ICANN Transcription
GNSO New gTLD Subsequent Procedures Working Group
Tuesday, 14 April 2020 at 03:00 UTC

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ANDREA GLANDON: Good morning, good afternoon, and good evening. Welcome to the New gTLD Subsequent Procedures PDP meeting held on Tuesday, the 15th of April, 2020, at 03:00 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?

Thank you. Hearing no names, I would like to remind all participants to please state your first and last name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise.

With this, I will turn it over to Jeff Neuman. Please begin.

JEFF NEUMAN: Thank you very much, Andrea. Welcome, everyone. I noticed that our call at this time usually does not have as a great a participation as some of our other times, but notice that we do have a good amount of people on the call, which is good.

Today we're going to just cover a couple … There were a couple items in reviewing what we did on the last time on the base registry agreement. There were a couple items that we sort of touched upon, but I didn't get the feeling that we finished it out. So we'll spend just a couple minutes finishing those items out but then spend the bulk of the time on application change requests. Then, if we get done with that, we'll adjourn early, but, if not, we'll take as much time as we need. This call is scheduled for 90 minutes.

Just a quick reminder that the next call that we have later this week on Thursday is scheduled for 120 minutes or two hours. So we'll have our second, longer call on April 16th. We'll mention that again at the end of the call.

With that, let me just see if anyone has any updates to their statements of interest.

I see Anne has her hand raised, so, Anne, go ahead.

ANNE AIKMAN-SCALESE: Oh, sorry, Jeff. It's not about an SOI update. I had sent an e-mail about AOB and about the GAC letter. I don't know if you responded to that on the list or not because I just recently came back in.

JEFF NEUMAN: Thanks. Sorry about that. No, I've not. Thanks for the reminder. Yeah, we'll add that in Any Other Business.

ANNE AIKMAN-SCALESE: Okay. Could we have enough time at the end so it can actually be discussed? Because, the last time, we crammed it into the last three minutes and it was very awkward or … I don't know. There wasn't discussion time on it.

JEFF NEUMAN: Sure. I think we'll have plenty of time. I'm not sure application change requests will take a full amount of time, but, just in case, let me just ask ICANN Policy just to make sure we have at least ten minutes to cover that subject.

ANNE AIKMAN-SCALESE: Great. Thank you.

JEFF NEUMAN: Sure. As they're writing that in, also let me just state that we are going to be sending out tomorrow the first batch of draft final sections. We just wanted to remind everyone that we'll also be sending out the form, where really the standard of review for these draft final sections are going to be things that you absolutely cannot live with. You'll have to use that form to send around the e-mail to indicate the section that you have an issue with, to quote the language, and then to suggest an approach or some exact language of what you would change to be in line with what you could live with but also in line with the tone of the discussion.

For example, if we've been discussing a subject for a long period of time—I'll give an outrageous example; we could take about fees, because that's going to be a section—and you said, "Look, I can't live with anything with the formula for fees," and then your suggested remedial action is to make all fees $10 million per application, obviously that's not going to be a good-faith trying to come to resolution to that issue.

We've all been on so many discussions on each of these items that I think you should all have an understanding of where the group lies to hopefully suggest reasonable language that not only you could live with but that have been in accordance with the discussions that we've had on then topic. So you'll see that coming tomorrow for the first five sections. That will include systems, communications, and the fee section. I say five sections, but the fees are actually two combined into one because there were two sections. One was called applications fees and the other one was called variable fees. We've now combined that into one, and you'll see how that works. I'm missing one. I said systems, communications, and … oh, the Applicant Guidebook, I think, is the fifth section. there you go. So I just wanted to put in that and—oh. You 'll see on the screen the form. Thank you, Steve, for putting that form up. That's the form we'll ask you to fill in.

Let me see if there's any questions on that.

All right. Not seeing any. Let's go to the first subject. Again, we covered most of it on the last call on the base registry agreement, but I want to go to Section C, which are the new issues. I think we did touch on some of these topics in conversations, but we just didn't have the feeling that we got to a closing point.

I see Justine has her hand raised. Justine, go ahead.

JUSTINE CHEW: Thanks, Jeff. I was going to ask a question and pop in then chat as well. Just going back to the form that staff put up on the screen, just a clarification: was there going to be any deadlines imposed on any submissions? Thanks.

JEFF NEUMAN: That's a good question. I forget to mention that. We're going to ask for the comments from each batch to come within seven days. So the deadline, if we send it out tomorrow, will be the end of the day, California time, of Tuesday next week. So we're going to see if that works.

You'll notice that even though it's a batch of a bunch of sections, the sections are, for the most part, pretty short. So it shouldn't be an issue. Again, you will have seen everything before because it was taken from actually this document that we're working through right now and the redlines. So we've discussed everything before, so none of it should be knew. We just addressed the comments that we got. The e-mail [inaudible] through the discussions and the new draft. So you'll see those changes. So we'll put the deadline in the e-mail as well. Yes, thank you, Justine.

Paul, go ahead.

PAUL MCGRADY: Thanks. Just to be clear, this live-with/can't-live-with thing is isn't a consensus call. This is some sort of additional refinement process we're going through? Is that the purpose of it? Thanks.

JEFF NEUMAN: Thanks, Paul. Yeah, this is just one last readthrough that we're going to go through with before we put it into the draft final report. Again, the last couple weeks … Actually, it's been a little bit more time now. The last few weeks before we release the draft final report, we'll make time to make a couple ultimate last tweaks. The goal is for the last set of tweaks to the sections before we drop them into the draft final report that will go out for public comment. Consensus call will not happen until … That's the last step we do after we get public comment, after we make the final revisions. That's when the consensus call will take place.

So no more questions. Let's go to the first part. This first notion is the notion of providing an avenue for a code-of-conduct exemption for registries that have engaged in a good-faith effort to get registrars on board to carry their TLD but are unable for whatever reason to do so and they would like to seek a code-of-conduct exemption which would allow them to be a registrar, which is allowed to today. You can be a registrar, but the code of conduct would require you to have separate books and records and have legally separate entities. That is actually complicated for a number of the smaller registries. So this would be a code-of-conduct exemption for a registry that has acted in good faith to try and get registrars signed up but is unable to do so. That's one of the new issues that came up.

