ICANN Transcription
GNSO New gTLD Subsequent Procedures Working Group
Monday, 17 June 2019 at 15:00 UTC

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https://gnso.icann.org/sites/default/files/policy/2019/audio/audio-new-gtlds-wg-17jun-en_0.mp3
Zoom recording:
https://icann.zoom.us/recording/play/xXJWkpHdOOfxvrg04JyF6VUguD-en5x2e4fSLzd2H2hsOnRId2esFGtHfjju_TrQ?autoplay=true&startTime=1560783641000
Attendance of the call is posted on agenda wiki page:
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MICHELLE DESMYTER: Welcome, everyone. Good morning, good afternoon, good evening. Welcome to the new gTLD Subsequent Procedures working group call on the 17th of June 2019 at 15:00 UTC.

In the interest of time, there will be no roll call. Attendance will be taken via the Zoom room, so if you're only on the phone bridge today, would you please let yourself you know now so we can note for attendance?

RITA HOUKAYEM: Rita Houkayem from Canada.

MICHELLE DESMYTER: Great. Thank you so much. We will go ahead and note that. And a reminder to all participants to please state your name before speaking for transcription purposes, and please keep your phones and microphones on mute when not speaking to avoid any background noise.

Also, as a friendly reminder, to view the documents being shared during the meeting today, please direct yourself to the top of the shared screen, and you'll see an option that says, "view options." Please click on the dropdown arrow, and you will then direct yourself between Julie Hedlund and Steve Chan's documents. With this, I'll hand the meeting back over to Jeff Neuman. Please begin.

JEFF NEUMAN: Thank you, Michelle. And yeah, I sometimes mess up on which meeting I'm attending as well. So no worries there. I know we're all attending lots of different meetings. Okay, I'm noticing, Steve, do we have a timer up there so we can continue that from last week? I think that that ended up working. So if we can get that in place, that would be fantastic.

Okay, so I'm just to review the agenda while that's going on, we are going to get started on the next topic – at least next topic, if not hopefully get through a couple different topics, all dealing with global public interest and freedom of expression. Then we will go into a discussion on what's planned for the ICANN 65 sessions, specifically the third and fourth sessions which are reserved for the non-Work Track 5, or the other way to say it is Work Track 5 has the sessions that are

labeled sub pro session one and sub pro session two. We, the rest of the group, will have sessions three and four. We'll talk more about that. And then finally we'll talk a little bit again about the post-ICANN work plan.

So with that said, let me first ask to see if there is any questions on the agenda. Okay. Not seeing any hands raised, let me ask if there's any updates to anyone's statement of interest. Great. Okay. Then as the documents are being switched over to Steve's computer – there we go, there's the timer. Thanks, Steve. I just saw your note in the chat that it's on your screen. Great.

Okay, so today we're starting the discussion on the global public interest, and I know this has come up on a number of occasions, but it's a very difficult subject because obviously global public interest can mean a lot of different things and in many different contexts.

We've tried to, through the community comment to the initial report and through the public comment analysis, try to limit the discussions of the global public interest to a few general areas without delving into how broadly that term could be [used.]

In addition, we also tried initially to come up with a definition, and I will say that we failed miserably, because as all other efforts have, there's really no way to come up with a concrete definition of what global public interest means, as I think a number of people have pointed out on these calls previously. The GAC has tried it. The ICANN board has tried it. The staff tried initiating a process that went on for a number of years to try and come up with a concrete definition. And essentially, we

just have what's in the ICANN bylaws. And that's not much of a concrete definition, but it's kind of a high-level overview of responsibility.

So, in this context, in the new gTLD context when we talk about public interest, it's generally in line with things like GAC advice, GAC early warnings, the public interest commitments which were an add on after the last 2012 round had started, and then also we talk about it in the form of objections as well occasionally. But I suppose it could come up in a number in number of other situations, but from our perspective, we have limited it to these areas. And I'm noticing a comment from Avri which says the ICANN board is still trying, they haven't given up on defining the term global public interest, and as Avri says, I guess doing it within context is the key. So we're going to attempt to tackle this subject within the context of new gTLDs.

So I think the link to this document is – or should be – posted somewhere. I'm going to be looking at the Zoom document but going back and forth to the Google sheet as well. There we go. Thanks, Emily. If everyone who's not speaking could mute, that would be fantastic.

Okay, so what are the policy goals that we've kind of taken from the various different comment periods and documents? So we want to develop policy that's consistent with ICANN's core values under article 1 section 1.2(b)(ii), which addresses public interest. And then the other policy goal we're trying to accomplish is to extend that mandatory and/or voluntary PICs – public interest commitments – are carried forward into the subsequent rounds or procedures, that we need to codify it and policy.

The reason we say that is because in the 2008 original GNSO policy as approved by the board, and even in the initial or – I should say the final – guidebook that came out in 2012, there's no reference to public interest commitments. This was a creation that came I believe in 2013 although someone might correct me on that date, but it came about in response to GAC early warnings and what the organization and what we can do to potentially address those early warnings and then was subsequently modified later on to deal with other GAC advice that came in the 2012-2013 timeframe and they are generally codified in Specification 11 of the registry agreements. So there are both mandatory PICs which are in everyone's registry agreement, and then there are voluntary pics that some of the organizations, some of the registry operators agreed to commit to in their agreements that are also documented in that Specification 11.

So just going through the chat, just to make sure I'm keeping up with this. Right. So some of the this came about as a result of a GAC letter and advice and all sorts of things. But regardless of how it came into existence, one of our roles is to determine whether these things should become part of the permanent policy or not. So with that said, in looking back at our discussions and the comments that we've received during the various comment periods, we believe that there's a high level of agreement to codify the current implementation of the mandatory public interest commitments, and most of the commenters that responded believe that there does not need to be additional mandatory public interest commitments. So just to refresh everyone's recollection, as I am myself turning to what these mandatory PICs are in Specification 11, there is one of them that pertains to – actually, let me

just go in order. So in Specification 11 we have the first one, which is only using ICANN accredited registrars that are party to the registrar accreditation agreement approved by the ICANN board of directors on June 27th 2013 in registering domain names, and then a list of the registrars are maintained by ICANN. So that was one of them.

