
ICANN Transcription
GNSO New gTLD Subsequent Procedures Working Group
Thursday, 21 May 2020 at 03:00 UTC

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

Attendance and recordings of the call are posted on agenda wiki page:

<https://community.icann.org/x/yIPsBw>

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page

<http://gnso.icann.org/en/group-activities/calendar>

JULIE BISLAND:

Good morning, good afternoon, and good evening. Welcome to the New gTLD Subsequent Procedures Working Group Call on Thursday, the 21st of May 2020.

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 yourself be known now? All right, I would like to remind all participants to please state your name before speaking for transcription purposes, and please keep phones and microphones on mute when not speaking to avoid background noise. As a reminder, those who take part in ICANN multistakeholder process are to comply with the expected standards of behavior. With this, I will turn it back over to Jeff Neuman. Please begin.

JEFF NEUMAN:

Thank you very much, Julie. And thanks for getting the fill-up on the phone line. Hopefully, this sounds okay. So with that, today's agenda is really going to start with continuing on the predictability discussion and I want to spend about half the time on that, and

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

then get to the review, the “can’t live with” comment on packages 1 through 3, which have been submitted over the past few weeks. So we’ll cover that and then hopefully we’ll be able to get out the package 4 by the end of this week. I know we had said earlier this week but there were some other things were trying to work on and fell a little bit behind. So we will get out that package 4 by end of the week, though.

Okay. Let me ask for any updates to any Statements of Interest. Okay, I’m not seeing any. Then let’s get started on the predictability. What I want to do – let me ask as well, if Steve or someone can just let me know when we’re getting towards halfway through the call. I just want to make sure that we’re leaving adequate time. If we could start this discussion, what I want to start with is just to show everyone a diagram that Steve has sent around just a couple of hours ago before the call. This diagram is really going to be hard to read on Zoom only, so hopefully you have an actual copy of it through the e-mail that was sent or if you can read this then great. But really it came out of an action item from the first – it wasn’t the last time, it was probably a week and a half ago when we first looked at the Predictability Framework. I think it was requested that we try to do some sort of process chart just so people can visually see what we’re talking about here. I’m not going to read every word of it here but I just want to point out a couple of things.

What you have on the left-hand side are really the three groups – the only three groups, we should say that – that are able forward an issue to the SPIRT team. So those at the GNSO Council, ICANN org, ICANN Board, those are those three bottom swim

lanes. Then the top swim lane is the SPIRT team, and so actions it would or could take. We've already talked and we're not going to go over right now, although we might actually as part of the materials, the threshold and other things for those groups to send an issue. But what I want to point attention to is the notes that are indicated in the ICANN org and the GNSO Council swim lanes in particular. You'll see things that are listed as Type A, Type B, Type C, Type D, and Type E. Those correspond to – I'm sorry, I guess it's Steve that's got control of it. Just look back and forth – but those letters correspond to – if we can go to just that summary chart for now. In the Annex – as it's being scrolled to right now. Here. This chart on page – sorry, I can't see the page number, Steve. Page 8, thank you. On page 8, that chart. Those are the different types of issues, A through E, and of course they're explained in more detail above and we went over those. We are going to come back to these types of changes so that we can just show you some redlines that we made, but I do want to go through some of the details first with the SPIRT team itself. So what we'll do is we will finish talking about this chart, go through some of the more detailed blanks that we were trying to fill in, and then come back to the different scenarios or different types – Types A through E.

There are three sets of notes. We just went over the notes that are in the ICANN org and the first set of notes in the GNSO Council swim lanes. The first note which is in the SPIRT swim lane, just as a reminder that request from other SOs and ACs, for that matter, any other groups need to come through one of the other routes below. So they need to come through the Board, org, or the Council. Then the last of the notes on the bottom swim lane for

GNSO Council is really just us indicating the option that the Council has in dealing with the output of the SPIRT team. And we discussed that towards the end of the last call.

So I see Paul has asked the question on the pink diamond. Yes, here with GNSO to mean the GNSO Council. I think it will help us to be a little bit more specific. So yes, GNSO here means GNSO Council.

Then I'm looking at Donna's question. Question for when it's appropriate to raise. What is the rationale for why the SPIRT team is not involved in A and B? We'll come back to those. I want to go through some of the items we haven't yet covered before or at least recently haven't covered, and then we'll come back to the different types and hopefully you'll see why the SPIRT team is not necessarily involved or is not involved. Donna, just hold on to that question and I'll ask Steve too as well, just in case we don't get to it or we forget to cover.

Okay, so let's go back to where we left –

KATHY KLEIMAN: [Inaudible]. This is Kathy.

JEFF NEUMAN: Sorry, Kathy. I should have been looking. Go ahead, Kathy.

KATHY KLEIMAN:

It's a lot to follow, especially late at night. Hi, everybody. First, great thanks to Steve for creating a flowchart. This is really cool. I haven't had the chance to look at a flowchart in a long time. It's really cool.

Jeff, I'm going to strongly recommend that we have a key at the bottom of it so that it's very clear what A, B, C, D, and E is and it's also very traditional to have a key. You can stick it in a corner or anywhere there's a blank space. You just draw a box and put the key.

I really think that where it says, "Issues identified as C, D, and E must be referred to the SPIRT under ICANN org and GNSO Council." I think there's strong disagreement in this group and I think we heard a lot of it last meeting. So I'm going to flag that. I don't think that's accurate. So, thanks.

JEFF NEUMAN:

Thanks, Kathy. Yeah, I think in the effort to try and be brief, we sort of paraphrased. These notes are not to take the place of the actual text that's in the document. Certainly, if we do intend to use this flowchart like put it in to the report, if that's something we choose to do then we will have to be more accurate in the text. And we'll come back to those types and we'll discuss them. Let's not start that discussion now because it will take us down the path. We'll get down that path during this call.

We can go back to the other document to the Annex and then towards where there's remit of the SPIRT. No. Scroll down. You're right. Okay, I think we got through 1, 2, and 3. I think we got

through the operation – hold on. Actually, we didn't get through all the way through the operations. Go back a little bit. No, #2.

