. Donna, go ahead.

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DONNA AUSTIN: Thanks, Jeff. A suggestion on the wording. What if it's changed to however assignments that become necessary because of a change in ownership due to death or retirement or whatever shall be permitted? So you could change the language a little bit.

The other thing that's strikes me is that with EBERO transition, so putting aside the emergency piece if there's a breach of SLA or something. But if a TLD kind of goes into voluntary EBERO because they don't have the funds or whatever to manage the TLD anymore then ICANN I think the process is goes out to an RFI to try to find another operator. So I just wondered whether that's a possible approach that might work here. Thanks, Jeff.

JEFFREY NEUMAN: So on the first part, I'd love to hear from others. I think changing the language in the way you said it makes sense. The second part – if the TLD fails – I guess what we're saying is that it would be the same rules would apply as would be voluntary EBERO or any kind of EBERO for any registry, whether or not it has applicant support. I'm not sure if we need to do anything different. Are you suggesting we do something different or are you suggesting just that we allow it to make sure it's not different?

DONNA AUSTIN: I think what I'm suggesting is – we've called that death over time in here but another possibility is – I don't mean this in a bad way – but it's an applicant support applicant so it may come to pass that they didn't have the resources to do the job that they intended to do or they couldn't keep their head above water, which could be

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another reason for a legitimate assignment. So it could be going out of business that the RFI could be used if they can't find somebody else to take on the interest.

JEFFREY NEUMAN:

Okay. I'm on the same page as you now. I got it. I think Steve asked for if you could just in the chat the first comment about the way you change the wording from the word "legitimate" and use your wording, if you could just jot that down in the chat, that would help. There you go. Assignments have become necessary because of death, retirement – there you go. Thank you, Donna.

Then on the point of adding in assignments that are necessary due to the EBERO process. Paul is putting in some other legitimate ones. Some assignments to affiliates or subsidiaries should be allowed. Some though – I was saying this in my comment. When you do a reverse triangular merger, which I've done many times, that involves a chain of assignments to affiliates and subsidiaries which gets around the whole notion of going to that third party. So I was trying not to just use that term but if that's something that we think should be in there, I'm fine with that too. Anne, go ahead. Is that a new hand?

ANNE AIKMAN-SCALESE:

Sorry, double mute. That looks like a good change happening there, so thank you. I want to raise a word from the immediately preceding sentence because it says – and I used the word "immediately" – but it says, "Whereby an applicant immediately

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transfers its ownership of a registry in exchange for financial gain...” I think the word “immediately” should just be deleted.

JEFFREY NEUMAN:

I think that’s fine. Yeah. Okay, any other comments on that language? Paul is continuing to list out more examples so we’ll come back into the chat after the call and make sure that we have all of these examples which I think are all – the ones that I was sort of thinking about as legitimate ones that we would not really want to penalize the applicant to get the applicant support from doing what maybe the normal course of business types of things that it would do.

Okay, let’s then move on to package 5. Sorry, package 4. I’m already in my head, moving on. Anne, let me just check – that’s an old hand or a new one? Okay.

In package 4 I think there are a lot of really great comments and also ones that were just like spelling out acronyms and things like that, which I think we’ll just take. I don’t think we need to discuss those but there are also some really good comments that do have substantive impact. So if we can scroll down. Steve has put the link in there as well if you want to follow in the Google Doc. Okay.

This is proposed by Kathy, suggested adding an additional clause. Basically, this is in the Discussion section and this is where it relates to changes to applications and public comment period that arise because of it. Kathy puts in here a note about getting notified about the request for changes of who made those. As Emily put in the reply, Kathy, this is discussed at length in Section 2.4 – well,



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it's 2.4 now – Application Change Request. Although I don't disagree with your added language in the sense that that does apply, I think just restating that component – that's always something that worries me when you restate only one part of the text of another section, then people think that there's a conflict because you're not mentioning all of it. So if you could review Section 2.4, which is the Application Change, and if your comment is covered in there, if we could just rely on that as opposed to putting in that new text. Kathy, go ahead.

KATHY KLEIMAN:

Hi, Jeff. I think we should just cross-reference it. These documents are getting so big that it's hard to remember everything. So I appreciate Emily pointing it out and I think we should cross-reference it for everyone because it's important that commenters should know that something has happened in response to their comments and that they may need to resurface and makes more comments. So I really like that idea. If you don't mind, let's just cross-reference it here.

