ICANN Transcription
GNSO New gTLD Subsequent Procedures Working Group
Thursday, 25 June 2020 at 20:00 UTC

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JULIE BISLAND: Good morning, good afternoon, and good evening. Welcome to the New gTLD Subsequent Procedures Working Group call on Thursday, 25 June 2020.

We are using a Zoom webinar room today which is equipped with a chat feature that defaults to all panelists. When using this feature please change the dropdown to include all panelists and attendees to ensure your message is seen by all.

If you have a question, please feel free to raise your hand. You will be asked to unmute when it's your turn to ask your question. We would like to remind all participants to please state your name before speaking for recording and transcription purposes. Recordings will be posted on the public wiki space shortly after the end of the call.

As a reminder, those who take part in the ICANN multistakeholder process are to comply with the expected standards of behavior.

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

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| JEFF NEUMAN: | Thank you very much. Welcome, everyone. We thought we would try some video today. So if you feel bold enough to get onto video, that would be great. It is actually a lot nicer when we can see people, but we're not going to force you to use video if you don't want to. |

Also, because this is a regular working group meeting but we're also using Zoom, every working group member should be promoted to a panelist so that everyone who is a working group member can actively participate. But we also have an attendee panel for anyone that comes in that wants to observe. Or I believe attendees can also put in comments in the chat as well. So that's good, and hopefully this format works. Just give staff a little bit of extra time because they need to actually I think manually promote everyone that comes in to a panelist, so that might take a few minutes.

So with that said, let me just review today's agenda. Even though this is during ICANN week technically, I guess, but ICANN ended, this is going to be a regular meeting of the working group. So we'll operate as we normally do. The agenda for today is we're going to spend a good amount of time talking about the predictability framework and move on to the Package 5 to review the "can't live with" comments.

And then I see Jim has got an AOB or now question. Let me just read it from the chat. "There are calendar items for the entire month of July yet the workplan has us going to public comment around July 16. What's the plan for those last two weeks of July?" Jim, that's an excellent question. I'll address it now.

I think we're just putting meetings on there just in case things don't get done by when we hope to get it done. But leadership will be meeting next week. My guess is that we will not need some of those meetings in later July if we get everything done, but there may be some items that we want to think about even when the draft report is out for public comment. So leadership will discuss that next week, and we'll certainly get back to you on that. So, yes, they're "just in case" placeholders, right.

Okay, so that said, let's start on the predictability framework materials. Steve sent—I think it was Steve—sent a document earlier today, so just not too long before the call, which is a chart we've done that summarizes the concerns that have been expressed and/or the SPIRT team model.

So I'm going to ask—I don't know if we can do this because probably it would be too small—to do a side-by-side of these concerns and the model itself. If that's too small, we'll just go through these. But I don't know if we could put up the annex also as another document or if that would make everything way too small. Let's see if that's possible. Sorry for those just listening that may not be—there we go.

Oh, I forgot to ask. Are there any changes to any statements of interest before we get started? Sorry for that. Okay, not seeing. Well, actually I should probably scroll down. Okay, not seeing any.

Thanks, Steve. I think what we'll probably be looking at is the annex as opposed to the predictability section itself, or whatever we ended up calling that. I think it's annex.

So as scrolling is going on, on the left-hand side of the chart you'll see the concerns that we've heard expressed about the SPIRT team or the framework. To the right are just some of the things we've jotted down to mitigate against those concerns. So we wanted to go through those to make sure that we had buy-in from the group as to the concerns and how we're proposing to mitigate them and whether there's anything else we should be doing to mitigate those concerns.

The first one is that there's concern that the SPIRT team may develop policy and therefore undermine the Council. Not just Council, it's shorthand, but undermine the whole PDP processes.

So what we've come up with is that because the SPIRT team has a representative structure that should keep it accountable. The functions are limited to triaging issues and providing advice on the operational issues. It's explicitly stated in the annex and elsewhere that this is not a policymaking body. The Council will always maintain a supervisory role over the SPIRT team. And all recommendations or advice that's issued by the SPIRT team will be subject to review and oversight of the GNSO Council who maintains the discretion on whether or not to adopt the recommendations made to the Council.

Is there anything else to add to that? First of all, do we believe that those are good enough mitigation factors? Should there be other ones? I just want to open up the floor. Okay, go ahead, Alan.

ALAN GREENBERG: Thank you. I had to take a phone call halfway through so I may have missed this, but are you specifying the GNSO Council threshold to approve? You probably want to specify whether it's a regular majority or a super majority.

JEFF NEUMAN: Yeah, thanks, Alan. So we discussed that issue, and I think where we came out on that is because we are not the GNSO Council I don't think we at the end of the day concluded that it would be our place to determine what the threshold would be for GNSO Council. And it was really an internal Council decision that once they get this—if they accept this model, of course, and the Board accepts it—then the GNSO Council will have to revise its own procedures to figure out what it wants to do with this or keep it the same. Does anyone disagree with that recollection? Okay, I see a couple hands, so let me go to Kathy and then to Greg.

KATHY KLEIMAN: Can you hear me?

JEFF NEUMAN: Yes, go ahead.

KATHY KLEIMAN: Okay, I just want to raise a procedural objection. Steve circulated this what appears to be a useful document at 1:22 PM today. Some of us were still presenting in Kuala Lumpur time 12 hours ago. That's not enough time to review this and tell you what's

missing and what should be here. Also, it would be helpful to have an update of the flowchart because a lot of what was of concern had to do with the order and the idea that everything that was policy had to do with the order and who got the first say and the final say on things. So procedural objection. We shouldn't be doing this right now. Thanks.

JEFF NEUMAN: Yeah, thanks, Kathy. I understand your objection. There's nothing new that's on this document itself. It's all taken from the annex which is material that's out there. So while I would have loved to get this out earlier, we were all tied up with different things. And this will be available on the list if we want to add things as well. As far as the flowchart, I'm not sure if that has been updated yet because, again, the flowchart was just really supposed to be a representation of what's in this annex.

