ICANN Transcription
GNSO New gTLD Subsequent Procedures Working Group
Monday, 23 March 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 meeting being held on Monday, the 23rd of March, 2020, 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're only on the audio bridge, could you please let yourself be known now?

Thank you. Hearing no names, I would like to remind all participant to please state your first and last 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 will turn it over to Jeff Neuman. Please begin.

JEFF NEUMAN: Thank you very much, Andrea. Welcome, everyone. I hope everyone is staying safe. I'm assuming most people, if not everyone, are working from their own isolation chambers, also known as their homes.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

Before we get started, let me just ask if there are any updates to any statements of interest.

Okay. I'm not seeing any updates to any statement of interest.

The agenda for today is to go through the role of GAC early warnings and advice. If we have time, we'll get then to applicant support. I do see on the chat that

Phil Buckingham has asked … Let me just read his chat. "In light of COVID-19 with the huge impact it is having, could we schedule the call on Monday, March 30th, as AOB?"

So I'll add an AOB, Phil, at the end, and you can bring up your comment then.

Anybody else have anything they want to add?

Cheryl, please?

CHERYL LANDON-ORR: Thanks. It actually goes to Phil's AOB point, and that is to remind the working group here that we don't have a lot of latitude, so be prepared for Jeff and I to push back on any suggestion that a mere global pandemic is going to have a chilling effect on our timeline. Thanks.

JEFF NEUMAN: Thanks, Cheryl. Of course, I agree with you 100%. With that being said, we will talk at the end of the call because it's been asked as a topic.

With that, also let me just state that we, just getting back to the topic from last time, when we talked about public interest commitments and registry voluntary commitments, did not do an extensive discussion on the verified top-level domains … Sorry. We did the verified top-level domains, but we did not necessarily cover the notion of whether we wanted to approve or not the notion of Category 1 TLDs. So we're going to start some discussion on the list on that topic and figure out when we can pencil in a follow-up discussion on that. Please do, when we send around some action items on that or on the list with that topic, respond. We still want to get everyone's thoughts.

With that said, let's start opening up the GAC early warnings and advice. We're going to work off of the clean document, which is the PDF document. Then Paul McGrady has some recommended changes. So we're probably going to jump back and forth between the clean and Paul's changes in the Google Doc. I'm not sure if people had the time to look at this changes yet, but we'll go over those on this call. Paul—I know you're on the call—hopefully you're available to talk to some of those changes.

"Yes." Great.

Christopher Wilkinson, please?

Christopher, you're on mute, but your hand is raised.

CHRISTOPHER WILKINSON: [Sub, sub, sub, sub]. Oh, heck.

JEFF NEUMAN: Wait. We can hear you now –oops. Well, we … Sorry—

CHRISTOPHER WILKINSON: Yeah, I think you should be able to hear me. Jeff, could you tell us a little bit more about the background to the status of these documents? I ask in a purely neutral sense because I appreciate that, over the last few weeks, I've been unable to follow everything in detail. But you've landed nearly 60 on our agenda, and it has been difficult to take it all on board on short notice. We know the issues, but exactly where did all this text come from? Is it staff interpreting what the working group has said? Is it the Chair and the Co-Chair rewriting the results of our work? I really don't know. It's a big document, so somebody should be the author of it. Thank you.

JEFF NEUMAN: The text here has been derived from a number of different versions. It keeps getting iterated and iterated in different ways. Ultimately, the PDF document was really generated because we discussed these items [at] ICANN67, and we're just trying to get to closure on this round of discussions for talking about these subjects. So, from here on out, after we cover the GAC early warnings advice and the applicant support, we'll be working out of the Google Document. We're also producing, as we talked about on the last call and before that, a draft final version. That one will be a separate document that we will be asking for changes [on] only through that spreadsheet form that we sent around a few weeks and then resent around last week. We'll talk more about that later.

The clean version is everything without the Paul McGrady changes because those were just made. I don't know if they all appear in similar colors for everyone on the Google Doc. We're going to start with the PDF document, which is a clean version, and then jump over to the redline to ask Paul about changes that he'd like to make.

On this topic, the first affirmation with Rationale 0, the clean version states, "Subject to the recommendations below, the working group supports the 2012 implementation of GAC early warnings and GAC advice, subject to Section 1.1.2.4 of the 2012 Applicant Guidebook." [It] describes the early warning mechanism and then it just quotes what's currently in the guidebook.

Paul has asked to insert a first statement, which states, "The working group acknowledges the ability of the GAC to issue GAC consensus advice in accordance with the ICANN bylaws." Because he has inserted that first sentence rather than restate the bylaws again just crosses it out of the next sentence.

 I don't know if we can just quickly jump over to the redline. I know this is a little awkward. The redline is essentially that first paragraph—essentially the paragraph I read from the clean version – [where we're] adding the first sentence from Paul and then deleting some of the language in the second sentence because it's partially restated in the first.

Paul, did you want to—yeah, your hand is raised. Good. Can you just discuss that change on the top?

PAUL MCGRADY:	Thanks, Jeff. Yes. Happy to. And I think it's a good opportunity to lay the groundwork for the other changes and the reason behind them. As all of you know, on the calls in recent weeks, we went round and round in circles on the issue of FAC consensus advice. Specifically, the community wants the GAC to act in a predictable way. We want all the issues that are settleable settled before that guidebook is issues, not after, not during the application process. For better or worse, depending on your world view, GAC advice, as it was called then, created a bit of chaos in the last round. The chaos lasted for years and was quite expensive and caused significant delayed. So we're trying to figure out how to solve for that. Like I said, we went round and round with the GAC. The GAC is completely uninterested in us curtailing its ability under the bylaws to issue GAC consensus advice. I get it. On the other hand, the community really wants something that's predictable.

So what I've done here in the changes that you'll see is essentially just changed the dynamic to what we're really hoping for here, which is that the GAC has whatever rights it has under the ICANN bylaws to issue GAC consensus advice. I think we need to use that term—"GAC consensus advice"—because that's what's used in the bylaws. GAC advice really isn't a thing. They can do whatever they can do under the bylaws, and, absent this group somehow pushing for a bylaws change—I don't even know if we can do that—that's not going to change. So what I'm trying to do here is basically lay out: "The GAC can do its thing under the bylaws, and here's what the community would like for the Board to do." So that's the reasoning behind the changes.