The second one is that the registry operator will operate the registry for the TLD in compliance with all commitments, statements of intent and business plan stated in the following sections of the registry operator's application to ICANN for the TLD. And it goes on to just talk about that it's enforceable through the PIC DRP. Registry operator shall comply with the PIC DRP and that the registry agrees to implement and adhere to any remedies imposed by ICANN, and then cites a section of the registry agreement.

Those are the first two. The third mandatory PIC has several subparts. The first part, 3A, deals with the public interest commitment of including certain things in the registry registrar agreement. The second one has to do with +B, which many registries are very familiar with now, there is just an audit conducted on all registries on the technical analysis to assess whether domains in the TLD are being used to perpetrate security threats, and goes on to define those, and those reports need to be maintained for a certain period of time. The part C is that registries will operate in a transparent manner consistent with principles of openness and nondiscrimination by establishing [inaudible] to clear registration policies. And the final one is one that will actually be talking about separately during a separate conversation, and that's the concept of the closed generic, essentially saying that registry operator of a generic string TLD may not impose eligibility criteria for registering

names in the TLD that limit registrations exclusively to a single person or entity or their affiliates, and then it goes on to define a generic string.

So I'm going to ask that we not go into that last public interest commitment, and in fact, a lot of these, we'll talk about the substance during separate conversations. So the real point of this is to discuss the high-level notion of PICs and whether we should put them into or code them into our policy.

So that's just an update of the PICs, the mandatory and the voluntary ones are all of the ones that were mentioned in other registry agreements after that, but there are some PICs which were added to registries that were deemed to be category one, which were the regulated or sensitive strings, and those are PICs as well that have been added to some agreements.

Okay, we have a hand up from Christopher. We've only gone through the first high-level agreement. We'll go through the others after Christopher, please.

CHRISTOPHER WILKINSON: Good afternoon, good morning, good evening. Thank you, Jeff, for that introduction. The fact that PICs were not foreseen in the 2012 AGM – [AGP,] whatever – does tend to confirm what I've said before, that the 2012 exercise was lacking in certain respects. But I don't want to go back into that. Obviously, I agree that PICs should be carried forward as a general policy.

However, this is not an exclusive or overall concept of the global public interest. There are several dimensions to the global public interest which can easily be identified which would not be covered by PICs at the level of the registry. They relate to the global public interest in this PDP, and in ICANN as a whole.

I will not claim to identify global public interests positively for the whole world. I'm very glad that, as Avri has pointed out, the board is looking into this.

But allow me to say that I know what is something that is against the global public interest when you see it. I just want to stress three aspects: the first is jurisdiction and incorporation. It is in the global public interest, especially with geographical names, that the registry incorporates in the jurisdiction that they intend to do business with.

Absent that requirement, we would go back to the abuses in 2012 where registries were incorporated in tax havens.

JEFF NEUMAN: Christopher, can you just list the other two briefly? And then we can go on and discuss.

CHRISTOPHER WILKINSON: Well, I would quickly – registered languages and IDN, which are underrepresented in this work, and specifically, the responsibility of ICANN to create the conditions of competition for open entry, and certainly not permit the accumulation and the concentration of registries in individual companies.

This, we obviously can go into in greater detail, and I have done some previously in discussions. But I just want to make quite clear that the PICs are not the end of the story in global public interest. Thank you.

JEFF NEUMAN: Okay. Thanks, Christopher. Just to note those three, I think Julie's got them, so we certainly have them documented. Let me go to Maxim.

MAXIM ALZOBA: Actually, for the position of geo TLDs, I would definitely recommend to ask them, but to clarify the situation, the curent situation where the potential registry for geo TLD has to obtain a letter of support or nonobjection from the local government in different countries, different cities and regions regulate differently, but still, I'm not sure that we are in position to dictate what local governments can and cannot do. I would not recommend to go there.

And I think the current situation with the letters of support and nonobjection are perfectly normal and for registries, for geo TLDs to have good relations with the local government is a must, so I don't think it needs to be regulated. Thanks.

JEFF NEUMAN: Thanks, Maxim. Christopher, did you want to do a short reply there?

CHRISTOPHER WILKINSON: Sorry, I seem to still have my hand up. I tried to put it down. But Maxim is right, but for that to work, my points about jurisdiction and incorporation of the registries concerned is crucial. Thank you.

JEFF NEUMAN: Okay. Thanks, Maxim, and Christopher. So moving on to the second high-level agreement from looking at the comments, most of the commenters wanted to or were in favor of continuing with the concept of the voluntary PICs to allow applicants to commit to additional voluntary PICS in response to public comments, GAC early warnings and/or GAC advice. Most commenters indicated that such voluntary PICs should be allowed even if they change the nature of the original application.

That last sentence is important because if you recall, there was a strict rule in the last round that did not allow any material changes to be made to an application regardless of whether it was in response to any of these things like public comments or GAC advice, and that created a lot of consternation and issues with ICANN Org trying to figure out how we could take into consideration those comments and advice but still abide by the rule that said there can't be any changes.

So this seems to – not seems to, this does support the notion of allowing these types of changes and as an exception to the no material changes to the application rule.

Okay, going on to the third bullet there, there was support from most commenters that when a voluntary PIC is made, the application applicant must set forth if it's meant to be limited in time, duration

and/or scope, such that the PIC can be adequately reviewed by ICANN, by an existing objector if there is one, and/or the GAC if the voluntary PIC was in response to a GAC advice or an early warning. So this is basically saying that you can change the nature of the original application as in the bullet before, but it really needs to provide other things that flow from that, including objections need to be able to consider those PICs as well and make sure that it's understood the complete nature and context of the PIC.

I did see Jamie's hand up.

JAMIE BAXTER: Yeah, Jeff, sorry, I believe we had this discussion in the past. Going back to the last part, I just wanted to reiterate and remind everyone that during the 2012 round, community applicants could change absolutely zero proportion of their application, perhaps with the exception of business addresses and things like that. But I just want to reiterate that if this is what the policy recommendation is going towards, is there going to be a clear distinction about whether this also applies to community applicants? So that it is not turned into a negative later on and with an assumption that, oh no, it never included community applicants when we said that everybody can make changes to their application.

So, is there some clarity that can be pointed out or some notes that can be added to this to make sure that that is absolutely clear going forward? Thanks.

