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**ICANN Transcription**

**Tuesday, 18 February 2020 at 15:00 UTC**

**GNSO New gTLD Subsequent Procedures PDP Working Group**

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**MICHELLE DESMYTER:** Welcome, everyone. Good morning, good afternoon, and good evening and welcome to the New gTLD Subsequent Procedures PDP Working Group call on the 18<sup>th</sup> of February 2020. In the interest of time today, there will be no roll call. Attendance will be taken via the Zoom room.

As a kind reminder, if you will 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 will hand the meeting back over to Jeff Neuman. Jeff, please begin.

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JEFF NEUMAN:

Yeah. Thank you, Michelle. Welcome, everyone. I'm in the UK today and I'm in a room that sounds a little bit echoey so I apologize in advance, but hopefully it's not too distracting. Today we're going to talk about application queueing and then start our discussion on closed generics. There's been a lot of activity on that lately and so there's definitely a lot to talk about.

But before we get into that, let me just ask to see if there are any modifications to any statements of interest or new statements of interest before we get started? Okay, I'm not seeing any, let me scroll down a little bit and make sure. I'm not seeing any hands or anyone in the chat. Great.

Let's get started. You know got through a lot of topics in the last couple weeks, which is great. I'm hoping we can get through application queueing in relatively quick fashion because I don't think there are a huge amount of issues there. But if we can bring up the section and put the link into the chat?

There are a couple of issues here and one thing that we haven't encountered yet, so we'll talk about that. We have at least one affirmation, recommendations, and implementation guidance but then there's something new in this section that we haven't yet come across. It won't be the first time but we need to figure out if this is the right way to handle it and talk about that in a second.

So, the first affirmation is to affirm the approach that was ultimately taken in the 2012 round, in which ICANN conducted drawings to randomize the order of processing applications within an application window.

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The working group acknowledges that continuing to use the randomized drawing approach is contingent on local law and the ability of ICANN to obtain the necessary license to conduct such drawings, but advises that under no circumstances should ICANN attempt to create a skills-based system, like Digital Archery, to determine the processing order of applications in Subsequent Procedures.

This affirmation updates and replaces implementation guideline D from 2007, which actually recommended a first-come-first-serve process, which was actually interesting, going back to reading that and remembering that that was what was proposed first. We came a long way since that. So, that's the first affirmation. We'll get into some more of the details as we scroll down the first recommendation. I see that Kathy has her hand up so Kathy, please.

KATHY KLEIMAN:

Thanks Jeff, coming off mute. Actually, maybe we're getting down to it, the IDN strings that were prioritized in the first round. I think it's important to mention that in the top because it wasn't purely randomized. We did IDN strings first, so that seems to be missing from the introduction. Talked about a little later but missing from the introduction. I think we have to put it in. If we're going to represent what we did in the first round we should be complete. Thanks.

JEFF NEUMAN:

Yeah, thanks. Sorry, I was trying to turn my computer off mute. So that is, as we scroll down, addressed. Let's hold off on that until we

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get through the next two, the recommendation and the implementation guidance. We will get down to the IDN issue. So, Kathy, if it's okay, just hold on to that because currently that's not within the affirmation, but we'll see where we come to on that paragraph when we get there. Okay. Christopher, is this in relation to IDNs or any other, or should we go on with the recommendation?

CHRISTOPHER WILKINSON: Thank you, Kathy. Thank you, Jeff. My point of view goes beyond the IDNs. The text that we've just looked at is negative, if not hostile to the idea, which I fully support, that the applications should be regrouped according to their characteristics in order to ensure that there is timely and due consideration of the evaluation of the applications and that above all the evaluators are specialized in the sectors and the businesses that are involved.

What you're saying here is that everybody will apply and then, somehow, ICANN will sort them out into some sort of randomized queue, which will be completely disrespectful of the characteristics of the applicants and not only the IDNs, but obviously I support Kathy's specific example of the IDNs as a major case in point. Thank you. I don't agree with this text that we've just read.

JEFF NEUMAN: Okay. Thanks, Christopher. So, in looking back at the initial report, the materials prior to the initial report, and the comments we received back, there was widespread support. Put the IDNs issue aside for a moment, but there was certainly widespread support both within the initial work track one that talked about this issue as

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well as many comments that came back favorably to the randomized solution.

I'm not hearing from anyone else on this call but let that be ... It's positive. Your views, Christopher, we certainly know them, and appreciate them but at this point conducting this in any fashion other than a randomized process, of course, subject to the discussions we're going to have on IDNs, that was certainly not a solution that was supported by other comments that we have received. I see your hand is lowered [inaudible]?

CHRISTOPHER WILKINSON: Thank you, Jeff, for this explanation. I think it's just another example of the predominance in GNSO of the registry/registrar IPR lobby. I don't think that reflects an objective or workable solution either in terms of efficiency and quality for IPM, for ICANN, or the credibility of the process. I maintain my comment and reserve my judgment. Thank you.

JEFF NEUMAN: Sorry, it takes me a second to get off mute. Sorry about that. I have to turn it on mute otherwise things will echo. I see Kathy is in the queue as well, and then we can get onto the other recommendation, implementation, and I know the issue that Kathy wants to address also is a few paragraphs down. So, Kathy, please.

KATHY KLEIMAN: Thanks, Jeff. I know we have got lots of interesting issues on the agenda for today. I just wanted to add, because I think it's

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absolutely critical that everything be accurate and when we're going through the Rights Protection Mechanism Working Group Initial Report, we're working on an error basis, if anyone can show a clear error or correction.

So, I wanted to add the words "non-IDN" to the first paragraph: "The working group affirms the approach ultimately for non-IDN application queueing during the 2012 round in which ICANN conducted drawings to randomize the order of processing applications ..." I just wanted to offer that because I've suggested it in the document. Thanks.

JEFF NEUMAN:

Thanks, Kathy. That's actually not exactly accurate because within IDNs they were randomized, so the order of IDNs was randomized. I understand your point, Kathy, so we will try to ... If we could just not accept those for "not IDN" but just put a note there, because IDNs were randomized within the group of IDNs. So, if we're going to be accurate, we need to figure out a different way of saying it. But I understand, Kathy, your point. We'll reflect that, without coming up with text immediately, but hopefully you understand. So, right. Can we just remove those words for "non-IDN" and just put in a comment? Let me go to Greg.

GREG SHATAN:

I was actually on to support the addition, although I would say "non-IDN" rather than "not IDN" because the approach ultimately taken includes splitting out all the IDNs and dealing with them separately,

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so I think it's certainly a lot more accurate to say we support the approach taken for non-IDNs. So that's it. I think that's all.

I would at least put it in but put it in brackets because I think unless there is some part of it that we ... I just think it comes a lot closer to saying what we're needing to say here because we haven't said whether we approve or not the treatment of IDNs, and right now it seems that we don't so we can't say that we do. Thanks.

JEFF NEUMAN:

Thanks, Greg. What I was trying to say, maybe not so artfully, was we will figure out a way to put that into that paragraph but it is not accurate to say that IDNs were not randomized because they were. Yes, they were separated out and they were randomized first but ultimately picking the order of IDNs was randomized. So, I agree with you. We all understand that concept. We will figure out the exact wording and we promise to use that in there, but if we can move on and not necessarily talk about exact words but make sure we understand the concept because, again, IDNs were randomized, it was just randomized first.