	Jeff, I don't know if it makes sense to go through them one by one or to do an overview. I'm happy to do it however you'd like.
JEFF NEUMAN:	I think we probably should go through individually because I think there's some rewording where we just want to make sure that we have buy-in on the concept.
PAUL MCGRADY:	Sure.
JEFF NEUMAN:	But let me go to Anne. We're just on the first paragraph at this point—the first affirmation.
ANNE AIKMAN-SCALESE:	[First], on the first paragraph and the [inaudible], I [do] agree with Paul about the reference to GAC consensus advice. I think that, with all the developments since 2012, that makes the sense. I think the GAC people who were participating previously didn't dispute that aspect of how the bylaws apply.
	My only question here in the first paragraph at this stage is … We're deleting a reference to the 2012 AGB. We've deleted the reference to Section 1.1.2.4. I don't know what we're deleting, so I'm trying to figure out what the approach is in terms of deleting that reference. Thank you.

JEFF NEUMAN: Thanks. Two separate issues. I think, as we talked about the on the last call, putting in GAC consensus advice is the right thing to where it talks about GAC advice because I think that's something I know others weighed in on the last call.

On the second issue, I'm not sure why we deleted the reference … Well, we initially deleted the footnote because it was in the body of the text, but now I think it's out of the body of the text in the redline. That's really the only place that defines what a GAC early warning mechanism. So I do think we need to that reference back in there. I don't think that changes the meaning.

Paul, would you have any issue with putting that reference back in?

PAUL MCGRADY: Hey, Jeff. I'm just taking a quick look at it because part of what we're doing here is parsing out GAC consensus advice from GAC early warning. So let me just take a quick look to make sure.

Yeah, I think it's fine. Yeah, that is only to do with the only GAC early warning, which is entirely a creature of the AGB. So I think it's fine to put that reference back in. Thank you.

JEFF NEUMAN: Thanks, Paul. I have Olga and Christopher int the queue, and then we'll go on to the next paragraph. Thanks.

OLGA CAVALLI: Hi, Jeff. Can you hear me?

JEFF NEUMAN: Yes, Olga. We can hear you.

OLGA CAVALLI: Thank you very much. I hope you're all well. One question to Paul. When you say that the community wants predictability, you're talking about all the community? Which part of the community? Can you clarify that to me? Thank you.

JEFF NEUMAN: Go ahead, Paul, if you want to respond.

PAUL MCGRADY: Sure. I hope that it's the entire ICANN community. I hope that, regardless of SO/AC participation outside of the primary structures of ICANN, there is nobody out there that is rooting for this to be an unpredictable process. Thanks.

JEFF NEUMAN: Thanks, Paul. I think, although there may be some different views on what predictability means, [we] state definitely that predictability is one of our goals and is one of our overarching missions. Now, predictability doesn't necessarily mean certainty, so I'm sure, as we get deeper into these recommendations, we'll cross this issue again.

                     Christopher, please?

CHRISTOPHER WILKINSON: Jeff, two points. First of all, as an entirely independent and, I hope, neutral participant, I would need 24 hours to study these amendments and to make up my mind. I don't see that you can push through, from one minute to the next, significant changes in a document that we have already had spent a lot of time trying to absorb and understand.

Secondly, I would like—not for the first time, I hope—to introduce an element of political reality into this discussion. I understand—Paul has made his position very clear—that some of us would like to put GAC in a box and make quite sure that bits that come out of the box are "predictable." I think that's totally unrealistic. There are issues that arise on short notice. There are issues that are intensely important for certain countries, and less important for others. The idea that, through redrafting these texts or the bylaws, you can put GAC in a box and say that you're allowed to say that but you're not allowed to say something else is politically absurd. I understand, from the point of view of predictability, but, as I've said several times in this group, predictability is more important for people who are not the applicants than it is for the applicants themselves. Thank you.

JEFF NEUMAN: Thanks, Christopher. Because the next couple—oh, there's more people in the queue. If you have overarching comments, go right ahead. I think we want to get into more of the substance. Let me go to Kathy and Greg.

KATHY KLEIMAN: I think Olga was next.

JEFF NEUMAN: I think that was—

OLGA CAVALLI: It's an old hand. Sorry for that.

KATHY KLEIMAN: Okay, great. Thanks, Jeff. I share Christopher Wilkinson's concern. As we go down this document, there are massive edits by Paul. They're completely changing what we're looking at and they're completely changing the standards. Yes, we need time to review, but, at this early stage, I would object. I don't think what we're doing her is fair. This is very, very concerning. The GAC cannot anticipate everything that's going to happen in the next round. We cannot ask them to wave a crystal ball. I think the original reasoning and rationale was useful, but now these edits [set Paul on board] to reject the GAC consensus advice. That's coming forward if it's not delivered by a certain time. I don't think we have agreement on that. These extensive edits … I just don't think we can do this on one foot, Jeff. Thanks.

JEFF NEUMAN: Let me just be clear on what's going on, since I know people have joined since the beginning. The authoritative version right now is still the clean version. Paul has made some suggestions. After we

talk about the clean version, which is the authoritative version, I'm asking Paul, because he has ideas on these paragraphs, to talk about what he wants to change and why. The group will discuss whether we want to use some or all of what Paul has written or none of it. Again, the authoritative version is the PDF version. That's the version that's been out there, but we will go and ask Paul because he's given us his thoughts on these paragraphs. I hope that makes sense.

Kathy, did you have a follow-up, or is it Greg next?

KATHY KLEIMAN: Thanks. I'm in the redline. What you're saying is that that's not the version that we're working from? There's a lot of stuff going on in the real world. We will need time to process this. But thanks, Jeff. It sounds like these edits are not in until we approve them to go in. Is that right?

JEFF NEUMAN: Right. We're going through the clean version, which you have as a PDF document. But then, because I noticed Paul has given us his thoughts on these, I'm allowing Paul to discuss what changes he's proposing. But they're proposals. They're not the authoritative document yet. If we agree with them, then we'll put it in. If not, then the text will stay as is. But he's spent time going through, giving his thoughts, just like other people have comments in the Google Document, which we are going over as well.

