ICANN Transcription

New gTLD Subsequent Procedures Working Group

Monday, 16 March 2020 at 1500 UTC

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MICHELLE DESMYTER: Welcome, everyone. Good morning, good afternoon, and good evening. Welcome to the New gTLD Subsequent Procedures PDP Working Group call on the 16th of March, 2020.

In the interest of time, there will be not roll call. Attendance will be taken via the Zoom room.

As a friendly reminder, if you would please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise.

With this, I'll turn the meeting back over to Jeff Neuman. Please begin, Jeff.

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.

JEFF NEUMAN:	Thank you very much, Michelle. Welcome, everyone. I was going to say, "Welcome back," but most people probably are in the exact same place they were when they took the last call last week. So welcome back to Zoom, I should say.

Today we're going to cover the topic that we didn't get to at ICANN67, which is on community applications. Starting on Thursday, we're going to go back and cover some holes or try to close some of the gaps from the other topics. So I think, on Thursday, we'll likely go to the global public interest. But we'll talk a little bit more about that later.

We're going to still work of the PDF document that we were working off at ICANN67, since that document is ready. Then we're going to incorporate revisions into the main working document.

Yeah. I just got a note that my audio connection is unstable, so I'm going to, after … Let me just ask to is if there are any updates to any statements of interest, and then I will join via then phone.

Okay. Not seeing any updates. If I could just ask one person to take over for one second—Cheryl, can you take over for one second [while I switch] phones?

CHERYL LANGDON-ORR:	[inaudible] you're dialing back in. Happy to do so, Jeff. We'll just get started on the beginnings of our agenda. Thanks, Emily, for sharing your screen. We'll dive into 2.9.1: Community applications. Those of you who are wanting to look at the Google Doc, I believe the link is in the chat—the PDF, at least. Thanks very much for that, Julie.

Jim, my guess is no. The PDF would be a static capture at a point in time that would not be as up-to-date as the Google Doc. So if we can also have the link to the Google Doc put in chat as well, that would be handy for those who wish to follow along as we go.

From the top then. You'll see some live editing going on in the Google Doc. Obviously we would be keen to make sure that any of your points that you are making on the work we're going through today … If you simply agree, just put a +1 of an "agree" in the chat. We don't need to have everyone taking up airspace saying basically the same thing.

With that, hopefully hastening our proposal or being happy for everyone to follow, let's start from the top with 2.9.1 (community applications) [A], looking at the recommendations and/or implementation guidelines. We have two affirmational rationales, the details of which we'll be of course pulled in specifically later. We have XX and Rationale 1, and it would be, I would have though, Rationale 2 for the second section as placeholders.

The first one, however, is: "The working group affirms the following concept derived from Implementation Guideline F from the 2007 Applicant Guidebook." AGB is not written there. I've put that in. Sorry. "If there is"—this is a quote from there—"a contention for strings"—it goes on—"a claim to support a community by one party would be a reason to award priority to that application." That's the close of the quote.

The second rationale, which is where, is, "The working group affirms Implementation Guideline H from the 2007 Applicant

Guidebook, which states: "External dispute providers will give decisions on complaints.""

So there's the two rationales. I don't see anybody putting up their hand or making a comment in chat on that, so let's now move to the next recommendation—Rationale 2—which is, "The Community Priority Evaluation (CPE) process must be as efficient, transparent, and predictable as possible."

Then we go on to look at three points of implementation guidelines under Rationale 2. The first one is, "In service of transparency, if the evaluation panel relied on research for the decision, it should be cited, and a link to the information provided." The second piece is, in Rationale 2, "To support predictability, the CPE"—which is Community Priority Evaluation—"guidelines should be considered a part of the policy adopted by the working group." The third piece is, "ICANN org should examine ways to make the CPPE process more efficient in terms of cost and timing. There was lengthy discussion and conversation about all of those in the various work tracks.

Jeff, I gather you've got your hand not just to comment but to take back over. I'm happy to let you do that. Thanks. Over to you, mate.

JEFF NEUMAN: Thanks, Cheryl. Actually, it was more for comment, but whatever you'd like to do. You're doing well.

For the second one of the second rationale, I think we should say, "The CPE guidelines"—and put in something like "as amended,"

because you talk about, below, some more things about the guidelines and we are going to revise it a little bit. So we probably should just put something in. Just, say, "as amended."

There's a +1 from Jamie, so we'll just make that note.

Just going back to some of the comments that were in this document, I'm not sure … Julie, just to make sure we're covering these, the first staff comment was, "Does the working group want to affirm or otherwise address this PIRR recommendation?" If we can show more on that one … I don't know if that's … Well, sorry. In the comment, it says, "Show more." If you go back up … sorry … Nope. I was [talking]—

CHERYL LANGDON-ORR: The one above it.

JEFF NEUMAN: Yeah. There you go.

[CHERYL LANGDON-ORR]: That's it.

JEFF NEUMAN: The one above—yeah. Please. Well, actually, the … sorry. Can you go back up to the comment just before this one—there you go—because that was the original comment that is a response. There we go.

Recommendation 4.1A—this is of the PIRR; that's a document/the staff review of the program—says, "Consider all dimensions of the feedback received to revisit the CPE scoring and framework before the next application round." Then I put down a comment … sorry. If you can go back to open up the next one …Okay. So there's a comment about whether we are adopting all of … The way we wrote the first rationale [in] the affirmation was, "The working group affirms the following [concepts]". Julie, I think that comment was addressed because I think originally it said we were affirming the Guideline F. But we weren't. So I think we fixed that. So that comment can go.

We put a couple of implementation guidelines below the recommendation for Rationale 2, but the question there is whether we want to put some more detail. Then there was a comment from ICANN Org on if we could show more there on that second comment there on the page. So ICANN says it would be helpful for the PDP Working Group if the PDP Working Group could provide more detail and guidance on the CPE process and that it must be transparent and predictable and there be more guidance on—right.

So what we did here is we added the CPE guidelines and asked for there to be more efficiency in terms of cost and timing, but I did note that there were other things that we thought should be under this category in response to ICANN org's question of providing some more details on transparency and predictability.

Now, don't forget that we've got some more recommendations down the page, so it may help to come back to this

recommendation after we're done with the rest of the recommendations and guidance below. So why don't we do that?