For the composition, I think we did start this one and then we talked about the group should be representative. The first bullet or sub-bullet under #2 is that we were talking about whether we should include some sort of – sorry. Let me go back a step. Ignore the brackets for the first just right now. What we talked about is that it should include at least one participant from the original PDP working group and IRT who can provide insights. But then we also discussed during that same call where we raised this issue that, okay, yeah, it makes sense for a minimum time period to have a representative from the original PDP and IRT, but once the SPIRT team has been in operation for several years, I think the relevance of the original PDP and IRT may not be as relevant. So we floated the idea of whether we would just say that at least for the first two years or the first five years, it should include at least one participant from the original PDP working group and the IRT. Do we have a preference? I think looking at this from a time or temporal aspect, the PDP hopefully will and let's say the end of 2020, and so you'll have a regular IRT come into play and that could last, I don't know, a year. Let's say you can have the shortest. So now you're already a year removed – at least a year removed when you create the SPIRT team from the PDP. So if you say that at least one member from the PDP or IRT should serve for two years then you're saying three years from the PDP and two years from the IRT. I think that provides enough protection, but let's throw that out and see if anyone's got any comments on that.

Then of course, what if someone is not available after a few years? Donna, go ahead, and then Kathy.

DONNA AUSTIN:

Thanks, Jeff. Donna Austin from Neustar. I think just don't make it prescriptive. Obviously, optimally you would want somebody that has been involved in the process even as far back as being involved in the PDP, IRT, and SPIRT for continuity. I think that that would be a good thing to have. But I think, to your point, let's be realistic that it might not be possible to achieve. So just don't make it prescriptive because otherwise, it could get into a situation where it's not easy to actually put the SPIRT in place because you can't meet the composition requirements. Have aspirations but don't make it prescriptive. Otherwise, it could get in the way setting up the SPIRT itself.

JEFF NEUMAN:

Yes. Thanks, Donna. That makes sense. The only thing I do want to point out and because of the discussion we have last time with Anne raised, the normal IRT rules state that they should at least have one participant from the PDP working group. This is a little bit different of an animal because it's a standing IRT, which is not something that's been set up before. So I agree, the less prescriptive we have to be, the better. I think when it's set up, I think we all agree that it should be set up with similar rules like the IRT where it should include at least one participant. I guess my question for everyone is, what if we just said the SPIRT should, at a minimum, include one participant from the original PDP working group? If we're silent on a minimum term, does that mean that that

requirement continues in perpetuity? Or does that mean when people read it, that five years down the road, if the SPIRT team doesn't have someone from the original PDP working group then that will be an issue? I guess that's my question. Hopefully, that made sense this late at night. Kathy, go ahead.

KATHY KLEIMAN:

Thanks, Jeff. I'm having trouble with this conversation because it's hard to know the composition of the SPIRT team until we've decided what kind of issues they're getting. And I thought we closed yesterday – sorry to go back to this but I can't get past this one. I can't grapple what we're doing here because I thought we decided last meeting that the SPIRT is only doing operational non-minor and operational new processes perhaps with input, but not D and not E. Not possible policy level changes, not possible policy level new proposals. If they're looking at D ... If SPIRT is getting a crack at that, especially if they're getting a crack at it before anybody else, that changes absolutely who should be in the composition of this group. I think it also goes beyond its mandate.

The other thing is who runs it? IRTs are run by ICANN staff. And again, anything that we're talking about, I think in this case, operational but also possible policy should not be run by ICANN staff. So lots of issues depending on what issues it's going to get. Thanks.

JEFF NEUMAN:

Without rehashing the entire discussion, because it was a very fruitful discussion and we'll I'm sure touch on it in a little bit when

we talk about the different types, the reason we say “possible” is because at the point in which the issue is raised, there may be uncertainty or ambiguity as to whether the particular issue involves policy or not. And so with D and E, the GNSO Council could refer issues to the SPIRT team to make recommendations as to whether there are policy elements or whether it is, at least in their view, mostly operational. Because I think if it is clearly policy then I think we’ll all agree that that’s something for the GNSO to handle through its existing mechanisms or any mechanisms that it would create. What we’re saying here is that not everything is black and white, and it may be that the GNSO would like a group of experts to look at these issues or help the GNSO pull out what is, at least in their view, policy so that those can be taken up and maybe there are elements that are not policy even within those. So I think that that’s the best we can do at this point without [rejudging] the whole thing, but we will get back to it. I do note that there’s some comments in there that are emphasizing what I was saying, which is we’re not saying the SPIRT team should make policy. So that’s not what we’re saying. Anne, go ahead, and then Paul, and then back to Kathy.

ANNE AIKMAN-SCALESE: Jeff, can you hear me?

JEFF NEUMAN: Yep.

ANNE AIKMAN-SCALESE: Okay. I just think that there are also several notes in the chat. Donna initially raised this issue and it's important – and I think Justine chimed as well – is that there's not a gate before an issue. There's not a gate where staff decides whether the issue is policy or implementation. As I understand it, it's the role of the SPIRT to help make a recommendation where an issue isn't clear. So if staff sees something where a change is required and staff thinks it's policy, they're just going to say, "Wow." They're going to say to the SPIRT and GNSO Council, "This one looks like policy to us. You guys agree, right?" Or if they think it's implementation – I mean, to me it works the way an IRT works with the Annexes. Again, it's a standing IRT. In the Annexes that were developed with Policy and Implementation Working Group, it was the IRT that could then take an issue that looked like implementation and say, "No, that's policy. You got to go to Council with that." This is a standing IRT. It's not a question where staff makes a determination, whether or not they're sending it to the SPIRT. It's got to be every category is open. Because of all the gray areas, one person's policy isn't [inaudible] implementation.

JEFF NEUMAN: Right. Remember, as IRTs, staff is putting together – when they put together a plan for implementation, they put a whole bunch of things on it. They don't usually ever, they may, but in the normal course of things, staff would say, "To implement this, we think we need to do ABCDEFG." They may put that forward to the IRT and the IRT could then say, "Look, you put here this thing for F and we think that is really policy, so we think we should go back to the Council on that one. But ABCDE and G are in the IRT view

implementation.” That’s the way I think it’s really going to work as opposed to staff has this new thing and it knows that there may be some ambiguity. It’s just I think they’re just trying to implement what is being asked.