Greg and then Paul and then I really want to get into some of the more substantive items. Greg, please?

GREG SHATAN:	Thanks. I'm sympathetic to what Paul is trying to accomplish here. I'm wondering if a slightly softer version might be more appealing and actually more helpful. I think part of the problem with GAC advice was that it came late in the day or late in the life cycle of an application. It wasn't just that it came after the Applicant Guidebook was done, although some of it did. But there was other things, especially in the early warnings, too, which I realize is a somewhat separate discussion.

But, if we can find a way to encourage rather than demand that the GAC give advice earlier where it is actually more useful and will have a greater effect, I think [this calls] to be framed more positively in terms of giving advice that will more easily get the result that the GAC is aiming for in its advice. Some GAC advice really got stuck in the Board for years because, by the time it came, it was almost impossible to comply with, but yet it did not seem appropriate to object it, either. So that's not a win for anybody.

The GAC, to its credit, has been looking for ways to intercede both formally and informally in ways that can have the best possible effect and work with the rest of the community in this process. So maybe there is a soft version of this that can try to move a lot of GAC advice earlier up the chain without making requirements or forcing the Board, in essence, to violate the bylaws. I'm sure Paul would have thought this out carefully and it wouldn't violate the bylaws.

But, in any case, I think you got the idea that there is something here. I wouldn't just dismiss this out of hand. I think it's actually something that, in some ways, benefits the GAC, at least in terms of getting its advice adopted and also not being seen as the guy who shows up and says, "You building is ten stories too tall," after it has been built. Thanks.

JEFF NEUMAN: Thanks, Greg. Paul and then we'll go onto the second paragraph because, substantively, I don't think Paul's suggested change changes anything substantive in that first paragraph. But we're going to get to that. So I'm going to give Paul the last word on this and then go to the next paragraph. Then, Anne, I'll come back to you. Paul, please?

PAUL MCGRADY: Thanks. Literally all we did was say the GAC has the ability to issue advice in accordance with the bylaws. That's the only thing so far that we have looked at, but it has caused quite a stir. It does seem like the reaction is coming from everybody who is reacting based upon the other text. So, Jeff, I am glad to see that we might get a chance to actually look at the other text.

One last overarching thought. This is not out of the blue. Everybody was on the phone calls during the remote Cancun meeting where we did go round and round, trying to problem-solve. We spent actually quite a bit of a phone call or two trying to problem-solve around this: how do we get predictability without

putting GAC in a box and without restricting their right to issue GAC consensus advice under the bylaws?

So, for those who are saying that it appears to be an attempt to constrict the GAC in some way, it's not. It simply the working group telling the ICANN Board: "We need predictability, and here's what we want from you." So this is about the Board. This is not about the GAC. Thanks.

JEFF NEUMAN: Thanks, Paul. I'm going to get onto the next paragraph, and then, Anne, I'll come back to you. Greg, I'm not sure if that's an old hand or a new one.

The second paragraph talks about implementation. It's implementation guidance. Going off the clean version … Can we post the clean version? Then I'll ask Paul to talk about the issues. Anyway, the clean version states, "To the extent that GAC provides"—I think we'll change this to "GAC consensus advice" because that is the term in then bylaws—"GAC consensus advice in the future on categories of TLDs, the working group urges the GAC to provide this GAC consensus advice and Board to take any corresponding action prior to the finalization of the next Applicant Guidebook. Once the application period has begun, the working group urges the GAC to limit advice"—GAC consensus advice— "to individual applications only, based on the merits and details of the application for a particular string, not only on groups or classes of applications or string types." Now, the "only" is bracketed, so we need to discuss whether that remains in or out.

By the way, just as a reference to an earlier discussion, this also means that, when the GAC does provide advice or ideas, we do need to fully discuss them. One of those was provided in 2012 on Category 1. I note that we as a group have not decided one way or another as to formally adopt that Category 1 or modify it or reject it. We haven't done anything. That's why we need to have a discussion.

Paul is proposing, in addition to some wording changes … I think the biggest thing in Paul's paragraph would be the last sentence there: "In the event that GAC consensus advice is issued after the application period has begun, and the GAC consensus advice applies to groups or classes of applications or strong types, the ICANN Board must, absent extraordinary circumstances, vote to reject the GAC consensus advice. You'll see that the original, in the clean version, is much softer and is not a requirement that the Board must reject it, but it does talk about that the GAC should really only give advice on individual applications. Paul's version makes it more strong.

Paul, did you want to say anything else? Then I'll open it to Anne.

PAUL MCGRADY: Thanks, Jeff. One quick technical thing but I think it's important. My change also makes this a recommendation and not a rationale. I think that's important to point out.

Again, the point here is, as I said before, that this is essentially a way to acknowledge that the GAC has what it has under the bylaws and for us to stop making this about the GAC and trying to

put them into a box and trying to constrain them but rather letting the Board know what the community expects in terms of predictability. As you can see here, we put, "absent extraordinary circumstance," so, if there is something that is totally out of left field that was not predictable, that was not foreseeable— something happens? We live in a world where things happen, right? Things are happening right now. So the circuit breaker is baked into this language. So this is all offered as a way to develop a model that works for everybody.

I'm happy to see in the chat that people are tinkering with the words and appear to be open-minded about the idea. So thank you.

JEFF NEUMAN: Thanks, Paul. Anne is in the queue, so, Anne, please?

ANNE AIKMAN-SCALESE: Thanks, Jeff. I have one question and then one comment. My first question was, where did we come out on the timing for public comment in relation to the number of applications that are received? I think I had mentioned on a prior call that, for example, within the IPC, we found it necessary in the 2012 round to divide up applications. I think each of us took, like, ten of them in order to see whether we wanted to provide public comment. It strikes me that the GAC … Doesn't each government have to review all the applications? And, should there not be a relationship between the number of applications received in the time period for public comment? I don't know that we made any recommendations in

that regard. That was my question. After I get an answer to that, I can follow-up with my comment.