So, if we go to the recommendation ... We'll get to the IDN issue in a minute, but let's get through these others first. The recommendation here is that any processes put into place for application queueing should be clear, predictable, and established in advance. I'll get to the comment in a second.

The recommendation to establish procedures in advance is in line with recommendation 1.2(a) in the program implementation review report which dates assigned priority numbers to applications prior

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to commencement of application processing. As a reminder, the program Implementation Review Team is the report that was done by ICANN staff as kind of a post-mortem on the entire process.

So, let's go to the comments. I'm just trying to figure out which comment is actually associated with that, with the word "advanced." Is this Jim's comment? It says, "I think we need to further refine this in advance of what application submission/publication of guide book. When does this need to be finalized?" and I think that's a great point because, when I went back and did some research on this, even Digital Archery was not finalized prior to the guide book being developed, so even if we had stuck with that ...

I do think what's meant here but I do want to check with all of you to see if you agree. "In advance," I think, should mean with the publication of the Applicant Guidebook. I think that's what was intended by the discussions, but let me ask the group to see if that makes sense. It's definitely a good question and it's something we should clarify. So, anyone have any thoughts on that? Sorry, I'm just going to scroll down here. Jim, please.

JIM PRENDERGAST: Thanks, Jeff. Sorry, could you repeat what you said? I'm not sure if it's the echo or my connection. Could you repeat how you just described it? Thanks.

JEFF NEUMAN: Yes, I think what we should put in there, or what was intended, is for the process to be published along with the Applicant Guidebook, so any processing put into place for application queueing should be



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clear, predictable, and published. Something around “at the same time as the applicant guidebook,” whether it needs to be in the guidebook itself, I don’t ... As long as it’s published at the same time, I think that’s the intent. We don’t have to be so exact as to say it needs to be in the guidebook itself but certainly at that time. So, Jim, is that ...?

JIM PRENDERGAST: Yes, I think that’s good. I only add one addition to that and that would be a “finalized and published and that adds to the predictability framework that we’re trying to establish for applicants.” Even though things were published in the guidebook, there were things that were changed afterwards, so I think the emphasis on “finalized” is important there.

JEFF NEUMAN: Yeah, thanks Jim. I think that makes sense and a plus one from some people. So, yeah, let’s put that in there, subject to Paul McGrady. Paul, what’s up?

PAUL MCGRADY: Thanks, Jeff. Why would we not want this to be in the guidebook? Why would we want multiple documents to have to track down to figure out how to apply for a gTLD? Isn’t that the point of the guidebook? I don’t understand. What’s the benefit of saying it doesn’t have to be in the guidebook? Thanks.

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JEFF NEUMAN:

Yeah, Paul. We've been trying to stay away from being too prescriptive as to how things are organized and ultimately the implementation team, along with ICANN staff/Org will figure out the best way to implement this stuff. I think if "published at the same time" it gives a little bit more flexibility, if for example ICANN is going to put together a site, let's say, a website, or web materials, or even an app that has all the materials on it but it has different places from what's called the "Applicant Guidebook," versus other resources. Again, I think at this point what you're saying makes total sense but I'm not sure we need to be too prescriptive. As long as we say "it's published at the same time," I think that should cover it.

That make sense? I'm fine if the group wants to put in the Applicant Guidebook. I'll do what the group wants. I just thought that saying things should be published in the guide book like this seems a little too inflexible, but it's whatever the group thinks really. Okay.

GREG SHATAN:

Jeff. Sorry, I was having trouble finding ... They seem to have moved, in the tablet version, where one raises one's hand so I have lost it. I would say that it should be published as an addendum or an appendix. I think the original guidebook had a number of ancillary documents embedded within it, so I would say this should be published as an appendix or addendum to the guidebook so it will be within the guidebook package.

That's not the words necessarily to use here but I think that's what we should do, because having a document that's not part of the ... We want to be able to have a one-stop-shop. If you want to just distinguish between different levels of ... I think it great to distinguish

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between the absolutely critical path and the lower levels of detail or implementation in some fashion, but I think not putting them in the document at all and having them in a separate place where you would not find them unless you had to go there to do it, I think is overdoing the focus level. Thanks.

JEFF NEUMAN:

Okay. So, understand what everyone's saying. We're trying to balance comments that we got from ICANN Org to have some flexibility and not be too prescriptive. It does say "finalized and published at the same time." We've got to put the word "as," [as Justine says,] "as the Applicant Guidebook," if people are willing to. You know, this is such an important issue as to be willing to die in a ditch and have to say it has to be in the actual Applicant Guidebook. We can certainly change that but this discussion is ... The intent certainly is clear. If we want to put in the Applicant Guidebook, let's put that in brackets and we'll move on to see what the group thinks.

Okay, implementation guidance. So, this says, "Procedures related to application queueing should be simplified and streamlined to the extent possible. For example, applicants could be provided the opportunity to pay the optional fee for participating in the drawing along with payment for the application. Another suggestion is to explore ways to assign a prioritization number during application process without the need for a distinctly separate drawing event."

Now, the reason this is implementation guidance was or is because we have not done any legal research and we don't fully as a group understand whether everything that was done in that original

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process was because it was required by California law, namely separate payments, being in person in the same location in California, and all of that. There are items here that ... This is a recommendation of what we think should happen but, of course, if there is some legal justification for requiring it exactly the way it happened, that would take priority over what our implementation guidance is.

Okay, any questions or comments on that? I'm seeing the support for the "in the Applicant Guidebook," so why don't we put the other part in brackets? We'll keep it "in the Applicant Guidebook" as the main part and in the brackets we'll put "at the same time," since it seems like there's enough support, at least on this call, to have it in the guidebook as being the default option, there.

Okay. Justine's asking, "Can we add a brief explanatory note to the effect of what you said re the implementation guidance?" There should be some things in the rationale, I think. Actually, there aren't because most of it's here. Yeah, I think we can put some more explanation around what I said for that implementation guidance in the rationale, in Part B. We can add a sentence in there about the fact that the reason it's implementation guidance is ... All of this is really subject to legal advice and where the legal requirements of holding a randomization draw in the location in which applications will be processed.

Okay. So, we're getting onto the section that's called "no agreement," and I'll explain why we put it in a "no agreement" as opposed to anywhere else and why this is a unique issue. So, in going back to the 2012 program, as everyone knows, there was this

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initial proposal. In the guidebook itself, they talked about something called a “secondary timestamp.”

And that secondary timestamp eventually—I think it was March, it was during the application window—became known as Digital Archery. So, Digital Archery was not laid out in the guide book, it wasn’t in the policy, and it wasn’t in any of the pre-discussions. Then, applications were submitted, I want to say, because the window was extended, late May or early June. I think it was early June. And then, there was a reveal day and everything was revealed.

And then, shortly after, at some point in the summer, I think it was July or August, some of the applicants started figuring out some ... I won’t call them loopholes, but figured out ways in which the Digital Archery system could be gamed. So, the ICANN Board resolved in the summer of 2012 to do away with Digital Archery and at that point it did not have another solution.

