
ICANN Transcription
GNSO New gTLD Subsequent Procedures Working Group
Thursday, 14 May 2020 at 20:00 UTC

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ANDREA GLANDON: Good morning, good afternoon, and good evening. Welcome to the New gTLD Subsequent Procedures PDP Working Group call being held on Thursday, the 14th of May 2020 at 20:00 UTC.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you're 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 name before speaking for transcription purposes, and to please keep your phones and microphones on mute when not speaking to avoid any background noise. As a reminder, those who take part in ICANN multistakeholder process are to comply with the expected standards of behavior. With this, I'll turn it over to Jeff Neuman. Please begin.

JEFF NEUMAN: Thank you, Andrea. I'm going to first ask because you were coming in and out a little bit for me but I just was wondering if it's just me that's happening to. So if someone on the chat could just

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say yes or no just so I can know and make sure you can hear me okay. But I'll assume that you all can hear me because nobody's –

CHRISTOPHER WILKINSON: I can hear you, Jeff, from the depths of Belgium countryside so there's a chance that you'd be heard elsewhere in the world.

JEFF NEUMAN: Thank you. I'm calling from the depths of my basement. Thank you, Christopher. Thanks, everyone. Okay, if you guys can hear me then let's get started.

Today, just a reminder, we have a 120-minute, 2-hour call scheduled if we can make some progress, which is good. Before we get talking about closed generics, which is the topic of the day, let me just see if there are any updates to any Statements of Interest or anything else to report to the group. Okay, I'm not seeing any hands or anything in the chat.

Actually, while we're going to that link, which I'm sure someone will put into the chat, let me just remind everyone that today is the deadline for turning in comments on package 3 for the draft final report. I note that we have received a few today already, but please, if you do have any of those comments, please get that in today. Also we should be having package 4 ready to go out by early next week. We're shooting for Monday, if possible. We think we're going to have a total of six packages of documents. In theory, we probably could've done five but we're trying not to put

too much in any individual package. So look out for that early next week.

Okay, with that said, let's move on to the topic of closed generics. For this, it's a relatively short recommendation section and it's pretty unique in terms of most of our sections. In fact, I think we've only across the no agreement one time before and actually now we do have a proposal for that last section where we had no agreement, which I think would be whether internationalized domain name should receive some sort of priority in application processing. I think that was the only other place where we had no agreement but we may get to a compromised position on that, and so I'm hoping that just like we were able in theory to come to some sort of proposal or at least be able to discuss it and get some agreement on the e-mail list on that topic, we may be able to make some progress on this topic. But at this point, option anything changing the Leadership team does not believe that we have any agreement one way or the other as to whether closed generics should be allowed or not. Specifically what we say here is that we note that "The 2012 round of the New gTLD Program, the decision was made by the ICANN Board to effectively ban exclusive use generic applications. It is the understanding of the working group that the ICANN Board intended that its decision to effectively ban closed generics applied only to the 2012 round and that it wanted the GNSO to engage in policy discussions regarding the treatment of such strings in subsequent rounds. Although the working group has had numerous discussions about this topic, and received extensive comments from the community, the working group was not able to agree as to how to treat these applications in subsequent rounds."

So absent making progress to this in today's call, this is what we have. You'll notice that while the recommendation section is fairly short, the deliberation section is much more lengthy. I wanted to note also that it seems like there's a person or two that may have added some text since we've sent it around to the group, so we may find some areas where there's some added text that was not intended to be added at least at the group level before this discussion. When we come across that, we'll point it out.

I want to also note that this topic has been extensively discussed by the GAC, the Government Advisory Committee, on a number of occasions. If you recall it was the GAC that brought a lot of attention to this matter by issuing advice, and that advice didn't ban exclusive generics or closed generics. Rather what it said was that an exclusive generic should serve a public interest goal or it actually says, "For strings representing generic terms, exclusive registry access should serve a public interest goal." That was from their Beijing Communiqué back in 2013.

So all of those background, the governments also have been discussing this topic. We discussed it at the last virtual ICANN meeting and since the GAC has come back with some additional input in their document that they sent over to us – I think it was beginning this week. It seems like a long week. I think it was the beginning of this week or it might have actually been late last week. So hopefully you've had a chance to read that. All in all, basically again it was an advice that most of the GAC members seem to support their initial advice on that exclusive registry access should support and should serve as a public interest goal,

although not much in a way of giving us concrete clarification as to what it means to serve a public policy goal.

We added in here a sentence or have highlighted it which says, “There also continue to be strongly different and strongly-held views on the alleged harms and merits of closed generics. In reviewing public comments on the initial report and continuing its deliberations, the working group revisited the alleged harms and merits summarized in the initial report, which will not be repeated here.” We probably should put a link to that, though, so in case anyone does want to see it, they can.

We’ve had extensive discussion in this group as to what would serve as the default if we’re unable to agree, but because of the unique circumstances of how this topic got to us, I don’t think that there’s clarity from us, the Leadership team or from anyone else as to what would be considered default. And frankly, I don’t think it’s useful for us to spend any time discussing what the default for this particular issue would be because ultimately this issue is going to go to the Board to make a decision based on input that we are providing – well, GNSO is providing and other groups.

If we can scroll down a little bit. In the initial report, just as a reminder, we presented four particular options that we could recommend. And of course, there’s probably an infinite number of hybrids of these options and little deviations. But essentially, Options 1 and 4 were the extremes. We either say it should never be allowed, which would be Option 1 or Option 4 saying it should always be allowed. I think that certainly no one – I shouldn’t say no one – very few comments have supported Option 4. It seems like most GAC members fell between Option 2 and 3. I would say

GAC members supported more Option 2 than there were that supported Option 3, but certainly there were some that believed that there could be like a code of conduct or something that could be used and to allow closed generics. But Option 2, because that was the GAC advice, it seemed to be supported by the most amount of GAC members that provided input.

So again, we've received a lot of divergent views on these topics. Some believed that it should never be allowed, some believed that it should be allowed always, but at the end of the day, our goal is to see if we can get some sort of concrete recommendation on whether we could come up with a way have applicants or allow closed generics if they can serve a public interest goal.

If we scroll down to the next page, this is just a little bit more about the options, but I want to focus on – sorry, just scroll down a little bit more – because you can read a lot of this stuff from – yeah, if you can stop there. So in going back through the materials and the e-mails on this, really this is credit to Anne, Anne supplied a list of factors that could go into the framework for evaluating whether a string could serve a public interest goal. I think there are two parts in – I think you guys are seeing the same color as I am at least on the screen and e-mail was in what we put that in the pinkish-reddish color, and then we're trying to incorporate other questions that were asked in some other e-mails, and so those are green. But essentially, this really has come from Anne in one of her e-mails and I think it does provide a helpful way of at least trying to get an applicant to answer why it believes its application could or should be considered serving a public interest goal. So it seemed like a good place to start. Alan is saying, "My

real pink is my purple.” I’m looking at the Zoom screen. So even so ... either way, the bulk of it is from Anne and only two small parts are from the Leadership team based on some other comments. So it would be great if we can just read through this and see if this helps frame the issue and potentially could frame the basis for a recommendation.

So what Anne did – I’m looking to see if Anne is on the call. I’m hoping Anne is. Yes, Anne is on the call. Good. So if I’m misstating anything here, Anne, or if you want to jump in anyway, please feel free. But this is based on the discussions that we’ve had. Sorry, if we can scroll up. Sorry. Keep it there. Yeah.

The factors that Anne had put together include – one we added as a number one, which is why is the applicant applying for the selected string? Why is it necessary to have that particular string through the registry? Two, does the proposed closed registry serve a public good? Number three, is the proposed mission and purpose of the registry innovative in nature? The next one is what is the likely effect on competition of awarding the proposed closed registry for the same or similar goods and/or services? Is it minimal or is it vast? Another way to think about it is why must this registry be closed? The fifth element factor: is there more than one proposed closed registry application for the same string? And if so, how could this be evaluated for some sort of preference, some sort of scoring system? The sixth one was, should there be restrictions on resale of the proposed closed registry? Because there were some discussions of even if this current registry agrees to some sort of what’s called PICs or whatever you want to call it, why we need to make sure that it’s binding on any subsequent

operators. Then number seven is, what specific public interest commitments are proposed by a registry and how can this be effectively monitored and enforced? Would additional fees be due from such a registry in order to pay for enforcement? An example is ICANN Compliance staff set up for this purpose.

