
ICANN Transcription
GNSO New gTLD Subsequent Procedures Working Group
Thursday, 04 June 2020 at 20:00 UTC

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ANDREA GLANDON: Good morning, good afternoon, and good evening. Welcome to the New gTLD Subsequent Procedures PDP Call being held on Thursday, the 4th of June at 20:00 UTC.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you are only on the audio bridge, could you please let yourselves be known now? And I will note that Cheryl Langdon-Orr is currently on the audio bridge only. Do we have any others? Thank you. Hearing no further names, I would like to remind all participants to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise. As a reminder, those who take part in ICANN multistakeholder process are to comply with the expected standards of behavior. With this, I will turn it over to Jeff Neuman. Please begin.

JEFF NEUMAN: Thank you very much, Andrea. Welcome, everyone. Hopefully, you could hear me okay. There's a high school graduation car

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parade going on outside my window so you may hear some honking over, things like that. So I apologize in advance. Actually, it doesn't start for another half hour. So we'll see if it's well insulated in the room I'm in, although it's a neat idea what they're doing.

Okay, so today we are going to do one last comment on the "can't live with". This is the section that we had forgotten – and sorry about that again, Anne. We missed that comment so we'll go through that one last comment, and then we're going to go through the global public interest but really we're going to look at just a couple of specific areas, the main one being reviewing the Category 1 and verified TLDs, and then also just look at a couple of the comments that were submitted by the GAC recently, a couple of weeks ago on DNS abuse on GAC input and applicant support if there's time. Again, some of these are not very extensive but we do want to make sure we cover them before we release a draft final report on this so that we can say we've reviewed and actually have reviewed all of developing comments.

So before we get into that first one, let me just ask to see if there's any updates to any Statements of Interest? Okay. I am not seeing any. Great. Let's go to that comment and I'm sure someone will post a link in the chat as we wait for it to come up. Okay. Thanks, Steve. Thank you, Emily, for posting the link.

So this is the section that deals with Registrar Non-Discrimination / Registry/Registrar Standardization. There was some proposed language. Is it possible – scroll a little bit down so we can see all the comments that Emily – yeah, there we go. Thank you. In this section, we talk about only using ICANN accredited registrars and

we recommend updating the recommendations to state that basically our recommendation was to add “unless an exemption to the Registry Code of Conduct is granted.” So, Anne Aikman-Scalese suggested adding the text that you see in bold, which would be added to the end of what I just read so it would say, “Provided, however, that no such exemptions shall be granted without public comment and further provided that exception request seeking approval of the use of unaccredited registrars will not be granted.”

Okay. So I think Anne’s – oh, is that coming up? All right, good, thanks. Sorry, I was just looking at the chat and it seemed to be cutting out. Okay, I just got disconnected. So now I’m using computer audio and I have no idea why. But Christopher has his hand up so let me go to Christopher and I’ll try to figure out what my issue is.

CHRISTOPHER WILKINSON: Good evening, everybody. I’ve gathered that I’ve got the privilege of filling a space so let’s do it. In general terms, I think this language in the whole section will be used, especially this business of exceptions to the Registry Code of Conduct, this will be used in practice to entrench vertical integration and that registrars will wish to privilege the registries there they own and registries will wish to prejudice to privilege their registrars.

I think Anne’s text is good, but I think it’s only a minor correction to the general problem that exists since 2012 of when the rules for registry/registrar separation were overturned by a PDP, apparently. I have never personally accepted that as a desirable

outcome and I just draw your attention to the fact that this section invites comments about the anti-competitive aspects of current registry/registrar relationships. Thank you.

JEFF NEUMAN:

Okay. Thanks, Christopher. Taking your comment, understood. Exemptions to the Code of Conduct were only granted under very limited circumstances. At the beginning it was mostly brands that got the exemption but then came the brand Specification 13, and so therefore, the brands did not meet to get both exempt from the Code of Conduct and get Specification 13 exemption, although some of the brand actually do because they signed their agreement prior to Specification 13 existing.

So the first part of it that Anne has added “provided that no such exemption shall be granted without public comment,” I think that’s fine because I think that’s the way it was done in this last round, so that’s just really kind of restating what was already in place.

I think the second part, the reason why Anne – we may not want to reword the sentence because I see why Anne has added that language because what it actually is is that you still must use only ICANN accredited registrars even if you get exemption from the Code of Conduct. It’s just the last part about not discriminating amongst accredited registrars which is what the Code of Conduct exempts. So I see why Anne has added that because the language in the sentence is unclear and it does seem like we’re recommending that registries would have the right to use non-ICANN accredited registrars and that wasn’t the intent.

So we have two options. We can take the language ... Susan is saying it's not unclear. Right. We have a couple of options. We can add all these, provide those, or we can see if we can modify the sentence with something that would make it clear. So maybe you would say registries must use only ICANN accredited registering domain names – maybe make it two different sentences or something like that. But also, Anne does want the concept of the public comment in there. I think the intent is clear from what we're recommending but the sentence structure could be read in a couple of different ways. So I think Anne's comment makes sense.

Susan is saying we can move the comma. "Registries must use only ICANN accredited registrars in registering domain names" – comma and then – yeah, that might be the simplest way to do it the way Susan has recommended, although I think we would still have that provided, however, that there's such exemptions. That'd be great with that public comment and then end it there.

Anne is still saying that there's a problem because unless an exemption is granted. In the Code of Conduct itself that we referred to, there is the language in there about the exemption, so all one would have to do is go to that exhibit. So why don't we – "Unless an exemption to the Registry Code of Conduct is granted," I don't know, "as stated therein," or something like that because it's not a completely wide open exemption. It is stated in the Code of Conduct itself how an exemption could be granted. And I think we can fix that with a citation and moving the comma where Susan is proposing. Anne, if we move the comma and then just kept the "provided, however, that no such exemptions shall be

granted without public comment,” and then we get a citation to what the exemption actually is or where it’s found.