So, later on in September, and then in ICANN meeting in Toronto, a proposed solution of doing this lottery had come out, and in that proposed solution it asked—or there was a comment period that asked questions—as to whether any of the types of applications should be prioritized above others, including Internationalized Domain Names.

And there were many comments that were submitted in response to this comment period. There is a whole summary of it on the ICANN page. There were many comments that were in favor of IDNs. There were also comments that were in favor of geographics. There were other comments in favor of communities. There were a

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couple comments in favor of brands or exclusive use TLDs, but there were also a lot of negative comments about prioritizing anything.

At the end of the day, ICANN staff, and I say “staff” for a reason, decided on the solution of prioritizing IDNs first, which meant in the lottery there were two different groups of IDNs. There were the group of IDNs that cared about being prioritized, for lack of a better way to say it, and there was a group of IDNs that didn’t want to participate in a lottery and so therefore didn’t pay the fee, but they were still prioritized over the non-IDNs that also choose not to participate in the priority selection.

This was not an ICANN Board resolution. In fact, I went back and read the board papers on this, although some of this is redacted. The part that not does talk about the staff not believing the board needed to pass a resolution on this, that it could be a decision made by ICANN staff, and so it was.

Now, fast forward to our work in the SubPro Working Group, and we certainly sent out for comment several times the question of whether there should be priority of IDNs but also whether or not there should be priority of non-IDNs or of other types of categories of TLDs. At one point I did mention that some of the comments that supported the IDN preference did specifically state that they only supported it because of the fairly low volume of IDN applications and the fact that the low numbers of IDNs would not delay too much the non-IDN applications.

So, a number of groups filed their conditional support at the time for the IDN preference. It would be interesting if we—which we can’t—

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go back in time and say, “Well, what if IDNs had 500 applications or a thousand? Would people still have accepted complete priority for IDNs?” That’s, unfortunately, not a question we can go back and answer but certainly one that some of the commenters did hint at in their comments.

But be that as it may, we certainly tackled this issue, Work Track ... Again, I want to say it’s 1 but I might be off on that, did discuss this issue and there was no agreement. There was certainly discussion that some believed IDN should be prioritized and others did not.

And then, the same thing is true with the comments that we received. Some of the groups came back and said, “Yeah, we think IDNs should be prioritized” and other groups said, “No, we don’t think IDNs should be prioritized.” It didn’t serve a goal there. At the end of the day, IDNs did not launch before non-IDNs because it was a matter of figuring out software issues and other Universal Acceptance issues.

And so, going back to the comments, we, leadership, are not able to find agreement one way or another – not even a majority agreement one way or the other. Kathy asks a good question in the chat, “So what do we do here?” The only thing I could say here was that all we could state is that there is no agreement.

I think that, as we say here, “The working group notes that in the 2012 round a decision was made by ICANN Org to prioritize applications for IDN strings. Although there was a 30-day public comment period, the decision to prioritize IDN strings was never subject to policy review. Although the working group received a number of comments on this issue, both in support and against, the

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working group was not able to come to agreement as to whether those IDN applications should receive any priority in subsequent rounds.”

I'm not sure why it says “those IDNs.” It should just say “IDN applications,” so sorry. Obviously, we’re not referring back to the 2012 round. That’s my mistake. I don't think we could say anything other than this. I see people in the queue so let me go to Greg and then Christopher. Greg, please.

GREG SHATAN:

Hi. Thanks. Procedurally, I think that since this was not approved policy and we don't seem to be able to approve it as policy this time, then I think the IDN preference disappears; becomes, in essence, a question of “what is the status quo?”

Well, I believe the status quo, in term of policy, is that it matches the last policy and that anything that happened since then that rises to the level of policy, which I believe this does, would then need to be affirmatively added in as policy. And so, it seems we have failed to approve this as policy and therefore it should not be part of the next round.

I will say that, even if I felt strongly that it should be. I just think that's procedurally the way this should work. Otherwise, everything gets stuck in afterwards regardless of whether it's good, bad, or indifferent, but it certainly was not part of a policy decision, becomes, then, part of the status quo, which encourages behavior to get things put in post-policy. I don't think we should go there. Thanks.



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JEFFREY NEUMAN: Yeah. Thanks, Greg. Just before I get to Christopher I'll read what Robin said because I do want to address this. Robin says, "We said at the beginning of this PDP that we wouldn't make changes to the existing policy if we couldn't reach consensus to do so," and Alan's saying, "We seem to have changed the rules." No, Alan.

This is one of the rare issues where we have this problem, because in most cases things are documented in the guidebook and things were implemented as was in the guidebook. This is one of the rare situations where this was neither in the policy discussions, it was not in the guidebook, and frankly it wasn't even in the first proposed implementation plan.

This is one of those items that is rare. I think only this and closed generics really fit into this category where we run into this issue. I don't necessarily see this as changing the rules because in other cases where, let's say, for example, we can't agree on ... Let me see. Let's take a decision or something that was in policy. Let's say we can't agree that communities deserve priority, if something is a community application. I'm not saying we will or we won't. But certainly, then, if we, this working group, agree on that, the default is exactly what was the policy back before and what was implemented in the guidebook, the communities will receive priority.

Here, it's a little different because "guidebook" doesn't describe the solution that was implemented, nor does the policy before it. It only happens with this and with the closed generic issue. Greg, I don't know if you want to ... Actually, don't. Christopher is next in the

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queue and I don't know if Alan or Kathy want to comment on that, as well. Let me go to Christopher.

CHRISTOPHER WILKINSON: Thank you, Jeff. Well, first of all, as some of you already know, I do not agree with the idea that the 2012 AGB is a default. There are a lot of things that were wrong with that from the point of view of public interest and efficiency. I reject—and Rubens made a similar comment on this document—the idea that in the absence of an agreement you revert by default to 2012. You could equally well say that in the absence of agreement we revert to no IDNs at all.

I would advocate in the light of what I just heard that we should have a separate, independent PDP exclusively on IDN gTLDs. Actually, I think it would be quite reasonable in view of the international and, indeed, political aspects of this question, to give that whole IDN PDP priority over the whole of this SubPro PDP. I have strong reservations about the direction in which this discussion is going. Actually, on this occasion, I disagree with Greg with some regret, because I sometimes enjoy agreeing with Greg.

That said, some of you have a mantra or two. Well, I shall make again the point of the mantra that I have advanced in several conference calls: incumbents cannot be allowed to determine the conditions for new entrants. This is just about what you're proposing to do right now. Incumbents cannot be allowed to determine the conditions for new entrants. Thank you.

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JEFFREY NEUMAN: Yeah. Thanks, Christopher. I will note that the comments we received are from the entire community and the recommendation, or lack thereof, from the working group is representative of the entire community and not just the incumbents. I think we need to, as a working group, stop making those types of comments. It somehow found its way into a CircleID article and I just don't think that there's any evidence of that, and if there is evidence of that then please present it so we can change it.

But at this point, please stop making comments internally or externally that this is dominated by incumbents because, as a challenge to both the PDP process and to the leadership team. If you can demonstrate that that is what's happening then please do present that evidence, but I don't really think that that statement should be made.