Let me read a comment from Anne. "Yes, Jeff, but we still need to see the amendments to the guidelines at some point."

Right. We had started a thread of discussion on that. I believe we've made some revisions in response to that and sent that around. This is going back a few months ago, so I'm going to ask, as an action item, if staff can resend around the revisions to the CPE guidelines, or at least the proposed revised version. We can pick that document back up in case some missed it.

The next recommendation, which is also part of Rationale 2, states, "All community priority evaluation procedures, including any supplemental dispute-[provided] rules must be developed and published before the opening of the application submission period and must be readily and publicly available."

Do we have any questions or comments? Right now we say "before the opening of the application submission period." Is that enough time? That was what we had talked about during our last conversation. So I'm just double-checking to see if anyone has got any comments on that.

Emily has posted the link to the revised version of the CPE guidelines. Thank you, Emily. You can take a look at that when you have a chance. The only changes, I believe, that we made were fairly minor to reflect changes of … We have placeholders for dates and things like that. I don't believe we made huge

changes, except there were a couple comments that we did take from you all and we did make some revisions. So do look at that.

Okay. The next rationale [is] Rationale 4 … I'm not sure what happened to Rationale 3. I think maybe the recommendation above it … Actually, we'll work on the numbering because I think we skipped 3—oh, sorry. There's 3. Thank you. [Sorry]. I missed that. So we'll talk more about that in the rationale.

The recommendation to Rationale 4: "ICANN must consider ways to improve evaluators' ability to gather information about an application." This came out of the discussions that we've had where some evaluators got some materials from the web and did their own research. Not all evaluators, I think, did that independent research. Or, if they did some independent research, it was not necessarily done the same way for each of the applications. So this really tries to put some predictability, transparency, and consistency into the process.

Just scrolling down. Jim, please.

JIM PRENDERGAST: Hey, Jeff. This one stumps me a little bit. Did we actually have access to the research that the evaluators did? I don't remember seeing that. I know we tried to get some information. But the EUI claimed confidentiality, I think. So I'm just looking for a little clarification on that.

JEFF NEUMAN:	Thanks, Jim. We did not get access—I don't know why my hand is raised; let me put it down—as you said, to the actual research, but they did refer to research in their decisions. I don't know if Jamie wants to comment on that. So the issue here is that they did refer to research and maybe in some cases they indicated the sources for that research, but it was not consistent across the board in the decisions. So, while we don't have access to their actual research, we do have access to the decisions that referred to this.
	Jamie, do you want to add anything on this and maybe … okay. So Jamie is in the chat and then I'll call on Kristine. Jamie says, "In some cases, the research you couldn't replicate either."
	Kristine, please?
KRISTINE DORRAIN:	Thanks. I'm not going to address this specifically from the concept of the community priority evaluation procedures, but I will go back to the analogous UDRP. It is highly inadvisable for a UDPR panelist or even any external arbitrator to go out and do additional research. So I'm going to back up. I joined this call a few minutes late. I'm sorry. But there should be no basis for which an evaluator … An independent evaluator is doing their own independent research. They might find wrong or outdated information. The parties are often not presented with the opportunity to rebut the information.
	So I'm really worried about how this recommendation go here and what was the basis for it. I apologize if we said this already, but I

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had something going and had to join a few minutes late. So I'm really concerned about this one. Thanks.

JEFF NEUMAN: Thanks, Kristine. There are some criteria in the CPE that talk about representativeness of the industry and appropriateness of the term to the industry. Unlike a UDRP, there are some elements where I'm not sure that it is necessarily that all the facts are in the application of those that may oppose it. So I think this is a little bit different than the UDRP in that way. We do talk in the next implementation guidance about clarifying questions and that there should be engagement/dialogue between the party that's seeking the approval of the community. So I think it's also a little bit different there.

But, given some of the criteria, I think there should be some research that needs to be done. Kristine, you're saying, "But isn't that the burden of the complaining party?" I think partially. I think the party that's seeking to be a community is going to make a whole bunch of representations that it represents the community and provides supporting details. But, unlike an adversarial position, there's not necessarily someone on the other side that refutes that. There can be letters that are submitted if you oppose a community, but I think, as we talk about communities and as we've discussed before, there seems to be a higher burden than just the applicant that alleges they're part of the community to prove that they are that part.

So I think what we're saying here is, to the extent that there is independent research that is allowed, then it needs to be more

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consistent and there needs to be ways or sources that ICANN should examine. Well, basically, they should improve evaluators' ability to gather information about the applicant and [have] more consistency in the approach.

I don't know if that … I still you see have concerns or strong reservations.

Anne states, "Maybe, if a panel is going to research, they should specify that and request input from parties before rulings."

I'll use that to go the next implementation guidance and come back. "Evaluators should continue to be able to send clarifying questions to CPE applications but further should be able to engage in written dialogue with them as well." The next one is, "Evaluators should be able to issue clarifying questions or utilize similar methods to address potential issues to those who submit letters of opposition to community-based applications."

So we have both sides of the coin there. It's clarifying questions to those that are seeking approval and then clarifying questions to those that may send a letter of opposition.

Kristine says that she supports both of those.

I do want to spend a couple more minutes—Kristine has got her hand raised—on the topic of independent research. While, Kristine, you're making your comment, if—I don't know—[I can] … Sorry to put you on the spot, but is there a way you can pull up the CPE criteria from the guidebook while Kristine is giving her comment?

Oh, sorry, Kristine. Go ahead. I think you might still be on mute.

KRISTINE DORRAIN: Thanks. Yeah, I wasn't sure if you were going to specifically call on me. Reading it together, maybe Recommendation XX Rationale 4 is just that we need to get better information and we're going to do that through the following two. Maybe I missed that and I should have read on further. Maybe the way to correct that … Because I do support numbers for the two rationales for implementation. So: going to ask clarifying questions and engaging in written dialogue? And then similar methods to address issues from opposition.

So I think, as long as you're there, [they're] requesting information from the parties or … I understand that the parties is a [whooshy] term here because it's not a traditional dispute resolution. It's an evaluation. Maybe there's a way to just reword that recommendation to say that they're going to approve the ability to gather information as set out in the guidance below, or something similar that's not an open-ended call for getting information but a more structured way to do in a way that's open and transparent and written and doesn't allow the evaluators to go digging through the Internet and finding fake news. That, I guess, is my primary concern. Thanks.

