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**ICANN Transcription**  
**GNSO New gTLD Subsequent Procedures Working Group**  
**Monday, 06 July 2020 at 15:00 UTC**

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TERRI AGNEW: Good morning, good afternoon, and good evening. Welcome to the New gTLD Subsequent Procedures Working Group call, taking place on Monday, the 6<sup>th</sup> of July, 2020.

In the interest of time, there'll be no roll call. Attendance will be taken by the Zoom room. If you're only on the audio, could you please identify yourselves now?

Hearing no one, I would like to remind all to please state your name before speaking for recording and 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 the ICANN multi-stakeholder process are to comply with the expected standards of behavior.

With this, I'll turn it back over to our Co-Chair, Jeff Neuman. Please begin.

JEFF NEUMAN: Thank you very much, Terri. Welcome, everyone. Hope you had a good weekend. I apologize again for missing the last call on

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Thursday, or Friday for some of you—or, actually, no. I think it was Wednesday and Thursday for some of you. I had a dog emergency, but the dog is fine now after being a little tired for a couple days. But now she's doing fine.

Today, we will cover the can't-live-with comments from Package 6 and then we'll get into the updated predictability framework. I sent an e-mail based on some notes from listening to the call afterwards. So hopefully we'll discuss that as well. If we have time, we'll go to the private resolutions/auction stuff. And that's the technical term—"stuff"—because there's a lot to unpack in there.

Before we do that, I'm going to ask if there are any updates to any statements of interest. I'll start with my own. I sent out a note to the group and I have revised my statement of interest, but I might as well say it on here. I have left the company Com Laude and I formed my own consulting company called JJN Solutions. Although I left Com Laude as a full-time employee, they are one of my clients. So I am still doing some work for them. So that's it. I think I've updated my statement of interest. At least I tried. I think it went through. If not, I'll make sure that it's updated as well.

Any questions about that?

Thanks, Anne. Okay, so let's jump right into the can't-live-with comments. We're going to go through this and I'm actually going to, when we get down to it—I know that the closed generics is, like, the second-to-the-last section—ask that we skip that one when we get to it, do the last one, and then go back to closed generics because that could, I have a feeling, take us down a couple different paths. So I want to get sure we get the rest of

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Package 6 before we get started talking about the closed generic issue.

If we scroll down to the first one, this is a comment from Anne. It is asking for a footnote that basically mentions an application type being closed generic. We didn't specifically list it as one of the application types in the paragraph above. So, Anne, I think, is wisely asking for us to put a footnote into this recommendation just to say that we don't identify closed generics as a type of application but it has been treated by the working group as a type of application and has a separate section. "To avoid confusion, this application type should be distinguished and set apart from this general working group recommendation."

I think that makes sense. We'll be talking about the closed-generic type in a little bit. I think it does make sense because we haven't put it down as a specific application type above.

Does anyone have any concerns about dropping a footnote as Anne has suggested?

Okay. I'm not seeing any objections. Thank you, Anne. Again, the reason why I'm a little quiet now is I'm waiting for the notes to be taken into the document, and, with this document, because it is so long, if you are looking at Packages 1 through 5 that were sent out a few days ago, you'll notice that the screen moves very slow because it is such a large document.

Speaking of that, we can go to the next one. This is actually on application queuing. If you recall, we added this as a result of our discussions last week—a couple weeks ago? I'm trying to

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remember now. A lot of it blends in together. What we said in this affirmation is that we are basically affirming what was in the guidebook, which was the notion of placing applications into batches of 500.

Rubens notes that, although it was in the guidebook, we didn't actually batch the applications. Then Rubens is proposing to state that first and then to say that we affirm what was actually implemented, which is not to put it in batches and then goes onto to say we're just going to call them grouping as opposed to batches.

But, Rubens, I'm hoping you're in a place where you can talk and maybe just go over your suggestion because it sounds substantive to me but ... Oh, Rubens is not in a place where he can speak. This sounds like a substantive change because we did discuss specifically affirming what was in the guidebook itself even though it wasn't what was implemented. That's the way that the rest of the Priority 4 IDNs ... that it flows from there because we create batches of 500, and then the batches get treated in the way[s] that are discussed below that. So I'm not sure I fully understand. If we affirm the implementation where there were no batches, then don't we need a paragraph saying, "But we're going to group it into 500"? I'm not sure I understand.

Rubens is saying, "The priority for IDNs is still there."

I guess what I don't understand, Rubens—maybe this is just me and maybe I'm just missing it—what the difference is between using the term "batch" and "group."

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If anyone else wants to speak on this, please join the queue.

Okay. So what Rubens is saying is, “That would be grouped for priority but not batched for evaluations.” In other words, it’s not like ... Oh, okay. I understand what Rubens is saying. So it’s whereas, if you batch it, you complete Batch 1 before you start Batch 2 in terms of every single step, including the evaluation and the delegation and everything else. So Rubens is saying that wasn’t our intent. Our intent was really just to group for terms of giving out priority numbers and then it’s just a rolling basis.

Is that right, Rubens? So you’re grouping initially to give them a priority number, but once the priority number is determined, it’s not like they’re going to complete Batch 1 first, then Batch 2, then Batch 3, sequentially. They’re just going to go in number order.

Anne asks a question, “How would ICANN determine order of evaluation?”

Anne, the priority order is still going to be there, but the way that it was envisioned in the guidebook—now I full understand Rubens’ comment—was you would do Batch 1 (complete everything in Batch 1) before you started even the initial evaluation in Batch 2. What Rubens is saying is that, if we just group them in order to determine priority, then ICANN will just go down the list, 1 through whatever, and it’s not going to stop when it gets to #500 and wait for those first 500 to complete every single other step before it starts the initial evaluation of #501. Does that make sense?

Jim, go ahead.

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JIM PRENDERGAST: Thanks, Jeff. I just want to note, for future reference back to this point, as far as my compromised proposal on auctions, it's important to note that any parties in the contention set would probably be able to withdraw their application rather quickly and not have the need for a full evaluation—just an initial completeness check. So we may want to just have a footnote in here that we got to make sure that we sync this text here with how the auctions are determined. Thanks.

