ICANN Transcription

Webinar in Support of the New gTLD Subsequent Procedures Policy Development Process Working Group's Draft Final Report

Monday, 14 September 2020 at 20:00 UTC

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TERRI AGNEW: Good morning, good afternoon, and good evening. And welcome to the webinar in support of the New gTLD Subsequent Procedure Policy Development Process Working Group's Draft Final Report. The webinar is taking place on Monday, the 14th of September, 2020 at 20:00 UTC. All lines are muted at this time to avoid background noise and will remain muted until the question and answer portion of the webinar.

The webinar room is equipped with a chat feature and a Q&A box, found at the bottom of your Zoom window. To chat, please change the dropdown to "include all panelists and attendees" to ensure everyone can see your message. To ask a question, click on the

Q&A box and type in your question. All unanswered questions will be answered at the end of the webinar. You may also raise your hand during the question and answer portion.

This webinar is being recorded and will be posted on the GNSO calendar and agenda wiki page shortly after the end of the webinar.

As a reminder, those who take part in ICANN multistakeholder process are to comply with the expected standards of behavior. With this, I'll turn it back over to Co-Chair, Jeff Neuman. Please begin.

JEFF NEUMAN: Thank you very much and welcome everyone. I still see a couple people coming in. I think we're up to 82 or 83 attendees so that's great. And again, we're still all trying to figure out the Zoom webinar versus normal layout and trying to make sure that we do not … That we're secure and we don't have Zoom bombing issues. So, this seems to be the best format for conducting a webinar. But we will make sure that when the Q&A period does come, we'll make sure that everyone is able to ask their questions orally and can speak to us.

And so, we do want this to be a very interactive session. And really, this is scheduled for 90 minutes. We can go as long as we want up to those 90 minutes. But really, I want to … We want to—Cheryl and I, as the Co-Chairs want to—make sure that we can provide any answers that you have on the draft final report or on any—or the material.

So, with that said, why don't we go to the first slide here, which is just the agenda? So, we'll spend a little bit of time going through the background of the PDP and an overview of the final report and public comment opportunity. Because this public comment uses a Google survey form, we're going to spend a couple minutes just going over that format and just making sure that those in attendance are familiar with the form and can respond to the specific questions that we have. And then we'll spend the rest of the time talking about some of the topics which we'll see on the next slide and then a Q&A period. Can we go on to the next slide?

So, these are just some of the topics that we picked out to highlight on this call. You may have questions on other topics and for that—and I think Cheryl has already posted to use the Q&A pod. So, if there are any topics from the lengthy report that we have not listed here that you have a question on, please do not hesitate to put that in the Q&A pod and we will come back to that during the Q&A period.

So, the topics we're going to cover: predictability, registry voluntary commitments and public interest commitments, applicant support program, application change requests, closed generics, limited challenge and appeals mechanism, community applications, and finally, mechanisms of last resort which include auctions and private resolution of contention sets.

So, this is the topics, again, that we picked out that we think that there were some substantive changes around and where we're really looking for feedback from the community on the draft final report. Okay, if we can go on to the next slide? Actually, one more.

So, most of this … You probably know most of this, right—that the GNSO recommendations in 2007 gave rise to the, essentially, the 2012 new gTLD application window opening? Those specific policies resulted in the development of what was called the Applicant Guidebook, which we can just shorthand as the rule book for applying for a new gTLD. And so, in 2014, after applications were already submitted, and in fact, I believe there were a few TLDs that were already in the root, the GNSO Council convened a discussion group to talk about how we review the new gTLD program.

And ultimately, the output of that discussion group resulted in creating a charter for this particular Subsequent Procedures Working Group. I know that's a mouthful, so we just say SubPro for short. And we started that work in 2016 and I think we initially started with around 40 topics and then as time went on, more and more topics were added. So, I am not sure exactly. We do break it down into the topic numbers in the draft final report. Some of those topics actually are the combination of a couple different ones that were listed in the original discussion group. Can we go on to the next slide?

And so, what I should mention, obviously, is that our job is—as the Subsequent Procedures Working Group, was or is to review the program as it was implemented in 2012 and to suggest or recommend any improvements that can be made to the program so that ICANN can conduct future rounds of new gTLDs without the necessity of necessarily having intermediate periods to do reviews where there is no applications accepted.

So, if you think back, 2012, that's over eight years ago. And when we look at the timeline, or talk a little bit about the timeline in a little bit, you'll see that it's going to be around a decade between the launch of the 2012 round and the next one which is really a long time in between rounds.

So, we published an initial report in 2018. Then, there were a few topics that we had realized we didn't fully capture, and therefore, came out with two supplemental initial reports. One was on a few of the topics, actually, that we'll be covering today. And then the second supplemental initial report was devoted to the treatment of geographic names at the top level. We called that Work Track 5 and we had about … I want to say we had about 250 participants in the overall Subsequent Procedures Working Group. And the majority of those participants plus a whole bunch of others joined Work Track 5.

So, we really had a substantial amount of input from all across the community, from the different stakeholders on the geographic names at the top level, which is one of the reasons it's not one of the topics we're covering today. But it's one of the reasons that you'll notice that the draft final report of that Work Track 5 on the geographic names at the top level has not been altered at all. And so, the full working group has elected to pull forward that report of Work Track 5 and make that part of the final, or at least draft final report, of the Subsequent Procedures full working group.

So, given that some of the recommendations have substantively been updated since the initial and supplemental initial report, we decided as a working group, and thanks to feedback from the community as well, that we were going to have an additional public

comment period for the draft final report and that was released, as you probably know, on August 20th, 2020. You can go on to the next slide.

So, here's the timeline for our work and the finalization for our work by the end of the year. So, the initial … I'm sorry. The draft final report is out for public comment until the end of September. And then, between the end of September and the end of the year, which also includes the time period for which we're all going to be virtually at ICANN 69, the full working group is going to be putting together the final report to deliver to the Council by the end of the year. You can go on to the next slide please.

All right, so a little bit about the draft final report that's important. So, what we really want to emphasize here is that this working group, our working group, has been around for more than four years now. We've had a number of public comment periods where constituencies, stakeholder groups, advisory committees, have all provided input into the 40 plus topics that are contained within our charter.