JEFF NEUMAN: Thanks, Kristine. I think that's an important point. I'm trying to get to the guidebook, and I don't know if policy staff is having the same issue. It shows that ICANN is not … The site that I'm trying

to get to is currently down. But thank you. Someone has got another copy. So thanks.

Can we scroll down a little but to just go over the criteria? The first criteria is community establishment. Remember, a CPE is a one-party filing to the evaluators. Yes, there could be letters of non-support submitted, but, in essence, it's only one party and the evaluators.

I guess my question is, if there's no independent research, then how is it that the evaluators can make an objective determination about whether there's a, let's say, clearly delineated, organizing, preexisting community? That's going down to the next one of longevity and size. Then you scroll down to the next set of criteria, which describes definition of all this stuff and—sorry—a little bit more. Then, does a string have a nexus to the community?

So, when you have a one-party filing and you say that the evaluators shouldn't be able to do independent research, how is the evaluator is going to get an objective view to make these determinations? Because you would assume that the party that's seeking approval is going to probably just submit the most favorable documents to their case.

Let me go—there's some good hands. I think this a good topic to talk about. Jamie, Anne, and Paul.

JAMIE BAXTER: Thanks. I think what you can't forget in this discussion, though, Jeff, is the requirement of community applicants to show support from the community. So, in weighing whether or not that is valid

information that's been submitted—by the applicant, that is—I think you need to take into consideration who has signed onto endorse that application. When you have hundreds of organizations from around the globe supporting a community application and the assertions that they are making, that certainly should carry way more weight than one article of fake news that an evaluator finds online somewhere.

So I think you have to couple those two concepts, which are both engrained in the community application process, to come out the other end with a better result. Thanks.

JEFF NEUMAN: Thanks, Jamie. Right. I'm just playing devil's advocate here because I think this is a great discussion. Let's say you have these letters of support from these major organizations. How is an evaluator supposed to know that those are real organizations or that they are who they purport to be? Because I would think that, if you have those opposing an application, they may cite to organizations that may be real or not real. Without any ability for an evaluator to do any kind of research—remember, these evaluators generally will not be subject matter experts in the community for which you're seeking approval … Again, I'm just trying to the devil's advocate.

Jamie, go ahead, and then I'll go to Anne and Paul.

JAMIE BAXTER: But I think the exact response to that, Jeff, is, if they're going to do research, why don't they research who these organizations are?

In many cases—I can speak for myself, anyway—there was a full explanation and description of who these organizations are, what their involvement is in the community, and what their history is in the community. If the evaluators want to do research, why would they not spend their time researching the organizations to make sure that they meet requirements to be supporting those applications?

So, again, it seems like the [diversion] needs to take place in where the research is actually being done and where the time is being spent.

JEFF NEUMAN: Thanks, Jamie. That's helpful. Let me go to Anne and then Paul.

ANNE AIKMAN-SCALESE: Thanks, Jeff. I agree with you that, on a substantive level, an evaluator has to be able to do research, and it can be fairly broad in scope. But I think that anything an evaluator is relying on should be disclosed to the applicant.

I'm thinking in particular of the fact that we're going to institute an appeals process. An applicant, to be fair, has to have the ability to know what the panelist was relying on in terms of independent research, if only to mount a proper appeal. I think the applicant also has to have the ability to, in some contexts—I don't know whether it's at the initial evaluation level or at the appeal level—to challenge any independently developed information.

But I do agree with you that you cannot make an evaluation as a panelist without doing research. Thank you.

JEFF NEUMAN: Thanks, Anne. I was going to type something in to the chat, but I will put myself in the queue behind Paul. Go ahead, Paul.

PAUL MCGRADY: Thanks. I think what we're trying to do here is choose between two models. One is that the model for the evaluator needs to be in the record. That puts a burden on the applicant to put together a robust application and explain why they should be given this special privilege. It encourages them to bring forward their supporters in advance. In encourages a robust public comment period, and it discourages the evaluator from being put into the role of biased researcher because everybody is biased in their research.

Secondly, I think that the open research model as opposed to the robust application model or the fulsome record model also opens up exactly the problem that you spotted, Jeff. I don't think you meant to support me, but you did in the chat when you said, "Possibly, if those that oppose knew about the application."

My concern here is that we get examiners who believe that somebody else should have participated in this process, should have showed up to oppose, should have had an interest, should have done this or should have done that, and they didn't because they don't have an interest. They don't care. Whatever. But that puts the examiner in the bizarre position of being an advocate for

third parties that didn't show up. Frankly, we see this kind of thing all the time in other judicial fora within the ICANN ecosystem, and it's very troubling.

So I think that anybody who wants to oppose it should show up and put forward a fulsome record. The examiner should rely on the record that's in front of him or her and not feel compelled to go out and be an advocate and biased researcher for a third party that didn't show up. Thanks.

JEFF NEUMAN: Thanks, Paul. I'll play the devil's advocate again. Even in, let's say [inaudible] in one-party judicial hearings, judges and others are allowed to use previous case law and do research on the topic [in] ultimately making its decision. So, if we're saying that you as a community get priority over ever single other application and we have criteria that states that it has to be well known, it has to be representative of the community as a whole, and it has to be all these things, then wouldn't it make sense for due diligence to be done, provided what Anne said: that they give the applicant an opportunity [through] a clarifying question, as well as, if there is any opposition, the ability to do clarifying questions and respond? Wouldn't that make a little bit of sense? Again, you're doing some due diligence. But, Paul, as you put it, we don't want to turn them into an advocate for the side that didn't show up, if you put it that way? But isn't there some sort of balance between … Again, this criteria—if we can scroll down just a little bit more and then I'll give it back to Anne and Paul … sorry. Go up a little. Sorry. You skipped one. "String has no other significant meaning beyond identifying the community described in the application." That

seems, again, like something you would have to do some research on. Scroll down. Sorry. If you can just stop at the next numbering areas. "Eligibility restricted to community members." Perhaps that's something you can get just from the application. Scroll down some more. "Policies include name selection rules consistent with the articulated community-based purpose of the applied-for gTLD." Maybe. "Rules that are consistent with the community." I'm looking content and then enforcement. That's probably something you don't need to necessarily do research on. Is there more after that, or it just goes to … after the definitions … "Documented support from the recognized community/institution." I don't know how someone knows which institutions are recognized if they don't do independent research. Scroll down a little bit more … okay. Then this is the opposition.

