ICANN Transcription
GNSO New gTLD Subsequent Procedures Working Group
Monday, 29 June 2020 at 15:00 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 Monday, the 29th of June 2020 at 15:00 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 telephone, could you please identify yourself now?

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

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

JEFF NEUMAN: Thank you very much, Terri. Welcome, everyone. Hopefully, you've had a relaxing weekend. Hopefully, were able to get out a

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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.

little bit I guess, but hopefully you guys had some kind of fun. Anyway, welcome back.

Today we're going to finish review of the "can't live with" comments on package five. Then we'll get to private resolutions and we'll refer to the regular document which we'll make at that point in time.

Then, let me ask, actually, before we get started if anyone has got any changes to any statements of interest.

Okay, not seeing any. As Steve is—or Emily or whoever has got control over [this] computer will go to package five where we left off. I just want to remind everyone that package six, which has been out there for a little while, comments are due by—someone help me. I think it's by tomorrow UTC. I think it's 23:59 UTC. And that's to help us be able to start talking about that on Thursday. So, please do make sure that you … It's a long package, I know, but please make sure that you've read it and can provide some input on that.

Okay. So, Julie has just put the link up of where we are. Actually, yes, of where we are in this document. So, if we could just scroll up a little bit, just to reacquaint everyone as to where we left off and what section this is.

Okay. So, this is the application change request section. We started talking about this a little bit on the last call, but we'll go over again.

The first new guidance that was there was from Justine and this was to get some clarity on the possibility or probability or being

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able, I should say, delay the evaluation … so, if an applicant is considering things like a joint venture or some other private resolution, [inaudible] auctions or things like that, but let's say a private resolution that results in a different applicant or for rereview, then Justine has put a change in here to allow an applicant to delay any evaluation that hasn't been done, so that there's a little bit of time to close whatever that combination is and to then be evaluated as opposed to being evaluated first, spending all that money, then having to respend time and resources to get it reevaluated.

So, we were discussing the meaning of the word early in that sentence. So, we were trying to think of alternate language that could be put in, whereby we have some certainty as to how much of a delay that applicant should be able to seek because, in theory, that could also delay other applicants in that contention set or otherwise.

So, has anybody thought about what … Yes. And Paul, on the last call, wanted to make sure and got this confirmed. What I was talking about, its own evaluation. But even evaluating your own application could delay, in theory, contention sets and otherwise.

So, anybody given a thought to whether we should put something specific about an amount of time that the delays could be or anything like that?

Okay. I'm not seeing hands up. So, why don't we say something, like arrange 60-90 days at the most, I think, would be sort of reasonable. This is how long the delay would be. Yeah, for 60-90 days. This is not the definition of early yet. So, this would be for

the time period. So, we're saying you could ask for a delay of 60-90 days and then we need to define what early means, because it says here pending early submission of an applicant change request.

And I would think an early application—sorry, an early submission—would be anything prior to the initial evaluation. Is that the intent, Justine? I'm sorry, I'm asking if Justine … Yes. Okay.

So, why don't, instead of early submission, saying allowing applicants to delay by 60-90 days evaluation of their own application, provided that it's submitted prior to … So, basically it needs to be submitted prior to the commencement of their initial evaluation. I'm trying to do some wordsmithing on the spot here.

So, the early submission we want to define as prior to their initial evaluation. So, if you go a couple of rows … Yeah. We don't have to put the exact words in here at the moment but the concept is prior to their own evaluation. Sorry, prior to the initial evaluation.

Okay. Any other questions or comments on this specific change? Okay. Yeah, Emily [inaudible] documents. Yeah. For those of you that are in the document, it's very slow because it's such an extensive document at this point.

All right. So then, if we slow down to the next one, which will take a little bit—I probably should look at my own copy so we can …

Okay. So, this next change is also from Justine and this actually just corresponds to the last one. So, the one at the top of this page, 97—or page 97 right now. Yeah, that one, let's just make it

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consistent with the change that we've made. I don't think there's anything else in the surrounding … Yeah. It's just making it consistent.

All right. The one below that is new. And I think this also from Justine. Yes. So, scroll up just a little bit, actually, because it's a change to the preceding sentence. Yeah, there we go.