JEFF NEUMAN: Thanks, Jim. It's a good point. And I wouldn't put it as a footnote. I would just highlight the section title and just say, "May need to revisit once final contention mechanism is determined." But I think it's a good point. We'll definitely have to come back.

So—no, no, no: "We're not talking about [policies]? We're talking about auctions?" No, we're not talking about auctions. Jim is just putting down a note to say that, if the auction section does end up changing, then we will have to sync this section with that. So let's not talk about auctions, other than putting a marker down.

Anne is just saying, "Just clarifying that this change for Rubens does not change priority groupings." Correct, Anne. It does not change the priority groupings. What it's saying is that evaluations are still going to occur in number priority order. It's just not going to be that you work on Batch 1, then you work on Batch 2, then you work on Batch 3. It's just going to continue from one until whatever on a rolling basis.

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So thanks, Rubens. We may play with the text to make that clear because it wasn't clear when I was reading it. So I think we might have to just tweak the text to just make it clear that we're creating groupings but the groupings are only to determine priority order, not to determine how applications are processed. Well, that didn't make sense either. We'll work on better wording, but I get the concept.

Any questions?

Jim, your hand is still up, but I'm not sure if that's new or ... oh, okay. Thanks.

Rubens is noting he made comments in other areas of this section which I don't think we need to necessarily go over now. They are more changes of the terminology to make sure that we're being consistent.

Just waiting for Emily to just type the notes in, in case anyone is listening on the phone, wondering what we're doing. Okay. I think, Emily, that's just a corresponding change. It's just an explanation. And Rubens confirmed that, too.

This one is a can't-live-with comment from Rubens. The concept that Rubens wants to add in here is the notion that a fee was required the last time to enter the priority drawing, if you will. It was stated that that fee was to make it comply with law. What Rubens is saying here is, if a fee is not required to establish the legal basis to do the draw, then his suggestion is that a fee must not be required—only an indication of whether you want to be in the priority pool or not.

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So this is a substantive change, I believe, because I don't think this is something that we discussed, so I'd like to hear from the group as to thoughts. And the fee was \$100 last time. That's correct. So \$100 per application that you wanted priority on. Anyone have any comments on this one? Concerns?

Justine is saying, "Should this be subject to legal advice?" At the end of the day, I think what Rubens is saying here is, if it's determined by Legal that a fee is not required, then they shouldn't charge a fee. If legal obviously determines a fee is required, then a fee would be assessed. So I just think it's putting a marker down to say that, if ICANN determines, for whatever reason, from a legal perspective, it doesn't need to charge a fee, then it shouldn't charge a fee.

Paul is saying, "Jeff, didn't we explore this in the last round, and people were afraid it was a lottery?"

Yeah, Paul. ICANN actually made it a formal lottery and registered it with the state. [Because they did not], they had determined that a fee was required in order to ... Or a sweepstakes. I forgot what it was. It was either a lottery or sweepstakes. I'm forgetting right now the difference between the two. One of them requires payment, the other one not. Thanks—Steve says "raffle." Either way, I think you're right, Paul, that it was determined that a fee was required. I think Rubens is just saying, if something is changed within the law and they don't need a fee, then they shouldn't charge one.

Maxim is saying, "I wonder if it's going to be legal to hold a formal lottery fully online."



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It's a good question, Maxim. We don't tackle that. I think we just basically say that, if it is legal, they should do it pretty much in a similar way but streamline it in any way that they can.

There's a bunch of people saying the entire methodology was based on a legal review, which is true. "If an applicant wants priority evaluation, then they should show their intent by entering the draw." Then there's some more on lottery law. Then Rubens is saying that sending money in some jurisdictions is problematic. Christa said, "We never really dug into the \$100. It was some minimal amount."

So I think what we should do here, Rubens, because we haven't really discussed this fully, is that we not change for now but ask that you submit a public comment during the public comment period, noting that this is an issue that we probably should discuss. It could be one of those things that we discuss ... When the public comment period is going on, we can already know that this is an issue. There's a couple other ones that we know of from ... You talked about a couple of them during the last call and the call before that[—]submitted comments from a few of the At-Large members that we also said that they should file a comment on it during the public comment period. So we can discuss it during that time.

6.4, Rubens is saying, is the same batch issue. Yeah, that's right. There we go.

We can move on to the next comment. This is in the new ideas section of the prioritization. So it's the same session we were just discussing. If you recall, we had a couple conversations,

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especially before the initial report came out, and then included a question in the initial report and got comments back on it. Our discussions led us to the conclusion that we did not want to allow applicants that applied for more than one string to trade or transfer priority numbers between applications of the same owner.

Susan is saying that she can't live with that and that she's recommending that we allow ... Well, she specifically says, "Whilst it's understood that creating an aftermarket for prioritization numbers is undesirable, this concern does not apply to the applications of single applicants. There seems to be no demonstrable reason to prevent an applicant from making their own choice as how to prioritize between their own applications. Since we have not made a recommendation that a single applicant may not apply for more than one TLD, then, to the extent that [opposition to transfer a priority between applications of the same owner is based on a fundamental objection to multiple applications,] this would seem to be irrelevant."

Does anyone have ... Susan, did you want to ... Oh, she's not on the call? Hold on. Thanks, Paul. Does anyone share Susan's view that can discuss this issue?

Paul, go ahead.

PAUL MCGRADY:

Thanks. Since Susan is not on the call, maybe I'll do my best to take up the torch. This isn't really an issue that I focused much on, but I do see the logic in her point: why do we care? If an applicant put in five applications, why do we care if they want to advance

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one for a business reason if a lesser-important one has a better number?

Say, for example, I'm a new market entrant and I apply for my primary house—dot-brand—and I apply for three other sub-brands. I'm trying to think of a real-world example. In the olden days, I would have said .sears and .kenmore and .diehard and .craftsman. Of course, I'm not sure what's going on with those brands anymore. If .diehard gets a better number, I see no harm to anybody by switching out from a .sears to go first. So I get it, especially from a dot-brand standpoint. But, in general, I don't see what the problem is that we're trying to solve with this. So maybe somebody can speak to the problem. Thanks.