Certainly, I'm willing to hear from others if they disagree with that but I think policy staff, Steve, Emily, Julie, myself, Cheryl, and the other members of the leadership team, including Annebeth, Martin, Robin, Michael—and I'm forgetting a lot of people and I apologize—have gone out of our way to make sure all of this is representative. I'm sorry to get off on that diatribe but this is just ... You can say you disagree and that's totally fine but to say that this is dominated is just not a direction, I think, that's productive to go in. Alan, and then Kathy.

ALAN GREENBERG: Thank you very much. First, I'll say I don't have a particular stake in the ground on IDNs so I'm not pushing for one answer or the other, but I stand by my comment. I understood the rules of this game are

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that the 2012 round as implemented, thus what was in the Applicant Guidebook and what was changed by the board, fairly or unfairly, is the result.

And so, just like PICs were the default if we could not come to an agreement to change them, I don't see why the ordering of the round and IDNs is any different. I understood that if we can't come to agreement on a change then the new policy is exactly as it was implemented last time, regardless of how that implementation came about. Am I wrong? Is that not what we said at the start the process would be?

JEFFREY NEUMAN:

Yes, Alan. You're not wrong. In most cases, that will be part of our recommendation. It's accurate to say that there's no agreement here. Now, if the group feels like it is in our mandate we should have a sentence after, something like "no agreement," although I'm not sure how to word it because the group's not recommending that it be prioritized, it's just a lack of agreement that results in that situation. The question is how we word it.

I think it's accurate here to say that there's no agreement, and whether this falls into the same category as what you're talking about, because that was what was implemented, that could ultimately be the case. But I think the way it's written here is accurate.

How the board and others implement this statement is really ... This is one of those areas—and closed generics is going to be another one—where it's hard. It's hard to put this into words because we're

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not recommending that it be done the way it was done before, although in other places we actually do that.

ALAN GREENBERG: Jeff, if I may respond very briefly? Again, my understanding is if we cannot come to consensus on a change from how it was done last time then how it was done last time stands. Because someone happened to draft these words in this recommendation, or “no agreement,” I don’t see why that changes the ground rules. Sorry. Thank you.

JEFFREY NEUMAN: Anne agrees with that. Let me go to Kathy and Paul.

KATHY KLEIMAN: Sorry, coming off mute. Can you hear me, Jeff? Okay. I actually don’t think PICs is part of our discussion. I think that creating a dumping ground in the base registry agreement for anything a registry wanted to put in is not what we’re talking about here. But you were right, closed generics and IDNs were part of an adjustment of processing. We just didn’t cover all the policy issues and implementation issues in the original Applicant Guidebook. We couldn’t even anticipate many of them.

I agree with Alan and others that I thought we had established that unless it was a really, really good reason not to go with something that had been done in the first round, and especially when it had been considered/especially when it had policy implications and understandings, as the processing of IDNs first did, because this

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was one of the reasons for new gTLDs, the introductions of IDNS for the first-time new gTLDs, and it continues to be part of our expansion. I mean, think of the policy implications of it; part of our expansion of new gTLDs into the global south and into lots and lots of other regions around the world where they don't want to type in English and ASCII. All of that would seem to weigh in favor of continuing what we did in the first round. Thanks.

JEFFREY NEUMAN:

Okay. Thanks, Kathy. But what I don't understand is how you're distinguishing between PICs and this. We can have this discussion when we talk about PICs but we're going to if employ a situation it has to be consistent across the board. Let me go to Paul and then, Kathy, if you want to get into the queue to respond to that. Again, we need to be consistent, period.

PAUL MCGRADY:

Hi, there. I guess I'm trying to figure out, then, what the effect of this paragraph is, right? What we're experiencing is the problem that I think is occurring here because of the limited nature of what this PDP's about. We don't seem to be going back and looking at the actual policy that the GNSO Council adopted that was the bedrock for the Applicant Guidebook and all the other implementation details that have come out. If we were, we would be looking at the policy principles: "New Generic Top-Level Domains must be introduced in an orderly, timely, and practical way."

Again, that's A. And then, B, "Some new Generic Top-Level Domain Names should be Internationalized Domain Names, IDNs, subject

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to the approval of IDNs being available in the root.” That’s the policy here.

And so, the fact that staff appears to have prioritized IDN strings, again ... And I believe this is the case, correct me if I'm wrong, but the prioritization has to do with the queueing for the evaluation, not prioritizing IDNs over other strings. In other words, being an IDN doesn't get you out of a contention set. It doesn't give you special rights the way that a community-based application might. We're simply talking about giving the IDNs a slight head start to go to market over the non-IDNs, assuming that the IDNs and the non-IDNs are not in a contention set.

So the question is, for us, did the staff do something here that is violative of the actual policy? If it did not, it's an implementation detail rather than a policy, I suppose. I guess we could affirmatively make it policy that staff shouldn't have done this.

But absent that and absent anybody saying what the staff did here violated the actual very skeletal policy under which this entire program is based, I guess I'm not following. I guess I'm not following the idea that just because we say there's no agreement that automatically says that staff can't do this again, it seems to me the other thing, right? If we say there's no agreement, what we're saying is we're adopting a new policy that would interfere with what staff did. But again, it's going to fall to staff.

And so, I don't know that the angst is appropriate here. I think maybe people who have angst and don't want to see the staff do this again really need to take this up with staff and the board come

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implementation time. If I'm super-duper missing something obvious, I'd appreciate being corrected. Thank you.

JEFFREY NEUMAN:

Yeah. Thanks, Paul. Just one thing I put into chat; technically the policy was first-come-first-serve but that was ultimately ... Through the implementation, the community actually went back and said, "You know what? That's not really the best way to do it because it would be unfair to so many different groups of people," and it just didn't make sense. And so, at some point during the writing of the guidebook, the notion of a secondary timestamp came to be accepted by the community. Of course, that resulted in Digital Archery, and then that was abandoned.

Looking at the comments, I believe that there's a high level ... If not consent, certainly I think at this point, but we haven't done an official vote, that first-come-first-serve is not the way to do it. And then, it becomes, "Okay, well we are affirming that random draw is the way to go forward. Where we have the issue is on whether or not to prioritize IDNs."

The fact that ICANN staff did it last time, I think, was partially also influenced with the amount of applications that they had. We're talking about 100 out of 1,900, so less than 10%, as opposed to let's say we get 1,000 or 2,000 IDNs and 5,000 non-IDNs. Then, the question is, should that same policy be followed if it means a delay of a year, two years, or whatnot?

It's an interesting one. I think the only thing I could say, or we could say as this group, is that we don't have agreement. Going on and



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making the next statement and saying, “Therefore, we recommend doing it the same way we did it before,” is going that extra step. But let me go to Anne, and then Greg.

ANNE AIKMAN-SCALESE: Yeah. Thanks, Jeff. Just very quickly, I agree with you that consistency in how we approach these issues is very important. I guess I would count myself among those in the group who had a different understanding from what you are expressing now. I think that it’s important for us to sort out this issue now because I think it will arise in other cases as we go along. It certainly was my understanding all along for quite some time here, that we would fall back to the practice, if there was no consensus.