Anne, I don't know if you want to add anything. I know this is a while ago probably that you sent this e-mail. We did and go and got through the materials, find this fairly helpful. So I'll give you an opportunity if you want to jump in. Sorry to put you on the spot.

ANNE AIKMAN-SCALESE: Yes. Thanks. I just probably would wonder how we might get to where this evaluation might be done. Factors of an applicant might assert. Then if you think about the fact that the Board probably doesn't want to be in a position itself of judging the public interest nature of the closed generic, at least not when you think about the public interest framework seems to refer back to the policy process I think. I'm not so sure. I don't know if Avri is on the call. So maybe that's a little bit later in the discussion but how an application might be evaluated would still be an open question I think.

JEFF NEUMAN: Yeah. Okay. Thanks, Anne. So let's see if we can get some support on this or a good amount of support on factors. Then I think the next logical question is what you raised, which is who would do the evaluation and how and all that stuff. So if we get past this, then I think we'll absolutely get to your issue.

I want to try to get a little bit higher level at this point to see if first if we support coming up with a set of factors and then get more specific into the details of whether these are the appropriate factors, whether there's additional ones or modified ones. I see there are some comments already in the chat on some specific elements, which I think is good. I guess my question is, before we get into those specifics, whether we as a group think this is a path worth going down. We'd hate to spend an hour on this call going through factors if people at the end of the day don't believe that there are any factors that should be considered and that it should always be banned. So let's try the high level and then understood that you have comments on specific elements which I'm already seeing in the chat. So, Alan, go ahead, then Christopher and Paul.

ALAN GREENBERG:

Thank you very much. I was going to point out on this particular one. Let me tell you why I raised my hand before we go to this. You didn't stop and ask for questions as you went over the whole rest of the paper until we got to this. There are extensive comments in this thing on what the GAC thought. But I think it's important to try to categorize the other groups in addition to the GAC because GAC is not the only one that has had strong feelings on this. So to the extent that we can do and we should give each group the chance to critique what we're saying about them I guess, but I think we really should be trying to categorize who thought what. In some cases, there may be very mixed messages from the same stakeholder group or constituency but if that's the case then say it, but I think we really should not be

taking out the GAC as the only one that we try to characterize what their positions were.

On this particular one, I think at the very least, if we can come up with a list of like this, and I'm not sure this is exactly the right list and I too didn't do my homework so I hadn't looked at it before, I think it will be useful to say, should the Board decide to allow closed generics in certain cases, these are the kinds of issues that might want to be considered. So even if we can't come up with the exact methodology for how to do it, it may well be worth including a list like this in our final report. Thank you.

JEFF NEUMAN:

Thanks, Alan. I'll start with the first one. I think it's a very fair point. I think part of that is I think our fault, the Leadership, because we included all of that in the initial report to the benefit and the harms in our discussions and is pretty lengthy, I think we probably made a mistake in this one – not a mistake but we erred on the side of putting in some of the newer stuff which I think has come more from the GAC than from us. So I do think you're right that we could better reflect the balance, and so we'll go back and think about how we can do that. We didn't intend to make it an exclusive focus on the GAC, but I certainly understand your point. I think it's fair.

On the list point, yeah, I also like your point that because we're not setting the floor to definitive recommendation one way or the other that this kind of alternate – look, if you are going to allow it then this or a list like this is a good way or are good things to consider,

good factors to consider. Again, whether this is the appropriate one or not we'll get to. So thanks, Alan. Christopher?

CHRISTOPHER WILKINSON: Hello. Good evening. Thank you, Jeff. Let me say from the get-go, I am fundamentally against the privatization of the commons and the commons in this respect of the languages. So don't expect me to find you solutions to how on earth to privatize generic words in closed generics. I think that is wrong.

Secondly, the PDP has a policy, which for the sake of argument I don't really agree with, but there is a policy but if there is not a consensus to amend and improve the 2012 situation then the proposals which are not majority accepted to improve and amend the 2012 situation are rejected. The game you're playing here is completely opposed to that policy. And if you continue with this game, frankly, others can play it too. I have a whole range of issues and I think there are several other participants in the Work Track 5 and elsewhere who might feel the same, there's a whole range of issues that have been rejected by the work tracks or the PDP of that because there was not a consensus and therefore we revert to 2012. Okay. But I don't see why I'm being asked to seek a solution for all Anne's imagination and diligence in this matter which might have been useful two years ago. But at this stage in the proceedings, I think it's completely wrong, out of order. You've got a situation in 2012, a Board agreement to oppose closed generics. And as Alan has pointed out, there's plenty of other comments from other Supporting Organizations and Advisory Committees that are opposed. But my bottom line is A) I'm against

and B) if you go ahead with this, my God, you'll find some other things to talk about in the near future. Thank you.

JEFF NEUMAN:

Okay. Thank you, Christopher. I think – and I'll reiterate again, the difference here is that the Board specifically passed the resolution asking the GNSO for our advice or our recommendations on this issue. So this is very different than the rest of the PDP, and the GNSO has made that part of our charter which is to provide recommendations on this particular issue, which is very different than any of the others where we're just engaging in a review of the process and suggesting amendment. So I appreciate your concern. We're just trying to see if there is any potential common ground here that we can provide some helpful guidance to the Board. It may not be possible. It may be, Christopher, that a lot of people agree with you and it should always be banned, and then that's it. But as long as Cheryl and I are chairs, this Leadership team likes to keep trying to see if we can find some middle common compromised ground. Go ahead, Paul.

PAUL MCGRADY:

Thanks. Yes, at a very high level, I think that Anne's factors are helpful. I do think that they are being offered in a scenario here where there are members of the GAC who can see the so-called closed generics moving forward for public policy, if there's a public policy benefit. Other members of the GAC indicating that there may be other reasons to allow closed generics to move forward, there are people in the community who see benefits to possible closed generics, and so I'm glad to see that we're moving beyond

I think a fairly false binary of none or all. So at a very high level support, I think the factors would be really interesting to walk through. Ultimately, I would like to see the factors turn into guardrails rather than an after the fact evaluation because if we're not fairly sure how an application will fare through yet another evaluation process, it's going to be hard to get the predictability for applicants that we need, so I would prefer we talk these through and figure out how to make them guardrails rather than factors for another panel if that's possible. But again, at a very high level, I really support and applaud Anne's effort. Thank you.

JEFF NEUMAN:

Thanks, Paul. I'm going to go to Donna and Kathy. Let me see if there's others. I know there's a bunch of comments, I do want to cover that are on the chat. Okay, Donna, Kathy, and then Alan. Then I'll go to the chat.

DONNA AUSTIN:

Thanks, Jeff. One of the things that occurs to me with this is public interest or public good is an overarching issue that haunts gTLDs as a whole. Maybe one way to unpack this is to think about whether this framework is helpful perhaps to the whole of the program in having specific questions in the application. So you're not making a statement on closed generics one way or the other, but by including these questions, that can help the GAC decide whether they have a problem with the string and it just provides additional information for other TLDs. I understand that we're talking about closed generics in the sense, but it does strike me that public interest, it has a broader context. It doesn't only apply

to closed generics, so I wonder if maybe we could ... and maybe it's something we parked but we're having this conversation about closed generics, but maybe there is broader applicability for this framework and has put on the table. Thanks.

JEFF NEUMAN:

Thanks, Donna. Some of these are more general in nature like #1 but others are very specific as to its closed nature. But I take your point about ICANN's mission is to offer it in the public good for the public benefit. I'm not [inaudible] that quote, so don't tear me apart. Yeah, I take your point. Let me go to Kathy then to Alan and then I'm going to cover some things from the chat because I think there's some good comments. Kathy, go ahead.

