ICANN Transcription
GNSO New gTLD Subsequent Procedures Working Group
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MICHELLE DESMYTER: Welcome, everyone. Good morning, good afternoon, and good evening to all, and welcome to the New gTLD Subsequent Procedures PDP Working Group meeting on the 10th of February 2020. In the interest of time today, there will be no roll call. Attendance will be taken via the Zoom room. As a reminder, if you would 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. With this, I'll hand the meeting back over to Jeff Neuman. Please begin, Jeff.

JEFF NEUMAN: Thanks, Michelle. Thanks, everyone. Okay. Welcome to the meeting. Sorry, I was just focusing on trying to get a reference fixed. So, the agenda is up on the screen. If you haven't looked on the screen, we're going to start with finishing up applications assessed in rounds which is on page four. I think previously it said page 20 of that document but it's actually page four. Then we're going to jump to page 20 to talk about RSP preapproval, so that will take us through the rest of today's session.

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So, with that, let me just ask if there are any statement of interest or any modifications to any statements of interest. Okay, not seeing any. And if you could all just remember to mute your lines, that would be great. Anybody have any other questions?

We sent out the work plan, so I did want to give a couple of minutes at any other business to talk about any questions on that. I saw Jim has submitted an email, but I apologize I haven't gotten to read it yet. I think it was … I just haven't gotten to do that yet. So, Jim, if you have any questions about that you want to bring up during the call, we'll just do that for any other business.

Also, just to add what topics we're going to talk about at the ICANN meeting—or at least the plan for the ICANN meeting. Great. That's put into there.

Okay. So, let's go back to applications assessed in rounds, as that comes up. There is some really good discussion on the email list and I had sent around a kind of list of the [inaudible]. I think the big item we should cover—and I think we got through almost all of the recommendations, although if you scroll down … Okay, yeah, sorry. Let's see.

So, we spent a lot of time—and I think the most, not controversial but the one we spent the most time on was in talking about how we proceed in a subsequent round when or if there are still applications in process.

So, what we had, the language in there is—was anyway—it should not be possible to … This implementation guidance at the top of the screen, bottom of page three, which says it should not

be possible to apply for a string that is being processed from a previous application round. Now, this next part I think was added by Anne, so it is not … Let's put that in brackets because that's what we're actually going to be talking about.

We seem to get off a little bit from the topic on what's policy versus what's implementation, and I think that might have been because of something I said, which I didn't mean in the way it came out. I realized that maybe I didn't communicate that right.

What I had said, or thought I tried to say, was that because there was a lot of discussion on what it means to be still in process and I said that figuring out exactly what is meant by in process could be something that we kick over to an implementation review team and then it started to get a whole bunch of discussion of, well, is it policy, is it implementation? That wasn't really what I was going for. It was let's get the rule down in this group. What is the overall rule? And if there's still some details that need to get worked out about the overall rule, then we can always punt that to the Implementation Review Team or we can decide it amongst ourselves.

So, what I did is—and I apologize to ICANN because I didn't let them know in advance, but I sent around an email laying out some different scenarios where a string could still be considered in process.

So, I don't know if we can pull that up, but if not, I can go back to my email. I think we're all in agreement, or at least on the call, if a string has been delegated, then obviously—not obviously, I shouldn't say obviously—then I think we're agreed that no one should be allowed to apply for that string if it's already been

delegated. And of course if it's confusingly similar, it's got those rules around that as well. So, that's the first point. I think we're all in agreement on that.

If there's an application that's listed in the system as active applicant support, in contracting, on hold, or in PDT, what that means is that ICANN is still—and the applicant are still—working the applications through the process. So, for that reason, I think the general rule should be an application will not be allowed for that string in a subsequent round.

Let me just stop there. Hopefully, that makes sense and it's a simple kind of rule. Okay, no questions on that. All right, then, let's go to the third one.

If all applications for a particular string have been withdrawn, new applications for the string will be allowed in a subsequent round. Anne is asking the question, "What is on hold?" On hold means that there's some issue that, for whatever reason, either it's being the subject of GAC discussions, advice or … There weren't really many applications that were put on hold but there is that status. It generally means that the application is still being processed, but for some reason, it hit some sort of snag. Susan is saying a challenge from such as a right of first refusal will put an application on hold. Okay.

Anne is saying, "Jeff, that might indicate there is a policy issue involved, so I would take the same …" Okay. The whole thing, Anne, is it's the subject of an appeal or an accountability mechanism, and at that point, I just don't think it's appropriate— sorry, I shouldn't say I just don't think it's appropriate. That's not

right. I think it's very much like the other statuses. It's still active. It still means the application is being considered. It's not in a final disposition, and therefore, an application shouldn't be processed.

Please remember, also, we're trying to keep this rule simple. Simple for people to understand if they're looking at it. So, if it's got a status on hold, they know that they cannot apply for it.

Alan, please go ahead.

ALAN GREENBERG: Yeah. I've never understood what applicant support means as an effectively permanent status.

JEFF NEUMAN: Okay. Thanks, Alan. I'm not aware that it is a permanent status. I think it is when an application is in the applicant support evaluation process before it gets … Remember, the rule was—and I don't know if we'll have this rule. In fact, we're leaning against it. But the rule was that if an application was in applicant support and it didn't get support, then ultimately that application then will not proceed or it had to be withdrawn or whatever.

ALAN GREENBERG: Except there is one that is still in that status.

JEFF NEUMAN: Okay. Which one is still that status?

ALAN GREENBERG: DotIDN.

JEFF NEUMAN: Okay. Well, DotIDN is still one of those that's in an appeal—in accountability mechanism as far as I'm aware.

ALAN GREENBERG: I'm not sure if it's finished or not but yes.

JEFF NEUMAN: Okay. Again, there is always going to be an edge case and we cannot solve for all the edge cases. But if the simple rule is that if's active applicant support contracting on hold or PDT, then there should not be another application for the string allowed.

