
ICANN Transcription
GNSO New gTLD Subsequent Procedures Working Group
Tuesday, 27 October 2020 at 03:00 UTC

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TERRI AGNEW:

Good morning, good afternoon, and good evening and welcome to the New gTLD Subsequent Procedures Working Group call taking place on Tuesday the 27th of October 2020 at 3:00 UTC.

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

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

As a reminder, those who take part in ICANN multi-stakeholder process are to comply with the expected standards of behavior. With this, I'll turn it back over to our co-chair, Jeff Neuman. Please begin.

JEFF NEUMAN:

Yeah. Thanks, Terri. I was just doing to see ... I guess someone didn't mute but now I guess they're muted. That's good.

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.

Welcome, everyone, to our first call post-ICANN. So I know now it's kind of crunch time. So, before we get started, I'm going to ask if there are any updates to statements of interest and I'll start with mine. I just updated my statement of interest to indicate that as of I think it was Wednesday when the Council met, I was appointed as the new GNSO liaison to the GAC. So that's now on my statement of interest. I know Javier updated his statement of interest, as did Olga, to indicate new positions from the Nominating Committee. But let me just open it up and see if there are any other updates to any statements of interest.

CHERYL LANGDON-ORR: Not exactly monumental. Mine is a continuing role. I continue to be the liaison from the At-Large Advisory Committee into the GNSO Council—

JEFF NEUMAN: Cheryl, it sounded like you almost got cut off there but I think we got the gist. Okay. So, congrats on the other continuing role, as liaison to the GNSO Council from the ALAC. Anybody else have any updates?

Okay, not seeing any. All right. Today's agenda is up on the screen. I know it's really small but there's going to be a lot to display and we'll periodically just drop the link to the documents that we're reviewing. But essentially we're going to spend a few minutes talking about the working method from here on out and look at the work plan and then we will get into the first set of

comment reviews which are the general comments and predictability.

So, we sent out an email earlier today that gave kind of an introduction to the working methods and we'll go over that on this call and I'm sure we'll have to go over it several times.

But the general gist of it is that we have a lot of subjects to cover in a short period of time. I don't know, Steve, if you want to pull up the work plan. So, what you'll see with that work plan is that there are multiple subjects per each day. Sometimes, there's a number of subjects. The reason for that is simply that we are not going to be reading through every single comment. We're expecting that everyone, when they come to the call, has read the comments in advance and knows the comments that they believe or that they would want to talk about.

So, before each call, Cheryl and I and the leadership team will fill in a column in the spreadsheet which I'll show you later, which will indicate the comments and questions that we thought from a leadership point of view would be worthy of conversation and of talking about during the call. This is not meant as any kind of binding, that these are the only comments we can talk about. But just a general head's up as to what we feel are the comments that either don't present—or actually I should say it the other way. The comments that we pick out are usually the ones that either present something that's new, present a response to a specific question that we ask, and/or good questions that we've seen that were raised either for the first time or ones that maybe we inadvertently left out or need to add some clarity.

So, it's not going to be every single comment. So, for example, if we've discussed these types of comments before or we're settled on a position that already took into account what the comment states, then we may not, as the leadership team, select that comment to discuss.

I see a comment from Jim. The leadership column, at least for this first meeting I believe is just myself and Cheryl, although the leadership team still does consist of Rubens and Robin and Olga and Annebeth and Javier and Maarten. I'm trying to remember. I think I said Robin, right? Yeah. So that's the general leadership team [forward]. So, hopefully, Jim, that answers your question.

Again, we're not going to read through every single comment that was raised. That would take forever. And our goal is to put these subjects to rest and to finalize for the final, final report. There may be some action items that come after the call. We may actually set-up some small teams to address these issues, but certainly we will do those offline as well so that we can continue the discussion and not have to always use up actual call time for discussion on these items.

We're also going to start with these meetings being 90 minutes but we may then move them to two hours if we feel like we need some more time.

Any questions before we get started? Go ahead, Jim.

JIM PRENDERGAST: Yeah. Thanks, Jeff. Jim Prendergast for the record. Just on your point about extending calls, I note that Justine is actually on

another call because she has non-ICANN work going on. We've got calendar items for calls right now. I would hope that if you do plan on extending these calls that you give everybody appropriate notice to do that because, despite what people may think, SubPro is not the beginning and the end of our lives. Thanks.

JEFF NEUMAN:

I was going to make a comment, but thanks, Jim. I certainly will absolutely give notice and I'm still hoping that we can accomplish what we need to within 90 minutes and also offline. Again, if everybody comes prepared to these calls to discuss the comments, then you'll see that there aren't a huge ... I mean, there are some topics which you can predict will have some more comments than others but there's a lot of other sections that actually don't really have too many comments or any new items that are added, and so we may fly through those, keeping in mind that the last report we were sending out was intended to be a draft final report. So, the goal is not to do major rewrites in any of this, unless something really new comes up that we have to completely revisit.

In addition, there may be some items that we may feel comfortable saying, "Look, we've gone about as far as we can go as our team and perhaps setting some of it up for an Implementation Review Team with appropriate guidance and guardrails," to use that term. So, we'll cross that bridge when we get to the specific items. But we do not have to necessarily solve every single issue.

Are any other questions on the work plan or the working method going forward? And let me also just open it up to Cheryl and Steve to see if I forgot to mention anything.

Okay, nothing to add from Cheryl. All right. Thanks, Steve.

All right. So let's get started. The first area that we're going to look at—and it's going to be a little tough to read on the screen because there's not much space, so if you have the link open, that's probably best and I think Steve is copying it so he can put it in the chat again.

So, the first, we're calling it general comments. And this is really the responses that were given at the end of the survey tool—or sorry, yeah, the survey—that was basically do you have anything new or are there any additional recommendations?

So, from the first part, the first question, are there any additional recommendations that you believe the working group should consider making? I put a comment at the top or we put a comment, as the leadership team, basically stating that overall we didn't see that there were any comments in this upper section that needs further review because they either relate to general comments that have already been made before or are things that relate to other sections, in which case we're moving them to those sections. Or there's a couple of comments in there about the survey tool itself or the Google form itself, so ICANN staff has taken note of that and I'm sure that they will address that for the next comment periods for other groups.