In addition, we've held multiple meetings or sessions at ICANN meetings over the last several years and have visited many of the advisory committees, and stakeholder groups, and supporting organizations to present the current status and the topics to get additional feedback.

So, there has been a lot of time for public comment already. And between the public comment period and the working group discussions, I think we can honestly say that we've comprehensively covered each topic. But that said—and we'll talk

a little bit about this later on—we are still … The reason why this is out for public comment again is to make sure that we take into account any new information that we may not have known at the time of the drafting of the draft final report or to make comments on some of the areas that have substantially changed over the last, well, since the initial reports.

So, you'll notice that for each of the topics that we have—they're all numbered in the draft final report—we have outputs and the rationale associated with those outputs. And we'll go into what those outputs are on the next slide, but just to say here that what we don't do in the draft final report is go through the history of the issue which we comprehensively did in the initial and supplemental initial reports.

So, if there are recommendations or implementation guidance that you see in the draft final report, especially for those areas that haven't substantively changed, and you want to know more about how we got to those recommendations or implementation guidance, highly suggest that you go back to the initial and supplemental initial reports because that will give you some, or much more, information on how we ended up where we did.

And also, just as a side note, there are a few topics that are not within our policy development process that sort of—not sort of, but that overlap or, I should say, that are being addressed through other policy development processes.

So, for example, rights protection mechanisms have their own policy development process and they're working on their final report now. There was also, and continues to be, work on internationalized

domain names that the GNSO Council is currently, I believe, developing a charter for some additional work that may need to take place on IDN guidelines and variants. And then there's also some work going on in a group called the Name Collision Analysis Project, or NCAP for short, where they are also doing some work on that very specific issue. So, you'll see areas in here where we may have recommendations but ultimately, they do have dependencies on other work that's going on.

After we finalize our final report—after getting all the public comments—we will do a final consensus call, or I should say our only consensus call, once we are comfortable that all the recommendations have been finalized. So, you'll notice that we do not use terms in this report, like "consensus," or "strong support," or any of those kinds of terms that you may be familiar with, with policy processes, because frankly, we haven't done the consensus calls. Although, that said, we do have a pretty good indication, I think, of those areas that are likely to have consensus and those areas—and we'll talk about some of them—where consensus may not be possible. Can we go on to the next slide?

So different types of outputs. Okay. So, this is kind of unique. I'm not sure I've seen this necessarily in other reports. But we have five different outputs that you'll notice at the beginning of each topic in each section. We have what we call affirmations. And affirmations are where there were elements of the 2012 new gTLD program either because of the policy from 2007 or because of subsequent discussions, agreements with the community, things that were in the applicant guidebook. For those areas that we, the working group, agreed should be part of the program, we affirmed those

elements so as to make sure that they are also included in the next, or in subsequent rounds.

Affirmation with modification, very similar to affirmations but because of maybe a couple of words that were geared towards the first initial round in 2012, or because certain things have been modified, we call those affirmations with modifications. We also then, on the new kinds of stuff, we have recommendations. And these are areas where you'll notice the wording in the recommendations usually have the term "must" or "shall" in them. And so, this is where we expect the policies or implementation—I'm sorry—the policies to be, or procedures, approved and implemented consistent with what the working group's intent is.

Most of the time—and there may be a few exceptions here—recommendations go to the "what" of what the working group is recommending. And the "how" that is implemented usually falls into the next subject, which is implementation guidance. Implementation guidance is not … While we don't use terms like "must" or "shall"—we use terms like "should"—we really do mean that we recommend the stated action and that there would be a strong presumption that what we've put down in the report be implemented. But we do recognize that there may exist some valid reasons not to do the particular action that's in the implementation guidance exactly as we had put in the report.

So, there are some areas, for example, where we may not have the complete expertise within the group to understand the feasibility of implementing certain of the things that we have recommended in the implementation guidance but where we've had discussions on feasibility. But the important thing is that if there is another way to

accomplish what we have in the implementation guidance that may be more feasible or, for whatever reason, needs to be done differently, that's okay so long as they're really carrying out the intent of what the working group had wanted.

And then finally … And this, thankfully, has only been with one subject and we'll cover that one subject. There was one subject where we were not able to reach an agreement on recommendations. And I should go back here. And I see that there is a comment in the chat. If there was something from the 2012 program that we didn't necessarily have agreement to change, then the default position, or the status quo, would be what happened in 2012 as it was implemented. And so, it's important to keep that in mind. And that's the way the group was operating when we came up with our recommendations and implementation guidance.

So, when it gets down to the one subject—and that's closed generics, and we'll address that—where there's no agreement, there not only was no agreement to continue what happened in 2012. There was actually no agreement or no clear status quo of what happened in 2012. We'll get to that when we talk about closed generics. And thankfully, it only is with respect to one area. Okay, let's go on to the next …

Okay, so as we said the current public comment period ends on September 30th. And we know that this is a long report. We know that there are a lot of topics. But what we're asking, or what we're requesting that commenters focus, on are the areas that have substantively changed since the publication of the initial and supplemental initial report. We're also asking that the comments focus on the questions. And there are some questions specifically

that we've posed to the community for feedback. And then, of course, if there is any new information that's not yet been considered by the working group.

So, to go back a little bit, because we've had so many public comment periods and because there were so many public comments submitted during those comment periods, the working group has extensively reviewed each and every one of these comments. And so, there may be some areas where we are continuing to recommend something that your constituency stakeholder group, your organization, may not have necessarily agreed with in the initial or supplemental initial reports.

We are asking that—not that you restate your initial objections to those because we have considered those but if there is any new information you feel like we haven't considered or, given the solution that we've recommended, any areas where some changes could be made using that recommendation to make it a little bit better.

At the end of the day, we're hoping that the outputs on all of our topics are intended to be considered as a full package. And what we're asking, and the way we're asking public comments to be submitted, is by using the Google Form that was provided in the announcement to submit the input. And then, contact staff if, for any reason, you're unable to use that form. So far, we haven't had too many complaints about the form yet so things seem to be working okay. And then of course, there is a tutorial, which Julie Hedlund has done, which is fantastic, on the use of the Google Form and I highly recommend that you review that.

