ICANN Transcription

GNSO New gTLD Subsequent Procedures PDP Working Group

Thursday, 12 November 2020 at 20:00 UTC

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ANDREA GLANDON: Good morning, good afternoon, and good evening. Welcome to the New gTLD Subsequent Procedures PDP Working Group meeting being held on Thursday, the 12th of November, 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?

Thank you. Hearing no 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 part in ICANN multi-stakeholder process are to comply with the expected standards of behavior.

With this, I will turn it back over to our Co-Chair, Jeff Neuman. Please begin.

JEFF NEUMAN: Thank you very much. Welcome, everyone. Sorry about the initial confusion there. That was user effort. So, everyone, welcome. The agenda is up on the screen. Before we get into our main topics, let me just ask if there are any changes to any statements of interest or anything else anyone wants to disclose.

Okay. Not seeing any. Today's topics are going to be the PICs/RVCs, and then we'll get into communities. The one area that is involved with both of these subjects that we're not going to spend too much time on today (because we're going to devote some more time in a future session) is the whole notion of the interaction between enforcing these types of requirements—how that interacts with the bylaws. That's an issue we've mentioned several times with a number of different subjects. Cheryl and I are still trying to find a time when both Becky and Avri can attend this call after we've briefed them on the questions that have come up so that then we can have a more fulsome discussion on that because, although it does come up in the Org comments and, actually, the Board comments, I don't think having that discussion without the benefit of the Board view is going to be very productive. So that is just an upfront introduction.

KATHY KLEIMAN: Great. Thanks, Jeff. Can you hear me?

JEFF NEUMAN: Yes.

KATHY KLEIMAN: Okay, terrific. I wanted to point out—I'm very glad we're segmenting it off—it's more than enforcement. It may be the existence of certain types of voluntary PICs or RVCs that are arguably outside of ICANN's mission. So I just wanted to make sure that we're talking about both topics that are being segmented at this point—the existence and the enforcement of RVCs that may fall under the ICANN Board letter, as well as concerns that numerous other groups have provided.

So, if that's right, then great. I've got some other suggestions and thoughts and wanted to ask you about organizing today, but I just wanted to make sure we're segmenting both because the ICANN Board letter dealt with both, not just enforcement but existence. Can these PICs be arguably outside of ICANN's scope and mission? Thanks.

JEFF NEUMAN: Thanks. The short answer is, yes, that's all included in that discussion with the exception of those that are specifically grandfathered in from the bylaws perspective. But, yes, the

concept of adding new requirements that may be viewed by some as not being within the bylaws … So we're going to have a full working group session on that with Board members.

KATHY KLEIMAN: [Great]. Thank you.

JEFF NEUMAN: So we'll skip over those for today. Jim, go ahead.

JIM PRENDERGAST: Thanks, Jeff. I would just urge you to be cautious in your language around this. I know it was probably a product of the hour during the last ICANN meeting, but in your interaction with the GAC and, I believe, with some others, you slipped a little and said, "Well, it's our view," "Well, it's the leadership view," and, "Well, it's actually my view." I don't think the working group has discussed the topic of, "Well, if we recommend this, then the Board should change the bylaws," or, "Should what we be recommending conform to the bylaws?" That's a very big question for this group to address, and I don't think we're anywhere close to even beginning that conversation. So, as you're having those conversations with Becky and Avri, just be mindful that we as a group have to come down. You may have your opinions, but the group as a whole hasn't really tackled it, and we need to at some point. Thanks.

EN

JEFF NEUMAN:	Thanks, Jim. Yeah, I'll blame it on the hour that those calls took place. But the short answer is yes to what you just said, although I think you only said there were two options. There is a third option, which is, can you have the current PICs and enforce it in a way which would have it fit within the ICANN bylaws? So I think you had presented the two options at the extremes, which are, do we ask ICANN to change the bylaws or do we confirm to the existing or get rid of these PICs and therefore not face any question? The third option is, is there a way to do both? From a personal perspective, I think there's a way to do both, but that's something we all need to explore.

Okay, cool. All right. So the other thing you'll notice with the RVCs, anyway, because there were … I kind of call them themes. Yeah, there were themes in the different comments that we got. Yeah, there's some outliers and some ones that don't fall within the themes, but we tried to color-code these within the chart itself. So we'll be skipping around to cover all the comments that are in a certain color. Now, some of them have multiple comments in it, so we'll come back to them, but we'll try to keep this in some sort of organized discussion.

There were some groups that supported the language as written. You can see that on the top. Then there were others that weren't necessarily thrilled or didn't think it was ideal but were certainly willing to support. Then there were others that just didn't express a view one way or the other.

But then we get into the other comments. I'm going to try to go through these. I think these appear as a yellow-orangish-type color.

Yeah, Kathy, that's … So Kathy is saying, "Can we go topic-by-topic?" Yes, Kathy. So that's what we tried to do with these colors. So hopefully we did a good job or an okay job with this.

So the yellow-orangish color is the color meant to indicate comments that were made on whether certain groups should get exemptions or waivers from certain parts of Specification 11—the mandatory PICS (the things that we do refer to as PICs now). So that came from Tom Barrett.

Then, if you scroll down, there were also comments from— whoops. You missed one there. You went pretty quick there. I think it was [.zon]. And I think ICANN Org, I know … BC, and probably ICANN Org is the other one.