Now, Anne, I understand what you're saying in terms of it could be for a policy reason, but at the end of the day, it could be allowed to go forward after an accountability mechanism or anything like that. So, to allow another application for that would seem to go against the principle of not allowing applications for in process.

Then we get to … Let me just finish going over these and then we can talk about it because maybe … I see you, Anne. Just let me finish with this.

So, number four. If a registry operator has terminated their registry agreement and [inaudible] not been reassigned to … Hey, Paul, I think you're … It sounds like Paul. I think your phone is not on

mute. Paul? Can you mute Paul's line? Because I'm not sure he's aware.

Okay. So, remember, ICANN has the right to reassign a TLD if the registry operator terminates the agreement, except in the case of a brand TLD and that's why this clause two refers to the brand TLD. So, there's a two-year kind of cooling off period in a brand TLD before someone could apply for that TLD. So, that's a rule for … That rule seems to make sense as well.

Number five—and I'll get to you, Anne, in a second. If all applications for a given string have a status of will not proceed, an application for the TLD will only be allowed if ... And then we have basically all appeals and accountability mechanisms have proceeded through final dispositions and no applications for the string is succeeded in such appeals and/or accountability mechanisms, because obviously if they succeeded, then they're going to be moving forward. Or all applicable time limitations, statute of limitations have expired such that applicants for a particular string would not be in a position to file an appeal or accountability mechanism with respect to the string. Sorry, I shouldn't have the word "and" at the end of there.

Then, number six. And I'm sure these are the ones we're going to talk about. If a TLD has a status of not approved, an application for the TLD will only be allowed if … And A and B are the same as will not proceed. Then here, the ICANN Board does not approve new policies or procedures that would allow one or more of the applicants from the prior round to [inaudible] the reasons for which it was placed in the not approved category but has approved new

policies or procedures that would allow an applicant to apply for the string in any subsequent round.

So, the reason I put in there this is that when the Board has been considering any new policy, let's say, or new procedures, it generally does—and maybe we should make sure that it does in the future. It generally does indicate what should happen with those strings that are affected by what the Board is considering.

So, it seems to me that most of the edge cases will have already been addressed by the Board if there is, for whatever reason, a reason why the Board has put a number of applications in the not approved category.

This is a real small edge case. And as I put in there, this was only seven strings, ten applications from the previous round which is a very small percentage of the 1930 applications that were submitted.

And I know we can get kind of bogged down in these details but I really think that we should keep it as simple as possible, and as Martin, I think it was, and Annebeth said in the email chain, that we could put this as implementation guidance so that it can help steer the discussion further. So, let me go to Anne and see if we can put a close to this. Thanks.

ANNE AIKMAN-SALESE: Hi, Jeff. Thanks. I'm hopefully off both my mutes. I don't want to speak for Greg in this and others and Justine. I'm less concerned about whether this is contained in implementation guidance or policy than I am about the substance of it. Because Karen has told

us—confirmed—the implementation guidance is, hey, definitely you ought to do this. I don't want to hang my hat on that particular issue, although I do think it's policy as others have noted.

Secondly, the question, the principle that I've been talking about actually applied across a number of these items that you have delineated because, in several cases, not just item six, you have set out rules that essentially would prevent backup offers. In other words, where there are policy issues involved, and that applies potentially to number two, the on-hold policies, potentially to the brand issue where there's this two years following the expiration date, number five also involves, if there's an appeal or an accountability mechanism in place which we know can last years, you're not going to accept any backup offers while appeals and accountability mechanisms are in play and there may not be any opportunity until the next round. So, again, you're not accepting backup offers that meet new policy.

Same is true of 6C, in the sense that while folks are still negotiating with ICANN over whether they'll meet new policy or not, no backup offers are permitted. So, it's that principle and it extends across—oops, I'm out of time. Sorry—across several of these categories, that is ignored here. and I'm not sure why you want to do that, given that there's no processing cost. It's at the risk of the applicant. It's not ICANN's risk.

JEFF NEUMAN: Yeah. Thanks. So, thank you, Anne. I think, as other people had raised on the call, if we're trying to keep it simple, that would be an extra complication. Other people also raised the argument that if

there's an application, then there somehow could be more pressure put on the system to either reject the initial application if, for whatever reason, the Board likes the second application better, or it could then force the original applicant to do some bargaining and negotiations with the one in second place. And I think it just adds a lot of complication that it may have some unintended consequences with the complication added.

I think it's really simple to just have a rule that says if it's in any of these statuses, you can't apply for it. If it's in this status and these things are all in place, then you can apply for it.

I'm not sure … You keep bringing up this new policy and I'm not sure … Yes, we had an instance of name collision in the first round and we had a couple of strings that were affected by it. But I would think that if something comes to light, ICANN, the Board, and the community would be asking the Board to put on hold all of the applications that are affected by it, not to put it in will not proceed but to put it on hold while everyone is figuring out what to do. Again, we're trying to read into the future. Then, it will only put something "will not proceed" if it has not found a solution that would allow those applicants to move forward in that particular round.

So, it would seem to me that if it's in not approved and all the accountability mechanisms had been used up and all the time statutes, limitations have been used up, then I think it's fair game for people to apply for whether or not there's any new rules that are established with that TLD.

Anne says in the comments, "There should be pressure on the prior applicants to meet new policy, and that's desirable, not a complication." [But again] we're assuming that there is new policy that's being set. We're assuming that nothing—or that something—is going to change. I don't think we can make that assumption.

Jim is asking, "How long do you let an application hang out without any pending mechanisms on it?" So, that's a great question, Jim, and I think that's one we probably, if we set these guidelines, can leave for the Implementation Review Team to kind of do the math. Once we figure out how long … Once we set forth the … Or maybe we can even revisit it once we discuss appeals and accountability mechanisms … Well, sorry. Accountability mechanisms are defined in the bylaws, so there are time limits associated for that. It's 120 days from the action that would give rise to that—action or inaction that would give rise to the accountability mechanism.