Anne is saying, “We need to know that the Code of Conduct will not change, however.” If the Code of Conduct does change then that would be a change that would require discussion. Well, if it’s somehow during the implementation of the program then an IRT is going to know about it and refer to us. If it’s a change after that, we have a process to deal with changes. So I’d rather not pin everything completely down and have a ripple on effect if the Code of Conduct is changed in ways that the community wanted to be changed, and now we’ve got to come back and look at this recommendation which is about using ICANN accredited registrars. I’d rather leave the change process to itself and never say something can never change. I think that would be too restricting since there’s already protections in place for when such changes are made. Does that make sense?

ANNE AIKMAN-SCALESE: Jeff, it’s Anne. I’m having little trouble getting my hand up. Can I ask some questions?

JEFF NEUMAN: Yeah, please, go ahead.

ANNE AIKMAN-SCALESE: Just a quick question. Are there unaccredited registrars out there – this is a practical question – or, if you will, in-house registrars who are seeking to act as registrars who are either existing or

future TLDs that you know of? Or is this just a subject where everybody is saying, “Everybody knows that it will always be required that you use an ICANN accredited registrar”?

JEFF NEUMAN:

I know that Jim said there are registrars accredited for ccTLDs that may not be ICANN accredited. I know that there are certainly or at one point where brands talking about doing their own registrations but I have not seen any formal request ever submitted to do that. There’s also some other comments in the chat about not having to state that it’ll never change because, well, there’s a couple of people that have made comments – Martin and Susan I think, because as they said, if that changes, there are change process to deal with it. And if the Code of Conduct does change, we’re still talking about exemptions from the Code of Conduct. So I’m not sure how that would relate. But let me go to –

ANNE AIKMAN-SCALESE: Just real quickly, a follow-up, what is the process for a change in the Code of Conduct? Is that a negotiation among contracted parties or is that a PDP process?

JEFF NEUMAN:

I don’t think anyone has requested a change to the Code of Conduct. I’m sure different people have different views on that. I don’t want to go down that rabbit hole right now.

ANNE AIKMAN-SCALESE: Okay. I just think it should be clear that registrars should be ICANN accredited. That's all.

JEFF NEUMAN: Yeah. I mean, look, we separated it out. It says that registries may only use ICANN accredited registrars, and by putting the comma where Susan has asked, it's clear that the only part of the exemption is granting is the right to discriminate amongst accredited registrars. It's not exempting you from the obligation to use accredited registrars.

ANNE AIKMAN-SCALESE: Okay. Thanks. I just didn't have time to focus on rewrite. Sorry. Thank you.

JEFF NEUMAN: Okay. Sure. I think Christopher's hand is an old one. So I'll go to Kathy. Christopher, if you are still in the queue, if you could lower and then re-raise your hand. Okay. Thank you, Christopher. Kathy, go ahead.

KATHY KLEIMAN: Great. Thanks, Jeff. Question on this and I put it on the chat. Given that we have solved the problem of brands on this issue, what were the type of problems that we were trying to solve with this? If you can just remind us, I'd appreciate it. Do we need a little more guidance then, given some of the questions that have been raised? Thanks.

JEFF NEUMAN:

Thanks, Kathy. With the brands, for example, they have an exemption but that exemption is in Specification 13, brands that not want to have to make their brand TLDs available to every single ICANN accredited registrar that made a request to distribute names. Since brand TLDs the registrations are limited to the one entity and it just didn't make sense for a brand registry to have to say if every retail registrar wanted to provide names that somehow that brand registry needed to allow every registrar to do it. The same thing for the Code of Conduct exemption in Specification 9 because it's a similar deal where it's an allowable closed registry that has to go through those requirements that are at the end of Specification 9. Yes, there are some Code of Conduct exemption, registries that have gotten a Code of Conduct exemption, some because they maybe got a trademark after the date required by Specification 13 and others because they may be using an industry term or something that may not qualify for a trademark but in all other respects would be considered very much like brand TLDs. And there is no open TLD that's got a Code of Conduct exemption. So it's not like you have a possibility of .music that would be a Code of Conduct exempt.

All right, now that we're past that, let's go on to – I think Justine had a couple of comments on universal acceptance in this package as well. I think most were clarifications. So I'll quickly go through those. I just wanted to make sure everyone saw them. So we're scrolling through, trying to find them. Okay.

Martin is saying the Code of Conduct exemption is just one of the parts of Specification 13.

Okay, Justine proposed adding in the new issues raised this paragraph which came from I think the ALAC and BC comments to the initial report, although they didn't materialize into actual recommendations. Justine wanted this reflected in the new issues that were raised, which is some commenters thought that no additional work should be proposed beyond that being done in the Universal Acceptance initiative. Others believe there should and could be more work, and then there's just some more language about that that comes from the ALAC and BC. I didn't see any objections to putting this in or I don't see anything that would be objectionable to putting something like this in, but we certainly want to give everyone a chance to make a comment. I know this is a long paragraph. If you have any comments after this call, please feel free to let us know. But I think otherwise this seems in line with some other types of changes we've allowed.

