ICANN Transcription

New gTLD Subsequent Procedures Working Group

Thursday, 19 March 2020 at 2000 UTC

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ANDREA GLANDON: Good morning, good afternoon, and good evening. Welcome to the New gTLD Subsequent Procedures PDP meeting being held on Thursday, 19 March 2020 at 20:00 UTC.

In the interest of time, there will be no roll call. Attendance will be taken via the Zoom room. If you're only on the audio bridge, could you please let yourselves be known now? I do note that as of right now, Cheryl Langdon-Orr is on the audio bridge only.

Thank you. Hearing no further names, I would like to remind all participants to please state your first and last name before speaking for transcription purposes, and to please keep your phones and microphones on mute when not speaking to avoid any background noise. With this, I will turn it over to Jeff Neuman. Please begin.

JEFF NEUMAN: Thanks, Andrea. This is Jeff Neuman. Welcome, everyone. It's Thursday for most of us. We seem to be sharing a global health crisis, so I know many or most of you are probably like myself at home. Being at home, I can't promise that we won't hear some noises from the family or the dog, but I will try to keep that to a minimum if they happen to come in the office that I'm in.

With that, let me just go over today's agenda, which will be to continue on the issue of community applications, really just covering one item that is left over from the last call. Then we'll move on to the registry commitments, Public Interest Commitments, which was formerly Global Public Interest. We'll review what happened at ICANN and then seek to close out some of the issues that we left. And then if there's time, we'll go into the role of GAC Early Warnings and Advice.

With that, if everyone can just please mute your microphones when not speaking. Let me ask if there are any updates to Statements of Interest or any questions on the agenda. Okay. I'm not seeing any.

For the first part of this discussion, finishing up communities, we're going to go click on that link which is the same document we've been using. The link is now in the chat. So we're on – yes, that's the right page. If we can just look at that page number there because I'm not sure I'm necessarily in the same exact draft, but it's Section C, page 33. This is Section C of the communities and it relates to the new issues. One of the items that we didn't get to on the last call, although we got to a number of different issues, is the issue of the notion of extra credit. There's certainly a recognition in the working group by some that communities in

general were not as successful as perhaps we have expected communities to be in the 2012 round or prior to one that started. The working group got a proposal to grant extra credit to CPE applicants that help solve a problem inside the community. Now, I know that's pretty broad but it was something that could help with the scoring criteria and the CPE guidelines. Those are the guidelines that we talked about the last time and a number of weeks ago. Those are the guidelines that we have recommended in Section A to be incorporated into the actual Applicant Guidebook with some changes to reflect the specific proposals already made within this working group.

So, we don't have a very specific proposal all on what would constitute solving a problem or how we would get that or what number of points or, Paul, as you put, "What does it mean?" But I just wanted to close out the issue either by seeing if this is something that we want to pursue, or if this something that we would like to pass on. Sorry, I believe there might be static on my line. That could be caused by me because I'm moving around. So if there's still static, let me know, please, and I could switch to the phone.

Paul McGrady asks, "What does that mean? Who is the 'community'? Does that mean the specific community to which the TLD is directed, or does it mean the ICANN community or subcommunity?" I think on that question, I think I can answer that. That community here means the community to which the TLD is directed. So our proposal basically said if you're helping to solve a problem within that TLD community then you may be eligible for

some form of extra credit. So it's not referring to the ICANN community or the Internet community or anything like that.

Heather asks, "Has there been any analysis of all of the community applications that were submitted to determine whether the cause was a difficulty of applicants in answering the community-specific AGB questions, or the cause occurred through scoring? If the cause of low numbers is that applicants had difficulty with answering the community criteria, then we need to provide guidance, not extra credit."

Paul states that, "Seems like we can tighten a community to the community to which the TLD relates." Okay, I think that makes sense, and I see that it's been put in there at this point so that we can clarify.

Heather asks some good questions. Yes, we've done some analysis on the community applications. We have looked at all the scoring. I think that it's hard to say whether the cause of the low number is because people have difficult answering the questions or whether the scoring was just too tight I think where a lot of applicants had difficulty on a lot and lost a point on opposition. So if anyone filed something of opposition and the opposition seemed or at least looked credible to the evaluator, then applicants automatically lost a point and then others lost points because of the nexus criteria, which was very difficult unless the string was an exact match of the community itself. So if, for example, the string was accounting but your organization was CPA, you may have lost a point on that. And once you've lost two points, you could only afford to lose one extra point in the rest of the 16 in the evaluation.

So, many had put in comments that the scoring was too tight, didn't allow for much forgiveness. But that said, there didn't seem to be support within this working group for changing the scoring criteria. So what we're discussing now is whether keeping the scoring criteria the same but giving some sort of extra boost if they're solving a problem. Again, it's pretty vague but I just want to sort of close this out one way or the other.

Anyone on the queue? My audio is still crackly apparently, so I am going to change audio real quick. Steve or Cheryl … or Cheryl, do you want to just take over for one minute until I switch lines? Or no one can take over? Is it still crackly?

ANDREA GLANDON: Yeah. Jeff, when you speak, it does crackle a little bit.

JEFF NEUMAN: Okay, so I'm going very quickly join –

CHERYL LANGDON-ORR: My apologies. I think I'm unmuted now.

ANDREA GLANDON: Yes, we can hear you, Cheryl. Thank you.

CHERYL LANGDON-ORR: Oh gee, too many mutes. Okay, I'll just reconnect. So, let's continue on. Let's open the queue on the scoring, the Work Track

since [inaudible] didn't indicate that they wanted to make any changes, but that doesn't mean we can not necessarily have a discussion about that now. Is there anyone in this call at this time who wishes to make any comments or bring any points forward regarding the very tight criteria that the community application certainly mentions in their reporting regarding this scoring? Let's [look] at the queue briefly. I see Jamie. Jamie, over to you.