And for appeals, we will be setting a timeframe when we get to that discuss. So, I think it might be easier, once we finish those discussions, to figure out how long an application would hang out.

Anne is stating, "The assumption arises from the fact that the past tells us that these types of issues will arise. Are we willing to learn from the history of the program or not?"

So, Anne, help me understand shortly, other than name collision, what other issue went into will not proceed? Sorry. What others went into not approved or will not proceed pending a policy issue, other than name collision?

ANNE AIKMAN-SCALESE	Yeah, Jeff. I'm thinking even of things like closed generics which you know were refused last time. Actually, we don't have jurisdiction over any 2012 applications anyway, so none of this would apply to the 2012 applications. You couldn't prevent a new string application for any of those by this policy because we don't have jurisdiction.

But I am thinking about the future. So, another example from [facts] standpoint would be closed generics where, ultimately, if you had a Board policy which would approve a closed generic, but only under certain conditions, then any prior applicant for a closed generic—and some people might decide they want to get in line just in case that happens in the future—they would need to step up to that new policy on closed generics that's approved by the Board.

It wouldn't be a situation where just by applying again for a closed generic and then refusing to withdraw their application that they established this great bargaining position where they can prevent any future applications for closed generics of the same string.

So, that's just one. I think there are many possible fact situations and even some that we haven't anticipated. The basic principle here is if the Board does not approve a string for a policy reason like that, there shouldn't be strings in line that can prohibit new applications that will agree to new policy. And that's an important principle, in my opinion. Thanks.

EN

JEFF NEUMAN:	Okay. Thanks, Anne. And let's make sure we hear from others as well on this issue. Anne, in going through this, whether it was closed generic issue, whether it was plurals and singulars and all of that, ICANN did not ever put those on not approved or will not proceed. Those were always put either inactive or on hold, but it was never put into a not approved or will not proceed, unless ultimately the Board came out and said no. And for those, it's only the seven strings listed there below in that email. So, it's such an edge case.

I think that, also, you're making an assumption that these strings a) that people would want to apply for those as a backup when they're so problematic and b) that there will be some sort of solution to these and there may or may not ever be.

So, I'd really like to hear from some others on this call. You're hearing people that just don't understand. Again, I don't want to spend too much more time on this, but I do want others to weigh in either on the list—because I'm not hearing anybody else really chime in with the same comments.

Phil is asking, "What is the status of an application string that has now been withdrawn?" If it's withdrawn, the status is withdrawn.

Okay. Katrin supports the email proposal.

All right. Let's go back then to the text. Sorry, if we can just go back to the … Okay. So, my recommendation then would be to cross out all of the rest of the text and then put basically the content of the email into implementation guidance. It could be

worded better, I'm sure, than what's in the email. So, we'll just put that note in there.

I think we went through all of the other recommendations, but I do want to give one more chance to see if we could just scroll down a little bit, just to double check and make sure that we're still okay with the rest of the recommendations, which again basically, just to summarize, the next recommendation is that there shouldn't be indeterminable review periods, that it should be predictable, regularly occurring rounds and intervals.

It should be … Like, all future reviews should be held concurrently with rounds and shouldn't operate to stop rounds. Then, the last one is that if there are any new policies that are developed, and it could have a material impact on the matter in which applications are processed, then that would take—those changes would take effect on the next round.

Anne, you have a comment on these.

ANNE AIKMAN-SCALESE   Yeah. I just want t note for the record that, although you are posturing this as just something that only I, as one individual, has raised as a concern, that kind of ignores our last call. So, I'm going to request that there be a note in here that we'd like to set out a minority view. Thank you.

EN

JEFF NEUMAN:	Okay. Sorry, it took me a second to get off mute. Absolutely. We will note that in the action items and we'll see if there's any other comments that are submitted.

The last thing I want to bring up on this topic came from an email from Alexander, which I thought was actually … I thought we should bring up to the full group. So, sorry, ICANN, I won't ask you to put it up there because it was relatively short. But it was basically a question of … I got to find it now. Let's see. Where is it? Sorry, guys. Oh, there it is.

So, do we want to consider—thanks. I don't know who's controlling it. Thanks whoever is controlling it. If a string has been … So, forget the beginning part of the language used by Alexander.

So, let's say that … Right now, there's been no mechanism to force a withdrawal of an application, even for strings that have been delegated. Basically, what Alexander is proposing is that should we put in a forced withdrawal mechanism in there for strings that have … Something has been delegated already or something has been "will not proceed" or not approved—should we be forcing a withdrawal or should ICANN force the withdrawal.

There's nothing in the policy right now that would allow that, so that's why in the 2012 round, you still have a couple of applications that are not withdrawn. I would think the easiest scenario would be that if a TLD is delegated, then certainly once it's delegated, it probably … I'm not sure it would harm anyone to withdraw that applicant's application, but perhaps with other statuses, that may be an issue. So, I do want to spend a couple of

minutes talking about this. So, I have Anne and I have Paul. Anne, you might still be on mute. Okay, Anne put some stuff in the chat. Let me go to Paul then since we can't hear Anne. Paul?

PAUL MCGRADY: Thanks, Jeff. So, I'm curious about what this means practically for strings where the Board simply has put them on hold because they don't want to reject them or approve them. Would something like this trigger a requirement to exhaust [inaudible] administrative remedies? What happens if they don't? I mean, some of these have just been moth-balled without any path forward, other than saying something like, "Well, let's see what happens in the next round."

I don't know. This seems to me adds more confusion than clarity, so maybe we can figure out what it is Alexander is trying to get at, and if we can, try to go there. But if we can't, at least we'll know what we're resisting. Thanks.

JEFF NEUMAN: Yeah. Thanks, Paul. So, there are—and we did send around a chart a few months ago on all the strings that were—or all the applications that were still, for whatever reason, were not withdrawn. So, it's [inaudible] these applications in the system.