So, the bracketed text there, which says applicants will be given the opportunity to continue with the application process for a string. Okay. So, this is where a brand who has to change their string. Remember, we had given a limited circumstance of a brand to change its string, if there's another application for the same string or something judged to be confusingly similar, and the change now has to be in there, it has to relate to its brand and other things. I'm not going to read the whole thing.

There's a suggested edit to this sentence that says applicants will be given the opportunity to continue with the application process for a string linked to their brand without the need for an auction [inaudible] to resolve contention. Process guardrails ensure that changes in the applied-for string occur only under narrow circumstances limit the impact on new gTLD program more broadly and are subject to public comment and objection policies. So, this is the rationale. This is not the recommendation itself. We're explaining why the change is being made.

Justine would like to edit where it is underlined. So, it will now read applicants of DotBrand strings, instead of applicants in general, will be given the opportunity to continue with the application process for a change in string that is linked to their

brand without the need for an auction of last resort to resolve contention. And here is a new edition: contingent on process guardrails.

So, it's basically just reworded here so it's [inaudible] adds more clarity and I think some grammar things in there as well. So, I don't think there's any substantive change in this one but let me just see if there's any comments. Anne, go ahead.

ANNE AIKMAN-SCALESE   Sorry, Jeff. Double mute. I wonder about the phrase "that is linked to their brand" in the sense that do we mean—and I'm sorry, I was a little bit late to the call. I don't know if we had used that phrase before. Are we talking about a change that's approved? Are we talking about—

JEFF NEUMAN: Emily, when you have a sec, can you scroll up? Because I think [there's a] rationale explaining the recommendation. The recommendation itself is above it, right? So …

ANNE AIKMAN-SCALESE   So, the second time we use that phrase, we will have been approved, is what we're saying? Are we using that [for the change]?

JEFF NEUMAN: So, it says here right in the recommendation itself: the working group recommends allowing brand [inaudible] to change the

applied-for string as a result of the contention set where … And then it describes. So, we're just saying shorthand in the rationale of [inaudible] [link], but the word [link] is not used in the recommendation itself. The recommendation was very specific. We just didn't want to restate the entire recommendation in the rationale.

ANNE AIKMAN-SCALESE   Right. So, actually, it might have been related more to whether that language—the second use of a [link] or whatever—should be changed to the approved variation on the brand or whatever. But maybe I'm not … At that point, are we approved on the specific change?

JEFF NEUMAN: What do you mean by at that point? We're saying that they have the opportunity to do it. So, the recommendation is how they do it and then all change requests. Because at the beginning of the section, say that they have time to go to public comment and all that stuff.

ANNE AIKMAN-SCALESE   Okay. All right Thanks.

JEFF NEUMAN: Yeah. So this is all in context.

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ANNE AIKMAN-SCALESE	Okay. And it's just [inaudible] specific to brands and that's what the recommendation does anyway. So, yeah, we're good. Okay, let's scroll then to the next one.

So, this the change from a proposal from Kathy in the rationale to redact early warnings contentious advice. What we say here is the working group believes that, to the extent that applicants can address concerns raised in GAC early warnings or GAC [inaudible] to proposed changes to the application, they must have the opportunity to make such changes and continue with the application process. Potential amendments could include the addition of registry voluntary commitments, formally PICs. Application changes would be subject to evaluation by ICANN as discussed in the application change request section. So, Kathy just wanted …

So, Kathy wants to add "and the community". I think the issue here is … I mean, I know the intent is to try to capture the fact that all change requests go through public comment, but it's not the community that's evaluating the change. I mean, they could comment on it but they're not technically evaluating it.

So, why don't we say subject to evaluation by ICANN and review through the mechanisms or through the processes set forth in that section. So, I think that's the concept that Kathy was trying to get at, because if not, there's no evaluation by the community.

So, let me … Susan, go ahead.

SUSAN PAYNE:	I put my hand up to make the point you were making, Jeff. I just put in the chat a suggestion. Why don't we just say evaluation by ICANN and the public comment process? Because isn't that what we're really saying? I completely agree with you that evaluation in this context has a specific meaning.
JEFF NEUMAN:	Yeah. So, you would just say evaluation by ICANN and review through the public comment process discussed.
SUSAN PAYNE:	Well, I was just going to say the public comment process. I'm not sure it needs the words "review" or "as discussed" but there's a public comment process for all applications after all, but I mean, I'm not sure we need to get into drafting, particularly.
	I don't feel terribly strongly about it. I just feel "review" sort of suggests there's some whole new process, which there isn't. There's a public comment process on applications. If there are changes made, there's public comment. I think that's what Kathy is looking for and I'm wanting an acknowledgement of.
JEFF NEUMAN:	Yes. So, yeah, I just don't want the word "evaluation" to apply to that. I was trying to put in a new verb or something in there that applied to the public comment as opposed to it looking like there's an evaluation by the … That the public comment is part of the evaluation.