JAMIE BAXTER: Thanks, Cheryl. I don't actually recall this coming up in prior discussions, but I know it's been a long few years. So I'm sort of coming at this just fresh right now. But some initial thoughts that come to mind are that I think most community applicants when they submitted their application thought they were solving a problem. So it seems a little strange that there is this suggestion that there's extracurricular points for solving a problem. It makes me think we're sort of solving a problem that we could solve in a different way and that is to have better evaluation of applications, something we've talked about quite extensively, given that the scoring is what kept people from getting community priority evaluation success.

I'm not sure I quite understand this because I guess coming from another prior community applicant, I think when you submit your application, you are doing it for the intent of solving a problem for that community. So it seems strange that a team that wouldn't give credits to a community because it didn't understand the community in the scoring process has the skill to give them credit for solving a problem that they probably still don't understand as

well. Again, I'm just rethinking here but it raises more questions than it perhaps answers for me. Thanks.

CHERYL LANGDON-ORR: Cheryl here –

JEFF NEUMAN: Okay. Thanks. I –

CHERYL LANGDON-ORR: Oh, you weren't quick enough coming off the mute. I was concerned you were still muted like I was. Back to you, Jeff.

JEFF NEUMAN: Yeah. Thanks. I'm not sure – I heard a little fuzziness when Jamie was talking. I don't know if that was my phone or not, so let me know if it's my phone that I'm also having an issue with. It says I sound okay. Good.

Jamie, I think that's right. But I do have a question. We did talk extensively about the evaluators and they have some recommendations there. We also talked about being careful when it came in terms of letters of support and opposition, and to make sure that they're credible organizations. I'm trying to distill what else is meant by better scoring. Do you mean that the evaluator should be better and stick closer to the criteria, or that the scoring needs to be changed? Can I get a clarification from you?

JAMIE BAXTER: Yeah. Well, it's a hard question to answer because we don't have a round the evaluator to look at that is based on applicants having all of the facts and the knowledge of how they're going to be scored prior to writing their applications, which is the intent in this subsequent procedure I understand, but we don't actually have an example to look at. So it's a difficult question. Had applicants written their application based on the CPE guidelines that were eventually put out while after they submitted their applications, would we have had a better result? I don't know the answer to that because that hasn't happened yet.

JEFF NEUMAN: Yeah. Thanks. Just to respond to Greg's question, "How well have we evaluated the evaluators?" That's an objective question but there is a CPE review report where ICANN hired an independent party to look at whether the CPE evaluator followed the criteria in doing its work. I believe, not agree … They concluded that there was nothing that was done necessarily wrong but the evaluators, of course it didn't look at the issues that we're looking at, and that Jamie mentioned, which is the evaluators used criteria that wasn't known by the applicants at the time they submitted the application. So putting that important issue aside, there is that review that has been done.

Paul has said, "Jaime has raised an issue that seems more vital than the one raised in the agenda." Okay. I think Jamie's issue is right. It's hard because we can't really test it until we actually have a round. We think that with the improvements that we're making, it will lead to better evaluators more standardization, more

credibility, but until we actually have that round, we're not going to know. Is the right way to look at it, Jamie?

JAMIE BAXTER: Yeah. I think what you stated is what I was stating. Yes. I don't know how any of us are going to answer that question right now because in my opinion, community applicants weren't given all the information they needed to write their applications and therefore they were scored against something that they weren't aware of. Obviously, that is the issue we're trying to solve here.

Will we know if the evaluators will do a better job and the results will be different or for better in the subsequent procedures? I would hope so. I would hope that the raised awareness that has been generated through the 2012 round about the actions and the decisions made by community priority evaluators will improve because they were highly scrutinized, there was a lot of concern that came out of their work, and I would expect that they would do better, especially if the rules are laid out from the very beginning. But again, we don't know when the answer to that will be. So, thanks.

JEFF NEUMAN: Yeah, fair enough, Jamie. If I'm reading the room correctly here, I'm not seeing anyone raising their hands for support of this extra credit proposal. Paul, please go ahead.

PAUL MCGRADY: I'm not raising my hand to support it. I put some questions in the chat, for example, the question about if we're going to say you get extra credit for solving a problem. Could it not be the garden variety problems like it needs to be more domain name, real estate, or gee, wouldn't it be great if this community had its own domain name? Those aren't novel or new. If we're going to do this, I'd like to figure out how we – maybe the words are novel, innovation, or something like that, but it doesn't sound like anybody is really advocating for this and I don't want to accidentally advocate for it by trying to clean it up. Thanks.

JEFF NEUMAN: Thanks, Paul. I seem to agree with you that I'm not hearing voices of support at least on this call. Of course, we'll put our action items and notes out and see if anyone … because honestly, I can't remember who was the proposer of this and it's quite possible that that person is not on this call. But at this point, it doesn't sound like we need to address this issue anymore on this call. So let me just see if there's any last comments on that. Okay, I'm not seeing any comments then I think we are safe to go to the next topic. We will come back to communities, don't worry. Right now we are reviewing the items that we did at ICANN but with the goal of finalizing these or getting them as final as we can into the next draft which is the draft where when we are done will be the one where you can't live without or without a change. So we've talked about that process before. That hasn't started yet. But if I can add, actually, Steve, Julie, can we make sure we reserve 10 minutes at the end of the call just to make sure that we do talk about that? Sure, cool. Okay.

