ICANN Transcription
GNSO New gTLD Subsequent Procedures Working Group
Monday, 23 September 2019 at 14:00 UTC

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.
Attendance and recordings of the call are posted on agenda wiki page:
https://community.icann.org/x/eYTkBg
The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page
http://gnso.icann.org/en/group-activities/calendar

JULIE BISLAND: Good morning, good afternoon, and good evening, everyone. Welcome to the New gTLD Subsequent Procedures Working Group call on Monday, 23 September 2019.

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 at this time, could you please let yourself be known now.

Hearing no one, I would like to remind all to please state your name before speaking for transcription purposes and please keep your phones and microphones on mute when not speaking to avoid background noise.

With this, I will turn it over to Jeff Neuman. You can begin, Jeff.

JEFF NEUMAN: Thank you very much. Welcome, everyone. Yes, I know this is a little bit earlier for some. I am actually in Europe this week, so it's a good time for me. But that's not why we switched it. I didn't switch it. It was switched to avoid a conflict from what I understand.

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.

Our agenda is pretty much the same as it has been for the last several weeks. We are going to just continue on with objections, we have a lot of stuff still to cover, and then get into accountability mechanisms. I know that community applications is also on the agenda, but I don't think we'll get there. But certainly just so you can see what's coming up next on the next topics.

With that said, let me just ask to see if there are any updates to any statements of interest and/or any new topics or things that you want to cover under any other business. There are two. Hold on. Okay, Kathy has an opening question. Sorry, Kathy, I just saw this now, so please.

KATHY KLEIMAN: I just posted it, Jeff. And apologies for the drill or something that's in the background. Good morning, everybody. Jeff, I have a question. Where are we embodying the agreements as we go along in this discussion? Same for the last discussion, say, on comments. Where can we go to see – outside of transcripts and chatroom notes – where can we go to see agreements like response comments, reply comments that we generally agreed on?

And here too with the oppositions, like separating out the community objections, the CPE objections, and distinguishing them from the more traditional community objections, one of the three major types of objections. These agreements, where are they being embodied? Thank you.

JEFF NEUMAN: Yeah, thanks, Kathy. It's a good question. It does take – we do go through all of these documents and ICANN staff goes through these documents. We are producing a draft. Ultimately, we're getting to a final report, but the next draft and leadership are working on. So that's ultimately where the agreements will be documented, but it does take a little bit of time.

The things that we brought up, let's say, on Thursday like making sure we're clear as to community party evaluations versus community objections versus other types of objections, that stuff won't appear in here yet because we just had a call. That was on Thursday.

So we should be able to see all of these in the next draft of each of these sections that come out. We'll provide some more information about that in the coming meetings. I'm going to hopefully have a draft section that you all can see, but at this point [that's all I can give you].

KATHY KLEIMAN: Jeff, can I follow up briefly?

JEFF NEUMAN: Yeah. I'm just wondering where the feedback is coming from.

KATHY KLEIMAN: Got it. Thanks to whoever muted their line. Okay, so what about a section at the bottom of chatroom notes. No, at the bottom of staff notes at the end of every meeting? That doesn't put in final

language but puts in areas of agreement. You can even do clear areas of disagreement as well, but areas of agreement and captures it so that all of us can look at it.

We're trying to continue these discussions, right? So we need to be able to look at it in real time even if it's not the final wording to make sure that it has been captured. Because if you captured something that we didn't agree with, we'd want to tell you in this meeting.

So what about something at the end where other people might put action items? We might put areas of agreement or disagreement, clarifying what had come out of the discussion. That way we could all read it and know that our ideas were captured in the conversation that we spent so long with you to do was captured. Thanks.

JEFF NEUMAN: Thanks, Kathy. I will address with ICANN org, our policy staff, and let's see what we can do. I think that's a good idea. I know that we [aim] to get the notes out really quickly after the meeting, so that does make it a little bit more difficult to editorialize because we like to get the notes and the recordings out. So let me just talk to them and see what we can do. All right, Kathy says, "Thanks." Okay, great.

Just looking to see if there are any additional questions. I don't see any. Let me just doublecheck. No.

All right, so where we left off was an important subject. The last time, we talked about this different type of objections. We talked

about some of the things that came out of the public comments, more transparency. We also distinguished between the types of objectives and we should make it clear when we're talking about community priority evaluation versus community objections. We talked about impartiality or [freeing] conflicts of interest off of panelists and some recommendations from there.

Right now, we're talking about a section on whether disputes can result in amending an application and/or amending public interest commitments in response to objections or in response to concerns raised in an objection.

So this could apply to things like even before a decision is made or in theory even after a decision is made on an objection in the form, let's say, of a remedy or something like that.

INTA and the Registry Stakeholder Group and the IPC and ALAC have some qualified support for this notion of amending an application or public interest commitments in response to the concerns raised. But there's also a concern of not making this mandatory. In other words, they don't want to circumvent other options to overcoming an objection. That's what INTA states.

The IPC supports this provided that the dispute resolution provider/panel/arbitrator/whatever that makes the decision determines if the proposed PIC or application amendment resolves the objection. So I'm assuming that's – sorry, that wasn't the IPC. That was the Registry Stakeholder Group.

Then the IPC wants to make it clear that they support this but provided that it PICs are published for public comment.

EN

ALAC states that an applicant must have the choice of withdrawing its application in the event the objector prevails. The working group should consider refunds or withdrawals as well as an appeals mechanism for community objection dispute resolution process.

So let's take that ALAC comment a little bit, that last part, let's take that separately. Let me ask if there are any questions or comments on the other comments from INTA, Registry Stakeholder Group, and the IPC.

I know, Kathy, you have noted the objection of the Non-Commercial Stakeholder Group that because PICs were not part of the Applicant Guidebook, Non-Commercial Stakeholder Group still does not support PICs as a method for resolving disputes. And there's also a comment here about whether this should be in the – we should harmonize this with the section on global public interest.

Sorry, there is one more comment. I think it's in this section. Yes, that states that there should be perhaps a narrower opportunity to amend public portions of an application in response to concerns raised and pursuant to a reasonable settlement of an objection. That's what Kathy has written.

Are there any questions, comments about these different things so far before we get to ALAC and ICANN?