ANNE AIKMAN-SCALESE: Just a quick follow-up there, Jeff. I guess the question is, does the chart indicate that staff determines whether if it’s an A or B, and if so, it doesn’t go to SPIRT? The chart may be a little misleading there. I don’t know.

JEFF NEUMAN: All right, I hate to do this because we keep getting back to it and I think it prevents us from talking about the rest. I want to stick with this composition and not spend the entire time again talking about the different types, because I do want to make some progress here.

ANNE AIKMAN-SCALESE: Okay, I’m with you. Just as long as we’re not saying that staff determines whether or not an issue goes to the SPIRT.

JEFF NEUMAN: Yeah, let’s come back to that. Go ahead, Paul. Paul says he’s got a practical solution.

PAUL MCGRADY:

We keep getting hung up on this. It seems to me when we keep coming back to it, what we need is some sort of circuit breaker. So I would like for us to consider baking in here somewhere that in the event that even one member of the SPIRT believes that something that has been sent to them is policy and not implementation that that would trigger the SPIRT sending it back to the body that sent it to them. Otherwise, we're just going to be a downward spiral worrying that the wrong person or group is going to send the wrong thing to the SPIRT, and the SPIRT is going to end up making policy by mistake. So why don't we just trust the SPIRT team members but empower them to say – if one of them says, "Gee whiz, this really is policy. We shouldn't be hearing this," then it goes back. Then staff, Council, Board – those are all empowered people – they can figure out what to do next. Thanks.

JEFF NEUMAN:

Thanks, Paul. The issue I have with that is that the GNSO Council always has supervisory authority and the SPIRT team doesn't make any "decisions" so the GNSO could always step in. I think it's dangerous to say one person can derail all of the work of the SPIRT team because it's not as if the SPIRT team is being selected necessarily by – well, let's talk about the composition, okay? Paul, hold on to your suggestion to see if something like that is needed. But we just keep going in circles here. I think we're much more worried than we probably need to be. But let's go through this again, the composition.

So we're saying it should be representative. We're saying like regular IRTs, it should have one member participant from the original PDP and the IRT. Kathy, I know your hand is up but I

know Donna's hand is up. If it's on the types, I'm going to ask that you hold it. But if it is on this composition section then go ahead. And Donna too after that.

KATHY KLEIMAN:

Jeff, on the flowchart which we opened with and then went on past, and that sounds like we've accepted the flowchart which – I'm an old programmer. I love flowcharts. They reduce things down to their essence. And the essence here can't be right that we're referring all issues – operational and policy – to the SPIRT because that would change the composition of the SPIRT team, everybody, and it would change it significantly. So if you tell me that the only issues that that circular box identifies or is informed of an operational issue. An operational issue. I also like Paul's solution, by the way. If you tell me that we're adding the word "operational" in front of all the word "issues" in that cylinder in the left after we identify the organization, that's one thing. If you're saying that everything – A through E – is going through this group, that will change the composition. It's not an IRT anymore. Thanks.

JEFF NEUMAN:

Okay. I hear that suggestion again. I will say, which is similar to what you're saying, is that if the SPIRT team is not doing policy development. I don't want to get hung up on what operational versus execution versus implementation versus administrative. I mean, it's like a hundred words you could probably put in there that are not policy development. I think what we're concerned about is that this group is not doing policy development. Donna, go ahead.

DONNA AUSTIN:

Thanks, Jeff. I was going to go back a little bit and raise it in the chat, but I think we need to go back a little bit and see if we can just agree why this Predictability Framework was something we thought we should work on. I think in my mind it's supposed to be a fast track and impartial mechanism to try to get past that 2012 problem we had where staff would make decisions about something that is a fundamental change for the applicant and there was no recourse for that. So that's what we're trying to do with here. There certainly was discussion about what's policy and implementation.

But, Paul, to your point, I think the idea of the SPIRT is that it is intended to be an objective impartial kind of circuit breaker. I don't actually agree 100% of how this looks in terms of how it's going to work. But in principle, I agree that this is a necessary evil based on what happened in 2012, but I think the intent is if something is policy, it goes to Council. But what I'm not sure about is with the flowchart, who makes that determination? There are still some gray areas for me and some murky territory, but in principle, I think the idea here is to have some kind of fast track circuit breaker that can resolve an issue pretty quickly so it's not holding up applicants. And I think that's really important. But I'm concerned that the way that it's being – what we're arguing over at the moment, we're just going to end up with a long process that isn't going to be of any assistance to applicants and also why we're bothering with this. Thanks, Jeff.

JEFF NEUMAN:

Thanks, Donna. As usual, you said it better than I did. Just to add to that, it's not just applicant. It's also going to look at changes that may impact objectors or other kinds of third parties that have to interact with the New gTLD Program in one way or another.

Let's move back if we can, Steve. So we've talked about the representative nature of the SPIRT team which is in line with normal/regular IRTs. We also put in here that the membership criteria should identify knowledge, experience, responsibilities, respective rules of engagement, and then we introduced this thing like a Statement of Participation. It's basically the Statement of Interest but includes a little bit more information that a regular IRT when they implement this policy and these things we'll drill down on, but it's very much akin to what the Name Collision Analysis Project (NCAP) group did. They had the regular elements in the Statement of Interest, but then they included some additional questions requesting additional information from members to provide which are very specific to the name collision issue. Similarly, I think what we envisioned here was that they would ask some additional or ask members to provide additional information specific to the New gTLD Program that would help others understand where they're coming from.

Like regular IRTs in the #3, we state that the SPIRT may determine that additional subject matter expertise beyond appointed members if needed. This is exact language from IRTs. This is different than a regular IRT because the regular IRT lasts as long as it's needed for a policy to be implemented, and then the IRT goes away. But because this is a standing IRT, we do need to talk about term length, and so what we suggest here is a two-year

term with the option to renew for up to two additional two-year terms which means essentially a maximum of six consecutive years and then have kind of a similar language, I believe, to what's in for like a GNSO councilor, where if you serve three – in the case of GNSO councilor, it's two – but here in the case you served three consecutive terms, you must be out for one full term before you can seek to be on it again. Then to facilitate this, again this is I think similar to other groups, at least half of the inaugural SPIRT appointees will be appointed for three years and then all the subsequent terms will be for two years so that we have some sort of staggered appointment so that you're not having a potentially completely new IRT being selected after six years. Does that make sense? Anyone have any questions/comments on that? Some support from Cheryl on the staggered terms. Okay.