JEFF NEUMAN: There are some recommendations in here that deal in general with timing, but, at the end of the day, there is a separate area that talks about timelines. Let's focus on the GAC advice and the substance of the GAC advice and GAC early warning. When we get to the discussion of what happens if it exceeds certain numbers of applications and thing and how we do that … Let's get to that separately because it's going to have an impact on every one of these sections—I'm sure, not just GAC advice and GAC early warnings, but, as you said, public comments and everything else.

Did you want to [inaudible]?

ANNE AIKMAN-SCALESE: Yeah. Thanks, Jeff. I think some of these changes are directed to timing. What I wanted to comment on, in relation to this particular change, is that it might be helpful for us to, for a moment, focus on what the implications might be, for example, with respect to advice on closed generics. So what we're saying is, "Hey, GAC, if you want to advise against closed generics, you do it before the Applicant Guidebook is finalized."

My question there is if we could potentially be, once again, shooting ourselves in the foot. I'm just suggesting that we consider that as a category in which there's some existing GAC advice, as to which there may be future GAC advice. So, in terms of

hypothetical, how does the language that Paul has suggested work in relation to, for example, closed generics? So we're saying, "Hey, that would be good," because whatever advice they're going to give us on closed generics we want before the AGB is finalized. And the Board wants it before the AGB is finalized. I'm not expressing an opinion either way. I'm just raising the hypothetical. Thanks.

JEFF NEUMAN: I'd rather not talk about closed generics because they have provided on that. Their advice is still their advice. If they choose to have additional ones, they're having an intercessional and they may discuss that. I think that the original point behind this recommendation was that we should already know and have good insight into the types of application. We already have advice on closed generics. We have advice on Category 1. We have advice on other types of strings. So the theory is that we should be addressing all of that now—we have addressed a lot of it—and that that, hopefully, as it goes forward, rather than doing these broad, sweeping consensus advice that applies to 100 or 200 or more applications, when the round starts and the applications are in, the GAC then focuses individually on applications as opposed to just sweeping new categories. Now, that's the theory. Again, that's not a judgment point one way or the other. In looking at this, there's certainly … Actually, let me go to Kathy and Jim. Thanks.

KATHY KLEIMAN: Thanks, Jeff. I really think that these changes, particularly in this paragraph in the blue, change the recommendations quite a bit.

While I appreciate Paul's work—thank you for going through it—I can't support where this is going.

One of the reasons why is we're assuming we know all the categories of TLDs at this time. I'll just remind you—everyone knows—that the early warnings had to do with individual applications and concerns that arose from dozens and dozens of individual applications. They were organized into categories later by the GAC, particularly in the Beijing communique. But the GAC did both. They looked at individual applications and they looked at categories.

I agree with Anne. If we want … Jeff, maybe we're asking for more advice on Categories 1 and 2. Even though you say we're not, I think we might be. But, again, I don't think the GAC has a crystal ball. I think we get early warnings. We may see gaming on all sorts of things that we don't anticipate. We'll see early warnings on those in the new categories, perhaps, arising. I don't think the GAC can possibly anticipate that, and I don't think we can tell the Board ahead of time to reject GAC advice. That just doesn't make sense to me. It doesn't seem consistent with the bylaws. Thanks.

JEFF NEUMAN: Thanks, Kathy. Jim, please?

JIM PRENDERGAST: Thanks, Jeff. I think, very early on in the public comment process, I suggested that maybe we should encourage the GAC to have its advice finalized. I got laughed at, but I'm glad to see this is back on the table. I think, as it applies to the broad categories that you

discussed, I agree that we would maybe not see some big surprises. We've seen the large category stuff in the first round.

I just want to clarify something, though. This would not preclude the GAC from issuing advice on single strings for whatever reason that they [deem], just as that right was given to them in the previous round. Is that correct?

JEFF NEUMAN: Yes. In neither version—the clean or Paul's proposal—would the GAC be restricted on providing consensus advice with respect to individual strings.

Paul, did I get that right?

Paul was having some audio issues.

PAUL MCGRADY: Sorry, Jeff. Yes, these sections only dealt with GAC consensus advice as it relates to categories and groups. There are some other things in the Applicant Guidebook related to GAC consensus advice. I don't know if those come up again, Jeff, or if they are in our recommendations here, or if we've already dealt with it and everything is going to stay the same. I'm just not sure. But this text here only deals with categories so that we can put out an Applicant Guidebook to the world that is predictable so we don't end in the situation we were in last time when the advice came in after the application round was opened, and people who relying on the plain language of the guidebook were not able to rely on it. Thanks.

JEFF NEUMAN: Thanks, Paul—

JIM PRENDERGAST: So I agree with the intent of this, Jeff, but I think, as Kathy is pointing out in the chat, the GAC will quickly figure out that they can do advice against 97 individual applications without calling it categorical device. So I'll just have to see how that plays out.

JEFF NEUMAN: I think that the one addition to that, Jim, or the caveat to that is that the GAC, in its advice, on Category 1 and other categories always said, "including but not limited to." So it basically left some uncertainty with respect to ICANN and the applicant to figure out whether its advice would be applicable to that TLD. I think, if you were on the call last week, we had .pharmacy-- you had NABP on—that basically said that the GAC didn't read their application and, therefore, they got stuck or were close to getting stuck with certain language that the GAC and ICANN were going to require on all applications, which actually would have made it less restrictive or would have conflicted with the restrictions that they had proposes.

So the one different thing is, yes, they could group individual applications, but it would assume that they've read each application and that they wouldn't have advice that would say, "including but not limited to," or, "for example." I think that was one of the points that was discussed.

Anne, are you back in the queue? Sorry. I don't … Yeah, go ahead, Anne.

ANNE AIKMAN-SCALESE: Thank you, Jeff. This is just a corporate-governance-type comment in that the phrase "The ICANN Board must" … I don't know that, number one, we have any jurisdiction to say what the ICANN Board must do. Each of the directors of the ICANN Board has a fiduciary responsibility that is defined by the bylaws and the functioning of the Board itself and the articles of organization. We almost should do a universal replace if we have other phrases in our report that say "The ICANN Board must." I think that's got to be reconsidered.

For example, we urge the GAC to provide the advice, blah, blah, blah. We haven't said the GAC must provide the advice because that's not within our control under the bylaws. Nor is it within our control under the bylaws to tell the ICANN Board what they must do. The language there needs to be changed. Thanks.