So, again, I'm playing devil's advocate and not telling how the group should come out, but just upon a plain reading of some of these criteria, some level of research need to, I would think, be done. But let's make sure that, as Anne said and will say again, I'm sure, it needs to be disclosed. There needs to be the opportunity to respond.

Let me go to Anne and Paul. Anne, please?

ANNE AIKMAN-SCALESE: Thanks, Jeff. Again, I want to affirm that I agree with the principle that you have expressed. Paul mentioned, "Well, that examiner may be biased, and therefore we should only rely on the applicant's information," but I noted in chat that, on a theoretical basis, no one is more biased, of course, then the applicant who

wants to achieve the community application. Now, we do want to encourage these because we didn't get enough of them last time around, but the idea that, in the one-party proceeding, you rely on the information provided by one party, that doesn't seem [inaudible] or proper.

I think, again, the issue is disclosure and dialogue. I don't think, in this situation … Paul's noting, "Well, if that's incorrect, then we go to the objection process," but you may just be causing unnecessarily expenses and more legal fees in a situation where community applications should be denied.

So, all in all, disclosure in a one-party proceeding and dialogue is a far better way to go. Thanks.

JEFF NEUMAN: Thanks, Anne. I'll go back to Paul and then to Kathy.

PAUL MCGRADY: Thanks. I just want to correct the record. I don't think Anne meant to say this, but I didn't say that the only thing that the examiner should look at is what the applicant puts forward. We have an entire section on gauging relevant opposition from third parties, among other inputs by third parties, into the process.

What I said was—if I said it wrong, I'll retract it and I'll say it this way—that the examiner should rely on a fulsome record, as opposed to going out and creating a record themselves. Examiners can't help it if they are biased. Most people are biased on most issues. The question is whether or not we are going to

increase the possibly of bias leaking into the system by opening it up to Googling and other things that are outside of the record. They don't really seem sensible to me.

So it seems to me that we should figure out a way to make this narrow. We've done it by having these implementation ideas here right beneath the recommendation. I think those should be removed up, maybe, and made part of the recommendation so that they're more firm and show that the examiner can, in fact, ask questions if they want to ask questions.

As to scrolling down and hitting all the various notes that Jeff hit, yeah, I think the applicant should provide honest and open information to the examiner on those, and have third parties can have a right to have a different opinion and get that in front of the examiner.

Lastly, with regard to cutting down the number of appeals or whatever they're called, yeah, I think that, the better job we do here, the fewer of those we'll have. One thing we can do is just to make sure that fake news and social media don't leak in. Thanks.

JEFF NEUMAN: Thanks, Paul. Let me go to Kathy and then I'll see if I can wrap some of this together. Kathy, please?

KATHY KLEIMAN: Thanks. I agree, Jeff, with what you're saying and with what Anne is saying. I do think that, in every other forum, we know, at the USPTO, the trademark examiner goes out to the real world and

does a few searches to check what's going on with the websites of the applicant and relate websites, as does the patent examiner. I'm pretty sure that's true in other countries as well. And, as you said, Jeff, there's a court record, and the courts can search as well [inaudible].

One thing we're lacking here is any kind of relevant notice to competitors. So we're assuming that they're going to know what's happening in our little corner of the world, and we know from the first round that they didn't and that we give them very little time to have notification and respond with comments and things.

So, unless you want to create an obligation to notify all your competitors that you're applying for a community priority evaluation, then I think you have to let the examiners go out and look at the real world. Thanks so much.

JEFF NEUMAN: Thanks, Kathy. Let's see if we can take a couple of the things. Let me start with Paul's recommendation or proposal to put all this implementation guidance as part of the recommendation or additional recommendations but make it stronger. I actually think that makes a lot of sense. And changing the shoulds to musts in those implementation guidance, if we did that.

Let me just ask first if anyone disagrees with that.

Okay. So it seems that—sorry, I have some noise in the background here at home … So let's do that. We'll make that change that change to recommendations.

Paul, I also would like to get you to start thinking about, because you had said maybe there's some ways to narrow it down in terms of outside research … One thing that just popped into my head—maybe this is good or bad; you guys let me know—is, if one of the questions that is asked during CPE is to identify independent sources of information—I probably said that wrong—to maybe make it part of the questions where you're asking the applicant where they can get independent information. I don't know if that's good or bad, but it may be something to help weed out that fake news aspect because the overall recommendation that we had started with was for ICANN to improve evaluators' ability to gather information if and when they do that outside research.

Does that make sense?

Anne is stating, "I suggest we just say, "In the event that panelists rely on independent research, that will be disclosed to the applicant, and the applicant is allowed to respond prior to the ruling."

Perhaps we make it a little bit more certain and say, "That will be disclosed to the applicant through a clarifying question," or something like that to make it some sort of formal part. But, yeah.

What do others think of that proposal? We have some +1s from those that support the independent research. Let me ask those that may not or may be on the fence. So Paul? Kristine? Others?

Paul, please?

PAUL MCGRADY: Thanks. That puts the applicant in a super weird position where the examiner has gone out from resources that the examiner thinks are credible. If they turn out to be fake news or garbage links or discredited experts, then the applicant is in a weird position. Again—what we wanted to avoid—the examiner is now an advocate and will not want to be embarrassed by bringing up fake news and discredited experts and will resist that.

So we're just introduced, by throwing open the door and saying, "Going out, Google what you want. Get on Facebook. See what it says. Talk to your buddies and come back and make a decision on the fate of a TLD application," to converting this role from an examiner[to an advocate] role. These guys are just going to dig in. I don't think this is wise. I think the applicant should put together a fulsome application, and third parties who don't want this happen, if any, can show up and explain why the examiner can make a decision and, if the examiner gets it wrong, then there's a next step already built into the system. Building in an advocacy role and a research role for these examiners is just going to be a big ole mess. Thanks.