As we go on to a sample from the public comment input form, I do want to say also, just something that we've learned as going through, that the public comment form allows you to save your work. But there is no submit button at the end of the form. So, what the Google forms do is it actually submits that section as you save it.

So, let's say you finished topics, I think it's one through ten or one through five and then there's a save button. If you hit save, that will be reflected when you view the comments right away. Now you can go back and you can change it and those changes will be saved as well, but this is one of the many reasons why we're recommending that you initially do your draft comment in something like Word where you can work on that as a group, if you are with a constituency or stakeholder group. You can edit it and then once you're comfortable that it's final, that's when you cut and paste what you have from Word into this format.

Now you may be saying, "Well, if you're doing it in Word, why can't you submit it in Word?" The reality is that this form does make it easier for the working group to analyze the results once all of the comments are in. So, this is a … It's really to make our lives easier because we know that the amount of work that you all do on the public comments will be extensive and we do take our responsibility to review all of the comments that come in, comprehensively.

And I see Michele's got a question which says, "Is there a separate doc with all the questions?" Yes. When you go to the public comment form, you'll see an option to download it, as Cheryl has stated, in PDF or Word. So yes, you can get all of this without having to go into the form itself.

Okay. So, this is just one example of what you'll see on the public comment form if you haven't opened it. This relates to predictability. So, we'll go into the substance in a few minutes. But putting aside the substance, what you see here is the topic. Then below the topic, we have … If there is a substantive difference between the initial and supplemental initial reports and the draft final report, we have a general overview of what has changed and then with that, also you'll see above actually, the description of difference, you can click on the link to that section of the draft final report and go straight there. So that should help you in your response.

So, when you ultimately get ready to respond, you will see several options. And this one screenshot shows the first three options. And the first three options here, you could support the output as is written. You could say, "Okay, well, it's not ideal. I might have done it a little differently but I'm willing to accept the outputs as written, understanding that the working group has had to make a lot of compromises on a lot of these subjects." Or you can just choose to say, "Look, I don't have an opinion on this section at all."

Then if you go to the next slide, you'll see two other options. And the reason we separated I t… I'm sorry. One other option. And the reason… No, there are two others. Sorry. The reason we separated it is because if you choose one of these two options, we really would like to have your specific comments as to why you chose one of these two.

So, this option at the top of this page is, "No, I don't really support some or all of the outputs in this particular section." And then, you're expected to write a response in that text field below. So, you may say, "I agree with everything on predictability, but I think the SPIRT

team," which we'll talk about in a second, "needs to do more of X, Y and Z." Or you may choose an option that says, "Well, there is some new information we don't think you've considered on that topic." And so you would check that circle, or fill that circle in, and then you'd enter your response there. So, this is how each of the sections are structured. And so, by topic 30-whatever, you'll be very familiar with how it goes.

Okay. So, if we go on to the next slide, we're going to get into some specific highlights. So, I just want to check. Cheryl, is there anything we should address from the comments—the chat—that I haven't yet covered?

CHERYL LANGDON-ORR: No. We've got it all covered. We've even got a few people happy. What more could we want?

JEFF NEUMAN: Well, that's great. Okay. Fantastic. All right. So, if we can go to the first of the many topics. And it happens to be the same topic that we were just talking about, predictability. And although we have one topic called predictability, I do want to emphasize that predictability is one of the overall goals for the entire program. So, every single topic, in some way … Or I should say we hope that every single topic in some way enhances the predictability of the program as a whole.

And so, what we're talking about under this topic is not predictability in general. But it's really to talk about how do we handle those issues and changes that we know will inevitably come up after the

Applicant Guidebook comes out, either before the application window opens, after the application window opens? Or, frankly, because we're recommending ongoing rounds of new gTLDs, there could be issues that we need to consider maybe not for the current round that's going on but for the next round. And so, all of these things will need to be worked into the new gTLD program.

For those of you that may recall, in the 2012 program, there were a number of areas that came up that, even if they were anticipated, they were not decided or they were not worked on until after the application window launched or even until after applications were submitted. That led to a number of different ad hoc processes by ICANN Org, the Board, the community, to try to address those issues as they arose.

And the number one complaint we had about the program itself was that with all of these changes and all of these issues that arose, the program lost its predictability, reliability, and in some cases, lost some credibility amongst applicants and the community. And so, one of the things we really hope to fix going forward is making sure that at least the process for handling issues as they arise or changes is a predictable process.

Now for this, we've developed what we call the predictability framework to analyze an issue to determine impact of the change and the process or mechanism that should be followed to address that issue. We want to really stress that this group that we're going to talk about in a second is not to develop policy or to revise policy. That is within the exclusive jurisdiction of the GNSO, responsible for developing policy for new gTLDs. That's not what we're trying to

do. What we're trying to do here is to analyze issues and determine the impact and also the mechanism to handle that issue.

And for that, we're recommending the creation of what we're calling the Standing Predictability Implementation Review Team and we like to pronounce that "spirit" with a silent second I because to say "spirt" just doesn't roll off the tongue very well. So, we call it the SPIRT Team. And this SPIRT Team will work under GNSO Council oversight to review issues or potential issues as they arise. They'll conduct analysis using the framework and then recommend a process mechanism to address the issue.

What's really important here is that you review Annex E of the draft final report, which has much more specificity on the composition of this team, what types of issues would go to this team, how those issues are submitted and all sorts of details on the interaction of this SPIRT Team and ICANN Org, the Board, and the community.

We want to emphasize, again, this is not a policy development process. This is overseen by the GNSO Council. So, the GNSO Council has the right to take away issues from the SPIRT Team if it feels like the GNSO should address this issue through one of the GNSO's existing processes, like a PDP, a policy development process, expedited policy development process, an implementation guidance, or an advisory. And I'm forgetting the exact names but there is already mechanisms to deal with that.

So please do review that. We do think that this is going to ultimately enhance predictability and we do address … We received some comments during ICANN 68, I guess it was, on the SPIRT Team which we think we have addressed in the draft final report.

One of the other things that we're recommending on predictability as well is that ICANN Org must publish a change log to track all of the changes that are being made to the new gTLD program, whether minor or not, so that the community can review what has changed since the initial—I'm sorry—since the application window was opened or since the Applicant Guidebook was published.