So, then you would say "be subject to public comment". Put public comment in there and evaluation by ICANN. There you go. Cool.

Okay. Thank you. Is Kathy on here, by the way? I just want to make sure she's good with that. Paul, go ahead.

PAUL MCGRADY: Thanks. I see that typing is catching up. I was just going to say we were missing the conjunctive "and" but it appeared. Thank you.

JEFF NEUMAN: Yeah, typing is a lot smaller now on this document because it's over 100 pages long. Okay, cool. All right. Let's then scroll down to the next one.

Applicant support. So, we have a bunch of comments in here. I think this is from Justine. I just want to double check, if you could scroll down a little bit. Yeah. Okay, cool.

So, this is in the applicant support section where we are recommending, with some modification I think—no, just a recommendation. Implementation guideline N states that ICANN can put in a fee reduction scheme for applicants and what we're saying here is the working group recommends that, as [inaudible] 2012 rounds, fee reduction must be available for select applicants who meet evaluation criteria through the applicant support program. That stays as-is. But here's the next part that Justine is recommending. Substitute language that says, "In addition, the working group recommends that ICANN continue to facilitate non-

financial assistance, including the provision of pro bono assistance to applicants in need."

And then there's a footnote to the applicant support director, essentially, which is what implemented the applicant support program.

So, Justine is proposing to word it this way. "In addition, the working group recommends that ICANN proactively manage the pro bono assistance program by not only encouraging the provision of non-financial pro bono assistance but also by coordinating communication in respect of the provision of pro bono assistance to and [inaudible] applicants in need."

So, what this sentence does is takes it from a very passive facilitation role that ICANN did last time and put more affirmative obligation on ICANN to actually not just put up a list like they did the last time and call that facilitation but to actually proactively go out there—market is I guess the wrong term because that makes it sound more commercial. But essentially educate the public on it and to try to take some affirmative steps to set up potential applicants with potential vendors, I would assume.

So, let me go to Justine. Do you want to explain anymore or …? I know Donna is in the queue but I just want to give … Okay. Thanks, Justine. Okay, Donna, go ahead.

DONNA AUSTIN: Thanks, Jeff. So, I guess I'm a little bit concerned about this because we need to be careful that it's not interpreted that ICANN will assist applicants. I think I understand where Justine is coming

from but it's a very fine line here between ICANN actually working with applicants and helping them develop their application and providing that kind of assistance, to just providing the list of providers that are available.

So, I think I am a little bit concerned about this. It's a pretty fine line. So, I think I was probably happier with passive language rather than what Justine is suggesting. Thanks, Jeff.

JEFF NEUMAN: Yeah. Thanks, Donna. So, is there, Donna, something we could put in? I understand where Justine's change is coming from and I've listened to some of the recordings from the ALAC. I'm assuming this came from a member of ALAC members as well. Or sorry, At-Large members.

So, I think the concern is that ICANN, the last time, all they did was put up a list and did absolutely nothing to promote it. They did very little. So, I understand the At-Large point and I understand your point, Donna, because you can't have ICANN working on applications and put itself in the applicant's position. So is there something in the middle that we could say that would require ICANN to just be a little bit more active than it was the last time in educating about the processes and what's available but without having to get involved in vendor selection or anything like that would be beyond its role.

DONNA AUSTIN: I think the language as it is works. I don't know that there's a need to expand on it. I mean, this is a similar argument to ICANN in the

previous round said that they can't do a communication program because they can't support one TLD over another, which some of us said we don't agree with that. This is kind of that similar situation.

So, I think the language as it is works. I'm not sure that we need that additional revised text.

JEFF NEUMAN: Okay. Thanks, Donna. And Becky, in the chat. Becky Burr says, "For what it's worth, I agree there are significant issues with ICANN participating in the submission process." Then Becky says, "Education and promotion is fine but should be delivered generally and transparently." Rubens is saying, "Outreach could be active."