We just wanted to see if there was any appetite for the working group to make this a recommendation or implementation guidance. Or a third option would be to make it one of those recommendations that we specifically ask a question on. So we can word it as, “This is what a recommendation would look like. Is this something you would support?” or something like that because we are going out for public comment.

We have silence on this. These new items, again we can include. We can not include them. We did have significant discussion but just not enough as we’re going through to put it as a recommendation at this point.

Justine asks, “Do we know how many registry operators are in this position?”

Unfortunately, there’s really no way of knowing because registries have not sought this code-of-conduct exemption because this was not an avenue for them to get an exemption. So I’m not sure. All we really have are anecdotal—I was going to say stories, but they’re more than stories—evidence, I guess, of certain small registries needing or wanting to have this kind of exemption.

Anne asks what the current standard for seeking a code-of-conduct exemption is.

Anne, there’s really only one ground for exemption, and that’s at the end of Specification 9. And you have to meet all of the criteria, which include, most importantly, that you have to be a single registrant TLD. If you’re a brand TLD, you would go seek that exemption under Specification 13, but these are registries that

wouldn't necessarily qualify for Spec 13. So they may not have a trademark for it, and they are only allowed to use it as a single registrant TLD, and they have to provide some sort of justification that not opening it up would … I'm going off of memory here but it's essentially that there's no harm to the public interest by having a single registrant TLD and exemption.

Thanks. Steve actually put the link there, so you can go to that. I don't know if everyone has this issue, but, ever since Zoom upgraded for me, I can't get that as an actual link. I think I mentioned this on the call the last time. I don't know if this happens for everyone or if this is just a uniquely "me" thing. This is the page where registries have sought code-of-conduct exemption. That's what the link is. At the top there it just restates what's in Specification 9: it's not a generic string, it's a single registrant TLD, and the application of the code of conduct is not necessary[ily] to protect the public interest. Thanks. And thank you for confirming it's not just me.

We have some support for including it as a … Let's see. We have a couple people who supported including it as a recommendation to support innovation. Justine supports it as a question being asked in the draft final report and then [we] examine the responses against the anecdotal evidence. I think that makes a lot of sense.

Jim is saying, "But wouldn't due diligence, especially after the 2012 round issues … Only a small handful experienced … So you need to do your research ahead to make sure that a few registrars will carry your TLD."

I think, Jim, that's been the argument for why some don't support this exemption that a registry that wants to go out there and market really needs to do some research to see if registrars will carry their TLD. I guess this would be more of a proposal where registrars are ready to move forward and do it themselves if there aren't any registrars that are willing to carry it. So they open it up to have registrars do it, but the registrars don't buy in, for whatever reason, and the registry says, "Well then, I can do it myself." So I'm not sure this is a matter of only doing due diligence, but that certainly is an aspect.

Jim, would you support the way Justine has phrased it: to ask a question on it to see if we can get some anecdotal evidence? We wouldn't include it as a recommendation but just include it as a question for a recommendation that we were considering.

Jim says, "Justine's approach makes sense."

Okay. Let me go to Anne. Anne, go ahead.

ANNE AIKMAN-SCALESE: I'm just trying to understand the issue better. it sounds like previously there was a mention of registrars. There's a vertical integration issue. When we say "makes a good-faith effort to get registrars to carry a TLD," we mean the standards that are applied in the conde of conduct … I'm having trouble understanding what the standard is that we're going to be asking a question about. I don't disagree with the approach of asking a question, but I'm not sure what standard we are presenting for how it's evaluated as for the good-faith effort and how it's evaluated for what type of

registrar you can get if you don't have an accredited registrar. But maybe I'm just not understanding the marketplace. Thanks.

JEFF NEUMAN: Sure. I raised my hand instead of unmuting myself. I think it's a really good question. I don't think there are purely objective standards that we're going to be able to say as to what constitutes a good faith effort with, other than that a registry would have to show that they reached out to registrars and tried to get them to carry the TLD and maybe show the communications they've had with the registrar. I think it'll be one where we have to leave some discretion to ICANN to evaluate those requests. Like I said, I don't think it's one we can say, "Well, yes, you've had the issue. Five communications to every registrar, and none of them have taken you up," about. I don't think we'll be able to do that in a real objective way.

Essentially, a code of conduct requires of you that, if you want to set up your own registrar, you would have to set up a separate legal entity. You would have to separate your books and records. You would not be able to communicate sensitive information. I'm not using the right term. You wouldn't be able to communicate confidential information about the registrar to your registrar operation. So it really requires some level of walling off of your operations between your registry and registrar.

So, although the code of conduct you, if you complied with it, to have your own registrar, there are many hurdles you have to jump through. So this would be eliminating some of those hurdles by allowing you to act as your own registrar. But the important thing

is you'd still have to be accredited, meaning you'd still have to comply with ICANN's requirements for all registrars, just like any old registrar would be. You just won't have to have separate books and records.

Does that make sense? You're still accredited.

ANNE AIKMAN-SCALESE: Yeah. I'm just—

JEFF NEUMAN: So you're saying—oh. Go ahead.

ANNE AIKMAN-SCALESE: Just a quick follow-up in that maybe the question should include what standards would you recommend for granting exemptions under those conditions so that we can actually get public comment on why the exemption would be granted or not be granted.

JEFF NEUMAN: Thanks, Anne. I think, when we phrase the question, we'll write it up as what I said before: the good-faith attempts to reach out to registrars. We'll write it up and then we'll ask about support or non-support and then to expand on what the standard should be or what evidence could be provided. So I think that does make sense as part of the question.

Donna states, "This is a marketplace issue, Anne, and that registrars largely prefer to onboard registries that are vanilla. There are costs to the registrar to onboard a registry. The requirements are unique in some way. So it may not always make

economic sense for the registrar, and that limits the options available for the registry."

Absolutely. That's right, Donna. The other reason why we included it here is we used to have a whole section devoted to areas where we could assist in these types of matters, but I think what it's boiling down to now is just one recommendation on a potential code of conduct exemption. So I think we'll follow Justine's suggestion of the question and, of course, with Anne's follow-up on rational and how that would be evaluated.