So, I'm going to ask then if there is anyone on this call that feels like any of these comments need any further attention because they present something new or because they provide something that we haven't discussed before?

Okay, so if we can scroll down. So this is the way we're going to attack all of these different sections. If we can scroll down to the next section which is line 12, I think. Okay. Sorry, I'm trying to look at two different screens at once.

So, this is the question that asks if there is any additional recommendations that you believe—the responder believe—that the working group should consider making, and if yes, provide the details.

I think, from the leadership perspective, the first comment there that I think we just need to take a look at is the Registry Stakeholder Group #1, which says that, "Given the importance of intended use of the string, in the string similarity evaluations ...". And then they cite other places that ask for intent. "We should make it clear that there should be a specific question that's asked in the ..." They say in the Applicant Guidebook. I think what's meant is the appendix to I think it was section 2, the evaluation questions.

So, I think this is a good point and I think it's a clarification of what we had intended anyway. So at least from the leadership team perspective, I don't think that this would present any substantive change to what we have but is probably a good clarification and in line with our recommendations. Let me go to Alan, please.

ALAN GREENBERG: Thank you. I put my hand up when you were asking were there any issues on the previous section. I don't remember your exact wording but you said is there anything new or something that we haven't already discussed here?

I think another thing we need to consider as we're going through these comments, if there is ... I won't say a preponderance but if there is a significant number of people raising things that, yes, we discussed before and, yes, we decided but if there is enough weight, essentially, behind comments that we discussed before. I think we really have to consider them because that's changing the balance going forward. And I'm not saying there were in those particular cases. I honestly haven't looked at them in detail. But I think the number of comments, and to some extent where they came from, have to be considered even if we did discuss it before. So, just a note. Thank you.

JEFF NEUMAN: Yeah. Thanks, Alan. It's a good point. And as you said, it doesn't necessarily relate to the general questions but it will or could certainly come into play when we get to the actual specific questions. So I think that's a good point and we'll keep that in mind, especially when we get to predictability and to other topics. Paul, go ahead.

PAUL MCGRADY: Thanks, Jeff. A quick general question and then a comment on this particular item. Are we flagging things for more discussion

later or are we discussing them now? That's question number one. Can you answer that and then I will proceed a comment on this particular issue?

JEFF NEUMAN:

So, I think it'll depend on the comment. I think this one, just to me, seems like a clarification so I'm not sure we need further discussion on it. I could be wrong and that's why we're discussing it now. But there may be other items that, as they come up, will require some additional—or may require—some additional thought.

So, this particular one here I think is just sort of a clarification but go ahead. I know you have a follow-up.

PAUL MCGRADY:

All right. Thanks, Jeff. So, in other words, hopefully everybody took some humanities classes and can deal with that level of ambiguity—ha-ha—because that answer was sort of yes and no which I understand.

With this particular thing, I agree that it's a helpful clarification but I wonder if we want to also ask it in reverse. So, for example, what is the intended use of your registry? And then I think it would be also helpful if we asked are there any uses which are outside of your intended use? I think specifically if, for example ... I don't want to pick on anybody but if the dot—shoot. I just lost it. The first company. What was it, DotCoach, right? If they had been able to say, "We do not intend to allow our second-level registrants to sell purses and accessories." An example like that might go a long

way to keep brands from having to enter into objections and other things like that if the applicant could ... If there was a method for the applicant to say specifically, "Yeah, and oh by the way, I don't intend to have X, Y, and Z in my registry." So, something to consider if we adopt this. Why not ask the second question? Thanks.

JEFF NEUMAN:

Yeah. Thanks, Paul. From my perspective at this point, I think the only clarity was that we were going to say that a question should be asked about the intended use, not actually write the question. But we can actually maybe change that to the scope of intended use, what's included and what's not.

What I don't think we need to get into right now, or even during this PDP, is writing the specific question. It's really just getting at the fact that a question should be asked that covers the intended use and then point to a couple of the sections of where that intended use or why that intended use is important. But I understand the point, so perhaps we just think of a different way to word it as a recommend that includes both what's in and, if applicable, what's not in scope of the use.

Alan, go ahead.

ALAN GREENBERG:

Yeah. I just wanted to agree with Paul and I think this is one where we may not want to write the question but we have to be a little bit specific. I mean, he's covering the case for a string that's already delegated, the Apple Growers Union saying, "We're not

going to sell Apple computers, so don't bother worrying about that." And I think that's a good clarification which may reduce a fair number of objections. Thank you.

JEFF NEUMAN:

Yeah. So, without writing the question, I think we can just generally point to a question should be asked of what's within the scope of the intent or intended use and what is specifically excluded, if anything, from the scope of the intended use. And then leave it to the Applicant Guidebook—or sorry, the IRT and ICANN—to draft the exact question.

Okay, anyone disagree with that approach going forward?

Okay, the second thing from the Registry Stakeholder Group is something that really relates to CPE, so I'm just noting it now, not that we need to discuss it here but we should discuss it when we get to CPE which is can ... I'm not sure we discussed this before. We may have and I'll have to go back to the notes. But whether a community applicant could, if there's no contention, change their—I'm sorry, not if there's no contention. If they don't qualify under CPE, whether they can convert it to a standard application so they're not still stuck with all of the restrictions. So, again, I don't think that's for discussion right now but it's a recommendation that we put it into the CPE section.

The third one is a question that I don't think we've actually ... I don't remember if we've considered. And I'm not saying we do need to consider it. But there's a question raised by the registry saying—I think it was the registries, right? Yeah, sorry, still the

registries—that say prevent a type of gaming applicants and their affiliates should not be permitted to file both a community and a standard application for the same string.

So, I'll kind of throw this out to the group. I'm not sure whether we need to do this or not. I'm not ... Let me see if there's anyone from the registries on this call that might be able to maybe address what kind of gaming they are concerned about.