KATHY KLEIMAN: Jeff, my hand is raised.

JEFF NEUMAN: Great. Okay, thanks.

KATHY KLEIMAN: Happy to wait for others. I don't see. Are there other hands in the queue?

JEFF NEUMAN: I'm looking. Sorry, my view is a little – for some reason – yeah, why don't you go now, and I apologize if anyone is ahead of you, but I'm a little frozen at the moment. So, Kathy, [inaudible].

KATHY KLEIMAN: Okay. So here let's do what we said about separating the legal rights objections, the community objections, the public interest objections, and the CPE because I'm not as familiar with that process and it sounds like it was very different than what was defined in the guidebook for the others.

So to ALAC, first of all, the applicant must have the choice of withdrawing its application in the event the objector prevails. This one's easy. The applicant must withdraw in the event the objector prevails. So that's taken care of.

In terms of what the modification would be in response to an objection, I may be the only one who did this on this call where [I was] community objector and the response of the applicant was to significantly change their application, which they have the right to

do. That was sent back to ICANN and then presented in the community objection to the International Chamber of Commerce.

The beauty of sending it back to ICANN was that the changes to the application, the proceeding, the community objection is not public until the decision, but the changes to the application were public. So it's not just the [objector] who can see the changes to the proposed application; it's the whole community.

So it went out on public notice, I don't know, 30 days, whatever it was. And everyone could see the proposed changes to the application, and we could comment in addition to other people commenting on it. Then that was presented back into the objection which was then dismissed because the changes that we needed had been made.

So I think we have to – so changes to the application sound fine, but voluntary PICs don't make any sense here. Voluntary public interest commitments, what you're changing may or may not have anything to do with the public interest commitment, and voluntary public interest commitments are becoming a dumping ground.

So a change to the application may be to change who is included. So let's just take an example, and this has nothing to do with the real facts, of .kosher. If you have multiple applicants in the community complaining about .kosher, the change to the application which should be public and everyone should see it so they can comment and also feel included should be to be wherever that is going to settle that with the community. And different communities claim the mantle of being the one to label things kosher.

But why should ICANN be brought into enforcing that? Voluntary public interest commitment, that doesn't make any sense that ICANN would somehow go into the Jewish community and enforce the standards of kosher or even be held to know what they are.

So voluntary public interest commitments, which the Non-Commercial Stakeholder Group and the public interest community have a longstanding objection to, actually don't really belong here. Make these application changes, and that way everybody can know about them, incorporate them, but they'll probably have nothing to do with public interest commitments. Thanks.

JEFF NEUMAN: Okay, thanks, Kathy. There are a bunch of things to unpack there. Let me start with the thing you said at the beginning where you started with objectors, the applicant must withdraw. I think there are different types of objections, Kathy. So if you filed a string confusion objection, the remedy for that if it's confusing to another application is that you get put into a contention set. So it's not that it has to fail or that the applicant has to withdraw. And then another objection is a community – actually, no, sorry. The community-based objection, it would fail and it would result in a removal. But I would have to go through each of them to figure out if all the objections result in having to withdraw.

But let me also – so I see Susan is in queue. So let me go to Susan, and then we can talk about some of the other comments. Thanks. Susan?

SUSAN PAYNE:	Yeah, thanks. Hi. I put my hand up actually because I wanted to ask you a few questions, if you don't mind, Kathy, just to try and understand better what you were saying.

I'm not quite sure where to start, but I'm interested in trying to understand why you feel there's a particular distinction between some kind of a restriction that's put in as a public interest commitment and something that maybe is made as an amendment elsewhere in the application. And leaving aside at the moment that generally speaking the registry agreements are very standardized and so there are only limited places where personalization can be made.

But you said something to the effect that you didn't think in an example of .kosher that it should be ICANN's job to be enforcing those standards. But it seems to me that if an amendment is made somewhere else in the agreement, it's still an agreement between ICANN and the applicant. So still if there was a breach in compliance with whatever it is that's been offered by the applicant in order to resolve these concerns, it's still somewhere in that contract and therefore there's still a role for ICANN in enforcement of compliance.

And that's not enforcement of compliance with the rules of kosher per se, but an enforcement in compliance with whatever the applicant has said that they will do which was intended to meet the concerns of the relevant part of the community.

I'm possibly just misunderstanding what you mean and what the distinction is, so I would really love it if you could explain that. But I'd also, I suppose, make a comment which is that to my mind all amendments are going out to public comment. If someone proposes a PIC, that goes out to public comment too. Similarly, if someone were to be making a change somewhere else in their registry agreement or something to their application, that also goes out to public comment. So I'm not quite clear why you think resolution by means of a PIC is somehow less satisfactory. Again, so I just wonder if you can explain further what your and your group's thinking is.

JEFF NEUMAN: Thanks, Susan. Kathy, I'll put you in the queue. Let me just add one more question if you want to address that too. In some ways, just to add on to what Susan said, a PIC is in some ways better than putting it as part of the agreement. If it's part of the agreement and not [in the] PICs, then it's only ICANN Compliance that can review any potential breach of that provision. But if it's in the PIC, you have a PIC DRP where ICANN has the ability to outsource that decision to a third party that's not ICANN. We can talk about whether we think that third party is qualified or not, but at least it goes to a party outside of ICANN.

Kathy, since it's a lot of questions, I don't know if you want to get in the queue and respond.

KATHY KLEIMAN: Yes, I actually need to go back to the comments because there are a lot of comments before us on PIC DRPs. So if someone else wants to speak for a little bit, I need to quote. You need to know the language, not off the top of my head, but that's been filed before us on these issues.

JEFF NEUMAN: Okay, I will reserve that right, Kathy, and of course you can respond on an e-mail or I think we'll get into – actually, no. PIC DRP is – oh, that is part of our dispute. Sorry, I was thinking about a different one. So, yes. Okay, that's fine.

KATHY KLEIMAN: But briefly, Jeff, PIC DRPs and applicant amendments are very different mechanisms. There may nothing public interest about the changes that are made pursuant to – so an application change is an application change to the contract between the registrant and ICANN.

Calling all of these changes public interest commitments does route them through a different dispute mechanism, dilutes and changes and distorts the public interest commitments [inaudible] voluntary which again we have no consensus on going forward with voluntary public interest commitments. We do have a consensus on going forward I believe with mandatory public interest commitments.