So, things like … There is even some applications that have not been withdrawn for strings that have been delegated a year or two ago. And for whatever reason, ICANN doesn't feel comfortable because there's no policy or guidance for them to actually

withdraw them. So, I think there's some easier cases and I think there may be some gray cases.

So, let me go to Anne. Go ahead, Anne.

ANNE AIKMAN-SCALESE   Yeah. Sorry, Jeff. I was having trouble getting off the double mute because [inaudible]. I support Alexander's suggestion, putting in a provision like that. I agree with Paul—mothballs, that's not a good status to be in. I think that when the Board says that something shouldn't proceed, the application should be withdrawn and refunds should be made by Board action. So, I support Alexander's suggestion.

And I did want to add that I think there are many categories in your proposal that are affected by that. Thanks.

JEFF NEUMAN: Okay. Thanks, Anne. Paul, yeah, you can ask a follow-up.

PAUL MCGRADY: Thanks. I guess for those where there's pending applications but the identical string has already been delegated, I guess I don't have a problem with those being forcibly taken out of the system because the identical string has already been delegated, and obviously a follow-on application in the next round for the identical string would be a wasted effort and money and would be balanced on string confusion [inaudible].

But I guess I'm trying to figure out how to drill down further into what Alexander is saying is what happens if the Board has basically said you can keep your application but it's not going to proceed for now. Maybe there will be more guidance in the future or in the next round that will help you. I don't think that …

I think that not approved is not the same thing as rejected, and not approved is pretty broad and rejected is more precise. So, again, I agree with Anne that being mothballed isn't great, but being rejected by administrative fiat when the Board has not rejected it— it's simply said we [inaudible] to do with this. I don't think those two things are the same thing and I'd rather be moth-balled than just spit out by the system. Thanks.

JEFF NEUMAN: Okay. Thanks, Paul. We could always say that the Board needs to be explicit. I mean, that is something we could always do. But, understood. Let's take that discussion offline. Phil is saying, "Only ICANN Board can authorize a withdrawal. It would require Board resolution, then it would trigger a refund." Okay. So, there's still some discussion.

Let's close this off for now. I think we have direction on where we're going, and as Anne has asked for, if there's a minority view, then certainly those people that hold that view can express that minority view. I'm not hearing a huge amount of support for Alexander's proposal but we'll take it offline and see if it builds up support on the email list. Okay, great.

So, as normal, I would ask that you all review the rationales given for the particular recommendations implementation guidance. We'll obviously have to change the rationale for the implementation guidance we were just talking about. So, we'll put that into the text and we'll point out that new language, so you can review that on the list.

Okay. Now we're going to just change gears a little bit—or a lot—and go to the registries service provider preapproval program. We have a number of recommendations and implementation guidance here. As background, for a whole host of reasons, which we won't go into again but they were in the initial report—actually, constituency comment number one or two, I don't remember which one. And it was also in the initial report. So, we've been discussing this for a long time and it seems like there is support within the community for an RSP preapproval program. We had previously called this accreditation programs, but for many reason, have changed that terminology to really indicate that—and we'll hit this point several times. It's basically to have a technical/operational evaluation of backend registry service providers earlier in time than during the application submission or evaluation window.

It is not in any way trying to say that there is specific endorsement of particular registry service providers. The only difference between the RSP preapproval program and the evaluation during the application evaluation period—the only difference is time, is when it's done. So, please keep that in mind as we go through these recommendations. Christopher, please.

EN

CHRISTOPHER WILKINSON: Hi, good evening. Jeff, you've jumped over a point that I wished to make. In this document, there is a paragraph which dismisses the proposal to evaluate applications in batches or windows according to their specialized nature.

I have argued for this for nearly two years and I find the drafting of that paragraph dismissive to the point of personal insult.

Look, I'm not small of anything. I am telling you what needs to be done. I seriously feel that those of you who wish to dismiss the idea of specialized and windows for applications are in fact seeking a situation where all categories of applications will be allowed from day one and ICANN will be, as in the case of 2012, submerged by large numbers of disparate applications.

The evaluation of different categories of applications is a highly specialized process and needs to be done properly. I, first of all, vis-à-vis Steve and his colleagues, let me say I personally reject the drafting of that paragraph which is dismissive, to say the least.

Secondly, I continue to consider that in order to achieve results which are credible and balanced, and non-discriminatory, we need categorization of applications, not the least to ensure that the categories of applications which were seriously under-represented in 2012 get a fair chance this time around. Thank you. I ask the staff to propose a different drafting for that paragraph.

JEFF NEUMAN: Okay. Thanks, Christopher. I think the topic you're referring to is one that we'll cover in the coming weeks that's on application [curating] and differentiation of TLDs. And according to the work

plan, which I don't have up, that is going to be at a later time. Sorry. I'm sure someone can give a better explanation.

Let's see. In the work plan, we have application [curating] would be next week and TLD differentiation is later on in a couple months. So, we will get to that. If you look at the work plan, which someone will put out the link, you'll see the order in which we're covering these things. So, do, please. We'll make a note of that in the minutes from the meeting or the notes from the meeting and then we will make sure we address that when we get to those [inaudible] subjects.

CHRISTOPHER WILKINSON: Okay. In any case, I'm glad I've put down a marker because I'll come back to this if necessary. Thank you.

JEFF NEUMAN: Okay. Thanks, Christopher. Okay. Back to RSP preapproval. So, the first is an affirmation which is really just a repeat of something we've affirmed before. So, again, it's just a generic why we're approving new top-level domains. So, whether we state that as a separate affirmation in this section or whether we just say "see above" we'll decide on what to do. So, I'm going to skip that one for now and go to the recommendation.

So, the first recommendation is the working group recommendation establishing program in which registry service providers—and there's a footnote—may receive preapproval by ICANN. The only difference between a preapproved RSP and one that is approved during application evaluation is the timing of

when the approval takes place. Therefore, all criteria for evaluation and testing, if applicable … Instead of "should" I would say "must" be the same.