The second issue on this I think we covered adequately on how to path forward, which is this whole issue of the recommendation about adding an element to the contract about that the registry operator will not engage in fraudulent, deceptive practices, and that we will lead out the PIC part of the recommendation that we have above. Then we asked a question of just part of the base agreement or whether that should be a PIC and then describe[d] what the ramifications of what classifying it as a PIC or, alternatively, not classifying it as a PIC and just having it as part of the registry agreement.

I think, with that, we are ready to then go on to the application change requests. For this one, I'm going to go to my version because [that typing] on my computer screen is very small. So I'm just going to switch to my version really quick.

Okay. So now we're changing gears to application change requests. If you recall, in the last couple of weeks we have mentioned this section several times. We've mentioned this in the objections section. We've mentioned this in the public comment

section, I believe. We may have mentioned it in the evaluations section, especially when we were talking about community priority evaluation, as well string similarity evaluation and potential objection, where we said that any changes that you were to make as a result of an objection or to respond—oh. The other section—right—was GAC early warnings …. Was that, if you made a change after application was submitted either because of an objection or for any of those reasons—or frankly you just wanted to make a change—that would be governed by this section. So it was very important that, rather than restating all of those rules and those other sections of what applies to application changes, we would make sure that all of the requirements are spelled out here in this section, 2.4: Application Change Request. So, as we go through this section, please keep that in mind. Then we'll see if this all fits in.

Sorry. I was just looking at the comments as well. I think it was on the last section. Greg is asking that we make this a little bit more clear [that] all of this is on the registrar. Thanks. We will do that as well. Thank, Greg.

Getting back to this section—change requests—the first affirmation, to which we have attached a number of implementation guidance, states, "The working group supports maintaining a high-level criteria-based change request process as was employed in the 2012 round." [In that], we get into some more specifics. "First implementation guidance: ICANN Org should provide guidance on both changes that will likely be approved and changes that will likely not be approved."

We know that this is a general statement. I think they provided some sort of guidance in the last round, but it was not considered detailed enough, and it was at least not as transparent as we all had wanted it to be.

"Second implementation guidance: ICANN Org should document the types of changes which are required to be posted for public comment and which are not required to be posted for public comment."

This one was drafted at a time when we weren't necessarily considering or necessarily thinking about changes in response to objections and responses to GAC advice or early warnings and those. By this, what we really meant was things like that ICANN would say that changes to the Board of Directors would not necessarily go out for public comment—organizational changes. We certainly think, as we state in later recommendations, that other things require public comment, but this is really talking about the everyday changes to an application because applications can be in the pipeline for months and, in some cases, potentially years.

Anne, go ahead.

ANNE AIKMAN-SCALESE: We had a number of discussions in which we talked about the need for public comment. In several places, you had said, "Well, we're just going to refer to the standards for application change requests." I kept suggesting amendments to add in "including public comment," and there was this approach that probably

wasn't necessary because of the application change language. In one case, I think there was a footnote added for a reference to application change requests. But, essentially, with this language, we're taking that away because we're saying that whether or not public comment is needed is decided by ICANN Org and not by the recommendations of this particular working group. That just doesn't seem at all consistent with what was determined in the discussion. I'm just really struggling with the fact that I had asked this question about the RCEP process and how that may differ or not differ. So I don't know how we clear this up in terms of not just incorporating this section into all those sections where we emphasize that public comment was critical.

JEFF NEUMAN: Thanks, Anne. In reading this, I think you're right. What we didn't do here—and we should have—is move those from where we had them to other sections where we said we were going to move them to here here. So we should add a recommendation here that states, "The following changes must be subject (or require) posting for public comment," and then we should list those and be more specific. So I think you're right. I think we need that as a recommendation because this section went out to the group a week or so ago—or more, actually, now—and we didn't put it in the section and we need to. So I think we need a recommendation here: that the following types of changes must go out for public comment.

I think Justine is saying she would rather stipulate what would not require posting for public comment. I'm not sure if that's easier or tougher. I think we want to make sure that certain things do go out

for public comment, but I'm not sure we could envision every possible case. At some point, ICANN Org does need some discretion for purely organizational things or confidential items.

I think we could do both, right? We do state here that the creation of joint ventures certainly would go out for public comment, but I think we also need a list of things that we definitely want to see out for public comment.

Dona says, "We should be explicit where we can." I agree with that approach.

Anne, your hand is up, so go ahead.

ANNE AIKMAN-SCALESE: It looked like Steve put something on his screen that had a representative list of things that did not need to go out for public comment. I don't know if he's suggesting that, based on what Justine is saying, we would refer to that. But definitely all those items that we talked about, where the application change request is incorporated by reference should be [checked] to make a specific listing, as Donna suggests, of things that absolutely do, based on our deliberations, require public comment. "The following require public comment, and others similar," whatever. But we need to specific about the ones that do require public comment based on our deliberations. Thanks.

JEFF NEUMAN: Thanks, Anne. I think that's right. I think, at the end of the day … And Steve has pointed to a list. I think we'll look at that list. Steve, go ahead.

STEVE CHAN: Sure. Thanks, Jeff. I'm not sure I have a whole lot to add, other than I did want to point out that there's explicit list of things that do not require a 30-day comment period. So I think what you could do, as you mentioned, is … I guess the danger in trying to list explicitly what does require a public comment period is you my miss things. So you maybe it serves as an exemplary list. Then the other half of the equation is things that absolutely do not require—well I guess "absolutely" is the wrong word because it does have an exception … These two things could maybe be put in the report in conjunction with each other to make a more complete package.

That said, I put this on the screen just because I thought it might be helpful for the working group to see. To the extent that the working group agrees with the types of things that are in the list, it could potentially be then endorsed in that implementation guidance to make it a little more clear and explicit. Thanks.

JEFF NEUMAN: Thanks, Steve. I'm asking Cheryl—my dog just had a little accident here—if you could take over for a few minutes. I'm listening on the phone, but—

CHERYL LANGDON-ERR: Emergency tag-teaming.

JEFF NEUMAN: Thanks, Cheryl.

CHERYL LANGDON-ERR: No problem, Jeff. Go deal with the delights of pet ownership. I understand them very well. Cheryl Langdon-Orr for the record, just so we know who's tag-teamed in.