Okay, let's then move on to the next topic. While we're getting to the next document, I just want to give a little bit of an introduction to this. So this is in the Global Public Interest section. We're not reviewing the entire section, we've already done that a number of times, and it will get put out I think in package 6, if I'm not mistaken. Yeah, I think it's package 6. Anyway, the part we want to focus on is related to – a couple of weeks ago or maybe it was even last week, we were discussing the role of GAC advice and some recommendations that we had on GAC advice, and one of our recommendations is to the effect of basically the GAC should provide all of its advice on categories of strings prior to the publication of the Applicant Guidebook – or I can't remember if it's that or prior to the beginning of the application window. But whatever that recommendation was in there, the point I made at

that time was, okay, the GAC has issued us advice and the most of that advice during the 2012 program I think we have addressed but there's one area where we really haven't said one way or the other what we're going to do with that set of advice which was essentially originally from the Beijing Communiqué and then there were follow-ups but it became known as the Category 1 safeguard advice. So the Beijing Communiqué, we put a link to it in the agenda and you'll see that amongst a whole bunch of other recommendations, there was the Category 1 recommendation which essentially said that there are certain classes or categories of strings that in at least the GAC's mind require – why don't we go to that actual language? Julie or Steve, if you have that, I don't want to paraphrase here because I'd rather quote it. Okay, that's the actual advice. Sorry, I'm trying to look for the line on the rationale. Okay, there it is. Sorry. "Strings that are linked to regulate a professional sector should operate in a way that is consistent with applicable laws. These strings are likely to invoke a level of implied trust from consumers and carry higher levels of risk associated with consumer harm." And then it goes on to list like 10 – if you scroll down a little bit, I think there are 10 of them if I'm not mistaken or ultimately ended up with some of them. There's five and there's some additional ones for more highly sensitive ones I think. If you scroll down a little more, there's a few extra afterwards that apply to specific strings. So there are eight. Okay.

Essentially, the GAC did a list of a bunch of strings. The GAC did say in this advice that it wasn't limited to these strings but ultimately after a number of meetings – Durban, I think Singapore – what ended up happening was the Board adopted a resolution

that accepted the GAC advice. And for this, can we go to the link that I sent around about a couple of hours before the meeting? This was the result of what the Board had adopted with respect to Category 1 strings. It basically took the GAC list as the definitive authoritative list of strings and it divided it up into those that were applied to children, those that applied environmental, health and fitness, financial, charity, education, intellectual property, and it said that for these strings, because of their generalness in nature and because they may not be used in their regulated sense that the Board felt that only safeguards 1, 2, 3 applied but then there were highly regulated ones like health and fitness, some of the financial ones, and gambling, one of the ones that was – sorry, two, actually because it was the IDN equivalent – that was deemed to be in line with charity and one of the ones in education university they felt was different than something like a degree or MBA. And then if you go to the next page, there are some other ones laid out there as well. So basically, the Board took the strings that the GAC had listed, had divided them up and said that, “Okay, we really have two types of regulated sectors or two different scales/levels of regulated sectors and the strings, and so for some of them, safeguards 1, 2, 3 are applicable. For others, all eight safeguards are applicable. Then for the special safeguards category, which didn’t really fit in to the regulated sectors but evoked the concern of cyberbullying and harassment or inherently government functions for these special safeguards were added.” You’ll see those when you scroll down to Annex 2, there’s 1 through 8 but then there’s also a 9 and 10 that would apply to the special listed ones that were there.

That's what we have left over from the last round. There wasn't really a good definition of why these particular strings and perhaps not others, except for the language that was used in the Beijing Communiqué about some level of implied trust that consumers would need in these types of strings, and so therefore, these PICs were added. All of them are subject to the PICDRP, and because these were mandatory, these would still fit into our definition of PICs as opposed to registry voluntary commitments as they've been defined.

So that's the introduction. We need to decide what we're going to do with this. We could affirm what was done because it's already in a bunch of Registry Agreements and we'll have to figure out a way or some sort of way to figure out which of the strings applied for the next round would fit in this category. But at the end of the day, if we're not going to adopt this then we need to be prepared to explain why we're not adopting it and I'm sure we'll be prepared to get similar GAC advice for the future.

So I want to open it up because this is now – sorry, one more thing before I do open it up. I don't see anyone in the queue anyway yet. So before I open it up, this is also related to the discussion we had with verified TLDs, which would include really just a few of them from the 2012 round. You have .bank, .pharmacy, and a couple of others that do that sort of verification/validation up front, that there were concern if you recall for applications that might be certainly for translations that would be applied for that .pharmacy especially was concerned and filed a comment because they were afraid that if someone got .pharmacy, let's say, in another language that a consumer would

believe that there were at least the same amount of restrictions in the foreign language translation of .pharmacy as exist in .pharmacy today and that may not be the case and therefore we were talking about it as a potential objection. But through that discussion, I think .pharmacy said, "If we define this Category 1 and keep that in the program, then this may go part of the way towards resolving some of their concerns." Not all of them but some of them.

Sorry for the long explanation but I just wanted to frame it in terms of where we are. I see Paul is in the queue. So go ahead, Paul.

PAUL MCGRADY:

Thanks. Sorry, Jeff, I'm going to ask you for an even longer explanation because what I saw, there were 8 or 10 items. When I look at the Beijing Communiqué, I see five items. Help me understand what were the original five in the Beijing Communiqué? And what are the new things that have since been added? Are the new things that have since been added GAC advice or are they Board direction? Because it's one thing to talk about adopting – well, not adopting GAC advice because that's not what we're doing – but we can take what the GAC put in their Beijing Communiqué and write it into the Applicant Guidebook, and that neither speaks to the issue of whether or not old pre-transition GAC advice is still operative or not, like we'd have to reach that issue we could just say, "Hey, here's some things from the Beijing Communiqué we really like. Let's put them in here." But I've seen 5 things, not 10, so help. Thanks.