Anyways, if you recall, there was a recommendation that said that, if you were a Spec 13 brand registry or a registry that received an exemption from the code of conduct that certain mandatory PICs wouldn't apply, like the security review and … There were others. I'm not going to go through them all. But each of these commenters, I believe, pointed out pretty much the same thing— that none of these, whether it's Spec 13 or the code-of-conduct exemption, aren't necessarily tied to a single-registrant TLD because they could have registrations from trademark licensees or affiliates. Therefore, the comments from the BC, certainly, and potentially some others, said you should exempt them simply because they have a Spec 13 because they could run into some of these issues that the PIC was designed to prevent against. ICANN Org doesn't offer an opinion one way or another. It just makes the same point—that there are entities that are not single-registrant TLDs.

So we need to discuss whether this matters. In other words, does the same rationale exist for the brand TLDs if they are not a single-registrant TLD as they did for when they were a single-registrant TLD? In other words, should we be requiring these brands to do the technical analysis and DNS abuse analysis, or do we think that it's okay for them not to?

I see Jim's hand is up and Paul McGrady's, so let me go to Jim first and then Paul.

Oh, Jim may have had a leftover hand. Okay. That's fine. Paul, go ahead.

PAUL MCGRADY: Thanks, Jeff. This is annoying because I kind of want to go back to where we started from, which is, prior to our call with Becky and Avri, have we put together a list of everything that will have to be looked at again if PICs and RVCs are not okay? I think that would be a useful exercise because we really have to understand that, if they come to our call and say, "Yeah, we decided PICs and RVCs are out," then we have to impress upon them that we've got years of work left ahead of us if that happens. Are we doing that? I think that would be a good thing for them to know. Thanks.

JEFF NEUMAN: Sorry. I was on mute. So can certainly indicate all the areas where RVCs come into play. I'm going to hold off on doing the full analysis until or unless RVCs and PICs are completely out the window, which I don't think … Call me an optimist. I'm not there yet. And I don't want us to necessarily do all that work if we don't

need it. But I know Avri has been on some other calls. I don't think she was able to be on this one. But Avri has certainly been listening in to a lot of the calls, so she certainly is aware of the ramification if we find that PICs and/or RVCs can't be utilized. So, yeah.

Again, one of the reasons why leadership wants to just have a pre-call with them is to make sure that they're thinking about all of those things when they come into the discussion with the full working group.

So let's try to go back then to the exemptions, which I was hoping, Paul, you would speak to. Is there anyone that believes that … Do we just keep the exemption, the waiver, there for brands regardless of whether they have affiliates and/or trademark licensees? Or is this something we think we need to revisit?

Kathy, go ahead.

KATHY KLEIMAN: Okay. First, Jeff, quick question. We're just in a conversation today on this call in this place about mandatory PICs? That's what we're talking about?

JEFF NEUMAN: That's what this comment relates to. This section of comments in orange is about waiver requests. We'll get to the other topics that are color-coded green and blue and others. We'll get there as well, later.

KATHY KLEIMAN: Okay. But I think most of them have to do with mandatory PICs right now in different colors. If we're taking RVCs out (the voluntary PICs), then we're in mandatory PICs, I think. I just wanted to make sure because it sounds like the category of who should be included is one for mandatory PICS. A category of whether DNS abuse should be included sounds like a mandatory-PIC question. So I just wanted to make sure that … Sounds like that that's our umbrella, in which case I recommend we look at the orange comments for the Business Constituency just because I think they're interesting on this topic.

JEFF NEUMAN: Okay. Let's scroll down.

KATHY KLEIMAN: And I'm not going to read or defend them. I just think they're interesting and should be flagged.

JEFF NEUMAN: Okay. So what they're saying—yeah. They're basically against any organization having a waiver from what's currently in Spec 11.3A-D. Right. But the recommendation, however, from the group was the opposite—that brand TLDs and those that have a code-of-conduct exemption should be exempt from those requirements.

Martin has got his hand up. Go ahead, Martin.

MARTIN SUTTON: Thanks, Jeff. The way I read the responses here doesn't give me a strong determination to move away from what we put in the draft final report recommendation. The reason I say that is we seem to have a good congregation of those that support the wording, and then we do have a string of responses. But in terms of this specific area, I can't see strong evidence. I was there towards the comment which I can't see on here now. But it was relating to the lack of or certainly a low-risk area of the brand TLDs for the abuse areas and, from my perspective, the ability of a dot-brand operated to respond effectively and quickly to anything that does alert them to concern. So whether or not it's a licensee, they've still got strong ability to end a desire to correct anything that they determine. So my opinion from what I'm reading here is that there is no strong need to move way from what we put in the final report.

JEFF NEUMAN: Thanks. Can we—Julie? I think it's Julie who has the screen, right? If it's Emily, let me know. Can we go to the recommendation on that? Because I think the reason it was brought up is we may have used some—oh. Emily. Sorry. I think in the recommendation we used some conflicting language. So I think that's why it was brought up. So it may just be a matter of fixing the language. So it'd be 9-point-something. Okay, we're getting closer here. So it's not that—wait. It's not that one. The next one. Okay. 9.2.

So 9.2 says, "Provide single-registrant TLDs with exemptions and/or waivers to mandatory PICs included in Spec 11 3A and Specification 3B." Then there's a footnote. This is where the problem may actually be. Maybe it's in the rationale. Sorry. Can

we scroll down that recommendation? I think we say "single-registrant TLD," and then in the rationale we talk about Spec 13. Is that right? Where is it that we actually refer to brand and … Somewhere we point … I know we have that language, which is single-registrant TLDs, but somewhere I thought we actually used the words "brand TLDS," or, "Spec 13" and "code-of-conduct exemption." I'm not sure why we can't find it. That's crazy. Is it down further a little bit? All right. Well, maybe not. Well, I will try to figure it out. I think we may actually … Yeah, if it doesn't mention the Spec 13 or the code-of-conduct exemption, then the fact that it says "single-registrant TLDs" is self-explanatory. It doesn't mean it applies to necessarily every brand, and it may not apply to every code-of-conduct exemption, but it has to fit within a single-registrant TLD. For some reason I thought it was in there, but good. It's not.