Okay, let me go on to Greg. Sorry, Alan, I didn't mean to—did you finish your comment?

ALAN GREENBERG: I did.

JEFF NEUMAN: Oh, okay. All right, let me go to Greg. And then, Alan, your hand is still up so I don't know if you want me to come back to you. Greg?

GREG SHATAN: Thanks. I hope you can hear me. Just following on what Alan said I think that brings back a bigger point that we discussed which is whether we are using to the greatest extent possible the standard IRT framework guidelines and procedures. So unless the issue that Alan raised is not covered in those guidelines and procedures perhaps because other review teams don't report to the GNSO Council we should always be looking first, in my mind and I think this is the decision we made, to the regular rules of the road for IRTs. Thanks.

JEFF NEUMAN: Yeah, thanks, Greg. I think that's in line with our thinking, and that's why I think we're silent on it because I think the Council can always choose to rely on its existing rules for IRTs. And we've certainly incorporated a lot of that into this document here. if you remember a few weeks ago we circulated an actual comparison of the standard IRT language in the GNSO operating procedures and what the changes are to this. I think it was a side-by-side Excel sheet or something like that that I remember drawing up.

Paul, go ahead.

PAUL MCGRADY: Thanks. I think missing from the chart under mitigation on the second row about lobbying, one of the things that we came up with that helped with the lobbying issue is that the SPIRT cannot assign itself work. All the work the SPIRT gets is from other places. So because it can't come up with stuff on its own to look at really the lobbying issue falls away. so I'd like if we can to add that

as another mitigating factor because I think that will calm nerves for people outside the working group when they read this. Thanks.

JEFF NEUMAN: Yeah, thanks, Paul. That's a good point. You've taken us to the next point, but let me first ask if—and this document I'll ask Steve in the background too or whoever has control—this document may be a PDF but we are taking notes. So I don't know if we can update it on-the-fly. If we can, great. If not, we will certainly update it. We'll take that note down and we'll update it and resend it out after this call.

Anne, do you have a comment on the first line or the second one? Just want to know if we should move on.

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

JEFF NEUMAN: Yes, absolutely.

ANNE AIKMAN-SCALESE: I just had a comment on Paul's comment. When we say the SPIRT cannot assign itself work, [inaudible] modify the language to say that items can be referred to the SPIRT by I think the Board, GNSO Council, and [staff], right? We just didn't want people within the SPIRT saying, "Hey, I've got an idea. Let's address X issue." So I think that's how [we put it]. That's some of the language we already did.

But the thing that I want to emphasize again, and I cannot see this chart at all as far as legibility really. I mean, [I have to get really, really close]. Is that I believe the SPIRT should be the screening tool for all issues that arise. I mean [staff] and the SPIRT may readily agree, "Hey, this is policy. We need to send this over to the GNSO Council" or they may not. And so I'm still back to being a little confused by the presentation on this that I think we've made to the GAC where, how many buckets do we have? Because we used to have five buckets: A, B, C, D, E. And I said every single bucket needs a pass from the SPIRT to say we think it's implementation, we think it's policy, or we think it's—you know, here's the bucket we think it belongs in. And there was some sort of idea in the flowchart that you're saying has not been updated that staff could decide the nature of the issue and bypass the SPIRT. And I think that is not correct.

JEFF NEUMAN: Yeah, sorry. Thanks. So we will get to those buckets at some point in this chart. And actually maybe it's even the third one, so we'll get to that part. We do say in the language what Paul has rephrased or what we've rephrased here. But it does say that work can only come from the three sources: the Council, the Board, or the Org. And your point is on who gets to classify what's in which bucket. So we will go through that.

Let me just go to the second row first, and then we'll come back to the bucket issue. I just want to make sure that we've gotten the mitigation factor. So the second one is, the concern is that the SPIRT team could be subject to the influence of lobbying.

And so Paul has already provided one mitigation factor that we've added which is that it can't refer work to itself. We also state that members will have diverse interests and backgrounds and complete statements of participation. Remember that's the statement of interest plus additional items kind of like the idea that the NCAP had incorporated which is just adding a couple extra questions to really understand the interests or lack thereof of the members.

And the decision-making procedures will follow 3.6 of the GNSO working group guidelines on consensus-based decision-making. And, of course, as we've covered, all the recommendations are subject to review and oversight by the GNSO Council, and the GNSO Council maintains that discretion on whether or not to adopt those recommendations.

I think, Paul, your comment—oh, for the first concern, Paul wants to add a bullet that says the SPIRT will not knowingly develop policy. So we have in there that it's not a policymaking body, and so we'll just add that language right there. Steve and I were on the same page, I guess. Cool.

Okay, anything else that we think would mitigate against either that we already have in the annex or anything else that we think could mitigate that? Anne, go ahead.

ANNE AIKMAN-SCALESE: Yes, I think I'd like to ask that we be able to actually see this document in full screen and, I don't know, minimize the predictability framework document and refer to it when needed.

Because I'm having to get way too close to the screen to see and read what's going on. Thank you.

UNIDENTIFIED FEMALE: Jeff, I can't hear you.

JEFF NEUMAN: Yeah, thank you. That would help if I actually unmuted. Sorry, guys. I mute my phone when others are speaking because I don't want to get that in the background. So sorry about that.

So let's go to the third row then, which has that ICANN Org will be able to—sorry, this is the concern not the actual fact. The concern is that ICANN Org will be able to make certain decisions on its own without consulting the community. This could include [miscategorizing] an issue. I think this gets at the heart of what Anne had brought up just a couple of minutes ago.

What we have as mitigating factors here is that the framework puts significant limitations on decisions that ICANN Org will make without consultation with the SPIRT. And it requires ICANN Org to consult with the SPIRT on every operational decision—oh, sorry— requiring ICANN Org to consult the SPIRT team on every single operational decision could become a significant unnecessary bottleneck.

We need to work on this because there is—so Anne's position is that everything no matter how minor it may seem or how internal it may seem should go to the SPIRT team or at least involve the SPIRT team before ICANN Org implements it, I guess is the world

I'm looking for. So I don't think we have consensus within our group as to how this should work.