JEFFREY NEUMAN:

Yeah. The sentence before it says, "Please see Section ..." I know it says "XX" because at the end of the day, we don't know if it's still going to be 2.4 or whatever but I think that was the intent. Correct, Emily?

KATHY KLEIMAN:

I've got a follow-up, Jeff.

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JEFFREY NEUMAN: Sure, go ahead.

KATHY KLEIMAN: Then can we say, “Which will include notification of commenters,” whatever the language was that Emily said? I think it’s page down. But I think we should expand it rather than just referencing application change request. This is a specific information about kind of ongoing public comment processes. So a little more detail should solve the problem – or the ambiguity, really. Not the problem but ambiguity. If you’re talking, Jeff, I can’t hear you.

JEFFREY NEUMAN: Yeah. That would help if I brought myself off mute. The Applicant Guidebook will be the document that’s actually read by applicants. Let us go back and review that. Like I said, we don’t want to be cross-referencing. We’ll try to not make this like a 500-page document but I understand your point. Let’s go back and think about that a little bit.

Okay, let’s move on then to the next one. I think the next –

ANNE AIKMAN-SCALESE: Jeff, I have a hand up.

JEFFREY NEUMAN: Oh, sorry. Anne, go ahead.

ANNE AIKMAN-SCALESE: I'm going to put it down now since I've been lazy about that. I have a question about this because I have a vague recollection that from ICANN standpoint, it's not 100% of application change request that go out for public comment. Could you please remind me what that section says about the standard for when a change request goes out for public comment?

JEFFREY NEUMAN: Yeah. There's a bunch of recommendations in the Application Change Request section. That section basically adopts what was previously in place for 2012 in staff kind of guidance document, which laid out the types of changes that would go out for public comment. Then on top of that, we recommend that ICANN be – well, I'm not going to use the exact words, right? But something to the effect of ICANN needs to set forth any additional criteria uses as to what changes go off to public comment and which don't. But then there's also recommendation of certain things that we do require to go off for public comment. So there's a bunch of information in that section.

ANNE AIKMAN-SCALESE: Okay. And which package is that? Sorry, I don't know if I'm tracking everything. What package is that Application Change Request?

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JEFFREY NEUMAN: I want to say it's 2.4. Is that right? Sorry, you're asking the package, not the section. I'll ask ICANN if they can figure out which package it was in while we go on to the next one.

ANNE AIKMAN-SCALESE: So you're saying these are ready. Oh, it's the current package. But it's out for a [inaudible]. Okay. All right, well, I see that Paul is agreeing with Kathy but you probably should add in the chat. Okay, sorry.

JEFFREY NEUMAN: Okay, everyone go back, in package 5 read 2.4, see if it covers everything. Remember this is not the Applicant Guidebook, so this is just our policy document that's going to go to an Implementation team that's going to write an Applicant Guidebook. As long as we reference the section number here, the Implementation team should be able to use that to make sure that all of these things that people think need to be restated will be restated. If we did that in this document, we would be adding hundreds of pages. So I'm pushing back a little bit but certainly review that section 2.4 in package 5. That's out now. Make sure it's got everything you need in there.

Okay. Cool. Let's go then to the next comment. I think the next few might be just some spelling things out that Kathy has made suggestions to, which I think we've got to come up with a consistent way to do this and maybe that's having a glossary or maybe that's spelling it out. I think COI is a good thing to – I think the first time you put it in a section, it should certainly be spelled

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out, especially people just read these sections but whether we do that for every single time, I'll leave that up to ICANN org to help us with to a consistent way to do it. Kathy, go ahead.

KATHY KLEIMAN:

Thanks, Jeff. I think in this case, COI is defined further down. So certainly the first time it's used in the section – I wouldn't do it just once in the document, every section just in case people are going to the different sections. Great, thanks.

JEFFREY NEUMAN:

Thanks for the comment. I think certainly going through it, it makes sense at least for us to be consistent and to not make it too difficult for readers to continue use abbreviations.

Okay, let's scroll down. Yeah, keep going. I think these are still abbreviation comments. Okay. This is a good one. Kathy asks what – sorry, let me go back a step. This is the section that talks about string confusion and is one where we set out the rule that plurals and singulars will not be allowed. I'm oversimplifying it but essentially that's the section. Kathy asks the question because we say that if one looks like the plural of the other plural/singular of the other but they're intended for different uses then that should be allowed. So Kathy asked the question, what if it's not clear from their application what the exact intended use is because let's say one of them says that it's completely open and maybe the other one specifies or doesn't, so what happens in that case? I put a note in there about, what if we add some implementation guidance that states something like, "In the event the intended use is

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unclear from the application to determine whether one string is a singular, plural or the other, ICANN should ask the applicant or applicants clarifying questions to ascertain the intended use of such string. Kathy, would that address your comment?