And then the footnote really just explains what is a registry service provider. So, you can take a look at that if you agree with that definition. That was something I kind of just drew up. So, if it makes sense, great. If not, please do suggest any modifications to that term.

Okay, we scroll back up. Let me just see. Christopher, hand is still up. I don't know if that's an old hand or a new one. Jim, I know your hand is a new one, so Jim, please go ahead.

JIM PRENDERGAST: Yeah. Thanks, Jeff. Just testing the audio since it's the first time I'm speaking.

JEFF NEUMAN: It's great. You don't sound like a chipmunk.

JIM PRENDERGAST: I tried something new. So, I just want to back up a sec. I had sent an email back on January 30th out to the list after we began initial discussions on this, and after we had received the breakdown of sort of the EBERO and SLA monitoring that Steve had sent around.

In that email, I sort of walked through some of the things that are touched on in this section but also in your email that requested the

information from ICANN. I still have a difficult time wrapping my head around the term preapproved. I know we've moved back away from pre-certified or pre-certification. But after seeing the data and seeing that we have scenarios playing out today where RSP providers who did pass PDP and have been delegated are still failing to meet SLAs, I fear that using the term preapproval still provides some sort of assertation of service-level quality by ICANN to registry service providers when it comes to new entrance to the market that ICANN can't really back up.

So, what I did suggest in my email was instead of referring to this as preapproved, we somehow look at this as two phases of testing. The first would be the items that would be covered under what's on the screen right now—things like EPP, IDN tables, etc. Things that could be tested anytime that are not specific to an actual TLD application. That would sort of be the phase one of testing.

Phase two I think would be the stuff that is actually specific to the TLD application itself and it could be everything that's in not specification A but schedule A of the application that is … Whether it be new registry services, etc. Those are things that are unique to each TLD.

I still have this problem with preapproved and the implications that it has, especially for non-ICANN insiders who are new to this, and the implied guarantees that does give to those new entrants to the market. Thanks.

JEFF NEUMAN:	Yeah. Thanks, Jim. In that email … One of the assumptions in your email is that there will be a phase two testing, which I agree there might be. We just haven't gotten to that subject yet. So, thinking about this, what ICANN does when they—I'm trying to not use the word accept or approve.

I guess what ICANN does is they say passed—passed initial evaluation. I suppose we could … There's just not an easier way to say that, right? But it's basically RSPs that have passed initial evaluation is what we're trying to signify here.

If there's a word that conveys that without saying approval … Does anyone else have any comments on that? Donna, please.

DONNA AUSTIN:	Thanks, Jeff. Donna Austin from Neustar. Sorry, I only just rejoined the call. Maybe you've already noted that we had a lot of discussion early on in the piece about moving away from certification. So, that's out. We can't use anything … And Jim, very much for the same reasons that you have concerns about preapproval, because there may be some assumptions or whatever. But I know we spent a lot of time on the certification and that's why we moved to approval. I don't know whether it's worth going back to see if we can understand why we agreed on approval.

Jim, I take your points, but we're going to get bogged down I think in trying to come up with a word that's acceptable to everyone and we've already largely had that conversation sometime ago. Thanks.

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JEFF NEUMAN:	Thanks, Donna. One of the other options, too—and I'll go back to Jim—is that we can add some sort of explanatory language, explaining to applicants that approval just means that they have passed the testing for initial evaluation does not imply any endorsement, all those kind of caveats that we could put in there. But, Jim, please go ahead.
JIM PRENDERGAST:	Thanks, Jeff. And Donna is right. We got into this a couple of years ago. The problem that I've run into is that we've just got a tranche of new data from ICANN that we didn't have at our disposal when we were having those initial discussions. I guess it only reinforced my concern that there are continuing to be problems with registry backend operators. So, that's what's driving my concern.
	And while, Jeff, I take your point that a footnote could address some of this, that's only really good for the insiders who are going to be reading this documentation. It's not something that somebody who is a new entrant to the market who is saying, "Okay, I need to find a service provider. Oh! ICANN says they're preapproved. I must be good to go." To me, that's the problem I'm trying to avoid.
	So, I see there's some words that have been thrown out in the chat. I've thrown out [inaudible] but I don't think it changes the structure of what the recommendations are. It's just how we're

talking about it. So, maybe it's something folks can contribute on the list in response to my initial email. Thanks.

JEFF NEUMAN: Yeah. Thanks, Jim. Let's do that. Let's continue that on the list. Also, keep in the back of your mind what we're talking about here is the program itself and the basic tenant of this program is everything—that there should be no difference other than the time in which it's done between the preapproval program or whatever we end up calling it and the regular evaluation.

So, the testing part of it would apply to both, if there is testing, and we'll get at testing I think next week. If we decide that there is testing for all, it certainly would be applied to these guys. So, just keep that in the back of your mind.

KATHY KLEIMAN: Jeff, this is Kathy on audio. May I join audio?

JEFF NEUMAN: Yes, please, Kathy.

KATHY KLEIMAN: Great. Thanks, Hi, everyone. So, I want to support what Jim is saying. I think we're actually really close. I don't think there's that much difference between what Jim and Donna are saying. I think Jim is offering slightly different wording. I think the wording is good. The [inaudible] when testing is … Does it hook into other expectations and understandings that the preapproval phrase

does? And, Jeff, only lawyers read footnotes so it's not going to reach the audience. We really want the explanation to reach. So, I think putting it in whatever the title is that we're talking about is really important. Thanks.

JEFF NEUMAN: Yeah. Thanks, Kathy. If I said footnote, I did not mean it. I can't remember if I said footnote or not. We can put it very up early in the text saying this is what it means. Everyone is suggesting the word "testing" and I want to stay away from that—for now I want to stay away from that—because we haven't decided definitively whether there will be testing. We may ultimately come to that conclusion but I don't want to get ahead of ourselves by changing a name to pre-testing or whatever it is if we don't agree to actually do any testing.