JEFF NEUMAN:	Yeah. Thanks, Jamie. We can absolutely add some clarity that this is intended to be for all applications, regardless of the type of application. But let me just make sure that there's no objection, at least on this call, to making that clarification. So, is there anyone on this call that would have any issues with clarifying that this applies to all applications and not to the exclusion of any particular type?
	Alright, I'm not seeing any objection, so we will make that clarification. Donna, please.
DONNA AUSTIN.	Thanks, Jeff. So just to clarify, Jamie, the point that you're making is that the difference in categories that were identified by the GAC, is that the point you were getting at? I think there's mandatory PICs that currently go across all TLDs, and there's levels – if you're category one safeguard, then this applies, category two safeguard, something else applies.
	So you saying to do away with all of that, I just wanted to clarify what you're saying.
JAMIE BAXTER:	Yeah, thanks, Donna. I think what didn't happen in the 2012 round but could potentially happen going forward is that there may be special warnings that go out that apply to community applicants specifically. Whether there's a contention set or not. And I think it's just important that everybody equally be able to adjust their application in order to clear any advice or warnings or whatever it might be so that community

applicants aren't specifically crippled in their ability to move forward in the process.

Again, a lot of this is about unforeseen next opportunities that may come out from any early warnings or advice that is leveled in the next procedures. Thanks.

JEFF NEUMAN: Yeah. Thanks, Jamie. Donna, does that answer your question?

DONNA AUSTIN: It does. Thanks, Jeff. And I makes sense. Thank you.

JEFF NEUMAN: Great. Okay, looking at the chat, Justine says she can't see any reason to discriminate. That seems like it's support for the point Jamie is making. And then there's still a bunch of discussion, which is great, going on on public interest and work that's ongoing.

Moving back to bullet point number four, this is actually several different parts, so we'll take one part at a time. The first part is that there's support from most commenters that voluntary PICs should be reflected in the registry agreement or in something like Specification 11. So that's the first part.

The second is that PICs can only be changed after public comment. And then the third part is that proposed material changes must take into account comments made by the applicable objector and/or the

applicable GAC members that issued early warning, or in the case of GAC advice, the GAC itself.

So that's really three kind of different points that were all in this one bullet, so let me ask – I see Donna's hand is raised. I'm not sure if that's new. Donna, is that a new hand?

Alright, I'm not hearing anything, so I will assume that that's an old hand. Let me go on to the next bullet point. Steve, if we can go to the next screen. So most commenters support providing single registrant TLDs with exemptions and/or waivers to mandatory PICs included in Specification 11 3A and Specification 3B. This was a high-level agreement from many of the commenters, and just to go back to the registry agreement, 3A was the provision that deals with the inclusion of a provision in the registry/registrar agreement that requires registrars to include in their registration agreements a provision prohibiting registered nameholders, or registrants, from distributing malware, abusively operating botnets, etc. The reason why this Specification 11 3A, many commenters said that single registrant TLDs didn't necessarily need this one, is because the registry and the registrant are the same entity. So yes, it has to at this point use an accredited registrar, but we're putting something in the registry/registrar agreement that prohibits itself from distributing malware because again, the registry operator and the registrant are the same. It didn't seem to make a lot of sense to a lot of people. and 3B, which is conducting the technical analysis to assess whether domains are being used for malware. Also to a number of commenters didn't necessarily make sense because again, the registry and the registrant

are the same entity. So I apologize for the phone ringing in the background, that should go ahead in about 30 seconds.

Let me see if there are any comments, and I see Donna, and then Christopher. Donna, is that a new hand or old? No. Okay, Christopher, please.

CHRISTOPHER WILKINSON: Thank you. Allow me, Jeff, to sound totally naïve, but it would be very helpful to me if somebody on the call would explain what this is about. Why on Earth would you want a single registrant registry? What is this for? I've read into this a bit over the years, and it baffles me still. Who on Earth wants these things, and why? Thank you. I'm not against them, I'm just totally incapable of following this debate because it makes no sense to me whatsoever.

JEFF NEUMAN: Okay. Thank you, Christopher. Yeah, I think as people are putting in the chat, this is another way to – brand TLDs are often called single registrant top-level domains. So there are many examples of brands that have launched, whether it's KPMG, Canon, Barclay's, there's a ton of them. They are single-registrant TLDs because they are the only registrant. It's really for their brands and not for third parties to register domain names.

So that is generally what single-registrant TLDs refer to, but there are examples of other single-registrant TLDs as well for organizations that exist. Paul, please.

PAUL MCGRADY: Thanks. So just a little bit of history too, in addition to the dot-brands which have settled in nicely with Specification 13, there were a significant number of applications in the first round for what became known as closed generics or single registrant registries. And these were applied for by some of the largest companies in the world, and there were business cases for how they were going to use them.

For example – hopefully it's fictional, I can't remember every applicant from last round, but if we had dot-airplaneinsurance and there was an airplane insurance company that wanted to have one that was Cleveland.airplaneinsurance and Omaha.airplaneinsurance and things like that, where thy could have used that to target specific markets. And there was nothing in the first applicant guidebook that prohibited that, and it was very late in the day before some people became upset about the idea. Cynically, I believe they became upset about the idea because they couldn't figure out a way to make money on them if it was a closed system that only required one registrar.

So that's what brought us into the closed generics conundrum, and ultimately, the folks who were against them prevailed and a lot of applications were withdrawn. So that's the background on that, Christopher.

From my point of view, the big problem with it was that the last applicant guidebook didn't sufficiently deal with it, and we still don't have a real policy on it, we just have the outcome from the fight last time. And I'm not sure if that's when you have an outcome from a fight

that that really is a community-developed process. I think it's really just the board trying to do whatever it could in the moment, because the community gave them a policy that was incomplete.

Or the community gave them a policy that was complete and later on, even though there were multiple opportunities to comment on that policy, nobody spotted the issue or they didn't care about it until later, so then the policy was reopened and that kind of thing. And depending on your point of view.

I'm sure my two minutes are over, but that's the background. Thanks.