JEFF NEUMAN: Thanks, Paul. But let me just, what about the notion of asking applicants to indicate sources of information for the evaluator to do their research?

PAUL MCGRADY: Well, won't that—I tried to put this in the chat—already be in the record? If I file an application and I say, "I'm such-and-such

association and I have five millions members and we operate in the following sphere," and I don't produce any links or detailed anything—no annual reports, no newspapers, or whatever—than that application is a stinker. The application record needs to be fulsome.

So I would say that it would behoove the applicant to provide a bibliography, either through footnotes in the application or to test the [bibliography]. I noted Jim's comment earlier that there seemed to be limitations on the size of these fields. Maybe we un-limit those to make the applications are as fulsome as possible.

I think that's what a good applicant will do. He or she will give the examiner a really good record. What a good opposer will do is also give the examiner a really good record with lots of links and explanations. Once those are entered in the record, then the examiner is free to click away.

What we're trying to avoid here is for the examiner to start in a place of bias and go out and do research designed to reassure him or her that their bias is correct. I think that is not the even-handed process that we're trying to seek out here. Thanks.

JEFF NEUMAN: Thanks. One more clarifying question and then I'll go to Kathy. Sorry. I just want to make sure I understand. So you are saying, if the applicant provides links or sources, that, at a very minimum, the evaluator can go out and read those sources and do their own research on those sources?

PAUL MCGRADY:	I'm not sure that I understand your question. Are you asking, can they go ahead and click on those links and read them? Yes. That to me seems sensible because they're part of the record. That's what the record is for. Are you saying that, once they click on a link, then we throw away the obligation to only consider the record and you can go on and do your own research from there? No. That's an exception that swallows the rule.

Kathy, just to respond quickly, put in text "Because I raised the fictitious examiner of Alzheimer's Association applying for .memory and how the Alzheimer's Association doesn't have a competitor." Yeah, you proved the point, Kathy, with mental health issues and memory issues and computer hardware groups. I don't think computer hardware groups compete with the Alzheimer's Association, so, in requiring the Alzheimer's Association to out and inform its competitors, they would have naturally left off hardware groups. So just to react that one point, where going out and trying to identify everybody that is your competitor wouldn't necessarily solve any of the issues that we're trying to solve here. Thanks.

JEFF NEUMAN: Thanks. Paul. I'll go to Kathy.

KATHY KLEIMAN: I think the disinformation issue is a red herring. We know that fake news affects certain kinds of very timely issues that go viral and may impact an election, but you're talking about fake organizations. That's very unlikely to happen. Organizations'

competitors will have probably as deep a history, perhaps, as the application. What they won't know is that this application is taking place.

So fulsome is not—Paul, if you can show me where that is in any of application criteria, please let me know … It means large size, generous, abundant. But it's going to be the applicant talking about how important they are. They will be seeing the words through their eyes, just as the Alzheimer's group would believe they own the word "memory," whereas others might disagree. And there may be lots and lots of groups that work with memory for seniors, memory for children—all sorts of groups on different kinds of memory issues. I saw that there are hospitals working on memory issues for patients, different ways to remember what they have do once they're discharged so that they don't come back.

So I think it would be crazy to not ask the examiner to do some basic research because we're going to have a one-sided application, no matter how abundant or fulsome it is. Thanks. Back to you. So I think your compromise, Jeff, is a good one.

JEFF NEUMAN: Thanks, Kathy. Let me go to Jamie, and then let me ask if, while Jamie is talking, can you, staff, bring up the nexus requirement as well from the community applications? Thanks. Jamie, then Anne, then Paul.

JAMIE BAXTER: I just wanted to point out that it certainly is part of the application process and part of the requirement for you to provide sourcing

and research and documentation that complements your application. So I think it needs to be very clear that it's not as through there is just a request for a string with nothing done by the applicant to actually support it. That is required and that is certainly what has happened in community applications.

I think it's one thing for an evaluator to confirm that information. It's another thing for them to actively seek something that opposed that information. I can speak from experience that information provided in our community application was completely ignored in the response by the evaluators, yet they went out and actively found other information that supported their view on things. I think that is something that gets a little tricky and we need to be cautious of.

I'm also a little bit concerned by this one-sided, biased opinion because it needs to be reiterated that it's not one-sided. When you have a community behind an application, that isn't just one side. That is a community that has supported an application—again, a requirement of this process. If it continues to be the opinion that it is biased and it's one-sided, I would like for someone to explain who is the other side to this. Who is it that's trying to be protected when a community has actively engaged in this process and is requesting something, especially when it becomes a marginalized community that has to face issues in the real world on a daily basis?

So that's something to think about. I just wanted to put that out there because I'm a little confused by some of this dialogue. Thanks.

JEFF NEUMAN: Thanks, Jamie. Anne, can put Paul in the queue just above you? Just because Paul wants to respond to something Kathy said. It was by bad, not going back to Paul. Is that okay?

ANNE AIKMAN-SCALESE: Sure. I'll wait.

JEFF NEUMAN: Thanks, Anne. Paul, please? Sorry about that.

PAUL MCGRADY: Thanks. This will be short. Anne, thank you for your patience. I just responded to Kathy's specific question of me on where "fulsome" exist in the Applicant Guidebook. "Fulsome" exits in good business, good law, good everything else. If you were making an application, you want to do a good job rather than a bad job. Thank you.

JEFF NEUMAN: Thanks, Paul. Let me go to Anne and see if we can get some other concepts out of this. Anne, please?

ANNE AIKMAN-SCALESE: I just wanted to say that I think that we need to remember that this is an evaluation. In other evaluation processes within ICANN—for example, when there's a financial evaluation—does the evaluator

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rely only on the information that's provided by the applicant? I don't know the answer to that.

But I also wanted to get to some brass tacks, if you will. It sounds like what Paul and Kristine are proposing is that we add a provision that says that the working recommends that examiners may not rely on any information outside the record.

I'd like to propose a compromise on the order of "except as needed to verify the reliability of the information provided," or something because the concerns they're trying to get at are fake news. Now, I don't really think the fake news thing … I think it's a red herring, too, the way Kathy says. But, in trying to get to some closure, could we limit the scope that the examiner can rely on? Because the idea that we're just going to say, "The examiner may not use any external research," is way too extreme. So could we somehow just modify that that type of research should be used for verification purposes only and should be disclosed? Thanks.