All right. So then let's go to the next set of comments. The next set of comments, if you scroll up, I think, were the blue? Green. The green is what we're not actually going to be talking about. So where you see the green, that's what we're pushing off until we can get the Board members on because those all revolve around content.

So let's now talk about the blue ones. Now, for the blue ones, we have to make an assumption that these PICs and/or RVCs are going to be allowed in order to talk about what's in blue, which is generally enforcement. So there are a number of comments that have been filed, whether it's the NABP, the GAC, the Swiss government, etc., that … BC, I think, even has, or IPC. There are a number of comments in here that relate to actually enforcing

these requirements. Again, we want everyone to assume that these PICs are actually okay and fit within the bylaws and that they are enforceable.

What people were not satisfied about was the lack of ability to enforce. So the NABP brings up, in connection with the Category 1 TLDs—this is the same comment that they made the last time, which we had not or have chosen not to addresses—the notion that, essentially, all of the safeguards that were put into these TLD agreements for the Category 1 TLDs were safeguards that—a lot of them—were basically enforced by just the registry having to put into its registry/registrar agreement certain provisions. In other words, Spec 11 would say that Category 1 TLDs—so, let's say a dot- … Well, it's NABP, so let' say .pharmacy. They have to put a provision in the registry/registrar agreement that requires registrants to be appropriately licensed in that area. It doesn't require that the registry has to make sure that every registrant is licensed. It just says that the registry has to have a provision in its registry/registrar agreement that flows through to require the licensing.

So, if you understand that distinction, you understand that all ICANN could do is to check to see whether that provision is in the registry/registrar agreement. It can't look at whether the registry has actually enforced it.

So that is okay? Are we still fine? Because there were some comments that felt that the Category 1-specific requirements were not—I'm sure people used better words—as well-enforced by Compliance as, in their mind, they should have been. So [is there] something we need to do about [it]? So you have these comments

from NABP. If you scroll down, the Swiss government makes some comments to that effect as well at the bottom about enforceability.

The registrars' comment is not that you should necessarily do more enforcement or better enforcement. It's that they basically are not happy with the fact that a registry's enforcement is dependent on the registrars actually doing the work. So they would like to avoid that I the future?

Kathy, go ahead.

KATHY KLEIMAN: Coming off mute. Can we go back up to the pharmacy comment?
NABP.

JEFF NEUMAN: Yeah. Sure.

KATHY KLEIMAN: And let me just ask so I don't make a mistake. Are they running .pharmacy? Is that NABP?

JEFF NEUMAN: Yes.

KATHY KLEIMAN: Okay. So, query. If … There have been a lot of criticisms about .pharmacy—I haven't followed them lately—because I understand

they are expanding what types of pharmacies are allowed beyond the U.S. But there was a lot of criticisms, and people went to our face-to-face meetings, back when we did that sort of thing. I remember the Canadian pharmacies coming up and saying they were excluded from NABP.

Is NABP asking that ICANN enforce an exclusion of groups that would fit under the highly regulated string definition by most reasonable interpretations and yet are excluded by the rules of the particular gTLD? Are they asking ICANN to enforce that? That ICANN would enforce that Canadian pharmacies are out and U.S. pharmacies are in? I would say that might be very controversial and gets ICANN involved not in a content issue but in a cross-border jurisdictional issue that it won't want to be involved in?

JEFF NEUMAN: Thanks, Kathy. I see Gg has her hand up. So, Gg, if you would like to address, then I can weigh in as well. Gg, go ahead.

GG LEVINE: Hi. I just wanted to clarify that the comment was in regard to the Category 1 safeguards and the requirement for complaints with applicable laws. So that's pretty much where [inaudible]. We're not talking about requiring the exclusion of anything or any parties—simply that there be some accountability as far as within those categories, within those strings, that those [inaudible] requirements be adhered to.

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JEFF NEUMAN:	Thanks, Gg. So to just add something to that, Kathy, they're not talking about .pharmacy here. What they're saying is that the Category 1 safeguards are—I think Jim used the term—lightweight. If we're going to have the Category 1 safeguards, it needs to be better than just, in their mind, requiring a provision in a registry/registrar agreement. It actually needs to be enforced. And it's any Category 1 existing or … They would like it to apply to existing TLDs. Of course, that's not something we can, but certainly, with respect to future TLDs, if you're going to implement safeguards, they should be meaningful.
	Go ahead, Kathy. I saw your hand come up.
KATHY KLEIMAN:	A question back to Gg. Applicable laws can also give a similar confusion, with the U.S. recognizing pharmacies under U.S. law, and Canada recognizing pharmacies under Canadian law. Can Gg talk to this issue? In which case, I think we need a clarification because it sounds like we're not talking about enforcing a .pharmacy or, to be more general, a dot-anything in a highly specialized TLD. If we're not talking about enforcing the rules that the TLD set up, then we should be clarifying what we're talking about—ICANN having the scope and that authority to enforce—because I think "applicable law" is still pretty vague. Thanks. But I think we're on the right track.
JEFF NEUMAN:	I see Gg's hand. Gg, do you want to go, or do you want to let Susan first and then …

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GG LEVINE: Susan can go ahead. Thanks.

JEFF NEUMAN: Okay. Susan and then GG.