JEFF NEUMAN:

Thanks, Paul. I'll take a stab at the issue as it was discussed a couple years ago, I guess, now. The issue was not for the brands, because I can understand that—if there were different brands and you wanted your house brand to be first—but the issue is in contention sets and especially obviously for open top-level domains where ... If we are encouraging private resolution ... Again, we're not settled exactly on what we're doing yet. We'll discuss that over the next couple sessions. Let's say it operates the same way it did the last time, where can privately resolve and do private auctions and do all that stuff. There is some gamesmanship that could be played, I could see, where, let's say, a portfolio applicant that applies for many TLDs could say, well, to a single applicant, "Look, not only do I want you to agree to my terms, but if you don't agree to my terms now, then I'm going to switch this to the very last priority number I have, which will move

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the entire contention set to the very end. So you, single applicant, aren't going to be able to launch it in three more years because I can just move other applications in."

Paul is saying, "Is there any evidence that happened?"

No, because you couldn't do it. So obviously there's no evidence, but if I'm thinking about it—I'm not most creative when it comes to these types of games—off the top of my head, there are many smarter people that can. I just don't see, for the open TLDs, the purpose, other than to play games with contention sets and when they're decided. I think, for brands, there's certainly a point that I understand. Anyway, this is what we discussed previously: the games that can be played. Again, we're not fully settled on the mechanism for last resort or private auctions and those types of things.

I'm just—sorry—reading the chat. Anne is saying, "Can we limit it to brands?"

Look, I think, again, this is one of those substantive things: this is supposed to be a can't-live-with comment. Since we reached no conclusion as a group, if this wants to be submitted as well as a comment during the public comment period, I think that's where it should actually be.

Does anyone object to treating this the same we just treated Rubens comment on the fee? Because this is pretty substantive.

Justine agrees. Anne agrees. And Katrin. So let's do that. In the same way. And Martin and Paul have just even provided yet another option.

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I think all of these are good to discuss during the comment period. As we know, this will be submitted.

If I can ask that we skip closed generics for the moment—we will get back to it; don't worry—and then go to some of the other ones I think we can handle much more quickly and then come back to closed generics, we're on the objections right now, on which I don't think there were any comments. Oh, there was one. Okay. This one I think we're going to make a recommendation to handle similar to the others that we just talked about today. Also, I know that this was discussed—or at least the origin of these comments was discussed—in detail on the last call, but this was coming from ... Actually, let me ask Justine. Is this coming from you or from the three persons that we discussed last time? Or is this the At-Large in general or the ALAC?

“This is from Justine.” Okay. I think we'll handle this one in a similar way, where it'll be filed during the public comment period. This basically says that ... sorry. Actually, it's not this one. I apologize. It's for a later one. I was ahead of myself. Sorry, Justine. This is similar to the one we discussed, actually, in the past. We actually agreed on this issue with respect to the panel. I apologize. Sorry, Justine.

This is Justine's comment that basically said we decided—I think it was last week or the week before ... The question came up as to what's the default if the parties don't mutually agree on a three-member panel. Then we decided that the default should be just as it was in the last round, which is that, if only party wants a three-member panel, they're going to bear the costs of having those two other members.

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So what we did here, which is not what the AGB had said—it's just what, I think, ended up happening—is that staff has added to the draft a note to the ... Actually, no. I'm wrong. Sorry. I apologize. I think what we're doing is going back to what the AGB actually said, which is that the default is a one-member panel.

Let me just see the comments in the chat. So the default here—forget what I just said—is a one-member panel and we're adding that in the rationale. Now that I've probably confused everybody, I apologize.

Any questions on that? So this was Justine's comment and then we addressed it in the rationale. Do people think we should put it in the recommendation itself, just to be clear? That was one thing I thought when I was re-reading it. Even though we did put it in the rationale, does anyone think it should go up into the recommendations?

Anne says yes. I kind of thought that as well.

Emily, was there a reason you prefer it being in the rationale? If you want to get in the queue. Or whoever. I know Emily wrote it in there, but it's a staff comment.

EMILY BARABAS:

Hey, Jeff. I think that, in response to the discussion, there was agreement to put in the rationale, but I actually agree with Anne that it probably fits better in the text of the implementation guidance itself, just based on the fact that it's a substantive thing being put forward. So I'm fine with moving it, both here and also in the appeals section, where there's text that mirrors that. Thanks.

JEFF NEUMAN:

Great. Thanks, Emily. Yeah, because I think the most logical question when one reads it is, “Well, what happens if they don’t?” So putting it right up front with this, I think, makes sense instead of having people have to dig through the rationale.

Justine is making a point that this may disappear elsewhere, so we just need to make sure that they’re consistent.

Justine then asks a question on this one. “Why would there be criteria used by panelists to file objections? This relates to the implementation guidance that says, “all criteria to be used by panelists for the filing of.””

I think this was really meant to get at the notion of the supplemental rules that panelists are able to come up with. To the extent that they come up with procedural things, yes, maybe “criteria” might not be the exact word, but, “for the filing of,” it’s really processes. We don’t want them to make any last-minute changes as to how the panelists are going to accept objections. So it was really meant to handle that. So it’s not really the criteria. So filing ... I guess we could say, “all criteria and/or processes to be used.” Would that make sense, Justine?

Sorry. I takes a minute to type this in there. So I think it works now because we’re not saying that panelists should be able to add substantive criteria in addition to what’s in the guidebook. We’re really talking about the processes there.

Justine is saying, “My problem was with the words “filing of.””

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Right. But now, if we're talking about processes for the filing of, does that fix the problem? In other words, let's say the panel or the company that supplies the panelists now says, "You need to file six copies. It needs to be stamped." I'm making this up. We don't want it to add additional procedures on its own unless it was all stated upfront as to what's going to be required.

Justine, I'm waiting for some indication from you that this makes sense or it doesn't and there's still an issue.

"It's a sentence structure issue."

If we added "and/or processes to be used by panelists," does that make it better? Make it worse? Do you want to see a different change?

Okay, great. Emily is just typing it in the notes. If we can scroll down then—thank you, Emily—whoops. I think—yeah, there you go. There's a question from Justine. "What does "execution of the independent objector" mean?"

The working group here is just describing the concerns that we had about the independent objector's effectiveness. By "execution," we meant how it carried out its work. There were concerns about the independent objector's research it did and other things like that. The term we used is "execution." Does that make sense? Do you think there's a better word to use there? We could say "implementation."