We really don't want to become a bottleneck. I think that's a big concern. There are certain purely internal things that we don't necessarily want to get in the way of. But understanding Anne's concern that that would mean that ICANN Org is making certain decisions or putting things into certain buckets without consulting the SPIRT or maybe would consult the SPIRT after the fact.

There could be something like one of the things we could do is doing something like a change log so that if ICANN does make any changes in that first category, that they will notify the SPIRT team and it will be on a change log or something like that where the community and the SPIRT team could see those changes.

Let me go to Anne and then to Paul. So, Anne, go ahead.

ANNE AIKMAN-SCALESE: I thought that the universe of items that we were talking about here to begin with was issues that arise after implementation. The problem that we faced [in a point farther on] was when an issue arises after implementation it may be viewed as policy by some, it may be viewed as implementation by others.

What we've said here is, well, if the predictability framework describes a situation that somebody on staff determines is implementation, they don't need to run it through the SPIRT. That's kind of like a Catch-22 because, again, the terms that you've used in the predictability framework are things like "has an

impact on this one" or "significantly affects that one." Those things depend on the point of view of the party that's [interested].

I like your idea of a change log, but the notion that you're going to have staff determining when an issue arises, not just day-to-day execution where everything is clear from existing policy work, but when an issue arises the notion that you'd have staff determining whether it should be referred to the SPIRT or not is back to the same problem that we're trying to solve. So a change log may be that then if there's a change log, who decides? Is it a change log that goes to Council, and do they figure out whether or not it needs to be addressed? Is it a change log that is reported to the SPIRT, and they're allowed to say something about it?

You've kind of gotten yourself back into, unless you have the screening function happen at the SPIRT level, you've gotten yourself back into, well, is it policy or is it implementation and whose point of view matters?

JEFF NEUMAN: Yeah, thanks, Anne. Just before I get to Paul, we tend to think of the major-type changes when we're going through this subject, but I also want the group to think about changes like in the last round ICANN developed a custom-made ticketing system for support. It turned out for whatever reason that ticketing system was not optimal. It didn't provide the greatest functionality that they needed internally and for whatever reason made the determination to go from a custom-made solution to a Salesforce solution. I think it was Salesforce. That's the type of issue that could come up as well.

So the question, Anne—and I'll go to Paul first and then I'll come back to you, Anne, if you want to get in the queue—is if there's something like that where they want to switch some custom-made software to some Salesforce software or something like that that doesn't change a functionality, that doesn't have any impact on the users of the system or certainly not a negative impact, it could be a positive one, then is that really the type of thing that we should be standing in the way of? I'm going to go to Paul and then, Anne, if you want back in the queue, absolutely please jump back in. Paul, go ahead.

PAUL MCGRADY: Thanks. For this row, I don't think that the second one is a mitigation factor: "Requiring ICANN Org to consult with SPIRT on every operational decision could create a significant unnecessary bottleneck." That's a why for the thing in the column right next to it, but it's not a mitigation factor. It doesn't make anybody feel better, so I don't think that should be there.

But I do think what's missing here is something that we can borrow from two rows up which is that the GNSO Council retains review and oversight. So, Jeff, correct me if I'm wrong. If the staff decides to do something and it's minor and they don't think it's worthy of the SPIRT and they don't consult the SPIRT, there's nothing stopping the Council from declaring that something that really should be looked at either by the SPIRT or in a PDP process because it's either policy or it's really, really important implementation that in the Council's mind exceeds what the staff should be up to.

So I think there's already a failsafe here because the Council is still involved. Unless the Council is not. If the Council can't do that, then we should talk about that, but I think they can. Thanks.

JEFF NEUMAN: Yeah, thanks, Paul. That's a good point, both of those points. I see Justine has made a similar comment on that mitigation second factor is not mitigation but just an explanation. So we may create a third column for notes. But I agree that that doesn't really belong in that mitigation column.

On the second point I agree with you as well that we could add in there that the Council does maintain its discretion over the SPIRT team or supervisory role and if the Council is not happy with an ICANN decision, there's nothing preventing the Council from stating its discontent. I think that's a great one to add so if we can copy that over and put it in as well.

Anne, you're back in the queue so please go ahead.

ANNE AIKMAN-SCALESE: Yeah, Jeff, I certainly agree with Paul that Council never loses its oversight capacity and authority. I think that being aware of a change having been classified by staff as a certain thing is a whole different story. Council has plenty of stuff to do on its agenda. So I guess in a spirit of compromise I would say that as long as staff documents that change bucket and notifies GNSO Council of the change they've made and the bucket they think it's in and we add that to the mitigation factors here that if staff makes

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a change, classifies a change in a bucket, I think that they [inaudible] they'll notify Council of that, then I'm okay with it.

JEFF NEUMAN: That's great. Thanks, Anne. I think we should—I'm just reading what Steve has added—the supervisory. I think we should add in the change log, Steve, if we can add that in. So that ICANN needs to maintain a publicly accessible change log and perhaps even allowing people to sign up for updates to those or something like that.

ANNE AIKMAN-SCALESE: Yeah, and to clarify, Jeff, what I said is that when staff makes that determination and makes that change or whatever, they need to notify GNSO Council. It's not just that if I'm on Council I can log in and look at the log. It's that Council is notified that staff has—for example, if you want to go back to the 2012 round you've got [inaudible] determining [inaudible] solutions an implementation like ICANN Org identifying something as implementation.

Well, okay, that's a very high visibility issue. It wouldn't happen [now], blah, blah, blah. But when [inaudible] that change log that we're putting in here now that GNSO Council [is just] regularly notified in a regular—I don't know what it would be, weekly, biweekly, monthly—report, here are the items that staff classified in Buckets A and B and what we did about it.