EN

So we'll talk a little bit more about that at the end of this call. Right now up on the screen, you have a clean version of the section that we talked about at ICANN. There is a redline of that, and the redline is, I believe, just the same document we've been working off of, that Google Doc. Is that correct? I'll just get the verification. Yes. But we're going to try to work from the clean version, and as we go through, I, Cheryl, Steve, Julie, Emily will all lay in on the changes that were made to the sections. So you can look at the redline if you're on the Google Doc but in this document here, we show a clean version.

On the first affirmation, I do not believe there were any changes. In fact, the first change is actually in the first recommendation or the second paragraph that's at the bottom of the screen. In this section, we added a footnote that we were asked to add which has a list of all of the A through D mandatory Public Interest Commitments. That was a request that we got and so we just dropped in the footnote from Spec 11 Section 3 A through D. That we put in there because of the request, but that is the only change in that particular section. Let me just stop and see if anyone has got any questions about that.

Okay, so then the next set of changes starts in the recommendation for Rationale 3 and the recommendation – I'm sorry. There's no change to recommendation Rationale 3. That's the way it was, except we added a footnote that basically says, "For the sake of clarity, this recommendation and the exemption does not apply to Spec 11 3(c) or 11 3(d)." That was asked for by one particular member of the working group, and so it doesn't really add anything because it's okay to have the footnote, it

doesn't change recommendation for Rationale 3 because we've already said that it only applies to A and B.

Okay. So 4 and 5 is where we start a couple of changes. Where we wanted to make things more clear and where we merge the couple of recommendations together, because when we went through it order in the order it was, there was some confusion, there was some duplication. We were asked a number of clarification questions. So hopefully, putting it in this new order in this way will seem to be a little bit more clear. If we can jump to – sorry, never mind.

Recommendation with Rationale #4. "ICANN must allow applicants to submit Registry Voluntary Commitments (RVCs) previously called voluntary PICs in subsequent rounds in their applications and/or to respond to public comments, objections, GAC Early Warnings, and/or GAC Advice. Applicants must be able to submit RVCs at any time prior to the execution of a Registry Agreement provided, however, that all RVCs submitted after the application submission date shall be considered application changes and shall be subject to the recommendations set forth in Section Application Change Requests."

Hopefully that's more clear. It says what it is, when it can be made, and how they're treated. So it seemed pretty logical to include that in one recommendation. Does that make sense to everyone? Substance-wise, we didn't make any changes. We just moved some things around because I believe we have the last part, which is consider them application changes I think was actually recommendation with Rationale 7, so we moved it up so that it's all kind of together.

Then what's now Rationale 5 states, "RVCs must continue to be included in the applicant's Registry Agreement. In addition, for subsequent rounds all provisions of the PICDRP and associated processes shall equally apply to RVCs." The first part is when you can make it, how you make it, and what they're considered as far as the application. Then this recommendation is basically the enforcement component of it.

Paul, please.

PAUL MCGRADY: The technical question about dependencies, do we need to change the PICDRP to refer to the RVCs? Or does that just happen magically if the Board adopts this? It's been so long, but I thought Phase 1 the RPMs looked at the PICDRP. So is this something that goes back to them? How does that work? I'm not trying to cause trouble. I just don't want us to have an orphaned policy. Thanks.

JEFF NEUMAN: Thanks, Paul. As Griffin just posted in the chat, the RPM group did not look at the PICDRP. They're looking at the Trademark PDDRP. So this was not the subject of an RPM group. And as far as how it happened, my guess is that the implementation team will make sure that the document is either changed or that it's exactly how it will be implemented.

There's a comment in the chat that says it's an unreviewed process. I think referring to the PICDRP, Griffin states that, "As someone who prosecuted a PICDRP complaint, that's not true,

Kathy, although it has certainly been less effective than we had hoped." At this point, there are some recommendations that came out specifically of the PICDRP that, Griffin, I believe the one you filed, which is a recommendation in the Legal Agreement section to add fraud as a contractual – that if you've committed fraud that that is a breach of the agreement, which I think wasn't necessarily a problem with the PICDRP but was a problem with the agreement itself. The PICDRP at this point is an issue of – because there are 1300 minus a couple of legacy, but essentially 1300 TLDs that have this PICDRP now, to the extent that that would need to get reviewed that would more likely be a separate process that would involve not just the new TLDs that we're talking about going forward but that would involve all of the TLDs.

I want to scroll up to Karen's comment. Karen stated, "If it's expected that the PICDRP would be updated to incorporate RVCs, would be helpful to note this in implementation guidance." We can certainly note that. The sentence that's in there now that says that "For subsequent rounds all provisions of the PICDRP and associated processes shall equally apply to RVCs." Do people feel like Karen states, which I think is fine, that we should put an implementation guidance or something for clarity that says what Karen has said? If people think that's a good idea, that's fine. That's great.

I'm not seeing anything one way or the other, but I do see Paul state that we should note this. Sorry, I'm a little behind on the comments.

Justine asks a question, "What are associated processes?" I'm going to ask Steve because – and Kathy, I see your hands up –

Steve, I remember that you and I had a discussion about this and I can't remember what we came up with. I'll think about that while Kathy, you go ahead, please.

KATHY KLEIMAN: Coming off mute. I think we should know what the PICDRP is and what it isn't. It's never been designed by a multistakeholder group. It's never gone through any kind of real community multistakeholder process. So if we're going to throw it to the implementation team, I think we should do it, noting that we've never looked at its rules and never reviewed it as a GNSO or multistakeholder group. Thanks.

JEFF NEUMAN: Thanks, Kathy. I understand what you're saying but I think that to the extent that needs to be reviewed, my guess is that it would be more in a GNSO Council-led effort and some other effort as opposed to ours since right now it applies to all TLDs that are in operation, not just the newer TLDs. But, Kathy, do you want to respond to that?