SUSAN PAYNE: Sure. Thanks. In terms of this comment, I think it's pretty clear that NABP are talking about Specification 11-3A in particular [and] the point that Jeff raised, which was, with the way it's been drafted, it's been interpreted as provided that the registry puts the relevant clause in its registry/registrar agreement. That's the end of their obligation. Now you may have views one way or the other one whether that's good enough, but obviously what they're saying— what NABP is suggesting and also what others have said—is they feel that simply putting a provision in a contract, in a registry/registrar agreement, but with no intention to actually follow through and make sure that it's honored is not really addressing the issue and is inadequate. If that's how it's being interpreted by ICANN, then there is a school of thought that feels that that's not good enough and that, if ICANN will not enforce further, clearly that language needs changing.

I don't think that anything that we're looking at here in that Row 12 has anything to do specifically with other provisions for particular registries like pharmacy or any others. We could come on to talk about that but that's not what we're talking about here.

JEFF NEUMAN:	Yeah. Thanks, Susan. I agree with those comments. Gg, go ahead.
GG LEVINE:	I would also agree with Susan's interpretation of the comments. They do refer specifically to the language of Specification 11-3A and the safeguards that were drafted by the GAC and accepted by the Board. We're not referring to anything beyond what is stated in those safeguards. We just think it's important, [if we want] to maintain those safeguards or a reference to, like, 11-3A in the contracts, that it should be meaningful. And as it is, it's not really. Thanks.
JEFF NEUMAN:	Thanks, Susan. Kathy, go ahead, and then let's see if there's anyone else who wants to add a final word on this one.
KATHY KLEIMAN:	Sorry. Quick question and then we might want to read the registrar comments here. So this has to do with the registrants' contractual compliance with the safeguard, but the registry has the ability to enforce, right? It can remove the registrant or otherwise put them on notice. So here it sounds like the thrust then is that, if you don't like someone who's registered or you want to prevent them from registering, you're pushing it on to the registrars, in which case we better read their comment, if I'm understanding this correctly. I still think it gets us into a question of what the safeguards are, what they mean, and who's interpreting them. I don't think we've dismissed my earlier concerns. But, even if it's a question of doing

something more, it sounds like a registry, like NABP, is trying to push something onto the registrars or onto ICANN. Anyway, I'd look at the registrars.

JEFF NEUMAN: So the registrars' comment then relates to this in the sense of, yes, you have groups doing exactly what Susan said—if the registry can fulfill its obligation to ICANN by just putting a provision in the registry/registrar agreement and never enforcing it, then that's not really a requirement to do anything, other than put it on paper. And then you have also now the registrars saying, "But wait a minute. Why are you forcing us, the registrars, to do your enforcement work, registries?" The way the registrars look at it is a … I've heard the registrars say, "Look, ICANN couldn't get this stuff in this registrar accreditation agreement, so ICANN is allowing registries to put it in registry/registrar agreements as a back way or back door of getting these provisions in." So registrars do not want that to continue to happen. They don't want burdens put on the registry by the registry agreement to automatically become the burden of the registrars.

Of course, you have what's in the comments right now. You have Jim make the comment, "But the registries don't have the direct relationships with the registrants," which is true in some cases, Jim, but not all cases. But that is true for a lot of, certainly, the most generic of TLDs, but usually, with the safeguard (the Category 1s), I think you might find some registries that do have that relationship.

Alan, go ahead.

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ALAN GREENBERG: I'm having a hard time understanding the registrar comment. If a registry chooses to put some requirements on registrants, it can only be done through the registrar. So, if they're saying that registrars should not be saddled with any requirements or work because of what's in a registry agreement—I'm presuming it's things like specifying the characteristics of a registrant—then they're really saying there can't be such provisions, and they're saying … We talk a lot in ICANN about innovation. Well, you can't innovate because you can't specify what the registrant's characteristics are because we don't believe that we should be required to enforce it, and we're the only ones that could.

So I understand why they don't want to be burdened with extra work, but it's their choice whether to take on a given registry or not. I don't see how the registry can do anything but require that the registrar enforce registrant specifications, as it were.

JEFF NEUMAN: Well, Alan, that's not necessarily true. In fact, you find some of the registries that have signed on to the abuse framework that was created. They do takedowns all the time when justified or when it meets their process. Certainly, they take the enforcement action.

JEFF NEUMAN: Takedowns is very different from ensuring that the registrant satisfies certain criteria.

JEFF NEUMAN:	Why is that? You can take down those names. I hear what you're saying, but I—

JEFF NEUMAN:	You don't have to know who it is to take it down, but you have to know the … If the registrant must be a legitimate pharmacy, someone has to check that the registrant is a legitimate pharmacy to use the pharmacy. But there's obviously all sorts of other things. How can that fall on anyone but the registrar, since the registrar proudly says, "We're the only ones that should know what's going on," especially since, under the Phase 1 EPDP, contracted parties are saying that even thick WHOIS, never mind knowing who the registrant is, is not enforceable? So we're in a catch-22 here.

JEFF NEUMAN:	Well, not really because in .pharmacy, for example, it's not the registrar that vets the registrants. It's the registry. They have a separate process. You have to get accredited/approved by the registry before you can get a token to go register the name at a registrar. And what the registrars are saying is, "Look, fine. If you want to have those types of requirements, fine. Don't make it our burden. Don't say to the registrar that they have to now come up with some certification mechanism that the registrant is a certified pharmacy.

ALAN GREENBERG:	So we now want to ensure that ICANN is monitoring business practices and business models.

JEFF NEUMAN: I wouldn't say that.

ALAN GREENBERG: Yeah.

JEFF NEUMAN: No. Alan, no. What the registrars are saying—I wish there was some registrars on here—is that, if a registry wants a Category 1 TLD, then it needs to do the required enforcement. It needs to take that on as opposed to just passing that through to the registrars. That's what they're saying.