This was a question I think that – we highlighted it because we weren't sure if there was a definitive answer. So if you look at a regular IRT, I don't think this is actually spelled out in any area that a person who serves on an IRT is – I can't remember if it's in there that they serve in their individual or in a representative capacity – but it is made clear on something like the Nominating Committee, right? You may be put on a Nominated Committee by your group that you belong to but you're serving on the Nominating Committee in an independent way. You're using your own independent judgment. You're not going back and getting your constituency or stakeholder group's views on the candidates. You exercise your individual judgment, even though you were put on there by a particular group.

What we've said here, though, in the last series of conversations is that there were a couple options. You could say that the SPIRT team – I'm starting with the second bullet here – is presuming that members are presenting the positions of the group but not necessarily representing the group, or we could say that for the purposes of assessing level of consensus within the SPIRT group where there's a difference between the view of the individual member and the known position of a group, the SPIRT member is expected to represent the known position of the group.

How do we feel about this? Let's put it out there. Kathy is saying, "What happens when someone wants to join from an SO or AC mid-way that is otherwise unrepresented?" Let me go to Anne and think about that question. Maybe Anne is going to address that. Anne, go ahead.

ANNE AIKMAN-SCALESE: I had this recollection that there was an idea that there would be specific technical expertise on the SPIRT and if you've got a technical expert who's there for purposes of providing wisdom and knowledge in a particular area, I don't think you can necessarily expect that person to be voting as a representative. So I don't know if there's a difference in composition when we get a technical expert. I think IRTs also have technical experts sometimes appointed.

JEFF NEUMAN: A technical expert that's appointed by the group that's not considered a member is not necessarily going to be participating in the consensus call.

ANNE AIKMAN-SCALESE: How does the IRT work?

JEFF NEUMAN: A regular IRT – anyone can join. Well, it depends, actually. I shouldn't say that. A regular IRT is impaneled by ... Steve, actually, you probably know this better than I. I'm going to probably mess up the explanation. So, Steve, do you want to explain the regular IRT?

STEVE CHAN: Sure. Thanks, Jeff. This is Steve from staff. As part of the adoption of Paul's recommendations at the Board level, the next step is generally to constitute an IRT. Sorry. Which part were you trying to get clarification on, Jeff?

JEFF NEUMAN: The composition of IRTs. Yeah, go ahead.

STEVE CHAN: Thanks. To date, they are generally open. They don't have a representative structure. Although they do have – it's not a requirement but it's essentially a guideline that the IRT should be representative and that the membership should be reviewed to

make sure that IRT membership is as representative as possible. What is different about at least what is in the draft right now is that this standing IRT is intended to be representative. I think to the extent a group that might not want to assign the member would not have to, but for a regular IRT, it's generally open and representative is a goal, not necessarily requirement. I hope that helps. Thanks.

ANNE AIKMAN-SCALESE: Thanks, Steve. Just real quickly, follow-up, Jeff. Do IRTs have consensus calls?

STEVE CHAN: I can take that too if you want.

JEFF NEUMAN: Yeah, please go ahead, Steve.

STEVE CHAN: Sure. When there's a consensus need to be taken, they essentially follow the consensus assessment process that's referenced in the GNSO operating procedures. I think it's actually by reference specifically to the PDP manual. So it uses the same guidelines. Thanks.

JEFF NEUMAN: Thanks, Steve. Anne, does that help?

ANNE AIKMAN-SCALESE: Yeah. I'm just trying to understand why would we when the initial public comment is, yeah, let's have a standing IRT – why would we be saying that this area would operate any differently from an IRT? What would be the reason that we would choose the different method of operation for the standing predictability IRT?

STEVE CHAN: Jeff, if you're speaking, you are potentially on mute.

JEFF NEUMAN: Darn, yeah. I was and it was brilliant. Yeah, thanks, Anne. Things have sort of morphed over time. Originally, when we thought about this group, it wasn't necessarily going to be "representative" but it was originally again way back when it was going to be this independent panel that could evaluate these types of issues, but I think now it's morphed into the representative like a regular IRT, so I do think that this section may not be needed. This could just be the same as a regular IRT. I'm not necessarily now seeing the absolute need for this section. But, Steve, help me if I'm missing something. And, Paul, go ahead while Steve is thinking about that.

PAUL MCGRADY: Thanks. About 5, if we are going to keep it, I guess I don't understand the difference between these two bullet points. One says that the SPIRT member will represent the known position of their group. And the next one says that they represent the positions of their group. I guess I'm not seeing the independent

judgment part of this in here. And if the SPIRT members don't have the ability to exercise independent judgment then they're going to be under pressure to decide if things are implementation when they may be policy. This just fuels the fear that we're setting up a miniature GNSO Council because people are concerned that Council doesn't move fast enough or whatever. So if we're going to keep it, I think we really need to think through this section. Thanks.

JEFF NEUMAN:

Thanks, Paul. After hearing you and Anne's comments, and because this morphed from what we were initially had which is much more of an independent body to what it is now which is representative. I think the easiest thing is to just not have the Section 5 and it will just essentially be no different than what the regular IRT rules.

Steve and Cheryl, am I missing something? Is that now serving a different purpose that I'm just not remembering?

STEVE CHAN:

Thanks, Jeff. I can start here. Section 5 followed from this area, which at least for the moment is still sitting in this document. This talks about the representative nature of the SPIRT, at least again in draft form. This is changeable, of course. To the extent that you want a representative structure, which I guess as we all understand in ICANN community, generally it means that it's going to be limited to a certain number from each of these groups, then it sort of follows that you want to know how they are

representative their interest within the group, as 5 is listed now, whether or not that's going to be independent or if they're actually speaking on behalf of the group that's appointed them. So that's where it follows. Or I guess that's where it stems from, I guess, is a better way to put it.

JEFF NEUMAN: Yeah. I think – go ahead.