KATHY KLEIMAN: Yeah. As people have been seeing in the discussions in circle and other places lately, the PICDRP process is not something that comes out of the GNSO. It's not something that has been sent in either of our charters, which is striking – the charters of my working group, the RPM Working Group, the charter of your working group, Jeff and Cheryl. So we're sending some implementation guidance to something so distinctly linked to our

work and yet beyond our control. So I think we have to be careful about sending implementation guidance to something that's not really policy. I don't know how a dispute resolution process can be near implementation and that seems to be kind of category it's under now. So I think we should all be concerned about this process that's outside of any of our working groups and outside of any of our review and never designed by our structure. Thanks, Jeff.

JEFF NEUMAN: Thanks, Kathy. I think we can put that in a footnote that it hasn't been reviewed, but at this point I think it's a question for the … All we can do as a PDP Working Group is ask the Council. We don't really have any other jurisdiction over that. Let's put it in a footnote that we did not review it but we're adding this to that process.

On the question of associated processes, I think that – because Steve reminded me that those were, I think, my words. Compliance has a process for enforcing the PICs and when it chooses to outsource it to a third party. So the goal of associated processes when I wrote those words was to make sure that to the extent that ICANN has developed internal procedures and other processes to which that PICs apply to that it wasn't just the PICDRP that we … for everything else out there that we just don't know because we haven't done a global search of where PICs are mentioned, it was meant to apply to those. It may not be the best wording. I'm opening up to other wording but it was really meant to say that wherever PICs are mentioned, they should also apply to RVCs. We knew that PICDRP applies to PICs but we couldn't think of every other area where PICs are mentioned or PICs are

referred to, and so it was sort of a catch-all phrase. So if anyone wants to help suggest better language, like I said, I'm completely open to that. But hopefully you understand the point. Yes, no? All right, I'm hoping with the silence that was either confused everybody or we got it.

Okay. Justine says, "Just thinking about it." All right, I think, Justine, the problem that I had personally writing it is now that we're changing a term for a certain subset of commitments, we just didn't know everywhere that it's being used. So if there's better wording, to just make sure it's all encapsulated, it's all captured, that'll be great.

So then we move on to Rationale 6. There has been some changes in this. We've reworded it. No changes in the substance, I believe. But hopefully some clarification based on the discussions we had at ICANN. Cheryl says, "Make a note to come back in final drafting to double-check this." Yes, Cheryl. Thanks. If Steve, Emily, Julie can make that note, that would be great.

The recommendation with Rationale 6. I don't believe there's any substantive changes but definitely worthy changes. "At the time an RVC is made, the applicant must set forth whether such commitment is limited in time, duration and/or scope." I think those words are the same as what it previously was. Here's where we started making a couple of changes. "Further, an applicant must include its reasons and purposes for making such RVCs such that the commitments can adequately be considered by any entity or panel (a party providing a relevant public comment, if applicable, an existing objector, if applicable, and/or the GAC if the RVC was

in response to a GAC Early Warning or GAC Advice) to understand if the RVC addresses the underlying concerns."

One thing we did is change the term "rationale" to "reasons." This was at the request of a GAC member who understood the term "rationale" to mean something else. The other wording we had in there initially that it was to be reviewed by ICANN, but that's not necessarily the case so we took that out but then kept in the rest of it to make sure that the reasons and scope basically that the applicant is providing enough information to those that need to understand the RVCs and/or PICs so that they can do whatever it is that they need to do with that information, and they each have different roles.

Okay, let me just stop there for a second and see if there's any questions or comments.

Okay. This one, our recommendation Rationale 7, I believe, is new – sort of. This was in the deliberation section or actually new subjects and we talked about it at ICANN and it seems like the group was in agreement to move this up to a recommendation. Same wording, it's just moved from the discussion now to the recommendation. It says, "In support of the principle of transparency, RVCs must be readily accessible and presented in a manner that is usable, as further described in the implementation guidance below." Then the implementation guidance states, "The working group notes that the CCT-RT's Recommendation 25 has recommended developing an organized, searchable online database for RVCs. The working group agrees and believes ICANN org should evaluate this recommendation in the implementation phase and determine the best method for

ensuring that RVCs are widely accessible." Again, these seem to have pretty wide support within the discussions that we had, not just from the working group but also to GAC members that supported the CCT-RT recommendation as well.

Justine says, "Rational 6: Just for clarity, what process is meant to apply if the RVCs do not address the underlying concerns?" Justine, that is going to depend on why the RVCs were submitted. That's sort of what the next sentence is trying to get at. The RVCs are usually going to be submitted if there's public comment, if there's an objection, if there's a Warning or GAC Advice, or if there's a panel that's reviewing this, let's say it's an evaluation like a CPE and for whatever reason, an RVC is made to respond to a concern in a CPE then it would be the panel that reviews whether it addresses the underlying concern. So it really depends on the context in which it's submitted as to how it is evaluated or whether that solves the objection or whatever. So it's according to who evaluates them. So if it doesn't satisfy a GAC Advice then GAC Advice will [stand]. If it doesn't satisfy an objection then I'm sure the objector will make that known and keep its objection. Hopefully that makes sense.

Okay, moving on to … Oh, Paul, please. Go ahead. Paul, go ahead.

PAUL MCGRADY: Thanks, Jeff. I think we sort of jumped there a little bit in terms of who would be evaluating them and whether or not the objection or GAC Advice – which is sort of saying GAC consensus advice because GAC Advice is a weird phrase that was only in the

Applicant Guidebook. I guess what I'm trying to understand is who will be evaluating them to make the RVCs to make sure they can port with this Rationale 6 and this Rationale 7 that I think is now going to be a recommendation, is that right? Is there a clarity panel? I mean, how do you pass or fail this? Whether or not somebody still objects after you put forward your RVC is a separate issue whether or not they are readable or whatever else we're trying to capture here in 6 and 7. Does that make sense? Thanks.