So, can we put, Donna, maybe … I mean, I know the initial language is fine, but can we say that something … Maybe it's even an additional sentence that says, "In addition, ICANN shall publicize the program and generate educational materials for applicants seeking support or something like that."

while you think about that, let me go to Paul and Susan. They may have some ideas as well. Paul, go ahead.

PAUL MCGRADY: Thanks. This is Paul McGrady for the record. While Justine is trying to accomplish here, super sympathetic to Donna's concern that we don't get ICANN involved operationally in helping to fill out the applications, because of course, ICANN is the evaluator and

we don't want the evaluator feeling any pressure to let something through.

I do think, to seize upon Rubens suggestion, that the solution lies in outreach. And I think in the pre-existing sentence, we can simply add a dependent clause making it clear that including ICANN making the need for pro bono assistance known throughout the legal community or throughout the legal and technical community or something like that.

Most big law firms have a lead person whose job it is to coordinate pro bono activities, and if those lead lawyers on the pro bono files for most big law firms can get a hold of something really interesting and different like this, I think a lot of them would take it up. But I guarantee you that, in the last round, the person who was in charge of that kind of coordination for my former firm would have no idea that this was even out there.

And because of the nature of TLDs, there's going to have to be specialized agreement saying we [inaudible] the string that you want to apply for but you having told us about that string can't disqualify me for representing somebody else, because if somebody wants to apply for a string that that law firm is already representing somebody else on or want to represent somebody else on, and if they are simply asked to do pro bono and the strings reveal that that would disqualify them, then no law firm is going to take that risk.

So, I do think we need to focus on outreach we also need to focus on making that outreach sophisticated and not just posting a list because posting a list didn't work but ICANN digging in and

becoming a coordinator pro bono services is not only scope creep but it's especially difficult in this particular context. So, robust outreach, sophisticated outreach, dealing with the problems that law firms will encounter taking this on. But getting the opportunity in front of them, I think you'd be surprised how many people take that up. Thanks.

JEFF NEUMAN: Yeah. Thanks, Paul. I think you're right. I think certainly there are people out there and law firms and others that will take this kind of thing on. I want to also, perhaps, as suggested in the chat a couple of things. One is probably deleting the word "continue" in that sentence I think makes sense because it's … I mean, I know the context [inaudible] in the last round but yeah …

And then if we tie things to the communication period, which I think is suggested by … I think it was suggested by Susan and Donna. Or sorry, I'm just going back in the chat. I want to give people credit. Krista, I think, sorry. So, Krista and Donna.

So, what if we … So, if we put the concepts of that they're going to facilitate the non-financial assistance but also say that maybe in another sentence, next sentence say that ICANN will provide educational materials and outreach during the communication period or something like that, so we tie it there.

Greg says that, "The language now is far too passive. Should be an obligation to outreach and educate. Facilitate is too vague." Then there is just some pro bono stuff and ICANN funds.

Okay. so, I think we're going to use the original text as put in the note but we'll add some elements of outreach and education. So, we're not going to take the exact language that Justine has put in because of the concern of ICANN involving itself in the application process, but we are going to take the main point of that, which is for education, outreach, and add another sentence that says that.

Justine is saying, "Can we replace the facilitate with actively coordinate?" I think [inaudible], Justine. I don't know what the word "active" adds and I think that you might here—I'm going to let them speak for themselves—that probably might go a little far in almost putting ICANN in the application process again. Donna, go ahead.

DONNA AUSTIN: Thanks, Jeff. It's something that came up with what Paul was saying. I think we need to look at the communication part and see whether it covers off whether there's some kind of specific aspect for applicant support.

But one of the things that struck me is I always looked at this from the perspective of making sure the applicants knew that this pro bono stuff was available. But there's another element here with what Paul said. So, there should be some kind of outreach maybe to other firms to say we're looking for people to provide this kind of assistance.

So, that, to me, is something that I hadn't thought of before but I wondered with that's something we need to make you're we cover off as well.

So, one, the applicants need to understand that this kind of assistance is available. But the second part of it seems to be that, in order to make this available to people, then there has to be some kind of outreach to potential vendors that could provide that kind of support. Thanks.