JEFF NEUMAN: Thanks, Anne. That's a good connection. I was going to say something like that—basically, to verify the veracity/the truthfulness/the reliability—whatever you want to say—about the information, even in the nexus requirement of how to [draw] it up because it says that the string matches the name, the community, or the well-known short form of abbreviation of the community. It just seems to me inherent that some research to, as you said, Anne, to verify the truthfulness/the reliability—whatever you want to say … It just seems unlikely that you could say no research needs to exist.

Paul is saying he's concerned about an examiner becoming an advocate.

Paul, if we added in a provision about outside research to verify, what other protections can we put in place to maybe curve the concerns that you're thinking about as an advocate?

I'm seeing a comment from Susan. "I'm mystified why it matters that someone else in a different field might want to use the string, which seems to be what Kathy was arguing as justifying the needs for research. But [I] may have misunderstood. Surely it's a given that someone else wants to use the string or there'd not even by a community evaluation."

Right, Susan. Without going into that one specific argument, I think what we're saying now is that it'd be difficult ban outside research but also have evaluators verify the truthfulness or the reliability of the application, much like an applicant is going to say, in the financial evaluation, they are not and have never been convicted of a felony or misdemeanor, but that doesn't mean that the evaluator cannot do a criminal background check.

So it does seem to me to be a part of evaluation just like, in a technical evaluation, backend operators are going to argue that they have the most up-to-date technology and they're going to describe it. The evaluators may have to do some independent research to see whether the technical solution that's being proposed is actually one that lives up to those standards.

So I love to focus on then protections so that we don't get advocates for some other side but also allow evaluators to do the

appropriate due diligence and make it known to the applicants what research they're doing and provide an opportunity to respond, both from the applicants, or, if it's researching the credibility of an opposition, to provide that as well: the questions.

And [inaudible], yes. Of course, someone needs to submit that they confirm that it's true during an application. But we still do a background check. We still do credit check. We still do a UDRP check. All that stuff is actually still done.

So I do think there's a balance we can strike. My homework, I guess, for Paul and Kristine and any others that are nervous about the third-party research is to think about other things we can put in place to address those concerns.

Paul, please?

PAUL MCGRADY: Thanks. I guess it's a somewhat difficult homework assignment because now we have to game out all the different possible ways that an examiner will take their biases forward and what channels of research they would use. Like, what are you looking for? No to Twitter? Yes to Facebook? No to Facebook but yes to LinkedIn? I don't know. I don't know what you're asking for me. For me to figure out how to build enough guardrails around possible examiner bias, and those biases leading to research that doesn't make sense, or someone starts out with a bias and goes out and tries to find a way to knock an application out, which it sounded like Jamie had experienced? I'm not sure how to build those kind of guardrails.

Does the Applicant Guidebook now affirmatively state that examiners can go out and do their own independent research? If not, then isn't the change here that folks are pushing for an affirmative right to do that? Jeff, can you let us know what the current status and the ground is before I undertake a Herculean homework assignment? Thank you.

JEFF NEUMAN: Thanks, Paul. There's nothing in the guidebook that states that they can't do outside research. I don't think, although someone could check, that there's a provision that says they must or can do it. I would argue that it was done the last time and that it would seem implicit in some of the criteria that research would be done. I think it would be incumbent on us that we are concerned to put the appropriate guardrails because I would think that there's not enough support within the group to ban any and all research.

So my guess would be that, again, like I would say, I would think the burden is on us to put some guardrails to the extent … There is some—oh, I'm sorry. There is. Look, in that paragraph it says, "The panel may also perform independent research if deemed necessary to reach informed scoring decisions." Thanks. I thought that might be in there, but I didn't want to speak too soon.

So, Paul, what we're working for now is to put some guardrails around the concerns.

Let me to Anne and then Paul.

PAUL MCGRADY: Actually, Jeff, since you called me out, can I please respond? Sorry. I hate to keep pressing for that.

JEFF NEUMAN: Sure.

PAUL MCGRADY: Really what this means is that we need to figure out what "deemed necessary" means and build some guardrails around "deemed necessary." "Deemed necessary" can't mean I have a personal bias against this application or I don't particularly think that the New York Times is the best newspaper in the world, so I'm not going to like that link. So this paragraph actually helps us narrow it.

So, instead of me trying to go through and build a naughty list, like, "Examiners can't listen to Fox News while one of these is pending"—I don't know how to do that—why don't Anne and I take this offline and see if we can figure out what "deemed necessary" means and then build in some minimalist guardrails about how that would work to remind examiners not to take their biases out to research or to go out to confirm their biases or those kinds of things? If Anne is willing to share the homework with me, I'm confident that she and I can come up with something that works. Thanks.

JEFF NEUMAN: Thanks, Paul. Also remember the ones we're also adding in there.

Anne, please?

Anne, I'm not sure if you're on mute, but go ahead. You got the floor.

ANNE AIKMAN-SCALESE: Can you hear me now?

JEFF NEUMAN: Yes. Thank you.

ANNE AIKMAN-SCALESE: Okay. "Can you hear me now?" I think you may have said while I was coming off mute that Jamie and Kathy should be included on the homework assignment.

With respect to the subject of guardrails, I think it actually really isn't all that complicated because the biggest guardrail is disclosure.

The other thing is there's plenty of opportunity for public comment in the initial report to say, "Hey, this guideline should be changed. We should ban access to external information." To the extent, obviously, that we're going to go in and limit that in this way, that needs to be highlighted for public comment because this fairly recent breaking here. The arguments that are being presented by Paul and Kristine in particular are pretty recent developments in terms of our whole process. But I'm happy to work on the homework to try to reach a solution. Thanks.

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JEFF NEUMAN: Thanks, Anne. I think that would definitely be helpful. Let me go to Christopher, please.

CHRSTOPHER WILKINSON: Thank you. Good afternoon. I think I'm online and unmuted. Is that correct?

JEFF NEUMAN: You are definitely unmuted, yes. Thank you.