KATHY KLEIMAN:

Thanks, Jeff. I thought this wasn't a bad summary at all, especially before all the pink came in. I was surprised to see all of it, so I kind of thought it was an open document for editing. Again without the pink, without the new edits, I think it's not a bad summary of where we are on that. Especially in the first paragraph, I really like to see a link to the Board's resolution so people can read it. And I'd really like to see some inclusion of the Board's reasoning. The word is right, they banned it. They banned closed generics for really, really serious reasons after a really truly global outreach. I think we need along with the GAC Communiqués, we need to talk about the dozens – and I would actually say hundreds – of early warnings that were received on closed generics, but I'll go with dozens as a compromise.

So now getting to this language, I think clearly we need to say some working group members. This is not a working group discussion. This came in late in the day. I thoroughly respect the person who presented it but this should be “some working group members suggested” or even “one working group member suggested factors” – that could be considered. This is one person’s proposal. This is not something we spent a lot of time on. You know I worked closely on closed generics and community objections on these, I think anybody registering their closed generic could answer all these questions in their own interest. What’s missing here is where have you gotten out to your competitors, to your competing organizations. Show me you have their support. So, for example, if we did go with the .disaster, we would need a question. How have you gone out to talk to other international relief organizations? Do they support what you’re doing to the communities that would use .disaster, support that one organization would do at the communities? Then we’d want to see letters from NGOs from countries. Or would they prefer that .disaster be shared with doctors without orders in other groups? I think we’re asking questions here that frankly can be pretty easily answered in one company’s own interest. It’s where they reached out to their competitors and others, how are they serving the larger community. We’re missing those questions. But overall, this is a framework that one wonderful person in the working group has created, but it’s not our framework. Thanks.

JEFF NEUMAN:

Okay. Thanks, Kathy. Yeah, it is true that this particular proposal, these factors were suggested by one person but there were a

number of working group members that submitted different factors and different proposals, so I don't know. It does say, "One working group member suggested using the following specific questions." I do believe the statement is accurate that there were some working group members suggested the factors could be considered in developing a framework. That was clear from a bunch of e-mails and the last discussion.

KATHY KLEIMAN: Jeff, working group members can be interpreted as some or all. I think you have to clarify.

JEFF NEUMAN: Okay. It's some. Sure. Fair enough. Some working group members suggested that factors can be used. I think that's fine. Then maybe even make the one working group a separate paragraph so it's clear that the some weren't necessarily the ones that suggested all of these factors. I think that's fine. As far as the other comments, let me go to Alan and then I do want to cover the chat stuff.

ALAN GREENBERG: Thank you very much. I strongly support what Kathy just said particularly about the competing organizations. No one might question whether the Red Cross as we used in this example is beyond reproach in their earnestness of trying to address disasters. But let's be honest. The various different groups that address disasters are competing with each other for the public's money and government support. So let's not pretend that a single

organization, no matter how good they are, doesn't have vested interests, just as a bookseller or a men's clothing seller might. So I think we have to be really careful here and I strongly support what Kathy said.

I personally believe and I know there are those who don't agree that what the Board did was they banned closed generics and tossed it over to the GNSO to say, "Can you come up with an answer that's better than what we did?" And if our answer is no then I personally believe the default is still closed generics. Obviously, the Board will have to pass judgment on that. But I think it's pretty strong. They banned them, we can't come up with a better idea that the community as a whole accepts, and in my mind, the answer is obviously not agreed to by all.

Next, the issue of guardrails – I strongly disagree with that. If you say they are guardrails, which means we're allowing them, it then becomes a compliance and enforcement issue, and we are really bad at that. We are really, really bad at compliance and enforcement. Unless things are so black and white, essentially you don't pay your bills, therefore, you're not in compliance. Anything else other than that, we are very reluctant to take strong actions on. So I strongly disagree that something where the public service and public commitment is at stake that we just rely on guardrails.

Lastly, akin to that, I think this is an issue where prudence has to win. We have to take the safe decision whether we are the Board or the panel that's going to make any final decisions. The use of a closed generic has to be really black and white this is going to be good. If there's any question about it, I think we have to reject it. I

think the rules that are put in place must end up rejecting it. Thank you.

JEFF NEUMAN:

Thanks, Alan. There's some really good discussions going on in the chat. I have to go pretty far because it started a while ago. A lot of discussions at the baseline and not knowing what it is. Yes, you can blame Leadership, especially me, for not wanting to get into a discussion in the baseline because too often, if people like the baseline, they've been reluctant to engage in discussions. Why would you if you like what's in the baseline? And for this particular issue, it is fairly confusing as to what the baseline is because of the ICANN Board resolution on this. So I don't think it's a helpful discussion to define the baseline. That said, I appreciate what Alan said, which is we can't come up with a better way to analyze or if we can't come up with better recommendations then no recommendation may be the best that we can or should do. Let's just read through these comments here. Sorry, I might skip a couple. That's not intentional. There's just so many of them.

Donna says, "We need to be careful about doing this for closed generics." Okay, so this is on whether to make this ... "We need to be careful that in doing this for closed generics there aren't unintended consequences for other TLDs given it is specifically bringing in elements of public interest/public good."

Jim says, "I don't know what our baseline is."

Kathy's got other factors, competing organizations, NGOs.

Paul is suggesting language on the one ... Paul is saying some other members do support what the one working group member suggested.

Tom Dale states, "The public interest remains an elusive concept, with the approach of the Board and pretty much everyone else being 'we know it when we see it.'"

Donna states, "There is nothing that restricts an applicant for applying for .disaster now, just that it can't be operated as a closed generic." That's true. In fact, nothing would prevent ... right, just portfolio applicant or anyone just applying for .disaster and running it completely open and without any kind of verifications or anything like that. That's absolutely right.

Or could be verified string, as Jim points out next.

Let's see. Anne says, "I support the idea that there could be letters of opposition, just as there are in the CPE process. As to a Public Interest Framework, I had been told that the draft Public Interest Framework essentially concludes that the public interest is achieved via the multistakeholder model." I think, Anne, that is sort of what has been coming out from Board level documentation. So it's not the most helpful for us in defining public interest.

Okay. There's some discussion of why ... I missed this but I saw earlier. One person that said, "Why are we even discussing implementation if we don't have a recommendation here?" Again, I think it's because of the unique nature of this particular issue where the ICANN Board did reach out and want to know from the GNSO its views on this. And it only quotes them that the gTLD is

for the 2012 round, and it mentions that specifically in the resolution. I understand that one Board member has filed a CircleID article and mentioned that that wasn't the intent, but we only have the resolution and the rationale that that's in that resolution. So I do believe we point to the resolution somewhere in the section. I can't remember exactly where.

Okay, Paul ... GAC category. So what the ICANN Board did – Paul posted the resolution. If go through it again, it says to address the category 2.2 advice on a resolved clause, for the remaining applicants in this round with the New gTLD Program will propose to provide exclusive registry access for generic string, proceed with initiating other New gTLD Program processes including – so you do the auctions and everything else. If it's a non-contended string or it's where an exclusive generic prevailed in the auction then they have to either submit a change request to no longer be exclusive generic or maintain their plan to operate exclusive generic and then their application will be deferred to the next round subject to rules developed for the next round to allow time for the GNSO to develop policy advice concerning exclusive generics or withdraw their application, get a refund consistent with where they are in the process.

So what the Board specifically says is one of the options, although no one took it, was a deferral of your application to the next round subject to rules we develop. Now, as Alan said, we may say we're not able to come up with rules and then it's done. Or we could say, "Hey, some people came up with these rules or these factors but there was no consensus on whether exclusive or closed

generics should be allowed in the first place.” So we have some options here.

Christopher, your hand is up. I think it’s an old hand but I’ll check anyway.

CHRISTOPHER WILKINSON: Old hand.

JEFF NEUMAN: Okay, thanks. Paul, go ahead.