JEFF NEUMAN: Thanks, Anne. Paul, I'll let you get the last word and then try to wrap it up.

PAUL MCGRADY: Thanks. Anne, you're right in terms of jurisdiction. Working groups can't tell the Board to do anything. What happens in this process is that we write recommendations, they go to the council, they're voted yes or not, and then they go to the Board, and the Board

votes yes or no. So, if the Board adopts this recommendation, it's the Board that's self-limiting, not the working group. No one is suggesting the working group has jurisdiction over the Board. But the Board can make decisions about how it will make decisions. That's part of their function.

Secondly, the word "must" is just because those of the words we've adopted as a working group throughout our entire report. We have a "must" and a "should." Jeff has made it pretty clear that "should" is non-binding and wishy-washy, and "must" is: "We really want this to happen." So I'm happy to find a different words besides "must," if we must, but we will be departing from the "must/should" dichotomy that exists in the rest of this report. So I'm happy to continue to wordsmith this thing. Thanks.

JEFF NEUMAN: Thanks, Paul. I hope I didn't use the term "wishy-washy" to describe "should." Just to clarify, the "must" language is a hard recommendation. The "should" language is a strong recommendation, but it could be due to circumstances either we don't know or feasibility that either it can't be implemented in exactly that way or it can be implemented but in just a little bit of a different way. So they're both strong recommendations. It's just that the "shoulds" are more the point about the principle and not necessarily the exact way that something has to happen. Hopefully that makes a little bit of sense.

There's a lot of discussion on the list. The first concept—it shouldn't be list—that Paul is proposing is to change it from implementation guidance "shoulds" to the "must." Now, we added

a "should" because I think the working group, initially in its discussions, certainly along the lines of what Justine and others are saying in the chat, it's very strong. Or saying "must" gets the GAC and others worried when you start talking about thing that must happen, and it feels like you are entering into the area of bylaw. I think that's why Avri may have written that initial question. But, as Avri says in the chat, "A "must accept" in certain circumstances is also known as a "should.""

So, on this one—I'm trying to get some closure on this—it sounds like the group agrees with the notion that any particular advice on categories that's known now—certainly that's known now and that could be known now—really should be in before we have a guidebook. There's been plenty of time and there's plenty of GAC advice already.

I think where it gets a little dicey from what we need to do here is after the guidebook is published and the application period has begun. It sounds like there's some that think that the GAC could provide advice because we can't stop it from providing consensus advice. But there are some in the group that feel that the Board must reject that advice unless it's directed at a particular application.

But I'm not seeing a huge amount of—I'm seeing a couple people—universal support at this point. We'll continue to discuss that online.

The next paragraph in the clean version, which is a recommendation, states that—it really just quotes the bylaws but then also quotes some things since the bylaws—

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"Recommendation for Rationale 1. As stated in the ICANN bylaws, [GAC advice]"—then we'll change it to "GAC consensus advice"—"must include clearly articulated rationale. The working group recommends that GAC consensus advice be limited to the scope set out in the applicable bylaws provisions and elaborate on any "interaction between ICANN policies and various laws and international agreements or where they may affect public policy issues."" That is a quote, I believe, from the bylaws. This is something the members of the GAC had referred to in our discussions at ICANN67, which is why we put that quote in there.

Then this came from the Amazon IRP/independent review, which states that, "To the extent that the rationale for GAC consensus advice is based on public policy considerations, well-founded, merits-based public policy reasons must be articulated." So that came from, like I said, the Amazon IRP.

So the changes we made in this section, meaning leadership and ICANN staff, were to reflect the discussions. Paul, I believe, has recommended to cross this out.

Let me just turn it over to see if anyone has questions.

Paul, please go ahead.

PAUL MCGRADY: Thanks. Well, I suggested across the mount that, if, of the language above that we discussed, we adopt it or adopt something that basically does the same thing. So my deletion of that paragraph and, I think, the next one are both dependent on that.

I do want to go back, though, Jeff, just to talk for two more seconds about the prior proposal. It looks to me from the chat, and it sounds to me from the comments, that there's actually quite a bit of support for the idea of trying to find a mechanism that works for everybody and not just leaving us where we were with the last Applicant Guidebook version, which was quite a bit of chaos. We did hear from Kathy. She's concerned about the Kathy. And we heard from Christopher, who said that he needed some time to read it, which I appreciate. But, other than that, there's quite a bit of support for trying to find a way forward here. There was some concern about this specific language—"should" or "must" or those kinds of things—but, again, those are wordsmithing languages. They were trying to refine a concept. So I'm a little concerned that you just brushed past it and said there was no support. I don't think that's accurate from the chat and from the conversation.

What I'd like to is to get your permission to impanel a small group of the people who were contributing on this call who are interested on this topic to try to take the language I proposed and refine it a bit more and get it re-presented, rather than just brushed aside. Thanks.

JEFF NEUMAN: Thanks, Paul. I have a feeling it'll apply to other sections as well in this (or other sub-sections) entire section. So I think that that is a good idea for those that have strong views on the subject. So it's a good idea, Paul. Let's hold that until the end of this discussion because I think there'll be others that fall into this category as well.

Let's go to Christopher.

CHRISTOPHER WILKINSON: Thank you, Jeff. I just wanted to put in a word of warning of the reference in Footnote 18. [It] will in certain quarters be considered to be quite provocative. I personally have absolutely no time at all for the philosophy and arguments that were presented in the Amazon IRT, but that's irrelevant. If you really want to make friends and influence people, delete Footnote 18. Thank you.

JEFF NEUMAN: Thanks, Christopher. We'll get other thoughts on the text. I mean, it didn't just come from us, so it's not my decision whether we get rid of text or not. But let's get some other comments.

Kathy, please?

KATHY KLEIMAN: Hi, Jeff. On the paragraph that you read, Recommendation XX Rationale 1 I think we should keep. I think it was well-phrased and well-reasoned, and I don't think it's being replaced by anything above based on the agreement for some change in wording but not change in concept. So I think we'll be getting GAC advice, and it should have a clearly articulated rationale. I would keep the original text and not delete it. Thank you.