JEFF NEUMAN: Thanks, Paul. Christopher, a quick response, and just before you do, we're not going to, at this point, discuss the merits of or what the policy should be with respect to closed generics. That's a whole other topic we have reserved for another day. All we're talking about here is the high-level support that there may be some exemptions to mandatory PICs, including potentially a single registrant TLD. Christopher, please. Christopher, is that an old hand?

CHRISTOPHER WILKINSON: Sorry. Problem of muting. Very quickly, Jeff – and I know you're pressed for time, and so am I. First of all, thank you for your clarification. Secondly, thank Paul for his explanation. All I would say at this stage is that as a realist, I could live with that for preexisting trademarks. Some people might not. But I would certainly not go with single registrant TLDs in the absence of a preexisting trademark right, and I think we

need to be very specific about that because this is not about – and there are other aspects – this is not about extending trademark rights. We respect trademark rights that have been granted, but the underhand de facto extension of trademark rights through the creation of monopolies in the DNS, no. Thank you.

JEFF NEUMAN: Okay. Thanks, Christopher. And like I said, we'll be talking more about the closed generic issue at a later date. Next and last high-level agreement was that voluntary PICs are an appropriate way to address issues raised by GAC early warnings, public comments, or otherwise flagged by the community. And this, again, is just an affirmation that we should by policy codify the notion of voluntary PICs. Any questions on any of the high-level agreements?

And Paul says that there is a takeaway that we need to make sure we codify these policies and make it clear for what we're going to do in the future.

Okay, now, there are some outstanding issues, some new ideas, or divergence that was expressed because not all of the high-level agreements – did I say that most or all agreed to this? So we'll go through these, and we can decide whether there's anything we should do to address this or not. But on the notion of codifying the existing mandatory PICs, Neustar had said that it doesn't support additional mandatory PICs, which actually was supported actually – really shouldn't be in this section, because most of the commenters said that.

ICANN Org said that if they are codified as policy recommendations, we should include what the categories of strings are, the process and criteria for applied for strings to be put into those categories, and what the contractual obligations are for these categories.

So this refers to the distinction between – as the GAC had created several categories, including category one and category two. Category two was the closed generics issue, which we'll talk about at a later date, and category one was the notion of adding PICs – whether we call them voluntary or mandatory – to address the sensitive strings, the regulated strings.

So to the extent we do that going forward, we should try to make the criteria as specific as we can so that the organization knows which TLDs will fall into that category one if we decide to continue that.

The Registry Stakeholder Group said that there should be a bright line of finality once matters are considered and concluded by the full community, including the GAC. This refers to the notion that many of the discussions of the GAC and the community just went on for months, and in some cases years after the application was submitted and/or after it was even evaluated. So there should be, according to the registry, some sort of way of cutting discussions off and putting some finality on whether the string moves forward and how it moves forward.

The NCSG made a comment that says that the PICs encompass intellectual property, policing of Internet content which is beyond the scope and mission of ICANN. So although I believe the specific PICs that the NCSG is referring to – although someone can absolutely correct me

– are specifically 3A, which deals with requiring registrars to include in their registration agreements a provision prohibiting registered name holders from distributing malware and then goes on to say trademark or copyright infringement, fraudulent or deceptive practices, counterfeit, etc.

So that was a concern from the NCSG, but I'm not sure if it applies to any other PICs. Is there anyone from NCSG call on here who'd like to comment? I see Martin. Please.

MARTIN SILVA VALENT: Hi. Thank you very much, Jeff. Basically, just [inaudible] idea is not only that – the idea that we are creating a second way to create policy or policy-like behavior. So it's both the idea that ICANN might be facilitating the control of content, and also the bypassing of the EPDP's process and debates. So we're very concerned about this. We do not think that they should have [place] in the application guide. And I'm actually surprised to see these are high-level agreement items. Thank you.

JEFF NEUMAN: So, thanks, Martin. I'm just trying to get my hands around that. So I think you're referring to the voluntary pics adding something like a global block or something like that. Is that what your comment is relating to as well? Martin, please.

MARTIN SILVA VALENT:	Yes. [Not only us we are presented now, the way we are creating this tool.]
JEFF NEUMAN:	Okay. Thanks, Martin. I guess the question I have is, then if we don't have something like PICs, whether mandatory or voluntary, how do we address the concerns that are raised by the community? And it could be even the NCSG that raises concerns through public comments or through objections.

So, what is another mechanism or alternative that we could employ? Martin, please. |
MARTIN SILVA VALENT:	Of course, I don't have a specific answer to this on what should we do, but I know what we shouldn't do. And we shouldn't be creating a tool that could be used to regulate content. That would be the end of ICANN, and also just the idea of having a policy like behavior that is outside PDPs is also a very troubling. That's just my piece.
JEFF NEUMAN:	Okay. Thank you, Martin. Christopher, please.
CHRISTOPHER WILKINSON:	Thank you. Look, Jeff, I understand the issue that Martin has described, but I would ask the board to take this into consideration, because if ICANN does not have any policy on content that extends at least to

trademark abuse and to abusive content, ultimately, ICANN gets into real trouble, real difficulties, and denial of competence will not be sufficient.

So at some juncture – and this is not for me, and probably not for this PDP, but at some juncture, the board will have to decide to what extent they're going to accept some responsibility for the abuses that may or may not occur. We've seen this with other large Internet corporations quite recently. Thank you.

JEFF NEUMAN: Yeah, thanks, Christopher. I think that really is the issue we grapple with. So while we understand the concerns expressed by Noncommercial Stakeholder Group, there does need to be a way to address concerns with an application so that an application can move forward. Whether that's a result of GAC advice, GAC early warnings, public comments in general, or even objections.

So provided that there's public comment on what is proposed to be added and some consideration of those public comments, I think most of the community does agree that this is the way forward. But just seeing if anyone has their hand raised. Okay, Robin, please.

ROBIN GROSS: Hi. Yeah, I just typed this in the chat box as well, but for the benefit of those who aren't in front of that, I just wanted to agree with Martin and talk about just sort of the broad principle of creating public interest commitments and what they do to the bottom-up PDP process. In a

sense, they create a disincentive to participate in the bottom-up PDP process. If you can just lobby the board to get a PIC at the end of the process.

So the idea is to try to create a process that encourages bringing concerns to the PDP early on, and having them aired out in the PDP process early on, rather than waiting until the end and trying to simply just go to the board to get a PIC.