I think what you’re saying is, “Yeah, but actually that practice violated the policy.” I almost hear you saying, “Staff did it and it violated the policy.” What I was wanting to suggest is, if you want to change, based on your understanding of these issues right now, the basic procedural framework that the group was operating under, I think it would be a good idea to propose a little bit of a different framework and see if the group will accept it. In other words, if there’s something that staff did but your view is that it violated the policy or it was policy and so staff shouldn’t have done it, that that would be a different category from something that the board approves.

Because it sounds like you’re making that distinction but you haven’t actually brought participants on board because we haven’t been exposed to that distinction in the past as a ground-rule. That’s why you see in the chat Alan saying, “Those weren’t the ground

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rules,” and Robin saying that. If you feel strongly about this I would suggest you propose a little bit of a different framework. Thanks.

JEFFREY NEUMAN:

Okay. Thanks, Anne. I guess the question is whether we put in that next sentence, right? I don't think anyone's disagreeing that the group is not agreeing one way, or either supporting or rejecting the way it was done the last time. The sentence basically says, "There's no agreement one way or the other," or, "we're unable to come to an agreement."

The question is, then, do we put in a sentence that says, "And therefore, we recommend doing it the way we did it the last time," or do we just stay silent on it and how it gets treated is like everything else where there's no agreement or we're going to talk about it here, which is the way it was done the last time? I think I'm partially looking for wording as well as this, and closed generics, and, I guess, PICs were the same category of things that came up without community agreement to put it forward. It was just sort of that solution that was imposed. Again, that really doesn't come up in too many situations. We'll go to Greg, and then Alan, and then I'd like to get to start the closed generic issue, at least to see if we're going to make progress there. Let me go to Greg and Alan.

GREG SHATAN:

Hi. I think it's important that we try to clarify these ground rules every few years in this group. I think Paul may have come the closest to my understanding, which was that if it is implementation the implementation stays, even if there's no agreement on whether it

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was good or bad, right or wrong, but that if something in fact rises to the level of policy, that is something that needs to be approved as policy in order to continue as policy.

To some extent, we're back to the classic policy versus implementation divide and the question is whether ordering was a policy issue. I think that if all implementation is up for grabs to be changed we have to decide to change it. That has been my understanding, that we don't have to approve every level of implementation in order for it to move forward, but that where it is a question of policy, the status quo does not stick if it was never a policy decision. I think the bottom line, and then I'll shut up, is that I don't think there is a one-size-fits-all solution to the topics where we have no agreement one way or the other. I think it depends on what it is that we are not agreeing about and how it came to be. Thanks.

JEFFREY NEUMAN:

Yeah. Thanks, Greg. I think we need to clear up one thing. This group was chartered to work on both policy and implementation, so in that way there's not really a need for us to clarify whether something is policy or implementation. We are either affirming, recommending, or providing guidance on all of the items around the new gTLD program, whether it's policy or implementation.

I don't think we should start now distinguishing as to whether one solution is for what was policy and another solution is for what was implementation. I just don't see that as being very productive, since we'll never, as a group, agree as to which parts are policy and which are implementation.

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In fact, Paul's got a comment in here that that doesn't want to conflate the two issues with closed generics because Paul is making the argument that that implementation violated the policy. Whether it did or it didn't is not something I want to necessarily get into because, again, our group is tasked with looking at both items.

The question here is not what solution is ultimately implemented by ICANN. The question is, what words do we use after we say that there's no agreement? It's not accurate to say that we recommend the status quo because some people don't agree with recommending. We could just say, "Therefore, the status quo should control," or, "absent agreement otherwise the status quo should control." That's fine. I'm not necessarily disputing that. It's just in the words that we use. I hope that makes sense.

I see Kathy's saying, "Conflating it with PICs also doesn't makes sense." See, I think the problem here is that if someone agrees with a concept, that they think it's something that is not the same. We have to be consistent. Number one, we have to be consistent. And so, we can't just say, "Well, for this issue," because maybe it's not as emotional or passionate as some of the other issues, we can't say, "Well for IDN prioritization we're going to say status quo controls but for PICs we're going to say it doesn't, and for closed generics it doesn't."

We're not going to say it does for closed generics and it does for this but it doesn't for PICs. We can't. We have to be consistent. That's number one and it should be all of our goal. I would love to hear consistency, if everything fits in or there are reasons we should be inconsistent, but it has to be clear as to why we do something

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with one topic and with others. I'll got to Alan, I'll go to Kathy, and then I really do want to talk some substance on closed generics.

ALAN GREENBERG:

Thank you very much. I don't think this is the first time that we've not had consensus on a change, so what wording did we use before? I'm happy to say, "We couldn't come to consensus, therefore the prior implementation stands." I'd be happy if this group could come to consensus, saying, "We can't come to consensus on how IDNs should be handled. We're willing to leave it to staff," or, "we're willing to leave it to the board to decide whether IDNs have consensus," but we can't make a recommendation that's different from the previous one because we can't come to ... We can't make a specific recommendation to do something because we can't come to closure. I mean, that's a conflict in terms. The wording you proposed, I think, is fine, and I'm presuming this isn't the first case.

In terms of lumping this with closed generics, I strongly disagree. This discussion is about what order we evaluate applications. Closed generics is a decision on whether specific applications can go forward or not. That's policy. There's just no way we can get around that being policy. How it was determined last time may have violated our standards of how we thought policy should be done, but it was done, and that's what working on to now. Lumping those two together, I think, is a very incorrect thing because one is very, very specific about simply how things are processed and the other one says, "Do applications go forward or not?" and that's a very different issue. Thank you.

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JEFFREY NEUMAN: Thanks, Alan. I'll go to Kathy, and then I really do want to get onto the next topic. Certainly, what's in here is accurate as far as there's no agreement. The question is whether we put in, either in this paragraph itself or in the preamble, that where there's no agreement the default controls. I do want to ... No, let me just go onto Kathy, please.

KATHY KLEIMAN: Okay. I think there's general agreement with what Alan has said—or at least I agree—that lumping these two things, IDNs and closed generics, together does not make sense. Happily, I think we have a path forward, and I want to suggest it, because we have another comment period. In this paragraph, because we don't want people having to reference general language and general paragraphs, when we add a line for the public and flag it/make it bold, we want commenters to see this.

It says something like—and I can put it in chat if you want—“In the absence of agreement, our default recommendation is to continue to prioritize IDNs first. What do you think?” And that way, because we have a second round of public comment, we're putting it out there that “we couldn't come to an agreement, if you've got some burning reason you don't like this let us know,” and if we hear from the public, great, and if we don't then going with the default path seems to make sense. I'll put that language in but I think the public comment period helps us, here. Thanks.

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JEFFREY NEUMAN: Yeah. Thanks, Kathy. I do agree that this is a good question that should be asked. I think that not just with this but whatever other areas where we don't come to agreement we should make it clear just so people know that "because there's no agreement it will be implemented in the way it was implemented before, absent agreement or otherwise. And so, what do you think?"

I think that's a good way to end this conversation because I think it is a good area that should go out for public comment and I do agree with Kathy that we do have one more shot to see if the public has some strong feelings about this. And so, it's not just going to apply to this. It'll apply to a couple of other areas.