JEFF NEUMAN:

Yeah, no problem. The way that GAC worded this was a little bit confusing in the sense that there are actually eight in the GAC Communiqué. Some of them are in the second part where it says that GAC further advises the Board. So if you take the five that were above the list and then the three that were after – sorry, you’re looking at it right now, right? You see the GAC further advises? But if you go up before the list, there’s the five, then you go after the list. We have the three that the GAC further advises. And then if you’re going to stop right there, then you also have that last bullet before the GAC further advises the Board, which says, “In addition...” No, there were two bullets. One that says, “Inherently government functions,” and then the second one says, “In addition, applicants for the following string should develop clear policy and processes to minimize the risk of cyberbullying harassment.” So the Board took each of these eight fully listed things and the two bullet points, and the way that they responded in the scorecard – they did a scorecard to respond to the GAC – was accepting the advice and this was the Board’s implementation of the Beijing Communiqué and follow-ups that came afterwards. So I don’t know if that helps.

PAUL MCGRADY:

It kind of helps in that we go to GAC further advises and then we’ve got 1, 6, 7, and 8. Well, 1 seems to be referencing back to a set of strings from the last round but the same strings won’t be applied for then – at least not all of them – in the next round. So how do we parse out what is a piece of this that makes sense in the Applicant Guidebook because it would apply to anything that comes down the path versus just comments here from the GAC

about these particular strings. Does that make sense? Have we taken this? I apologize, I should know this but have we tried to excise out of here into our own document? Like maybe the universe and then try to figure out what shouldn't stay and what should stay? Is that the way to do it? Because not all of these points in the GAC Communiqué are created equal. Some of them respond back to specific application strings. Thanks.

JEFF NEUMAN:

If we determined that these types of protection should apply, for lack of better word, regulated industries are sent to their strings, whatever you want to call them, then you are right. We need to devise some sort of mechanism so that applicants could predict that they could fall into one of these categories so that they are prepared and certainly would not be surprised if these types of safeguards are imposed on them in the same way that the Board put on commitments in the registry.

So if you noticed, the wording the GAC uses in their implementation and ultimately in the Registry Agreement does not require everything exactly as the way that the GAC had asked for. I think the GAC in this may have asked for pre-validation or have implied that but it's worded much differently and gives other options to registries in their implementation. If we are going to protect strings in some way like this, I would encourage us to – rather than looking at the safeguards and the GAC advice – is to look at the implementation of it in the Board Resolution in that Annex that was provided, the link I sent a little bit earlier today.

There's a bunch of good comments in the chat but let me go to Christopher and then Anne, and then let me just make sure I'm getting caught up with the chat comments.

CHRISTOPHER WILKINSON: Thank you, Jeff. Very quickly, since you sent us this document just a few hours ago, if indeed in 2014 – and this is about the currency codes, hold on to your hats – the GAC considered this whole block of strings as regulated and highly regulated, my God, when the penny drops, all the currency codes will in there. It's absurd to think that some of those questions, some of those strings in there are regulated sectors and to say nothing at all about the currency codes. So I rest my case. The currency codes are geographical names and they should be reserved. Thank you.

JEFF NEUMAN: So, Christopher, just to respond to that, some of these names, because GAC hasn't read every single application – and that's not faulting the GAC, there's a lot of materials – it turns out that some of these were taken off the list because they were brands or they weren't applied for in the regulated sense. For example, .kinder, even though hat's German for kids, it was actually applied because it's a brand of chocolate and candy. Because it was a brand, they I don't believe were subject to the safeguards at the end of the day. I think with currency codes, because they're three characters, if there's a wholly other acceptable use of those three characters other than being a currency code, I'm not sure that that would necessarily have the same concern as these on the list.

They may initially make the list but once someone looks into it further, if it doesn't appear from its face to be associated with the currency code, they may not face that kind of regulation. But I would agree that if someone were to apply for – like here, you have FOREX. FOREX is a market in and of itself, and that's why it was put on the list and it was intended to be used in that kind of way, foreign exchange, and therefore, that's why it was on the safeguard list.

Without getting deep into the currency codes, let's go back to the main concept which is on this Category 1 safeguards in general. Anne and then Kathy.

ANNE AIKMAN-SCALESE: Thanks, Jeff. It sounds like they're asking us to basically affirm some 2012 implementation, but it seems as though there are three or four different aspects of that and one of those is just the existence of these categories sent to the strings and highly regulated string. And as you point out, it'd be good if applicants had a way to figure out before they apply somehow what bucket they were going to fall in. The second thing is the specific strings, they're a fait accompli so I don't know if there's any need for the working group to affirm 2012 implementation. Then the last thing is the PICs themselves in terms of the elements and are you asking us to somehow to affirm the implementation and the language of these PICs.

Then the last comment I would have is that it makes it pretty clear that there can easily be GAC advice that's subsequent to the issuance of the AGB. We've tried to encourage them to talk about

categories before the AGB issues but when it comes down to individual strings, there isn't anything to prohibit them from providing a device on individual strings. So, in terms of affirming implementation of this, it kind of breaks down into a few different categories.

JEFF NEUMAN:

Yes, absolutely. You are correct. Obviously, I'm not asking people to affirm that these strings were the right string to put in the right category. As you said, that's already done, that's in the past. But there is the general advice which – sorry, can you scroll back up again? I'm sorry, it's not in this document – in the Beijing Communiqué, in the first bullet point right there, yes. “Strings that lead to regulated or professional sectors should operate in a way that is consistent with applicable laws. These strings are likely to invoke a level of implied trust from consumers and carry a higher level of risk associating with consumer harm.” Then they say the following safeguards should apply.