So that's really the idea, the concern that we have, and it isn't only with respect to some of them, but it's with the concept of PICs generally. Thanks.

JEFF NEUMAN: Yeah. Thanks, Robin. Anne, please.

ANNE AIKMAN-SCALESE: Thank you, Jeff. I see exactly what Robin is saying. I don't think we want our policy process hindered by that, but it does appear that with the board developing, as Avri says, kind of a whitepaper on the topic of global public interest, which they're really sort of bound by with the bylaws and articles that there will be a point where whatever we're recommending gets evaluated from the board standpoint based on its fiduciary responsibilities, that there will be an interplay at some point in time.

Second comment was [inaudible] on this specific topic of mandatory PICs versus voluntary PICs. I'm wondering if we as a PDP need to look a little bit at the types, because you raise the issue of types of gTLD

applications when you're talking about sensitive and regulated strings, and then we have a whole section [inaudible] verified strings.

It kind of seems as though mandatory PICs, if there were a way to make that very general with respect to verified strings so that for example there'd be a mandatory PIC that said that the [minimum] qualifications to be categorized for eligibility [have] to be proven with documentation. Is there a way for us as a working group to recommend that on the verified TLD, that certain PICs are mandatory for that TLD that could be described in a general way?

JEFF NEUMAN: Yeah, thanks, Anne. So on that point, I think the issue is not putting PICs on verified TLDs, it's putting PICs on sensitive strings to make sure that they are verified or validated TLDs. I think it's kind of related, but if someone's committing to be a verified TLD, then they've already, in theory, committed to implementing certain commitments.

I think the GAC provided advice on top-level domains that in their view should be some sort of verified TLD in some way and then put PICs in place. So we should be discussing whether we agree that there should be this distinction between category one TLDs, the sensitive strings, or not, thereby requiring some form of contractual commitments, whether it's in the form of a PIC.

So we will or can be discussing and should be discussing that. On Robin's point, we're going through this now, and we're hopefully trying to solve the issues of the types of PICs through a PDP that we can foresee. I think the issue is that there will invariably be future applications that no one

predicted that may raise some sort of issue that needs to be dealt with, and to go and just say now that we need to deal with all issues through a PDP, as opposed to through some sort of comment process, I think is kind a burden, not just for the applicant but it's a burden for or could be a burden for the GNSO and/or the community.

So that's just kind of in my head if we don't go along with this voluntary PICs to address concerns that are raised, and then we say that everything has to be through a PDP, I think we're going to get into an unreasonable, unruly kind of process where now we've got to start PDPs on 100 different applications because concerns were raised that we didn't anticipate. So Robin, your hand's up, if you want to respond to that.

Okay, so just something to think about. We certainly have the NCSG that is not in agreement with this at this point, unless there are other organizations or disagreement, then that would seemingly be something for a minority [report] if that turns out to be the case.

Moving down to –

KATHY KLEIMAN: Jeff, this is Kathy Kleiman. I can't raise my hand.

JEFF NEUMAN: Oh. Sorry. Okay, Kathy, please.

KATHY KLEIMAN:	Hi. I'm joining you late, and I apologize. But here we have a real situation which the Noncommercial Stakeholder Group, an entire stakeholder group, and not just that. You've heard as you know from the Electronic Frontier Foundation and other members of the traditional public interest community and digital rights community that voluntary PICs are a real problem. And Robin suggested a way, a procedure forward that seems to make sense if [I] came in at the right point.

Do we just put this aside as a minority – this is – voluntary pics were not consensus policy, they were entered – I assume you went through the history that these were a real problem. The kitchen sink was thrown in, they cover things way outside of ICANN's mission and mandate.

So I assume within the scope of this discussion, we are going to limit what can be done and under what circumstances they can be done, and how the public is informed, or are we just going to continue to let everybody throw anything they want in? Apologies if this has already been covered. Thanks.

JEFF NEUMAN:	Yeah. Thanks, Kathy. We covered the notion of when PICs were appropriate, which included in response to public comments, objections, GAC advice, GAC early warnings, etc. We covered the fact that there's high-level agreement to put them out for public comment and consideration of those comments.

The solution that was offered by Robin of starting a PDP on each of the voluntary PICs, I had just brought up that that might be not the easiest solution to carry out, and certainly would not be predictable and

certainly would be a lengthy process. and I'm not sure the GNSO could even do that for every single PIC.

But what I'm really looking for is some sort of alternate then. And it's one thing to say that we don't like voluntary PICs and we have issues with them. What we've not heard is an alternative proposal to address public comments or to address the GAC advice or warnings or objections, all that stuff. And if we're going to do away with PICs, we need something else to be in its place that is workable and feasible.

KATHY KLEIMAN: Have you talked about boundaries, Like not putting in a PIC that's content regulation, or not going above and beyond the consensus policies. And not doing things like banning proxy privacy services when there is a consensus policy on that. What are the boundaries of PICs so that people don't have to police the entire world if they go out to public comment? Thanks.

JEFF NEUMAN: Thanks, Kathy. We have not had a discussion on the boundaries, but it seems like you've added something that is certainly worth discussing. Should we add a restriction on PICs that would go against consensus policies?

It seems to me that that might make sense, but let's see from the group if that's something that is supported. And on the other point, on the content point, I think that's a difficult one, Kathy, because even the one – and I know you're in favor of it, the one that said no closed

generics. That was a content-based PIC that was added after the process, and that was addressing a lot of concerns that were raised.

KATHY KLEIMAN: Are we revisiting the mandatory PICs, Jeff? That's a mandatory PIC. Are we revisiting the mandatory PICs or just talking about the voluntary PICs? Sorry.

JEFF NEUMAN: Right, but that was mandatory after the public comment process, so it was made mandatory. But it was during the process where the PICs were created to address concerns. So then I'm not so sure what the distinction is between voluntary or mandatory. So it'd be interesting to get your definition of that, Kathy, after I go to Donna.

KATHY KLEIMAN: Okay.

JEFF NEUMAN: Please, Donna.

DONNA AUSTIN: Thanks, Jeff. I'm just trying to understand this from a conceptual [point.] So it is possible that a registry operator may have chosen to go beyond what is within the remit of ICANN for business model differentiation purposes. With consensus policy, I guess it's a little bit trickier, but so

long as you're not contravening the consensus policy, I don't see why there's a problem with it.