ALAN GREENBERG: I think it's wider than just Category 1's, though.

JEFF NEUMAN: It is, for this comment, we're just talking about Category 1.

ALAN GREENBERG: Okay. Well, we may choose to differ.

JEFF NEUMAN: Okay. So, when we get to thinking about PICs and other things figuring out whether we can add or not, this enforcement is going to be certainly a question.

                         Paul, go ahead.

PAUL MCGRADY: Thanks, Jeff. As I'm listening to this, it's sort of like nobody wants abuse to happen but nobody wants to have to be in charge of cleaning it up. I'm super sympathetic to the registries who, like you said—like somebody said; like Jim said—in most cases, don't have a direct relationship. We also have registrars, which, frankly, every time they touch a domain name, lose money. The whole idea here was it's supposed to be pretty much online thing. So I'm sympathetic to that very much. I'm also sympathetic to people who would like for these Category 1 safeguards to be meaningful, but they don't necessarily have a good outlet because the PICDRPs is sort of a big, bad, hairy deal.

So I'm wondering if what's missing—Jeff, this is dredging up your past—is .biz-like mechanism. Remember good old .biz, where you could file a complaint because they're not using it for business, even if there's not bad faith? I wonder if that's the little chunk that's missing—that, if the pharmacy crowd was unhappy about a particular second level, then, instead of it having to go through the PIC, they could just file a complaint saying, "This is outside the scope of the GAC Category 1 safeguards and should be cancelled for that reason." Something like that. Or is that way too ambitious at this point I the process? Thanks.

JEFF NEUMAN: They can use the PICDRP.

PAUL MCGRADY: They can, but if you look at the PICDRP, it's not a thing you just fill out. You know what I mean? You hire arbitrators. There's all kinds of … If you look at it, it's not a streamlined, easy thing to do or else people would. So I'm wondering if there's a more simple dispute resolution mechanism that we haven't [inaudible] it up yet. It's just not here.

JEFF NEUMAN: Okay. Well, I think we'll get a little bit more into this. I do want to turn to some of the, if we scroll down, purplish-red comments. Sorry, I'm trying to figure out what color that is. Is that burgundy? Purple? Red? Whatever. Those are all related to the topic of DNS abuse. The only reason I'm bringing it up is not to get into a discussion about DNS abuse in general but just to remind everyone that we filed a letter with the GNSO Council that removed the issue from this PDP to the GNSO Council level to inform that we thought this issue should be handled in a holistic manner and that whatever results come out of the policy efforts on DNS abuse shouldn't just apply to new gTLDs, or new gTLDs after the next round starts delegating TLDs.

Not unpredictable, but some groups did not like that decision, including the GAC and ALAC and some others. But at this point, the only reason I'm pointing it out is because this already has been referred to the council, so I don't think there's anything for us to do this, other than note that some people aren't happy. But there's nothing really for us to do.

Jim says, "Have we heard back on that letter." We have not. It's funny you mention it because the council is going through its

strategic planning sessions. Because I'm a new GNSO liaison to the GAC, I did bring up that issue that the council needs to do something with that. So hopefully they will at some point.

Okay. I think those are the main themes. Can we just scroll down to make sure I'm not missing a particular color here? So think that's it. I think those, if you put all of them in baskets, it's content, whether this amounts to something that would violate the bylaws. It's, should there continue to be exemptions from some of these requirements with single-registrant TLDs. Are we happy with the amount of enforcement that's available, and … What did I just miss as providing a summary, summing it all up? Those are really what the issues boil down to.

Cheryl says, "The council received it but"—right; this is on the letter—"has not responded."

Justine is saying, "What are we doing with the NABP comment?" At this point, other than the relationship between the PICs and the bylaws, I'm not hearing a huge amount of interest in amending our language or doing something different. So I'm not hearing it. Of course, if you want to review this after the call and think something really should be done to address it, then let us know.

All right. I'm just looking at some comments. Okay.

Let's now go to communities. Hopefully this one is I wouldn't necessarily say easier, but we've certainly been working on this one. So, in some respects, it will be a little bit easier to cover this topic. Like the others, there's a decent amount of … Well, the "support as written" as the NCSG, and there were some others

that supported it as written, or some where they didn't think it was necessarily ideal but they're willing to live with it.

The other comments then, starting on Line 11 … So there a bunch of comments in here that also relate to this. Sorry we didn't get a chance to color-code these. But there were a few groups that did weigh in on the threshold, meaning that you had to score 12 out of 14? Yeah, 12 out of 14 points. And a lot of groups felt—not a lot. There were some groups in here that felt that that was too high. So we've been discussing a lot of these issues. Sorry, 14 out of 16. Thanks, Jim. Sorry. I'm exhausted. A lot of calls today. So there are a few groups that recommend to move that number down to 12, including the Swiss government and some others down the line. And the ALAC. So we've been talking about these comments.

I want to draw everyone's attention to the conversations that we've had, a bunch of them since the comment period was going on. We had met several times to discuss a number of potential changes to the guidelines to, I think, address these comments. We're in the process of compiling all of those comments into one source, but if there's a way that ICANN staff could help us just refresh our recollection on—maybe put the links in—the notes from those sessions in the chat, then you all can read what kinds of changes we are discussed making. So I think, yeah, Emily is dropping in … So we had a conversation on the 17th of September, on the 24th, and on October 1st. So, as we go through some of these comments, I'm going to refer back to some of those conversations, just to remind people that we have been in the

process of addressing these and hopefully resolving some of these or most of these comments.