JEFF NEUMAN:	Okay, so if we had a—oh, sorry. I didn't mean to cut you off. I'm sorry. Oh, you're on mute. I think you muted yourself.
ANNE AIKMAN-SCALESE:	[I just meant] keeping Council up-to-date by staff letting them know things that they've put in those buckets and just keeping Council up-to-date, not requiring Council members to go log in someplace else.
JEFF NEUMAN:	Okay, yeah, so if we made it a subscription, subscribe to updates, made sure that the Council was included on those, maybe even a monthly report or something like that, I think that could solve it.
ANNE AIKMAN-SCALESE:	Council members should not have to subscribe. They should be notified without subscribing.
JEFF NEUMAN:	Okay, let me just go to Justine and let's figure that last part out, but Justine may have a comment on this. So, Justine, go ahead.
JUSTINE CHEW:	Thank you, Jeff. My comment, I'm not sure whether it's related to this per se. It was more an issue of the term that is used. The comment that I wanted to make is the one that I posted in chat. It actually refers to the second bullet under the first concern where it

says, "The SPIRT's functions include issue triage and providing advice on operational issues."

My point was, what do we mean by operational issues? Because according to the table, Type A/Type B are operational, well, it says type of change operational. So do we mean operational change, operational issues, are they same thing? In which case A and B are operational in nature but they do not involve SPIRT. So it just causes a bit of confusion for me. Thanks.

JEFF NEUMAN: Yeah, thanks, Justine. Let's go to—sorry to change documents, Steve. Is there a way to go to the annex now? I see it behind there. Okay, so A says that if it's a minor change—sorry, this is internal also—if it's a minor change, a change to ICANN Org's internal processes, does it have the material impact? I don't want to read the whole thing. This would be like what I was just mentioning. The backend change from a custom-made software to a backend Salesforce type thing.

If we scroll down, Steve, to the—so at this point ICANN Org shall use the framework to determine if the issue falls into this category and if it does, then they can implement without the need. So we're going to change that language because it says without the need of consultation. But we're going to add in the stuff that we were just talking about in terms of the change log, etc.

And then B is changes to things like service level. These have to be communicated prior to the deployment. This is where we think that if the SPIRT team wants to provide some advice on the

operational stuff, it can. So they're going to get notice prior to the change and then it's envisioned that the SPIRT team could at this point say, okay, now that we have notice we do think that there are operational things you may need to consider. So that's where the operational advice may come in.

So I'm going to go back to Justine before Anne just to finish out that comment.

JUSTINE CHEW: Thanks, Jeff. Then based on what you're saying, can I understand that the table on Page 8 is outdated?

JEFF NEUMAN: That's probably a safe assumption.

JUSTINE CHEW: Okay, thank you.

JEFF NEUMAN: Yes. So, yeah, we'll need to fix that. Thanks. Cool. Okay, Anne, go ahead.

ANNE AIKMAN-SCALESE: Yeah, Jeff, essentially that was my same question. Just to summarize this, what we're now saying is A is the staff-only determination [for] changes that will be kept in the change log and B, C, D, and E the SPIRT's involved in some manner.

JEFF NEUMAN:	Well, I don't think we need to limit the change log to things that are just in Category A. I was thinking that, at least I thought the suggestion was, that it was a change log for all changes and then they put the category in there. So I think the only difference between A and B is that A are the type of changes that because it's all internal and no impact, they wouldn't have to notify the SPIRT team before the change is made. But for B where it's non-minor they certainly have to notify the SPIRT team and the SPIRT team could then ask ICANN Org to hold it up because they may see some operational things that are in there. Sorry, Anne, you're on mute again.

ANNE AIKMAN-SCALESE:	Oh, sorry. I think that's clear because B involves material [inaudible]. So basically, if it's B staff is not going to make a change. But they'll put it in the change log and say referred to the SPIRT, blah, blah, blah, right?

JEFF NEUMAN:	Yeah, so B would be ICANN would provide the description of the change it wants to make. The SPIRT team would have the option of jumping in to say, well, wait a minute and of course notifying the Council if it thought that it rose to that level. So A is without the involvement of the SPIRT team until, obviously, afterwards. And then B is where the SPIRT team could jump in and say let's do this or let's review this or something like that.

ANNE AIKMAN-SCALESE: Okay, great. Thank you.

JEFF NEUMAN: Sure. Okay, anybody else have any comments or questions on this? Okay, awesome. So let's go to the next one which is the fourth row. Some have said it's unclear why the SPIRT is better positioned compared to others in determining what is policy versus implementation.

What we've put here as the first couple items is that the SPIRT team doesn't make its recommendations in a vacuum. It's always going to be working in collaboration with the Council, with ICANN Org, and the Board if it's appropriate, with the Council playing a supervisory role. It is expected that the SPIRT can work more effectively than Council alone because its membership is dedicated to this purpose.

I would also add in there that it's hoped that members of the SPIRT would have some level of experience and expertise in these areas. Paul, go ahead.

PAUL MCGRADY: I think that this is actually more of a PR problem than anything else. In fact, we heard this from I think it was a GAC member in one of the calls where you and Cheryl were on. They were raising the question like, wow, is this really more simple or is it more complicated? To the outsider, it looks a bit like an Escher painting.

But I think that the mitigation point is that staff, somebody will come up with a simple explanatory guide to how the SPIRT works

so that people can get comfortable that in fact the SPIRT is better positioned compared to the other processes that we already have in place or that we could build. So I think we need a mitigation factor saying, yeah, we promise to explain this in a simple way. Thanks.

JEFF NEUMAN: Good suggestion, Paul. Thanks. If we can add that in there. That's the type of thing I think also we can include as a formal implementation guideline/guidance in the actual main body of the text too that we strongly recommend or we recommend that the implementation team create a—I'm not going to word it on-the-fly—but does that sound like something you would like to see as implementation guidance? Paul says, "That's a good idea."

Paul, since you brought it up, and I know this might be skipping a line or two—I think, Steve, you might be putting that in the wrong line, although it could apply to that too. There you go. So I want to skip a couple lines after Steve puts that in to the GAC concern because Paul had brought it up and I think it's a good segue.