Justine suggested "performance."

We could say that. Yeah, I'm fine. I don't think that ...



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Rubens says, “Execution of the independent objector” sounds like we are not doing something nice.

Justine is suggesting “performance by.” We’ll go up and check the grammar for that. I think it ... “Because really it’s effectiveness of and performance by.” Yeah. Thanks, Emily or Steve—whoever is typing that in there.

Scroll down—oh, wait. I think ... Okay, this is where we went to the ... We’re going to move that up in line with the discussion that we had before. Now, this is when I was confusing the other comment [with]. So this is what I’m going to ask you, Justine. Is this document a comment from the full At-Large, some of the At-Large, the ALAC? Can you just describe what this document ...

“This is the At-Large.” So this was approved by the At-Large through their processes?

Okay. So I think ... Justine is saying yes. So Justine was taking this opportunity to point out a document that the At-Large has produced on the CPE guidelines. There’s actually two documents, I think, that are related to this. I’m going to ask that, because these weren’t ... I’m trying to think if any of these have been discussed already. But, either way, I think this is one of those issues, as we were saying before, that should be one that’s filed during the public comment period and then discussed at that point. I know you suggested text to go in there, but I think this is one of those that, even adding text to describe this issues, because this is the first time we’re seeing it, or at least the first time we’re seeing it submitted as a comment, I think we need to just push off to the public comment period.

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Concerns/questions about that?

As Robin is saying, “To be fair to other groups, this should be submitted as a comment rather than text in the document.” Right. I think that’s right.

Okay. So we’ll do that. I think this might actually be one of the last ones—I’ll double check—before we go back to closed generics. Oh, no. There’s one more. This one is from Anne. It is putting some alternate language in. What we said in the new issues section is that we consider proposals for changes to the CPE guidelines but we’re ultimately not making any specific changes to the text but rather we’re saying it should be done by the implementation review team, taking into account the recommendations and guidance that were described above in Section A and B. So Anne is asking for alternative language for this, saying that, “I think it starts out the same but then says, “[the working group consider proposals for specific changes to the CPE guidelines in 2012 but not] fully review and discuss the changes proposed by working group members to the CPE guidelines.” So that is a little bit different text but it’s stating a similar thing. And then [it] goes on to say, “Accordingly, the working group is seeking public comment on the 2012 guidelines (link to Footnote 197) prior to the finalization of its recommendations for changes to those guidelines and will incorporate the public comment into its consideration of the changes needed for the implementation of CPE guidelines and scoring system to be applied in the next round.”

A couple things. The first sentence is just a restatement of what we have above, but where it starts at the second sentence there—

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where it starts, “Although then working group is seeking public comment”—this would be a substantive change because we’re saying that the work should be done by the implementation review team as opposed to us. Anne is changing this to that we should be making some changes even prior to this going to an implementation review team.

The third sentence talks about the scoring. I think part of the guidelines that I think we’re envisioning the implementation team to work on wasn’t the scoring but the other guidelines around it. I don’t think we’re recommending any changes to the actual scoring—in other words, how the scoring is determined or the score you need to pass. We’re specifically not making recommendations on that. So we need to be careful as to what we say in here.

Anne, go ahead.

ANNE AIKMAN-SCALESE: Thanks, Jeff. I guess the main point here is I thought that we should seek public comment on the CPE guidelines because I don’t think we did that in the initial report.

As to whether it’s all up to the working group or the implementation review team, the only reason I brought up the scoring thing was just so we could get a clarification on it because, for some reason, I thought that Jamie—I don’t know if he’s on the call—had some really substantive comments on the scoring system. To be honest, I didn’t go back and review exactly what his comments were, but the main point here, I think, of the difference

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is that the final draft report does not seek public comment on the CPE guidelines and says the IRT will deal with it in its entirety. I think that's probably leaving out something that's important for public comment. Even if it's the IRT that takes that public comment into account, that whole system is pretty important[the] CPE. So we should get—

JEFF NEUMAN:

Thanks, Anne. Yes. We can certainly seek public comments. I want to read the chat, though. Rubens says, "I don't believe we should say, in a report, to seek public comment. We can welcome it if it's warranted." Justine is saying, "I thought the working group did a piecemeal check on the guidelines, which is why At-Large decided to review it and submit a revision."

Yes. We did spend a couple of sessions talking about the guidelines and there were e-mails back and forth as to propose changes but we never as a group decided whether to take those changes or not. So obviously the whole draft report is going out for comment, but as we discussed in a meeting or two, there are certain areas that we do want to point as areas that we want specific attention being paid to, which really is for the newer stuff that wasn't in the initial report. So I don't have an issue with including the guidelines as one of those things we point out as to new areas that we didn't previously seek comment on, but I want to hear from the group.

Anne, is that a new hand or an old one?

Okay, thanks, Anne. Jamie, go ahead.

JAMIE BAXTER:

Thanks, Jeff. I think, based on this conversation, I'd be curious to understand where the input is going to come from for the implementation review team, if that is where this is all left. Is it going to come from all the discussions that have taken place in this group and they're actually going to act on them? Or are they going to call for input from, in this case, specifically community applicants? I know that At-Large has put together their own feedback and thoughts on the CPE guidelines itself, but I guess my concern is that, if this is just an implementation review team that's going to be put together without consultation about the key issues and a larger discussion, that would be concerning to me. I felt like we talked about a lot of those things in this group. As Anne pointed out, I've raised a lot of concerns that I've had. I've included a lot of those discussions with the At-Large group as well. I just would like to get an understanding of how all that gets funneled into the implementation review team if in fact we're not providing any further guidance. Thanks.