If we affirmed something like this, we would be affirming that there is some kind of category of strings that may require a certain language in there to ensure – I don't want to paraphrase. Basically, that there would be PICs in there to satisfy what the government advice was and ultimately what the Board had implemented. One of the issues as you said is, what strings fit in here? Do we want to just give the same kinds of headings that they gave? They gave specific headings, if you scroll down. Actually, no. In the implementation document, that's where the headings are. They have children, environmental, health, fitness, financial, charity, education, intellectual property, and then there's

a couple of others below that on the next page. There's a bunch of things we can do.

So I'm asking several questions. One, do we want to accept the general advice that there's this category of strings that may need some extra protection? Number two, if the answer is yes, then how do we define the types of strings that would fall into this specially unique category? Three, what are the conditions that we would impose on them? I guess the fourth one is whether there'd be any additional sub-categories or types that may not have been applied for the last time that we might consider to be deserving of safeguard status. So I guess that's what I'm asking. And then some comments in the chat.

KATHY KLEIMAN: Did you just call on me, Jeff? This is Kathy.

JEFF NEUMAN: Yes, please go ahead, Kathy.

KATHY KLEIMAN: Okay, great. There was a glitch. Okay, I'm not going to address all of your excellent questions but a few. First I want to hearken back to the Beijing meeting. Anyone who was there will remember the days and days that the GAC spent in closed session. They spent an enormous amount of time relative to how they've done other thing on their GAC advice in these categories. So I wanted to say that I think that it's a good idea to incorporate these categories and to put both applicants and communities on notice of the

safeguards list as you called it, Jeff. I would give the 2012 examples. Why not? It will help to provide some concrete examples of what came before. There's no indication at least as I read the GAC written consultation of May 9, 2020 that the GAC has moved away from these categories. My sense was that they continue to embrace the work of their – in some cases, it's [inaudible] but that they remain pretty committed to this. So I think it's a really fair notice warning and precedent. Thanks.

JEFF NEUMAN:

Thanks, Kathy. Just before I get to Jim, let me just do a couple of comments in the chat. I liked – Justine used the term framework. That's really what we'd be talking about affirming is the framework that was created.

Then just going down further, Donna asks how do we rationalize a given that we've concluded that we agree not to create more categories. So, Donna, I think we always had this one as the outlier in the notes. I think we can rationalize it in the sense that it was already around from the 2012. We're not talking about creating categories for anything other than putting additional provisions in their contract but we're not talking about anything like priority or there's a special evaluation or anything like that. We're just talking about additional contractual information.

Go ahead, Jim, and then I'll go back to some other notes.

JIM PRENDERGAST:

Thanks, Jeff. What we've got here is a chart that I guess we could try and put future applications into. The problem is if you really do

look at what the requirements were on the operating of the strings, what the ICANN Board implemented versus what the GAC was looking for in their advice – I think if you set members of GAC down, I think they would say they were profoundly disappointed with how the Board implemented what their advice was. So I'm not sure what we're trying to do here. Are we trying to raise the bar for these types of applications? Or are we just trying to give future guidance to applicants? I'm not quite sure what the whole purpose of this is. Thanks.

JEFF NEUMAN:

Thanks, Jim. The purpose is – yes, not the GAC advice itself. That's another reason why I sent around the implementation. The purpose is to affirm the general notion that there are certain strings that may require additional protections and that the ultimate implementation that the Board use, mainly the addition of PICs and those specific PICs, would be the ramifications for being classified as one of these TLDs. That's what we're affirming.

Remember, the whole thing is to add predictability to the application process. And yes, you are absolutely right, Jim. The GAC was not thrilled with the exact implementation the Board used, but by the same token, the applicants weren't very thrilled either. But it seems like it was a good enough compromise which would allow these strings to still go forward and still provide protection.

I'm not aware of – although it might be out there – but I'm not aware of any complaints that have been filed on these particular TLDs as a result of being fraudulently misled or whatever. That

was the big fear. So is it because of the safeguards? It can be for any reason. But again, to provide predictability, if we believe the GAC is still going to use something like this going forward, and they're going to call out strings because they believe strings are in a regulated market, which I believe they'll do again based on precedent, then if we can help dictate the types of strings that could fall into these categories and what the remedy is if they're in one of those categories then we can give applicants some notice of what they may have to live up to. Otherwise, if we ignore it and just say, "You know what, the hell with it," the GAC is going to do the exact same thing, only the applicants may not be on notice and we may end up with a completely different implementation than what happened in the last round. So that's our choices, the way I see it.

If, as Justine put it, we could come up with a framework that helps applicants or gives applicants or puts them on notice that they might be these added requirements that at least they're applying with eyes open. Jim, go ahead, because you want to come back. So please go ahead.

JIM PRENDERGAST: Thanks. For the sake of simplicity, predictability is what's in the contract. It doesn't matter. We've seen that the guidebook is not a predictability indicator from past performance. So the contract is the predictable document that applicants need to go off of. So why not just note in the Applicant Guidebook there were concerns from governments about certain types of strings in highly regulated industries? Those applicants were required to include the PICs

found in this section of the contract in their contracts. Future applicants be aware.

JEFF NEUMAN: I thought, Jim, you were going to go down the full way. I thought you were going to say at the end, “So be aware that if your string is classified as a regulated string then these are the specific contractual provisions that will apply.” But you didn’t quite go all the way there.

JIM PRENDERGAST: That [inaudible]. I think we’re overcomplicating this. I don’t know.

JEFF NEUMAN: No, you’re absolutely right. We could affirm the contractual provisions that were included. We could do any of that. Yes, it is very complicated. Jim presents what we can do, which I think makes sense to say that there are these types of strings that in the last round were considered highly sensitive, regulated – basically using that terminology – these strings were required to agree to PICs. These were the PICs. Then I think it would be better and more predictable for applicants to say – where I thought you were going, Jim, which is – so if you are classified as one of these, be aware you may have to agree to these very specific contractual provisions that will be handled through PICs and be subject to the PICDRP. It can be as simple as that except at the end of the day, the determination of what types of strings would fit in to there is up in the air. Paul, go ahead.