Okay. I think we'll stop there on predictability. Jump into, I think there is the next one, which … Let's see. Next slide. Okay, registry voluntary commitments, and public interest commitments. So, during the 2012 round—I should say more likely 2013, '14, '15—a concept came up called public interest commitments to address concerns that were raised primarily by the GAC, the Governmental Advisory Committee, to specific types of applications, and in some cases, specific applications. And they were incorporated into registry agreements and called public interest commitments. And they were, or I should say are, enforceable through a dispute resolution process called the PICDRP.

Through a number of discussions of the working group, we do want to maintain the concept of including commitments in the registry agreement. But we also noted that not all of the commitments that were included were "in the public interest." That's not to say they were against the public interest but it's to say that some of the commitments made by registries were either with respect to their own TLDs or maybe didn't rise to the level of what we would say were mandated by the public interest.

So, what we did there is change, or bifurcate, the commitments that are made in the registry agreements. There will continue to be public interest commitments. Those commitments are similar to the

ones that you see in Specification 11, Section 3A through D in the Registry Agreement.

But we're also incorporating a concept called registry voluntary commitment, which are commitments also enforced through the contract and also will be enforced through the PICDRP, but may address certain concerns that are raised by the community to an application. Maybe they're raised by the government. Maybe they're raised by objectors. Whatever it is, if a registry wants to make that commitment in its agreement in order to resolve an issue, then it can do so through what we're calling the registry voluntary commitment.

One other important thing to note or highlight from this is that we're also recommending that we maintain the framework that was established by, essentially, the ICANN Board, or with a subset of the ICANN Board that was not conflicted—they were called the NGPC—for what they called Category 1 strings. And these were strings thought of as highly-sensitive strings, or regulated strings, or something unique about those strings where additional commitments needed to be made. We're also establishing a new process, or recommending the establishment of a new process, to consider whether the applied-for strings require the treatment or Category 1 treatment of their applications.

Okay. I'd like to also state here that applicants will also be required … I should say … Yeah, I guess they're still applicants because they haven't signed the contract yet. But applicants will be required to state, either in their application or whenever they make their commitments, whether that commitment is limited in time, duration, or scope, or whether they can change it for whatever reasons they

can change it, so that the community understands the full nature of the commitment the registry is making or the applicant is making.

And we also are recommending that these commitments be indexed in a way that they could be readily accessible and presented to the community so that the community can review them when they're reviewing these applications.

The final thing on public interest commitment to registry voluntary commitments that you'll notice is … And for those of you that attended ICANN 68, this is not anything new. But we do defer the discussion of DNS abuse to the broader community so that the community can address this in a holistic manner, as opposed to the Subsequent Procedures PDP Working Group addressing it merely for new gTLDs that are subsequently introduced.

Because new gTLDs will not be in the root for several years, it didn't make sense for us to only look towards those new gTLDs to address DNS abuse—that it should be handled by the community. And there are a number of community efforts that are underway as we speak on this subject of DNS abuse. And it's not that we don't think this issue is important. We do think it's important. I don't think there is any member of the working group that would disagree with that. But we also agreed, as a working group, that this should not focus only on the new gTLDs.

There are a number of areas out for public comment here because we've made a number of substantive changes. But really looking for your views on the Category 1 safeguards and the notion of registry voluntary commitment. Okay, if we can jump to the next one.

Applicant support, this was probably the second area that was most talked about in terms of the biggest amount of issues from the 2012 round. I think there are few in the community that would disagree with the notion that the applicant support program in 2012 did not work the way it was supposed to. There was not substantial, or there was not enough, outreach. There were some really tight rules around the support program that seemed to be geared towards only insiders.

And so, the recommendations here really center around maintaining the applicant support program but also including things like—or expand the level of services that would be included in the applicant support program. Not just help with paying the application fee but also help with the provision of consulting services, or registry backend services, and other kinds of technical and other services beyond merely paying for the fee for the application—not that that's not important but it's really just one step in the overall process. And if we really are serious about expanding the program to what we're calling middle applicants, and those that were not included in the last round, then we need to do better with additional types of services other than just monetary support of the application fee.

So, the other thing I want to highlight here is that we have also recommended a concept of adding a bid credit or a multiplier for applicants that qualify for applicant support because if there are multiple applications for the same string, as was in 2012, we are affirming that those contention sets are resolved through an ICANN auction. We'll talk a little bit about that later because that is one of the later topics.

So, for now, I'll just leave that there and talk about the other highlight which is that in the 2012 program, if you applied for applicant support and you were denied, your application was thrown out. So, it was almost … Not almost. It was a punishment, essentially, for applying for the program. I think it was added as an attempt to stop gaming of the applicant support program. But at the end of the day, it really was viewed as a punishment. And so, what we're recommending here is that, look, if you're not awarded applicant support, you are given some amount of time to raise the funds for the application fee to be able to transfer your application through the standard application process. So, we think that is a good recommendation or good benefit of the program.

Move on to … One question, actually, before we go to the next slide that we did not address in the report itself thoroughly but something we have a question for the community is whether the applicant support program should be an ongoing support program for things like the ongoing registry fees. As you know, each registry, once it's signed its agreement with ICANN, is required to pay, I guess we'll call it a licensing fee to ICANN of a minimum of $25,000 US per year.

So, there's a question as to whether the support program should include those ongoing fees. And if so, how? How would we raise those fees, raise the funds for those fees? And how do we support that given the limited resources of ICANN? Okay, if we can go onto the next slide.

Application change requests. So, much of this is similar to what was done in 2012. So, once you file your application, there could be months—and in some cases in 2012, it was years—where things

changed between the time that you filed the application and when you're ready to go on to the next stage, which is signing the registry agreement. We're maintaining the ability to make those types of changes and to publish those types of changes the same way that they were done in 2012. But we're also adding the ability for making changes to include settlements of contention sets through business combinations or other forms of joint ventures.

So, in the last, or in the 2012 round, if you were to create a joint venture … Let's say several applicants applied for a TLD and then they all see … It's all revealed who has applied for the TLDs and they are somehow able to work it out amongst themselves how they can all operate the TLD or how to roll. The 2012 round did not allow that. There was no ability to file an application change request and it was just not allowed. You were not allowed to make those material changes.