There is something in here from the Swiss government that's new. I don't think it's something we've discussed, but the Swiss government put in a proposal here to provide support for non-profit community-based applications to be able to get through CPE. That is, like I said, a new proposal. Leadership does not believe we should take this up at this late date, but I do want to see if there's any thoughts on that proposal.

Okay. Lots of quiet. Okay. Not seeming like a huge interest in that one.

There are some groups that have asked us to define community better, and we note those. We actually tried to come up with a definition for a number of months on what constitutes a community. The way we ultimately decided to handle it was to see if we could give more flexibility to the guidelines so that more diverse types of entities other than economic-based communities could satisfy the community requirements. You'll see those in the notes from those three sessions.

Justine is noting that we need to—yeah. So we're in the process of taking those three sessions and updating the guidelines with the outcomes. But in the meantime, we have those three sessions and the notes from them.

I wonder if we can scroll down. Okay. fTLD—this is .bank—has submitted a bunch of comments not just on lowering the score, which they do have in here, but … Can we make the whole

leadership column visible. The one thing that we have not yet resolved, though we brought it up, in connection with application changes … fTLD does not think that applicants should be able to make any changes to any parts of the application that will have an impact on CPE, on Community Priority Evaluation, even though we've already said that any changes would have to go through a comment period and all those other requirements. What fTLD is, I think, saying here is that it's not fair, if things are in the middle of complex proceedings, to allow changes to be made.

But on the other hand, if you were to take the other side, you would say this is precisely why we want to allow changes to be made because, if it looks like there's something that's standing in the way of community status which can be addressed by an applicant, then isn't that the kind of thing that we should allow them to use the application change mechanism? Again, that would have to go through public comment and all that stuff. So that's the flipside of the coin.

I just wanted to throw that out there to see if there's anyone that that … So fTLD's solution is to not allow any changes to applications after the applications are filed, if that would have an impact on CPE. Anyone with thoughts on that one?

Jamie is saying, "I think our prior conversations on this topic should take precedent." I think that's right.

Okay. If we jump down to the New Information section, the ALAC sets forth a list of what we've already, I believe—Justine can correct me if I'm wrong … I believe this is just an outlined list of the types of things that we've already been reviewing by the

documents submitted. So those were specifically reviewed on September, what, 7—I forgot the dates now. They were just up there [in] the link that Emily put up there. So, again, check out the notes from that session. Make sure you agree with those notes. In the meantime, we'll get them into a draft.

Justine says, "Except 1[.1] through 4." When you say not [1.1] through 4, I think we did have a discussion about the process by which an evaluator would be chosen. Justine, your hand is up, so please go ahead.

JUSTINE CHEW: Thanks, Jeff. We did bring it up, but I think I only received feedback from you, Jeff. I don't think anyone else actually said anything. So is that the extent of the discussion? Thanks.

JEFF NEUMAN: It's hard to answer that question because other people need to be motivated to weigh in. There has to be interest in making changes to our recommendations. So at this point, I haven't seen that interest. It doesn't mean we're not going to. It just means that, if people really want to add something like this in, we need much more of an interest expressed by members.

Alan, go ahead.

ALAN GREENBERG: I think interest expressed by other members is one thing that one can consider. Objections are also. If everyone is silent, that could

well imply, yeah, they're fine with it. "Let's do it." So, if you're waiting for everyone to speak up, I'm not quite sure that's a fair way of assessing. Thank you.

JEFF NEUMAN: Thanks, Alan. I'm not waiting for everyone to speak up but something certainly more than Justine and I. Yeah, we can't take silence—

ALAN GREENBERG: I'll speak up if you'd like.

JEFF NEUMAN: Okay. Well, let me just finish real quick. We can't take silence as meaning acceptance, and we can't take silence as meaning rejection. So we do need some others to come forward and say that this is something that they would or could support.

So I'm seeing some more hands, so that's always good. Alan, if you want to respond, and then Paul.

ALAN GREENBERG: My response was somewhat facetious because I'm clearly supporting Justine in this case. So to have two of us say the same words doesn't have a lot of merit.

JEFF NEUMAN: Thank you, Alan. Paul, go ahead.

PAUL MCGRADY: Thanks, Jeff. I am a bit confused now because what we're doing is reviewing public comments, and the public comments may be suggesting changes, but they're suggesting changes to a draft report which I think had enough support to be plausibly put out for public comment. So wouldn't silence mean our, "[Nah, our direct report] is okay," and people speaking up for changes would be them supporting the changes? We have to have some method. It can't just be that we're going back to square one and counting the number of voices of people speaking on these things or else we [wouldn't] be starting over. Thank you.

JEFF NEUMAN: Thanks, Paul. I think that certainly makes a lot of sense. Anne, go ahead.

ANNE AIKMAN-SCALESE: Sorry. Can you hear me now?

JEFF NEUMAN: Yes.

ANNE AIKMAN-SCALESE: Okay. In terms of how we interpret public comment, particularly in light of some of the comments made by the IPC, for example, in relation to GAC advice and whatnot, I wouldn't say, "Hey, we can't consider public comment if it's only one two people making that comment." I think we have to look at it as though we've actually

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addressed public comment. Otherwise, we didn't need to issue a draft final report. I certainly hope, for example, in connection with IPC comments, we're going to consider those whether or not a whole bunch of other people ring in.

Secondly, I would just like to ask again—I am so sorry that I've a bit lost track of what we're being asked to either support or not support with respect to this particular comment that Justine and Alan are supporting. Could you please summarize it again? I apologize.