STEVE CHAN: I was just going to say if this part goes away, if you're saying that it's either an open structure or even if you do have a representative structure, you could still potentially have the members operate independently. But as I was saying, it stands because of this language right here about it being representative. Thanks.

JEFF NEUMAN: Thanks, Steve. I think regular IRTs have that language anyway. If we're going to say anything about this, it should have something – and I think regular groups, this should be in there anyway – which is that unless otherwise indicated a member of a group is expressing their own opinion but not necessarily the opinion of their group or, in a lot of cases, even their employer necessarily, right? So I think you could have a representative group which is made up of different members from the different groups but still acting in their own individual capacity, unless they indicate explicitly otherwise, I think is really what would make sense.

Anne and then Donna.

ANNE AIKMAN-SCALESE: Yeah, Jeff, I agree with you that there would potentially be people acting in each capacity. I guess what I'm trying to understand is when Steve points out folks acting in a representative capacity, were you guys trying to get at something the influence of that member would be greater because the person is in a representative capacity like the way it works, I guess, on a CCWG where there are members and there are participants? Or again, could this result to IRT?

JEFF NEUMAN: Anne, what we're trying to say is that because this working group believes that members should be diverse of the IRT and that members should come from a diverse set of interests, but that diverse set of interests does not necessarily mean that the people that come from those groups are representing that group. While we're saying that the group should be diverse, we're not saying that the diverse members need to represent their groups in a formal representative capacity. I hope that makes a little bit more sense. Donna, go ahead.

DONNA AUSTIN: Thanks, Jeff. This conversation is sounding a little bit similar to conversations we had about the composition of the Customer Standing Committee. One of the things that we did there was agree what the scope of the CSC was going to be and then understand what the minimum number should be now. Say it was

supposed to be – Elaine is on the call – but the scope was kept pretty narrow. So you didn’t necessarily want a group of 20 people that were on the CSC because that wasn’t going to be workable. The RySG and the ccNSO ccTLDs had an interest in the IANA function and ensuring that it had satisfactory performance. So we consider that they were key members of the CSC. So I think within the charter, we have two representatives from the RySG, two from the ccNSO, and I think there might be one other potential member, but that’s your core four of the CSG. And then it’s optional for other groups to appoint liaisons. So the other ACs, SOs, SGs, Cs – [inaudible] probably don’t have SG/C level. But the other parts are optional and then there is liaisons. But they still have pretty much the same rights as the members but we identify a call for membership based on the scope of what the CSC was meant to do.

So maybe there’s some way that we can try to apply that kind of logic as well. We get a little bit hung up on trying to be equal in terms of representation, but if we can understand what the scope of this group is and assign a core, four or five members and then the others are optional as liaisons and can be appointed by other groups, then maybe that’s a way around this rather than getting hung up on it. Thanks, Jeff.

JEFF NEUMAN:

Thanks, Donna. I agree, Donna. That’s one way to go about it. I think where we’re getting hung up – and I think this is kind of an internal conflict within this working group – there were many working group members and many comments that said, “We don’t like IRTs in general because we don’t think they’re

representative.” But now we’re kind of saying, “Well, why don’t we make this more like an IRT?” So we’re sort of stuck in a little bit of a place. I think basically saying that the goal is to have diversity in membership but understand that those serving as members are serving in their individual capacity. I think that’s probably as prescriptive as we should be. If the regular IRT that’s implementing our recommendations, we’ll have to be more specific, they can go down that path. I just see us going in circles right now. So would it be acceptable to just instead of saying “should be representative,” we would say, “The group should have a diversity of membership coming from different stakeholders,” or something like that, and then a note that those that are members are members in their individual capacity. Would that be the easiest way to solve this?

Donna is saying, “Not necessarily.” Okay, then we’re still stuck between those that believe that the group should be representative, which is where we are now versus where we are a couple of years ago which is that the group should be an independent group made up only of experts that don’t approach this from a diversity of membership perspective. I thought we have evolved from that. But go ahead, Donna. Maybe you can help.

DONNA AUSTIN:

Thanks, Jeff. Why I say not necessarily is that I would hope that there would be representation from applicants on the SPIRT. Because they’re the ones that are likely to be most affected by any possible suggested changes or whatever the ICANN staff or the Board might be coming forward with. So I think as the group that would be most impacted, I would like to think that

representation from applicants on this group would be appropriate. But I wouldn't like those representatives who are applicants to be there to push their own barrow. So that's why I say not necessarily. I think it's reasonable that they would be represented on the group but we need to be careful that they're not ... primarily they're to push their own barrow.

So as you know, with the 2012 round, there was the New gTLD Applicant Group that set under the Registry Stakeholder Group and it had its own structure. It had its chair and secretary, and treasurer. So it was a group that had a kind of representation, but that group was for the benefit of all applicants, not just one single one. So that's what I mean by not necessarily.

JEFF NEUMAN:

Okay. Thanks, Donna. Okay, let's park this particular point for the moment because it may also get sorted out a little bit when we get back to the types of issues, because really what we're talking about is more of a triage type group as opposed to – we're not talking about policy development obviously, but agree with the notion that that representative doesn't necessarily mean representative in the nature that we have it here, which means RySG, Registrar Stakeholder Group, things like that. So there's a couple of little niche in here.

Okay, let's go on to – if we can scroll down a little bit here past #5 to #6, Conflict of Interest here. Where we came out on this, initially we were very concerned about conflicts because when we were initially discussing this group years back, it had a little bit bigger role and could actually make decisions. But where we've come out

now is that this group doesn't make actual decisions in terms of things that will be binding on the community or applicants or anything like that. So we have come out at the end of the day where, yes, they're going to do the Statement of Participation that they should be operating with the expected standards of behavior, and of course citing the bylaws of how ICANN is supposed to operate anyway. At the end of the day, we didn't believe that this needed anything else in terms of a different Conflict of Interest policy because of where we ultimately ended up the scope of this group.

Anne go ahead, and then Kathy.

ANNE AIKMAN-SCALESE: Thanks, Jeff. I think that GNSO Council, as you know, adopted a Consensus Policy Implementation Framework, and it strikes me that if this recommendation goes forward the SPIRT team, it's going to be have to be incorporated into an amended Consensus Policy Implementation Framework. I really wish that we could have what was the final approved version of the CPIF for reference in terms of how the IRT operates in that framework and whether or not the SPIRT can operate under those same rules. Because my recollection of the CPIF is that IRTs are supposed to be representative, and you said that they weren't.