PAUL MCGRADY: Thanks. As you noted, I put the link to the actual decision of the Board which is being characterized as a ban. It’s not a ban, it’s a deferral as you mentioned. And they asked us to come back to them with a policy guidance on this issue. So people can call it a ban all day. It just isn’t a ban. But more importantly than all of that, we’ve already gone round and round and round on this in prior calls and I don’t want us to miss the opportunity by going in and saying – trying to dig back into what the status quo means and all those other stuff. Looking backwards, we have some really interesting ideas from Anne that I think could become guardrails which could become factors. Wherever we end up with this that would allow us to implement what the GAC is actually saying which is part of the GAC says, “Yes, if there’s a public policy interest,” other parts of the GAC say, “Yes, public policy, also maybe other stuff, very open-minded approach, that’s great.” Board says, “Deferred, not know.” So we can look back and we

can all call things banned or whatever or threaten people with a status quo or whatever, but I think it would be far more productive for what remains in our call if we instead look at Anne's suggestions and walk through them and see if we can develop a path forward. Thanks.

JEFF NEUMAN:

Thanks, Paul. I know this not any kind of we're going through official polls or anything like that, but I want to get a sense of the people that are on this call. If you think it's worth continuing the discussion on factors, if you could just indicate a yes. If you think that this is – you're against all forms of exclusive generics or closed generics and don't think this is a worthwhile exercise, can you click no? I think this is important for the Leadership to understand rather than continue on this discussion if there are people in this working group that just don't believe that this is a worthwhile exercise. If you believe this is a worthwhile exercise, please indicate a yes. If you do not believe this is a worthwhile exercise, please indicate no if you can't.

KATHY KLEIMAN:

Jeff, the exercise is reviewing Anne's points?

JEFF NEUMAN:

For reviewing factors that could be used is a way to measure whether an application serves a public interest goal. I'm seeing some yeses, I'm seeing one no, and I'm seeing the hand from Alan. Alan, go ahead.

ALAN GREENBERG: Thank you. I just want to comment that I'm going to put up a yes but it's conditional on how these factors get evaluated. The panel process we had before was not very successful and now we've had appeals to it and it's not clear to me how these decisions will get made. I made a proposal a long time ago that I thought it should be the Board that decides on this, not a panel. Public interest is a Board responsibility. So I'm going to say yes but I may withdraw that depending on the process that comes up for how to evaluate this criteria.

JEFF NEUMAN: Very fair, Alan, and I'm assuming it also depend on how it's enforced, right? So I think that's a very fair comment. Obviously, not everyone has indicated something on this call but there seem to be more yeses than there are no. So, okay, let's continue down this path subject to of course all the reservations that everybody else has.

Okay. On these specific factors, let's look at each one and try to indicate whether we think this is helpful to the process or whether there's questions on them, because I know I saw a bunch of questions in the chat a while ago on some of these factors. So let's go into the factors a little bit.

So the first one I think is probably one that is general to everyone. Why did you select this particular string? I guess it's meant to get at, why does have to be this exclusive generic? For whatever

purpose you're applying, why do you believe you need to use a otherwise generic string? Alan, go ahead.

ALAN GREENBERG:

Thank you. I think the question has to be more nuance than that. I think it has to include: did you consider others? Why are they not acceptable? One of the problems I have with this process is if we end up like we do with panels of taking each of these 12 questions we end up with and assigning points to it, and then adding up the points and say, "Oh yeah, you qualify. You passed the threshold," I think this is a far more nuance thing. And it's not going to be eligible to points, it's going to be very subjective, and I think we need to give people the opportunity to explain in some depth why this is necessary or what they've considered. So I think these questions have to have more depth to them, and certainly not the yes/no ones, and I think we've perhaps gotten rid of those already or will. But I think we have to push them to give us the background and logic behind all of this.

JEFF NEUMAN:

Again, it's: why is it this string? Why were others ruled out? I take your point again in the evaluation. I fully understand. But if we can come up with some factors then perhaps we can figure out the evaluation question. It sounds logical that you should ask, "Why did you choose this to the exclusion of others?" I think that makes sense.

The next one Anne has on here is, "How does the proposed closed registry serve a public good?" It initially said "doesn't serve

a public good,” but we’ve changed it from a yes/no to more of a descriptive “How does it serve the public good?” Questions on this one? Kathy, go ahead.

KATHY KLEIMAN: If we’re playing this game then I think you have to define what a public good is and the economic definition – and this may be what Anne was referring to – is “A commodity or service that’s provided without profit to all members of the society either by the government or a private individual or organization.” Please define the term so that people know what they’re talking about and what we mean by it when we’re dealing with an international group. Otherwise, everyone is going to argue innovation. Innovation is a public good, and that’s all we’re going to get, one-line answers. Thanks.

JEFF NEUMAN: Okay. Thanks, Kathy. Can you just indicate the source of that? I’m not doubting it. It’s just that if we’re going to put a quote, let’s put a source.

KATHY KLEIMAN: Sure. I’ll put it in the chat.

JEFF NEUMAN: Okay. Thanks. Greg, go ahead.

GREG SHATAN:

Thanks. I'm actually staring at the same thing that Kathy read out. It appears to be from Oxford. There are actually two definitions. The first definition that Kathy read begins with the term "economics" so this is apparently a term in the art or science of economics. There's a second definition, which is the benefit or well-being of the public. The example given in the first is a conviction that library informational services are a public good, not a commercial commodity. The example of the second is the public good clearly demands independent action. So the benefit or well-being of the public is the more general definition of the economic definition – and I see that Kathy's posted something from Investopedia so I'm expecting another economic definition – is a narrower definition. Of course, you can ask Anne what she meant to say by "public good". I think what Kathy has pointed out is that public good maybe is not as ambiguous the term as public interest which are the rocks that many ships has crashed upon. But by public good we at least need to have some more clarity around the definition.

I personally think that Anne was reaching for the second rather than the first. One could go further into it, but I think what we need to do is define it for our purposes. We're not economists even though some of us are descendants of economists. So I think we need to figure out what we're doing here. Thanks.

JEFF NEUMAN:

Hi, thanks. I am certainly not a descendant of an economist. Thanks, Greg. Anne, you drafted the factor. If you want to join the conversation, go ahead. I'll give you the floor.

ANNE AIKMAN-SCALESE: I think it's very helpful what Kathy said and what Greg said. Because to my mind, as Alan was pointing out, it's very nuanced. It's very much a judgment call and to me the definitions that have been supplied are examples of how a public good might be defined. I think the use of the term "public good" is probably better to address. Donna is concerned about public interest per se being a term of art at ICANN. But I think that the definitions that have been supplied are potential just examples of what a public good might be. It wouldn't even hurt at all to talk about libraries. Libraries – it's a nice example.

JEFF NEUMAN: Okay. Thanks. I think examples are always helpful. Elaine, please go ahead.

ELAINE PRUIS: Thank you. I just have a couple of thoughts in the question. One, it seemed like when we had our GAC folks joining us, they were adamant that it's up to governments to define the public good. I'm wondering how far we're going to get with this. And two, the definitions of public good that were just dropped in chat seemed to say that it's for the benefit of all people without getting a profit. So if it's a closed generic, how does it benefit all people? Because strictly speaking, you're restricting who has access to that. Third, just thinking about the Supreme Court case with booking.com, and depending on the ruling that comes out of that, if booking.com is allowed to trademark that term, what will happen if we do allow for

closed generics and now all of a sudden you've got Amazon controlling power.tools or Google controlling word.search. I think we have to be really careful about what we enable with this.

JEFF NEUMAN:

Thanks, Elaine. The booking.com is an interesting one. I don't think the case is necessarily about what is a generic term versus other terms. The case is really about whether you should look at a term for its secondary meaning even if others might think that it may fall into a sort of generic category. Certainly, the question of what's generic and what's not is always going to remain. I think that the answer to the first question, though, of how could it be for the public good if it's closed, what's being restricted are registrations, not the services or whatever is being offered through the domain. So we often equate Internet users with registrants and that's not the same. In this case, we are talking about users not being registrants but users of the TLD being those that go to use the content of what's contained within the registrations of the TLD. I think that's an important distinction. So you could restrict all registrations or registrants but having very beneficial TLD for end users. So I think that's the distinction. Elaine, do you want to respond?

ELAINE PRUIS:

No. I appreciate the clarity. Thank you.

JEFF NEUMAN:

Okay. Greg, go ahead.