But it would seem to me that we would move this actually to the community. We could move this to a community application section but I would think if we allow number two, if we allow people to change it from a community to a standard, then will this even become an issue? But let me see if anyone ... Yeah. Paul just [inaudible]. So maybe the answer to three depends on the answer to two that we come to.

I'm not seeing any hands, so why don't we group these two questions, move them both to the community because it does just apply to community. So let's move this to the CPE section but please do give it some thought. I might post a question online just to get some discussion started so we don't wait until when we discuss CPE to discuss this question.

And remember, just because it's raised in a comment doesn't mean that we necessarily have to now address it, meaning to say that we need to definitively state that they should or should not be permitted to file both a community and the standard.

Okay. If we then move on to other things that were raised in this area. NameShop, which is online 23, filed a comment that I

thought was actually a new question. Again, maybe it's not and others have a different view. But they state that deference should be paid to applicants of previously applied-for TLD labels and evidence Okay. Actually, let me go back a step. Sorry.

What they're saying here is that the language that we use in the implementation guidance basically states that, when dealing with applications and going to the next round, we state that we should not allow applications for strings which are still active. Well, I'm using the wrong terminology. But essentially, we state that we would allow applications for all strings that say that it will not proceed, that ICANN as marked will not proceed.

NameShop points out—and I don't know if they go to a specific example but they basically say that ICANN has sometimes marked things as "will not proceed" where they're still in the middle of a cooperative engagement or where there's still a dispute going on, at least according to the applicant. But maybe not, in the eyes of ICANN.

So, what NameShop is saying is that they want us to consider not allowing applications for strings that are marked "will not proceed" unless there's some clarity or check with both the applicant and ICANN that the situation has been resolved.

So, this is not something that I think that we've considered. I think we've sort of just assumed that when it's marked "will not proceed" that it's deemed to be a final decision but let me just kind of throw that out. I know there's still some discussion on the intent to use which I think is good, but if we can kind of focus on this question

for now, that would be great because I think this is a new area and I'm just asking whether we think we need to address.

So, Kurt says, "I think we should be cautious in casting potentially [in contention] applications aside."

Kurt, it was our understanding—I may be wrong but it was our understanding that there were at least different statuses that were used—and we'll probably get to this when we get to applications assessed in rounds. But that the "will not proceed" was only used when a final decision was made. So, at that point—and only at that point—we would allow applications during a subsequent round for that string.

So, if it was in contention, I think that was a different status—and I'm blanking on that status but there were different statuses. But as Karen says in the chat, will not proceed had a specific definition. They can in "will not proceed" from a program perspective and still be in the cooperative engagement process. Okay.

So, what this points out is that we need to make sure that not only have these applications been marked "will not proceed" but that they truly have exhausted all appeals and/or accountability mechanisms.

The exact way of how we do that, we may not ... I'm not sure we need to state. We could leave that to implementation, as long as we set the principle that it's a basic principle that, so long as an application is still in or could possibly be within the statute of limitations of appeals or accountability mechanisms, that we

should not allow a string to proceed. That's the general principle. Jim, please go ahead.

JIM PRENDERGAST: Yeah. Thanks, Jeff. I think you just nailed what's a very important question: what does "will not proceed" actually mean and just getting clarification on that.

Then, specific to the comment. This particular commentor has one opinion of whether or not his application from the last round will proceed and ICANN has a very different interpretation on that. So, I'm not sure what a check would actually accomplish. So I think we need a little more clarity around what that check would in fact accomplish. If there's a difference of opinion where ICANN, in six or eight different letters to this applicant said that this application will not proceed, yet the applicant themselves continues to feel as though it should proceed, is clearly a difference of opinion there in who actually has the ultimate say on it. So, it's a big question I think that does need to be answered.

JEFF NEUMAN: Yeah. Thanks, Jim. So, the two points there are, number one, is we need to make sure that any application that is potentially within the, I'll say, statute of limitations, appeals, accountability mechanisms, etc., we should not be allowing an application in the next round four.

But the second question, which is the one, Jim, you were sort of referring to is where there is a difference of an opinion between what ICANN believes is sort of past that period and has been

exhausted and the applicant, if there is some sort of dispute, how does that get handled? And I think we just need to put a question there, maybe do some discussion online.

Like I said, it could be, look, ICANN's determination needs to control or it could be something different. But we should provide some clarity in that section of applications assessed in rounds.

Still some discussion about intended use. We'll hopefully capture that but we will address that subject again. So it's good conversation but it would be great if we could just focus on the other ones at this point.

Okay, so if we can scroll down then to the next one that leadership has sort of—

ALAN GREENBERG: Jeff, you've got some hands up.

JEFF NEUMAN: Oh, I'm sorry. I've got to extend my participant list here. Go ahead, Alan. Sorry.

ALAN GREENBERG: Okay, thank you. On the one we were just talking about, two points. I don't think we can ... You can't go and find the applicant and put that in part of our process. I think we have to rely on what ICANN believes, and if ICANN ... If there is a dispute in the courts or whatever dispute mechanisms there are will have to handle it. I don't think we can handle disputes between a potentially unknown

applicant in any given case and ICANN. I think we have to rely on ICANN's position.

Second thing is you were speaking as if an application and a character string are synonymous. In this particular case—and I don't want to go into the details—they're not. And there is a dispute about what character string is being applied for. So you can't simply look and say, "Is the string delegated or not?" or whatever.

And lastly, related to that, there are still applications from the earlier pre-2012 rounds where people claim there are disputes and they applied for something there, therefore whatever. So I think we have to be really careful going back into ancient history. Thank you.

JEFF NEUMAN:

Yeah. Thanks, Alan I do not disagree. And that is certainly possible as to how we come out on that issue. Right now I'm just sort of raising the question and then we'll discuss it online, but your proposed response may be exactly what we as a working group should put into the document. Thanks.

Karen has put in the definitions that were used, has put in an advisory link which are good. But I think here the problem is that, even if we know the definition "will not proceed" it still could be within a cooperative engagement process or something like that. So, I think the definitions are very helpful and we do incorporate them in one of our recommendations. So let's make sure we

understand them. Justine and then Greg. Justine, are you able to ...

JUSTINE CHEW: Can you hear me?