I do know what I wanted to say to Alan, which was this is actually the first area where not only has the group not agreed but the group is not comfortable, necessarily, with the status quo. Another area that we covered [we know] at least [inaudible], the group actually felt some comfort in and was okay with the status quo. The comments were not necessarily that comfortable during that but it is what it is. We'll ask a question about it. I think that that does give, as Kathy said, another opportunity for people to comment on what the default will be.

Okay. Someone's line is open. If we can close that open line, that would be great. Okay, thanks. Let's just scroll down a little bit here. I just want to make sure ... I can't remember much in the new area other than .. Oh. So in the new issues raised, there were discussions—and this goes to Christopher Wilkinson's point—both within the working group as well as in the comments, certain groups favoring certain types of applications, others not. That includes geographic, community, and others. Certainly, there's no

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agreement on any other category. By saying that there's no agreement, it doesn't mean that some people in this group don't feel strongly. It just means that in general, the community did not feel strong in prioritizing another type of application.

Let's move on, then. Julie's comment there actually just reflects what we've been talking about so I think we can move on. Okay. Just so you see my response, the question from Julie was ... Actually, it was from Emily. "If there's no agreement, do we want to put it as an affirmation?" My comment back was, "Well, we're not really affirming what was done but it's more of a question of the default if we put some wording in," kind of like what Kathy just mentioned. My comment was, "It wouldn't be an affirmation, it would be some separate category, or whatever we wanted to label it." That's what that comment was about.

If we want to scroll down? Okay, this is also important, just to make sure people are on the same page. The initial report also had a recommendation that portfolio applicants could work with their numbers and choose which application it wanted, in which order, so if you applied for 100 different strings you would get 100 different priority numbers and you could pick which one you wanted. That did not get agreement in this group, certainly not with the comments we got back.

In fact, I went back and researched this. This was actually a proposal that was made during the initial prioritization draw and it didn't get support then. I just wanted to verify that this also is discussed in this new idea but it is not something that at least the leadership team here believed there was any agreement on. I'll go to Christopher, and then we'll go to closed generics.



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CHRISTOPHER WILKINSON: Right. Apologies for the delay but the mute button was latent. Just a note; recall my general criticism to the concept of portfolio applications. This option of a few companies having enough financial support to make, as you put it, “hundreds of applications,” is potentially extremely prejudicial to new entrants. There must be some form of restriction or de-prioritization of this kind of portfolio application.

I'm very critical of that option, particularly insofar as apparently—and we haven't discussed the WT5 report in the PDP yet—particularly in the context of geographical names, the idea of said country/companies making portfolio applications for geographical names worldwide, I think, will—and there is nothing in our policies here that would prevent that—create political situations at the level of the ICANN Board that would be highly prejudicial to ICANN.

We need to have a very precise and restrictive concept of portfolio applications, particularly if the companies concerned already hold portfolios of top-level domains from the previous round. Jeff, you danced over the paragraph that I have already expressed exception to and I request that it be redrafted. It sounds very much like a personal attack on my position. I am not small of anything and I don't think it's correct to dismiss what I know to be significant improvements of the 2012 procedure, and that paragraph, from my point of view, is wrong and personally damaging. I request that it be redrafted. Thank you.

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JEFFREY NEUMAN:           Okay, Christopher. I'm not exactly sure which paragraph you're referring to but if you could suggest some other ...

CHRISTOPHER WILKINSON:       Well, I've already sent a memo to the staff and to yourself about that. If you scroll back up, I'll point it out to the rest of the PDP because it is not appropriate, even from minority positions, to dismiss them so summarily.

JEFFREY NEUMAN:           Okay, thanks.

CHRISTOPHER WILKINSON:       New issues.

JEFFREY NEUMAN:           Yeah.

CHRISTOPHER WILKINSON:       Little C, "the working group reviewed," etc. You cannot dismiss this on the basis of a small number of participants. This is a pretty fundamental issue and relates back to the economic priority of ICANN to create conditions of fair competition and to facilitate new entrants. Thank you.

JEFFREY NEUMAN:           Okay. Christopher, if you can draft some language that you think might fix the problem, please do suggest that. I think that would help

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us. It may just be me. I'm a little slow, sometimes, so it might just be that I am not picking up it. If you could just ...

CHRISTOPHER WILKINSON: Okay. I'll discuss something with Steve and Emily. But Jeff, this is not a problem for me. This is a problem for you. Thank you.

JEFFREY NEUMAN: Okay, thank you Christopher. If we can move onto the closed generics? Okay. On the closed generics, all the other mics ... Oh, I'm sorry. Alan, I see your hand raised. Is it on closed generics or is it on something else? Alan?

ALAN GREENBERG: Yeah, thank you. Before we get onto the substance of the topic, I'd like to strongly object to the next meeting being rescheduled to overlap with an ePDP meeting. We've not overlapped with them before. From my perspective, I cannot miss that meeting and I believe closed generics are a rather important topic. Overlapping with another critical ICANN GNSO meeting, I believe, is inappropriate.

JEFFREY NEUMAN: Yeah. Thanks, Alan. I hope you made that point to the ePDP, as well, because ours was previously scheduled. Thank you.

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ALAN GREENBERG: The ePDP has been scheduled in that timeslot since time immemorial. It may not have been on the agenda but it's always scheduled and that time on Thursdays. Staff may not have known that but that's a staff issue.

JEFFREY NEUMAN: Okay, thanks. Your objection is noted, although I can say that there's no difference. Anyway, let's move onto closed generics. I'll take your point back and I'll try to figure out what happened. Okay, closed generics.

On this issue, we have certainly had many, many discussions on closed generics. We've talked about the pros and the cons of allowing them and not allowing them. We've talked about potential different options that we had, whether to ban them completely, not ban them at all, only allow them where there is public ... Sorry, the GAC word. If it's in the public interest. We have talked about a lot of different options and the one question that still remains is whether there is any room for a compromise solution other than an outright ban of all closed generics.

If there are people on this call and in this group that will not entertain any other potential solution then I don't want to waste people's time in this group discussing other possible scenarios. I do want to have this initial discussion. We'll continue it on the next call but if we're not making progress in people's minds, especially those that want to not allow them completely, then we will cut the discussion short and figure out some of the issues around the edge. But we're not going to spend a lot of time debating this unless there's an actual

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willingness of people to want to figure out if there's a way to allow certain of them to go through and what the criteria would be.

I started with that disclaimer. Again, what I start with here is that in the recommendation the working group notes that in the 2012 round of the new gTLD program a decision was made by the ICANN Board to effectively ban exclusive use generic applications. The ICANN Board made it clear, however, that the decision it made applied only to the 2012 round and that it wanted the GNSO to introduce a policy discussion regarding the treatment of such strings in subsequent rounds.

Although the working group has had numerous discussions on this topic and received extensive comments from the community, received a number of comments ... I think there are some typos from my part. We received a number of comments from the community, from the working group: "We're not able to agree as to how to treat these applications in subsequent rounds." We'll fix the wording, I apologize for that.