It seems, from my listening, that there is perhaps appetite from today's discussion to have an exemplary list, but I'd like to see if we can measure, at this point in time, in some way, if there's a greater appetite for the do-not-require list. So it's the examples of things that are—with some exception, obviously—not going to require the public comment, rather than risk trying to list the things that will or do require public comment. So can we perhaps ask that people weigh in to the extent they can now in chat so we get some measure of the thinking of those of you on this call?

But, more importantly, Steve and staff, can we make sure that we ask the e-mail list for their opinion on this point? Because today's meeting is, as is often the case at this time of the 24-hour UTC clock, not quite so well-attended as other times.

Okay. Thanks, Steve, for putting up the link to the page. Yes, we note, for people who've updated the Zoom recently—sorry, let me start again; I was reading something coming in from Jeff as well—that you don't have a live link. That will be changed in the near future, but Zoom hasn't gotten around to it at this stage.

Looking now at the next highlighted section, which I believe is center-screen—the Rationale 1 implementation guidance—if you could just highlight that for me, Julie. Fantastic. Great. Here what we've got in implementation guidance as our next [phase of] implementation guidance is that community members should have the option of being notified if an applicant submits an application change request that requires a public comment period to be opened at the commencement of that public comment period. So we're suggesting that implementation looks into some form of opt-in for a notification system.

Anne has written in chat, just as you [inaudible] to discuss this further. I'll have to just make my chat space bigger because you all keep putting things in chat and it rolls off the screen. Okay. We really need to justify those items that we discussed specifically in our deliberations, where we were [assured] that references to application change requests, including public comment … For example, setting objections. So that's just for then previous part. Thanks for that, Anne.

There's a bit of agreement between Justine's earlier comment on the do-not-require list and proposing a little adjustment there. That is being supported by Greg.

I might actually, seeing that I don't have people in the queue, read out to the record what Greg specifically said, which was, "Agree with Justine. Do-not-require makes sense as a track record, and it's preferable to have a false positive. That comment period [inaudible] really imperative." That certainly fits with my belts-and-braces approach to many things, if I'm giving my personal opinion. So thanks for that, Greg and Justine.

So everyone feels comfortable within the implementation guidance, suggesting that there's a design to have an opt-in option of the notified [inaudible] of public comment periods at the commencement [and the] public comment period where an application change request has been made that requires it?

Excellent. Let's move on to the next one then. Just highlight that for me—thanks, Julie—so everyone knows what we're talking about. Terrific. "ICANN Org should identify in the Applicant Guidebook the types of changes that will require reevaluation of some or all of the application and which do not require reevaluation." I mangled that reading. I do apologize. Sorry. Is Steve doing it? Fine. Thank you, Steve. I'm so used to talking to Julie. Thank you, Steve. I'll make sure [inaudible].

Welcome, Maxim. Great to have you on board. Just opening a queue on any comments on this piece of implementation guidance for Rationale 1. That is that ICANN Org should identify in the Application Guidebook types of changes that will require reevaluation of some or all of the application and which do not require any reevaluation. To go back to John's comment, [inaudible] as we possibly can.

Not seeing anyone wish to jump in on that, let's now move, Steve, to our [next] part, which is Recommendation # Yet to Be Determined, Rationale 2. This is "The addition of registry voluntary commitments must require public comment." I very much doubt, after all the conversation that we've had about RVCs, that anybody is going to objection to this rationale, but, if you do so, let's know now or forever—well, not forever, but certainly hold your peace for this call.

Great. Let's move to the following rationale, which is already highlighted, with a note from staff. Here staff would like us to ensure that we discuss the following. Thank you very much. You jumped before I could ask you to. Let me have a look at the rest of it. Fantastic. Because this is quite a long one. Let's first of all read the text in the document which is highlighted in yellow, and then we'll go over what has been suggested [that] working group provide clarity on. The working group recommends allowing application changes to support the [inaudible] of contention sets through business combinations or other forms of joint ventures." This is a very new approach. "In the event of such a combination or joint venture, ICANN Org may require that reevaluation is needed to ensure that the new combined venture or entity still meets the requirements of the program. The applicant should be responsible for additional material costs incurred by ICANN due to reevaluation. And the application could be subject to delays."

So that's where we are with our current reevaluation. This is what we're particularly being asked to clarify in our deliberations now. [inaudible] from staff. Does the working group want to provide any additional guidance as requested by ICANN Org on this proposal with respect to procedures for processing applications? That was the reference there to "See ICANN Org questions in response to the topic [auctions]." It's being quoted there.

I'll just briefly go over it so we know what it was. "Since joint ventures would put the application under the ownership and bring into question how this change should be addressed vis-à-vis other program processes, such as applicant [inaudible], GAC early warning, GAC [inaudible] advice, and objection filing. For

example, suppose the GAC didn't object to an application for a particular string because of who the applicant is. But, if the applicant had been different, they might have objected. How would the new procedure being considered by the PDP Working Group address this? It would be helpful if the PDP Working Group could consider and provide clarification on this." It's a significantly decent ask.

Jeff is back, so he will probably pick up after we open the queue now and ask for your discussions and deliberations on this important addition question to Rationale 3. The queue is open. Who would like to jump in?

Go ahead, Jeff. You're jumping in.

JEFF NEUMAN: Thanks, Cheryl, for taking over. That was kind of disgusting: what I had to clean up. Anyway, the pleasures of having a pet. That pet decided to get into our dinner and jump up on the table, and she's paid for it, I guess, now.

Anyway, this is the part of the recommendations that does address what we were talking about before but not in as great a detail as I think we need to have it, meaning you're responding to an objection or GAC early warnings or whatnot to cure any problems that you might have. But the question is a good one in the comment because what we don't mention here is more detail about opening up for objections and doing other things that might need to be done if we allow for that kind of joint venture and it materially changes what was in one or both of the original

applications, if you're combining applications. So this is an important one, and I think the questions from staff are really good on this one and something we should be considering.

Let's see. No one else has got comments. I think, perhaps, when we go back and make some of the more explicit changes that we were talking about earlier, some of this might come out. Maybe we should schedule a little time for follow-up after we put these back in.