UNIDENTIFIED FEMALE: Yeah, now we can. Go ahead.

JUSTINE CHEW: Sorry, I had to double unmute myself. I was just saying ... Speaking to myself just now. I was just saying, I could be wrong, but I seem to recall that we tried to put in a statute of limitation somehow, and I can't remember which topic it was under, but I do recall that we tried to do something like that. So maybe when we review this item we could have a look at that particular recommendation that tried to do that. Thanks.

JEFF NEUMAN: Yeah. Thanks, Justine. I have a vague recollection of that, too. So, absolutely. It's in the section "Applications Assessed in Rounds" so we will certainly re-take-up this issue when we get there, if we haven't solved it online. Greg, go ahead.

GREG SHATAN: Thanks. Sorry for joining a few minutes late. I actually have a change to my statement of interest. As of the end of ICANN69, I am now a member of the At-Large Advisory Committee, having

been appointed or nominated by the NomCom. So, that's changed. In this, particular, however, my comments here are in my personal capacity.

I think we need to be careful here and perhaps in some other places where we have a comment that is really what lawyers might call special pleading where it's really somebody who is kind of arguing their own case and trying to advance a particular interest. Obviously, everyone is arguing their own stake or their stakeholder's interest but this is a particular ... Apparently a very particular situation that is being advanced in the form of a comment. Now, obviously, the comment can't be uncommented but we need to be weary about saying something that then becomes evidence, if you will, or an indication that something should go one way or the other. So, whatever we say in response to this I think we need to just make sure that we're not somehow becoming a part of the case and that we're commenting on generalities and not this very specific actual instance. Thanks.

JEFF NEUMAN:

Yeah. Thanks, Greg. Great point and I think the only part of this that sort of jumped out to me—or the main part that jumped out to me—was not on their specific issue but it was on the point that an application could still be marked “will not proceed” but also be legitimately in the cooperative engagement process and therefore the rule that said that applications will be allowed for strings in the last round that did not proceed, where none of the applications for that string—or I should say all the applications for that string either were withdrawn or will not proceed, that was the main point for

bringing this up. But I think it's a great point and I think when or if comments like this come up, we should definitely point that out.

Okay. Again, just to remind for people that may have joined a little bit late, we are not going through every single comment. We're only going through the comments that, in the first case, that leadership has marked as being ones that we think we should go through, but also, because I know all of you prepared before this call, if there were comments that you think that leadership may not have marked as ones we should discuss, please do raise your hand and let us know.

Okay. The Business Constituency, I just wanted to note for the record that a lot of it deals with DNS abuse so I think we'll get to a lot of those comments in the DNS abuse.

The Board, I think those are just general comments, so I think we can skip that. The GAC as well, general.

Then I think we just jumped to ICANN Org where there are a couple of things that at least leadership has pointed out. The ICANN Org comments are very extensive as you'll see from all of these sections but I boil it down—the comments from this part—to basically their point number two which is, where possible, we may want to provide more details in specific sections that call for more transparency. ICANN Org states that their bylaws require transparency.

So, if, when we do make recommendations on transparency, if we could provide more details, we should. So that's not really

something that we need to discuss further for this section but something to keep in mind as we go through.

The next one is—and I can't see that comment right now, sorry. So I'll have to go to my version. Number three says that there are some specific recommendations that refer to the implementation guidance and we'll see some specific examples. And the question there is did we really mean that the implementation guidance becomes part of the recommendation itself and therefore mandatory? Or did we really mean that the implementation guidance is what we said, is implementation guidance. I know that sounds confusing. But like I said, when there is an example, we'll review it specifically. I don't think we need to discuss it now. It's just something I wanted to point out. There's something that we noted to move to predictability.

Then, number five I thought was kind of interesting. I didn't necessarily make this kind of distinction, but ICANN does. So ICANN Org noted that they consider ... They have a very specific definition in their mind of processes versus procedures and, in their view, the word "process" is something that is a higher level view that's included in the Applicant Guidebook, though their definition of procedure is operationally focused that implements or completes a process and we use the term process and procedures sometimes interchangeably.

Their view, though, is that when we used ... This is their view. We have a choice here as to what we do about the ICANN Org view. But their view is that if we said something is a process, then it's meant for the Applicant Guidebook, but if it says it's a procedure

then it's after the Guidebook and therefore potentially not something that needs to be identified prior.

Giving my own interpretation, we did use the terms more or less interchangeably and we didn't really use them to have the meaning that ICANN set forth, so our options are to a) be very clear as to whether we mean something is a process or procedure and adopt the ICANN definition; or just reject the ICANN distinction between process and procedure and just state that, look, the recommendations stand on their own and are not indicative of the ICANN Org definition.

So, Jim and then Alan.

JIM PRENDERGAST: Yeah, thanks, Jeff. My comment is actually on number two, so consider more details around transparency. I'm just curious how is this actually going to play out in our deliberations? Is Karen going to be flagging things that we need to provide more details on as we're going through this or is one incumbent upon the group to find them on our own? I just [inaudible] a little more clarity on what process around addressing these, if we in fact decide to address them. Thanks.

JEFF NEUMAN: Yeah. Thanks, Jim. So, the good news here is ICANN Org's comments are pretty substantial and they do a pretty good job in their comments, pointing out when we need to or should or they'd like for additional detail. But it's generally our job as far as ... Well, it's the working group's job but ultimately the leadership team and

working with ICANN policy, we'll do our best to point out every circumstance where we have in our recommendation a call for transparency to ask the group whether we want or can provide additional detail. So, between ICANN Org's comments to each section and the leadership team and policy staff, hopefully we'll have everything covered.

Okay. Alan, go ahead.

ALAN GREENBERG:

Thank you. I'm talking about number five. I have never actually thought about this before and I just looked up a Google search of process versus procedure and there are a whole bunch of answers. I'm not 100% sure ... You called on me too soon but I'm not 100% sure if they're agreeing with ICANN's definition or if it's the reverse. But nevertheless, if these are the way that ICANN is using the words, then we might as well try to be consistent and not add confusion by using them in either random ways or in the reverse way. So I think it's something that we could take into note. It's largely an editing job of going through and looking for every time we talk about process or procedure and making sure we're at the right level. Honestly never thought about it before, but apparently based on the Google search, a lot of other people have, including the ISO.