KATHY KLEIMAN: Yes, I think it would. I think it would then I guess the evaluators would take it from there, depending on the answer. Thanks.

JEFFREY NEUMAN: Right. Okay. All right, that's good. We can create an Implementation Guidance on that one, a policy that makes sense. Okay. I know we had discussed that anyway in our discussion so it's not really something new. It's just something we hadn't documented in here yet.

This one's complicated and they're really good comment, and I'm not 100% sure of what we should do. Well, there's two comments. Anne asked to reword the recommendation. That's one of them. Anne asks, "Do we mean here that in the next round, no one can apply for .casino and Cyrillic script or Bible and Hebrew text TLD?" We're talking about variants here and not translations. To answer Anne's question, this doesn't apply to – if someone were to apply for an IDN equivalent or an ASCII TLD or for that matter, a ASCII translation of an IDN TLD. So no, this doesn't apply to that.

The more difficult one is, I think, brought up by Justine a little bit further down. It might be in the rationale. There it is. Okay. Justine here says that, "The explanation provided by the At-Large IDN Working Group is as follows. The wording in this recommendation

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seems to expect that an IDN variant TLD go through the same application process when in fact any IDN variant TLD should only be activated, not applied for by the same registry operator. This is consistent with how it was envisioned originally in 2012, although that didn't go through and then allowing IDN variant TLDs to be applied for is problematic for the concept of IDN variants.”

As I say in my comment below, this is a tough one because we've never actually discussed the process of how one would, for lack of a better term, apply for a variant of an existing TLD. Even though we're saying it can only be – and I'm putting air quotes around “applied for by the existing backend operator.” So the question I then have is, if it's not going to be these – I think we all assumed in this, it was going to be a normal application process for the TLD. Now, I know the At-Large IDN Working Group has stated that it shouldn't be the normal application process, it should be something else. What that something else is we haven't discussed, and I think it could take us down a huge rabbit hole if we try to discuss exactly what that process should be.

Maxim states that “If IDN variant is in the same language, only one winner is taken all after paying abnormal application process.” So I just want to say, Justine, is that we don't have an answer for that. If it's going to be some other process, someone needs to lay that out, perhaps in an implementation phase but I don't think we should say anything other – perhaps saying an implementation guidance saying that or something in here saying, “We don't discuss this specific process for applying for a variant of an existing or applied for TLD and maybe punted to the team.” I think it's a complicated one for us to actually delve into all the specifics.

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Paul says, “Can we change [allow] for to activation?” Once again, Paul says, “Can we change to this activation?” If we change it to activation, we haven’t defined what that means to get activated. I think the easiest solution or simplest solution would be to say that something to the effect of the working group acknowledges that the process to get a variant of a TLD or to get an idea and variant of an existing TLD may not be through the normal application process. However, an Implementation team should look at this issue in more detail. I don’t want to say “activation” because then we have no definition of that as to what that means. Anne, go ahead and then Paul.

ANNE AIKMAN-SCALESE: I’ve seen a document online on ICANN’s website dated January of 2019 called IDN Variant TLD Implementation, which appears to have been adopted after public comment. Do you know anything about that document?

JEFFREY NEUMAN: Actually, that was before the public comments. Wait, it was around the same time as a public comment and we knew of it and it’s very similar to this in here about allowing or about who can get an IDN variant TLD. But I don’t think it goes into the process of how to get that. Justine is saying, “How do we make it clear that only the same RO get to apply?” I think we do say that above. We have that in a recommendation.



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ANNE AIKMAN-SCALESE: So what you're saying is that it's not clear whether they have to follow an application process for that? Also, why aren't we referring to the implementation that exists if it exists?

JEFFREY NEUMAN: There is no process that is set forth at this point to activate, apply for, whatever it is, an IDN variant of your existing TLD. There's a document that describes that it should be available for the same registry operator and then the report also touches on and saying for gTLDs, there's a significant application fee, which means that there's already a barrier to do this. The study recommends that the application process for a variant will be the same as for the gTLD label.