Anne states, "There are items that are not just implementation guidance on application change requests. Some of these are recommendations from public comment"—right—"as RVCs, as stated above." Correct.

I think perhaps, when we put some of the more explicit things in there, this recommendation might be reworked because this is just really kind of a mixture of a lot of different concepts and therefore is a little bit difficult in light of what we just decided to do.

While people are thinking about that, one of the other items that we really need to talk about, which we do not have any recommendations on and which is in Section C, is the ability to change a string as a change request. Now, we've ruled out the ability to change your string for anything other than a very narrow circumstance. So this is not the ability to change strings at your whim. What we're really talking about here is the ability to change your string as a result of either an objection or changing it as a result of some sort of settlement with another string that you might be in contention with.

I'll go into a little bit more detail on each one. In the first case, let's say the governments issue advice on a company name for whatever reason, but they say, if you add the word "company" at the end of the string, that should solve all of their issues. Let's say you think that that's a good idea and want to do it. So this would be a narrow circumstance where, as the result of an objection, you want to change your string that it becomes acceptable to the party that was objecting. Again, that would have to go out for public comment, of course, and is also subject to the rule that we've been discussing for a while: that it doesn't put you into another contention set. So that was one area.

The second area, which is a little bit more complicated, where you're not necessarily responding to an objection: let's say you have two or more applicants that apply for the same string but decide, because they're companies that both provide those services, that, if one of the entities changes the string to include the word "company" or include a descriptive term about their business. The example we talked about was SAS, where you had in this last round SAS the airline and SAS a software application company both apply for SAS. Both had valid trademarks around the world in their marks for different classes of goods and services. If it was an option to them, they may have done something like SAS Air if the airline could change it, and the software company could change to something like SAS Software, or something like that. That was not an option that was available to them but was an option which we have discussed as being one that could be beneficial and not one that would raise too many eyebrows. The concern people had is, of course, the potential gaming for this. So, for that, we would need to make sure that we

narrowly define the circumstances in which a change of string would be allowed.

Sorry for the really long explanation, but I just wanted to get us back into the framework of what we were thinking about as a group when we were talking about change of string: that we were not talking about, just for any reason, the changing of a string.

Anne, go ahead. If you can cover your comment in the chat as well. Thank you.

ANNE AIKMAN-SCALESE: Yeah, Jeff. I guess it's earlier in the west. So I don't meant to totally dominate the conversation, but there is a need for public comment when there's a change in the string. That was one of the areas where we talked about [in] deliberations: there should be public comment. Maybe you just confirmed that. I'm not sure.

Secondly, there's a question raised there about whether that change in the string should raise a new objection possibility. I get the hypo—your SAS hypo—which is that one of the companies says, "Well, I'm going to change to SAS Software, and that should clear things up." But suppose your trademark is SAF (as in Frank) Software, and you didn't really object to the SAS application but you object to SAS Software because it's too close to SAF Software. Does a change in the string that's agreed [to] like that trigger the ability for a new objection process?

JEFF NEUMAN: Sorry. I was talking on mute. If you look at the last paragraph of Section C, the more detailed proposal that was discussed—the narrow one—was one from brand TLDs to change the applied-for string as a result of a contention set, where A) the change adds a descriptive word to the string, B) the descriptive word is in the description of goods and services of the trademark registration, C) such change does not create a new contention set or expand an existing set, and D)—this is the part that you were just talking about—the change triggers a new public comment period and opportunity for objection. I think, when we were having that discussion, this one came closest to the one that had the most level of support within the group. If we wanted to put this as a recommendation, then your concept of objection would be in there.

Greg, go ahead.

GREG SHATAN: Thanks. Had to remember which device had my voice on it. I think this is a very rational suggestion, and I'm a little surprised that we were not able to come up with any recommendation around this: to tell one or both companies, basically, "So sad. Too bad. You have no way out," after they've applied with the idea of setting up. Again, I think it makes more sense with dot-brands due to circumstances, whether it's two SASes or two Deltas or two Uniteds or pick your favorite example. There should be the ability to coexist and not just squander $185,000 and maybe get some money back but have spent hundreds of thousands of dollars and the like with nothing at all to show for it. That would probably leave a pretty bad taste in the mouth of a company that's not necessarily

committed to the idea that a TLD is the only way to create a web presence.

I think, for other cases, I could see issues where there could be some gaming. They basically put an application in that you know will have multiple strings. Anybody could have put in for a .web or .app the first time around and be assured that they were not going to be alone. Then, to be able to switch that to—I don't know—weblog or the like, just by getting your nose in the tent …

So I think that there needs to be a review process in addition to public comment and criteria for implementation. I think that this is the kind of thing that should be managed appropriately because I think it creates a real whole for good-faith applicants that could choose one or another variation and happen to choose one that's also been chosen by another company. They're perfectly happy to take one of their other variations and go forward with it, but they have no option, other than applying again several years later, which is a very frustrating option, again, to companies that are not completely wedded to this as the greatest thing on earth. They're not going to be back. Or, if they are, they are going to be just back and pissed off. Thanks.

JEFF NEUMAN: Thanks, Greg. I think, Greg, that that last paragraph—the proposal there—like I said, we did have some strong support on. I think part of the reason it didn't make a recommendation yet is we just didn't finish the discussion, which is why we all highlighted this entire section.

I'm just going from the other chat comments: it wasn't just the ALAC but others that said, if we allowed a string change, there needed to be some tight guardrails. I don't think anyone disagrees with that at all. I think, if we went with this last paragraph as a proposal, that this certainly does have enough guardrails that you'd be assured it was not just anybody seeking a change from, like, a .web to a .weblog or a generic one.

I guess that the only question I have—there sounds like there's some support for putting it as a draft proposal and then, of course, asking a question about it to see if the community would agree—is that this is only limited to dot-brands, which may be fine because they're required to have a trademark and, because they're required to have a trademark, they're also required to have a description of goods and services, so it's much easier to verify that the string they're changing it to would be in accordance with their registration. So it's that limited. But I guess the question is, is that too limited? Should there be other types or other situations where we could envision a change? So let me throw that out there.

Anne, go ahead.