So, hold that thought on a name. We may come back to that but after we hit it. So, there's a whole bunch of recommendations. For now, let's just call it preapproval. We may end up changing the name but let's look at the concepts here and then we can go to the name of it later. Donna, please.

DONNA AUSTIN: Thanks, Jeff. Just quickly, I've got some suggested text there to adding to the recommendation that may overcome the problem, but then again it may not because it has the word "testing" in it which you want to stay away from. But maybe we can fix this by a little bit more qualification in the recommendation. So, I've just suggested some text. Thanks, Jeff.

JEFF NEUMAN: Yeah. Thanks, Donna. Where would that text go, just to be clear? Donna, please, go ahead. You're on mute, though. Donna, you're still on mute.

DONNA AUSTIN: Okay. Sorry. I was having trouble getting off mute. So, with the recommendation rationale one, the working group recommends establishing a program in which registry service providers may receive preapproval if they pass the required technical evaluation and testing conducted by ICANN or their third-party service provider.

JEFF NEUMAN: Great. Thanks, Donna. I like that language. And Phil is saying a plus one. Yeah. So, let's put that in there—or at least put an action item to put that in there and we will do that.

Jim is saying, "I'm not quite sure I understand the desire to avoid testing but I'll wait and see where it goes." We have a whole topic on registry testing and I don't want to get ahead of ourselves to definitely say we're going to have testing. I think we will but I would hate to just put in the words "testing" here if we don't end up approving that. I think we will approve it, and then we can come back and put the word testing in. Again, we haven't gotten to that topic yet.

Okay. Thanks. So, that language is put in there. Great. If we look at the next recommendation, participation in the RSP preapproval

program must be voluntary and the existence of the process shall not preclude an applicant from providing its own registry services or providing registry services to other new gTLD registry operators, provided that the applicant receives approval during the standard application process.

I suppose we can bracket the words "receives approval" because that again goes to the whole approval language. I guess it would be provided that the applicant passes technical evaluation or something like that. I don't know. But we just bracket it because it depends on where we come out with the terms we use. Okay, any questions on that one?

All right, the next recommendation. The RSP preapproval program shall be open to all entities seeking approval, including both new and incumbent RSPs. For the initial RSP preapproval program, both the evaluation criteria and testing requirements, if applicable, shall be the same regardless of whether the RSP applying for approval is a new RSP or an incumbent RSP.

Now, with the words "if applicable" we'll take those out if we determine that there is definitely going to be testing requirements. But for now, since we haven't gotten to that subject yet, we just put if applicable. But we will come back and remove those "if applicable" after we talk about the testing. That one make sense? So, it's everyone gets treated equally.

Okay. Now, the next. The implementation guidance. This is a little bit of a wrinkle. I know it was discussed in a couple of the comments but I don't know if we as a group discussed it, so I

wanted to put it in here and see if this is something that the group agrees with.

So, we said the recommendation was for the initial preapproval—the RSP preapproval program. But what happens when we get to subsequent rounds?

So, here's what was put in there. With respect to … Actually, you know what, it might be better off after the next recommendation. But regardless of where we put this, with respect to each subsequent round, ICANN Org may establish a separate, more streamlined process for reassessments in terms of evaluation and testing than those entities seeking RSP preapproval for the first time.

So, essentially, what this is saying, if you look at the next recommendation which it goes along with, we're saying preapproval occurs prior to each round and only applies to that specific round or we're saying reassessment must occur prior to each subsequent application round.

So, with that recommendation, the question is does ICANN need to have the same exact program for reassessment for existing RSPs as it does for the new entrants?

Now, for the first round, we think obviously—or for this first next round—we have in there that you're treated the same no matter what. But this is sort of giving permission to ICANN to establish a separate type of reassessment program that may not be as thorough as the preapproval process. Any thoughts on that one? Donna, please.

DONNA AUSTIN: Thanks, Jeff. I think I don't … I think we should just stay same and same. One of the challenges is we don't know how this is going to go in the next round. I guess the fact that you've used the word "may" is okay. So, initially, I had reservations about this. I think it's probably easier if we just stay the same as what we had before. But if there is the possibility that ICANN could streamline the process, then there should be an opportunity to do that. So, sorry, I've just worked that through in my head and maybe I'm okay with it. Thanks, Jeff.

JEFF NEUMAN: Sure. Thanks, Donna. Essentially, what I'm trying to say in this is that reassessments can be different than the initial preapproval process. So, you may have a much more extensive preapproval process, and then in order to get reassessed for the next round, if you've already been preapproved for a previous round, you might have to jump through some—or you might have to jump through less hoops than you did for it to be initially preapproved for that first round. It's not … I didn't say it very well in that explanation either. So, sorry about that. Alan, please.

ALAN GREENBERG: Yeah, thank you. I agree with the principle. The wording, I think, needs refinement which I think is what you just said. When I read it the first time, it sounded like we were saying there would be a streamlined path for those seeking approval for the first time. I

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missed the [inaudible]. So, I think the wording needs clarification to make it really clear what we're saying here. Thank you.

JEFF NEUMAN: Okay, great. Thanks, Alan. So, we'll work on the wording but it's essentially saying that a reassessment can be treated differently than the initial preapproval. So, we'll work on that wording. Christopher, please.

CHRISTOPHER WILKINSON: Thank you, Jeff. Very briefly. Just an explanation for my silence. I think on this topic we should refer the whole caboodle to the SSAC and the competent technical specialists in the ICANN staff. I have no confidence that the PDP has either the mandate or the technical competence among ourselves—and I include myself—to decide on these matters.

It's fairly straightforward when it works and it's very tricky when it doesn't work. And I don't think our language in the text will succeed in making the distinction in practice in the future. Refer this [inaudible] to the SSAC and the ICANN staff. Thank you.