So I would urge this group not to use a mechanism that we don't know and actually there's huge objection to its existing because it didn't exist in the first round. It was one of those things thrown in

and virtually anything became a voluntary public interest commitment, including things that were actually opposed to consensus policy. So we don't want the public interest commitment dumping ground.

So the best way we're talking about generally these objections have to do with some kind of significant change and can be reflected in the application itself, and that's an appropriate – because we're actually – these objections are about fundamental changes to the application. No one's asking generally for more types of content protections. They're asking for fundamental changes in the application, and that's where it makes the most logical sense that the changes be. Public interest commitments tend to be nonstructural changes. And, again, there's no agreement about voluntary PICs, so it's not a mechanism that exists yet. Thanks.

JEFF NEUMAN: Okay, thanks, Kathy. Just so I understand, you're to opposed to resolving disputes through some form of amendment of the application/agreement. I think one of the big parts is calling it public interest commitments and the ramification of calling it a public interest commitment. But do I understand you do support the right to resolve objections through some sort of amendment if it goes out for public comment?

KATHY KLEIMAN: It was done in the first round and it worked well in the first round so, yes, it is a good way to capture. And I wish we were

distinguishing types of objections. I think we'd find a clearer process. But to community objections that went through the International Chamber of Commerce, there was at least one that was settled by significant changes to the application and then brought back to the community objection which was then dismissed because the issue had been resolved. Thanks.

JEFF NEUMAN: Okay, thanks, Kathy. So then to move on to the other parts of the ALAC before we move on to ICANN, they talk about refunds and withdrawals. The appeals mechanism we'll get into in the next subject on accountability mechanisms, so I'm going to reserve comment on that one. But on the refunds and withdrawals, I think there already are mechanisms to withdraw and to get a proportional refund. We haven't talked yet in this group as to whether those proportional refunds are the right amounts or the right thing to do, but I think they already are subject to those.

ICANN org raises a concern. They want to clarify. Request to clarify expectations on the applicant objector and ICANN org to satisfy the in response to concerns raised in an objection part of the preliminary recommendation. In the case of community applications – again, we're talking community here – that might elect community priority evaluations in a later phase of the program, consider the potential impact to other applicants in the contention set if the community applicant is provided the opportunity to change its application or add [public interest] commitments.

So that's a very unique case with community objections which would have impact not only on the objection itself but on the priority evaluation. And in the priority evaluation, if they're successful, that could then put them ahead of others in the contention set.

Is this something we have concerns with? Some people may say if it's a community-based application that can be improved by responding to an objection, then at the end of the day is that a problem even if it does give that applicant some advertise over the other applications in the contention set by solidifying the community priority evaluation for that applicant.

One might argue it's not a problem because we've chosen to favor community applications over others and you're making a community application that much stronger and resolving any disputes. So, yes, it would make it easier for that applicant to prevail over the applicants. But at the end of the day, the ICANN community has chosen to favor community applications over standards applications.

Kathy, your hand is up, and then I will take a look at the comments. Is that an old hand, Kathy?

KATHY KLEIMAN: It is an old hand, but one of the questions is, can we give it a new label: CPE objections instead of community objections? Because we already have a community objections. Thanks.

EN

JEFF NEUMAN: Thanks. Help me understand this. Maybe this is my confusion. But there is no objection process to community priority evaluation. A community objection is filed for one of two reasons. It's either someone in the community believes – or obviously you have to be more than just someone – but a person of standing within the community claims that an application for community status does not meet the requirements. Then the second form of objection is where someone applies for a standard application but they are members of a community that believes it will be impacted. So neither of those are objections filed at the community priority evaluation process. Those are just two types of community objections.

So maybe it's just me that's not understanding, but let me go back to the comments. Let's see Kathy's comment. Okay, sorry, Justine says we should not confuse community objections with community priority evaluations. Okay, that's what I was trying to do there. CPE isn't an objection. Plus one [to Susan]. Okay, so there's still, because of Jamie's comments last week, there may have been some confusion.

So let me go to actually, Jamie. If it's okay, Kathy, if I can put Jamie. Oh, Kathy lowered her hand. Jamie, please?

JAMIE BAXTER: Thanks. There are two points I want to make here. One is that I wouldn't consider there being community priority evaluation objections. However, there is opposition, and opposition must be supported with a purpose in order for it to be considered opposition. I wouldn't consider that an objection, although I think in

the last round we saw how some people used it as an opportunity to express opposition.

And then the second point I want to make is going back to Susan's point. I want to be really clear about this. Unfortunately, I feel like it's not quite coming across the way I'm intending it.

When I was providing examples of how the rules and the guidelines for objections should be set prior to the application window closing, I was using community priority evaluation and the fact that those guidelines and principles weren't solidified prior to the application window closing being of great concern. Because what we saw is that they were a moving target after applications were accepted.

I'm trying to point out that it's important, if this group thinks it is, that we force objections to also be solidified prior to application window closing. Because I would hate for the rules and the guidelines to shift after the window closes the way they did for community priority evaluations. In no way am I trying to conflate the objections as community priority objections. It's more about process here. So I hope that comes through this time so that we can put that to rest. Thanks.

JEFF NEUMAN: Yeah, thanks, Jamie. So if I can just restate I think what I heard you say, then you can tell me if I'm wrong. So what you were just talking about really relates to the community priority evaluation process, including the level of opposition to a community

application. So those things will be dealt with in two topics from now when we talk about community priority evaluation.

And your big point is, which I think we're all agreed on and we've talked about before, is making sure that all of the rules and the criteria for scoring the community priority evaluations, which include scoring the opposition component which was one-fourth of the components, is standardized, is known upfront before the application is even filed, is clear, and is followed, I think is your point.

Did I get that correct?

JAMIE BAXTER: Correct. And that no additional guidelines or reinterpretations of the objection process are permitted by the service providers for objections the way they were permitted for community priority evaluations.

JEFF NEUMAN: Yeah, thanks, Jamie. So I think that's clear for me now. But, Kathy, I think you still may have from looking at the chat – so CPE opposition is very different than a community-based objection. We need to use those terms, and I need to do a better job using those terms consistently.