ANNE AIKMAN-SCALESE: I would agree with you, Jeff, that it doesn't have to be that limited, as long as the guardrails are there. There could be other objections that could be triggered, like community objections, but, if the guardrails are there, I don't see why the permitted change would be limited to brands. Thanks.

JEFF NEUMAN: Thanks, Anne, although one of the guardrails was the fact that you had two trademark owners and they're just changing that to be in line with their services. So what are the other guardrails that you think should be applied? I'm assuming you're not—well, no, I shouldn't assume anything, actually. So what other guardrails, other than that it's subject to a public comment period and the ability to object?

ANNE AIKMAN-SCALESE: I think those are some very important guardrails: the public comment and the ability to object. I don't think that we have to say anything … I suppose, if you end up with something where a descriptive word is used and the applicant has a closed TLD, that could trigger a problem if they're using—I don't know—a descriptive word in a way that folks consider [inaudible]. It's hard to think, but I think the two most important guardrails are the public comment and the objection. And no string contention set is important, too, right? I mean, who determines whether it moves into a contention set or not? Is that an exact match, or is that string confusion? That's an objection.

JEFF NEUMAN: We don't specify here exact match. I think it would be if [it is] subject to string similarity evaluation. Let's say Unicorn and Unicom, for example, decided that they understood that they might be confusingly similar in terms of how they look, but let say one—the Unicorn, I think, was a school, if I remember correctly—Unicorn, says, "Well let's change our to Unicorn School," and Unicom said, "Well, we're a telco, so let's do Unicorn Tel," or

something like that. That would then take it out of the string confusion. So I'm not sure it necessarily needs to be an exact match, but it could be strings that are considered similar.

I've asked Steve if he could pull up the because Justine had said to look at the ALAC comment on guardrails … So let's if we can pull that up. I just don't remember that—oh, my gosh. That green really makes it really tough to read, so Steve is doing it in black there.

So, as Steve is doing that, Justine has posted a comment. "It can't cause any [inclusion] risk. The new string not closely related to original string. New string can't be exact match and IDN variant of. A new string cannot be an IDN variant of a delegated string."

Okay. I think those are some additional … Well, we already have that you can't put it into another contention set.

Anne, go ahead.

ANNE AIKMAN-SCALESE: I'm sorry, Jeff. I can't get my hand to go down. I don't know why it's up.

JEFF NEUMAN: Okay.

ANNE AIKMAN-SCALESE: I can't get it to lower. I'll try closing out and opening up again.

JEFF NEUMAN: No, you got it. It's down.

ANNE AIKMAN-SCALESE: [inaudible]. Thanks.

JEFF NEUMAN: Great. Obviously, in looking at what Justine has posted, we could not have the new proposed strings be in a contention set. They can't be a variant. They need to be subject to name collision review. It needs to be subject to objection and public comment. So I think we're in line there.

I guess the basic question is—it sounds like, at least on this call, there's support for including a recommendation on this (narrow circumstance)—does it have to be this narrow to only brand TLDs? I remember, although Kathy is not on the call, Kathy was definitely of the opinion that it needed to be very narrow, and I think she said she did support this narrow version here that was limited to brand TLDs. But I don't know if that would expand to any other circumstance.

So we're going to include this as a draft recommendation: in these narrow circumstances. We will ask a question on support for this proposal, of course, and then also ask the question of whether there are other circumstances which they could envision this string-changing concept being allowed and if there are any additional guardrails if they do.

Maxim has some other things in there about IDN variants, which I think are important. I think we can summarize, Maxim, the name collision and IDN variants as that it still needs to comply with all of the other rules of the program. So it can't be just a plural and singular, for example. So you can't just have one entity say, "Well, I'll take the plural. You take the singular," not that I think that would actually come up. I guess the rule basically is that you have to still be in compliance with all of the other rules when you change your string or propose the changing of your string. I'm afraid, if we specify all the particular rules on here, that we may miss some and, therefore, because we don't list it explicitly, some may assume that it's not something they need to comply with. So, if there's a general way to refer to all of that, I think that's what we should do.

What about the notion of changing—I guess the same thing could apply for objections—a string as a settlement to objections with the same guardrails of triggering a new public comment period, a new objection period, and … sorry. I forget the other one. Oh: Doesn't place it another contention set.

Maxim is saying, "I hope this report is less than 500 pages." We're going to try.

Donna is saying, "We're making this very complicated." Donna, if all we say that this is the proposal and they just need to comply with the other rules of the program, I'm not sure this is not difficult.

Karen, go ahead.

KAREN LENTZ: Thanks, Jeff. I just wanted to note on this point about the brand TLDs—changing the strings—that this would also potentially change the criteria used for a Spec 13. One of the things that's looked at there is whether the string is an exact match of the trademark. So that would be something we would probably look at it if we were asked to implement this. I just wanted to raise that for awareness. Thanks.

JEFF NEUMAN: Yeah, certainly, Karen: they would have to first qualify to be a brand TLD application, which would require you to look at all of those features, and only in that circumstance would they be granted that ability to change that string. Then, yes, then, in this circumstance, that new string would also need to be considered a brand TLD, which—you're right—would be a very narrow exception to the exact match.

KAREN LENTZ: Got it. Thank you.

JEFF NEUMAN: Thanks, Karen. It's a good point. Greg, go ahead.

GREG SHATAN: Thanks. I'm of two minds on this. I think the common sense rule is what you stated—that they should stay a brand TLD—but, on the other hand, then we're creating a certain unfairness with companies whose exact match is not available for any number of

reasons and would choose to perhaps put a generic term or an entity-type identifier after it. A good example is GE, since .ge is Georgia and also a two-letter—so for both reasons—and oddly enough does not have a trademark registration for anything really good other than that. I believe they wanted to do something like .gecompany. They were told that that was all well and good but that could not ever be considered a dot-brand and they would have to apply for an exemption and create the quasi-dot-brand.

So I'm not sure, if we tolerate the idea of quasi-dot-brands, why the one that changes wouldn't be, in essence, kicked out of dot-brand, or, if we are going to create the idea that you can have a dot-brand that isn't an exact match under certain narrow circumstances relating to the string itself, that you could open that up further. I hate to open a new can of worms and don't want to sink this particular thing which I think is a fix, but it does create a bit of an oddity that needs to be considered. So maybe, in ten years from now, when this group reconvenes, we can consider how to deal with non-exact-match dot-brands where [they follow] circumstances along the line of a semi-hypothetical that I mentioned. Thanks.