So we need to be careful here that we're not taking away an opportunity for a registry operator to differentiate with their business model. So if their voluntary PIC is intended to provide some kind of – I can't think of the word, but the intended registrant, similar to a verified TLD, although that's a little bit different.

We need to be careful that we're not closing out that kind of business model differentiation ability to the registry [inaudible].

JEFF NEUMAN: Thanks, Donna. I have Kathy, and then I know Martin, you're next to put your hand up, but I promised Kathy an opportunity. So Kathy, and then –

KATHY KLEIMAN: No, let Martin go next, please. Thanks.

JEFF NEUMAN: Okay. Martin, please.

MARTIN SILVA VALENT: Thank you, Kathy, for that. Just a brief comment. I don't agree with Donna. I think that, yes, of course we need to provide as much diversity options to the business to develop, but you're talking something much more [core] here. Thanks.

JEFF NEUMAN: Okay. Thanks, Martin. Kathy, do you want to get in as well now?

KATHY KLEIMAN: Yeah. So Donna, I see what you're talking about in terms of differentiation. I wanted to read to you – and I hope it hasn't been read already – from the NCSG comments, which are based on a lot of research on voluntary PICs. And how do we get what you want, Donna, without doing what we see here which we think really takes ICANN out of its mission?

So the voluntary PICs have allowed new gTLD registries – and of course, we're talking about 2012 – to throw in the kitchen sink into their applications, including the absurdity of content regulation outside the scope of ICANN's mission and mandate, B, additional trademark protections above and beyond the many rights protection mechanisms created for the new gTLD program via the community process, C, banning of privacy proxy services even though they're fully part of the consensus process. Indeed, deletions of domain names entirely without due process, and work with law enforcement outside of law and due process.

So how do we prevent those and still allow that differentiation of business models? Part of the problem here, Jeff, as you know, of course, we should ban things that have been created by the consensus policy, but we also have to keep ICANN in its mission and mandate, including within the PIC DRP and within the scope of these PICs. So, how do we balance both? Thanks.

JEFF NEUMAN: Yeah. Thanks, Kathy. So just going to the chat, and then I'll get to Susan. Seems to be some discussion on – Robin said if we can establish boundaries, that may be something worth considering. Some agreement with Donna, some agreement with Kathy. Okay, Susan, please.

SUSAN PAYNE.   Yeah. Hi. Your comments, Kathy, raised similarly interesting points, and you finished it off by saying, "How do we ban all of those?" And I think my answer to that would be we don't ban all of those, and indeed, it seems inappropriate to do so. There might be some potential voluntary restrictions or voluntary PICs that one would feel are inappropriate and shouldn't be incldued and shouldn't be permitted.

For example, something that positively ran contrary to some kind of consensus policy. But a number of those examples that you identified I don't think do that. If we take the rights protection one just as an example, really, why is there an objection to a particular registry feeling that they want to go above and beyond the minimum that was always identified as being a minimum, a floor and not a ceiling?

And if a registry operator wants to ensure that purchases of names in their space are held to a higher standard, what is the objection to that? After all, there's no one telling registrants that they have to buy a name in that particular TLD versus some other TLD which perhaps suits their purposes better.

So I think my answer to your question would be, I don't think we do want to ban all of those, but perhaps what we do want to do is identify the things that should be banned, to use your terminology.

JEFF NEUMAN: Yeah. Thanks, Susan. I see Martin's hands up again, so let me go to Martin for a quick response.

MARTIN SILVA VALENT: Hi. Thank you very much, Jeff. Susan, to answer your comment, I think the problem with high standards is [inaudible] censorship. It's really not that easy to say what that high standard should be and how it will be applied in each case. That's what we are fearing, not for the best-case scenario but for how easy it is to abuse it. Thanks.

JEFF NEUMAN: Yeah, thanks, Martin. It sounds like we're still at a place where there's disagreement from the NCSG and public interest groups that submitted comments. Let me go to Donna then Kathy.

DONNA AUSTIN: Thanks, Jeff. I think one of the things we potentially saw with the 2012 round is some registry operators – and this is before contracting – so when the GAC advice came out, there was possibly – and I don't know this for sure – some applicants were offering up voluntary PICs to make their application look more agreeable than maybe another applicant so that it was that differentiation.

But I guess at the end of the day, I not sure that that came into part of the evaluation process, so I'm not 100% sure of the timing here. So I think if voluntary PICs are being used – this is really hard, because in my mind, I'm starting to think about when does this matter. So can you add – and I'm not sure of the timing on this either, whether you can add a voluntary PIC at the time of negotiating your contract with ICANN, or whether those voluntary PICs actually have to be identified at the time that you submit your application. So I'm sorry, I'm getting a little bit confused here, because I think it depends on what time in the process we're talking about this, and I'm not 100% sure that voluntary PICs were required with the application themselves or were something that came as GAC advice that was submitted later. Thank you.

JEFF NEUMAN: Thanks, Donna. And I switched connections to a phone line because I was having some Internet issues, so I hope everyone can still hear me. So I think there are some good comments, and I know Kathy and Christopher have their hands up. But let me just go to the chat, because I think there are some good comments that have been put in there in the last few minutes. And I think one of them is really just [inaudible] what Donna was saying, that voluntary PICs are not about what someone's putting into their application necessarily. In most cases, they were in response to some advice or some sort of concerns that were expressed as Kristine says, an outcry from the community.

So again, I'll ask the question of how do we allow changes to applications that stem from those concerns that are expressed. So let me go to Kathy, and then Christopher.

KATHY KLEIMAN: Great. Thanks, Jeff. And my recollection is the same as yours. Voluntary PICs were not submitted with the original applications, they were put in later. To Kristine's comment in the chat, not all of them were in response to public outcries. Maybe they were in response to small outcries or small private lobbying. [That's where I get it.]

Some of them were, and I understand that there are people who want to leave room for some voluntary PICs in response to GAC warnings or objections. But how do we set the right boundary? And a lot of these PICs came in as things that people wanted that were rejected by the consensus process and by the policymaking process, that's why the RPMs are not consensus.