GREG SHATAN: Thanks. I don't want to sink too deeply into definition land but reading a little further in the Google page, I see that the economic term public good is a singular noun, the plural of which is public goods which are contrasted with private goods as in goods and services. So a sandwich is a private good, whereas a fire department is a public good or at least it's a public service, let's say that. It's not a good as such. When Anne writes about serving a public good, I think it's really being used to mean serving a public benefit, serving a public interest, serving the interest of the public. But let's not get confused by the economics definition which is largely seems to be using goods in the context of goods and services, and not in the sense of goods and bads. Thanks.

JEFF NEUMAN: Thanks, Greg. Susan and Paul.

SUSAN PAYNE: Hi, thanks. We seem to be getting very bogged down now on public good and what the definition is and I'm certainly not at all persuaded by a number of this kind of economic theory definitions that had suddenly materialized in the last minutes. But why are we not talking about a public interest goal? The reason we're having this whole debate about should or shouldn't you have closed generics is because of the GAC advice. And the GAC advice was if they're to be allowed, they should serve a public interest goal. So shouldn't that be the standard that we're looking at and not suddenly some newly thrown in economic theory?

JEFF NEUMAN: Thanks, Susan. Wouldn't it be your recommendation then that this really shouldn't be a factor, how does this serve the public good? Or shouldn't it be listed as a separate factor? The whole evaluation is how is this proposal going to serve the public interest and therefore you don't ask that question, or you might ask it as kind of a catch-all at the very end – is there any other information you want to provide that demonstrates how you will serve the public interest? Am I reading you right? Basically saying that this as a factor should –

SUSAN PAYNE: Yeah. I think you might well ask the applicant to explain and demonstrate why they consider that they're going to serve the public interest's goal. But it's not really a factor. It is what we're trying to establish.

JEFF NEUMAN: Okay. Greg said, "Good point." Justine says +1. Let me go to Paul and then Kathy. Greg, you're in the queue but I think it might be an old hand. So I'm going to go to Paul and Kathy. Greg, if you want to be in the queue just – no? Okay. Oops. Is Paul no longer in the queue or did you just move up on my list?

PAUL MCGRADY: Yeah, I pushed lower hand instead of unmute.

JEFF NEUMAN: Okay. Go ahead.

PAUL MCGRADY: I'm using the web-based version today because I couldn't get the app to work, so I'm all discombobulated. Plus one to Susan. I don't think spending any more time evaluating hastily to find Google definition of the public interest is going to bounce the ball. That's been a thorn in the flesh for ICANN for decades now, we're not going to solve it. But I think what Susan has come upon really is the heart of it, right? Question #2 tell us about the public good that this TLD would go to. To Kathy's earlier point, you can't just write down innovation. You've got to give us a detailed justification of how your closed registry will serve a public good. So it's #2. Then #2 should be #1. #7 should follow on to #2, which is what are you willing to bake into your contract? What public interest commitments – or whatever we're calling them these days – are being proposed by the registry? How will you monitor and enforce them? How can ICANN monitor and enforce it? Should we look at additional fees because it's going to be more work for ICANN? Although one would say there's plenty of abuse on the open generics out there, but okay, for the sake of moving the ball, let's keep it in there. Then the new number three should be, should there be restrictions on resale of the proposed closed registry? In other words, should the public interest commitments, or whatever we're calling them these days, follow on in the event somebody wants to sell the registry downstream? I think that does it, right? It can't be flip answer. If somebody says, "Tell us about the public good," and that the public good is "This will create a safe space for new second level registrants," well, we've got plenty of those and

that's not interesting. But if they have some innovation, some new thing they're going to do that is going to enhance the DNS and bring something great to the marketplace for end users then give us some details, let's hear it. Let's hear how you're going to put the PICs in and let's hear how whoever buys the registry in the future if you were to try to sell it or stuck with it. I think that right there, those are great questions. Thanks.

JEFF NEUMAN:

Thanks, Paul. I can't remember who put it on the chat – it might have been Donna – on the restrictions on resale. I don't see that as a question that would need to be answered by the applicant. I think that's policy where we as a community would say, "Look, if this is going to happen and if someone is going to be granted it then any resale would of course have to carry with it these terms and conditions." Period. I don't think it's a question we ask people with this. They, of course, are going to say yes. So I think we're just making a term and condition.

Okay, Kathy, Alan, and Anne.

KATHY KLEIMAN:

Yeah, .search, .blog, .book, .mobile, and dozens of others we opened up in the first round. They were banned as closed generics because they represent entire industries and businesses. The issue was monopolization of basic terms. I can't believe after dozens of dozens of hours we're having the same argument we've already had. Let's go back to the original text. It says we didn't reach agreement, and we still haven't, guys. I think Anne got it

right. The closest thing you could get is a public good and that is a term of art, guys, and it means giving back to the community. It means services shared by the community. It means social goods, collective goods, public goods. Very valuable terms. The way we throw around, how they were banned. We talked about a dozen other. The day they were thrown out and they were opened up, and that's what the GAC wanted, that's what the Board wanted, and that's what the world wanted in its comments. What we're doing is creating a list of questions with any leading competitor in a field will come in and say, "I am the field, I will make the field, and I will throw out all of the smaller competitors and future competitors that want to register domain names and what is the logical industry and business grouping." Again, we've talked about this for dozens of hours and we've read lots and lots of commentary on this, and hopefully you've read the community objection that through .mobile as a closed generic. These questions are all to be answered by the dominant competitor likely and they'll be able to answer all of them.

To something Alan said a few weeks ago, a few months ago – sorry, time has become collapsible – but he was afraid that ICANN, whether we've got the Board or the staff, whoever is going to be sitting with the third party it's going to be sitting down with this, will wind up spending days and months of their lives evaluating this, and that's what's going to happen. Thanks.

JEFF NEUMAN:

Okay, Kathy. Thanks. I think we just need to make sure we're all on the same page here. I think, at the end of the day, the GAC never advised the Board to ban or even open up all closed

generics. The GAC advised that any exclusive generic, whatever you want to call it, must serve a public interest goal. Period.

KATHY KLEIMAN: And when pushed [inaudible], Jeff, the GAC representatives couldn't come up with a good example either as we can't.

JEFF NEUMAN: Okay, Kathy. So what we're trying to see is, without going into specific examples, is there a way that an applicant can at least attempt to show they're serving the public interest. Who knows? Maybe the GAC would support it. We don't know because we're not the experts in coming up with potentially every single application for every single TLD in the future. We can't predict that. Maybe we all do agree that mobile and others should never have been allowed as a closed generic and it was the right decision to open it up but that doesn't mean that there can't be any in the future. I think that's what we're trying to grapple with. And we're not trying to do an advocacy piece, either for it or against it. We're just trying to provide some advice to the Board, or recommendations or whatever you want to call it. We're not trying to make this into an advocacy piece, either for it or against it. And I hope this is fairly successful at doing that. If it looks like it's too much in one direction or the other, it shouldn't. So I'd welcome any comment.

Let's go to Anne, Greg. Sorry, Alan, I can't remember if that's new. All right, Alan go first and then Anne and Greg.

ALAN GREENBERG: Thank you very much. Kathy mentioned something a long time ago on this meeting and I supported it and I haven't heard it mentioned since, and I think it was a really important issue. One question you ask is, do you represent the whole worldwide community for this generic word? For instance, if the GSM Association apply for GSM, and GSM is not a generic word but forgive me for that, then clearly they represent everyone. But if they don't represent everyone, the question really is why should your competitors be grateful that you're willing to take this on so they don't have to? Why do your competitors want to support this? And if you can't answer that, then you're not serving the public good. I don't care how we word it but that's a really, really important issue is why is this going to serve the whole community for this generic word and not just your part of that community? Thank you. Anne, I'm finished.

JEFF NEUMAN: [Inaudible].

ANNE AIKMAN-SCALESE: You're cutting out, Jeff.

JEFF NEUMAN: Yeah. Am I still cutting out?

CHERYL LANGDON-ORR: Try again.

JEFF NEUMAN: Okay, how about that? Any better? No? Yes?

CHERYL LANGDON-ORR: It's crackly.