JEFF NEUMAN:

Thanks, Jamie. A couple things. First is that we have to separate the guidelines document from the substantive scoring and all the other changes that we talked about that are in Sections A above. Emily, can you just scroll up just to refresh recollections here? There's a whole bunch of recommendations and implementation guidance. I don't ... What's the plural of the term "implementation guidance"? So there's a whole bunch of things that are in there. There's affirmations, recommendations, implementation guidance. There's a whole bunch of stuff in there. The guidelines, remember,

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is a separate document that was produced by the panelists that dealt with more procedural matters, although we did discuss a couple things that we know needed to be revised to make them in line with some of the recommendations that we have in here. So, when Justine asks, “How do we [e]ffect change to the CPE guidelines, criteria, and scoring?” those are three separate issues. The guidelines is its own document that doesn’t determine what the scoring is or how it’s determined or the criteria of the scoring. That’s in this section. We discussed several times about the scoring and whether things needed to be changed [and] different groupings. Nothing really seemed to get consensus as to making those changes. We talked, I remember—and it’s included in the discussions [and] the materials we talked about—about whether the scores should be 13 or 12 instead of 14. We talked about if there should be certain items that are given weight and not given weight. We do have a recommendation above—or maybe it’s implementation guidance—that talks about giving opportunity to respond and making sure that competitors or other comments that are received aren’t given much credence as they were given the last time unless it’s verified that the opposition—the people—were who say they were.

So there’s a bunch of things up there in the recommendations and implementation guidance. The only thing that’s not in here is a comment or a determination of the actual document called the CPE guidelines. That was what we were leaving to the IRT.

So I think what we do here is we can for now strike out the “Rather, this should be done by the implementation team.” We can seek comment on it. By seeking comment, we don’t necessarily

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need to say in this section we're seeking comment. We can point it out as one of those areas that's new that we would like comments on, which'll in the preamble. We'll talk more about that in another call.

Does that make sense?

All right. Let's scroll down just to see if there's anything else before we go back to closed generics.

Okay, cool. Closed generics. While it's scrolling up, I've seen lots of—

ANNE AIKMAN-SCALESE: Jeff, I'm sorry. It's Anne. I think you just said that we're not going to point out that we're seeking public comment on the CPE guidelines that we just—

JEFF NEUMAN: No, no, no.

ANNE AIKMAN-SCALESE: Oh.

JEFF NEUMAN: Sorry. Not what I meant. We're not going to put the words in this section—that we're seeking public comment—but rather, in the preamble, where we will be talking about what sections we're

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specifically seeking comment on as changes. We will include this in there.

ANNE AIKMAN-SCALESE: Perfect. Thank you.

JEFF NEUMAN: Okay. Let me just make sure ... Emily, Steve, and Julie—you guys okay with ... okay. [inaudible]. Right. That's just shorthand, folks. We're not ... yes. Okay. It's good. Emily, you're good.

Closed generics. We have had many sessions talking about closed generics. We've had sessions at ICANN meetings. We've had many phone calls devoted to it. We've heard the pros and the cons. We have also read the communiqués and tried to come up with solutions as to whether we could find some way to recommend allowing closed generics in accordance with essentially the GAC advice that they gave, which was—sorry, I'm paraphrasing here—basically if it's in the public interest. Leadership has discussed this, and we don't think that there's really any basis for a recommendation other than no agreement.

So that's number one. Even though there's been a lot of discussion on the list about court decisions and things like that—I'm sure we'll have that discussion—there was a comment submitted initially by Paul on the wording of the no-agreement. Then, through the e-mails, we worked up some language that seemed to be okay with Paul and just really restates the exact language from the Board resolution. So, while we stated in this paragraph that there was effectively a ban on closed generics, the



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reality is that that was not the terminology that was used. So what we do here is we just quote the language that used in the Board resolution as opposed to summarizing it as a ban. Because the resolution was really long, we just quote [parts] of sentences as opposed to all of the descriptions because that would take up, like, three pages or something like that.

So the proposed alternative text states—still there's no agreement—"The working group notes that, in the 2012 round of the New gTLD Program, a decision was made by the ICANN Board to require applicants for exclusive generic strings to either A) submit a change request to no longer be an exclusive TLD, B) withdraw their application, or C) maintain their plan to operate an exclusive generic TLD, which would operate to defer their applications to the next round of the New gTLD Program, subject to the rules developed for the next round, to allow time for the GNSO to develop policy advice concerning exclusive generic TLD"—probably it should be "TLDs." Or something is not ... Yeah, might have forgotten the "s" there—no, no, no. Sorry. Not there. The next one line down. There you go. Yeah, right there. So, since we're quoting it, we might need to see what the quote says. If there was an "s" in there, great. If not, we'll just do the sic abbreviation.

Then it goes on to say, "All applicants in the 2012 chose either options A or B. It is the understanding of the working group that the ICANN Board intended that its decision to not allow closed generics to proceed in the 2012 round applied only to the 2012 round and that it wanted to the GNSO to engage in policy discussions regarding the treatment of such strings in subsequent

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rounds.” I think this language is the same as above. “Although the working group has had numerous discussions about this topic and received extensive comments from the community, including members of the Governmental Advisory Committee, the working group was not able to agree as to how treat these applications in subsequent rounds.”

So the change is really ... Justine is saying, “Do we really need to quote the same language in both this no-agreement section and the rationale?”

The reason I did, Justine, is because the exact wording is very controversial. And to summarize it, I think Paul—Paul is in the queue ... Well, Paul, you go ahead. Why don’t you go?

PAUL MCGRADY:

Thanks, Jeff. I didn’t mean to interrupt you, but, yes, I think the actual history here is important and not just people’s spin on the history. So I do think it needs to be here if there’s a way to make it shorter somewhere else for efficiency’s sake. I’m not sure this document is a paragon of typographic efficiency, but if people want to tackle that down lower down in the document, then fine. But I do think the history here needs to be front and center.

I didn’t mean to cut off that discussion, Jeff. I just wanted to raise a discussion at the end where we say the working group was not able to agree as to how treat these applications in subsequent rounds. Well, that may be true, but that’s not the outcome. What really happened is that the working group was not able to agree on any change to the current status quo found in the 2012

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Applicant Guidebook. I think that's what needs to be reflected. The leadership on this working group has consistently kept us from discussing what that status quo is and how other activities in the last round affect that status quo. I'm not trying to open up that can of worms. I think it would have been a useful discussion. But I do think that we need to not say, "Oh, we can't make up our mind on how to treat these." That's not true. By not coming to an agreement, by not putting forward a policy for the Board, what we're agreeing to is the status quo as it exists in the 2012 Applicant Guidebook, whatever that may be. So I think we need to make that clear. We can't make changes to the status quo without consensus to make those changes. Thank you.

JEFF NEUMAN: Thanks, Paul. I will go on to Anne. Go ahead, Anne.