The DPML for example was largely rejected policy. And some of this idea of takedowns without due process, we never even talked about that because it's not what we do in ICANN. We don't take down things because of content.

So I think policing the boundary has a lot to do with staying within ICANN's mission and particularly ICANN's mission section 1.1, which is that we don't do content. Let me throw that out. Thanks.

JEFF NEUMAN: Yeah, thanks, Kathy. As of course, Kathy, you know, because you're one of the co-chairs, I'm going to refer all the rights protection questions, including the ones as to what should be mandatory or what may be

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added additionally to the RPM group, because I believe that's within that group's purview.

We could spend a lot of time talking about that here, but I think the most appropriate group there is the RPM group, and has much more expertise than we do in this group to discuss those issues. But to the extent that the comments raised about going against a consensus policy, that seems to be very relevant, or PICs that – I'm trying to think of how to classify this, because the takedown of names, Kathy, that you brought up, that's part of the mandatory PIC. [In] relation to anything, that's actually how ICANN Compliance has been interpreting 11(3)(b), that action should be taken to address security threats and abuse.

So that doesn't really seem to be a voluntary PIC issue, but more of a mandatory PIC issue. But Kathy says in the chat it's a standard-based registry agreement, and the voluntary, DONUTS and others went beyond. So now we're talking more about the block list than that. Okay.

Let's see, Christopher I think is next in the queue because I think Kathy went ,but I might be forgetting. Yes, Christopher, please.

CHRISTOPHER WILKINSON: Hello. Jeff, as Donna said, this is really hard, and I don't think we're all fully prepared for it. Personally, I feel very familiar with all these issues at the second level, having dealt with that in several contexts, including the dot-eu EURID board.

But extending that experience to the top-level is really hard. I think we need a working paper from the staff which would map out the issues

and the level at which they should be applied. At the present level of the discussion without commitment, and reserving the right to change my mind, I would say at the very least, we would need from ICANN a superset of PICs that are generally applicable.

It might be quite a narrow superset, but we would need it, particularly as it needs to be applicable globally. Picking and choosing – sorry for the pun – bits of PICs for different registries is alright at the low level where you're talking about exactly how a particular top-level domain will function. That's okay, but there are, as I've said, a superset of obligatory PICs, nonvoluntary PICs, which I think should be defined for the program as a whole. But that's just part of the possible solution. My main proposal is that we need a staff paper that sets this all out. Not only for the people on this call, but for the PDP and the community as a whole. Thank you.

JEFF NEUMAN: Thanks, Christopher. Yes, no doubt this is one of the tougher issues, and something that we all need to kind of go back and do some more reading on. I do want to get through a couple more things before we go into just the discussion on ICANN 65. So staff, if you could just let me know in five minutes, just give me kind of a nudge to move on.

let me go with Maxim, and then hopefully quickly, and then move on.

MAXIM ALZOBA: Actually, I don't see a reason why we should replace the policies work of registries, because different registries are different forms of legal

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bodies. Sometimes, they can have shares, they can be not for profit, they can be municipal entities. There are different ideas, and it creates huge spectrum of different policies. We shouldn't substitute the work of all registry, because effectively, we have less people than they have to do this work. And we don't have time to imagine every kind of unimaginable ideas on the planet.

So I strongly object to a situation where we will ask the staff to create a set of policies for all imaginable registries. It's just loss of time. Thanks.

JEFF NEUMAN: Yeah. Thanks, Maxim. Let me jump to the – I think we've talked about the – if you look at the exemptions or waivers, I think we definitely talked about that issue, certainly in the context of single registrant TLDs. I want to scroll ahead a little bit, because I think we've covered – if we could scroll on the screen there, keep going to page four. Okay. We talked about the notion of – I want to just go to changes to the voluntary PICs.

So this is something that needs to be taught about. We need to clarify whether [the language of draft] in our recommendations is in reference to changes during the application process or after execution of a registry agreement. If it refers to changes after execution of a registry agreement, consider how to address the elapsed time between the initial GAC early warning, GAC advice, or objection and submission of the changes as circumstances may change. So that's something we need to think a little bit about for the final report.

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In addition, if we look at the next bullet point, Valideus made the point that if there's a voluntary pic that's filed in response to an objection, we should give the objector a limited time to decide whether to continue, amend or withdraw its objection. I think that makes a lot of sense because of the fact that these PICs could in theory deal with or get rid of an objection, and if it's withdrawn, there should be some consideration of some sort of refund of those objection fees, and the IPC states there must be an established process that allows for predictability and flexibility, limitations and conditions of voluntary pics should be expressed beforehand, and any changes not foreseen at the time of inclusion of commitments should be further addressed in a process that allows for public input. This is about changes to PICs at a later date.

With respect to the public consultation bullet, public consultation and voluntary PIC changes the nature of an application. We talked about this. As we said, most people support some sort of period to object or comment. The registries are one of the disagreements on there, they do not believe that we should reopen any objection period on the adoption of a voluntary PIC, because the voluntary PIC is being put into place to, in theory, address those public comments or objections that have already been raised. But the registries and Valideus – so basically the registries that have filed comments that do not foresee opening up the public comment periods or objections, but that seems to be a minority of the views that have come in.

Okay, I'm going to stop at the verified TLDs because I think that's a longer discussion, and will also get us into the freedom of expression subject fairly well. So we'll save that for after ICANN. So why don't we – and I'm just looking to make sure Trang is on the call, and she is. Okay.

So changing gears a little bit to ICANN 65, there are four sessions of subsequent procedures. Three of them on the first day on Monday, one of them on Tuesday. So the first two sessions are for Work Track 5, and there's already been some discussion and will continue to be a discussion of what goes on at those two meetings.

The third and fourth session, the one from 1:30 to 3:00 I believe on Monday, and then the morning session on Tuesday are reserved for the rest of the Subsequent Procedures Working Group, and the third session, I'm going to let Trang introduce what we'll be talking about in the third session. This is, I think, something that everyone will find some good amount of value in. So Trang, are you ready to let us know what's going to be talked about?

TRANG NGUYEN.   Hi, Jeff. Certainly. So I wanted to – and of course, the formal communications will start to go out today, so many of you will start to see that as well. But just as a preview, what we have been doing is since January, at the board's request, ICANN Org has been briefing the board regarding the next rounds of new gTLDs and what's necessary to get there.