JEFF NEUMAN: Sorry. I don't know what's going on around the 5:00 PM timeline.
Okay, well –

CHERYL LANGDON-ORR: You got to dial out, Jeff, or are you on VoiP?

JEFF NEUMAN: I'm on the phone.

CHERYL LANGDON-ORR: Interesting, okay.

ANNE AIKMAN-SCALESE: If I could just jump in next.

CHERYL LANGDON-ORR: Go ahead, Anne.

ANNE AIKMAN-SCALESE: Let me just say I agree with the idea that this is just posing some
thoughts for further consideration. Just for the record, I am not

personally particularly in favor of closed generics. What I am in favor of is responding with something when the Board asks for direction from the community. Even if that direction isn't final or definitive, I think we fail the Board if we do not give them something for further thought and fodder. That's the reason that I suggested these questions.

I think I heard Paul say that he would only pose three questions and that he would delete Question 5 and the questions about the effect on competition in Question 4. I would disagree with that approach. I think that effect on competition is important and should be evaluated and should be mentioned. I think that we go too far if we're requiring an applicant to prove that essentially they should have made a community application that somehow had eligibility. I don't think we should start eliminating any questions nor do I think we're at the point where we can say we absolutely recommend that close generics move forward if we can establish a process. I do think we've got to provide some input to the Board because they specifically asked us to do so. I have this terrible feeling of utter failure if we just say, "Sorry, we disagree. You, the parent, will have to decide this." It's a failing in our organizational behavior whenever we put stuff in front of the Board and say, "We can't provide you any further insight on this." So I really hope that we keep at it. I oppose the deletion of questions about the effect on competition and I oppose the deletion of Question #5 as well. Thank you.

JEFF NEUMAN:

Thank you, Anne. I think it's very helpful. I'm in 100% agreement with you that we have the opportunity to give some thoughts on

this issue other than, “Yes or no, we wanted to see it go forward or not.” Clearly there’s a divide and clearly we’re going to mention right up front that support, that there is not a consensus of the group that believes that closed generic should either go forward or be banned completely. But I do like the way you’re thinking about this, which is that we have an opportunity to provide some assistance, some help into the question without necessarily making a recommendation to go forward or not go forward with it. I think that’s a helpful way to look at it and I appreciate everyone on this call proceeding on that. With that in mind, I think that’s a great way to think about it. Greg and then Christopher then Justine.

GREG SHATAN:

Thanks. First, I agree with everything Anne just said and I can’t say it better so I won’t say anything further on that. Second, Kathy, what I’d like to do is to see if we can continue the brainstorming as opposed to – which is really in line with what Anne was saying. I would also believe in the competition framework and I think Kathy may have identified a factor or a guardrail which is what I have been calling in my own thinking “category killers,” that not every potential closed generic, even if it meets the definition, is a category killer. But some of them clearly are category killers and such that they would have an effect on competition.

Of course, we’re heading with all of these things into qualitative territory. I also agree with Alan that we don’t have a great track record on qualitative things, but nonetheless, we are trying and we need to see what we can come up with, if we can come up with something. So I would nominate it the category killer as a potential

factor for when a potential closed generic should not move forward. Thanks.

JEFF NEUMAN: Thanks. Thanks, Greg. Christopher, Justine. Let me see if there's anyone after Justine. Hold on. Sorry, Christopher. Go ahead.

CHRISTOPHER WILKINSON: I defer for the moment to Justine. I'll come in later.

JEFF NEUMAN: Okay, Justine.

JUSTINE CHEW: Thank you. I don't necessarily oppose the intention behind Anne's approach. I note that there is some effort within the group to take that forward. What I have difficulty is with being able to reconcile this block of texts with other parts of the report, for example, the block of texts right above it. I'm wondering – we're looking at Anne's block of texts in isolation to other things – whether that is necessarily a good approach. I don't really know how to reconcile it. I'll give you a couple of examples with my difficulty.

Number one is if we maintain the reference to public good as Kathy has suggested then looking at the paragraph above it where the suggestion that the potential applications be limited to applicants to a nonprofit entity or public entity or nonprofit, that could work because we know public good is meant to be for the benefit of public and could be arguably publicly financed. I'm not

saying that that is the way we should go, but I'm just trying to point out the difficulties in reconciling and not looking at texts suggestions in isolation.

The second example is, if we're going to play this game, Question #3, I think it's more important to understand how the use of the string is innovative as opposed to the proposed mission and purpose of the registry. It's something that I put in chat earlier but I thought I'd bring it back up again. Thanks.

JEFF NEUMAN:

Thanks, Justine. Let me just start with the last point to make sure we capture it and then go backwards. For #3, I think this is right too, how is the proposed use of the string innovative in nature? That is opposed to the registry itself because we're looking at the string as opposed to the [mission]. I guess we're looking at both but one of the important parts of is how is the use of the string innovative? Was that accurate, Justine?

JUSTINE CHEW:

Yes. You could imply some things from the mission and purpose of the registry, but I think absolutely how the use of the string as innovative is a more pertinent question to be answered than the other one. Just to add, somebody mentioned about contractual compliance and stuff like that. Again, in the earlier paragraph, I believe I was the one who suggested this, is we have additional contractual enforcement provisions proposed that could also fit into this block of text that we're looking at. Again, we shouldn't be looking at things in isolation really. Thank you.

JEFF NEUMAN: Okay. Thanks, Justine. Absolutely. I think as a package, all of it's going to be important. As Alan said earlier in the call, who's doing this evaluation and you're saying compliance as well after the fact, very important. I think we shouldn't be presumptive, but I believe we all agree on that notion if we do go forward with this. Christopher, you're up.

CHRISTOPHER WILKINSON: Thank you. I think Justine has mentioned very good points, which would simplify what I have to say. First of all, if we continue to go down this route, I take it that staff and the Leadership will schedule two if not three single issue calls to continue this discussion because we aren't finished yet.

Secondly, nobody has really addressed the multilingual aspects of this issue, although Justine and Alan have hinted at it. You have a closed generic in English? I can think of six other closed generics for the same concept, the same subject in other languages, including IDNs. As one might have said in French, [inaudible], what is the relationship going to be in terms of string contention between multiple closed generics for the same subject? Come on. I don't think we need to go down that path. Thank you.

JEFF NEUMAN: We've already gone down that route with just looking at string similarity and we've already said that with a possible exception of verified TLDs, which we still haven't resolved yet. But the general rule as a group is that there is no similarity, at least from string

similarity perspective of translation. So if one wanted in a closed, exclusive, generic and qualified for it in English, there would be nothing preventing another from having a closed exclusive generic in another language. Again, assuming it meets whatever qualifications are set up. I don't see that as an obstacle unless I'm missing something. Alan, go ahead. Alan?

ALAN GREENBERG:

Sorry. Somehow I got muted again. Recall there were cases last time around where there were translations – or not even translations, but concepts that were translated and deemed to be equivalent and shop related was what I'm thinking of. So last time around, certainly people did not agree the translations were not equivalent. I think that was a wrong decision, but how will people misinterpret our words this time is clearly up for grabs. I'm not particularly worried about the translations of words that if you get – I'll use .books because it's not eligible this time around – if you got .books, then [.libro] is another close generic, but they're different close generics and I don't think we need to agonize over that. Thank you.

JEFF NEUMAN:

Thanks Alan. In fact, one could be open and one not, right? I think that's right. I don't think the rules for this would be different than any of the other type for TLD similarity rules we've established.

Okay. I see Anne's hand is up and Greg. I don't know if they are new or they are ... I'll assume that they're new. Anne, go ahead. Nope? Okay. Greg? Greg, are you ... Okay, let me go to the chat

in the meantime because I don't hear anything from Greg and I'm assuming I [inaudible] On the topic of competition, I think Paul had initially suggested or it seems like he was suggesting that that be eliminated, but I think clarified that it's a factor and his point was merely – not merely – this point was not requiring an applicant to chase down all competitors for consent is not ... Well, go ahead Paul, you're in the queue. So go ahead.