PAUL MCGRADY: Thanks. I really like the idea of what Jim is talking about, which is – and, Jim, if I’m getting it wrong, correct me – identifying the kinds of strings – so children, environmental, health, fitness, financial, charity, and so on – and saying in the last round these were considered strings that needed special attention. Here are the corresponding contractual provisions that ultimately ended up being applied to these particular kinds of strings and applicant be aware and time with the PIC makes sense because they were PIC provisions, right?

In that way, we sort of sidestepped having to take the Beijing Communiqué minus Board advice equals whatever. We just look at how it turned out and we make reference to how it turned out. In a way it kind of enshrines what the GAC and the Board did here without specifically saying so. Then if the GAC decides that what we’ve done there somehow it’s efficient, they of course can pick up the pen. But it certainly shows respect for what the GAC and the Board did, so all that makes sense to me. Thanks.

JEFF NEUMAN: Thanks, Paul. If I can just ask a question – well, two questions. Number one is, would we say that if you are classified as one of these by the GAC then these are the provisions that would apply? Or would you be silent on that? I didn’t understand. Sorry.

PAUL MCGRADY: Yeah, I think I would be silent on that because we don’t know what strings the GAC will call out in what they want. For example – this

is a wild example – somebody applies for .lego, is that a children string? You know what I mean? Who knows. So I don't know that we would say that we either affirm or disaffirm the GAC's ability to issue GAC consensus advice on particular strings. But I think the point is to alert the applicant that something happened in the last round. Here's how the Board resolved it in the contracts. FYI, this could happen to you if you're applying for a gambling TLD or an education TLD, right? If you applied for .schoolbus, you may end up getting called up by the GAC under both children and education, who knows. More specifically, to GG's question, I don't think we can guess in advance who are going to apply for what strings, and so I don't know how we get beyond beware. I think what we need to do is to not give the GAC any reason to go back to the drawing board and come back with something that's even more restrictive than what they did last time. Thanks.

JEFF NEUMAN:

Thanks, Paul. But I'm sort of missing something because I think if you don't specify that all sensitive strings are going to get these safeguards 1, 2, 3, some – if they're in highly regulated sectors – would get an additional five and then if it's an inherent government function, you get this additional one or cyberbullying. So, yes. We don't know what people are going to apply for but I think the predictability is in what they're going to have to live up to. And my fear – maybe I'm wrong so I'd love for people to say – is that if we don't specify the remedy the exact language then the GAC could go back to square one and say, "You know what, we didn't like what the Board did with professional services and we think it should be much more strict like we initially had in the Beijing

Communiqué.” I would think it would be more predictable to say, “No, no. What we’re affirming is how the contractual provisions went in in 2012, which was the result of the complete process and not give the GAC reason to say, “No, go back to what we said at the Beijing Communiqué.” That’s where I’m a little bit confused.

PAUL MCGRADY:

I’ll do my best to try to respond to that. I think where I’m not being a good conveyor of concept is that it’s difficult for us to say if you fall into professional service, the other list further up has been scrolled away from children, financial services, whatever, that you will have to sign a contract with the below contractual requirements because we’re not the decider of what gets called out as a sensitive string. Does that make sense?

I think the best we can do is say there existed in the last round sensitive strings that fell into the following types – I don’t like categories because category means something else for us already – and the GAC called them out and here’s what happened. We don’t know whether or not the string you’re going to apply for might fall into one of these types. But if it does, you also could get called out by the GAC or the Board then you might have to sign something like this. I don’t know how much more predictability we can get without enshrining who the caller outer is and/or guessing what strings will be applied for. Because I can think of all kinds of things that might fall into one of these categories that may not get called out at all like .schoolbus. I’m just afraid that we might get people too much assurance that in an environment where we don’t have the insurance, I think for me at least, the key is to be respectful of what the GAC tried to accomplish here and what the

Board tried to accomplish here. Without enshrining – we keep saying something like affirming. I don't think we have to affirm those things. I think we have to report history and warn the applicant of what's coming down the pike. That way, in the event an applicant applies for something that would fall into one of these types, they're not going to be able to say, "What do you mean I applied for .globalwarming?" We would say, "Yeah, that was environmental. We told you so." Thanks.

JEFF NEUMAN:

Thanks. Although if you look at the list of safeguards, for the most part, they're not specific where it says like if you apply for children one, it's these safeguards, and the environmental one, these safeguards. It's the same three safeguards for whatever category you fit into. If it's not highly regulated, you get 1, 2, 3. If it's deemed to be highly regulated, you get also 5 through 8. If you get deemed a government function like army, navy, you get number – I forgot which one it is. It actually might not even be in this list here – but if you're deemed a cyberbullying one – oh no, sorry, it's number 10 if you were inherently government function. If you were one like [.sox] or feedback, then the most you'll have to commit to is 1 through 9.

PAUL MCGRADY:

Jeff, I don't mean to monopolize this but .globalwarming is a great one because, is that environmental or is that a government function? I think it's perfectly fine. We say, if you're in these categories, the chances are high that you'll end up with these things. And then these things, they look this way in the contract. If

you have this other type of application, you're likely to get these things and this is how these things looked in the last contract. I still know what else we do for applicants other than that because we don't know what people will apply for and how people who put things into buckets will feel about each application. Thanks. And I promise to be quiet. Thank you.