JEFF NEUMAN: Yeah. Some of this is in the communication [inaudible] stuff, I think. But it was intended as you said, Donna. It was both to applicants and to providers of these services. But if we're going to add another sentence in here, we need to tie it to the communication period, I think, and we need to also make it clear that education and outreach is both the applicants and the potential providers of these services. Okay. Thanks, Donna. Anne, go ahead.

ANNE AIKMAN-SCALESE: Thanks, Jeff. Just going back to Paul's comment, I think actually regarding pro bono services, the number of people within any given law firm who are actually qualified to provide those pro bono services is probably not huge. So, I don't think that we should at all assume that, in the next round, all of a sudden there will be tons of law firms volunteering to undertake pro bono services for applicant support applications.

In fact, personally, I think that ICANN should be establishing a fund for that, but I know that we don't have any authority in this process to try to create that.

But I definitely agree with those who want to see more active words than "facilitate". I think you're headed in the right direction with Donna's comments.

I'm concerned that when we refer to the communication period, are we saying that this outreach has to be done well, well before? Are we talking a six-month time frame? Are we talking about the outreach to both potential applicants and to law firms that might be willing to do this pro bono? What's our timing? Thanks

JEFF NEUMAN: So, the official communications period is in the communications section and it's six months I believe—at least six months—prior to the application window opening. It doesn't mean that people can't start outreach before that. It just means that the minimum requirement is that six months.

So, it we need to get into the detail of who is going to provide these services. I think we just need to generally cover the outreach and educational materials to both providers of services and to the applicants. I think we're good there.

ANNE AIKMAN-SCALESE   Yeah, I think we've [inaudible]. And just a follow-up. We have to make sure that ICANN gets this stuff out and the outreach out by that six-month mark. Thanks.

JEFF NEUMAN:	Okay. So, let's tie it to the communications period as well. I think we already put that in there. Yeah. Okay. Let's then move on to the next one.

Okay. So, this is … Justine proposes adding a word in this recommendation which currently says, "The working group recommends that ICANN improve [inaudible] outreach, awareness raising, application, evaluation, and program evaluation elements." And Justine is saying the working group recommends that ICANN improve utility. So, the rationale is At-Large considers the element of education around viable [inaudible] for applicants identified by [inaudible]. Study is also important to increase the utility of the ASP for potential ASP applicants, applicant support.

So, I think, utility, Justine, you mean the benefits of or the usage of a TLD, that kind of thing? Yeah. [Usefulness], okay.

So, the working group recommends that ICANN improve outreach and [inaudible] elements of the support program as proposed in the implementation guidance below.

So, do we have anything in the implementation guidance below that talks about the utility? We can scroll down. Because that's really the topic sentence of the implementation guidance. Let's see. Can we scroll down to the next page? I don't see anything there.

There you go. So, this is in conjunction with an added sentence that Justine wants to add which says that essentially the Implementation Review Team should draw on experts with relevant knowledge, including from targeted regions, to develop

appropriate program elements related to outreach, education, including educational business models. For example, through different business case studies. So, that's what the utility is related to in the first paragraph.

So, let's treat these kind of changes together as one. So, let me ask if there are comments. Oh, so utility here Justine puts is the usefulness of the program itself, not the usefulness of having a top-level domain.

JUSTINE CHEW: Sorry, I had trouble finding the "put my hand up" button. Utility refers to the usefulness of ASPs. So, the idea is we want to make the applicant support program as useful as possible to potential applicants who want to use the program. So that's what utility means.

But, in essence, when we go to the implementation guidance rationale 4, one of the comments that have been put out over and over again is that in terms of education, the specifics is that a lack of business models and business case studies was apparent. So that's something that we need to address. Thanks.

JEFF NEUMAN: Yeah. Thanks, Justine. That helps us understand it. Okay. So, if we go back to the first part then, to improve utility. How does everyone feel about that? Christa Taylor says, "Perhaps applicable instead of utility." Or wait—sorry. Sorry, Christa, what is your recommendation? You can type it in. Okay. [inaudible] any thoughts here? Paul says usability. I think that's … I like that

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better than utility. Improving the usability of the applicant support program.

Emily is saying, "Or the working group recommends that ICANN improve outreach, awareness raising, application evaluation, and program. Evaluation only to the applicant support program, as well as usability of the applicant support program." Does that help, Justine, if we did that, what Emily is suggesting? Yes. Okay, good.