JEFF NEUMAN: Thanks, Greg. Well, at any point of time, a PDP could always be commissioned or initiated to discuss broadening the definition of brands, but that's not what we're doing. This is really so narrow. This would put you in a contention set. So you have to apply for your brand originally. That would then have to be in a contention set. Only then, where the parties try to resolve their contention and can't, and then one or both decide to change their string to

something that's in their description … I think it's so narrow that it's not really opening up the can of worms. But, if people feel like it's opening up a can of worms, there could still be a Spec 9 exempt from the code of conduct. I think the only thing they don't get the benefit of that point is some of the provisions that the string can't be redelegated until after a cooling-off period. There's very few things that a brand TLD gets that a code-of-conduct-exempt registry wouldn't get. So I don't think this is a huge issue, but, if it is, we can always just say it could be eligible for a code-of-conduct exemption.

GREG SHATAN: Jeff, if I could respond briefly, I did not suggest that this suggestion was a can of worms. I said that I was opening up a can of worms by suggesting that perhaps non-exact-match dot-brands should be considered more broadly and/or that this company should be kicked out of the dot-brand club. I think, frankly, in the interest of keeping this narrow, allowing them to continue as a dot-brand and creating no other certain circumstances under which this would happen is probably the best thing for this decade. Thanks.

JEFF NEUMAN: "For this decade." Thanks, Greg. Thank you for clarifying that. Great.

I think that brings us to the end of this section, which is good, because we said we would do an Any Other Business item on the letter that we got from the GAC. I've since found out, because we

had just gotten it on the day of our last call, that the EPDP got a similar letter about wanting to extend the EPDP timelines because of the COVID-19 crisis that we're in, albeit there are some things different things in the letter, like how the letter to us said that it was their view that we had brought the timeline in from what they expected, which was the GNSO change request.

Anne had a comment on this, saying that she wanted to discuss this further and I think, in her e-mail, had suggested that we might want to think of doing an initial draft final report, followed by a supplemental draft final report, to give the GAC more time. I think that would be, at the end of the day, a little bit more confusing, but go ahead, Anne.

ANNE AIKMAN-SCALESE: Jeff, that was not what I was suggesting at all. My suggestion was that we would offer a compromise based on going ahead with your timeline for the final report other than in relation to the [five] issues that were reviewed with the GAC and ICANN[87]and that we would issue a supplemental final report on those five issues only, trying to meet the GAC in a cooperative manner because I think it's, in the long run, better for this working group and better for getting to a next round because I think, in particular, if we don't involve them more in ICANN68 virtual meetings with those five issues before we issue a supplemental final report, it will come back to haunt us later.

So my suggestion was not what you said. My suggestion was to issue your final report on time, except for those five issues, and issue a supplemental final report after ICANN68. Thanks.

JEFF NEUMAN: Thanks, Anne. Okay, sorry. I misinterpreted that. I think Cheryl and I discussed the GAC letter during our leadership meeting—no. It was actually subsequent to that. At this point, I'm not sure that we're going to have … Well, let me read Heather's comment before I give my point here. "To Anne's point, we're going to inevitably have issues with GAC participation in remote meetings. APAC was completely unable to participate in Cancun. Which GAC region will be unable to participate in ICANN68?"

I think, no matter what we do, people are always going to ask for more time. I think the GAC has given us excellent feedback so far, even on those five issues—enough for us to take back the issues and discuss. I don't think we should decide now that we should create this supplemental report on those five issues or on any issues. I think we're not there yet. I'm not of that view at this point. I think it's just a little early to tell. If it's being another virtual meeting, what's to stop them from saying that they need to meet in person, so now we need to wait until face-to-face meeting in Hamburg if that happens? And, if that doesn't happen, is it the face-to-face—wherever the first one is—next year?

I think we're on a path to get this draft final report out. Yes, we're moving a little bit quicker than the change request we submitted to the GNSO Council, which is, I think, a good thing. Also, the schedule we put for the GNSO Council—it's in the document itself—was not intended to be the best-case scenario. This was intended to be the worst-case to enable us not to have to go back to the GNSO to ask for another extension. So why the GAC was relying on the GNSO change request is something I'm not 100%

sure of. So I think this would be an ongoing subject that we should talk about.

Cheryl, please go ahead.

CHERYL LANGDON-ORR: Thanks, Jeff. Yeah, what you and I have discussed I still am comfortable with, but—here comes the "but"—I do see something attractive in what Anne has proposed, and that is the opportunity to perhaps say to the GAC that, whilst our end-of-year final worst-case scenario dates are not/will not/cannot change—that's it; we're not putting in another change request to the GNSO Council, or at least, if you're going to, it'll be over my cold, rotting corpse—there may be an opportunity for us to say, "Dear GAC, on these five particular issues, we will accept input from you, in addition to the fulsome and detailed interaction we've had on these matters in the past—blah, blah, blah, blah—that have allowed us to put what we think is reasonably robust and strong proposals together—blah, blah, blah, blah—and that we will take up until (find another data after 68) input for consideration." We may have a bit of wiggle room. That's all. So we do need to think about it more. But I must say there was a part of what you said that I thought, "Ooh, okay," about I got nervous when you started to say "supplemental things," but I got comforted by the "maybe giving them a little warm and fuzzy wiggle room, as long as it's not interfering with our final drop-dead dates."

You've got Justine now.

JEFF NEUMAN: Thanks, Cheryl. Of course, we'll take their input. There is a public comment period. We could have that be a little longer than we initially had scheduled it for. There's lots of things we can do. Of course, we'll accept their—not just accept but welcome—participation during the public comment period. So that, of course, is always an option.

Justine, go ahead.

JUSTINE CHEW: Thank you, Jeff. Sorry. I had trouble unmuting. I think what's confusing to me is I'm having a look at the Google Sheet workplan and, as far as I see, the public comment process is still slated for the 23rd of July, unless I'm mistaken, unless that's being pushed up. I did ask the question last time. Jeff, I think you said that we'll look at the possibility of moving the public comment period forward. So I don't see it reflected in the workplan, which is why I'm asking the question again now.