So as part of CPE, community priority evaluation, one of the four main components is the level of support/opposition for the community-based application. That is not an objection. That is a part of community priority evaluation where the evaluator panel

tries to assess the level of support and/or opposition to a particular community application. That is at the evaluation stage. That's not an objection.

An objection, a community-based objection, is filed for one of two reasons. Number one is a member of the community that does not believe that this application can be or could ever qualify for a community. And the second type of objection which is actually the more prevalent objection is that there's an application for a standard term where someone in the community thinks they're going to be adversely affected by it not being a community application.

So I hope that makes it a little bit clearer. It's one of those fuzzy topics because opposition in a lot of cases was dragged out and oftentimes seemed like an objection.

Let's see, Justine says objections filed by community objections should be time limited as with other objections, which it is. [inaudible] legal rights, limited public interest. CPE should not be used to submit an objection essentially. So I think that's exactly right, and Jamie supports that. So we should do a good job in making that clearer, that they serve two different purposes.

KATHY KLEIMAN: One quick follow-up. So clarification: we're really talking about four different categories of discussion/opposition/objection. Thank you for the clarification. I just want to make sure that the interpretation that Jamie is talking about only goes to the CPE opposition because we've got pretty clear, we may be talking about them, for

EN

community objection. But I want to make sure we're not changing the other objection processes inadvertently in this discussion. Thanks.

JEFF NEUMAN: Yeah, thanks, Kathy. That is the intent. I think Justine summed it up in her comment which says in theory it all makes sense but practically it could be difficult. But, yes, if I'm interpreting Jamie's comment – and Jamie's in the queue – it's mostly on the opposition component of CPE. And I don't think that there's discussion right now of changing anything with the objection process. Jamie?

JAMIE BAXTER: Yeah, thanks. Now that we sort of have a clear understanding of this, the point that is incredibly important and this will probably come up during the community priority evaluation is that the assumption after reading the Applicant Guidebook was that once a community applicant gets through public comment and gets through community objection, that would be the basis for any opposition going into CPE.

But what did not happen was what the guidebook suggested because ICANN allowed community opposition to come in weeks before CPE started. So when you read the guidebook from 2012, the only way that opposition could come in was through the objection process or community comments, which was only supposed to exist for 90 days.

So I think it's really important that change needs to happen in the next round around this because that's why there's confusion with what is opposition and what is objection. Because all the objection to an application and all the public comment should have equated to opposition but it didn't because additional opposition was allowed much, much later years after the applications were submitted. Thanks.

JEFF NEUMAN: Thanks, Jamie. And you're right. That will come up under CPE. We also talked about it in our public comment section. So I think it has come up multiple times, and I think we understand it and certainly it needs to be much more clear in the next version of the guidebook.

Okay, great, so let's then go to the next set of comments which are I think sort of on the remediation measures in response to objections. We may have covered a lot of these, so I'll go through them and I'll go quicker through the ones I think we've already covered. But please do raise your hand or chat if you have additional comments.

Jamie I think mentions that objectors should also be required to engage in remediation measures with the applicant before their objection can move forward. This could be, I guess, meditation but if it is, it has to be in a non-discriminatory manner between standard and community applicants.

The registrars believe that applicants should be able to responds to and remediate objections. Marques, which is a European

trademark organization, states that applicants should have the option of submitting a second choice alternative string. Where there is an objection or direct conflict, applicant can move to the second choice.

INTA states that remediation must be at the discretion of the applicant and might include the voluntary adoption of contractual provisions. Here we get into such as PICs or adopting an alternative string.

I'm going to go through all of these, and then we'll come back and talk about it.

The Registry Stakeholder Group states that where the community itself identifies a resolution that the applicant can agree do, they should be permitted to resolve the issue. Consider a mechanism to allow an arbitrator/panelist to identify remedies or cures that could address the detriment to the community, which by their community is not raised in the sense of a community-based objection but a general term community, which could be adopted by the applicant and would form a binding portion of the eventual RA. There is not a mention there of a PIC but just a general RA. The panel should not have the authority to go beyond the remedies requested.

The Non-Commercial Stakeholder Group, revisions must be done publicly such that other impacted parties have a right to comment on the proposed amendment.

And then the ALAC states that if we allow remediation measures, criteria must be clear and established in advance. And then

they're asking a standing IRT could consider, and then there are some principles here: fairness, the extent to which an application is capable of being amended. How does an amendment, if allowed, impact other applications? So there are lots of things that the ALAC points out that would need to, upon implementation, be addressed.

So if I can take all of these comments, it seems like provided that there's opportunity for public comment and that the changes are transparent, that they form a part of the agreement – and I'm not using the term PIC here but just in general – a part of the agreement, it seems like there's no opposition. Or at least I'm not getting the feeling there's opposition to that.

On the string issue on ability to change a string, I'm going to defer to the conversations that we've already had on changing the string. I know that we'll have future ones on that as well, so I don't want to get into the notion of changing strings on this call.

On the implementation measures, I think some of the things – not some, all of the things – suggested by the ALAC make sense as far as when this does get implemented, these questions need to be considered.

All right, let me go to the chat where I see there is at least one new comment. I can't get to it for whatever reason. There we go. It's a comment from Jamie. Oh, it's addressing community objections. So I think we've talked about that, but it seems to support the notion of engaging in dialogue to resolve.

Kathy, please?

KATHY KLEIMAN:	A question for Justine about ALAC. Well, first, Jeff, is it possible to clearly – you mentioned it – but to clearly cross-reference in the comments that concern that has been raised in addition to the concern about voluntary PICs the concern about changing the string? You mentioned it, but I think we should clearly put it in the comments and reference the number so that everyone can go see that because they're maybe not on the call today.
	But a question to ALAC [inaudible] what does a standing IRT do here? I'm trying to figure that out given that the objection processes are normally outsourced to other third parties like the International Chamber of Commerce. What's the thought here on the standing IRT and what they would be considering so that we can discuss it? Thanks.
JEFF NEUMAN:	Thanks, Kathy. If Justine wants to respond, she can. I can give you my interpretation. But let me see, Justine, if you want to address or you want to take that back and I can give my impression from reading the comments.
	All right, well, I will go on and give you my interpretation. Thanks. So I think what the ALAC is saying here is that the implementation team that's set up to implement these policies – so this is before the process even starts, before the window – our policies are going to go to an implementation review team. And this review team should consider all of these different things when finalizing the sections in the guidebook.