ANNE AIKMAN-SCALESE: So, relative to Justine's comment, that would require an application then, right?

JEFFREY NEUMAN: Yup. I'm waiting for someone to hold me where that comes from. Could you put it into the chat? Thanks, Steve. That comes from the document you were talking about, Anne.

Justine, the recommendation about who can get it, if you scroll – I think it's in this section, if you scroll up. I'm sorry, we do want to highlight. It is. It says it must be the same registry operator and backend registry service providers. So it's in there, Justine.

Anne, new hand, old hand?

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ANNE AIKMAN-SCALESE: I just wondered if we could have a bit of time to look at this thing ICANN document which I wasn't aware of before. I'm not doing it right now but I'd like to have a chance to read the worksheet that was already done internally.

JEFFREY NEUMAN: Sure. And we did use that in coming up with this section. Mr. McGrady, go ahead.

PAUL MCGRADY: Thanks, Jeff. I guess now I'm thoroughly confused because my comment I think was a little more pedestrian than you took it. I guess I'm trying to understand – it's the second highlighted one – where we say IDN gTLDs deemed to be variants of already existing or applied for TLDs will not be allowed for a separate application and allowed for activation by the same registry operator and backend registry provider. Are we trying to say the opposite of the paragraph above it? Because what I was trying to do is when I said – and my comment's gone – but I was wanting to say something like, “will not be allowed for a separate application and will be allowed for activation,” because that sentence reads really weird and I don't know what it means. I was trying to parse out that they won't be available for a separate application if you don't already have the other variant, but they would be allowed for application if you do. Is that what we're trying to do with that second yellow text? It's super confusing.

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JEFFREY NEUMAN: Sorry about that. I probably should have said this at the beginning of the discussion just to remind everyone. The original text is what's highlighted and not in any color. That's the original text. The text that's below it is what Justine has recommended to be new text. So it's either one or the other. Either the original – it's not that we'd have both paragraphs in there. Sorry for the confusion because yes, one does in theory, or could conflict with the other. Justine is recommending that this new text be substituted for the original one in there. So hopefully, that clears things up a little bit. Paul, go ahead.

PAUL MCGRADY: So assuming that we're working off of Justine's version, then I think we really need my recommendation which said – it would now read, "TLDs will not be allowed for a separate application and will be allowed for activation." Otherwise, it reads really strange there.

JEFFREY NEUMAN: Yes. The baseline is going to be our language. If we think that Justine's language is a little bit confusing or to start with our language, and then if Justine has some elements that aren't covered or the group wants to adopt Justine's language, then we could talk about changes to that one. But it sounds like we're not there yet.

PAUL MCGRADY: Okay, got it. Thank you. Sorry to be so dense.

JEFFREY NEUMAN:           Nope. No, no. Like I said, I probably should have said something earlier about which text we're looking at. Go ahead, Alan, and then Justine.

ALAN GREENBERG:         I suggest we let Justine talk first because then maybe what I say will make more sense.

JEFFREY NEUMAN:         Got it. Justine, go ahead.

JUSTINE CHEW:            Thank you. What Paul was trying to get at is the intention behind the amendment that was proposed. I apologize for the language being a bit confusing, but it was meant to say that IDN gTLDs deemed to be variants of already existing or applied for TLDs will not be allowed for separate application but will be allowed for activation. Having said that, I understand that there is obviously a lacuna in terms of what we mean by activation and also the fact that it isn't grounded somewhere yet that there should be separate application by the same registry operator. So taking that into account, I propose something in the chat that just refers to the IDN gTLD payments being made available only to the same registry operator and backend registry service provider. But I would like the opportunity to check this with the IDN Working Group, if I may. Thanks.

JEFFREY NEUMAN: Thanks, Justine. But can I ask you a question? How is that different than the language that's already there?

JUSTINE CHEW: It isn't. I'm just trying to address the point about separate application and activation. Thanks.

JEFFREY NEUMAN: Got it. Okay. Also take a look at that link document that Steve put on there, because that did undergo a bunch of discussion already. I'm trying to remember ... I think it was also out for public comment so that's sort of the guiding document at this point. I understand that maybe different than what the At-Large IDN group is saying, but take a look at that, if you can. Alan, go ahead.