JEFF NEUMAN: Yeah. I guess I didn't explain this in [2L]. If there's a RVC that's made in the application, then it's going to be considered just like everything else in the application, right? People will review it and if they don't understand it, there'll be comments or objections or whatever it is. So it's not like we're saying that there needs to be a clarity police or anything like that, but what we're saying is that if it's in the application then it's going to be looked at just like everything else is looked at by the public or by someone that may want to object or whatnot. If an RVC is committed to because of a GAC Early Warning then the only party that really matters at that point is the party that originally submitted the GAC Early Warning. If the member or members that submitted the Early Warning are satisfied, it doesn't require any further evaluation necessarily, assuming they're the only ones that had an issue with it. So there's not really an easy way to say this, I don't think, or maybe there is and I just am not doing a great job. But essentially, the reason an RVC is made is to solve a problem with some group, entity, person, government, and the judge of whether the RVC

satisfies the underlying concern is that particular group, entity, person, or government. I hope that makes sense.

Anne's in the queue and Kathy. Paul, if you want to jump back in, please go ahead. Anne?

ANNE AIKMAN-SCALESE: Thanks, Jeff. I'm having a little bit of trouble tracking some of the changes here, so I just would like to ask that you or staff help me to understand. In the previous version, there were two things that I'm having some trouble locating. The first thing was the "all RVCs will be subject to public comment," and the second one was that "all the RVCs that are proposed like a post application will be treated as an Application Change Request." That may go a little bit to how it's decided or juried, if you will. Where are those two things in this draft: all RVCs are subject to public comment and all RVCs proposed post application are treated as an Application Change Request?

JEFF NEUMAN: Thanks, Anne. The part that is on the screen right now, it's recommendation Rationale 4, the part on the screen it says, "Provided, however, that all RVCs submitted after the application submission date shall be considered application changes and be subject to the recommendations set forth in Section Application Change Requests." In Application Change Requests, there's a lengthy discussion of everything being subject to public comment and objections and all that other stuff.

ANNE AIKMAN-SCALESE: The answer to how all that gets determined is in Application Change Request procedures, which I guess don't apply to the initial proposal of RVCs but only to those post application. I'm sorry, it's just a follow-up.

JEFF NEUMAN: Yes but I think there's another component. So, yes, it's an application change so certainly within all those procedures, but remember if there's a GAC Early Warning and the governments that submitted the GAC Early Warning do not feel like your RVCs have satisfied their concerns, sure, they can file a public comment during the application change process or they can try to convince the GAC for GAC consensus advice against the application. Similarly or alternatively, if someone submits an RVC – I think Paul brought this example up – where trademark owner where there's a term that has perhaps a dictionary meaning but it's also a trademark, and the trademark owner files an objection or wants to file an objection, let's say it's already filed an objection, and then they start negotiating and the trademark owner says, "If you promise not to use it in a way that's confusing to my trademark," and they agree on language then that could be submitted as an RVC. Of course, the person who has already objected tries to withdraw their objection if they find that that satisfies their issue.

Paul says, "So 'adequately' and 'usable' aren't gatekeepers to bounce RVCs?" No, they're not. They're just more instructive to help the applicant address the underlying concerns. Paul says thanks.

Cheryl says, "We could cross reference here though to be extra sure."

The reason I didn't want to put "and subject to public comment" even though it would be subject to public comment is I think the application – maybe this is too much of a lawyer inside of me – but I hate having duplication where duplication could be read as being inconsistent because it doesn't include everything that's in the Application Change Request section. So if we only put "and subject to public comment," then the next logical question is, why didn't you say, "And also potentially subject to objections and also potentially subject to GAC Advice"? That may be too much the lawyer in me. So I'll let others comment on that.

Kathy, you're next.

KATHY KLEIMAN: Thanks, Jeff. I'm not sure it will be subject to objection. Objection had deadlines, which if we're working with rounds could be an issue, so you have a change request that's put in after the objection deadline. Something to think about. But let me go through my checklist.

First, redlines. Redlines would be really, really useful if we could see those. I think it will help us review faster. Second, could you outline the process, and do we need to clarify GAC Early Warnings versus other groups' concerns. So the GAC notifies the applicant, how does the applicant notify the GAC and the public? Are we saying that's all subject to the Application Change Request and the public comment? Are we then saying that every other

change – I believe we're also saying that every other change should RVCs will go through the Application Change Request and the public comment.

So procedurally, how do we know if the GAC is satisfied and will that always be public? How do we stop an endless series of RVC changes that the public may or may not be able to follow? Thanks.

JEFF NEUMAN: Okay. On the redlines, Steve posted the link. It's the same document we've been working off of. The redlines are there if you want to go back to them after the call. There's just a lot of red because we moved stuff around and it was easier to look at the clean version on Zoom, but the redlines are there when you want to go back.

The first question on the GAC Early Warnings and Advice, what you just mentioned is actually in that section already. So I'm going to ask that we hold on to that question until we get to it most likely the next call. Because we do address – there are things in there, for example, that says that whoever submits a GAC Early Warning must make themselves available to the applicant and there should be a dialogue, all that kind of stuff is in the GAC Early Warning and Advice section. So I'm just going to ask if we can put a marker in there, so hopefully that addresses your concerns. The Applicant Change Requests also, when we get back to that for the final time addresses, I believe, your other comments about making sure things are out for public comment. I know there's a lot of bouncing back and forth, but fortunately this bounces back and forth to things that we've already covered. So if you want to go back after

this call and review those to make sure you're happy with those, I think you will be because I think it does address everything you've just brought up. But I know it's hard because we're only looking at one section right now. Okay, let me go back because –

KATHY KLEIMAN: I'll take a look at the other areas and hopefully [inaudible].