JEFF NEUMAN:

Yeah. That's interesting. ISO has and I think that may be why they're getting that. Why don't leadership and ICANN policy, we'll take back the action item to see where processes and procedures

are mentioned in the recommendations and implementation guidance and we'll see how big of a task it actually is to do some editing. So let us assess that. We'll come back to the group. If it doesn't seem like it's that big of a job, then we can adopt the ICANN definitions. If it seems like a big job, then it may be easier for us to state that we understand that ICANN uses this definition but we are specifically not using that distinction and the recommendations and implementation guidance stand on their own as to when and how they need to be implemented. So those are our two options. Justine, go ahead.

JUSTINE CHEW:

Thanks, Jeff. Not disagreeing with what people have said vis-à-vis the [inaudible] processes but I'm reading the last sentence on ICANN Org's comment which reads that ICANN expects process development will be the focus of the AGB, while procedures will be developed after the publication of the AGB once systems are developed and panel members are identified.

I'm a little bit concerned about this sentence or this statement because I would have thought that some of the procedures would be included in the AGB. So I'm not quite sure whether the concern I have is unwarranted or not but I just wanted to flag it. Thanks.

JEFF NEUMAN:

Yeah. Thanks, Justine. I had a similar kind of reaction, which may just mean that if we adopt the ICANN definition we change everything to process. So we'll have to ... Like I said, give the leadership team and ICANN policy a little bit of time to do some

analysis to see how big of an editing task this is going to be. Certainly, it's not a distinction that we went into this group thinking about, so we'll have to, one way or the other, resolve it so that ICANN has got some clarity as to how we feel.

So, Donna is saying, "Can we ask Karen if this is a significant issue?" Sure, we can ask. Karen, is this ... Karen, go ahead.

KAREN LENTZ:

Thank you. This is Karen Lentz from ICANN Org, for the record. I think it's mostly about, as Jeff said, consistency and also expectations. When we get to implementing a particular section or recommendation that uses one of these words, we're putting on the record how we understand that term, so that if that's not what's expected, that that can be clarified in the recommendations. That was the goal with that comment.

JEFF NEUMAN:

Yeah. Thanks, Karen. And I do think, Justine, that there are some ... There are a bunch of things—I'll call them things instead of processes or procedures—that will not be completely finalized with the Applicant Guidebook. Things like selection of certain vendors for certain things, certain internal means of ways of working. There are definitely going to be things that are not in place when the Applicant Guidebook is finalized and that's okay. So we just need to make sure that everything that this group intended on being done by the time the Applicant Guidebook is finalized is actually written in a way that ICANN understands it to

be finalized prior to the publication of the final Applicant Guidebook.

Okay. Thank you for those. Let's now turn to predictability. So, the good news here is that there could have been a lot more comments. The bad news—or not bad news but the other news—is that there are some detailed questions, especially when we get to ICANN Org. But I'm not sure it's going to take us too long to go over these questions and come up with action items. And maybe that's just being optimistic.

But we are now on topic two. So the other thing I should have pointed out at the beginning is you'll notice that, in the work plan, we are not necessarily going in numerical order. So, please do always pay attention and bookmark that workplan to know what topics we are going through.

So, we've skipped one for now—topic one—and we are on topic two. To look at point that I think Alan raised during his first intervention, that it is certainly noteworthy to look at the number of—not necessarily the number but the organizations or individuals that supported all the recommendations and did not have additional comments. So it's useful to look at that as well as, of course, the ones that state they do not support certain aspects.

The good news about the “do not support certain aspects”, I don't think there were any real just “throw it out completely” and “it's awful”. There were certainly comments that we've heard before about questioning the value-add. Anyway, we'll get to those.

The first comment that shows up with the NCSG but actually also does show up through other comments, at least two others and possibly more, but certainly the NCSG Article 19, the GAC, a couple of individual countries mention that there should be some sort of ... Now, they used the term “annual review” of the work of the SPIRT team. I actually think an annual review, given how reviews work in ICANN Land, seems quite excessive. But nonetheless, there is a bunch of comments that call for a review.

So, the first question I have to the group is do we think there should be some sort of periodic review of the SPIRT team? And if so, do we have a recommendation as to the interval of when that should be reviewed?

So, let me go to Paul and then Alan.

PAUL MCGRADY:

So, Jeff, World’s Dumbest Question, which is are PDP working groups often the genesis of saying what needs to be reviewed and when or is there a different mechanism within ICANN that decides what needs to be reviewed and when? Because I don’t really recall ever being in a PDP that set up a review. But maybe we do. I don’t know.

And if we do, I guess I’m most concerned about the timeframe and more concerned that we reiterate that the review won’t stop the continuous process from continuing. Thanks.

JEFF NEUMAN:

Yeah. Both good points. So, going back in time, I do know that there are or have been PDPs that have said that there should be reviews—not necessarily that we've done them. But for example, I believe the add grace period, whenever we did that a long time ago, had called for reviews to make sure that what we had proposed was actually working. I also do believe that as part of—Steve can correct me. I'm not sure if it's ICANN 3.0 or whether it was 2.0 or something else that we said it was a good idea to do reviews of the outputs. In fact, I think it's part of the—oh my gosh, is it the CPIF process, the consensus policy implementation framework I think calls for some sort of systemic reviews of how we implemented PDPs. I did remember that right, it's captured in the CPIF.

So we could in theory just state, “You know what? We don't need to set forth a specific review. The GNSO can review it in accordance with the consensus policy implementation framework.” Or we can do something different. Because other PDPs have set forth review periods or asking of reviews in a certain amount of time. Alan, go ahead.

ALAN GREENBERG:

Thank you. And Jeff, you're right that going back, I think the add grace period domain tasting was the first one to say, “We should go back and see if this worked.” And in fact, the GNSO has just taken action—well, taken inaction on the domain expiration PDPs or policies to see if they're working, deferred it, because there doesn't need to be a problem, but nevertheless, it actually did have an agenda item talking about it.