ANNE AIKMAN-SCALESE: Thanks. I think that there should be a more neutral way to state it in that what Paul is addressing is the question that everyone was asking: "Hey, what's the default?" What Paul is saying is that the default is the 2012 AGB. What others have said is that the default is the Board's resolution. For a time, we were all saying, "Hey, let's not talk about what the default is because we'd really like to get to some kind of agreement on some new policy approach to this issue, if nothing else." But we cannot automatically say that now we have a consensus on what the default is because we don't. We don't have a consensus on that the 2012 AGB books, and we don't have a consensus on the Board's resolution with

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respect to this highly substantive issue. So we have to find a way to state that without stating a default. Thanks.

JEFF NEUMAN:

Thanks, Anne. And thanks, Paul. The problem is, as Rubens put into the chat, we're not able to agree on what the default is, or what the default means, because usually we're going with the implementation, even if it's changed from the guidebook. But the implementation itself [in] the resolution itself says that this was only intended to apply for the 2012 round and it was kicking it off to the GNSO to discuss it. So it's a circular default. If we say the default is the resolution, then it just loops back to us again. It's a circle.

So the reason we are avoiding the discussion of the default is, as you say in there, Anne, is that nobody agrees to what the default is. Frankly, at the end of the day, it's ambiguous. I know there have been articles out there, and people have made very good arguments as to why it should be one or the other, but we can't come to agreement on that. I would love for us to have been able to do that. So that's why we basically can say ... And we can add a sentence that says we're not even able to agree as to what the default was. Leadership [thinks]—we talked about this many times—it's not a productive discussion because there's two equally opposing and valid views.

Paul, go ahead.

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PAUL MCGRADY:

Thank you. Again, without trying to get to what the default may be, because leadership has consistently kept us from talking about that, which is fine and a choice—that's fine—what language we have here that's being proposed is not that default. I'm not seeing any changes based upon my prior comment, which is why I put my hand back up. It's not true that the working group was not able to agree as to how to treat these applications in subsequent rounds. Essentially that's a change to the default because the default is an Applicant Guidebook 2012 that says nothing about these. By saying, "Oh, yeah, we talked about these and we don't know how to handle them," that's casting doubt on the status that they have in the 2012 Applicant Guidebook. And that's a change to the status quo without consensus being around it.

So I do think we do need to clarify that the working group was not able to agree on any changes to the status quo found in the Applicant Guidebook 2012 version, full stop. What that means could be anything from that applicants apply for them and they get them because the current Board is not worried about it, having read case law that came out a few days, to that applicants apply for them and something bad happens to them. Who knows? We didn't answer that question. The Board wanted us to but we didn't go down that path. But we can't say that the new status quo is that we don't agree on how to treat these applications. How they should be treated in subsequent rounds is found in the Applicant 2012 Guidebook because we didn't get consensus around any changes to what's in the 2012 guidebook. I think that this needs to reflect that. Otherwise, we are making a change where there's no consensus around the change from the certainty of what's in the Applicant Guidebook 2012—whatever that may be—to, "Gee

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whizz. We don't know how to handle these." That's not the same thing. Thank you.

JEFF NEUMAN:

Thanks, Paul. I think we could have language in there that says, "was not able to agree to any changes from the status quo." Period. I don't think we can add the Applicant Guidebook because there's many sections where we've interpreted the status quo to be the actual implementation, even where it's different than the guidebook. So that would include things like name collision. That would include things like the new registry agreement that was implemented after the guidebook.

Justine is asking, "But what's the status quo?"

It's a great question. It's not something we can answer. Or it's not something we have agreement on. If you all could tell me, if this group could all agree to what the status quo is, great. But we're not going to., if these discussions are going to be anything like what they've been for the past five years.

So why don't we just end it with, "The working group was not able to agree on any changes to the status quo"? I know that's going to be ultimately for the Board to determine what the status quo was.

Jim is saying, "Have we asked the Board liaisons?"

We haven't specifically. We certainly could. The Board liaisons weren't on the Board at the time that the Board passed the resolution. We've already seen ... I know George Sadowsky was on here. I'm not sure if he still is. And he has joined the group. But

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George has his own views as to what the status quo is or was, and those may be different from other Board members at the same time. We can certainly ask Becky and Avri.

Donna, I know that's what Jim means—Becky and Avri—but I guess the point is we can ask the liaisons, and they can go to the Board. But—oh, George is still listening. Good. Thanks, George. And George wrote an article on it.

Donna, go ahead, then Paul, then Anne.

DONNA AUSTIN:

Thanks, Jeff. I guess my concern here is that—this just doesn't apply to closed generics—when we said that the status quo will prevail, I guess I had in my mind that that was always the AGB. So this is a really tough conversation, I think, to be having now about what we mean by status quo and, if we can't decide, we kick that to the Board to decide what status quo is. I guess I'm just surprised that, at this point, we've now decided that we don't know what status quo is and we might be kicking that to the Board to decide. So I guess I'm just voicing my surprise. Thanks, Jeff.

JEFF NEUMAN:

Donna, thanks. Let me be clear. We know what the status quo [is] in general. Put aside closed generics. In our initial report, in our discussions, everywhere, we've talked about the status quo as being implemented. It's in the initial report. You can go back to it. What I'm saying is, with respect to the very specific topic of closed generics, because the implementation said A, B, or C here, you can submit a change, you can withdraw, and—look at C—you can

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maintain your plan, and that gets decided in the next round on the merits that the GNSO policy develops advice on. That's circular, if we were to say that's the status quo, because the status quo is just a loop back to the GNSO to give policy advice and we're not able to give policy advice. So what does that mean?

So I want to be very clear. We always have said from the very beginning—it's in the initial report and it's in documents before that—that the status quo, the default, is as implemented. It includes the Applicant Guidebook. But where [implementation] differed from the Applicant Guidebook is the implementation. We have it in many other sections here. Usually, we've affirmed it just to be crystal-clear. That's my point. So I'm not trying to make it sound like we're having a discussion as to what default is in general. We're only having a discussion as to what this means: this resolution as a default, as a status quo.

Paul and then Anne.