JEFF NEUMAN:

Okay, thanks, Paul. I guess that the part I'm missing – and now I want to go to Martin – I understand why you're saying you might get things like this but why wouldn't we have the policymaking body advise ICANN to – if it's determined that they are, not that they're going to get something like this, but they're actually going to get this. This way, we now have complete predictability. An applicant may not know definitely that they'll be in one of these categories, but at least they'll definitely know. The very worst case scenario is that they're deemed one of these things and they'll have to put these things in the contract because we are requiring that. If we don't specify, then I think I ended up putting in the chat that this caused a lot of delay. And so if we don't put the exact recommendation in, I guess that's where things could completely fall apart. So what I'm saying – and Anne's asking – if we think these strings are deserving of protection then I would propose us affirming these very specific PICs and then we would need to think about how it's determined who's in what category. But at the end of the day, I think that would provide a little bit of predictability up front. But Martin, go ahead.

MARTIN SUTTON: Thanks, Jeff. So just taking that a bit further, I do like Jim's idea of sort of providing the pre-warning and the experience in the previous round to give an indication to applicants as to what may happen. One other way to look at this is potentially through the application process to give an opportunity for the applicants to self-declare. So giving this kind of information, do you believe that you fall into Category 1 or Category 2 or whatever type? If so, are you willing to adopt these additional requirements and safeguards for your TLD operation? In which case, that might sift out quite early on and easily those that believe they quite straightforwardly fall into those categories, leaving the stockpile of any others that need to be reviewed and considered where they haven't self-declared to be under more scrutiny or review. Perhaps it makes it even easier, then, for the GAC to review those outliers. That's a suggestion. Thanks.

JEFF NEUMAN: Thanks, Martin. So you're saying if someone self-declares, sort of like self-declaring your community, in one sense anyway, that you get the community specification added. So if you self-declare as one of these regulated strings, these contractual provisions will be the ones that will apply in your contract, whether or not you're deemed by any other authority. Then if you don't self-declare, then that's where I'm a little – what happened then?

MARTIN SUTTON: Given that information – just in response to this – is that if you don't self-declare, you're still going to become under scrutiny of various parts of the community, including the GAC, and that may

be called out in a different way, but at least then you're siphoning that down. To those that you don't need to look at, because they've self-declared already and are willing to adopt additional safeguards, then that smaller pool you can review and that may make it easier to question and challenge the applicant as to whether they actually do fall into one of the categories to then proceed with whether they adopt or willing to adopt.

JEFF NEUMAN:

Thanks, Martin. Again, I think we're still left with at the end of the day – I guess what I've been trying to convey and not very well is I'm trying to convey the worst case scenario. What is the worst thing to happen to an applicant if they're found to be in a regulated section? In my head, we could recommend that the worst thing that happens is they get stuck with all 10 of these PICs. That it wouldn't be some new process that the GAC negotiates with ICANN Board like it did the last time. That we would basically be saying that, "If you are classified as one of these, this is the remedy." Not the Board and GAC can spend four or five years discussing it and figuring it out and you end up with something 10 times worse. Maxim says, "The worst thing is to be stuck in limbo." I agree with that.

So I don't know where we are. Try to regroup a little bit. Let's go back a little bit. So Jim had suggested giving a warning, which I think regardless of what we end up with as our policy solution, I think that makes sense. So giving that warning. All right, here's the other question. We are supposed to be reviewing the 2012 round and what happened and making a recommendation as to whether we agree, disagree, or think that there's modifications

need to be made. I still don't know what the opinion is of the group of, first, whether we agree that there are certain strings that we think merit extra protections. I don't know if people just aren't willing to state it one way or the other or – okay, Paul, go ahead.

PAUL MCGRADY:

Thanks. I don't think I've heard anybody say that there are no strings that might merit extra protection. Well, that's a whole lot of double negative there. Anyways, no one's saying, "Yes, this is dumb. The GAC shouldn't have done it. Let's toss it." No one's saying that. I think everybody's trying to figure out the best way to respect what the GAC and Board did, and at the same time, warn applicants of what might happen but in an environment where it's not entirely sure how strings will be viewed, whether or not they'll actually be viewed as sensitive and by whom.

So I think they're stomached to try to figure out how to incorporate the prior implementation and learning, but I think we need to move from working out of two or three or four different documents and sort of put down in writing what that might look like. Jeff, if you did it from your point of view, at least we would have a document to mess with. Does that make sense? And then people could say, "No, no. Do this or do that." But I don't hear anybody saying, "Throw the baby and the bathwater out. Irritate the GAC and hope something really bad doesn't happen," because that sounds like a recipe for disaster. Thanks.

JEFF NEUMAN:

Thanks, Paul. Okay. Certainly, a takeaway is to put this framework – and, Justine, I’m going to steal your term – into writing. So a lot of it seems, as Jim put it, you got the warning – you got to scroll back up again to his comment – but you essentially got the warning, describe what happened the last time and point to the process that took place and then ultimately the implementation.

The question then which I’m getting a different vibe from different people, is whether we want to go take that last step and say that if this is the case, however, it’s determined that you fit into one of these, that these are the contractual provisions that will apply. But we’ll write it – Paul says, “Are likely to apply.” So Paul, if we say, “Are likely to apply,” are we giving the GAC and the Board the flexibility to negotiate something more stringent? I mean, that’s my concern. Because I think if we like the Board’s implementation in those contractual provisions, should we say that at least?

Just to answer Kathy’s question, “What contractual provisions?” If you look in the PICs back Specification 11, you look past the mandatory PICs, so for example, well, [.sox] has all of them, I think. Well, no, it doesn’t have to be inherently government functions one, but it has all eight plus the cyberbullying one. That’s one you can go to. I think pharmacy probably has all of them too, even though they’re regulated TLD. I mean, even though they are community TLD and have things that are more strict, but GG can correct me if I’m wrong. GG says yes. So you can go to .pharmacy and you’ll see those PICs in there. So if you go with .pharmacy, you’ll see PICs 1 through 8 – or sorry, the things that correspond to 1 through 8. And then you’ll see in the [.sox] one added number

9 and I guess which I didn't look at, you went to .navy, seeing number 10 in there as well.