If you were listening to the GAC sessions and the communique drafting, while it's not going to be advice because I don't think they're going to do any formal advice, some of the GAC members expressed a concern that they were afraid that the framework would undermine existing roles and responsibilities afforded to ICANN organizations under the ICANN bylaws. So they were afraid that this would somehow limit the role of the GAC in doing what they do under the ICANN bylaws. Although Cheryl and I tried to assure them that was not the case, that certainly wasn't the

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intention, and in fact there's nothing we could do to minimize or limit the role under the bylaws.

Nevertheless, they still have this in their communique as a concern, and so we would love to reassure them through these mitigation factors that that indeed is not the case. So we have in there in the mitigation column the SPIRT's functions include what we had earlier, the triage and providing advice. The framework does not impact or seek to limit any SO's or AC's ability to carry out its roles and responsibilities under the ICANN bylaws.

Anne, your hand is raised, so if you want to go ahead.

ANNE AIKMAN-SCALESE: [inaudible] I saw that in that communique draft as well. I wonder if in the mitigation factors where we talk about the representative nature of this group we could be even more welcoming about representatives from SOs and ACs are welcome, that kind of thing. The GAC [inaudible] [appears to be fearful about] they'll have no input into what the SPIRT's doing. Well, you want to send somebody over? That's kind of what I'm getting at.

JEFF NEUMAN: I think that's a good idea. We do have that it's representative in nature. What we've been going around talking about has been that other SOs and ACs may choose to put some representatives on that. I guess representatives is not the right word because they're not representing their group; they're just from that group, so probably a better way to word it. But, yes, persons from other

SOs and ACs are able to join that group provided that they [inaudible] statement of participation and all of that.

Paul is saying, "I think the GAC concern line could be merged with one of the items above which basically raise the same concern." Yeah, Paul, it is duplicative. I wanted to put it in here separately just because when the Council actually gets the communique and if it decides it wants to respond, I wanted to be able to clearly hand this to the Council and say, "Hey, if you want to put something like this into your response, this is what we're working on." But, yes, some of these are duplicative.

I also think that the "how it works" document that you, Paul, had brought up that we're going to include in implementation guidance, I think that could help explain the story and that certainly could be a mitigating factor as well, just an explanation.

Okay, so let's jump up two points to where we left off at the top of the page there. One of the framework issues that has come up is, how do we determine which bucket? I think we've been talking about this with the other elements because we have these different buckets but determining which bucket is not always the easiest thing or it may not always be clear.

So what we have here is similar to what we have which is that the role is advisory in natural of the SPIRT team. They're working in collaboration with the Council, Org, and Board as appropriate. Council always has a supervisory role. So all of this makes the SPIRT team accountable and if there are errors, it's not like there's a lack of different mechanisms to ensure that it's doing the job according to the expectations of the community.

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So, Anne, go ahead.

ANNE AIKMAN-SCALESE: Just back on the GAC concern box, I think it would be worthwhile to repeat the change log as another accountability mechanism there because anybody from the GAC would be free to sign up to the change log and it's not like anybody is going to try to pull a fast one on them. We don't have to notify them because it's Council that we're notifying and it's Council's domain. But if we also refer to the change log, that's another way that we're addressing their concern.

JEFF NEUMAN: Yeah, I think that's right. Steve, can you add the change log into determining which bucket for the first row of that second page?

ANNE AIKMAN-SCALESE: Jeff, I meant in the GAC concern. Well, both of them, I guess. The change log could go in both of them. And then [inaudible] going to have to respond.

JEFF NEUMAN: Very nice. Okay, yes, I think it applies to both. You're right. Okay, any other comments on that one? Okay, let's then go to the second-to-last one but the last one we need to talk about which is that the framework and SPIRT are too complicated and it's not clear that they create value versus existing mechanisms for issue mitigation.

This was also part of the GAC concerns. There's a couple words in there about what value does it add as far as cost-benefit I think is the term that Jorge might have used. So again, I think that implementation guidance we're talking about of the PR document that Paul was talking about, I think that could go a long way as well. I think when that's created being absolutely 100% clear on the why this has come up in the first place will also talk about the value that it will add for the community.

I think part of it too is that the GAC, I don't think a number of— well, there are a lot of new members of the GAC that were not around during that time period. And the ones that were around I think don't feel like some of them may not be as concerned as the applicants and community were of all the delays that were caused with these issues because many of them were, frankly, to address the GAC concerns that were expressed during their program. So again, I think being very clear on the background of why we're doing this should demonstrate the value.

Anne, go ahead.

ANNE AIKMAN-SCALESE: Well, Jeff, I totally agree with that and I think that PR document that Paul has raised should [inaudible] emphasis on the public comment asking for a standing IRT. Because of course, one of the reasons that [we've been asked] to do this is it's presumed that the SPIRT can act more quickly than [different] mechanisms. That may not be meaningful to the GAC, but I think that the public comment asking for a standing IRT could be meaningful.

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JEFF NEUMAN: Yep, great. Okay, let me ask one final question before we jump into the Package 5. That is, do we think something like this kind of item—I know we're using this document to help us to make sure that we're all aligned on what needs to be in this framework and how we're structuring it. Is this the type of thing that we may want to include in the draft final report as a FAQ or something like that? Or do we just think that this document should be purely internal?

The reason I ask is because right now this document is worded, much of it, in shorthand and if we were going to make it a formal part of the report, then we probably would want to not abbreviate some of the things and to restructure some of the wording. Let me just throw that out there.

I see Annebeth says she thinks it's useful as a supplement, and Cheryl is talking about appending it. I think Paul—so, yeah, okay. I agree with that. I think it's going to help explain and hopefully it will focus the comments that we get back. Hopefully, it will lessen some of the concerns but if not, at least we have that material document in there.

Okay, so here's what we're going to do. We're going to go back, work on some of the wording to make it more presentable in the report. And then keeping this in mind on the next meeting, so we'll go through Package 5, and then the next meeting we'll incorporate some of this into the details of the section and the annex. And then we hope to wrap that up on the next call. We'll wrap up predictability. So hopefully, that will be good. Steve has a question. Go ahead, Steve.