JEFF NEUMAN: Okay, thanks, Christopher. Donna states in the chat, "We're not [inaudible] technical competence. We're just providing the guardrails." I think that's right. What we're saying is everybody has to go through the same testing or same evaluation and same testing regardless of whether they're an existing provider or a new provider. We're just saying that, whatever that testing and

evaluation is, you can do it earlier in order to indicate that you have been pre-evaluated for that round. So, we're not doing anything different in terms of technical requirements.

Okay. So, we already went over the next recommendation, but let's go to the next implementation guidance which says it may be appropriate to require an RSP to agree to a more limited set of [inaudible] terms and conditions when submitting their application for preapproval process. Such an agreement would be limited to the terms and conditions of the program and may not create an ongoing direct contractual relationship between ICANN and the RSP, nor be interpreted in any way to make an RSP a "contracted party" as that term is used in the ICANN community.

So, this was certainly the subject of a lot of comments. So, I just want to make sure that we've captured that correctly as implementation guidance. Maxim has got some comments in there about the SSAC and understanding the aspects of registries. I'll just let that stand.

Okay, let's move on. The RSP preapproval program must be funded by those seeking preapproval on a cost-recovery basis. Cost of the program should be established during implementation phase by the implementation review team and/or ICANN Org.

Then, the last recommendation. The results of an RSP preapproval program must be published on ICANN's website with all of the other new gTLD materials and must be available to be used by potential applicants with an adequate amount of time to determine if they wish to apply for a gTLD using a preapproved RSP. Donna, please.

DONNA AUSTIN: Thanks, Jeff. Just on the program that has to be funded by those seeking preapproval, I think I raised this when we were talking about the budget last week. I'd really like to understand what those costs are. I don't know what it's going to take for ICANN to set up the testing facility. I do know that the costs for PDT have been quite significant on an ongoing basis but I think that's because of the way that the 2012 round was set up. But I think it's important, if it's possible to get some kind of indictive costs on this to understand how much that will be.

One of my concerns here is that it's prohibitive. We may not have anybody using the preapproval program, so it will just roll into the application process itself and the cost isn't advertised across all the applications. So, I just wanted to flag that as maybe something we could come back to at some point. And I'm really sorry but I'm triple booked as it seems this morning and I have to drop from this call. Sorry, Jeff.

JEFF NEUMAN: That's okay, Donna. Thanks for coming. Yeah. It's kind of difficult because I'm not sure whether we're going to have any more information on the costs at any point during our PDP. I'm sure during the implementation phase they will have a much better understanding, especially once we get through and they get through all of exactly how they're going to do this testing and which tests are going to be required and so on.

But I do have confidence in respect of they've been doing this now for—ICANN as been doing this now for a number of years. They've had several rounds of TLDs in which they've done technical evaluations. I would hope that this is one of the easier [inaudible] to determine. So, I'm not sure what more we could do other than just having this recommendation. And you're right. If it's too prohibitive, nobody will use it. So, I'm sure that ICANN will try to figure out a way to do this without being cost prohibitive.

Phil is saying, "We need to understand the costings." Totally understand. And Donna is right. We sort of have a chicken-and-egg problem. But I think that a couple of things give me hope on this. Number one is ICANN did try to put in a process like this or did want to initially, although it didn't get very far. I think it was 2010 when they brought it up and it didn't get very far. But number two is they do have the numbers of what it costs for their technical evaluations. It's, for the most part, fairly straightforward. So, I think this is one that will have to be … This is our recommendation and it will be for ICANN Org and the implementation team to figure out exactly what those costs would be. Paul McGrady, please.

PAUL MCGRADY: Thanks, Jeff. With regard to recommendation results of the preapproval [inaudible] published on ICANN's website, [inaudible] narrow that in some way. If somebody is rejected because there's a vulnerability, I'm not sure that we want that vulnerability published, especially if they're a preexisting registry provider and that might put a lot of registries at risk. So, if there's any way to narrow that for security purposes, I think that would be great. Thank you.

JEFF NEUMAN: Yeah. Thanks, Paul. I'm sure we can narrow that. I think we probably could say that … Instead of just the results, we could say that preapproved [inaudible] RSPs will be published and just leave the rest of it … Right. So, say a list of preapproved RSPs must be published on ICANN's website.

Susan says plus one to Paul's point. Let me see. Would that change, Paul? Does it seem better? Paul, you might be on mute.

PAUL MCGRADY: Yeah. Having some trouble getting un-double-muted. I think that fixes it, right? Because [inaudible] reasons why, so that makes sense to me. Thank you.

JEFF NEUMAN: Great. Okay. Good suggestion. Okay. The rationale for this. Again, please, everyone, do read the rationale. I think that it does contain a number of things both on the naming issue and on just some more explanation about why we're doing this, to gain efficiencies and also just on making sure that or reinforcing the point that this is only a timing difference as opposed to anything substantive with the evaluation itself.

And also pointing out, if we scroll down, making sure that we do this in advance and that we've considered a bunch of options in terms of an entity needed to be reassessed every couple of years or whether it was by round and we came to the conclusion that reassessment prior to each round makes the most sense.

If we scroll down some more, there is some language in there about the costs and maybe we can put a point in there as well about what Donna has mentioned. So, we can put a note at the end of that for rationale five. Maybe put in some language about Donna's comment there.

Sorry. For those on the phone only, it's silent just because I'm waiting for ICANN to put the comment in. So, giving them some time. Otherwise, we move way too quickly for them.

Then, we scroll down. Keep scrolling. Okay. So, the new issues. This just talks about some of the elements and the whole notion of the SSAC did come back and say that they just didn't want an automatic approval for existing providers. So, that was the real crux of their comment.

There's in here a number of people have brought up whether past performance should be taken into account. We did sell on this being more forward-looking than looking at the past performance.

Then, if you go down, we talked about whether there should be an appeals process for this, and ultimately the working group did not come to any kind of consensus on, yes, there should be an appeals because a) the program is voluntary and b) any unsuccessful RSP can always go through in the regular application process and apply for approval that way.