ALAN GREENBERG: Thank you. I think Justine just said that her new wording fixes the word with activation but the word and activation was only introduced in her variant. Excuse the pun. The way the second one reads, it implies that if you already have one of the variants, you can just ask to have the other one activated with no fee and nothing, and I didn't think that was our intention. I thought that if you're asking for two variants of the same word that we are expecting you to pay two fees. Am I wrong on that or is that correct – before I continue?

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JEFFREY NEUMAN: To be honest, I don't think we discussed that issue in detail. I think it was assumed that if you wanted a variant, that you'd have to apply for it separately through the normal process.

ALAN GREENBERG: The reference to add to activation implies that you can just ask, "Please, sir, may it be activated?" That's a fine way of saying it, I could live with that. But if that's not what our intent is, then I think both Justine's and the original wording say the same thing. We could change Justine's new wording, but the old one I think is identical. I'm not quite sure what the idea and what the At-Large Working Group had in mind.

JEFFREY NEUMAN: The existing language there does not say anything about activation or anything like that. It's a much higher level policy statement. Right? It just says that would be allowed.

ALAN GREENBERG: Excuse me for interrupting you. Presumably, activation, whatever that is, comes somewhere later in the process that starts with an application. It's something related to delegation, but I don't know exactly what. Maybe it means turning it live and putting it into the root.

JEFFREY NEUMAN: Okay, thanks. I think the point made by Justine's statement, though, is that it shouldn't have to go through the normal

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application process and that it should just be a request. Justine, am I interpreting that right? That should be some different process for variants as opposed to filing a gTLD application?

JUSTINE CHEW: I believe that is the intention of the IDN Working Group.

JEFFREY NEUMAN: Which is very different, right, Alan?

ALAN GREENBERG: Yeah. Then, if I may get back in before Maxim, I think that is a reasonable rule. If you're using the two variants as identical parallel things, the entities under them can't vary. You're just doing this as a convenience to people who may use one of the variants over the other. It is reasonable not to charge a second fee for it but we need to make that really clear. Then there's a different process for getting a variant approved.

JEFFREY NEUMAN: So the paper that Steve cited in the chat actually says the reverse. I want everyone to read that because there was a lot of work that went into that. Because what you're saying, Alan, and what Justine is saying and the At-Large IDN is, I think, sort of the opposite of what existing work says. Just read that and then let me go to Maxim and then back to Anne.

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MAXIM ALZOBA:

First of all, that group which made recommendations wasn't working code into the normal multistakeholder [model]. It's just backup experts. Then the GNSO Council created scoping team to check what should be implementation, what should be policy, how to deal with that. I posted to the chat the final report of that scoping team. I would recommend to read it. It's short, just read across. It has history of what variants, what not variants, references to documents, to previous work and to condition what to do. So far in GNSO Council, it's one of the projects in GNSO Council project list so it will be taken care of. But so far, it's not policy, just recommendation of some group from the [inaudible] perspective.

JEFFREY NEUMAN:

Okay, thanks, Maxim. So again, I think if we just go back to the original high-level comment – and not get into the details – of activation, how that works, I think we're better off to just stay at that high level. Then as Maxim said, there's an IDN working group that's going to be working on this issue. There's going to be an implementation, these recommendations that'll ... I'm sure ... Again, it's my phone. There's an Implementation team that'll be working on it. So I don't think we should go into any more detail at this point. I want to scroll down to the next one, see if we can make a little bit more progress. I know that there's some people in the queue.

Anne, is there something different? Anne, Christopher, Alan, something different that hasn't been said on this?



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ALAN GREENBERG: Yes.

ANNE AIKMAN-SCALESE: Yes. It's really best – I'm not sure what order you're in there.  
Sorry.

JEFFREY NEUMAN: Go ahead, Anne.

ANNE AIKMAN-SCALESE: Would it be okay, given that not everybody may be familiar with this work, if we said already existing or applied for IDN TLDs? Because that's what you're really talking about. You're really talking about an existing or applied for IDN TLD.

ALAN GREENBERG: That's what it says.

JEFFREY NEUMAN: Yeah, that's the first part of it. Remember we're looking at the original.

ANNE AIKMAN-SCALESE: It says already existing or applied for TLD. Do you see the language I'm talking about?

JUSTINE CHEW: Okay. The first words, Anne.

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ALAN GREENBERG: The first word is IDN.

ANNE AIKMAN-SCALESE: Right. And the second time it's referred to, it doesn't say IDN. So thank you for making that change.

JEFFREY NEUMAN: Got it. Okay, Christopher, go ahead.