JEFF NEUMAN: Thanks, Kathy. Let's go on to the next substantive point, which is Recommendation XX Rationale 3. This talks about Section 3.1 of

the 2012 Applicant Guidebook and states that GAC advice " will create a strong presumption for the ICANN Board that the application should not be approved." Noting that this language does not have a basis in then current version of the ICANN bylaws, the working group recommends omitting this language in future versions of the Applicant Guidebook to bring the Applicant Guidebook in line with the bylaws language. The working group further notes that the language may have the unintended consequence of hampering the ability for applicants, ICANN Org, and the GAC to mitigate concerns and reach a mutually acceptable solution as described in the relevant bylaws language which could allow an application to proceed.

Now, many of you might notice that some of that, or the last couple sentences, sound more like rationale, which is normally included in the deliberations section. But, because this paragraph generated a lot of discussion at ICANN67, it's also noted in the GAC communique as well. Some of us felt on the leadership team and ICANN staff that putting [it] directly in the recommendation would ensure that those that just read the recommendations will actually see at least some of the rationale as opposed to just saying it in the deliberations section. So I know it's a little bit different but, because this issue was strongly raised by the GAC, we wanted to have some language in the recommendation itself.

With respect to this paragraph, there … Let me just open up the floor. I know that Paul has probably got some thoughts. But maybe not, actually. I'm not sure there's Paul revisions in here. Does anybody have any comments on this?

I see a comment from Justine that states, "Jeff, how does ICANN Org mitigate concerns?"

Well, there were a couple ways that we did it in 2012. We're not mandating what those acceptable ways are. For example, PICs in some circumstances (sorry—registry voluntary commitments), could be ways to mitigate concerns. There's some contractual language that could be added for these applicants. There's a whole bunch of ways that concerns could be mitigated, but I don't think we want to constrain that or dictate how that's done necessarily.

Justine is saying, "I thought it facilitates mitigation between the applicants and the GAC."

Okay. Let's look at the language. Well, ICANN is a party to the registry agreement, so I think that the reason we included ICANN in there is because the registry agreement will be an agreement with ICANN, and it'll be Compliance to enforce, perhaps. So that's why ICANN is included in there as well.

Kathy is saying, "Does Paul propose major changes in here?"

No. I think those changes [that] are there, if I'm reading this correctly, were the changes that were made to come up with the clean version, unless I'm misstating. Someone correct me if I'm wrong, and then I'll—well, Paul has got his hand up. Paul, go ahead.

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PAUL MCGRADY:
Thanks. I actually suggested that we delete these paragraphs because they're redundant with the first sentence of what I proposed, which is an acknowledgement of the GAC ability to issue GAC consensus advice. I believe that we should find a mechanism (maybe I should have had a softer pen here) to make it clear that the GAC consensus advice isn't "GAC consensus advice, plus." There should be no presumptions. Those are not in the bylaws. What we're proposing is that the GAC has the abilities that it has [to issue] GAC consensus advice, essentially solely in connection to what's already written in the bylaws. So, if we get there, which I think we should, I think there are going to be some cleanup edit in the Applicant Guidebook as a result of that. We can call those out in a footnote or whatever.

But, if we're not going to develop a model that works for everybody, and if we're going to stick with the old chaos model, then these paragraphs we should look at and keep in. When I deleted them, I was trying to convey that they are substantially redundant if we simply just acknowledge the existence of the ability of the GAC to issue GAC consensus advice. Thanks.

JEFF NEUMAN:
Thanks. I'm still looking at this Paul because I don't think you deleted this one—Rationale 3—because this is talking about the presumption.

Let me go to Kathy and Anne.

PAUL MCGRADY: Jeff, I'm sorry. Apologies. You're right. That was the prior two paragraphs, not this paragraph. Thanks. Apologies.

JEFF NEUMAN: Okay. So disregard what Paul said. He actually kept this the same language that it was for the changes that leadership made based on the conversations at ICANN.

Let me go to Kathy and then Anne.

KATHY KLEIMAN: So the language that you walked us through—this is a question, Jeff—back to Rationale … So it was leadership that deleted Rationale 2, and then the edits that we're looking at [in] the redline on the next page (Page 17)—can we advance to that, please?— are from leadership? And this what you were reading in the clean version? Just checking.

JEFF NEUMAN: I was reading the one that's labeled Rationale 3, not—

KATHY KLEIMAN: So the edits that we're seeing on the screen now are from staff or from Paul? This is getting really confusing.

JEFF NEUMAN: The clean version is from leadership and staff. It has none of the changes that Paul has recommended. That's what we're—

KATHY KLEIMAN: But whose redline are we looking at on the screen now? Is it Emily's? Or is it Paul's? In other words, if we like the clean language or at least willing to go with it, are we looking at those edits now or are we looking at something else? Thanks, Jeff.

JEFF NEUMAN: For Rationale 3, the set of edits you're looking at were written in by Emily based on discussions with leadership and with staff. I don't believe there's edits in there from Paul on this one. I know the colors are confusing because some of it looks like the red that Paul has used, but it's a different color.

KATHY KLEIMAN: Okay. Thanks.

JEFF NEUMAN: Anne, sorry. Go ahead, Anne.

ANNE AIKMAN-SCALESE: I think I also commented with this in our ICANN67 meeting, but I think that we need, when we delete this language about creating a strong presumption for the ICANN Board, to add language that makes a direct reference to the force of GAC consensus advice under the bylaws because it's not fair to applicants if they don't know in advance that it takes eleven directors to counter GAC advice. So we need another reference to the bylaws here to substitute for this.

I agree with the recommendation to delete the "strong presumption," but we need to refer applicants to the bylaws section that actually governs because, otherwise, it's not fair to applicants, particularly those that don't know our system and don't know the bylaws. Thanks.

JEFF NEUMAN: Thanks, Anne. It is referenced in Footnote 19. Now, we're not writing the guidebook here, so that's really for ICANN and the IRT. But we do cite the bylaw[s]. If you scroll down to Footnote 19, you'll see the full bylaw quite.

ANNE AIKMAN-SCALESE: Jeff, footnotes are not clear to … I think it should be clear from the working group that the AGB language should have substitute language that refers the applicant to the bylaws in terms of the strength of GAC advice. We don't want people to be saying, "Gee whiz, I didn't know that. I didn't know that that's how strong the bylaws are on GAC advice." So we should say, "substitute a reference to those bylaws provisions," expressedly in our recommendation.