The part that's highlighted, Kathy has ... There are questions about the [stability] of this statement. And then Jim—sorry, if we can scroll down to Jim's comment—partially agrees with Kathy, "I'm not so sure this part of the sentence is accurate." Okay. Let's start that discussion. I do want to note the original ... Actually, while I go to Alan and then Jim, if I could ask ICANN staff to pull up the wording of the resolution? Then we can go through that to just, hopefully, try to talk about the meaning. Let's go to Alan, and then Jim.

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ALAN GREENBERG: Thank you very much. I'm a strong supporter of not allowing closed generics. The argument that has been made, however, Jeff, by you among others, of a gTLD such as .disaster being run by the Red Cross, ignoring the fact that .redcross would probably be as effective, and in both cases there are language issues; just looking at it in its merits, I think that is a closed generics which might have value and might be in the public interest. The question is, how do we allow such closed generics without allowing in the ones that many of us feel are inappropriate?

Given that I may not be at the next meeting when this is discussed, I'd like to make a proposal. I would propose that a closed generic be allowed subject to approval of the ICANN Board, that approval requiring near-unanimity, so more than the super-majority, and if the board approves that then it can go forward. If the board does not approve it, it is not appealable.

It's a one-time decision that the board has to make at that time. We have ICANN accountability measures that could be used if the community widely feels this is inappropriate, so that board decision could be subject to the Empowered Community approval/could be subject to Empowered Community rejection. Those details could be discussed.

But I believe if we allow closed generics that are believed to be in the public interest to be allowed if the board agrees, that means we are not saying the really good ones cannot go ahead but it says that the overall principle is that we not have closed generics, essentially, for a profit.

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I am explicitly saying that if the argument for why this closed generic is good is “it’s a new, innovative business plan,” I reject it out of hand because we’re looking at things in the public interest and business plans don’t factor into that. I would like to propose that we do allow closed generics in the specific case of overwhelming approval by the board and allow that to be the escape hatch which says we are not closing the door to good gTLD closed generics but we’re not in general allowing them. Thank you.

JEFFREY NEUMAN:

Okay. Thanks, Alan. I appreciate the proposal. If you could submit something like that in writing and maybe also give some thought to Donna’s question about whether you can think of criteria that could be used by the ICANN Board, at least in your proposal, that would be very helpful so that it could be used as a guide for potential applicants of this type of string. I think that’s a helpful proposal. Let me go to Jim, and then Paul. I do want to go to the resolution but there are a lot of people in the comments so I’d rather hear from people than talk about the resolution. Jim, please.

JIM PRENDERGAST:

Sure. Thanks, Jeff. I guess, two points. One, directly related to my comments in there, I’ve also put the link to the resolution in the chat. The assertion that the board was clear that this only applies to the 2012 round; I’m not so sure about that because it kicks it to us to do something but it doesn’t say, if we don’t do something, what the impacts are for future rounds.

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I think unless you can see language in there that would point us to where it's definitive, I'm not sure if that's appropriate language. Let me take it up a few levels here and ask a question which I think is foundational to our deliberations on this. We talked about it during previous deliberations but I don't think there was any clear outcome, decision, or consensus on it. That is the standard by which we've been operating has been that in the absence of consensus it reverts to the guidebook.

This is a situation where the guidebook didn't have any prohibitions but board action came in afterward, inspired by GAC advice on this, to prevent these. So can you clarify what our "fallback position" is, here, if we do go ahead with a "no agreement" in the recommendation section? Thanks.

JEFFREY NEUMAN:

Yeah. Thanks, Jim. I guess we do need to pull up the resolution. Sorry, guys. If you pull up the resolution, the reason why ... Because one of the options for applicants at the time was—let's see where it is, the options here—they could submit a change request to make it no longer generic; they could maintain their plan to operate as an exclusive gTLD.

As a result, the initial report application would be deferred to the new round, subject to the rules for the next round, to allow time for the GNSO to develop policy advice concerning exclusive generic TLDs. That part B can be interpreted three different ways but it can't be interpreted to say that the rules will ... Sorry. That's interpreted as you should be able to move your application to the next round and have it considered subject to whatever rules are developed by



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this GNSO, which means the way to read that statement is that the ban was only with respect to that round, and that applications would be—if anyone exercised this option, which I know nobody did—or could be subject to different rules.

In conversations with the brands that were subject to this decision, it was very clear from assertions from a number of staff and others that the resolution only applied to 2012 and that there was no judgment by staff or the Org as to what the treatment would be in subsequent rounds. Whether it's worded too strongly to say that it only applies to that round, maybe we can get rid of the word "only" and say "it was intended to apply to that round," but it's clear that the board wanted us to take up this issue and decide the policy, if we could. Kathy is saying ...

JIM PRENDERGAST: Jeff?

JEFFREY NEUMAN: Sorry, go on, Jim, and then I'll reply to Kathy.

JIM PRENDERGAST: I'm not trying to make light of this, and I know we're up against the clock, but it took you two minutes to explain how the board made it clear, so therefore I would argue that that's not really clear.

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JEFFREY NEUMAN: Okay. Thanks, Jim. I mean, it does say that they have the option to move their application to the next round, subject to whatever. Basically, the rules, right? I don't have to read the whole thing.

JIM PRENDERGAST: Even going through this exercise I don't know if that's clear. I don't want to get hung up on a word but I think it's important that we ... I'll put some language in the document that we can look at next time, some alternative language that may address that.

JEFFREY NEUMAN: That would be helpful. See, here's the issue that we ... Right. Thank you, Karen, for putting that in. "The NGPC is also requesting that the GNSO specifically include the issue of exclusive registry access ..." Oh, I just missed it because Anne ... Sorry, Anne. "The NGPC is also requesting that the GNSO specifically include the issue of exclusive registry access for generic strings, serving a public interest goal as part of the policy work, and it is planning to initiate on subsequent rounds of the new gTLD program and inform the board on a regular basis with regards to the progress on the issue the president/CEO should provide the GNSO with the information needed to support this request."

Yeah, we could reword some of that and put that in. I think that might improve it. I guess the question I'm asking, before we get to, ultimately, the end of the day and what is recommended, is whether we will find agreement within this group to work on a solution, sort of like what Alan had presented, as to whether there would be a significant amount or group of people that will come off of the

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complete ban/support to work on a solution to allow some form of closed generics, whether that's demonstrating the public interest or not. I'm just trying to gauge whether there is a willingness within this group to work on that type of solution. Let me go to Paul and Christopher.

PAUL MCGRADY:

Thanks. I do think we need to answer Jim's question because I do think we need crystal clarity on what happens in the event we leave this "no agreement" paragraph in without reaching some sort of compromise because I'm afraid what I'm hearing from Jeff is that the default setting is that the board ban in the 2012 round which the board ... It seems to me pretty clear that they were saying it only applied to that round, which is why they say "for the remaining applications in this round," and for all the other content that points to the next round. It seems to me that that falls away and we are back to the actual policy, which did not ban closed generics and, in fact, called for the entire thing to be orderly and predictable, which the ban on closed generics was not.

And so, we need to decide, essentially, what does it mean that we don't reach agreement? I argue that it means that closed generics are back on. Jeff seems to be taking the position that closed generics remain out even though there is a very direct concession in the summary that the ban only applied to the 2012 round, so I'm not sure how the ban that applied only to the 2012 round somehow survives of its own accord.