EN

The standing IRT part, I think that's a little confusing because one of our recommendations is to create a standing IRT for issues that arise after the launch of a process as far as helping with predictability.

So I think what ALAC means here, and it may have just in its comments done a global replace, I think this is meant to actually be the normal implementation review team that's set up to implement policies. So that was my reading of it, but I could be off. So I'll just give a minute here to see if Justine wants to respond to that. Yes, okay. Okay. Yeah. It was meant, Kathy, just to be the implementation Team that gets these policy recommendations after we're done with them, the two sections in the Guidebook. That's what Justine just put the comment in – great – in the draft. Kathy, does that make sense hopefully? Yeah? Okay, good.

The next question that we had asked in the initial report was – the community feels like there were some objections in 2012 round where they filed with the specific intent to delay the processing of applications for a particular string. Or actually, we believed that there may have been and we have the community to respond [inaudible] to the report, seeing if that was true or that was just our perception, and if it was true, how will that issue be addressed?

The NCSG has asked that we establish safeguards into the objection process that protect against potential gaming and other manipulations of the process. Before I get on to the Registries Stakeholder Group, it's probably a good idea to mention something we talked about in the last – I think it was the last call, it might have been the one before that – where we talked about the notion of a quick look mechanism, and I think as a group, we did

agree that a quick look mechanism did seem to make sense that someone could look and see if the complaint that its face was – I'll use the term frivolous but that's not the term that we use. I think that is one mechanism that we are building in or it seems like we have agreement to build in to the process to provide that kind of safeguard.

The Registries Stakeholder Group states that there may have been instances of objections filed with the specific intent to delay. They recommend that: (1) Individual entities should be limited to participating in either Objections or CPE, but not both. This was part of Jamie's point as well. And I think Justine had filed that comment up on chat as we're having a discussion of two bites to the cherry I think it was put by Justine in the comments.

Second thing is to implement and strictly enforce page limits on objections.

Third is to consider expanding the "quick look" which we've just talked about and I think we agreed on.

I think for those three, they seem to make sense. Let me stop there and see if there's any comments from the Registries and the Non-Commercial Stakeholder Group. Actually, no. Sorry. Let me just go to INTA real quick because that's the same topic.

INTA suggests the quick look mechanisms, processes which would allow for summary judgments. They're asking for costs awarded in clear cut non-cases, as well as clear application guidelines for applicants and clear conflicts of interest measures.

Let me go back to the comments in the chat because I thought I saw Kathy ask a question about quick looks. "Who would do the quick look – presumably the third party dispute provider?" Yes, Kathy. I believe it was limited public interest objection. There was a quick look mechanism that was done recognizing that a full dispute could cost the parties a lot of money, and if it could be disposed of in a quick look mechanism, that would be the optimal place. I think most people agree that that was a good idea to expand to all of the objections. I think it was two meetings ago we seemed to have agreement from the group as well as from commenters that that made sense to expand that idea.

KATHY KLEIMAN: Jeff, this is Kathy. My question is can we embody where we want that quick look to take place so that when this gets to the IRT, there's no question? It sounds like that the quick look would be done by the International Chamber of Commerce, the American Arbitration Association, whoever is delegated with handling these particular types of objections. And I think that would make sense because that's the group that's expert in the process. But I just want to make sure it doesn't get kicked to ICANN staff to do the initial quick look because we're outsourcing this on purpose to third parties that specialize in legal rights and other things. I'm just saying can we go to where we're going to lodge this quick look, because I don't think we've nailed that down yet. Thanks.

JEFF NEUMAN: Thanks. Yes, I think that is the point. Justine says, "I thought quick look was done by ICANN. So I think you may be thinking, Justine,

EN

about the PICDRP. For PICDRPs, ICANN Org does an initial look to see if they can resolve the situation. It's their choice – ICANN's choice – is to panel the dispute provider or the panel that they have serving for them. But that's unique for the PICDRP because in that case, it's ICANN using a dispute mechanism to enforce a part of a contract. But for this, for the limited public interest objection, which we have in the 2012 round, it was indeed the third party.

As Rubens says, they're much more likely to outsource this than to do it internally.

Alright, cool. The next question is, should ICANN continue to fund all objections filed by the ALAC? For those that may remember, in the last round, ICANN basically said that after many conversations and debates that if the ALAC wanted to file an objection based on either community or limited public interest, and it was limited to those two, that ICANN would fund the objection process. I think the ALAC filed one against .HEALTH I think was the one. I can't remember if it was both limited and community or just one, but I believe it was the only one that the ALAC actually filed. The ALAC did not prevail in that objection. I think that was the only one.

I think that answers Jim's question which string. It was .HEALTH. The only reason I remember that well is because I was at the time representing one of the applicants, so I do remember that well.

On this notion of continuing to fund the applications, the ALAC/Council of Europe, and Registries Stakeholder Group agree.

The ALAC, though asks for substantial guidance to Dispute Resolution Service Provider Panelists on definitions of terms such as community and public interest – as well as questions on objector standing. If you have the desire to read the .HEALTH objection and how that case turned out, I think you'll see that those are two of the terms that there was a substantial portion of those objections devoted to providing each sides of view of what public interest and community means.

The Council of Europe has a new idea to clarify ALAC's task in the Bylaws. We can note that in our report that that is obviously we cannot impact the Bylaws. We could obviously note that. it's something that might want to be looked at but that not something that we as a group can recommend.

The Registries Stakeholder Group has a new idea which is prioritize cost-controlling mechanisms, where possible, associated with any objection funded by ICANN.

Registrars disagree with having ALAC funded, objections funded. Or impose a limit and not make it unlimited

Non-Commercial Stakeholder Group also is of the opinion that ALAC should not be given special rights and privileges unless it's shown that they have standing in the dispute. I'll also note for everyone that the standing argument is also very interesting to look at in the .HEALTH case because it was of course a question as to whether the ALAC could stand in the place of an organization like the World Health Organization when the World Health Organization could've filed its own objection but chose not to. So I think those comments are well worth the read if you are

interested in this area. I tried to say that objectively regardless of the fact that I was on one side, and I'm not telling you which side I was on.