JEFF NEUMAN: Okay. I think we can do that with a couple wording changes as you just mentioned about substituting. So omitting the sentence and substituting in language that … Yeah, I think we can do that pretty easily.

Moving on, because do want to get to more of the substance on this, the recommendation with Rationale 4—again, I don't think Paul has any proposed changes on this one—says, "The working group recommends that GAC early warnings are issued during a period that is concurrent with the application comment period as discussed in the 2012 Applicant Guidebook. To the extent that there was a longer period given for the GAC to provide early warnings above and beyond the application comment period, the Applicant Guidebook must define a specific time period during which GAC early warnings can be issued."

That addresses your question earlier, Anne. We're not saying a specific time period because that may be adjusted depending on the number of applications and other factors, which we talk about in a different section of the guidebook. We're just saying that it really should be the same as the public comment period. But, to the extent that the Board decides to give the GAC longer, then there should be that mechanism described in the guidebook so an applicant can have some predictability [inaudible]. It says in the guidebook that the Board can give an extra 90 days or whatever it is just so that it's not … In the last round, in 2012, it was, "Okay, we'll give you an extension," but there wasn't necessarily a cutoff date.

Any questions or comments on that?

ANNE AIKMAN-SCALESE: Yeah, Jeff. Just as a follow-up with respect to the earlier comment about time periods, when we say here, "as described in the 2012

Applicant Guidebook," that could be a little bit confusing because that might mean we're recommending the same comment period.

JEFF NEUMAN: Yes—

ANNE AIKMAN-SCALESE: Could we just end the sentence with "the application comment period"? Or is—

JEFF NEUMAN: Yeah. Thanks, Anne. I see that and I think that makes sense.

ANNE AIKMAN-SCALESE: Okay, thanks.

JEFF NEUMAN: Does anyone have an issue with that: just ending it after "application comment period"? Then, if anything, we can cite to another place in the report that talks about the application comment period but not then guidebook. I think that's right, although, in the footnote … Yeah, I think that's right. I think we take out Footnote 20 and, if anything, refer to the applicant comment period discussion in this. Good catch.

The next one, Rationale 5—pretty short one—is, "Governments issuing early warnings must include a written explanation

describing why the early warning was submitted and how the applicant may address the GAC member's concerns."

We had a discussion with certain GAC members on this section during ICANN67. I think they understood this one, but some of them had questions of, "Well, what if the GAC member doesn't think that their concern can be addressed?" That came up. I don't think we had an answer for that. I'm not sure we need an answer for that. I think some people did say, "Well, the point of early warnings is really to help applicants address concerns. It's not the same as GAC consensus advice. So, if you're going to file an early warning, it's most helpful to have a way to progress and move forward."

Does anyone have any thoughts on that?

Donna is stating, "There's a distinction between early warnings and GAC advice. An early warning was generally made by a single government."

That's true. So Donna is right. But it was also hopefully a mechanism where … Certainly you'll see in the next recommendation … So let me do that one, too, and then I'll come back – I see Paul and Christopher in the queue—because I think these are related. So, "Applicants must be allowed to change the application, including the addition or modification of registry voluntary commitments to address GAC early warnings and/or GAC advice. Relevant GAC members are strongly encouraged to make themselves available during a specified period of time"— whoops, I think there's an extra word ("period") in there—"for direct dialogue." So we should cross out that second "period."

Sorry. Let me read this again. "Relevant GAC members are strongly encouraged to make themselves available during a specified period of time for direct dialogue with applicants impacted by GAC early warnings or GAC advice to determine is a mutually acceptable solution can be found."

So those two recommendations, I think, really relate to each other, at least with respect to GAC early warnings.

I see Paul and Christopher. Paul, please go ahead.

PAUL MCGRADY: Thanks. I apologizes for consuming so much oxygen today. I think we should leave Recommendation 5 the way it is, even though, when you read it together with 6, it's pretty clear that what the community is hoping for is that the GAC country issuing the early warning will issue a warning and come forward with ideas and be available and will talk and something can get worked out.

But it would be a perverse outcome for the government to say, "Well, I really don't know what can be done here, other than the applicant withdrawing it, so I'm not going to issue an early warning, and I'm going to submarine this application." I don't want to get on the wrong side of an entire government if possible. So I'd rather know, even if the news is really bad. Thanks.

JEFF NEUMAN: Thanks, Paul. Christopher, go ahead.

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CHRISTOPHER WILKINSON: Thank you, Jeff. Just a [rappel]. My recollection is that there is, on the record in the Montreal communique, a request, if not just a suggestion, from GAC members to be warned in advance of any application for geographical names. I don't know what exactly GAC had in mind, but I know from previous experience, independently of all of the above, that applications for geographical names will become highly sensitive. So I just wanted to put that on the record and recall to you all that, to the best of my knowledge, GAC members have suggested that there should be an early warning system for geographical names. Thank you.

JEFF NEUMAN: Thanks, Christopher. I think we talked about, last time, with public interest commitments, that we recommend a searchable—I'm forgetting the exact words—improved access to commitments that are made, including what the GAC had put in its Montreal communique. I believe that's where it came from.

So we made it through the recommendations. I think the … sorry. I was just reading the chat to see if there's things we need to cover. On, I think, the first couple of recommendations, Paul wants to get a small group together, which I think makes sense. So, in the action items, we will ask to see if there are people that are interested in working with Paul to see if that clean language we have now can be changed in a way that would satisfy the working group. So we'll put that in the action items. I think that's a good idea, but I only think it really was with respect to the first couple of recommendations and not to ones that were labeled 3 through 7. I

think those are fine the way that they are, or subject to some of the comments that were raised during this discussion.

In the deliberations section—just scrolling through; you can read this—there were only a few changes. There was a sentence added in there for Rationale 0, but it basically stayed the same. We crossed out the rationale that was for Rationale 2 but included some of that in 3. So most of it is still there. It's just either moved around just because we moved around some of the recommendations.