So, assuming that the public comment period stays opening on the 23rd of July, is there any reason why we can't delay finalizing the draft report until after ICANN68? I think that's something that I would seek clarification on. Thank you.

JEFF NEUMAN: Thanks, Justine. We were supposed to move those dates up. The new goal was getting it out before ICANN68. But, again, these are all subject to change based on where we are on all of these topics. These are the topics and the order in which we are going to discuss the topics. That's the most important part of this

workplan. As we get closer to dates, we may change the dates in which these topics are discussed by moving it earlier, but we don't change the order.

For example, we have application change requests for the 13th. We're obviously doing that now. We have accountability mechanisms for the 16th. If we don't get done with accountability mechanisms, we may bleed that over into the 20th. So things may move back dates.

I think the most important dates and topics are really from here through the next month or so. After that, it's a lot of [PVDs] because we need to see where we are. But, at some point, we're going to be done with all of these topics and we don't really need a month to finalize this report for public comment. We may not need a month. We may have everything we need and not need that much of a buffer.

So I think it's really just going to depend on where we end up on all of these things, but we will move up the date of the finalize-and-report for public comment. That needs to get moved up. So it is not contemplated as late as July 20th or 23rd.

Cheryl, go ahead—I think this is a new hand—and then Anne.

CHERYL LANGDON-ORR: Thanks very much. I just wanted to point out that, when we're talking about moving it up, there's always going to be the however-long-some-of-these-topics-take as a variable here. But, in the ideal world, with the current run, as I said in chat, we were planning on being able to have the report out for public comment

pre-68 to allow facilitated and fulsome discussions and interactions during 68 for those parts of the organization that need that sort of thing. In other words, that would actually benefit the GAC. So we are not just powering on for the sake of powering on. We are thinking about the consequences, but I do think there's the potential for a little bit of least trying for some win-wins here on how we approach this particular request—no changing of the end date at all.

Jeff, you might be on mute. We've got Anne next.

JEFF NEUMAN: [inaudible] Thanks, Cheryl. Yeah. Anne, please go ahead.

ANNE AIKMAN-SCALESE: I think we need to underline that there's a difference between the opportunity for public comment and the opportunity to participate more fully in the deliberations of the working group.

One of our organizational effectiveness goals of ICANN just has to be resolving issues before they get to the point of formal consensus advice. For that reason, I would like to urge leadership to reconsider, as Cheryl suggested, how we might get to the point—I think this is what Cheryl suggested—that, at least on those five very important issues, we could enable some GAC input in ICANN68 that is not just in the nature of public comment on the final report because I think that absolutely no to their letter is not a good idea in terms of organizational effectiveness. Thanks.

CHERYL LANGDON-ORR: I hear what you say, but I just want to make clear to you and everyone else that Jeff and I did almost double the amount—actually, we did more—time, just Jeff and I, in the virtual meeting in ICANN67 with the Government Advisory Committee on these topics that were on our agenda anyway in just solid meetings and making ourselves available with them. We literally did, I think—what was it? Was it two more hours with the GAC than we actually spent in the PDP face-to-face meetings? So it's not like we have not bent over backwards. So let's be clear we're not being uncooperative. Far from it. We're being extremely, outstandingly cooperative and helpful. And that's not to count all the other meetings Jeff and I have gone to as well.

But, that being said, I think, yeah, with some wiggle room on these five topics on looking at how we [inaudible] respond to their letter in a different way.

JEFF NEUMAN: Thanks, Anne. Cheryl is absolutely right. We [spent] at least 13 or 14 ICANN meetings with them [inaudible] a lot of participation, but there's always more we can do. And there is more that we will do.

Justine says, "If we're contemplating running out of time, I would love it if we can consider dropping down to one call per week." I think we've got some good momentum. I'm afraid dropping to one call a week is not going to work. It'll, I think, result in us going backwards. As far as the two-hour marathon, let's see what we can get done with accountability mechanisms. It's really dependent on if we can get people really with the spirit of compromise and doing the work. So far it's been great. I think

people are doing that. But there may become subjects that are coming up that we might not have that ability for. So we have some pretty meaty subjects coming up.

Steve wants to speak. Go ahead, Steve.

STEVE CHAN: Thanks, Jeff. I'm certainly cognizant that we're over time, so I'll keep it very brief.

The first point is that, in our materials and slides for ICANN67, we tried to make a point of drawing a distinction in the slides that said that the timeline depicted was, as Jeff said, more like a worst-case scenario, which in effect means that some of the milestones can actually be earlier than anticipated.

So that point was raised, but, that said, there's probably still an opportunity for some outreach with the GAC. Because of the emphasis within the GNSO on, I guess, more achievable timelines, there's always, I think, going to be more opportunity to actually [exceed] your timelines, which then means that some of the expectations for when milestones are going to be achieved is actually earlier than anticipated.

So, I think, related to what Jeff as saying in terms of things that we can do—it's not maybe specific to this working group—that specific outreach from the council to the GAC might be warranted. Just to note that, with this emphasis on more achievable timelines, it means that we might be actual be able to meet timelines, and milestones get hit earlier, not only for this effort but future efforts.

Then they'll have a little more, I guess, better expectations that things can change versus workplans. Thanks.

JEFF NEUMAN: Thanks, Steve. We are very much over time. I appreciate everyone who stayed on the call so far. This is not done by any means. This is not decided at this point, but I do think we need to see what progress we make in the next few weeks and then reassess at that point. I think it's too early to do anything else other than to just keep on working on, keep our heads down, and keep going.

Anne, all your points are well-taken.

Can someone put in the time for the next call? It is scheduled for 120 minutes, which is a little bit longer of a call, but it is a pretty big subject on accountability mechanisms. We are talking mostly about the creation of a completely new appeals and challenge process. The materials should be out. If not, it'll be out by tomorrow, but I think it's already out. Please do review the materials because that will help the calls go more efficiently so we don't have to cover things that people know will be covered later on in the call.

All right. April 16th, 2020, at 20:00 UTC is the next call. Thanks, everyone, for staying over. I really appreciate it. I think we made some great process. Thanks, everyone.

[END OF TRANSCRIPTION]