CHRISTOPHER WILKINSON: I'm unmuted. Okay. Look, Jeff, I've listened to this conversation with some interest and I am certainly not volunteering for homework, but I think you're dealing with an upfront question that has not been resolved. That question would be, are we going to have and give priority to community applications? Is that is resolved, then there are various sensible things that can be done to make sure that community applications really are communities and all the rest of it.

This discussion has been driven by a few of our participants who quite clearly don't want to have community applications at all. I disassociate myself from that part of the discussion. Thank you.

JEFF NEUMAN: Thanks, Christopher. I did not take any of their comments—the comments on this call from anyone—as being against the notion

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of communities. In fact, our first and second recommendation are still that we affirm that communities do get priority. So I think this discussion was solely related to the independent-research component. So I think that was not certainly what was intended.

Can we jump down—

CHRISTOPHER WILKINSON: I accept your interpretation as the Chair, and I hope that that materializes. Thank you.

JEFF NEUMAN: Thanks, Christopher. Yes, our first two recommendations are affirmations in this section, which did not seem to go opposed and are still in there supporting Priority 4: communities.

I do want to go to—let's see—Christa Taylor, who posts in the chat, "If the issue is a concern on bias, why not increase transparency on information that is being relied upon? Perhaps some of scale that panelists design for the information. This would also help overcome any biases and allow applicants a method to address any sources that may not be overly legitimate."

Yeah. So there's some agreement there that disclosure, transparency, and ability to respond are important elements to address bias.

I want to jump down to some of the notes that are in here. If we scroll down a little bit more – because I think this rationale just goes into the discussions … If we can just … Yeah, if we can go

there, that's great. There's a comment in here from … Now, this is how all of this relates to the CCT Review Team recommendations. Some of you may have heard some of the comments from—I'm sure they're will be a GAC communique coming out shortly today or soon that, although it doesn't contain advice, does have some statements in there about us trying to make sure that we are addressing CCT Review Team recommendations, which I think we've been doing throughout. It may not be as much as perhaps other groups may have expected us to address, but certainly I think we've been looking at all the relevant CCT Review Team recommendations and discussing them.

#34 states (Recommendation 34 of that report) that a thorough review of the procedures and objectives for community-based applications should be carried out and improvements made to address and correct the concerns raised before the new gTLD application process is launched. Revisions or adjustments should be clearly reflected in an updated version of the guidebook.

I think everything we've been talking about today has certainly been because of that review and has been made to address and correct concerns, at least that we've seen, and that have been expressed. So I think we have been addressing those.

There was a statement in the CCT Review Team recommendation that said, "Consider a higher rate of success for such applications to be a measure of success." Now, that [rate] is the measure of success from the CCT Review Team. I don't know if we've discussed that internally as being a measure of success, so I do want to now put that issue out.

Do we believe, first of all, that the CCT Review Team is correct in stating that a higher rate of success will be a measure of success in getting more communities in? Let me just see if there's anything else from that statement. Okay.

So let me look to the chat. "Someone needs to mute." Yes, please. But what do those on the call think about the statement from the CCT Review Team? Are we trying to get a higher success rate? If so, what can be done other than the recommendations we've already made? Because I will note there are no recommendations in here about altering the scoring because it didn't seem like we have consensus on any of those. There's nothing in here narrowing down those or expanding those criteria. We do talk about increased outreach. As Anne states, obviously we have some recommendations in our communications [in] others that we should increase outreach. But, other than that, any thoughts? Let me look down.

There's no one in the queue.

Yes, please. Go ahead, Mazzone. Sorry if I've mispronounced that.

GIACOMO MAZZONE: No, no. It's fine. Thank you. Can you hear me?

JEFF NEUMAN: Yes.

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GIACOMO MAZZONE: Okay. I'm from one of the communities that passed through the CPE. It was a very painful exercise and a very unfair exercise, by experience. So this is something that we have to be very careful to avoid to repeat the same mistakes that we experiences last time. This is why I strongly recommended—this has also been discussed at the GAC last week—that the people that do the CPE would be selected among those that know what "community" means because, last time, we had people that had no clue about what the community is. We asked the economists. That normally is not the place where they know what the community of indigenous people or communities of any kind are and can understand what it is. So this is the first big mistake that was made.

The second was that there was a lot of obstruction and unfair behaviors against community TLDs, even when some of them were qualifying. Then there were other means and tools to block the decision. For instance, in our case, even if we were selected by the CPE as being a real community, then, for nine months, we got blocked because –no, even more; near one year—there were recourse and claims that were purely instrumental.

So I think that would be totally unfair if we repeat the same mistakes again. I don't see on both these problems any addressing in the current document. Thank you.

JEFF NEUMAN: Thank you. Excellent points. I'll work backwards. On the issue of accountability mechanisms, which is really what slowed down in your case, we do have a whole section of this report, though not

here, that deals with accountability mechanisms and appeals and making sure that we correct the mistakes of the last round. It's not in this very section here on communities, but it is in a section called Accountability Mechanisms. I think those are very important points. Certainly that pain was shared by a number of community applicants, both those that were successful and, frankly, those that ultimately ended up not being successful. So certainly that was an issue.

I think the qualifications of the panel is an interesting note and one that we had not necessarily spent a lot of time on. But I do think that that's worth putting in the notes to see if we can improve that because you are correct that it was a division of the ECU—ECI? I'm trying to remember the abbreviation. The Economic … It was certainly more commercially-oriented than one would think for communities.

So all very good points, and we will make those notes.

Jamie, go ahead.

JAMIE BAXTER: Thanks, Jeff. I wanted to circle back to this, where we were talking about this issue last week at the ICANN meeting around GAC early warnings and GAC advice and how it was suggested that there should b an opportunity for the applicant to engage in dialogue with the GAC to try to resolve those issues and that it was almost suggested that it should be required. I'm not sure if this is the place. I know that I've raised this issue in the past. I just want to make sure it's not lost in the discussion.

For those community applicants that receive letters of opposition from community organizations, is this the place or is there some other place where we have discussed how that gets handled and if a similar requirement is put in place that requires the objector to speak—I'm not talking about formal objections but letters of objection—with the applicant to sort our their issue to prevent any gaming or giving the voices the opportunity to have an opinion but not have to stand behind their opinion in any way, shape, or form? I'm curious as to if that's addressed somewhere, if not here. Thanks.