This briefing includes things such as status of reviews, status of the SubPro PDP, the implementation of the 2012 round and the lessons learned from there, as well as our initial thinking on planning work that could be done.

Clearly, if we are to start doing planning work now, there are a lot of unknowns. So if we're going to start, it's important to document any

assumptions that we're making, and that's exactly what we've done. And we've shared those assumptions with the board. So now what we would like to do is share those same assumptions with the community, with the Subsequent Procedures PDP Working Group being one specific group that we would really love to share these assumptions with and get feedback from you on. And again, the goal in making these assumptions explicit at this point in time was really to surface any potential areas of misalignment and to allow for informed discussion on any assumptions that should be added or adjusted to help ICANN Org continue to do [the planning] work moving forward.

So that's what we're hoping to get some time with you on Monday afternoon in Marrakech to do – and again, like I said, the formal communications will go out today, and with those formal communications, we'll include the set of assumptions that we'll be discussing with you in Marrakech so that you can have a preview read so that you can be prepared to have those discussions in Marrakech on Monday.

So Jeff, I'll stop there and see if there are any questions.

JEFF NEUMAN: Yeah. Thanks, Trang. Martin has his hand up. Martin Silva, please.

MARTIN SILVA VALENT.   Hi. Thank you very much. Just a quick question. Are we still going to be debating these issues in Marrakech? I feel this is definitely not over. We do not have agreement on this, and implementation without an

agreement just seems weird. So, are we still going to be debating this in the face-to-face meeting?

JEFF NEUMAN:

Yeah, thanks, Martin. We are – I don't believe we'll be addressing this topic of PICs at the meeting, and certainly, Trang and ICANN knows that there's certainly no agreement on certain subject – or we don't have agreement on certain subject areas, but as Trang was saying that and implying that we can't really wait for agreement on every single sub-issue before ICANN starts to think about how to implement the program.

So I think what they're doing makes a lot of sense since it's definitely a multi-year process, but of course, ultimately, ICANN will have to consider whatever's in our consensus policy. So I think they're just trying to do a presentation on the assumptions that they're making and to validate those assumptions with the community so that they can start looking into things like, say, an RSP preapproval program and how to set that up, and looking at systems to have in place to submit an application and to allow for an objection process and consultants to start working with in order to think about how to evaluate.

So I think everything is a – this is all going to be multi-year process, and like what happened in 2012, ICANN actually started "implementation work" in 2008, if not earlier. So I think what they're doing here is smart, and I think it makes a lot of sense.

Let me go to Jim.

JIM PRENDERGAST:	Alright. Sorry about that. So yeah, Trang, it's going to be helpful to have that material ahead of time so folks can dig into and then come prepared with questions that are reacting on the fly. Jeff, do you know if we're going to get the materials for the stuff that we're going to cover during the other sessions ahead of time as well? I think we started that practice last ICANN meeting, and I think it kind of helped people prepare for the actual in-person meetings. Thanks.
JEFF NEUMAN:	Yeah, so we'll certainly get you the list of topics that we addressed at the second session out in advance along with what to review for that discussion before people leave for – well, unless you leave today. Hopefully assuming you leave Wednesday or later, you'll get some materials.
	Okay. So thank you, Trang, and I think it should be an interesting discussion. I have not seen this document yet either, so I'm looking forward to reading that document and discussing this with the group, and ultimately with the community.
	Okay, and then on that – any other questions? Let me just take a look here. No. Alright, and then on the second session, that will be reserved for a couple of topics. We wanted to see how far we got on this topic just before we finalize with the leadership team what topics we're going to discuss at the Tuesday morning session for SubPro. We want to pick topics that will be engaging and not just ones where you'll hear either

myself or Cheryl speak the whole time. So we're trying to balance that with certain topics.

We will also be trying to break out into small groups during that session, though we are still trying to figure out whether remote participation or how remote participation will be handled with doing something like breakout groups at this Marrakech meeting. But we think it just encourages much more conversation if we can break out into smaller groups and then have people report back on what the groups have discussed. So that's something we'd like to do but still trying to verify whether we can do something like that with remote participation.

Any other questions on ICANN? Okay. So very last and before everyone has to drop is post ICANN 65 workplan. As a leadership team, we did discuss some of the concerns that were raised on the call about going to two meetings a week, but on balance, we decided that we're still going to move ahead with it to try it out and see what happens, and hopefully get some additional participation via the mailing list. As you can see, discussions often take a lot longer than we anticipate or that we'd like to. We don't want to cut off discussion, and therefore in order to stay on some semi-reasonable timeframe, going to two meetings a week does seem like the best thing we can do at this point of time, because we don't want to cut off conversations, and at the same time, we don't want this to go on for an additional several months after when we had promised the GNSO council we would get this done.

I know that's not popular with everybody, but I think it's something we as a leadership team have made a decision to try and see how it works out. Kathy, I know your hand is up, so if you can just be brief. Thank you.

KATHY KLEIMAN: Sure. And just continuing my objections, the times have already been published for the summer, if I recall correctly, and we've been working with them. And it's a lot of time that you're asking people who are not employed to be in this area. You're asking for a lot of time from volunteers. So I'd like to continue my objection to two meetings a week, and three hours and what that does also to the people in Work Track 5, which I think makes it four, four and a half hours a week. Thank you. Bye.

JEFF NEUMAN: Thanks, Kathy. We totally understand, but it's something we're going to try out and see what happens. Alright, any last questions and/or comments?

GREG SHATAN: This is Greg Shatan, I'm on audio only. Could I get in the queue, please?

JEFF NEUMAN: Sure.

GREG SHATAN: Just very briefly, I think if people were to be succinct and stay on topic, and not make the same presentation over and over again, we might be able to do one meeting a week. But given the desire to let people air things out, that's why we have two meetings a week. Thank you.

JEFF NEUMAN: Thanks, Greg. Okay. Thank you, everyone. I don't want to keep everyone over time, so I look forward to seeing everyone that's going to ICANN 65, and of course, there will be remote participation. So thank you, everyone. I look forward to talking the beginning of next week. Thanks, everyone. Bye.

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

[END OF TRANSCRIPTION]