In the new issues on Part C, this is another area … "The working group is currently considering whether additional work may be needed to harmonize the PDP recommendations with Recommendation 33 from the CCT-RT, which was directed in part at Subsequent Procedures." That recommendation is quoted, which states, "GAC consensus advice to the Board regarding gTLDs should be clearly enunciated, actionable, and accompanied by rationale permitting the Board to determine how to apply that advice." Then there's, "ICANN should provide a template."

So some of that recommendation, I believe, we've already addressed in stating that there should be a rationale and quoting the language that we did. The part that we have not addressed is really the actionable component—when it gives advice to the Board—and the second part, which is that there could be a template to give to the GAC as to how to file GAC advice.

Now, is this something we want to provide more information on? Is this something we think we've already addressed and don't need

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to? Let me throw it out there. Is it feasible to provide a template for the GAC when it's filing its advice, or do we just leave that to the GAC because they provide advice the way they do it? Should we leave it to an IRT? These are questions, like I said. But the part I think we don't have in here, which I think is a good add, is the whole point about GAC advice being actionable by the Board. We talk about a clearly articulated rationale. If you look at Recommendation Rationale 1, if you can scroll up to that … Now, again, whether this gets changed by the small group that's working on it we'll see, but do we want to add the actionable concept in this paragraph?

So we could say, "GAC advice must include clearly articulated rationale." And we could even say, "as recommended by the CCT Review Team should be actionable," or, "should permit the Board to determine how to apply that advice," or something to that effect. I think that's the most logical place.

Donna, please?

DONNA AUSTIN: Thanks, Jeff. I was going to ask the question, "Actionable by who?" but I think you just stated who that should be. So perhaps whatever the advice is must be actionable by the Board, but then I think we get into another conversation about what does "actionable" mean. So it starts to get a little bit complicated.

Jeff, just as a follow-up, I wondered, as we're going through this, whether there's any way that we could provide a recommendation that encourages the GAC to provide some kind of guidance for

applicants about what strings that they would find concerning … Or something like that. I'm starting to think that we're putting all these recommendation in place, which are fine, but what would be really helpful for applicants is to understand, "Well, how do we know whether we're going down the wrong path with some of the strings that we're thinking about?" So perhaps it might be helpful to have some guidance from the GAC up front that might address that. Thanks.

JEFF NEUMAN: Thanks, Donna. I'm assuming you're talking about those areas [that] we may not already know from previous advice? Because I would assume that, if we just blankly ask that question to the GAC, they would say, "Well, we've already provided GAC Category 1. We've already talked about exclusive generics." There's also some advice on kids-related TLDs, I think. Or it might have been just .kids. I have to back. I think it would be good for us to figure out how to incorporate that advice or whether to incorporate that advice first and then, above and beyond that, to see if there are any other categories that they are currently concerned with.

As the gentleman representing the government from Brazil has stated, advice can also be deduced from the early warnings expressed by the GAC.

So I think we, being staff and leadership, have an action item: to see if we can gather up again the different types of categories of advice that the GAC provided. I think was as a working group should certainly work on whether to incorporate that advice,

modify that advice, or not recommend that advice. We really should, before going to the GAC, do that exercise.

Donna, is this a new hand?

DONNA AUSTIN: Yeah. Thanks, Jeff. That's a fair thing for staff and the team to do, but, given that we have a number of GAC people that are now participating in this effort, it would make sense to work with them because maybe things have moved on since that GAC advice that we're not aware of. I think, because we have so much angst over all of the GAC advice and the early warnings, it would be really helpful, given that we do have members from the GAC participating, if they can help in articulating that. Thanks.

JEFF NEUMAN: Thanks, Donna. I think Cheryl is in the queue to move on to Any Other Business.

CHERYL LANGDON-ORR: You're reading my mind, Jeff. Well done. Yes, you did promise Any Other Business and you've now got five minutes left in the call.

JEFF NEUMAN: Okay. I noticed Kavouss has his hand up. Kavouss, do you want to make a quick comment? Then we will go that quick discussion on Any Other Business, of which I think Cheryl has already given our view. Go ahead, Kavouss.

Kavouss, I think you're muted, so I'm going to go on to Any Other Business. This will be reflected in the action items.

If we can get Kavouss … "Leave it until the next meeting." Okay. Thanks, Kavouss.

Obviously, the world is going through a crisis at this point. A lot of us, if not all of us, I think, are hopefully quarantined or isolated and doing all of our work from home. At this point, because it seems like everyone is, at least to our knowledge, still working, we're going to keep the calls on the schedule. Obviously, we record all of the calls, and the e-mail lists are open. We know that this is a dynamic situation. So things could change, and they could change rapidly. I think, at this point, other than face-to-face meetings which likely won't happen for a number of months, with respect to these conference calls and the work that we have, we're at the point of keeping this going.

Cheryl, please jump in.

CHERYL LANGDON-ORR: I just wanted to hear from Phil and have him articulate his particular issues or concerns.

JEFF NEUMAN: Phil, are you still on?

CHERYL LANGDON-ORR: I did check. He was still in the room before I called on him because I do that as a manager of a call.

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JEFF NEUMAN: Phil, do you want to speak?

Okay. I don't hear—

CHERYL LANGDON-ORR: I'm not hearing anything.

JEFF NEUMAN: Yeah.

CHERYL LANGDON-ORR: We tried.

JEFF NEUMAN: Yeah. We tried. Phil, if you want to send around an e-mail, we can respond to that as well.

Please, everyone, stay safe. Take care of yourself. Take care of everyone else. If you don't have to go out, please don't. We want everyone healthy so we can all get together maybe later this year—definitely next year—to celebrate that this has ended and we can all go about our daily lives. So please do take care of yourselves.

Our next call is … Let's see. Today is Monday. So it is Thursday at 03:00 UTC, I believe, which for many people will actually be late on Wednesday late or very, very early Thursday morning. We will start the topic of applicant support. I think that one is not as

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controversial. If we get through applicant support, then we will move on to the next topic, which I'm forgetting off the top of my mind, but we will certainly put it in the agenda for the next call.

Everyone, take care. We'll talk to you on Thursday. Or Wednesday for some of you.

CHERYL LANGDON-ORR: Bye for now.

[END OF TRANSCRIPTION]