JEFF NEUMAN: Yeah. Thanks, Kathy. Okay, I just want to go back a little bit in the chat. Anne states that, "Page 7 of the redline completely deletes the previous recommendation in the last section related to Rationale 7." So let me just go back. Sorry, I'm looking at the redline now. Yes, we have deleted all of those words. They are all covered in the one that's now Rationale – if you could scroll up – 4. While that was deleted, it is in there. If you don't like this approach, please let me know. This again was the lawyer side of me that just doesn't like to only partially duplicate things and then raise questions in people's minds as to whether everything else applies, which is why we refer to Application Change Request and say that everything is considered an application change, and that has all the public comment and everything else. Anne, please go ahead.

ANNE AIKMAN-SCALESE: Thanks, Jeff. I just want to make sure that I understand your drafting logic here. Are you essentially saying that because some RVCs will be at the time of application that all applications are themselves subject to public comment and, therefore, no

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additional language is needed with respect to that, and that anything else that comes after the application process is an RVC that is subject to an application change request? And are you saying that every application change request is subject to public comment?

JEFF NEUMAN: I'm definitely saying the former. When we go back to the application changes, there may be some application changes that are not necessarily subject to comment. I don't think they'd be in the context of RVCs but remember, if someone changes their board of director, that's an application change that wouldn't necessarily be subject to public comment. So all RVCs are application change requests but not necessarily all application change requests are subject to public comment, but I think that said, all RVCs would be the type of application change request that would be subject to comments. Sorry to be really confusing, but hopefully that makes sense.

ANNE AIKMAN-SCALESE: Okay. I just have again a drafting comment and I do understand that you have done it this way because you think it's legally more correct. But I'd have to say that the previous draft that stated that all the RVCs would be subject to public comment and that those that are submitted post application would be treated as application change request was a lot clearer and easier to understand. Thank you.

JEFF NEUMAN: Yeah, Anne. It was. But then I got asked the question during the ICANN session, what about objections? What about to the extent that it's meant to address the GAC Early Warning? Are you saying we only have the public comment process? We can't then continue on with our GAC Advice? If it's only public comment, then who makes the ultimate determination? Is it ICANN? We got all those questions and agreed that the sentence before was much more easily readable but it wasn't complete. Hopefully that makes sense. It's fine to address a whole number of concerns.

Kathy, your hand is up. I don't know if it's new or old. Okay, thanks. But please do go through this afterwards if you think there are better ways to word it. There's no pride of authorship. Kathy, I think the hand went back up. No. It went back down. Okay.

All right, where did we leave off? I think we are on Rationale 8. This is one that I think we might spend a couple minutes on probably because this also had stimulated a discussion within the GAC. And for those of you that read the communiqué, the communiqué is not GAC consensus advice. It certainly gives an indication as to where they are. So I'm going to read this recommendation and then I'm going to ask if we could post the relevant section of the GAC communiqué and discuss both to make sure we're still happy with the way this is worded and what we've decided. I will note that the working group seemed to be okay with this during the ICANN discussions, but GAC representatives were not happy with it.

Recommendation Rationale 8, "The working group acknowledges ongoing important work in the community on the topic of DNS abuse and believes a holistic solution is needed to account for

DNS abuse in all gTLDs as opposed to dealing with these recommendations with respect to only the introduction of subsequent new gTLDs. In addition, recommending new requirements that would only apply to the new gTLDs added to the root in subsequent rounds could result in singling out those new gTLDs for disparate treatment in contravention of the ICANN Bylaws."

That last part was asked to be added by the registry so I do want to come back to it, make sure everyone's okay with that. Then the last sentence. "Therefore, this PDP Working Group is not making any recommendations with respect to mitigating domain name abuse other than stating that such future effort must apply to both existing and new gTLDs (and potentially ccTLDs)."

Let me just read this, again, or read the next paragraph we have in there which is more sort of rationale. But because it was the GAC that raised these issues, I thought this might be important including the recommendation itself so it stands out.

"The working group has reached this conclusion after duly considering the DNS abuse related CCT-RT recommendations, which includes 14, 15, and 16. Note however that at the time of the drafting of this report, the ICANN Board only passed through a portion of Recommendation 16 to this working group (amongst several other community groups) and Recommendations 14 and 15 remain in a 'Pending' status."

Okay. That's a lot but I do want to open this ... Sorry, let me read the GAC ... If we can now post the GAC statement. I'm not going to call it advice. I know that's kind of small for some people to read

but I will go off of my own copy. Here's what the GAC says: "Discussions on Public Interest Commitments, both voluntary and mandatory were not included in 2007 policy." I could probably skip that sentence. Sorry about that. "One important area of focus for GAC members was DNS abuse as mandatory PICs were used to implement GAC Advice on DNS abuse and specifically due to the referral of relevant CCT-RT recommendations, which are passed by the Board to the GNSO and from its council to the SubPro PDP Working Group. The PDP Working Group co-chairs indicated that the current recommendation texts would refer DNS abuse to a separate ..." Now, this is not always said exactly but "The PDP Working Group co-chairs indicated that the current recommendation texts would refer DNS abuse to a separate policy development process or other effort, which would address the issue holistically, i.e. not only for the next round. GAC members expressed concern with this approach highlighting the importance of the CCT-RT recommendations and the need to implement them in light of the GAC Montreal advice on this matter."

Now you've seen the GAC statement, you've seen what we have as a working group – do we believe that we should still stick with our language and our approach? Do we think that the GAC statement, acknowledging it's not advice but merely just a statement, do we think that this statement alters in any way what we have up there? Let me open it up. I'm not seeing anyone. Okay, Kathy, please go ahead.