JEFF NEUMAN: Yeah. I think what we're talking about now is in Line 18, if I'm reading it—yeah. It's what's under Number 1 through small Roman numeral I through IV. So it's participation in the selection of the CPE service provider. Thy would like to have more community involvement in the development of the criteria, short-listing the identified candidates, have input into the final selection, and the terms for inclusion into the contract between ICANN Org and the selected candidate. So that's what we're looking at.

ANNE AIKMAN-SCALESE: Okay. Thanks, Jeff. I appreciate your recap on that.

JEFF NEUMAN: Okay. Alan, go ahead.

ALAN GREENBERG: I'll just point out that the Roman numeral 1 through V are five different things. Some of those are, I think, almost a piece of cake to grant. Certainly, ICANN Org might find some of them more onerous. That is, community involvement in selecting a vendor. On the other hand, community involvement in setting the criteria for selecting a vendor should be a no-brainer. So although I grant that some of these may be hard certainly for ICANN Org to accept—I don't have trouble accepting them, but ICANN Org might—but for others, why would we not want community involvement when the selection of the vendor was done so poorly last time? So there's a track record showing ICANN Org to not get it right. Why would we not necessarily want involvement? So just rejecting it because no one is speaking up for it I find defeats the purpose of these comments. Thank you.

JEFF NEUMAN: Thanks, Alan. I could see a downside in this. Again, I'm not taking a position, but I can see some arguing that having the community more involved creates more bureaucracy. It could easily lead to much more delay. Is the community the right entity or do they have the skillset to be able to evaluate four ICANN Org who best could carry out the … We have made recommendations already, albeit not the exact criteria of the selected entity, but it's not as if we're silent on the requirements of what a vendor has to agree to. So that would be the other argument. Again, I'm just playing devil's advocate, just to say that there is another side. But I don't officially take either of those positions.

But this was a draft final report, right? So there has to be some wave of support for doing something like this. That's why we can't

just look at these comments. That's why we're going over them now. The leadership is trying to make an assessment as to the interest of the working group in pursuing a number of these areas. Or are we fine where we are and have done the best job we can on these topics to move forward? Yes, there could always be something better, but it can't just be one group or one person that says that they like something and therefore it goes in.

Jamie, go ahead.

JAMIE BAXTER: Thanks, Jeff. I think it's an interesting suggestion. I think we can all agree that the discussions surrounding CPE pretty much pointed to the fact that the whole thing was a disaster. So I think what these suggestions point to is the fact that we shouldn't miss looking at the forest because we're staring at the tree. Again, I don't see the downside to having a more open discussion about how the community could be engaged in this. I'm not specifically pointing to one particular thing here, but we've all agreed that the whole CPE was a disaster. So why are we about to let ICANN go and do this on their own again? If we don't have strong enough recommendations that point them in a better direction or we're not comfortable with them taking the direction and pointing it in the right direction … Again, I don't know exactly what this might look like, but I think the suggestion by ALAC is interested here, and I do think it warrants having a discussion, as you said. Thanks.

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JEFF NEUMAN: Thanks, Jamie. We can take this to the list and see if there's … Because, remember, I do want people to review those notes from the other sessions because we are making some substantive changes to the guidelines. Was the problem who they selected, or were the problems the criteria which we're trying to fix? So it could be both. I don't know if we'll be able to figure out one answer to that question.

And Paul has got some legitimate questions as well. "Can the IRT actually do some of this?"

Okay, Anne. Go ahead.

ANNE AIKMAN-SCALESE: I might be in favor of the IRT's [inaudible] that you had. Also, I was wondering. On some of these things, where it says "elimination of a supplementary call for documented support for opposition by the CPE service provider, didn't we already say that there could be such a supplementary call in the sense that, if there's independent research? Or am I confusing different evaluations? If there's independent research, we say you notify the applicant of research you're relying on, and they have 30 days to respond? So would that not conflict with elimination of a supplementary call?

JEFF NEUMAN: We're only looking at 1(small 1 through 4). The other areas have already been discussed.

ANNE AIKMAN-SCALESE: Oh. So for the other areas, what did we do? I apologize.

JEFF NEUMAN: For Number 2, we've made some changes. That's what we've been talking about those last weeks in September. Number 3—oh, sorry. On the subparts, we've not done small Roman numeral II. We have talked about conflicts, which is number one, in general, of all panelists. Then, yeah, on Number 3, we have appeals or challenges. So we've addressed those.

ANNE AIKMAN-SCALESE: So you're saying that they didn't need to make these comments that all fall under Number 2 because those were already addressed? Or you're saying that leadership considers that everything under Number 2 has already been addressed?

JEFF NEUMAN: We did a lot of this addressing while the public comment period was going on.

ANNE AIKMAN-SCALESE: Okay, [good]. So what if we just did a compromised thing where we said that implementation guidance might be for greater community participation in ICANN's engagement of the CPE providers and left it to the IRT?

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JEFF NEUMAN:	Yeah, we can certainly, if that's something the group supports … I don't know if that's something that the group supports or not. So that's what we're trying to gauge. Does the support more community involvement? Or should we say, does anyone object to having more community involvement? I know ICANN Org would think that this would be a burden for them.
	Paul, go ahead.
PAUL MCGRADY:	I object to having more community involvement when I don't know what community involvement means. What we don't want is to create a program that … There can just be a group of just disgruntled people in the community that can [inaudible] to the machinery. We have to have guardrails around community involvement.
	But I'm not opposed to talking about what greater community involvement could be definitionally and figuring out if we could do it, although it is 11:59 P.M. But just greater community participation? I don't know what that means. It sounds like it's going to cost everybody three extra years in the process. Thanks.
JEFF NEUMAN:	Okay. So let's continue this discussion on the list.
	I want to scroll down to … the ICANN Board comments, I think, are all covered on the content stuff. So, if we jump down to … We briefly talked about the GAC for supporting or monetarily supporting non-profit community-based applications. I don't hear

wide support for that. Then we also did talk about, in our actual recommendations, that evaluators should have a greater level of expertise, which is pointed out in the GAC comments as well.