JEFF NEUMAN: Well, we're talking the difference of representative in terms of a diversity of where the members come from. Right, that is true. So when I said they're not representative, I meant you're not acting in

a representative capacity, meaning that you have to go back to your groups, find out what they think on every single thing and come back and only act in accordance with how they tell you to act. That's representative –

ANNE AIKMAN-SCALESE: Actually, it made things a little bit easier and clearer because I think that if we could refer to what [inaudible] and GNSO Council adopted in their latest adopted version of the CPIF or Consensus Policy Implementation Framework, it would make this body come into alignment with that, it would make your job easier, I think.

JEFF NEUMAN: Thanks, Anne. It would but then we're getting into the previous problems where there were many comments that wanted to ensure that different groups could have participants on this IRT, whereas that's not necessarily the case. As Steve puts in – and I'm fine setting that, I think it's fine. IRT should be open to all interested parties but may not necessarily be representative of the ICANN community, as actual participation may depend on interests and relevance to the topic of their discussion. If that's what we want to put in, that's great, that's easy, but I don't want to –

ANNE AIKMAN-SCALESE: I'm sorry, but it says the opposite in the language about IRTs in the CPIF. It says that they should be representative. And I think the objection previously was just that a lot of people don't have time. Community representatives often don't have time to

participate actively on an IRT, and that was the difference that you were discussing. In fact, the language around IRT says that they should be representative of the community and all members who want to join in order to make it representative community are free to join.

JEFF NEUMAN: Yeah, Anne. I don't think we're saying anything that's different. We're saying it should be representative but it may not be. In other words, the people that actually volunteer and [serves] on it may prove that it is not actually representative. If a hundred people volunteer and it is open then those hundred people will be on it. But 80 of those hundred people may be registries. That group then is not technically representative. I don't think we're talking past each other here. Well, let me go to Kathy.

KATHY KLEIMAN: I'm not speaking to this issue, Jeff. I'm going to talk about the Conflict of Interest.

JEFF NEUMAN: Then hold on for a sec, Kathy, then I'll come back to you. Paul, are you speaking to this issue or another one? By this, I mean representative.

PAUL MCGRADY: This issue.

JEFF NEUMAN: Okay, good. Go ahead.

PAUL MCGRADY: I guess I've lost the narrative because I thought the SPIRT was supposed to be a small nimble group of non-policymakers who could answer questions and make recommendations quickly. If we're going back towards making it open for anybody, which maybe we should, but that certainly is going to change all kinds of things in this. So what is it? What is the SPIRT? Is it a small band of wildly non-policymakers or is it an IRT? Thanks.

JEFF NEUMAN: Thanks, Paul. There's no easy answer to that question. What started out was – as you discussed, the small nimble group, but the way it's evolved because of public comments we've gotten and other discussion to the working group, people felt like it needed to be more like an IRT. I don't see what else it would change if we are saying that it's a bigger group or an open group, I don't think that changes anything else here so I'm interested in that comment. I mean, look, we're sort of going backwards and I need to know not just questions of what is it, I need to know preferences.

Anne has expressed the view that it should be no different than an IRT except that it's standing. Kathy, I think has in the past expressed the view that it should be more representative or involve more groups. We need a decision. I can't make that decision. I could but we need to figure out as a working group what we really want. There is a big difference between the view

that Anne has which is it should be no different than an IRT and the view that Paul has which – sorry, it may not be the view of Paul – the other thing that you expressed, which is to say, a small group. We can't have it both ways.

Donna says here that, "The SPIRT team should be representative and balanced, meaning that it should not be dominated by one or two groups. Once the scope of the SPIRT is better understood, we may be able to understand the optimal number."

Sorry, Paul. Paul says, "Not my view, I'm just trying to understand." That's why I tried to correct myself here.

Okay. So let's go just down one more because we are going to get to the scope.

KATHY KLEIMAN: Jeff, can I speak to Conflict of Interest?

JEFF NEUMAN: Yes, sorry. Thanks. Go ahead.

KATHY KLEIMAN: Great. Thanks. On the Conflict of Interest, I do think we're missing something. We've never had a standing IRT before that I know so we haven't had to cross this issue before. But now that we understand the operational issues, major and minor, that are certainly going to go through the SPIRT, don't we think that a recusal mechanism is necessary? So if the operational issue is initiated by your company or your client, shouldn't you recuse

yourself from any discussion or evaluation or decision or recommendation of the SPIRT? Thanks.

JEFF NEUMAN:

Thanks, Kathy. So the reason why we got away from that notion of recusal was ... well, there were a couple of reasons. Number one is the people who know the most, they have the most experience with an issue are recused, you're not going to get effective discussions. I mean, it's just not going to happen. Everyone has an interest. So as long as the interests are known, as long as the statement of participation includes additional elements, not just your normal Statement of Interest, but additional questions and answers for other potential interests other than just being a contracted party or not, and as long as the group understands those, then there should not ... Sorry, I forgot the other important part, which is that this group is not making decisions. There's always a check and balance, it's just making a recommendation. So ultimately, the end of the day, it's the council that's going to adopt or not adopt. There may be people I feel like they need to abstain from certain items if we're on a consensus call, but I don't think we need a formal recusal. So let's go to Kathy to respond, and then Greg.

KATHY KLEIMAN:

I think we may want to reconsider that now that we know that an operational issue can come in from one applicant. It doesn't have to be representative of a group of applicants, it can come in from one applicant. Certainly the SPIRT can and probably will call on one of its long standing members to provide information and

insight. But it's not up to the SPIRT team to identify the potential conflict. The person should identify themselves as being the representative of the company or client and should recuse themselves. They should not be involved in their evaluation of the change that will impact, only their client or maybe only their clients and someone else. That's probably not right. Thanks.

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

GREG SHATAN: Thanks. I agree with half of what Kathy said, which is that it's up to the – we'll call them the conflicted party – to disclose their conflict and to disclose how any potential outcome would affect them. So just saying that I have a client I'd rather not name that has an interest, I'd rather not be specific about in this context. I think there needs to be transparency and it needs to be – I think I saw the word "continuous" come across my chat with Cheryl. If not continuous, at least it needs to be regular or irregular, but there basically has to be a disclosure, in essence, every time someone speaks up if it is directly affecting them.