So I don't know why … Sorry, I'm looking at my version and the version up on the screen just to make sure. So, Kathy, I'm not sure the ALAC could object without standing. I don't think that's correct. I think the ALAC had to have standing that even though it was funded, it wasn't like the independent objector, so the ALAC still needed to pass the standing test. The ALAC did argue I think in the case that because it was funded by ICANN, it should not have the standing requirement. But I believe at the end of the day, it did. I can follow up to the list on that one just in case I got that wrong. I'll have to follow up.

The next set of comments were on – these are general suggestions so it didn't fit within one of the other areas we talked before.

Dot Trademark TLD Holding Company wanted to make sure that improved notifications and that there was enough time to respond to objections. In case that the e-mail notice could not reach the applicant, ICANN shall confirm with the primary contact by other means (telephone, fax, etc.). It may be worth noting that dot Trademark TLD actually was not primarily English-speaking company. They were based in – I want to say China, I think it's China. I think they had some difficulties in getting the notice and responding, so I think that was behind one of their suggestions.

The Council of Europe has new ideas. One of them is adversarial proceedings should be more widely used within string contention

and dispute resolution procedures; notably enabling concerned parties to provide their arguments during a hearing. So they're arguing for public hearings as opposed to just all being on the paper. They stated that parties should be provided with the possibility to respond to arguments raised by their opponents; justification of panel determination as well as of the final decision should be supported by more detailed reasoning fulfilling the fair process rules, explaining in detail key aspects of the case, as well as referring to the main arguments made by the applicants.

I think there were good comments. I seem to recall though that the decisions for community objections and limited public interest were fairly comprehensive. Whether you agree with them or not, I do recall them having a lot of details, so I'm not 100% sure of what additional things the Council of Europe is asking for and the decision, but I do understand the request for potentially a public hearing, which would of course increase the cost dramatically of objections. So I was wondering if anyone had any thoughts on the notion of public hearings, again which is not something that is contemplated in the current Applicant Guidebook or objection processes except in extreme – probably doesn't use the word "extreme" – but except in limited circumstances. Any thoughts on that? Is that kind of nice to have but not a priority? Kathy, please.

KATHY KLEINMAN: Does anybody remember what the Council of Europe's concerns were here? Did they point out any specific, because they're asking for more than public hearings? And I agree with you, Jeff. That would be very expensive and difficult, and the proceeding itself isn't public until the decision. But something is definitely [knowing]

at the Council of Europe. I was wondering if anybody who read their comments knows what examples they gave us and whether there is something there we can address.

JEFF NEUMAN: Thanks, Kathy. This is only taking a small portion of the European Council's comments. It's a really good paper, actually. If you read the whole paper, it mostly focuses on trying to incentivize more community-based applications, and that according to the Council of Europe, we should not be using the current strict contention rules, that it should be more of evaluation of the merits of applications as opposed to an auction. So the Council of Europe really is … and this kind of fits in with all of that, and basically stating that parties should be able to work out their differences and that essentially, at the end of the day, ICANN should incentivize more community applications. This is one way to incentivize it, to have hearings and a lot of parties to air their concerns so that they can be remedied.

I just see what's in the chat here. There's discussion of ALAC having standing. Then Rubens states, "The panelist in the ALAC objection said he was unable to differentiate between standing and merits of the matter in community objections, so he seemed to indicate that he wouldn't rule just on the standing." Thanks, Rubens. That is part of one of my hesitations that he acknowledged that they needed to meet standing, but at the end of the day, found there was no merit in the complaint and since it was intertwined with standing, the panelist decided to not have to separate those two out.

Kathy, you have your hand raised on the dot Trademark TLD, please.

KATHY KLEIMAN: Actually, I want to go back to ALAC for a second, then I'll comment briefly on dot Trademark which was indeed a Chinese company. Or is it a Chinese company?

On ALAC, there out of four comments – and I don't think we really captured this actually – reflect a concern about ALAC's task here and the definitions that have been laid out and the scope. I don't think we've captured this that the Registries, Council of Europe, Registrars, and Non-Commercial all have concerns about the special privileges that have been accorded to ALAC and perhaps defining them and limiting them in some way. That's what we're talking about here, and I don't think we've captured that and I think we should. I don't think we have as much background as we might although it's coming into the chat about how ALAC used its privileges. I don't think anybody objects to them. Well, some do. But there's a huge issue in clarifying them, so I don't know how we'd go back to that but it seems like we should.

I terms of dot Trademark, they've got a very, very valid concern. We're seeing this also in the Rights Protection Mechanisms when we're looking at disputes at the second level. We've got more and more IDNs and we've got more and more companies and registrants that don't speak English as their first language. Dot Trademark did not get notice of the objection, that's a real problem. The only problem with their comment is they say ICANN should confirm with the primary contact, and I think it's really the

dispute resolution provider should be put on notice. I think we're talking to the wrong party here. But the dispute resolution provider should be put on notice. They really need to reach out to the applicant by all channels possible and work really, really hard. Objections are a big deal. Work really, really hard to make sure the applicant knows what's been filed against them. And if dot Trademark didn't know – it's a big company that's a contentious company – then we've got a problem out there with people that don't speak English as first language. So I'm glad they flagged that in their comments and I think we should correct it. Thanks.

JEFF NEUMAN: Thanks, Kathy. I believe dot Trademark got the notice but I think it might have been later – or not that they got the notice later. Because they were not native English speakers, they may not have understood its ramifications until it was close to the deadline I think is one of their complaints. A notice did come from the dispute resolution provider. So the notice went to all of the applicants the way it was prescribed in the Guidebook and everyone had to have a contact to receive those types of notices.

But on the other point on the ALAC and the scope, the only special privilege that ALAC had in the last round was that their objections were funded, but they weren't given any other privileges. In other words, they still had to meet all of the criteria that any other objector would have to meet. I think they were trying to argue in here in their comments that they should be given automatic standing and be given some special privileges. But at this point, the only special privilege that was provided to the ALAC

in the last round was that their funding was given but they were not given any other special privileges.

So there is a debate there. Kathy says it's more than standing. Justine states, "I don't know what else you want to clarify with ALAC's ability to file objections."