But most PDPs are far more focused than ours. So it makes sense to say periodically, every N years, we should go back and see, is this really working the way we foresaw it to be working? And in some ways, this PDP is the review for the first PDP on new gTLDs.

I think the point that's being raised here is somewhat different. This comment is not saying check to make sure the new gTLD project, as it were, is working overall. This is very focused on SPIRT. And it's relatively unusual that a PDP creates a group like this that has a particular task. CCWGs have done it a few times, but I don't think PDPs in general have. And this is a group which we're putting an awful lot of reliance on to do the job right, to make sure that this program keeps on track.

So I think the comment is really well taken. I don't, on the other hand, think this means a periodic review every two years. But I think we do need a sanity check a year or two into the program, or a year or two into the implementation, because a lot of it's going to be during the implementation and then afterwards when the program is launched, to make sure that it is working.

So I don't think we should be recommending a periodic review. God, we have so many in ICANN and another institutionalized review, I don't think is what we're looking for. But this is a critical group that's brand-new, and I do think it warrants some level of review before the third round starts. Thank you.

JEFF NEUMAN:

Thanks, Alan. So I think you said almost—the last sentence you made was sort of in line with my thinking, but you said it first, within a year or two, I was kind of thinking throwing out a proposal saying that it should be reviewed, the first time it gets reviewed should not be until after this next round is well—I guess we can't really say over, but it needs to be well into the process so that it gives enough data and time to actually do an effective look back. I think part of the problem with the CCT review team is that it started so quickly after the program launched that it just wasn't able to do an effective look back.

So perhaps we just state that kind of a mixture or a hybrid, say that review—as Justine said, review is desirable, it should be subject to the CPIF, but the first such review should not happen until—I don't know how we word this, but essentially, until sufficient time has passed between—to basically give us enough information. That could be five years, it could be after the round is over—although that would require us to come up with a definition of what it means to be “round over.” Alan.

ALAN GREENBERG:

What you're describing may be something that is useful, but I don't think it's what this is talking about, at least not what I'm talking about. Every time we define a brand-new process from scratch, especially one that's never been done before, we make an assumption that it's going to work. What if this thing really is not working? How do we put the brakes on and do some level of adjustment before this whole round goes down the tubes or whatever?

JEFF NEUMAN: Remember, this is all under the supervision of the GNSO. The GNSO, the council can certainly step in at any point in time and sort of disband the—they have a lot of power, if they wanted to exert it, over the SPIRT team. So maybe it's just left o the devices of the GNSO council.

ALAN GREENBERG: Or maybe we need to explicitly say something like that, that GNSO has a responsibility to make sure that the wheels are turning and everything is oiled properly and it's working, without giving a particular process by how it's going to do that.

JEFF NEUMAN: Yeah. Right. So those are our options. Greg.

GREG SHATAN: I agree we need to be a bit more clear or explicit here in part because, as I believe, a regular IRT is not constituted by the GNSO council. Rather, it's more of an ICANN Org thing, although it takes off from the PDP. So I think that while we have tried to follow many of the IRT processes and procedures in setting up the SPIRT, I think it is a distinctive characteristic of the SPIRT that it is under the oversight of the GNSO council, and we should say that. Thanks.

JEFF NEUMAN:

Thanks, Greg. If I can just summarize, and then Paul, I see your hand, so let me just summarize first and then if you have something else to add or disagree, or both, let me know. But I think we all are—at least the people that have spoken so far are in favor of having some sort of review of the SPIRT and how it's working. I'm just saying this very colloquially. I think we all are agreeing as well with Paul's point that whatever the review, whatever form this review takes, it shouldn't stop the work that's ongoing, and I think the other point that Greg and Alan have made, which is we need to make it clear that this is under—maybe it's not like other IRTs but it's under the supervision—and this'll come up later anyway—of the GNSO council. So those are the three things I think that it sounds like there's been no disagreement to so far. And I see Donna's point here which is it should be lean and focused. So I think that's a fourth point. I'll put that down as point four. Paul, do you want to add anything? No? Okay, good.

We'll take that back and come up with a proposal for that that contains those four elements. We'll also, in the fifth element maybe, that it's just left to be in accordance with the CPIF, which could be lean and focused. I've got to review that again, so we'll take a look at that. Yes, and distinguishes from a big review. This is not one of those.

Steve is also saying, do we want the whole framework to be reviewed, not just the SPIRT? Justine supports that. Would that take us away from sort of the lean and focused review? Let me just ask quickly to see if there's any thoughts on Steve's question other than from Justine. Do we say it's the whole predictability framework? All right, so Greg is saying they're separate reviews.

Yeah, okay. Anyone else with thoughts? Paul's three letter response, "ugh." Donna, and then Paul.

DONNA AUSTIN: I think we can make these as complicated as we want to make them, but if we want to focus on the lean and focused, surely there's a way we could do that. I suggest that we look to the CSC reviews as just an example of how it can be done pretty lean and mean. I was part of both of those, and I think they might serve as a good example for us in this instance.

JEFF NEUMAN: Thanks. And just to clarify, CSC is the Customer Standing Committee?

DONNA AUSTIN: Correct. Yes.

JEFF NEUMAN: Thanks. I agree with you that those were very lean and focused, so that's a good point. Paul, go ahead.

PAUL MCGRADY: Thanks, Jeff. Yeah, this is sort of a self-fulfilling thing. I think we could do one review for the framework and the SPIRT: I don't know how you would separate those two things out. If the framework is broken, the SPIRT will be broken. If the SPIRT's

broken and the framework is not unbreaking it, then those two things feed on each other.

And secondly, it would necessarily be lean and mean because the whole point of the predictability framework is that things will be predictable. So hopefully, at the end of X number of years or months, the SPIRT will not have looked at very much, because it was providing exactly the kind of predictability that made it really not used very often.

If we had hundreds of cases out of the SPIT and flowing from the framework such that a review would be undertaking, then we already know it's broken and not doing its job. Thanks.