Here, through this process, with some checks and balances that are detailed in this application change section as well as the section that deals with private resolution of contention sets, we believe it's a positive change that will enable more flexibility for applicants, especially where there is a contention set.

We've also added in the very unique situation where there are brands—two or more brands—that have applied for a specific TLD and those brands are able to work it out amongst themselves that they could change. They're permitted to change the applied-for string, where the change adds a descriptive word to the string, and that the descriptive word matches what that applicant actually does, and it doesn't either create a new contention set or expand an existing contention set.

So, what do we mean here, as an example? So, there were two applicants for SAS and this is public because it was brought into the working group. The two applicants for SAS, one was the well-known Scandinavian airline. The second one was a software and analytics company. And the two companies were not able to work it out amongst themselves as to … Or I should say, that ICANN wouldn't allow—the rules wouldn't allow—one company to, let's say, take SAS Air and the other company to take SAS Analytics or SAS Software, whatever. That was not allowed.

In reviewing this, we thought that doesn't make a lot of sense because we're not trying to punish those brands that are—in the real world, have the same trademark for different class of goods and services. And our goal is to expand new gTLDs, not to try to limit them. So, if these circumstances are met, we, or ICANN, would allow those changes to be made. Okay. Go on to the next slide.

Okay, this is, I guess, the most discussed subject, I think, of the working group. And in fact, discussions still are occurring within the working group on closed generics. As of last Thursday, I think, we are still talking about this issue.

So, in the 2012 round, there were no prohibitions in the Applicant Guidebook for a brand, let's say, applying for what's considered—and I'm putting sort of in air quotes—a "generic term," or a category term, to use for itself and/or its affiliates. And so, we saw a number of applications in the 2012 round for things like books, or search, or cloud. Or mobile, I think, was another one. There were a bunch of them that were applied for by multiple entities. And some of those proposed to use it in a closed manner, meaning reserved for only their organization or their affiliates.

This was subject to a number of comments, including advice from the GAC, the Governmental Advisory Committee, and an outpouring of comments both in opposition to allowing closed generics as well as a number of groups supporting the allowance of closed generics.

The ICANN Board … Ultimately, this issue went up to the ICANN Board. And the ICANN Board has a resolution from 2015 where it states that for the current—and it means the 2012 round—if an applicant still wanted to maintain its closed status for a generic term, it would then be deferred to subsequent rounds and would have to abide by the policies set forth by the Subsequent Procedures Working Group essentially. If an applicant wanted to proceed, however, it could change its application from a closed model to an open model, and, therefore, agree to a contractual provision in Specification 11, and then it can move forward.

So, fortunately or unfortunately, all of the applicants either withdrew their applications or converted their applications to the open status. And therefore, we had no applications that were deferred to the subsequent rounds, which again, is fortunate or unfortunate because we did not have anything to kind of evaluate in terms of applicants that still wanted to use their string in a closed or exclusive manner.

In this case, the views of the working group were very diverse. There were some that supported allowing closed generics to go forward without any kinds of restrictions. There were some that said, “No closed generics ever. We don’t ever want to see them.” And then, there were lots of proposals somewhere in-between, including proposals that were similar to what the GAC had advised

in 2015. Or maybe it was ’13. I’m getting my years mixed up. But basically, the advice was that exclusive use or closed generic TLDs should only be allowed where it serves a legitimate public interest goal.

That was the advice. It still is the outstanding advice from the GAC. But we’re left with an unusual circumstance where the Board didn’t say, necessarily, its resolution that it adopted the GAC advice. It rather gave this resolution, which wasn’t the clearest that it could be. And for this unique area … And the reason I’ve gone to so much detail here is that we could not even get agreement within the group as to what the status quo was from 2012. Right?

Normally, what we said before at the very beginning of this call was the status quo was as it was implemented in 2012. But here, we have the Board specifically not saying to allow them or not allow them going forward, nor does it say whether, if it does allow it, it needs to serve a public interest goal. It’s silent on that. And it really defers that issue to our working group, or the GNSO Working Group, and, of course, the community.

So, this is the one area that we’ve designated as no agreement. But towards the end of drafting our draft final report, there were several … There were three papers that were submitted to the working group which we believed, as a working group, should go out for public comment. But the working group has not taken a position on any of those papers. So, we’re really seeking public comment on … In one case, it’s an individual’s proposal. And in the other cases, there were a group of individuals that made these proposals.

We really would like you, the community, to review those proposals and give us your thoughts, not just on the details of those proposals but also on if the working group went in the direction of one of these proposals, which one should it go down? And what are the high-level principles that are important?

So, you'll see, for example, a very detailed proposal from George Sadowsky, Greg Shatan, Kathy Kleiman, and some others. Has a lot of details in it but also there are some core principles in there. So, you, as a reader or as a commenter, may not agree with all the details but you may find that some of the principles are in the right direction. And if you do, then we'd like to hear that. Or if you don't, we'd like to hear that as well.

So, that's really what we're looking for from this comment period. This is one of those areas that we're trying, within the working group, to get to some sort of agreement. But at the end of the day, when we do a consensus call, I think Cheryl would agree with me that as the Chairs, we're not sure where this will land on this topic. So, it's not that we won't do a consensus call. But the reason we're saying there's no agreement now is because it just doesn't seem like there will be any sort of consensus or, for that matter, even strong support for a particular option. But we could be wrong.

Okay. Let's go on to the next topic. It has a lot of materials here and I want to make sure we do have lots of time for Q&A. On this topic, limited challenge appeal mechanisms, really, the big highlights here are that there will now be, or we're recommending that there will now be, a challenge appeal mechanism, where none existed in the program in 2012.

Yes, applicants were able to, in some cases, use the ICANN accountability mechanisms to address some of their complaints. But the complaints had to be very narrowly-tailored to being one where ICANN violated its bylaws or really was not intended to govern a legitimate substantive challenge or appeal. And so, this recommendation is not to replace or substitute, in any way, any of the accountability mechanisms. That's still there in the bylaws. That will be there. Nor could we recommend a change to that. That's way above our group.