Okay. So the way I'm going to – I say "I'm" and that's really probably going to be really the people that do the best work here, which is staff and us together – we'll write out a framework which I think will be very much like what I was describing, and then we can poke holes at it. Kathy, go ahead.

KATHY KLEIMAN:

Coming off mute. Do we want to take into account some of the GAC written materials that we've gotten on this, where they're asking for some flexibility in this for emerging issues and unexpected concerns? I think we need to figure out how to handle that as well.

JEFF NEUMAN:

Thanks. I think you're referring to just defining additional types of categories and things, what they had asked for flexibility – or just the ability to provide advice after the window opens, which, frankly, we can't ever prevent any advice from coming in, it can come whenever it wants. Sure.

Okay. I see that as the deliverable so we will get started on that. I can't say for certain that it will be ready for the very next call on Monday but we'll try to do that.

I do want to just cover quickly DNS abuse. And I know it's not a quick subject in general but I think for us, it should be pretty quick, that being because we essentially drafted a letter already and sent

it to the Council. Because based on all the discussions that we've already had, that we will likely to recommend that DNS abuse be addressed in a holistic manner, and that if we were to do it just in subsequent procedures, it would only apply to new TLDs and not to any of the legacy TLDs, which accounts for 100% of the abuse that's going on today. Yes, it's 100%. No, I should say 100% of the gTLD abuse because there are no future TLDs that are delegated.

So we basically said to the Council – we punted it back up and said, “This is probably something for you all to consider what the best way is to handle.” Jim, no, we've not heard back from them. I believe they discussed it on the last call. I don't think they finalized a discussion by any means. So no, we've not heard back yet. I just want to point that out because the GAC did give us additional comments that they still want us to address it but then in their letter, I think they understand why we said what we said and I think the GAC is just waiting to see what the GNSO Council is going to do. My guess is if there's a community-wide process that looks at us holistically, that I don't think the GAC will have any issues with the fact that we're not doing it. If the Council doesn't do anything, then I think we'll probably hear back from the GAC saying, “Okay, someone's got to adjust this.” All I'm really saying in this section, the only thing we're changing is putting in a reference to the letter, which was in that paragraph, which was just up there. There it is. On April 27th, we sent a letter to the GNSO Council, etc. So does anyone object to the way we're going to handle it? Okay, so that's our DNS abuse.

Sorry, there's more in C, isn't there? In Section C, on this? There it is. That paragraph two, yes. Go take a look at those after the call, see if you have any issues with the wording. Basically, I think, essentially quotes in the letter so hopefully you won't have any issues with that.

Paul thinks that we could solve DNS abuse. I'd like to one day finish the work of this group even if we couldn't solve it.

Okay. Then the next thing on the agenda was – I'm trying to remember what the order was. Can you just put the agenda back on? Sorry, I probably should have had it in front of me. I don't think it was auctions. No, it was an auction. It was auctions in a sense.

So the next issue – we're not going to get deep into it because we're getting towards the end of the call. But although we will be having more extensive discussions on types of auctions in general, one of the issues that I'd like us to discuss in a specific way is something we have not yet resolved, which is that if we have this auction of last resort, whether it's at the end or at the beginning or whenever it is – and again, we're not adjusting to whenever at this point – do we want to recommend that for those that qualify for applicants support, that there should be some sort of multiplier figured into the auction process? Taking into account some of the discussions we've had prior, that it's not easy to do – and I'm not sure that others have experience in dealing with those types of auctions – but essentially it's this thing that's up on the screen under C, which is what do we do about this proposal on the multiplier. And if we don't adopt it then essentially what we're saying is that – I guess it's the same difficulty that .kids had at the

end of the day, which is that they qualified for applicant support but that didn't give them any kind of help on an auction process if it ultimately went there.

Jim, we're not starting on it. I'm just setting it up for the next time because that's what I want everyone to think about for the next call. Again, this is the section. I don't know if there's any other materials people want to prepare for that call that they think they need. But if you come up with any, just send a note on the list and we'll provide that to you. Sorry, I was not implying that we're going to do this now, just that I wanted to set it up. Okay. Any comments or questions on the setup for what we're going to start with next time?

Okay, Rubens is saying public procurement frequently uses weighted evaluation. Jim agrees. Someone has an example – Jim, Rubens – that we can look at? I'll apologize that – Rubens, you probably know of examples in other languages and I will admit to not being as smart as most people that know multiple languages, but if you know of one that is in English, that would be great.

So for clarity, the only subject on the next call that relates to auctions is going to be this issue of the multiplier. We're not going to tackle everything else in auctions yet, we're going to save that for a larger discussion.

Okay, thanks Rubens. If any of those are in English, cool. If not, maybe I'll get you on a call so you can talk me through it. Great.

All right, thanks, everyone. Also be on a lookout for package 5, which we will get out tomorrow. There's a lot of material in

package 5, especially because we're going to include the final report from Work Track 5, which we have not at all made any changes to, so you're going to get it in the same format that we got it. By "we," I mean the full working group from Work Track 5.

All right. Thanks, everyone. Good discussion. We'll try to put together that strawman for your consideration maybe in the next call but if we can't, then certainly on the call afterwards. All right, thanks, everyone. Have a great weekend.

CHERYL LANGDON-ORR: Thanks, Jeff. Bye for now.

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

[END OF TRANSCRIPTION]