At the beginning of the call next week, I think we need to understand what happens if there's no agreement because that might motivate

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some people to get off the fence. I think that the presuppositions that the anti-closed generic folks win by default, that's just not how this all has worked up until now. Thank you. Bye.

JEFFREY NEUMAN:

Yeah. Thanks, Paul. I know we have to keep going. I know there are people in the queue. This is going to be controversial but I'm going to say it because I'm hoping it'll lead to a better result. In this subject, I don't want to clarify what happens if we don't agree because I don't want people to say, "Well, I'm comfortable with the way the default would be, and therefore I'm not going to even try to come to an agreement with the others."

At this point, I would love for everyone to just completely put that aside and actually enter into good-faith discussions to see if there is middle ground, here. If we go in and we clarify, "Well, this is what's going to happen if we don't agree," and that happens to be what people like, then there's not going to be the incentive for them to back off.

I'd rather everybody in this group assume that everything is up in the air so that we can try to see if there is a solution, or that people are working on or could work to a solution. I want everyone to be motivated to see whether we can work on some sort of solution.

I know that's controversial. I know people may not be happy with that but I'd rather people not just sit on their laurels and assume that the status quo will control or that it won't control. I want to see if people will want to come to an agreement. Again, I apologize if people are offended by that or that makes people uncomfortable,

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but with this topic I do not want to have any discussion right now on what happens in the default, period. I hope that makes sense.

I'll quickly go to Paul. Sorry, your hand's still up. I want to give everybody a minute. Thank you for staying on a little bit extra. I do think this is important but I'll cut the queue off at Alan. Christopher, Kathy, and then Alan, please.

CHRISTOPHER WILKINSON: Hi. Jeff, once upon a time, a long time ago, I was sympathetic to closed generics but on the false understanding that these would all be based, necessarily, on a pre-existing international trademark. It seems that this is not the case—silly me—so I withdraw any past support I've given for closed generics. In the present context, given what we've heard, I would like to give Alan's proposals a run for their money so that we can see the drafting of how it would go. As a general proposition, as you've understood elsewhere, I have no time for the default to 2012 if 2012 was manifestly wrong.

By the way, I think most of you are talking about closed generics in English. As an English speaker, I disagree with privatizing and giving monopolies over generic terms in the English language. A fortiori, think of the implications, political and otherwise, of what you're saying vis-à-vis Chinese, Urdu, Japanese, and other languages. You want to have a discussion in the GAC about closed generics in IDN languages? Good luck to you.

JEFFREY NEUMAN: Okay. Thanks.

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CHRISTOPHER WILKINSON: Finally, Jeff, I've head your comments to Sadowski. I have no particular background in George's position because he's been a board member but there's a phrase here which I think is wrong and re-emphasizes the problems that we have in the PDP. You effectively accuse George of a lack of confidence in the PDP process. Wait a minute – and how! There are a lot of people out there who have very limited confidence in the PDP process. Let's get real. I'm afraid to say this, Jeff, but that phrase in that comment does reflect a lack of neutrality, which in other respects you have creditably tried to sustain. Thank you.

JEFFREY NEUMAN: Thanks, Christopher. I'll go to Kathy, Alan, and maybe put myself in the queue.

KATHY KLEIMAN: Thanks, Jeff. Since we're going to have more fun on this in our next meeting I'm just going to go back to the fact that we really do need to edit that opening paragraph. I think George Sadowski and his CircleID gave us the right wording, the factual wording: "The ICANN Board decided that closed generic strings such as .book would not be allowed in the 2012 round of new gTLDs. The essence of the concern on the part of the board was that closed generics would allow the monopolization of a significant part of the information space and would create a non-level playing field for others within that space."

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I think we should put that in, not interpretations of that, and I think we should add that probably no board-created policy has ever had more public input than this one did. So, let's get the facts in and then add that the board did create the possibility that if we could create another answer we could have that but that the default is the board banned this in 2012. Let's make that very, very clear, please. Thanks.

JEFFREY NEUMAN: Thanks, Kathy. Alan, and then I'll close it up. Alan.

ALAN GREENBERG: Thank you. Number one, I support what Kathy just said, that if we're going to refer to the board motion let's refer to the board motion, not an interpretation of it or an abbreviation of it. The motion said, "We're not allowing them in 2012. We suggest you reapply in the next round subject, of course, to the rules in the next round." We're sitting here making the rules. This PDP is deciding on what the rules are. They don't revert to something else if we can't make rules. Our ground rules say how we're going to move forward so let's keep that in mind as we go forward.

The board motion, essentially, was talking about the public interest and I don't think we're going to define it. There were people in the chat saying, "How do you define it?" Well, it goes back to there was a US Supreme Court decision a number of years ago where they were talking about defining smut, pornography, and the comment oft-repeated is "I'll know it when I see it," and I don't think we're ever

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going to come up with something better for the public interest in that. Thank you.

JEFFREY NEUMAN: Yeah. Thanks, Alan. Interestingly enough, the US Supreme Court is considering a case in this term, which will be decided in March, about the definition of generic-ness and domains. That may be more relevant at home. We'll see what happens in March.

ALAN GREENBERG: When we have the result yes, indeed, it may be more relevant.

JEFFREY NEUMAN: Thanks. At the end of the day, yes, I agree with Alan, we should be operating to see if we can try to come up with some agreement on a solution. If we can't then it's clear that we can't and we'll move on. I think I'm trying to be very neutral in this case because, personally, at the end of the day, I need and Cheryl needs to make a judgment as to what the consensus of the group is, regardless of whether I personally support it or Cheryl personally supports it.

That's how we will view things and that's why I believe that George's statement does show a lack of confidence in the PDP, because if for whatever reason this group does work on Alan's proposal, let's say, and let's say everyone adopts it and it does allow some form of closed generic, albeit subject to the rules that Alan has laid out, then the PDP will, in fact, recommend removing the ban, at least in that situation.



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And that will not be a decision by the incumbents or the contracted parties; that will be a decision by this entire working group. Neither Cheryl nor I will accept any recommendation if it's only supported by one faction of this working group. We will follow the PDP and we will follow the definitions. And for George to make an assumption that if some form of closed generic is allowed it'll be because the process has been captured is something I will not let happen while I am a co-chair of this group.

If you believe I am operating unfairly or in favor of the incumbents or contracted parties, please do raise that up immediately and either I will change up or I will be removed. But I do not accept someone to prejudge an outcome of this group as being subject to capture. That is why I had put in that it shows a lack of confidence in the PDP if done right.

Thank you. Sorry about that. I know some people on the board felt strongly and we will go back and we will use words from the board resolution. Unfortunately, George's words are not in the resolution itself. Therefore, George's CircleID cannot be considered a fact but we will find language that's in the resolution and make sure it reflects.

Thanks, everyone. The big question for next time is, are we going to work together as a group to come up with a solution? If not then we will go to the next subject. It's fine with me. I'm not saying that we can't do that but we'll only continue talking about the subject if it looks like we're going to make progress. Thank you, everyone. I really hope we have some productive days, and we'll talk to you at the next call. Thanks, everyone.

MICHELLE DESMYTER: Thank you so much. Meeting has been adjourned. Have a great day, everyone.

**[END OF TRANSCRIPTION]**