JEFF NEUMAN:

Thanks, Paul. I guess the overall question that I'm sure people will look at is, did we actually succeed in making things more predictable? That's something that I don't think a whole review should be centered on that, but certainly, it's a question that needs to be considered. Instead of setting up a specific review that looks at every single point of the predictability framework, the general question that should be asked of the community is, hey, did we do a better job this time? And if not, what can we do to make it better, as opposed to going through every single little topic?

But I think we have some commonalities here, and I think we have enough to move forward to sort of make a proposal, so we'll take that back and make one on the list. the second point that started with the NCSG—well, I say it started with the NCSG, it's just the first one in the list, but it was mentioned in a bunch of others,

which is making a point that the GNSO procedures—there's the word “procedures” again—take precedent over the work of the SPIRT.

I think we try to make that clear. The IPC does later on have a specific recommendation that may make everything clearer and may have that path forward, but I just want to ask the group, still, whether they still agree with the point that the GNSO procedures take precedence. I think that is not a controversial point and is something we intended, but perhaps we can—in fact, let's scroll down to the IPC comment since we're discussing it anyway.

There it is. It's line 19, and they basically want to see something that we have in the—I think it's something that we have in implementation guidance, but it should be in the actual recommendation itself. So hopefully by moving it to a recommendation and making the point that the GNSO processes and procedures take precedence. So I think it's our recommendation, or from what we've been talking about, I think it's a good recommendation to actually put in our recommendations or move it from implementation to the recommendation language. And hopefully, that will address the NCSG comment, and I think there might have been some others that make the same point. So yes, the GNSO council and their outputs would take precedent in the event of a conflict if there ever is a conflict. Yeah. Alan, and then Donna.

ALAN GREENBERG: Maybe I'm misremembering, but doesn't SPIRT recommendations go to the GNSO?

JEFF NEUMAN: Yes.

ALAN GREENBERG: So how could it do anything that conflicts with the GNSO if its actions only get acted on by the GNSO?

JEFF NEUMAN: Yeah. Alan, that is a good point, and it's something that I think was implicit and certainly can be read like you just have, and sort of what I thought in reading it too. So I don't think it does any kind of disservice to add some clarity, even though it seemed sort of obvious to some of us to just explicitly spell it out. And I think we can do that by adopting what the IPC has said, which is move it from implementation guidance to recommendation.

ALAN GREENBERG: Yeah. It's like a PDP working group can't do anything unless the GNSO agrees. So it's crippled by the fact that it is a creature of the GNSO and its actions require approval of the GNSO. So I don't see how there could be a conflict unless the GNSO chooses to violate its own rules, and that's a different issue altogether. Thank you.

JEFF NEUMAN: Yeah. so I agree with what you just said, so I don't think it hurts us to add that clarity. Donna.

DONNA AUSTIN: I think I was on the same page as Alan, so I think I'll just take my hand down.

JEFF NEUMAN: Okay, good. Sounds like we're all of the same mind, at least on this call. The next one I have—there were a couple comments on the representativeness of the SPIRT, and I think the first one comes up from the BC. The BC basically says we do say it should be representative of the community. That is something that's said. And I think the BC just wants us—and I think this is a good idea—to the extent that we can, or to the extent that an implementation team can, is to spell out with more specificity what the qualifications for serving on the SPIRT team should be. I think the better way to go—because we do state that it should be representative and that they should have certain qualifications, is basically let the implementation review team spell out what those exact qualifications should be. That would be—I think we can entrust an implementation review team to do that.

So let me just throw that out there. Would we be okay with the implementation review team setting forth the specific qualifications for serving on the SPIRT, provided of course that the high-level recommendations that we have, that it be representative of the community and that they should have knowledge, experience, responsibility, etc.? Is everyone okay with letting the IRT spell out the qualifications? Anyone not okay? Donna.

DONNA AUSTIN:

Jeff, I'm not sure, because it could become a difficult conversation within the IRT because it could be used for posturing reasons. I thought we had conversations about what qualifications we would want for people on the SPIRT and also the fact that the SPIRT might be dealing sometimes on a technical issue, sometimes on an administrative issue, sometimes, I don't know, some other kind of issue, that the qualifications are going to have to be diverse or account for all situations. So I'm not sure about kicking this one down the road to the IRT unless we have specific guidance, I guess.

JEFF NEUMAN:

Thanks, Donna. So we do have guidance. At the high level, we say membership criteria—we say the SPIRT should be open to all interested parties, but may not be representative of the ICANN community as actual participation may depend on interest and relevance of the new gTLD process. membership criteria should identify knowledge, experience, responsibilities to the respective organization, rules of engagement, a statement of participation, etc.

So that's what we say at a high level. Now, we could be more detailed as the BC is asking us to be, or we could set forth maybe another set of high-level, "Look, they need to understand the new gTLD process from an applicant as well as an objector and other participant perspective, and then leave it to the IRT."

I just don't think that we need to get into all of the details of "You should have one to three years of serving in this kind of role" or

anything like that. But I do take your point that it could cause—any issue with an IRT could cause a jam, right?

And also, remember, the SPIRT has the ability to consult or bring in experts when needed on very specific areas. So Justine says if we kick this to the IRT, then it will be subject to comment. I should know this. A lot of times, what comes out of an IRT is out for public comment, I'm just not sure if it's a requirement. Does anybody know off the top of their head whether things that come out of an IRT must be—so Karen's saying usually the IRT posts it for public comment.

Again, we should see if it's an actual requirement, but I think Karen's right, it usually does, I'm just not 100% certain that there's a requirement that it goes out for comment. Yeah, it's definitely a good practice. So I'm sure this won't be the last time.

So the question for us is what level of detail are we comfortable with putting or adding, if any, to our recommendation on the qualifications so that we can leave the rest to the implementation review team. That's the question that we need to think about.

Paul says, should we brainstorm qualifications on the list? We can, but that presupposes the answer, which is that, yes, we should set forth the qualifications. So it's almost like a two-part question. Number one is—Karen points out in the CPIF what it says. It's that GDD staff, in consultation with the IRT, will determine whether it goes for public comment.

All right, so to answer your point, Paul, I think yes and yes. First, we need to establish that we want to, as a group, spell out some

more qualifications, and then we also want to brainstorm if the answer to that is yes.