So, this is really to address the situation where an evaluator found that a registry didn't meet the technical criteria because of A, B, and C. But it turns out the registry actually did meet it. At least, it believes it met A, B, and C. It just got wrongly-graded, let's say. So, you can file a … The applicant that feels like it was wrongly graded could file a challenge to the evaluation result.

Or it could be that an objector filed an objection, lost the objection, but thought that there was some issues with the panel that heard the objection, and therefore, it could ask to appeal that to have it heard again. Now, the standard for appeal is not just going to be what's called in Latin "a de novo review," or in legal terms. It's not going to be where everything is just reviewed as if it was never reviewed before. But the appeal, or the challenge, will look at what was done with the either objection panel or the evaluator and really look into whether the—will give some sort of deference to the evaluator or the panelists. And it's described a lot better than I just did in the actual draft final report.

There's also an annex on this specific subject of appeals and challenges. That's Annex F and it goes through the who can

challenge or appeal, what they could challenge and/or appeal, and what the result of that challenge or appeal would be, and who would hear those challenges or appeals. Really, it's a great chart to see visually what I just didn't do the greatest job in talking about. But I highly recommend you refer to that chart. Okay. We can go on to the next one.

Community applications. We also spent a good amount of time on community applications. You will see a number of recommendations there that refer to enhancing, again, the predictability, the transparency of what's called the CPE process, the Community Priority Evaluation Process.

We also want to formalize the ability of evaluators to engage in dialogue with applicants, using clarifying questions to those who submit not just letters of support but also letters of opposition to community-based applications. And really emphasize here that if there are letters of opposition submitted for community-based applications, that the evaluators look into those letters and balance those with the documented support for the application.

There were many applicants in the 2012 round that feel like there were letters of opposition from newly-created groups or from other applicants or competitors and others that were not fairly balanced with the amount of support that those applicants believe that they got. So, this really is emphasizing a balance between what is submitted in support and what is submitted in opposition.

And then, finally, one thing that we're asking for comments on this, aside from those recommendations, is to look at the CPE guidelines. Now, these were guidelines that were drafted after the

application window opened—well after the application window opened. And just prior to the first community priority evaluations being done, many of these community-based applicants were surprised with some of the requirements in those guidelines and really believed that even if those are the right guidelines to apply for future rounds, they should have known that prior to applying for the TLD and not something that was known well afterwards.

And so, we're asking the community, especially those that are interested in the CPE process, to look at those guidelines. Many of them are administrative in nature but there are also many in there that can have significant implications on the evaluation process.

Okay. And I think we have one more topic, if I'm not mistaken—at least one more. Okay. This was a lengthy one. I'll highlight it by saying that the group is recommending to continue with resolving contention sets as a last resort with ICANN auctions, although we are proposing a different model called a sealed bid auction. I'll talk a little bit about that. I'll talk about that a little bit more.

We also received a number of comments that there were certain forms of private resolution that they did not think were … And I'm trying to delicately put this. Let's just say that they thought that private auctions or raising money—or contention sets resolved, giving the losing applicants money to fund other applications or to make money, was not seen, by some, as a desirable practice in the 2012 round.

And so, we spent a lot of time talking about that. And although there was support for that notion, there is also those that believe that if we gave applicants more creativity to resolve their disputes in forms

other than a private auction, that that should also be allowed. And we talked about creating joint ventures or business combinations or other types of changes we would allow to applications to resolve the contention sets creatively. But we're also adding in there a requirement that applications must be submitted with a bona fide or good faith intent to operate the registry.

One thing that some members of the group were concerned about, or are concerned about, is that if we allow private resolution of contention sets, that there may be applicants that apply in these ongoing rounds just to make money off of losing contention sets. And we do know that there were some applicants in the last round that, although they applied for the TLDs with a good faith intent, by the end of the process, seemed to be happy with losing the contention sets to make some money. And the—not just members of the community but some of the ICANN Board expressed concerns that they don't want to now see new applicants coming forward to try to make money off of losing contention sets.

So, one of the things … Obviously, it's a very broad standard here. We've considered possible factors that ICANN may consider in determining whether an application was submitted with a good faith intent to operate the gTLD, and we've listed those. But we're really looking for comments—feedback from the community.

This is one of those areas where we need to get it right as a working group. And we need to make sure that we have a process and a standard that's implementable but also one that mitigates some of the undesirable effects that some groups are worried about. And again, I'm trying to present this in a neutral fashion but there are definitely strong views on each side.

We're also mandating—or, sorry, I should say recommending—that there are a number of elements, when disputes are resolved, that are transparent to the community. So, applicants that resolve string contention sets must adhere to some transparency requirements. And we think that the more transparency there is in the process, hopefully, the less undesirable behavior we may see. Move on to the next slide.

As we go on to the next slide … So, we've created—or not created. I should say we've recommended a different style of auction here, which has a different process than 2012. So, what we're doing … Essentially what we said here is that once applications are all submitted, ICANN does their string similarity evaluation before it reveals the strings. Once it determines the string's similarity evaluation—so, which strings are in which contention sets—it will then inform the applicants only that one or more of its applications are in a contention set and list the number of other applicants or applications that they are in a contention set with.

At that point, applicants will then be asked to submit, or are required to submit, a sealed bid—an auction bid—for that top-level domain. So, it's done early on in the process. It's done before all the other evaluations and it's done before information about the other applicants, except for the number of applicants, are revealed.

So then, as in 2012, all the applications will be revealed and then afterwards, applicants may then discuss amongst themselves their contention sets and may try to privately resolve their contention sets. If, at the end of the day, they are not able to resolve their contention sets, then the auction of last resort will take place and

that will be the … That will use the sealed bids that were submitted towards the beginning of the process.

And so, this, we believe, will be a fair way to do the auction which, again, will be the second highest. I should say it's the second highest price that the winner will have to pay. It's a lot more information in the section itself. This is really just kind of the overview. And if we go to the third slide, we're really seeking comment on all of this because it has substantively changed.

We've considered a large number of different options. And this is where we ultimately came down to recommend in our draft final report. We'd really like your thoughts on how to determine, or what factors could be used to determine, good faith, or I should say a lack of good faith. And so, that is something that we're really going to hone in on towards the end of this process.