KATHY KLEIMAN: Thanks, Jeff. Do we want to define or have we defined DNS abuse? I know people are going to wring their hands, but how we

define it for our purposes is going to be very important, whether we're talking about DNS abuse in conjunction with the DAAR – for people who don't know that acronym, that's one type of DNS abuse tracking in which ICANN is engaged or are we talking about other kinds of DNS abuse – I think we should define it. If we have a definition, I think we should refer to it. Thanks.

JEFF NEUMAN: Thanks, Kathy. Perhaps because we're referring to the CCT Review Team recommendations, we can just refer to that definition even if we agree or don't agree with that definition. What we're saying here, the point of what we're saying is to the extent that DNS abuse as they have defined it needs to be addressed, it should not be addressed only with respect to new gTLDs these going forward but a holistic approach. I know the concept of DNS abuse is ... the whole definition is a thorny issue in and of itself, so let me asked if we just for the purposes of this paragraph use the definition that the CCT-RT uses would that work? Because we're responding to the recommendations.

KATHY KLEIMAN: Jeff, I'm not sure it will work because we don't have it in front of us. We do know the DAAR definition which is the measurable, discernible types of DNS abuse that ICANN is now engaged in metrics and reviewing. So maybe we should make a mention of that as well. Thanks.

JEFF NEUMAN: Thanks. Kathy, I was hoping to avoid the whole "What is the real definition?" and just say because we're responding to the CCT Review Team recommendation, we're taking – and we can put a footnote in and say the working group did not discuss this definition. By including it in here is not indicating its support or opposition to such definition. Would that help? I'm trying to stay away from not defining it here.

KATHY KLEIMAN: That would help because without a definition, we don't know what we're supporting, I think. Thanks.

JEFF NEUMAN: Okay. Anne, please go ahead.

ANNE AIKMAN-SCALESE: Jeff, I have a practical concern here. This looks like the kind of situation that is going to mount to a potential roadblock or bottleneck at the Board level. I keep trying to figure out how we can avoid sort of the head-to-head because I think the last thing really anybody wants is for our recommendations go forward, GNSO to adopt them, Board to be reviewing them, and the GAC to give advice, "We advise you not to proceed to the next round until you develop a definition and policy related to DNS abuse," because we all know how, I guess, popular and a matter of concern this topic is right now. It's really more of a question and possible brainstorm. Is there anything that we as a working group can do to avoid such a bottleneck? I know, in the past, I said, "Well, maybe we should just recommend an EPDP on DNS

abuse," but that seems to be an unpopular suggestion, particularly with contracted parties. I'm just throwing the question out there because it really looks like another one of those looming bottlenecks. Thanks.

JEFF NEUMAN: Thanks, Anne. One of the things we discussed during ICANN67 was sending a letter to the GNSO Council, giving them sort of advance notice of what we're planning on doing, although I'm sure they know anyway. But formally giving them advance notice and making it a GNSO Council issue for them to head off as opposed to us. I think, in this case, it wouldn't make sense for us to ... Well, let me go back to your example, Anne. I think whether or not we have any recommendations in here, I believe the GAC would still provide potentially advice if we only set it applied to new gTLDs going forward.

So let's say we came up with some really great things, which I don't think necessarily we have the expertise necessarily to do, including myself. But let's say we came up with some great recommendations. I would still think the GAC would still say, "You know what? We don't want you to do new gTLDS until every existing TLD puts these measures in place as well." And we're still back at square one with the Council.

Paul does a plus one. "It's already on their radar so they won't be surprised by that. If we try to deal with it, this working group meeting its deadline is doomed." I totally agree with that.

So why don't we brainstorm and maybe that's an action item to the leadership team is to brainstorm a draft letter to – not brainstorm – to come up with a draft letter to run by the group that we sent to the Council, letting them know what our current thinking is, and that they should decide whether to do something about it or not, just refer to the council.

ANNE AIKMAN-SCALESE: That sounds good. Thank you.

JEFF NEUMAN: Okay, great. All right, I believe now we've covered all of the section, the new recommendations. I want to just open it up now for just any other comments. The one area that we have not done that we still need to kind of think about or we need to do something with is the whole notion of ... a couple things. Number one is, do we codify what the GAC did as category one as mandatory PICs? That's one question that we need to consider. The second question is, I guess, it's sort of related to that, there is some discussion in here about verified TLDs towards the middle of this section before the pros and cons chart about – I guess it's related to the category one, but there's some additional information. So I encourage everyone to read that. At this point, we don't have any recommendations with that, but I can certainly imagine there's a hole there in not saying anything about category one that since that was enforced on the existing TLDs as mandatory PICs. So let's think about that and discuss that on the list. But I do want to spend a couple minutes now talking about how we go forward. Again, just to cover it again, because I think

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we're getting closer to the stage where we will be releasing, hopefully within the next week or so, a series of sections that we've already covered a number of times, including this draft final time that we want to start the new process. With the first section that comes out, it's going to be related to things like systems, testing, those kinds of sections. But for now, can you guys bring up the chart that we're asking for people to follow?

Paul, we're still coming up with the release schedule. We will make that known. We're still figuring out logical batches but we'll certainly indicate when we expect to release the first batch. We'll send a follow-up e-mail, and then how much time we're giving to fill out this chart which is going to come up in a second. Then hopefully within the next week or so, we'll come up with a good schedule moving forward for batch two, three, etc.