ICANN Org has a bunch of comments, and a lot of these … Well, let's just go through a few of the categories of stuff. There's … I'm trying to find the exact comment that relates to it. So the note I have in there is on … So ICANN asks about Affirmation 34.1, and they ask us to synchronize this a little bit with their final report that they had done and actually asked whether it's still worth going forward with CPE and giving priority to community-based applications. We have discussed that at length. I did not hear any real support from the working group for giving communities priority and therefore doing an evaluation.

But there is language in the thing that we affirm—30 and 34.1— that talks about ICANN staff being the evaluators. So they ask us to change the language to make it clear that it doesn't have to be ICANN staff. They could outsource that, which is what they are doing or have done.

Then they express, in 34.2, that they want to know—because we say that the community priority evaluation must be efficient, transparent, and predictable—specifically could they be more transparent, efficient, or predictable on. I think, just noting that comment, we've gone to great length with the suggestions we've made as to what was and what was not transparent and how that could be made more efficient. So I think that's an asked-and-answered question.

Are there any comments after the ICANN Org comment? Because right now it's just the Org comment that's up on the screen. I'm not on my own copy. Is that the last one?

No. Okay. I didn't think so. So—oops. Scrolled too far. Okay. So we asked a question about the CPE guidelines. I'm just going to summarize all of these comments as pretty much being in favor of revising the guidelines, which is the work that we've been doing. So I'm not going to go through all of these comments because I do think that all these comments relate to changes that we have been discussing, and you'll find information on those changes in those three notes from those meetings. Right. So some of them have asked us to get rid of the bias towards economic communities, which is clearly something we've been doing with the guidelines. So that's just one example of the changes that we're making.

So I'm just looking at the … Anne is saying, "I think public comment needs to be considered." Anne, that's what we're doing now. Everyone was supposed to come to these calls, have read all of the public comments, and have looked at each of them to see how they think we need to or if we need to do anything to address those comments. So that's the purpose of these calls.

Oh, okay. Thanks. All right. Sorry, I misunderstood from the comments.

All right. Is there any other questions or comments on this?

Like I said, all the other comments on this really relate to changes that we are already have been discussing and/or making. So that means we predicted what the comments would be fairly correctly.

Justine says, "For the record, I think, if the At-Large/ALAC did not submit the work that we produced in our two papers, this working group may not have even undertaken the discussions in those three calls." Yes.

And Annebeth says, "But many of these different issues have to be a certain compromise." That's right.

Paul, go ahead.

PAUL MCGRADY: Thanks. I'm a little afraid that we're getting a bit off topic in that people are becoming concerned that people don't want to go through public comments. Of course we do. That's what we're doing. That's what this is about. Even on the specific one that I've spoken about about great community participation, even in that scenario, I pointed out that it's late in the day. That seems fuzzy, but if we want to talk about it, let's talk about. And nobody said that we can't talk about it, and nobody said it couldn't be on the list. A lot of these things actually Jeff was pushing off onto the list so that we can keep talking about them.

So no one here is advocating for the idea that we ignore public comment. In fact, it's the opposite. But there does have to be some end to it, too. If anybody feels like we're pushing past anything too quickly that needed more airtime, I'm sure Jeff will give it more airtime on this call or probably in future calls. This is a random comment, but I don't want anybody to feel like, by saying we'd have to decide what we're going to keep talking about[,] that's going to go to the list and that really doesn't have the

support to keep talking about it[.] Nobody feels [inaudible] by that process. If you do, speak up. Thanks.

JEFF NEUMAN: Thank you, Paul. Well said. Jamie, go ahead.

JAMIE BAXTER: Thanks, Jeff. It may go without saying here, but I think a lot of this work that we've been discussing around CPE could also be summarized with the fact that, once it's discussed and it's published in the Applicant Guidebook, a hard and fast rule is that there is no additional language interpretation document—anything that comes out by the CPE providers … That what is in the guidebook is the only tool that is used in order to evaluate the applicants. I think, if I was taking a three-mile look from above, I would say, "That's, I think, what we're trying to get to—let's discuss all these rules, let's get them out, and let's ensure that whoever the provider is has what they need in the guidebook at the same time that the applicants write their applications and that nothing further is popping out of thin air as we move this process forward for CPE." It seems to me that that is really what the key is to these discussions. Thanks.

JEFF NEUMAN: Thanks, Jamie. I think that, to mitigate anything that could possibly come up, is right. I don't think we can eliminate anything or everything that could pop off, but then we do have a predictability process where hopefully we have to go through certain things to

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understand what comes up and the ramifications of those and how we deal with it.

Okay. I think we're at a good ending point here. If someone can post the timing for the next call. Please do also keep checking the workplan because I know we send out the agenda with the topics, but the workplan also has the topics. So you could actually get ahead if you want, or you don't have to wait for the agenda to come out. We've been pretty good at sticking to the workplan and haven't made any changes. So we are looking good. And, as Julie says, the workplan is actually linked with the agenda. So we've been sticking to it.

All right. So the next call is Tuesday, the 17th of November, at 03:00. So, for some of us, it'll be Monday at night. All right. Thanks, everyone. I look forward to talking to you. Have a great—it's Thursday, right? Yeah. Have a great weekend. Thanks, everyone.

[END OF TRANSCRIPTION]