Now, obviously at some point, you can't just stop conversation so that everyone reads at a caveat. People will get to know what your position is but I think it's really important. I've seen this actually done very well by some people here who will very much hate themselves or rehat themselves when they have an issue. I mean, there are so many people around here who have some sort of stake in things, that's why we're stakeholders. Some of us have

less of a stake than others in the sense of a conflict, but nonetheless, I think operationally one could have a much longer conversation about conflict of interest and I kind of had to deal with it, but I don't think this is the place for the brave new world. I think if there is anything new here is that there needs to be a more specific disclosure and really need to avoid the appearance of steering something in a direction that would directly benefit your company. Thanks.

JEFF NEUMAN:

Thanks, Greg. I think that summarizes where most of the group was. That's why we have this here, which is that because it's not making the ultimate decisions they're not binding, because everyone's got – as Greg said, we're all stakeholders so everyone has a stake. And because there are so many checks and balances in there, that as long as we emphasize the disclosure aspect and disclosing when any changes are made, similar to how other group operate, so that's why at the very beginning of every call, we ask are there any changes to any Statements of Interest. I think that's where we are. I think we're okay not having a formal recusal policy.

Okay, confidentiality obligations. This discussion has morphed into what we have now, which is just going to operate with full transparency, publicly archived mailing list. Then I can't remember where, Steve, you got this language, whether it was an IRT or whether it was a Customer Standing Committee. We do say here that in the extraordinary event that the SPIRT should require confidentiality, the SPIRT normally is encouraged to conduct its meetings in accordance with Chatham House Rules, and if

necessary, additional rules and procedures may be developed if that need were ever to arise. But the default is that it's just like every other group, full transparency.

We go on to state that ICANN will be participants in this group and so they will play a supporting role, they'll provide liaisons so this is no different, I think than other IRT type groups. We talked about a Leadership team, a chair being selected.

So there's a comment in here that, obviously, if we have this kind of representative nature, meaning like three from this community, three from that, we would have to get into a discussion of how the chair counts, but we're not heading down that path. So I think we can eliminate that comment and just stick with this language, and then we talk about vice chairs. We talked about the role of public comment. I think this is important. That recommendations related to operational issues will normally not be subject to public comment unless agreed by consensus of the SPIRT. Recommendations that are directed towards the GNSO Council will not normally be subject to any additional public comment beyond what is normally envisioned. However, in rare case, a public comment period may be conducted prior to delivering recommendations to GNSO Council.

Again, it reflects the limited scope on this. Is that the last before we can go back to scope? I can't remember if it ends there. If there's more than after #10. Can you just scroll down? That's the end. Okay, that is the end.

All right, while Steve is going back to the A, B, C, D and E text, let me just look at what was – sorry. There's a plus two from Paul. I'm

not sure with that. Okay, let's go. I think it's relating to the scope. Greg, your hand is up but I'm not sure if that's a new one. Nope? Okay. Anne, go ahead.

ANNE AIKMAN-SCALESE: Just a couple of things. So here we're talking about the election of a chair of the SPIRT. In the IRT guidelines, for example, there's somebody who's listed as the GNSO Council liaison and not listed as chair. Folks are saying that IRTs don't have to be representative. But you're saying that they may or may not be representative depending on who volunteers. But from the IRT guidelines, the language specifically says, "The call for IRT volunteers should, at a minimum, be sent to all members of the PDP working group that was responsible for developing the policy recommendation. The call for volunteers may need to reach beyond the working group members to ensure broad participation by parties directly impacted by the implementation and parties for specialized expertise needed for implementation." So I'm not sure why folks are saying that IRTs don't have to have broad representation and I still don't know why –

JEFF NEUMAN: Sorry, Anne. Sorry. Not to interrupt. I think we're all in agreement, we're just not necessarily using the same terminology. Okay. When we're saying it doesn't have to be representative, what we're saying is it's not like the EPDPs are structured, which is there has to be two members from this group and two members from that group and three members from this group. But we are all

in agreement with what you're saying of it encourages broad participation. So we are all on the same page within the –

ANNE AIKMAN-SCALESE: So why would we not refer to the IRT language? In terms of the broad participation, why would we not be using that language that I just pasted in chat? Why would we not send out invitations to members of the PDP working group?

JEFF NEUMAN: We certainly can. Again, we're not putting every single rule in here. We're not drafting ... This is summary points that will eventually be given to an IRT that will draft the full language. Here, these are just summary points of the group. We can take that language in exact word for word. Again, we're not doing the foundational documents here. Greg, did you have a response?

GREG SHATAN: Thanks, Jeff. I think there may be a middle place here. I agree with Anne that we shouldn't be reinventing the wheel, that we should be following the game plan wherever appropriate, and it's mostly appropriate with regard to creating this in the image of an IRT. And so if we don't list everything out, as Anne was perhaps suggesting, we should make reference in some fashion that the foundational documents will reflect the standard methodology of IRTs, except where specifically noted and we could make some sort of reference to wherever Anne was bringing the stuff in from. Some other outboard place so we don't have to just kind of ... If we're not reinventing the wheel, then the wheel must be

somewhere else. Let's just reference it and then we'll know that we're following the path. Thanks. Jeff, did I stun you into silence?

JEFF NEUMAN:

Yes, you have. No, good point. Sorry, I was talking on mute. Again, it was excellent comment that I made, but it was on mute so it's irrelevant. I'm just kidding. Yes, Greg, you're absolutely right. And on the last call, we did decide that in the rationale section – this is just an Annex here. But in the actual text that includes the recommendations, we do say that. This, again, is the Annex to that section where we do say we base it on IRT and all that kind of fun stuff. So it is in there. Or we agreed it would be in there. I can't remember if we've actually drafted our part yet, but it is noted that we need to put that in there.

Okay. So let's go back then to the scope. 1-A is the minor operational change. We have a bunch of real-life examples under there. But just as a reminder, it's a change to ICANN org's internal processes that does not have a material impact on applicants or other community members. So this usually involves no changes to the guidebook and the examples are put there.