PAUL MCGRADY:

Thanks. [Super nervous] [inaudible] any changes to the proposed language. Jeff, you suggested that we say the working group could not agree on any changes in the status quo. "Agree" is not quite the right word. I think we need to say, "The working group could not reach consensus on any changes to the status quo." "Agree" makes it sound like 99 people were for one thing, and one person was against it, or 99 people were for the other thing, and one person was against it. "Agree" is not an ICANN word. So I think we need to say what really happened, which is, "The working group could not reach consensus on any changes to the status



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quo. I think that that's the better phrasing. I guess I don't want to be too picky. As long as we're saying there was not agreement for changes to the status quo, I suppose that may be good enough.

In any event, what we don't want to do is to say that we weren't able to agree on how to handle these. We are. By not getting guardrails in place, by not actually having the last conversation that we were promised to have on this, by cutting conversations short on it, we're basically saying we're not putting forward anything new. So that means that, I guess, everybody is happy enough with the status quo and happy enough to see how that plays out. But I do think it's important that we do make the change to the language that you mentioned. Thank you.

JEFF NEUMAN:

Thanks, Paul. We haven't done a consensus call, so I'm nervous using the term "consensus" because that's got a very specific meaning. But, if there's another word between "agreement" and "consensus" ... Justine is saying, "We've used "did not agree" in other places." Yeah.

Paul, is that one you could live with? If it just says, "was not able to agree on any changes to the status quo"?

PAUL MCGRADY:

Yes, I can live with that. Sorry to be too strident on the "consensus" word. And I see Justine's point. It's a good point.

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JEFF NEUMAN: Cool. Thanks. In the ultimate final report, we could change language to “consensus” and other things like that.

Anne, go ahead.

ANNE AIKMAN-SCALESE: I don’t disagree with that proposed language or, I guess, putting a period after “status quo.” But, yeah, we really can’t leave it there and still be accurate and transparent because, in Paul’s mind, status quo is the AGB. In the minds of others, the status quo is the Board resolution.

I have put some text suggest[ing] for one more sentence to be added right after the words “status quo” in the chat. My proposed text is, “Some members believe the status quo is the AGB, which is silent on the topic. Other members believe the status quo is the Board resolution. I think we can’t hide the ... It’s not an Easter egg hunt. Let’s not hide the issue. Let’s be upfront. Let’s be transparent. Thank you.

JEFF NEUMAN: Thanks, Anne. What we can do on this is have it state and stop at the status quo. Then, again, we can have additional discussions during the public comment period to see if there’s any way we can all agree as to what the status quo is. We’ll give it a fair shot. If we can do it, great. I think we’ve tried on many occasions, and I’ve tried to steer us away from it after it was clear that we would not be able to agree on the status quo because you have Avri stating here, “The Board has not had a conversation. I can only offer my thought that the decision made in the round was that the decision

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made in the last round did not have status-quo status.” I would think that George does have a different view. He was on the Board at that point. He’s written an article, so it’s ... Paul, go ahead.

PAUL MCGRADY: Thanks, Jeff. Just for the record, I’m the one who asked for the Board’s decision to be put into this document instead of spin on the Board’s decision. So I’m not proposing anything that’s not transparent. In fact, I’m the one that’s bringing it forward because what the Board’s decision actually says is really important, and Avri’s comments on that Board decision are extremely helpful. That’s all. Thank you.

JEFF NEUMAN: Thanks, Paul. Anne, is that a new hand? Sorry. I didn’t notice if that was new or ...

ANNE AIKMAN-SCALESE: Yeah. Just very quickly, in everywhere else in our working group, implementation is the status quo. So we need to point out that the working group has a divided opinion on this. The public needs to know that. It’s not something where it’s like, “Well, somebody else who doesn’t know our programs really well just reads it through and says, “Status quo? Great,” but only those who are super-concerned either way provide public comment on it.” It needs to be pointed out because there are plenty of people not on this call, not part of the insider group of new gTLDs, and the public needs

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to know what these issues are. And this is a big issue. It should be pointed out.

KATHY KLEIMAN: Jeff, this is Kathy Kleiman. I'd like to join the queue.

JEFF NEUMAN: Sure, Kathy. Good. Go ahead.

KATHY KLEIMAN: Sure. I'm not online and I don't have any cavities. I am at the dentist's office. Closed generics, if that's what we're talking about, I don't think were scheduled for today. If we're making final decisions, if you could briefly bring me up to speed. I thought we were on auctions today. So if that's what we're talking about, then I'd like [you] to bring me up to speed. And I'm hoping that the word "ban" or "effectively ban" was not deleted from the record because that was a very descriptive comment of what was in our report going out to the public. Thanks, Jeff.

JEFF NEUMAN: Thanks, Kathy. We did remove the words "ban" and "effectively ban," but in its place we put the actual Board resolution. Then we put the citation. So—

KATHY KLEIMAN: Then let me object because those words were very useful, and was an effective ban. If you want to say "effective," which [was] in

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the original ... But it was a ban. No one proceeded forward. If you want to put the Board resolution in a footnote—again, I’m sorry to miss this discussion; I didn’t see it flagged for today on the agenda—then put the Board resolution in. You have to state what it did and that it operated as a ban on closed generics. Dozens changed. So, for the world that needs to close this clearly, as Anne is saying—I don’t know if she would agree with what I’m saying—the world needs to know not just what the resolution said but what its effect was. And we need to say that in clear English. And we said it in the original. So I object to the changes that were offered on that. You can add but I don’t think we can take away and still be as clear and coherent as we were in what we had agreed to originally. Thanks.

JEFF NEUMAN:

Thanks, Kathy. What it says now is—let me just get to the relevant part—“The working group notes that, in the 2012 round of the New gTLD Program, a decision was made by the ICANN Board to require applicants for exclusive generic strings to either A) submit a change request”—this is direct quotes—“to no longer be an exclusive generic TLD, B) with draw their application, or C) maintain their plan to operate an exclusive generic TLD, which would operate to defer to their application to the next round of the New gTLD Program subject to the rules developed for the next round to allow time for the GNSO to develop policy advice concerning exclusive generic TLDs.”

“All applicants in 2012 chose either options A or B. It’s the understanding of the working group that the ICANN Board intended that it’s decision to not allow closed generics to proceed

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in the 2012 round applied only to the 2012 round.” And this is all the same language. So there were no other changes at that point, until the last sentence, where it’s being discussed now that, “Although the working group had received numerous discussions about this topic and received extensive comments from the community, including members of the Governmental Advisory Committee, the working group was not able to agree on any changes to the status quo.”