STEVE CHAN: Thanks, Jeff. I was just about to verbally [intervene], so thanks for seeing that in chat. Just maybe a different way to look at this and a possibility for a different way to address this is that these concerns and then the mitigations could actually just be converted into rationale rather than be stored as it is in a separate document like this. Then it just becomes a little more streamlined. I think after us seeing how this doc was formulated, the expectation I think is that we need to make everything consistent with what is captured here. So maybe it's add additional implementation guidance as is noted in a couple of areas. And then all of that follows that the rationale needs to explain why these things were added. So I'm not explaining this very well, but maybe everything in here should just be part of the rationale rather than be a separate document. So maybe that's another way to approach it. Thanks.

JEFF NEUMAN: Yeah, thanks, Steve. Why don't we—let me just, there's, oh and a flowchart update, right, for the next meeting. So, yeah, let us go back and make these changes and then present it for Monday's meeting. Although, let me ask staff before I commit to Monday, is that too short? I don't want….

JULIE HEDLUND: Yeah, and as Steve is saying, that's too short. We have a lot of work that we're trying to catch up on that we haven't been able to

do during ICANN 68. So we're a little bit behind. It would be great if we could have some more time. Thanks so much.

JEFF NEUMAN: Yeah, as I was saying, is Thursday okay? I know, because we're getting down to our last weeks here. let's work on it for Thursday then. We'll schedule that to finish predictability on Thursday. Okay, and I'm sure, by the way, that Steve and Julie and Emily, first of all, thank you so much for all the work you've done with us. So sorry for putting you on the spot. I realized after I said it that I probably shouldn't have committed since you guys do most of the work, so thank you so much.

Okay, so let's move on then. Sorry, Anne, is your hand up? Is that a new hand?

ANNE AIKMAN-SCALESE: No, [inaudible].

JEFF NEUMAN: Oh, okay, thank you. All right, and just note that the flowchart as well we'll change out for Thursday as well.

Okay, let's go to the Package 5 if we can. Let's give a minute or two. We talked about this one. I think we need to scroll down.

STEVE CHAN: Jeff, so just for context, this is connected to….

JEFF NEUMAN: Yep.

STEVE CHAN: Okay, if you want to, I think you understand.

JEFF NEUMAN: No, no, go ahead. Go ahead.

STEVE CHAN: Okay. This updated rationale was in connection to a potential change that Justine had recommended but I think the working group had agreed not to adopt that change. So correspondingly, this updated rationale would not make sense to accept since the updated recommendation was not accepted. So that's just where we left off last time. Thanks.

JEFF NEUMAN: Yep, thanks, Steve. Okay, good point. All right, so let's go then to the next one. I'm relying on you because for some reason I don't have it pulled up on my screen. You know what? Actually, can someone put the link in so that anyone can go on to the Google doc if they want? Ah, two of them. Thanks, Julie. And thanks, Justine.

All right, great. So this is on the limited challenge and appeal mechanism. The original text we had in there was, "The working

group affirms Recommendation 12 from 2007 that states," and it has the quote.

The proposed alternative is from, can you just click on that to see who it's from. Is it Justine? Yes, okay, so Justine notes that there's an inconsistency between the above affirmation and the affirmation with modification under section objections. The solution is to adopt the final text for the affirmation of Recommendation 12 under objections and the rationale. And so far as the topic of objection serves as an antecedent to this topic of limited appeal mechanism, is there an inconsistency with the approach the working group is taking in possibly affirming Recommendation 12 with modification under the topic of objections?

So let's read this new language. This would be an alternative to what's in the first affirmation. It would state "Recommendation 12 from 2007 states," and it would have that quote and then say, "Consistent with the implementation guidance below the Working Group affirms Recommendation 12 with the following modification in italicized text: 'Dispute resolution and challenge processes must be established prior to the start of the process, the details of which must be published in the Applicant Guidebook.'"

So I think that is a good suggestion. I think that certainly the start of the process I think is very vague, and so I do think that is certainly in line with our intention and what we state in the objections section. Is there any opposition to that? Great. Thanks, Justine. We'll adopt that.

Okay, so then the next recommendation there is a proposed change from Kathy. It states, "The working group recommends

that ICANN establish a mechanism that allows specific parties to challenge or appeal certain types of actions or inactions that"— what it says now is—"are" and Kathy is proposing I don't know if this is to add or in its place but "appears to be inconsistent with the Applicant Guidebook." Kathy is saying it's not inconsistent until there's a finding as such.

So I think that makes sense. So I believe that's to be in place of the word "are." Would anybody object to having it state "certain types of actions or inactions that appear to be inconsistent with the Applicant Guidebook"? Paul McGrady is a plus-one. [Other] plus-one, so great. I don't see any objection, so that's great. Let's do that.

Okay, this is also another wording change from Kathy. Right now it states, "The working group recommends that the limited challenge/appeal mechanism applies to the following types of evaluations and"—what it says now is—"objections decisions." Kathy would like to add in "formal objections." The term "formal" comes from the current Applicant Guidebook in Module 3 and may help to flag readers to understand the important distinction of evaluation changes and objection appeals. So it's for clarity. And then the same change would be added in the list below.

So anybody object to this change? I think that Kathy is right. If we want to make it in line with the current module, they do use the term "formal." I guess that would also distinguish it from any other types of what people may think of as an objection in a public comment or something like that. So this seems like a good change Paul says as long as we aren't cutting anything out by accident. And Rubens is saying we want to make sure it's consistent. So

what I'm hearing is that we can make this change, but we need to make sure that we're being consistent in our report. So there's an action item there. Accept the change and then make sure that we're consistent in the rest of the report. Okay, thanks, Kathy.

I know this is a little tedious, but I appreciate everyone hanging in there. Can we just go up just a little bit? There we go. Because it's all under the recommendation. I want to make sure people can see the recommendation too. This is in support of transparency. The recommendation is "clear procedures and rules must be established for the challenge/appeal processes as described in the guidance below." So the second implementation guidance states that "The type of decision that may be challenged/appealed should vary depending on the process being challenged/appealed. The working group's guidance on this issue is summarized in Annex," and then there will be an annex.