PAUL MCGRADY:

Thanks, Jeff. I didn't mean to actually try to kill off the competition question. I just got really excited about the three questions that I highlighted because it kind of dovetailed with what Susan was saying, which is the public interest is the thing itself. That's the primary thing. Asking 4 I think is fine, it makes sense to me. I don't know how anybody would know how to answer #5, because in theory you would have to answer these questions before you filed your application and we don't know who's going to apply for what. So I'm not sure what we do with #5. Other than that, I think that these are all great questions and I think that when Anne asked, "What's the effect on competition? Is it minimal or is it vast?" I think vast sort of corresponds to what Greg had to say about it being category killer. I mean, I think these are all great questions and in my exuberance, I did not mean to suggest we should kill them off. I just got excited. Thanks.

JEFF NEUMAN:

Thanks Paul. The way I understood your comment, not to be the one that's completely wrong, was that some of these questions, an applicant must respond to and, in their own words, explain.

Number five was more of a question that needs to be considered by an evaluator, as opposed to a question that's answered by the applicant. Similarly, I think #4 – why must it be closed – that part I think should be answered by an applicant but I don't think it's fair – not even fair. I don't think an applicant can assess the likely effect on competition. I think that's more of an evaluation factor after the fact as opposed to an applicant answering it. I think there are some in there, like those two I think are more from an evaluation perspective, but I think 1, 2, 3, and why must be closed part of 4 is certainly something that an applicant could be asked to respond to. I have a question on the category killer, but I'm going to go to Alan first. Alan, go ahead.

ALAN GREENBERG:

Thank you very much. One of Paul's questions in the chat was, "Do I have to go to every competitor?" I think the answer of course is not. I think if the applicant has not gone to their largest competitors and got letters of support just like a geographic TLD applicant has to get support from the cities or whatever, that also have some level of rights to that string, then I think the evaluation process has to go to the competitors and say, "Do you support this?" Because as I said, if you do it properly, they're going to thank you because you're taking the expense and they're benefiting instead of them having to do it. But if you don't have that level of support, then we have to put them the question, "Is this a self-serving application or not?" Thank you.

JEFF NEUMAN:

Thanks. Alan. Well, I'll let Paul respond. Paul, go ahead.

PAUL MCGRADY:

Thanks. Just to respond to what Alan said, I just don't know how realistic that is. We saw a lot of people in the last round file objections to closed generics before the Board deferred them. Generally, they didn't prevail but the basic complaint was, "Gee whiz, my competition came up with an innovative idea. I didn't listen to ICANN telling me I could apply. Now I wish I had applied. So I'm not going to support my competitor's actions." Maybe we could talk to competitors but in the marketplace, competitors generally don't run around supporting each other. That's what competition is. Unless we're prepared to basically abandon the DNS to a place where no innovation happens, I think we have to tread lightly with the whole ICANN needs to go out and get a bunch of consents for competitors. I just don't think that's based on how a marketplace actually works. Thanks.

JEFF NEUMAN:

Thanks, Paul. Logic would say that that's right. I mean, why would a competitor consent to anything that its largest competitor would want to do? It just to me seems like they wouldn't. But I do think competition needs to be measured. I would say from a personal perspective, competition needs to be measured by an independent person, party, whatever it is, as opposed to the applicant or its competitors determining the effects on competition. That just doesn't make sense, I think. But again, that's not my chair hat, that's personal. Alan, go ahead.

ALAN GREENBERG: I think that argument is exactly why we're worried about closed generics. If this is an innovative idea, which is going to benefit you and your competitors don't support it, isn't that what we're trying to avoid?

JEFF NEUMAN: Well, I should say no. I think competition is one factor, not the only factor. The reason we're doing new GTLDs, one of the reasons is competition. It's a fact there. But it's also about consumer choice, trust, innovation, all the things we put in Section 1 of our report as to why we want to move forward with subsequent rounds. I don't think competitors may have other reasons to not consent other than altruistic reasons. Paul and then Kathy.

PAUL MCGRADY: Thanks. We're talking about the world marketplace where something could benefit an innovator and could bring great benefits to the marketplace and a competitor may not be happy about it at all. In fact, just to use a today issue, there will be some innovator that gets across the finish line with their COVID-19 vaccine first that will bring vast, wonderful benefit to the marketplace and I'm 100% sure that their competitors won't be happy about it. And if the FDA had to go collect consents from everybody who came in second, third, fifth, and tenth, we would never have a vaccine.

So I don't think that requiring ICANN to operate in a way that is inconsistent with how the marketplace actually works is the thing to do. I think instead, we need to make sure that there is in fact

the heat going back to this, it's the heart of the thing. Like Susan said, that the public benefit is out there. Public benefits don't automatically have to make your competition happy. That's not what that means. Thanks.

JEFF NEUMAN: Thanks, Paul. Kathy?

KATHY KLEIMAN: You asked a good question, Jeff. What would make your competitors happy? Well, if you're going to take the term of your business or industry, sell the domain names to your competitors, don't monopolize the term of your business or industry your registry. Sell your domain names. It seems like a really simple answer. Talked about way up early in the chat, you can have a verified TLD. You can have a TLD open to everybody in your industry or business. Be the registry seller, you certainly get some advantages with the hundred reserved names that you're going to have and other things. Lots and lots of ways to do that without monopolizing and owning every second level domain of the generic word that is your business or industry, and as we heard from the US Trademark office last week before the Supreme Court, you're not allowed to trademark it, you're not allowed to own it. Elaine mentioned that earlier. We're kind of back to first principles, guys. This discussion doesn't seem to be advancing the argument. Thanks.

JEFF NEUMAN: Thanks, Kathy. Let's go to Christopher. I think it's a new hand, right?

CHRISTOPHER WILKINSON: Yeah.

JEFF NEUMAN: Go ahead.

CHRISTOPHER WILKINSON: Okay. Just to say that Paul's characterization of the future market for coronavirus vaccine is uninformed and there have already been significant policy statements internationally about how this should proceed. I would like Paul to withdraw that comment completely. Thank you.

JEFF NEUMAN: Thanks, Christopher. I think Paul was just providing it as an example. Paul, do you want to respond to that?

PAUL MCGRADY: Sure. Since I was called out, I'm happy to. Christopher, it was a metaphor. It was a means by which we could understand the problem that we are trying to look at by dealing with the real world example. It was not meant to be a policy position in relationship to how pharma technology rolls out vaccines. I don't claim to be a vaccine expert. Maybe you are. But in any event, I'm happy to

withdraw it if it makes you feel better, but I think that you raising it that way was frankly an exercise in missing the point. Thanks.

CHRISTOPHER WILKINSON: Yes and no.

JEFF NEUMAN: Thanks. Let's not offer judgment on other people. Let's just respond to the facts if we can. Thank you, Christopher and Paul. I'm going to go to Greg.

GREG SHATAN: Thanks. Another potential innovation, another reason why closed generic might work would relate to potentially open sales at the third level. Using a taxonomy at the second level, whether it's types of trees or it's types of sausages or whatever it might be, and having created a taxonomy, which some of us more than others wish the Internet would be a taxonomy. But if you control the second level and create a control taxonomy, you can let things happen at the third level or below. I think there may even be some one or two from the first round that at least propose something similar to that. But again, that's something that if we have a band, we'll not be able to go forward. So we heard stifling innovation by thinking that the second level is where openness must prevail. Thanks.

JEFF NEUMAN: Thanks Greg. I don't think we're saying that exclusiveness is always at the second level. I think even the Registry Agreement recognizes that it can occur at the second or third level. So I think we're okay there.

Can we go back to the notion of the category killer? I didn't follow it completely as to what would be considered a category killer. If you could help – I think it was Greg. Greg, can you just go back to – because Kathy has proposed adding that as another factor. Can you just go back and describe that again? Sorry for asking you to repeat.

GREG SHATAN: Sure. I think roughly speaking, category killer would be a term which defines a category or an industry or a field of goods or services such that it would basically kill off any competition essentially in the category or at least that it'd be a dominant – would allow the owner to essentially dominate the category simply by owning the domain, the TLD. I'd be looking at ... I think Alexander [inaudible] would because as often use the term keywords, now obviously any word can be a keyword if you buy it. But the point again is kind of high value keywords. Again, we're looking kind of at things that would form a taxonomy, if you will, at the second level. So tools or clothing or whatever, beauty perhaps, beauty aids, all those sorts of things that would define a significant category. Of course, this is a bit of a strawman spit-balling but it's the kind of idea that you could nibble at forever or you could try to find a way to make it go forward. But that's the idea. Thanks.