Okay. Something that the GAC has mentioned—and I know we only have a few minutes left—as well as the country of France has mentioned is that the GAC wants a mechanism to refer things to the SPIRT. We did address this question before, and we came to the conclusion that only the three entities being the GNSO council, the ICANN Org, and the ICANN board, should have the right to refer things to the SPIRT.

So the GAC again is stressing a point that they want to be able to refer things. So the question for the group is, is this something we want to address again, or whether we are comfortable just leaving our recommendation as is with basically saying that, look, if the GAC wants something to refer to the SPIRT, it needs to convince ICANN Org or ICANN board—or the GNSO council—that it is something that should be referred to the SPIRT. Paul, and then Donna.

PAUL MCGRADY:

Thanks. So yeah, we covered this already, and I believe we spoke specifically about all kinds of points of entry, including the GAC, and I don't think that we should revisit this. I think where we came out was right. and I think importantly, the GAC has the ability to get something in front of the SPIRT as you said in a couple of different ways, including issuing consensus advice to the board basically advising the board to put something in front of the SPIRT. So I don't want to blow up our work this late in the game. Thanks.

JEFF NEUMAN: Thanks, Paul. And in fact, it doesn't even need consensus advice to the board. If it convinces ICANN staff that it's something that is worth referring, it can do that. So let me ask the question in a different way. and I note Donna and Alan, I'll get to you too. Does anyone disagree with or does anyone feel like we should be considering or reconsidering allowing the GAC to refer items to SPIRT? Donna, and then Alan.

DONNA AUSTIN: Thanks, Jeff. I'm leaning towards let's think about this some more, and I say that from the perspective of if the GAC provides consensus advice to the board, it has certain weight and certain processes involved with it. If the g ac is able to bring something to the SPIRT, then that takes away from some of that weight and some of the complications associated with the process. So it's potentially a leaner mechanism to have something looked at by the GAC. The GAC would have to understand that whatever happens as a result of that by directing something to the SPIRT is that whatever the SPIRT comes up with is final. So they can't then say, "Well, we don't like this so then we will try our other mechanisms." So that's the only reason why I think it's worth maybe having another think about whether we want to exclude the GAC from this or not, because having it come from the board as a result of GAC advice to the SPIRT will have additional process implications with it.

And what I'm thinking, if the SPIRT disagrees with the GAC advice that the board has sent to the SPIRT, and then the board has to

take that back to the GAC and say, "Okay, they disagree with that advice," then there's a whole other potential delay process.

So what we have is an intersection of incompatible processes, and I guess that's what I'm worried about and I'm not sure that we've unpacked that enough to feel that I'm confident with the way that we're going forward.

JEFF NEUMAN:

Thanks. Steve just did a time check. Not just online but he's [inaudible] I don't know how many times. Thanks, Steve. So I think it's a good point. It could add time. And then also, if we give the GAC that right, then why should the ALAC for example or the SSAC or any other—well, those are the two advisory committees be treated—no, there's RSSAC. Why should they be treated differently? At the end of the day, if the GAC gives consensus advice to the board, the staff doesn't have to wait for the board to actually adopt it. The staff can take it on their own to the SPIRT team.

So it sounds like a question we should throw out to the list. Alan, last word, and then we'll kind of summarize and end the call. So Alan, please.

ALAN GREENBERG:

Thank you very much. I'm not sure I can do this in 30 seconds. This is the kind of thing that I was talking about in my first intervention. And looking at the responses, you said, well, the GAC can convince ICANN Org. ICANN Org is this nebulous thing that there's no way the GAC has any process to convince ICANN

Org of anything. The GAC can give consensus advice to the board, and the board can take action. Using GAC consensus advice to the board and the board taking action to refer to the SPIRT sounds like using a sledgehammer to kill a fly.

What's the harm in allowing the GAC—or any of the ACs for that matter—in actually raising something to the SPIRT? Yes, it's more work for SPIRT, but SPIRT can basically say, “We’re not taking any action” or can get rid of it as it wants. GAC advice should be reserved for when it wants the board to take action on a substantive issue, not simply refer to someone else.

So I really don't see the harm in saying yes, they can do it. The SPIRT is not obliged to take any specific action because of it, they're just going to consider it. And as Donna suggests, I don't think we can tell the GAC—if you don't like the response that SPIRT does, which then goes to the GNSO, you can't tell the GAC you're not allowed to go to the board and give advice about the final outcome afterwards. So I don't think we can do that.

I just don't see the harm. I think it's something that we can agree to and there's not an awful lot of cost to it. And clearly, this seems to be important to some parties. Thank you.

JEFF NEUMAN:

So let's take this question offline on the e-mail list. and the basic question that I'll put out there is if the GAC, through a consensus—because consensus advice goes to the board. But let's figure out a way to say it. The question essentially is if the GAC has consensus within its organization to refer something—to

want something referred to the SPIRT team, should we allow that as a fourth mechanism to get issues in front of SPIRT?

So Paul, I'm not going to call on him because our meeting is over, but Paul can give UA a whole bunch of reasons what the harm might be, I'm sure, so we'll spell it on the list. Before we close up, I think we've gotten through most of this because there's a lot of repeats in here. The comments that I'm going to throw out, a bunch of them from ICANN Org in particular, are very specific. A lot of them are really referring to us coming up with use cases and making sure to help them understand how this all would play. So I'm not sure we need to necessarily go over those on a call, but we'll do a quick review offline, the leadership team, and see if we start with one or two questions that we might need to discuss. But I think we have our work cut out for us on a bunch of questions we'll throw out to the list, and then as Cheryl said, it's the GAC and it's all the ACs.

All right, next call is Thursday the 29th of October, 15:00 UTC. We got through a lot of material today on some tough subjects. Please do look out for leadership comments on the next topics that are on the workplan, and we will see you all on Thursday. Thanks, everyone.

TERRI AGNEW: Thank you, everyone, for joining. Once again, the meeting has been adjourned. I will now disconnect all remaining lines. Stay well.

[END OF TRANSCRIPTION]