Justine states the nature of this intervention is more of a question and it's connected to the topic of objections. So the key question here is whether the draft recommendation and our implementation guidance under objections which confirms the ALAC as an established institution for purposes of a community objection altogether removes any requirement on the part of the dispute resolution service provider to find on the issue of standing, to object vis-à-vis the ALAC. If the answer is yes, then annex is complete. If no, then annex may need to be clarified to include standing as a ground of appeal.

So my understanding is that we did not mean to change the standing requirements of the 2012 round. So that even though the ALAC can file a community-based objection, there still needs to be

standing. And so then what Justine is saying is the Annex X may need to be clarified to include standing as a ground of appeal.

So I agree with that. If there's a finding in the decision that the ALAC did not have standing for the community, then that should be a ground for appeal. Does anyone oppose that? Alan, go ahead.

ALAN GREENBERG: Thank you. I'm not sure I'm opposing it, but I am noting that when this was being discussed in the dark ages before the first round it was not at all clear that standing in the normal sense was relevant because our understanding certainly was that just as with the independent objector the standing was de facto that we were appointed to be able to file objections and therefore we had standing. Certainly, that's the way I viewed it and I believe that's the way the rest of the group viewed it. I thought that was the intent. I'm not quite sure how to proceed from here, but I certainly have a concern if anything were to be explicitly added to say we needed standing because my understanding is it is very much like the independent objector. Cheryl might want to take off her cohost hat and see if she has a recollection different from that. I think we're the only ones that have that history.

CHERYL LANGDON-ORR: [inaudible]

JEFF NEUMAN:	Yeah, so I have a history as well but go ahead, Cheryl. Sorry, Cheryl, I didn't mean to interrupt. Can you go ahead?
CHERYL LANGDON-ORR:	I was saying my recollection is not different to Alan's.
JEFF NEUMAN:	Yeah, so my recollection is a little bit—oh, sorry. Yeah, my recollection is there were actually a couple decisions or, sorry, there was one decision that was in DotHealth. They came out with the fact that they did not have standing to make a community objection automatically. So using that decision and the guidance that was given by ICANN—but I also want to say that we did discuss this topic within the objections work team and there was not a consensus of the group to change that or to say anything one way or the other.
ALAN GREENBERG:	Jeff?
JEFF NEUMAN:	Go ahead.
ALAN GREENBERG:	My recollection is that the case that did go through the panelists said that they did not get to the point of considering whether the group had standing or not because they made the decision prior to

that. So maybe you and I are reading a different case, but that's the way I remember reading it.

JEFF NEUMAN: Okay, well, we'll have to go back to that. In any case, there was no recommendation—yeah, go ahead.

CHERYL LANGDON-ORR: The point is here, and Alan and I remember what brought up the issue of ALAC having standing in the first place. That's what we're referring to. You're talking about the case and the result of, and Justine's point is depending on what the intent is either the appendix or does not need to change. So can we spend less time on history and perspectives of our memories, albeit mine is obviously fading, and focus on what the intent is of this working group and these pieces of text and whether or not an appendix or annex needs to be [inaudible]?

JEFF NEUMAN: Yes, thank you, Cheryl. That was what I had initially said, that we do need to change the annex to include the ground of standing as being able to be appealed. So I think that's what started this conversation. So I was in agreement and was asking if anyone had objected to including that. So let me ask again, is there any objection to including what Justine has asked which is the ability to challenge a finding of no standing? Okay, I'm not seeing any….

ALAN GREENBERG: Jeff, I keep on putting up my hand and someone keeps on putting it down. I don't know why.

JEFF NEUMAN: Okay, it's not me, but go ahead, Alan.

ALAN GREENBERG: Okay, I believe if the wording goes in as I'm hearing that it is appealable, that is a decision is appealable on the grounds that the objector had no standing and that objector is the ALAC, I believe the ALAC will disagree with that in any final report. Because as I said, my recollection is, and unless there is a consensus to change it, is that we did not need standing just like the independent objector did not need standing. So I'm just giving a red flag. I know I didn't participate fully in the discussion when it was discussed earlier and if I missed it, then we may have missed it. But that's likely to be something that we will disagree with if it comes down to that. I can't speak on behalf of the ALAC, but I'm pretty sure that's the way it would come out.

JEFF NEUMAN: Yeah, thanks, Alan. I think you'll find, again, I want to point out that this was not an area of agreement within the working group. There was not an agreement as to change any language or anything existing from the last round. So I think the same arguments you had for the last round will be the same arguments you'll have for the coming round. And I think those that felt that the standing did apply, they'll have that too. So what I'm trying to say, I guess, is that nothing is changing. The only thing we're doing is

saying that if for whatever reason there's a lack of standing in any objection—this doesn't just apply to ALAC, it applies to everybody—if there's a lack of standing, the party that's found to not have standing has the right to appeal, I guess it's a general rule.

ALAN GREENBERG: Okay.

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

PAUL MCGRADY: Thanks. I was in the process of lowering my hand, Jeff, because you said it. This is just about the availability of an appeal. It's not about who does or does not have standing. That's someplace else. Thanks.

JEFF NEUMAN: Yeah, thanks, Paul. Is there another comment on Rationale 6, or is that just the—sorry, Steve, I know you're still typing. Was that all part of the same—okay, that's all part of the same one? Okay, thanks. Okay, that is a different one, sorry.

Okay, so this is a comment on the—okay, for challenge of registry services evaluation decision the arbiter of the challenge is currently listed as the existing evaluator entity. Different ultimate decision maker within the entity. Rubens proposes changing this to a new panel with different RSTEP panelists selected from the

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standing roster. The rationale is the RSTEP is not done by entity, so the arbiter needs to be changed.

I agree with Rubens' proposal. That is the way that the RSTEP functions in that it's a group of people and they select from that group of people to serve on the RSTEP for a case. So Rubens is correct that if there was an challenge, it would have to be people from those that are accredited to do RSTEP challenges. So his change makes sense. Okay, cool.