KATHY KLEIMAN:

Jeff, it’s not the opinion of the working group that the 2012 resolution was only intended to apply to the 2012 resolution. Again, the earlier wording about that this was a ban, an effective ban, was accurate. It’s an accurate reflection of what happened in the first round. Now we’re asking to people to comment on it. They should know that. And our working group is split on what the 2012 resolution meant and what it means absent any other clear policy guidance. So I’m not sure where we’re clear here. Sorry about that, but I’m just not sure we’re clear or correct. I’d go back to the original language. Thanks.

JEFF NEUMAN:

Thanks, Kathy. Well, let’s hear from others, but what I’m seeing in the chat is, essentially, that there’s no better language to put in than quoting the actual Board.

But the one sentence I think that there is a little bit of interpretation on is, “It’s the understanding of the working group that the ICANN Board intended that it’s decision to not allow closed generics to

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proceed in the 2012 round applied only to the 2012 round.” That’s what you’re disagreeing with, Kathy, but I have not heard others in the group disagree with that.

KATHY KLEIMAN: And George Sadowsky was very clear in his CircleID article, which was directed at us.

JEFF NEUMAN: Yeah. And George is on this call. So George is now part of the group.

KATHY KLEIMAN: Oh, great.

JEFF NEUMAN: So, if George wants to speak for himself, he can. He’s certainly invited to. But, otherwise, again, we understand that that’s your view, Kathy. Unless I hear from others, I think this is an accurate view of what the working group has said.

KATHY KLEIMAN: Jeff, I’ll have to object because we have a view that we don’t make changes to this report at this time without full agreement, including those who were so involved in three-and-a-half years in writing the text that has now been changed. So—

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JEFF NEUMAN: Sorry. Just to be clear, the only text that's being changed is taking the words "effective ban" out and putting the actual resolution itself in. All the other language, including the language "It's the understanding of the working group that the ICANN Board intended that it's decision"—again, we took out the word "ban" and we say "to not allow" ... But, other than that, everything else is the same. So the only change now that you're asking for is to remove the Board's actual language. Everything else was in there.

KATHY KLEIMAN: Or put back in the words "effectively ban," which was an accurate depiction and gives some counterweight to the working group's assessment that the 2012 resolution was just the 2012 resolution: leave it aside and throw it to the gutter and who cares. It was a ban. It was an effective ban. It was an actual ban. It worked very well. So, without that counterbalance, the sentence that you haven't edited doesn't have the same interpretation and weight.

JEFF NEUMAN: There is language in the rationale that talks about the discussion that took place. That's the counterweight. That's all of that. This is just a factual statement in here at this point now. There's no subjectivity.

Anyway, the way I'm proposing—then we could talk about this issue more during the public comment period—is to word it this way. Of course, if you have any comments, please send an e-mail, but ... sorry. Is there anything further down in this section other than what we've discussed? Let's note Kathy's objection.



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KATHY KLEIMAN: Jeff, I think you have to clarify that sentence—I'm sorry—to say that a number of working group members who participated in good faith for many years on this did not think that the 2012 resolution was just for 2012, absent any other guidance. That is an incorrect interpretation of our conclusion. We can say we were split. We can say we had differences of opinion. But many people—

JEFF NEUMAN: Right now, we—

KATHY KLEIMAN: Then put it back in—"effectively ban"—because that was accurate. That's what happened and we may be reversing that inadvertently by not telling people what actually happened in 2012—actually, 2013/2014.

JEFF NEUMAN: You're right. Well, it's the 2012 round. Thanks, Kathy. When you get in front of a computer, can you read the changes? Just let us know after that what you think is not accurate about what we state, and then submit that. It might be easier when you're in front of the actual text.

I just want to note, from the chat, that George says—whoops, it just scrolled up on me here—"I can speak to what I believe was the intent of the Board. I believe the intent was to institute a ban, which the GNSO could [do], if it were proposed [as] an alternative

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in the future. But that hasn't happened." So that's the George's view.

KATHY KLEIMAN:

Jeff, that's the language that we're trying to capture here in the working group. That's the language we're trying to capture here: what the Board members thought (so what some of the working group members thought). That's what has been changed by this new language.

JEFF NEUMAN:

What we're trying to take is take out subjectivity. What George thought ... I have lots of respect for George. He knows that. We've had many conversations. But, unless that language was put into the resolution itself, George may have a different view than ... I don't know else was on the Board at that time—many other people. There were a lot of people on the Board. Since we can't just go and pull every member that was on the Board at that time, we can put something in a discussion. George can submit his thing as a comment, and we can discuss it and figure out how to put that in the rationale for the final final report. But, at this point, we can't—I think George would understand this—take one statement from one Board member as being the complete view of the Board. The resolution speaks for itself, as you said. Right? So that's why what we put in is the resolution—

KATHY KLEIMAN:

No, I did not say that. That is what Paul is saying: the resolution speaks for itself. What I said is that our original wording speaks for

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itself, that there was a ban or an effective ban or closed generics, and that a number of the working group members who, again, participated for a long time in good faith [inaudible] on this issue a number of working group members did not agree that the resolution was limited to the 2012 round, that a number of us saw this as the status quo—what had been done—and that this is this the policy that we’ve been provided. This is the precedent. This is the policy [and] the status quo. That’s how we’ve been directing everything else. So at least that sentence has to reflect the diversity of the working group and, again, the ban that took place in 2013/2014. I’m sorry to hold the working group up on this, but those changes are not reflective of what needs to be going on here. Thanks.

JEFF NEUMAN:

Thanks, Kathy. We’re at time, but if you could just look at the wording. Then Justine is asking, “We couldn’t agree to what the status quo is.” We’ll figure out how incorporate that in there as well because I think that makes sense. And that was going to be my suggestion.

Sorry, guys, for going over time. I know people had to drop. We can continue this conversation on e-mail, but we are going to get to predictability and auctions on the next call on Thursday, which is at 20:00 UTC for 90 minutes.

Thanks, everyone.

**[END OF TRANSCRIPTION]**