CHRISTOPHER WILKINSON: Thank you. There's a question that I'm quite confused and I don't expect to be elucidated tonight. But in the ccTLD sphere, the IDN equivalent of a ccTLD is granted to the ccTLD registry automatically. But in the gTLD sphere, you're speaking of IDN variants of a string in how many scripts? Are we going to have to be dealing with registries which hold some of the IDN version of the string in 25 scripts? I don't expect an answer tonight. I just wanted to drop that question into the mix for future consideration. Thank you.

JEFFREY NEUMAN: Okay, thanks, Christopher. Alan, go ahead.

ALAN GREENBERG: Thank you. I think Christopher is confusing variants with things which are the same meaning in different scripts in different

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languages. And variants are very specific situation. They're roughly equivalent upper and lowercase in English, or in Latin script. They have the same meaning, they just happen to have visually different characters in the same script or in the same language, whatever.

The reason I put my hand up is if indeed this is a still up for grabs by an IDN Working Group or a GNSO policy process that might come out of it, then we really have to give two variations. We have to say that if the two scripts are going to be deemed separately, then this is the rule. And if they are deemed to be identical and can be applied for as a package, then this is the rule. We can't leave it completely unset or say one of them, because we don't know which way it's going to come out. So we have to finesse both of them if indeed some other group is going to be making a decision after we finish.

JEFFREY NEUMAN:

Again, the high-level principle I don't think is going to be discussed by any other group. The high-level principle is the only one entitled to a variant of an already existing or applied for IDN TLD, is the same registry operator and same backend registry service provider. That's not something that's subject to change. That is our recommendation. How it gets that variant and what it has to do to get that and how many it can get, those are the things that are up for discussion. Again, I'm a little confused as to why we need to do anything but the original language.

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ALAN GREENBERG: Okay. Your statement of principle is correct but since we are talking about applications and things like that, that is the largest part of what we're doing, we really do need to make it clear that we are not deciding whether you need two applications in the same round or different rounds or one application to get two variants delegated. That part we need to say, "We have not settled on it. We will abide by whatever comes out of the GNSO Council at some later date."

JEFFREY NEUMAN: That's sort of what I was getting at. If you scroll down a little bit in my comment to Justine about saying – no, actually, sorry, it's not in that comment. It's what I said to Justine at the beginning, which is we can put some text in there saying we're specifically not addressing the process by which one would apply for a variant TLD. We can put a note like that in there and say that –

ALAN GREENBERG: Apply or be granted.

JEFFREY NEUMAN: Right. Okay, good. So we are running up to the bottom or the end of the meeting, which is fine because I think this is probably the toughest issue in package 4 to talk about. So I think the rest of them certainly won't take as long to go through, I hope. But I'm fine with ending that here. Remember, after we finish this, we're going to go into the discussion on Category 1 TLDs. There's going to be a straw person, this document sent around right after this call or shortly after this call, and we'll use that as the basis for the

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discussion. Then we will go on to other issues related to options that we didn't cover because we were only covering the specific multiplier issue.

Then Justine says, "Please, let us have amended text for consideration." Justine, the only thing we're going to amend in this section is keep the old language and then put in some language on what we were talking about at the end that we haven't set forth or discussed or whatever it is the process by which to apply for and/or be given, I think is the words that Alan just used. As soon as we can get something drafted, we'll send that around.

Elaine is saying, "Is there a plan to update the work plan given time it's taken to get through the 'can't live with'?" So the work plan is at that link. That's being shown right now. Perhaps someone can drop that into the chat. We consistently change that after each meeting. Thanks, Steve for posting it. So go to that one. Give us 24 hours or so usually after a meeting to update it. But I guess they're doing it on the spot now, so kudos for that. We do update that after each meeting so I think you can keep checking there.

I know that there's two hands that are up. Are they new hands? While I'm asking, if we can just have the date and time of the next meeting posted. Anne had said she made a brief package 3 comment. Let's make sure we cover that on the next call. We'll start with that one.

ANNE AIKMAN-SCALESE: Thank you.

JEFFREY NEUMAN: Sure. Next call is Tuesday, June 16 at 03:00 UTC. For some of us, it's Monday. For some of us, it's Tuesday. Good progress. Have a great weekend. And thanks for staying with us a couple minutes over. Thanks, everyone.

JULIE BISLAND: Thank you, Jeff. Thanks, everyone for joining.

**[END OF TRANSCRIPTION]**