JEFF NEUMAN: Thanks, Jamie. What we do address in here is that we state that— now we're moving into the recommendations as per the proposal from Paul—essentially we are encouraging this dialogue and certainly requiring clarifying questions to both the applicant as well as to the opposer.

The reason we can try to mandate dialogue between the GAC and the applicant is because obviously the GAC and the governments participating are the part of the ICANN community. We could certainly encourage dialogue or put something in there, but it would be a little bit harder to mandate that someone that opposes actually enters into a dialogue. I'm not sure that that would be feasible, but we can certainly encourage it, I would think.

Jamie, do you want to respond to that?

JAMIE BAXTER:	Yeah. I think it's an important point, again, not to be lost anywhere because I think what we saw in the last round were voices that had an opinion, but the voices didn't have a face and the voices didn't elect to come out and speak publicly about their opinions. Therefore the concern is whether they were actually their opinions or whether they were coerced or whatever.
	I think it's important that, whenever you have a community application that has overwhelming support, at minimum, those who have opposition should be willing to step up and speak about it, not just in a letter that is a one-time thing. But that should be part of an ongoing-dialogue requirement, perhaps, with the evaluators. I'm not sure. Especially when we saw what happened from those singular voices speaking out and how it affected scoring, it's a huge concern going forward: that this will be repeated and that those watching what's unfolding here will realize that all they have to do is twist one arm that represents a voice that may not even be a legitimate voice in order to cause [fuss]. So just a point. Thanks.
JEFF NEUMAN:	Thanks, Jamie. A couple things. If you can look at the rationale for the implementation guidance that's highlighted on the screen now, just what you would add to that in order to—go down to the rationale section—make sure that we're encouraging this dialogue back and forth.
	The separate issue that we haven't really had an implementation guidance on recommendation on is the notion of weighing the opposition and support. Alexander talks about that in his chat

comment as well: how one weighs letter of support and letters of opposition. Katrin states that we also saw campaigns against community applicants driven by one entity. So let's think about some language on that if we can do that.

Let me go to Jamie and then back to Giacomo. Jamie, please?

JAMIE BAXTER: Thanks, Jeff. I think one thing that should be added is that there should be a public and a transparent verification that the voice represented on a letter that claims to represent an organization should be made public. We certainly have an example of a voice that claimed to represent an organization that in fact did not. The onus was put on the applicant—us—to actually reveal that to ICANN. I think there needs to be an active process that, if some voice wants to represent an organization in some way—the same way that they did with the letters of support—especially if it's a letter that's going to derail an applicant, there needs to be an effort—a very transparent effort—to bring that forward, just to watch out. Thanks.

JEFF NEUMAN: Thanks, Jamie. Let's got to Giacomo, please.

GIACOMO MAZZONE: Thank you. I think that this brings—also it's something that I read in the chat now—another consideration that was missing in the CPE process. It was the qualitative approach. If you have a purely qualitative approach and you don't have any kind of possibility to

correct it, adequate to the situation, you can make an enormous mistake.

Jamie is too shy to mention this, but, for instance, one of the reasons why the .gay application failed in the CPE process was because they said that the support was not covering the global community around the world. This was without considering that, in 70 countries still, to write a letter supporting a .gay application is a crime.

So how could the [CPE] condemn the fact that there was limited geographic support when we know that, in a third of the countr[ies], we are discussing something that is considered a crime and not as human right?

So you see that there was a missing, qualitative understanding of the rationale of what is behind the community application. For this, I think that was what Alexander proposed: to have a separate round before the appetites start. This could probably be a mitigate some of the problems we had in the past. If you know that is gone, then there is no need to game and to trick and to try to block and to make obstacles to something that has been already decided. It's not the solution but could be a way to mitigate some of the risks.

JEFF NEUMAN: Than you. I think they're all good points. I'm just trying to keep up with the chat as well. There's definitely some chat that a single person/entity can be very loud and have a disproportionate impact. I think that's right. But, again, what do we put in there to

protect against that? How can we address that weighting, that criteria? Again, I know, unfortunately, it's not quantitative. Certainly, there was the comment that was just made about it being really difficult when you have that quantitative analysis.

But what can we do, especially in such a tight quantitative analysis, to protect against that? Because it almost seemed like it was a point against everyone if that were to happen. Certainly, Giacomo's comment that it's a completely separate round would address that, but I haven't seen in this group a huge amount of support for a community-only round. So that's going to be difficult, unless this working group and others get comments in favor of that.

Giacomo, is that a new hand or an old one?

GIACOMO MAZZONE: Sorry. And old one.

JEFF NEUMAN: That's okay. I'll note your comment in the chat about that a quantitative and qualitative assessment by experts in communities is important.

Let me go to Christopher and then we'll have to wrap up the call. Christopher, please?

CHRISTOPHER WILKINSON: Just in relation to what you just said, allow me to recall that, throughout, I think, the last two years, I

have systematically advocated separate specialized rounds according to the nature of the applications. Obviously, community applications would indeed by one, and probably one of the first. Thank you. I'm sorry that there has been, as you put it, not sufficient support. But there's a lot of common sense stuff that's been put on the table here that has not been sufficiently supported, so I don't take that personally.

JEFF NEUMAN: Thanks, Christopher. Yeah, we're in a multi-stakeholder community, and sometimes it's difficult to get agreement on a lot of things.

So we've run up against the time. On or next call, which is Thursday, March 19th, at 20:00 UTC—Alexander, we got your comment; you're not going to lose anything that's on the chat—we're going to spend the bulk of the time going over the global public interest with revisions based on what was discussed at ICANN67. So we'll come out with a revised version of the global public interest shortly so that you can review it for Thursday's call.

Let me just see if there's any other comments or questions.

Cheryl, did you have anything you want to add?

Okay. I'm not hearing anything. Thank you, everyone. I think we made some really good progress today. We're going to work on these revisions. If you took home a homework assignment, we will be contacting you to make sure that you do it. Thank you in advance to those. We'll talk to everyone on Thursday. Thanks, everyone.

[MICHELLE DESMYTER]:   Thank you, Jeff. Thank you, everyone. The meeting has been adjourned.

[END OF TRANSCRIPTION]