Let's then go to the next one. Okay, this is from Kathy. There's a question. What this states is that, "For all types of appeals to objections, the parties to a proceeding must be given the opportunity to mutually agree upon a single panelist or a three-person panel, bearing the costs accordingly." The question here is what if the parties don't agree. One wants single and the other wants three. What is the default?

That's a good question, and I can't remember what the guidebook had suggested as the default. What Rubens said in the chat is what usually happens with one or three panelists is the one wanting one pays half and the one wanting three pays two and a half. So is that document in [Ruben's doing now]? I just can't remember. Someone that [has filed] more would know.

While we research that, I think we can be more specific in the rationale as to what the current situation is. Oh, Rubens is saying what usually happens with one or three panelists is one wanting one pays half and one wanting three—so we'll check in the guidebook to see if that situation is handled because I now that

there were some that could have had three the last time and there may have been some.

Annebeth is asking, "Does bearing the costs accordingly cover this?" I think it does, Annebeth, which is why perhaps in the rationale itself we can add just what happened the last time. Kathy, would that be sufficient at this point? Okay, I don't know if Kathy is around, but I'll just take it that—she might have had to drop. Okay, so we'll go with that for now. Great.

Let's move on to the next one. I know we have ten minutes left. Justine makes a good point for this rationale. We just need to update it to correspond to what we all just decided, those changes. So if we can move to the next one, we'll have to update that. So that's a note as an action item.

The rationale, I think this is the rationale for one of the implementation guidance. It says, "In general, the working group believes that parties affected by an evaluation or objection decision should have the opportunity to file a challenge/appeal"— "under limited circumstances" is what Kathy would like to add. Kathy is saying that this should not be controversial. We opened only a limited right of appeal, so it's best to flag it as such.

That makes sense to me. Does anyone object to putting that language in? Okay, others are saying okay. So, good, let's accept that and move on.

Lots of explanation here. Okay, Base Registry Agreement. Flying through right now. Okay, here we go. Sorry, can you just scroll up

because I already forgot which section this is in. Okay, thanks, Application Change Requests. Okay, you can go down now.

Okay, so there is a proposal from Justine to add new implementation guidance. Or is this actually in place? Sorry. I think this is new, right? Yeah, okay, so Justine is asking us to put in, "Insofar as it is feasible, ICANN Org should explore the possibility of allowing applicants to delay evaluation pending early submission of an applicant change request on the basis of business combination or other forms of joint ventures so as to facilitate evaluation instead of reevaluation of the new combined venture or entity in an effort to save time and cost."

This is not something we have discussed, but I think it is very sensible. If an entity hasn't gone through, let's say, the background check and it has already decided to change the entity to a joint venture, perhaps it could save that cost by asking ICANN to hold off on it. So it sounds very reasonable, but I do want to note that we have not discussed this as a group. So ,Paul, go ahead.

PAUL MCGRADY: Thanks. Yeah, so here's paranoia for you. Can we change it to "explore the possibility of allowing applicants to delay evaluation of their own applications pending early submission"? What we don't want is to create a situation. I don't want to be vague here. I don't want to accidentally create a tool by which somebody gets put into a contention set and then they start playing around and trying to derail other people by using something they found in the

guidebook. I know that sounds crazy, but I would feel better. Thanks.

JEFF NEUMAN: No, that makes total sense. But let me ask Justine if Justine is okay with that. It doesn't sound crazy to me, but let me just make sure. Is she still on? Yeah, go ahead.

JUSTINE CHEW: Yeah. Hi, Jeff. Yeah, of course, the possibility of delaying the evaluation only applies to the concerned applications not anyone else's applications.

JEFF NEUMAN: Great. Thanks, Justine. I had assumed that was the intent but didn't want to speak for you. Jamie, go ahead.

JAMIE BAXTER: Yeah, thanks, Jeff. I think one thing I would flag here is, especially since I don't believe it has been completely sorted out yet, is timing. Keep in mind that all standard applicants in the 2012 round were required—well, all applicants including the standards—were required to finish their evaluation before CPE could begin. I would hate to think that without any further changes to that progression in the next subsequent procedures that this causes an undue delay to a community applicant getting to their CPE evaluation. I think in the original state where they're forced to go through a reevaluation that at least can come at a time when CPE is moving

forward. So I flag that because I'm seeing this just for the first time and it immediately concerned me. So thanks.

JEFF NEUMAN: Yeah, thanks, Jamie. That's a good point. So this is saying, ""Insofar as it is feasible, ICANN Org should explore the possibility of allowing applicants to delay evaluation." Do we want to put in some qualifier there like—I don't want to specify an exact number of days—but we could say a limited delay. Or I don't even know if that's right. Justine, is there something? So Justine says to define "early." So what should we say of defining early?

JUSTINE CHEW: Hi. Sorry, Jeff.

JEFF NEUMAN: Yep.

JUSTINE CHEW: I haven't considered a definition for early. My point was just to try and have the flexibility of letting applicants avoid going through reevaluation if they can, if it's allowable. It just makes sense to save time and cost. I didn't consider the impact it may have on community applications. That's why I just put in early submissions. So if you want to go back and think about what "early" means, that's fine with me. Thanks.

JEFF NEUMAN:	Okay, thanks, Justine. So given that we're up against the end of the time, we can start here. Let's think about the early. So if there's a way to highlight that. The whole paragraph is highlighted. But we'll start here on the next meeting. And then we'll try to create some words, capture the goal. Start here, finish Package 5, and then go into private resolution of contention sets. So we'll be prepared for that on the next meeting, which is Monday, 25 June, 15:00 UTC for 90 minutes.
	I look forward to seeing everyone then. We'll try to do video as well so if you know in advance we're using video, it would be great to see all your faces. So thank you very much. Cheryl, anything you want to add? Just a wave? Okay, thumbs up. All right, thanks, everyone. Just Anne put something in the chat about contention sets, great. So we'll make sure we discuss that. Thanks, everyone. Have a great weekend, and talk to you on Monday.

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