"Do we need to go into this one anymore?" Sorry, scroll down a little bit more and then I'll get to Donna. The reason why we do not have the SPIRT team here is because, again, it's minor, it's an internal process change, and ICANN will implement it without the need for consultation, but they will report obviously on what they've implemented.

Donna, go ahead. Donna, you're probably saying something very profound but it's on mute.

DONNA AUSTIN:

Blah, blah, blah, blah. I think this goes back to my original question as to why we're taking SPIRT out of A and B. And one of the reasons that I asked this is even though these changes that ICANN may decide to make aren't going to impact the guidebook per se, they may have an impact on applicants. Because if a change in the internal process workflow for contracting or pre-delegating testing has a material impact or delay for applicants, then I think that's problematic.

JEFF NEUMAN:

I agree with you, Donna, but then wouldn't fit into this type of change. That is more in line with either B or C. This is like – if ICANN wants to change from its current servers to Oracle databases, it just does it. Right? These are changes that ICANN can't consult with or these are the most minor of changes. And by definition, they don't have any material impact on applicants or other community members.

So then you look at B, so let's then go to B, which are the non-minor ones. These are changes to ICANN org's internal processes that have a material effect on applicants. So this would be a change in their internal service level agreements, but again they would use the framework to see whether it falls in this category and they need to communicate to all impacted parties. But in this

situation, they don't need to use the SPIRT team because it's a change to an internal policy. Donna, go ahead.

DONNA AUSTIN:

Maybe there's something I'm not following here. But if there is an impact to applications to applicants that causes significant delay, then ICANN should not be making the change even if it is non-minor from an operational perspective, then I would say that they shouldn't be able to go ahead with that change because of the impact that it's going to have on applicants. So maybe I'm misunderstanding something here.

JEFF NEUMAN:

No, you're leading us to the category C, which is any new process or a significant change to an internal process for ICANN that we added because of Paul's guardrails that he mentioned in the last call. So category C are new processes that weren't envisioned in the original ... it's not a change to something that's existing, but it's something new. Or changes to ICANN or internal processes that have or unlikely to have a significant impact on applicants where it's expected to result in a delay, result in a suspension of a round, result in the delay of a future round, or result in delay of processing of applications by more than 30 days. Or where it targets specific application types that would fall in the category C and that would have to go to SPIRT. So if it's a change that is cleared or is reasonably likely to have one of these impacts, then it's in C. And that would act on the SPIRT team. Does that address your concerns, Donna? Go ahead, Donna.

DONNA AUSTIN: Thanks, Jeff. I think this goes to some of the challenges that we've had but it goes to the SPIRT. What's the type of recommendation that the SPIRT will be making? That they can't go ahead and make that change because of the impact that it will have on applicants?

JEFF NEUMAN: There could be a whole host of different recommendations from the SPIRT team. I know we're getting towards the end of the call. It may recommend that ICANN not do that. It may recommend that ICANN could achieve whatever it's called worthy or different way that may not have that kind of an impact. Or it may make a recommendation to the GNSO Council that this is something that the community needs to step in on. There's a whole host of things that the SPIRT team could recommend.

Cheryl says it's sort of a triage. Paul, go ahead. And Greg, if you can keep it short, because we are already at time and then we'll pick up some of those from the next call and then get into the review of the package 1 through 3. So, Paul, go ahead and Greg to close this out.

PAUL MCGRADY: Thanks. Just very quickly, so when we say that these other items that don't fall within the guardrails must go to the SPIRT but we also mean that on the other end of that, those would go to Council. Right? So ultimately, SPIRT can make a

recommendation but they can't make policies. Is that the part that I should be reading here along with this? Thanks.

JEFF NEUMAN:

Again, these are not policy level changes. If they are policy changes, then the GNSO Council in the community should be stepping in anyway. But yes, ultimately, as we think about where the flowchart and the decisions, the GNSO Council has always provided a copy in advance. If let's say the request came from the Board or the staff, GNSO Council can, at that point in time, choose to let the recommendation go to the Board because they don't find an issue with it. They could ask for clarification and kind of work back or it could say, "You know what? Thanks, SPIRT team, for your input. We're going to take it from here." Then take over the issue and employ one of its own processes. Did that help, Paul? Okay. So next, Greg quickly, and then I'll just read the chat comments. I don't want to keep people too much over because it's ... Anyway, go ahead, Greg.

GREG SHATAN:

Just briefly, concerned that we may overstate the importance or the singularity of delays to the application process or the delegation process. While that's an important factor, it can't be a dispositive factor. There are things sometimes that are more important than keeping the train running. Thanks.

JEFF NEUMAN:

Thanks, Greg. If you're thinking of additional kinds of guardrails that would help to ... if you can give us some examples and

maybe some other guardrails that we would put in there, I think that could help us for the next discussion.

Okay. I don't want to get into D and E right now because I think that would start discussions. I know, Kathy, you've asked for that. Hopefully D and E are sort of clear in the text and we can absolutely continue this on e-mail as well. Last few last words, please?

KATHY KLEIMAN: Cheryl said that we're going to do D and E at the start of the next meeting. Can we do that?

JEFF NEUMAN: Of course, yes. We will get to D and E on the next one. Okay. Next call is May 26th, 15:00 UTC, 90 minutes. I'm still good here. I know we didn't get to the new package stuff, but I'm hoping we've made some progress in people's minds. If I'm overstating that, lovely, do let me know. I'll try to stimulate some discussion on the list. Greg says name collision as example. So let's think about that. I see that, Greg, as not a process change, but more of a D or E kind of category. But let's think about those kinds of things and start with that on Monday. Sorry, is it Monday or is it Tuesday? Sorry, I totally forgot here.

JULIE BISLAND: It's Tuesday.

JEFF NEUMAN: It's Tuesday. Thank you. Thanks, everyone.

CHERYL LANGDON-ORR: For me, it's Wednesday. I'd be the last one to know what day of the week it is. Thanks, everybody. Thanks, Jeff.

JEFF NEUMAN: Bye. Thanks all. Thanks. Bye.

JULIE BISLAND: Thanks, everyone. Bye. Stay safe.

[END OF TRANSCRIPTION]