So I'm being alerted that policy staff is trying to track down our chart. So while they're doing that, they will post it. Essentially what we're doing is the next version of this. So when you see batch one, you will see, I think it's like five sections, the smaller ones, where we have the draft final recommendations and then we're asking for everyone – so these documents will be locked so you can't do red lines to these documents. What we're asking for is that you submit any changes that you can't live without, with really stringent categories previously used by the EPDP.

While the chart's being brought ... I was going to call on Paul but he dropped his hand. There is the chart. Can we enlarge that a little bit? What it asks for is what you have an issue with. You copy the applicable text, you copy the section to each of these, we'll have section numbers, and then why you can't live with the

current text, your rationale. This is very important as well, the proposed changes you would make to make it something you can live with. So what we're not saying is you can't live with a concept at all because this had been through many, many rounds of revisions and has been run by the working group many, many, many times.

What we're saying here is how can we make the changes so that you can live with it? These are only for internal working group use, yes. The batches are only internal for working group. We're not releasing any of these out to the public. Of course, everything that we do is visible by the public so they can see it. But no, we're not intentionally seeking comments from anybody else, except from within the working group.

So our proposal then is to give seven days from when we released the batch to provide the comments. We note that the EPDP had much less time. I think it was two or three days that the EPDP had to do that. We're giving a full week. Hopefully that's enough time if we find that. If not, we'll see if we can give some more time. But, now we're getting to these final stages. By final stages, again, this is all going to be in a draft final report that goes out for public comment.

Paul is saying, "How horrible is April going to be?" Paul, I guess, how horrible it is in the eyes of the beholder, but hopefully it won't be too bad. Because hopefully this text will be text that everyone has seen, because they're all in the redlines and there's very few substantive changes.

Kathy, please go ahead.

KATHY KLEIMAN: Thanks, Jeff. Maybe Paul is referring to a different kind of horrible April and I think we should talk about it, which is we're in the middle of the pandemic and yet many of us are moving our classes online. Our students have gone home, our businesses are going online. Our lives are in turmoil. If yours isn't, congratulations. We don't know how horrible April will be and we don't know what's about to happen in many of the countries that we're in. Certainly, our whole lives are being turned upside down because we're told that horror is on the way. I think it's crazy to think about seven days for anything right now. I think we should be doubling or tripling all timeframes because we don't know what's ahead. But we're told it's not real good, so I think we should just face that now. Thanks.

JEFF NEUMAN: Thanks, Kathy. A lot of things have been turned upside down. I had to cancel my daughter's bat mitzvah party, and then on two hours notice, we change the rehearsal to the actual bat mitzvah and did it over Zoom, which was kind of cool. Anybody wants the link, I can send it. But that's just me as a proud dad.

Let's see what happens, obviously, as things progress. We'll certainly pay attention to what's going on in the world. Let's start with seven days. If that's not enough, clearly we're human and we're not going to try to do things that … we certainly understand what's going on. We will certainly be paying attention to that. Cheryl, do you want to add?

CHERYL LANGDON-ORR: I do. Of course, my partner's phone now rings, because yes, we're all working from home as well. My apologies on that. Just try and ignore the ringing bells, people.

We also probably need to stop thinking about it just being April. You get to have to start thinking about this to be April, May, June, July. Who knows, this could still be by [inaudible] in many countries. This is a great unknown. Obviously, we're going to have to be very aware of that and the effect it will have on many people. But that being said, there is also a well festered principle of the advantages of where possible, trying to manage things in a known and predictable and planned way to give some, dare I say, normalcy. Putting normalcy, as a term, with anything to do with EPDP I think is farcical, but that's just my biases. I think all those things considered, Kathy, yes, this is trying and difficult times but let's just do our plan. And if need be, modify the plan. But having a plan will in fact give something tangible and predictable for those volunteers who can continue to commit the time, and not everyone might be able to. You see what I'm saying? It's not just a management issue from our PDP perspective but having a management plan in our PDP from our perspective is important.

Hopefully, I haven't confused you. I should probably note, I've actually been in self-isolation since the 26th of February, so I kind of understand a little bit about this now.

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JEFF NEUMAN: Thanks, Cheryl. Absolutely. Let's see what we can do. I think Paul says it well. Let's be committed to moving ahead expeditiously and also making unnecessary flexibility. I think we can do it. If we didn't have a high tolerance for ambiguity, we wouldn't be anywhere near this kind of work.

Let's go with the schedule. Again, we should be releasing the first batch in the next week or so, and then we'll see what happens. But please, to the extent you can follow this format, it will greatly help all of us and to see all the issues in one place. We'll maintain the master chart and provide everyone with the link to that so everyone can see the issues. Then as we solve those issues, we can then tick them off and proceed that way. That seems to work for the EPDP so let's try it.

So on the next call, we're going to do the GAC Early Warnings and GAC Advice and then we'll jump into applicant support. Then if time, we will go into ... What am I missing? Closed generics I think. Anyway, help me, ICANN staff. The next call I know is on Monday. If we can post the time, and we'll send out the agenda again, but certainly the first topic is GAC Early Warnings, GAC Advice. Thank you. GAC Early Warnings, GAC Advice, applicant support. I'm sorry. We're not going to go back to community. Sorry about that. Or close generics because I don't think we're ready for that yet. But after the Early Warnings and applicant support we're going to go to applicant freedom of expression, which is a section that we have not reviewed the draft final yet. So please be on the lookout. I think that section is already out for review. But the next call is Monday, March 23rd at 20:00 UTC.

Thank you, everyone. Please stay safe. Please do not go outside and risk it. We all need to do our part to help us get through this as quickly as possible so we can get back to some semblance of normalcy. Please, everyone, take care of yourself. Thanks.

ANDREA GLANDON: Thank you. This concludes today's conference. Please remember to disconnect all lines and have a wonderful rest of your day.

[END OF TRANSCRIPTION]