Yes, it's more than standing. ALAC had to meet every other burden. It was not given the same privileges as the independent objector which is one thing that they had asked for, but they were not given those privileges. Even though the only privilege that I'm aware – and someone can correct me, I hope you do – that they were given, it was that their fees were paid for by ICANN. Kathy, please.

KATHY KLEIMAN: Okay. I think we should clarify that because it has been a question – last 20 minutes – that ALAC has no additional standing provided by their right to file cost-free objections. So then we reach the other bullet point – and I think other people should be speaking to this because the comments then say that there's an interest. I mean is there any limit to how many objections ALAC can file? It looks like if there's not, there's concern that there should be. Thanks.

JEFF NEUMAN: Thank, Kathy. They only filed one last time – I think it was partially because I guess it's pretty difficult to get the ALAC to all get together and agree and file an objection. Oh, there's three objections on one string. Thanks, Rubens. You're right. Yeah, I

EN

think part of the limitation was within the ALAC on getting their ducks in a row, if you will, to file an objection. But you are right to bring up the point that there's a number of people that made the comment that there should be some sort of limit. Obviously, I don't think the ALAC believes there should be a limit.

I'm not sure what else to say because I don't know how you limit it other than saying you get X dollars in funding or you get to object to one out of every thousand applications. I have no idea. I'm just making this up as I go along. But if we can think of other ways to apply limit that the ALAC would or could agree with, then that might be something worth entertaining. As Justine says, it's a high bar for ALAC to file objections. Kathy was actually thinking the same thing as some sort of ratio of objections to strings. Any additional thoughts on that?

Sorry, let me go back here. Anne Aikman-Scalese says, "Personally, I don't agree that there should be a limit on the number of objections ALAC can file. If there is significant interest in this idea, I can check with IPC. It seems arbitrary to specify a number."

Sorry, there's lots of people writing, so it jumps every time. Lots of comments.

Rubens says, "A reasonable limit for ALAC could be five if for each region, and they used less than that. So while there were no limits, they used that ability carefully."

Cheryl says, "Indeed, Justine, I am concerned regarding Jeff's comment about the entity getting its ducks in a row."

Justine states, "Kathy, I object to that."

Kathy says, "I'm just reflecting the comments. They're pretty clear."

There seems to be some interest from some on applying some limits. At this point, there are no limits. If we can come to some consensus on some form of limit, we can bring that up.

Greg is saying, "Limits should be qualitative and not quantitative." Greg, that's really difficult. I don't know how we'd do that, Greg. But if people have ideas, again let us know. Greg, please. You're in the queue.

GREG SHATAN: Thanks. To explain what I mean by qualitative, which I think shouldn't be difficult, is that there need to be certain standards for these objections to be filed. It shouldn't just be on a whim. There need to be certain parameters and criteria. That's what I meant by qualitative. So it's not dependent on some sort of numerology, which may or may not match the real world number of objectionable applications that arise. I have looked into this deeply, I must confess. I expect that there are already are.

I see Justine noting in the chat that ALAC has a stringent review process for this. Maybe we need to examine that, but I think it puts us on the right track. So I think those who are concerned here are about limiting ALAC may just have concerns about ALAC more broadly, and that's kind of a subject for a different day. But putting that aside, I'm thinking of this [stance] on face value. It is important that this not be just an unlimited free shot but the

limitations need to be based on meeting some minimum standards, not some maximum number. Thank you.

JEFF NEUMAN: Thanks, Greg. When you're talking about minimum standards, I mean there's obviously standards in the complaint itself, but you're talking about minimum standards like it needs an affirmative vote of all five regions or – I don't know. Is that the type of qualitative standards you're thinking about?

GREG SHATAN: Well, I think that any ALAC action requires an affirmative vote. I'm not sure exactly what the standards are, but it clearly requires approval by the committee, but I'm thinking more than that. It needs to be non-frivolous, that it meets the same kind of standards as a complaint would meet. Generally, that would be well-grounded, that it'd be relevant to the public interest. There's a substantial question or … I'm not going to make up standards, but it's something to avoid the spaghetti standard. Something higher than that. As in let's throw spaghetti at the wall and see what sticks. That's too low a standard. Thanks.

JEFF NEUMAN: Thanks. Susan just posted. I guess a question I was sort of thinking about too. We have a quick look process to address that. So, are we just duplicating the qualitative standard? Justine, please.

JUSTINE CHEW: Thanks, Jeff. Look, I'm going to start offense to comments about spaghetti on walls and things like that. As I said, ALAC has a stringent process of deciding whether to file an objection or not. I think we should leave that process to ALAC. After all, it's part of what they do. I'm not sure that this group should be looking into micromanaging how ALAC operates or exercises its duties in terms of filing objections. So I will leave it as that. By the way, there is a description of how the process ought to work in the AGB already. Thank you very much.

JEFF NEUMAN: Thanks, Justine. I think the reason why there may be some comments on this, maybe just because of the unlimited funding from ICANN. So from a fiscal perspective, for ICANN as an organization, let's say that the ALAC as a group does decide that there are a hundred – and I realize that that may be an edge case – but if there are a hundred legitimate complaints and objections they want to file, and all of those have to be funded by ICANN, you could see there does need to be some fiscal reality in what ICANN can spend. I mean it had a budget for an independent objector to have a limit as well, so maybe it is just the amount of funding that's made available and then it's up to the ALAC how it would like to exercise those funds.

Justine, I'm not trying to say that ALAC doesn't exercise its access to funding seriously but you could understand for any kind of organization an unlimited budget to file objections is something that's a concern to a few people. That's not speaking against the ALAC at all.

EN

Jim is saying, "Under the new ICANN budget pressures…" Right. We have more budget pressures than we did in 2011.

"Tend to agree with Justine." This is from Anne: "If ICANN Board defines Global Public Interest, then okay, maybe use that standard but you are adding a determination to be made by the panelist." I guess the question, Anne, I have for you is, is it ALAC's role to assess the Global Public Interest? Or why is it just the ALAC's role to assess Global Public Interest? I think if you're going to add that kind of standard, and only subject to ALAC to that but not work against them or in favor of them, I don't know. It's kind of an interesting standard to apply to the ALAC but not to others. The only difference between ALAC and others is that ALAC reports to represent the users. So that's the ALAC's role.