So, with that, I think we've covered the listed topics. It was a little bit more time than I necessarily wanted to take, but I'm going to go to the Q&A pod. And Cheryl?

CHERYL LANGDON-ORR: We've got one from Paul, as an open one. I asked Paul McGrady to copy it across from chat because I figured you might want to get your teeth into this one, Jeff, while you're having a drink of water. Are there any rules against another applicant helping an applicant who doesn't get applicant support? Could a competitor try to keep another competitor in a contention set? So, I figured you couldn't resist doing that one live, Jeff, because it's the sort of thing you love to discuss. But I'd also ask Terri to do the necessaries to allow the

attendees to start voicing their own questions once you deal with that one. Thanks.

JEFF NEUMAN: Thanks, Cheryl. And Paul, I think those are two very good questions. I think we'll tackle them separately. So, the first part of are there any rules against another applicant helping an applicant who doesn't get applicant support? No, there are no rules against that. Any third party that wants to assist another applicant can absolutely provide pro bono or other types of support.

In fact, one of the areas that we are trying to maintain from the 2012 program, although not implemented ideally, was that there was a list of service providers, different types of service providers—being registries, registrar, consulting, other service providers—that were on the ICANN site that were willing to provide such support to applicants. So, we fully expect ICANN to maintain a list of ones that have let ICANN know that it's willing to provide those services. But if an applicant's able to find support from other entities and organizations, then fantastic. That's great.

The second question is a little bit loaded here, whereas could a competitor try to keep another competitor in a contention set? I'm going to defer that one to basically say that that sounds like it would be a competition issue not under—within our expertise here. And I would punt on that one to say that the law does apply to this process. And so, if you're doing this for some nefarious, potentially, reasons, then you should consult with an attorney and get some advice, I think. But at the end of the day, it all depends on what the motives are.

So, any other questions? Any other topics? Anything you want to cover in more detail? Got to be more questions.

CHERYL LANGDON-ORR: You would have thought so, Jeff, wouldn't you? I note Vanda Scartezini, in chat, also mentions that they provided support to competitors here in Brazil and they got it all approved, etc. But in the end, the group decided not to apply on their own. So, whilst you were very diplomatic, Jeff, of course, there are experiences out there which may count towards better opportunities for more people in the future.

Tom, I actually answered that but I will read out the answer if you missed looking at it. So, I answered you, Tom, that … I said, "Thanks for the question, Tom." And Tom's question was, just so you all know, regarding the technical requirements that pertain to the use of a backend registry provider. "Backend registry providers can now become 'accredited,' i.e. they are preapproved as providing services that satisfy all of the technical requirements in the application. Given the existence of these accredited backend providers, will applicants be allowed to respond to all of the technical questions by simply saying, 'We plan to use one of the accredited backend providers—'" sorry about my birds. It's morning here— "instead of providing detailed technical answers in their application?"

My response was—and Jeff, correct me if you think I'm wrong— "Thanks for the question Tom. And noting that we definitely use the term 'preapproved,' an applicant could most certainly Name—" and capital Name— "any such preapproved backend service provider in

their application. And it would be that service provider's bona fides and tests that would count in the evaluation of the detailed tech answers. However, they need to actually use such a service provider or pass the technical tests regardless. So, saying so is only one thing. Doing so is also needed."

JEFF NEUMAN: Yeah. Thanks, Cheryl. That's absolutely right and the only thing I would add to that is that if there are any other services that the applicant is proposing—or I should say technical services that an applicant is proposing—it will need to go into details on at least that part.

So, if they're using a unique form of validation, let's say, as an example, it would need to prove those details in the application because that is not … At this point, that's not something that the pre-approval program is going to look into. But maybe it will at some point, if anything becomes the standard. Who knows? But yeah, the intent is to—for a couple of reasons. One is not force technical backend operators to be evaluated hundreds of times, as was the case for the backend provider for Donuts and backend providers that provided services for multiple brands.

Really, it's to pre-approve, as Cheryl said—not accredit but pre-approve—these backend registries, to only evaluate them once. So, that should do a couple things. One, it should save some time, knock on wood, but also should save costs for applicants that will not have to cover that portion of the application unless, of course, they are new and haven't gotten preapproved or they're adding services that were not in the preapproval program.

CHERYL LANGDON-ORR: Okay, Jeff. You've got another one in the Q&A part from Paul McGrady. It's a question about sealed bids. "What about dot brands? Are they exempt from sealed bid requirement? Can they opt out? Obviously, the brand incorporated into the TLD could be worth zillions. But does it make sense for brands to have to participate in such a blind process? Won't this scare dot brands away?" And then, you do have another one that I'll bring after that, Jeff, out of the chat pod, from Susan Anthony.

JEFF NEUMAN: Great, thanks. Thanks, Cheryl and thanks, Paul. So no, brands are not exempted out of the sealed bid requirement. If they do not bid … They can always choose not to bid anything but that would be the equivalent of a bid of $0. So, those brands will need to make sure that it's resolved privately as opposed to going to the ICANN auction if it has bid, essentially, zero.

Now, will it scare brands? At the end of the day, the sealed bids are not going to be made public except, ultimately, at the end of the day, a sealed bid that … Or I should say the second highest sealed bid for a contention set will be made public, like it was in 2012, in the open process. So, if a brand's paying—or wins the sealed bid—they won't know necessarily what the brands bid but they'll know what the second highest bid was because that is the ultimate result. So, I hope that makes sense.

CHERYL LANGDON-ORR: Thank you, Jeff. I'm not seeing.

JEFF NEUMAN: And I see … Yep.

CHERYL LANGDON-ORR: Did you see Susan Anthony's? I'll just read it for the record.

JEFF NEUMAN: Great.

CHERYL LANGDON-ORR: "What happens when an applicant for the application changes in the process of review? Is there an opportunity for the community to weigh in?"

JEFF NEUMAN: Yes. Thank you. Thank you, Susan. Absolutely. There is and I should have mentioned that. I think it might have been on the side but I may not have mentioned it. But yes. All application changes where the change is a material change will be subject to public comment. There are a couple of changes that, like in 2012, may not be subject to public comment. But those would just be changes that were initially confidential.