JEFF NEUMAN: Thanks Greg. So our category killers, are they always nouns? Or is that missing the point?

GREG SHATAN: I think yes. By and large, they would be nouns. And indeed I'm not sure that any things that are not nouns would even necessarily qualify as closed generic if they were applied for. Whether .happy even qualify as a closed generic, or if it is, is it a category killer? There's really no category of happy. Again, we're looking at goods and services and the idea that you'd foreclose ... essentially you build the only exit off the interstate where people can buy tools and all of a sudden everybody by tools by you, and all the other tool people are left holding their tools. Sorry, I didn't mean to go there. In any case, the idea is that it literally kills an industry, it kills a category. It would allow the owner to dominate the marketplace, at least, if they were successful just by dint of having ownership of that namespace.

JEFF NEUMAN: Thanks, Greg. I think thinking of in terms of categories is helpful because it would also respond if you look at a GG's comment, "What about WHO (the World Health Organization), would that be a close generic or not?" Because the word WHO is not a – I don't think it's a noun, it's not a noun and it's not a category. So therefore it could not be a closed generic. Would that be a correct assessment?

GREG SHATAN: Yes, I would agree. I see Paul agrees.

JEFF NEUMAN: Okay. We're making a little bit of progress here. So the category killer I think is an important – although it's a very slang term so I'd love to come up with a way that any reader can understand. So if you, Greg, or anyone else has a good definition of category killer, that would be – I'd rather put that in than a slang term like category killer. Anybody else on these factors or other ones? I know we only have 10 minutes left but I think this has been valuable.

All right, let's go to then ... I see wiki has category killer as the working title. So we've noted that that's important, whether we call it category killer or define it or whatever it is. Let's go to Alan's question that he started out with. I know we only have 10 minutes left but it would be good to start the discussion. Who would do this? Who would do this evaluation? I think we've heard that some had said the ICANN Board because it's their role to act in the public interest. I'm probably doing a terrible job of restating what someone said, but is it the Board? Is it an independent party that we hire? What do you think of that? Alan, go ahead.

ALAN GREENBERG: Thank you.

JEFF NEUMAN: There you go.

ALAN GREENBERG: I have no idea whether Board members would support what I'm about to say, but I think ultimately it has to be a Board decision because they are the only ones that are charged with looking at the public good and the public interest. Maybe there's a panel or some other process that eliminates hopefully the vast majority of the applicants, because I suspect there's going to be a lot of them, and gets down to some reasonable number that the Board could focus on. But I really don't see any other process. I mean, I hate to mention it, but look at the discussions that focused around the .PIR issue and ultimately the Board had to make a decision. I think this falls into that sort of category. If we allow these and there's going to be a transfer of control later on to another registry in other organization, it's going to come to the Board to say, "Is this organization going to meet the commitments that were met to begin with?" I don't see how the initial decision can go anywhere else either. Thank you. Someone's talking. I can't hear you.

CHERYL LANGDON-ORR: If you're speaking, Jeff, we're not hearing you.

JEFF NEUMAN: I was, yes. Thank you. I was talking to myself.

CHERYL LANGDON-ORR: Well, it was undoubtedly brilliant that we missed it.

JEFF NEUMAN: It was. Let me ask, Alan, you're not saying that ICANN couldn't get advice from a third party. You're just saying ultimately the decision has to be made by the Board but they could get advice from a third party? Or am I misstating that?

ALAN GREENBERG: Well, if there are 300 applications like this, I think it would be ludicrous to say the Board or staff have to evaluate them all. I think it's going to have to come down to a reasonable number and I don't see any other way around that. But yes, I think ultimately, I believe it is the Board. Avri I see is on and maybe her comment is relevant to this. Thank you.

JEFF NEUMAN: Avri put a comment that says, "While the Board isn't the only one, at the end of the day, the Board is responsible for making a decision that it understands as being in the global public interest." Okay. Paul, go ahead.

PAUL MCGRADY: Thanks. Alan has anchored the discussion with the Board. Avri, I think rightly indicates that ultimately the public interest, the Board is the guardian of that. But I would hate for us to, just because we have three or four minutes left, kind of throw up our arms and say, "Okay, the Board." I just think we need a bit more time to think through what would the process be so that the application – if it ultimately has to be decided by the Board, that the Board has something to work with, that it seems to have passed certain things or it seems not to have passed certain things. Those kinds

of processes, I think we just need to think through those a bit. I don't think we're going to get to them in the last three or four minutes. I hope that in the notes, so that when we take this up on the next call or whenever we take up closed generics again, that we see that pushpin there to remind us to keep talking about this. Thanks.

JEFF NEUMAN:

Thanks, Paul. I think that's a good way to get to sort of a summary of where I think we are and next step. What's clear is that the actual recommendation that we have up at the top, which is actually a no agreement, that's going to stay. We're not going to as a group come up with a recommendation that we all or that there's a consensus on that agrees one way or the other that we absolutely should move forward with or not move forward with closed generics. But that said, and we'll figure out the best way to word this, in the spirit of trying to respond to the Board's questions of things that can be considered, we may be able to provide a set of factors, an explanation of those factors, maybe even some guidance, that would go into the ultimate evaluation plus decision and of course monitoring if the Board chooses to go down that path. I just want to stop for a second. Does anybody vehemently disagree with the way I've couched it?

ALAN GREENBERG:

Jeff, I'd want to see those words in writing because I think the devil is in the details in this one. But I would agree that we're saying something to the effect of, "If the Board chooses to go ahead and allow them, then these are issues that must be

factored in or something.” I’m not pretending to rewrite what you said. I’m just saying I don’t think on this call I can answer that question, but we need to see a formulation.

JEFF NEUMAN: Absolutely. Thanks, Alan. Somehow I do better with writing than I do speaking. Absolutely. We’ll of course write that down. I just wanted to double-check and make sure that I’ve provided a semi-accurate summation. But, yes, everything’s going to be dependent on the words. Paul, go ahead.

PAUL MCGRADY: Thanks. Jeff, I think it’s important – I’m having trouble seeing the document because I can’t see it in the Zoom – that we’re clear that it’s not that there’s no agreement for closed generics to proceed, but rather there is no agreement to change the 2012 AGB status quo, whatever that means. We can argue about what that means all day but I think that that’s important. Then we work on these factors and put them in. The Board itself can determine what the status quo is and how to apply these factors if that’s as far as we can get. I still remain hopeful though that we’ll be able to build factors such that we can actually get a rough consensus on this. We can give the Board more than just, “Here are some things to think about.” I think they meant it when they told us to figure it out. Thanks.

JEFF NEUMAN: Thanks, Paul. There’s a little bit of a detail I think is important and it’s got some chat text on it. I think what we would say is that

there's no agreement to change ... We have to word it similar to the way we've worded other sections but I get your point. I think we –

CHERYL LANGDON-ORR: Jeff, we'll draft it. We have two minutes to go. You're not going to make it happen.

JEFF NEUMAN: Right. Thanks. I think we will need to schedule some more time, but I'd like to do some discussion on the list if we can on this to give some time to write this up and then have some discussion on the list. We will, during the next call, go back to the predictability model and the other things on the work plan, so please be prepared for that discussion. I think if we can be prepared to get into some of the specifics of how the Standing Committee could address the predictability issues that we've been discussing in light of the examples that we discussed the other day. We want to get down into a little bit more detail than we did on the last call. Last call, we are pretty high level. We want to see if we can get into some detail on that.

Also please look out for the next package. Our next call is going to be on Monday and I'm stretching for time so someone could post the time of the call. We got Monday, May 18th at 20:00 UTC. Thank you, everyone. I do believe we've made progress on this issue, and I thank everyone for contributing. We will talk to you on Monday. Thanks, everyone.

ANDREA GLANDON: Thank you. Please remember to disconnect all lines and have a wonderful rest of your day.

[END OF TRANSCRIPTION]