Okay, I think we spent a lot of time on this. We have a few minutes left. I do want to get on to the GAC Advice topic. This is an interesting one and one that I think we should spend some time discussing.

There were some recommendations in the initial report, some of which that stated that GAC must clearly articulate the rationale, including the national or international law upon which it is based. That's what we had as one of the options in the report.

GAC stated that they would welcome the opportunity to discuss options to increase the transparency and fairness of these arrangements including providing a rationale for objections and giving applicants subject to Early Warnings the opportunity for direct dialogue with the GAC. However, the GAC does not consider that the PDP should make recommendations on GAC

EN

activities, which are carried out in accordance with the Bylaws and GAC's internal procedures.

I think there's one element in there that was not addressed by the GAC. I'll state this as, I guess, more as an individual than as a Chair here, that the GAC is right in saying that we shouldn't make recommendations on things that are Bylaw activities. But the Applicant Guidebook had an extra provision in there on GAC Advice. If we took that provision out then the GAC is absolutely right that we would not be messing with their rights under the Bylaws. But the provision in the Guidebook clearly states that there's a presumption that if the GAC files consensus advice that the application would not proceed. That's not a Bylaw right, that is strictly something given to them during their negotiations with ICANN staff but outside the Bylaws. So if we were to take that presumption out then the GAC would be left with what they have in the Bylaws, which the initial report believed it was the right way to go so that we're not confusing their Bylaw rights with … or adding to their Bylaw rights with something above and beyond what they're given in the Bylaws.

So let me go to the other comments below. Sorry, I'm scrolling on my own copy here.

Marques, the ALAC, Council of Europe, INTA, Neustar, IPC, the CCT Review Team Report, MarkMonitor, BRG, Registries Stakeholder Group all agreed on these recommendations. So I think that's actually kind of unique in all of these comments that everyone seemed to agree except for the GAC on taking out the presumption in the Guidebook and relying solely on the Bylaws for GAC Advice. It's interesting how that came out.

The BRG/Registries Stakeholder Group I think asks for modification of our language in the initial report, which I think models itself after perhaps one of the independent reviews. So it's worth looking at that which is … oh, it's deleted in my copy. Someone took it out. There it is. Thanks, Emily. I think this language is worth considering because I think it did come from the independent report. Does anyone have any objections on that language on this call? Again, you'll have afterwards to look at it. You don't need to comment immediately on it. But I think from reading through this, it makes a lot of sense.

INTA wants to require that GAC Advice nominate and provide contact details for an authorized GAC contact who is knowledgeable about the grounds for the objection and authorized to discuss solutions with a view to trying to reach a resolution.

Again, that comment seemed to make a lot of sense to me. I would love to include something like that. Because we do want to encourage resolution outside of the formal dispute, does that sound like something members of the group could get behind? You just look at the comments while waiting. Okay. I'm not hearing anything or seeing any comments. I'm not sure how to read that as far as whether people like that language or don't like that language or think it's worth considering. I think it's pretty benign to ask for someone that provides advice to have contact information of someone who may be authorized to lead a negotiation team or something like that, to help the applicant and the GAC who resolve its disputes.

Susan says we can make recommendations. Right.

Perhaps we should change it to a "should," so GAC Advice should include clearly articulate the rationale, including the national or international law. Is that what you're commenting on, Rubens? Alright, while we're waiting for the – okay, great.

The next … scrolling down a little bit here. There were other options that are listed in the initial report. Any GAC Advice issued after the application period has begun must apply to individual strings only, based on the merits. This addresses the whole category of – they're not formal objections but the creation of categories that the GAC had in their advice that applied after applications were already submitted, and for which I guess Public Interest Commitments were made.

The ALAC, BRG, Neustar, IPC, Non-Commercial Stakeholder Group – basically everybody thinks that there's merit in that solution. There's no divergence from that solution, so I think that's one that could be moved to a high-level agreement. There are some suggestions to add to it.

GAC Advice should be issued against specifically identified applications, not just strings – we say "strings" in here – because applications for the same string may propose vastly different business models. I'd love to get thought on that as a modification to something I think we have high-level agreement on. Any thoughts on that? Okay, no thoughts on that. It would be great if we could think about that because I think all of that makes sense for overall agreement based on the comments that we've gotten so far.

We're not going to get through this whole thing on this call because there's only a few minutes left. So, why don't we stop here? I think we've made some really good progress. Anne's got her hand raised, so please, Anne.

ANNE AIKMAN-SCALESE: Just very quickly, Jeff. I agree with Susan on her comment in the chat. We can make recommendations about how GAC Advice is valued. But for example, GAC Advice as far as I know is not required to be based on law or international law. So up there earlier in the suggested language, it should say the base is law and international law and/or public policy. Because as we know, public policy is not always the same thing as law, and GAC Advice as far as I know is not absolutely required to be based on law. Thanks.

JEFF NEUMAN: Sorry, guys. It took me a second to find the unmute. You are correct that we can only make recommendations. I think if we pull out … I think the Bylaws now are worded in such a way to take into account what was in that independent review, so we can take a look at that and perhaps just quote the Bylaws, which actually already asked for this anyway. Let's go back as an action item. We can look at that if it's worded the same way as the Bylaws for ICANN. I don't see any harm in wording like that. If it's different then we should say "should" for the reasons Susan and Anne have spoken.

With two minutes to go, is there anything anyone wants to address these last couple of minutes? If not, I will note that we have a call on Thursday. If someone could post the time on the call, look after the notes after this meeting. We'll have a leadership call this week and talk about Kathy's comments on the notes, and talk a little bit more on the next steps.

Next call is the Thursday at 03:00 UTC, for 90 minutes. That would be fun for me as I will be here in London. That's pretty early.

Cool. Alright, thanks, everyone.

Anne, your hand is raised but I think that might be an old hand. Yup, okay. Thanks, everyone. Thanks for the call. Lots of good progress made. I'll talk to you all on Thursday.

JULIE BISLAND: Thank you, Jeff. Thanks, everyone, for joining. This meeting is adjourned. You can disconnect your lines and have a good rest of your day or night.

[END OF TRANSCRIPTION]