So, if an applicant changes the address of the Board of Directors—the personal address or the contact information—that's not going to go out to public comment. But if there is a business combination, if there is any other type of material change, then the recommendation is that it must go out for public comment. And

there is also recommendation in there where it gives rise to a new objection. Those objections can be filed.

So, I want to differentiate a little bit there, right? Where if you could have filed an objection initially, and the change doesn't affect that objection you could have filed, then you won't, now, get a new period to file an objection. But if the change gives rise to, now, something an objective is concerned about based on the new information, then an objection can be filed. Hopefully that makes sense. But in either case, comments will be allowed. So, let's see …

CHERYL LANGDON-ORR: So, Jeff, Tom had a follow-up.

JEFF NEUMAN: Yes. Go ahead.

CHERYL LANGDON-ORR: Tom had a follow-up. He said … Tom Barrett said, "Thanks for the answer. The nuance of my question is whether the application needs to include the name of the preapproved provider, which needs a legal agreement between the applicant and the backend provider prior to the submission. Or can applicants select and start an agreement after submission of their application but prior to the technical testing phase of the process?" My immediate response was I believe they need to be named to ensure that they are preapproved. But then, of course, I am not a terribly trusting person. Jeff, you're much nicer than I am. How would you reply?

JEFF NEUMAN: Yeah, I think this is one of those implementation questions where you … We didn't … I don't think we have a specific recommendation one way or the other. I know that within the individual work track that we're discussing this issue extensively, there were some that felt that you should just basically be committing to use a or an approved—I should say a preapproved—backend provider and then only name it when it comes down to signing your contract. But there were others, as Cheryl has mentioned, that have been—want you to name the specific one.

So, we haven't gotten that detailed yet but I think that's a good comment to put in and one where we can see if the working group wants to make a concrete recommendation one way or the other. I think that's a really good comment.

CHERYL LANGDON-ORR: He's so much nicer than I am.

JEFF NEUMAN: And we've got to read … Sorry. We've got to read Elaine's comment because I'm even using the wrong terminology. It's "pre-evaluated." We made that change at the end. I'm sorry. It's "pre-evaluated." We keep changing the name because "approved" and "accredited," all of those seem to have connotations with it that we were not trying to necessarily give. "Pre-evaluated" is the right term. Thank you, Elaine. And I've got to drill that into my head because I'm the one that's been saying it wrong. Elaine, thank you for that and I will do better the next time. Thanks.

CHERYL LANGDON-ORR: You and me both, Jeff. I just fought so hard against the term "accredited" that my brain stopped there, you see.

We have a comment/question from Christopher and then another couple coming in. I'll perhaps read all three together. Neither of them, two of them are not, I think, particularly extensive.

From Christopher Wilkinson, "Scary for a trademark owner. So, there could be other competing applicants in a contention set actually proposing to infringe their trademark?" I'm sure you'll be able to answer that fairly quickly, Jeff.

From Philippe Fouquart, "Question re: topic 35 and rec 35.3. Would you please elaborate on some of the criteria that ICANN may consider in determining whether an application is made in good faith? A number of different thresholds and square brackets in the draft final words."

And then from Abdeldjalil Bachar Bong, "If a community fought the community application, how can they get letters of opposition and from who?" Over to you, Jeff.

JEFF NEUMAN: Sure. Thanks for those and I wrote it down, so hopefully, I can answer those. So, on Christopher's question, on the infringing trademarks … So, even though you filed a sealed bid, there are still the objections that occur after the—during the evaluation process and after the evaluation process, prior to doing the mechanism of last resort. So, if a trademark owner believes that an application is

violating its legal rights—and I use that term because it's called a legal rights of others objection—then a trademark owner can file that. And so that would be what the infringer … That would be the potential ramification for the infringer.

The second question, a lot more difficult, on the factors to determine good faith intent. And so, as Cheryl said, we have a number, or a few factors in there that the working group discussed could be an indication of a lack of good faith intent to operate the registry. But—and there's a big caveat there—that any of those factors alone may not give rise to that inference of lack of good faith, nor all of those, right? So, what we don't want to do is we don't want to punish legitimate applicants that have filed applications that, for whatever reason, have lost their contention sets in a private resolution. Right? It's not meant to punish those that went into the process with absolute intent to operate it but they just end up losing all of their applications because they get out-bidded. Out-bidded? Outbid.

So, we're also not trying to assume that if you apply for multiple strings and only get a couple, that that is bad or that is a lack of good faith either. So, this is really one of those areas where it's extremely difficult—one of the ones that we're trying to solicit feedback. And ultimately, at the end of the day, trying to address the concern that the ICANN Board raised in its letter to us, to the working group, which stated that they do not … They would not like to see applicants apply for strings solely for the purpose of losing those applications either to pocket the money or, as they said, for funding other strings because that creates—

CHERYL LANGDON-ORR: Jeff? Jeff?

JEFF NEUMAN: Well, I'm not going to say [because why] but that's what the Board [inaudible]. Yes?

CHERYL LANGDON-ORR: I'm pushing you to be more concise.

JEFF NEUMAN: Thank you.

CHERYL LANGDON-ORR: So, if there's more to be said, perhaps you can say that later in an e-mail. Final question. If you could respond to the fully community [inaudible], it might be lengthy because we are at the end of our time. Rest assured, we've discussed that at great length in our working group. But we will post that to the questioner.

And Alan Greenberg did want to just have us note, "Kudos to you, Jeff, for such a concise and illuminating presentation on a huge document, summarizing over four years of work." And with that, I'm going to let you have the final word, Jeff.

JEFF NEUMAN: Yeah. Thank you, Cheryl, and thank you to everyone for participating. If you do have any questions—other questions—you can e-mail us or ICANN staff afterwards. We're here to try to help

you respond, or help you with responding, to the public comments. And I know there's a lot of material, like I said, to review. But we really look forward to seeing your comments by the end of the month. So, thank you, everyone. And to the working group, I look forward to talking to you all on Thursday.

BRENDA BREWER: Thank you all.

CHERYL LANGDON-ORR: Bye for now.

BRENDA BREWER: Thank you all. Thank you for joining today's webinar. We will disconnect all remaining lines at this time. Have a wonderful rest—

[END OF TRANSCRIPTION]