We scroll down some more. I think to cover here … I think that's it. I think we talked about everything else.

So, obviously, this is highly linked to registry system testing, applicant reviews, and security and stability. So, naturally, all of

the recommendations and implementation guidance we have in those areas, they will have some bearing on the RSP preapproval program. Any questions on this?

Okay. Let's get into the AOB then because that's the topic for today. The first AOB we'll talk about is the work plan, which it seems like already we are a little bit ahead which is good news because RSP preapproval we had put in for two calls but it seems like we handled it in one. So, we will move some things up on the work plan to reflect the fact that we cover the topic which is great.

So, the next topics, just for the next meeting then will be the universal acceptance—I'm trying to remember if we can pull up the work plan. We have universal acceptance, registry system testing, application queuing I think are the next few topics, so we will get to those and we will keep adjusting the work plan. So, do come and check the work plan regularly, so you can understand what we're on.

Jim, I do want to offer you the chance, because I know you did send an email, but apologize, have not had a chance to read it yet. So, do you want to go over your comments on here? Sorry to put you on the spot.

JIM PRENDRGAST: Yeah. No, sure, Jeff. In fact, I'm just trying to bring up my email. But, essentially, a couple of points. One, as you noted, I think there's ways for us to find efficiencies in the timeline, as we just did by getting through something in less than two calls—or mostly getting through something in less than two calls.

During the discussions on Thursday, there was the suggestion that might need to do extended calls, and in my opinion, [inaudible] [four] hour calls are going to be a bit of a challenge, especially when they need to rotate through the overnight hours. I just think that's going to be brutal and probably not productive.

And as an alternative, what I proposed was we take advantage of being in the same place during the upcoming ICANN meetings, two of them that are already in the timeline. Also, if we do desire more time on calls, we experiment with maybe giving them two hours, because over the course of four two-hour calls, you actually do get one extra 90-minute call in there.

Then I had some specific questions and feedback, which I'm wondering what exactly you meant by our engagement with the GAC on their issues during the upcoming ICANN meeting since most of what they probably will be interested, and by no means speak for the GAC, but just my estimation of what they'll be interested in will not be handled prior to Cancun. So, I don't know how we get their feedback on that when they don't see draft recommendations on issues of most interest.

Then, also, just feedback on some specific dates that may [inaudible] challenges. So, that's it in a nutshell, but it's in email for all to read as well.

JEFF NEUMAN: Great. Thanks, Jim, and we'll be sure to read that and to make any adjustments. And I'd like your suggestion that maybe two hours is enough. So, I'm trying to get ICANN to check on the

dates that we have suggested for those extended calls, and as soon as we find out about those, we will let you know and perhaps put a hold for three hours and not necessarily use all three but we can put a hold on it.

So, for ICANN, ICANN has put out—or their small group has indicated or will be indicating to us certain … Or I should say it this way. We have copies of GAC advice on a number of these topics and we've been going through—meaning the leadership team and ICANN Org have been going through where we think GAC advice and where we're heading towards may be not in line with each other. Let's say it that way. Or not fully in line.

So, what we're doing now is trying to figure out which areas those are so we could give them an indication from the previous discussions we've had on where we're heading with those and the differences between that and their advice.

So, you are right, Jim. In a number of those areas, we will not have had draft final recommendation reviews, but I think with the summary documents, we have a pretty good indication of where we're heading. But I do think that's a really good point.

So, as we get closer to the meeting, one thing that we've been talking about within the leadership team is to produce, like we did for the last ICANN meeting … It wasn't called position papers. I forgot what it was called. But basically briefing documents of where we think we are leaning towards. So, I think it'll be helpful.

One thing to address your question. Jim put the question on the chat. "Does the GAC know this is coming? They don't turn on a

dime." So, the good news is that the GAC has basically said that they are intentionally not setting up any conflicting meetings with our sessions and that they are instructing each of their members to come—or they're recommending that each of their members come to our meetings. So, they do know that it's a very important time for our group, so we do expect a number of GAC members to be there.

So, we will certainly—the leadership team will meet with at least ICANN support for the GAC session so that we can let them know exactly what's coming.

So, good news is they know they're going to be at our sessions. They know or they have requested that we talk about topics that are of interest to them. And I think where our advice may—or our recommendations may differ from their advice I think is a good basis for discussion. Jim, please.

JIM PRENDERGAST: Yeah. Thanks, Jeff. I can't stress enough that having it in their schedule was fine, but the substance of what we want to talk about and the detail of what we were going to talk about I think is critical. Otherwise, it's just going to be a waste of time. They can't react on the fly. Many of them have to check with capital. Just as we as a group do much better when we have the materials ahead of time to digest as opposed to reacting on the fly, I think the same goes for the GAC.

It worked. The engagement worked with work track five, so I would encourage us, as I think you're heading to, to try and

replicate this overall effort so that we don't get into this protracted new GAC advice situation where everybody is in a standoff waiting for the Board and the GAC to sort things out when we may have been able to head it off much earlier.

JEFF NEUMAN: Yeah. Thanks, Jim. Totally agree. This week at our leadership meeting, we hope to at least have an initial list of topics that we'd like to run by ICANN … Well, hopefully, run by the GAC through ICANN, their support team. Okay. Great. Any other questions or comments?

So, look for that on the list, and certainly by at least next Monday's call we'll have that list.

So, we're going to cover universal acceptance, registry system testing, and application queuing on the next call. So, we'll fix or we'll move up the work plan. The next call is Thursday, the 13th of February at 0300 hours. So, it's a nice early one for some, late one for others or a perfect time for yet others. So, we'll talk to everyone on Thursday. Thanks, everyone.

MICHELLE DESMYTER: Thanks so much, Jeff. Thank you, everyone. Thank you, everyone. The meeting has been adjourned.

[END OF TRANSCRIPTION]