Anyone object to that change? Great. Thank you, Emily, for that. It's a good suggestion. You had already typed that in, so great.

Okay. so, then, let's go back to the actual specific change, which is add things in like educational business models, business case studies. So, to develop appropriate program elements related to outreach, education. That's on that.

So, if we have education in parens, including education on business models. If we … Okay, Susan, go ahead.

SUSAN PAYNE: Yeah. Thanks. Maybe we, instead of education on business models, isn't it sort of separately? It's information about business models or something like that. Because it's really wording about more information about what you can do with your TLD, which I'm not sure that I really see that as education as such, but I don't know.

JEFF NEUMAN: Yeah. I was trying to think of that, too. It really deserves its own calling out. So, if we said to develop appropriate program elements related to outreach, education, business case development. If we said education, business case development, and application evaluation, does that work?

Martin says, "ICANN created some short case studies." Yeah. That's part of it. Yeah. So, business case development. I know it's really slow.

Justine says, "Awareness of different business models." I mean, that's all part of the business case development, right? Would be discussing or giving information on the types of models that are there.

Okay. So, does that cover or do we want something … Okay. So, let's explain that in the rationale. So, we'll make an appropriate change. So, this is rationale #4. And in the rationale 4, explain that this is to create awareness of the different business models that are out there.

Okay, great. Let's scroll down. All right. So, [inaudible] rationale. This relates to the change—yeah? Sorry, Donna, go ahead.

DONNA AUSTIN: Can we just scroll back to where we were? What's the last sentence getting to? Regional experts may be particularly helpful in providing insight on the evaluation of business plans from different parts of the world. I mean, its implementation guidance but I don't know what it means.

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JEFF NEUMAN: So there was lots of discussion during this work track one and other areas that basically said may work as a business model in one area of the world, may not work in other parts of the world. So there was a desire to have input from the different regions, so that just because they may have some experts in one area of the world, that may not help them in other areas.

So, what Christa was saying, I think it should be referred to regional concerns. So, regional experts may be particularly helpful in providing insight on regional concerns. Or sorry, Christa, I'm trying to figure out what should be there referring to the regional concerns. Instead of experts or is it instead of evaluation of business plans?

CHRISTA TAYLOR: Jeff, can you hear me?

JEFF NEUMAN: Yeah. Go ahead. Great. Thanks.

CHRISTA TAYLOR: Sorry. So, taking a step back, one of the big concerns here is that we didn't want to, so to speak, fly somebody in and that person who is kind of like this third party would be able to relate to the people, to understand their concerns in that region, to make sure it was applicable to them and really helpful. So, we wanted people on the ground, that those people would understand the regional

concerns that potential applicants would have and make sure that they could kind of address those concerns. Does that make better sense?

JEFF NEUMAN: Yeah. Thanks, Christa. I'm just reading Donna's comment. "Should it be evaluation of business plans or development?" It should probably be development because they're not the ones doing the evaluation. So, Donna, is that okay then? Does that make it better? Yeah? Okay.

All right. So then, if we scroll down, I think the next one is Justine. It's a rationale. So I think it's just copying the language that she had before. But if we just make it consistent with the recommendation, I think that would be … That's all we need to do there.

So we're not going to take this language, but we're going to make it consistent with the actual recommendation above. Cool. And I'm assuming there might be one or two more of those down below as well. Yeah. So, that one also is just made consistent with the one above.

This is the same thing as the recommendation where we were talking about ICANN's involvement.

Okay. So, this is a proposed edition. This is from Justine. "The working group considered a comment made by the ALAC during the call for public comments for the initial report which proposed for an applicant that qualifies for its [inaudible] priority in any string

contention set and not be subjected to any further string contention revolution processes.

While the working group noted that applicants which applied for applicant support will consider themselves as applicants who needed financial support, and therefore less likely to possess the financial wherewithal to succeed. In an option of last resort, the working group did not come to an agreement on the ALAC's proposal. Instead, the working group preferred to consider the ALAC's secondary proposal for the provision of a multiplier or equivalent to help applicants which qualify for applicant support to effectively compete in auctions of last resort against other applicants in their string contention sets that are better resourced and not in need of financial support.

So, this relates to what is in … I think we put this in package six for the multiplier. Justine, go ahead.

JUSTINE CHEW: Thanks, Jeff. At-Large just wanted to note that we made the comment for the priority be given to successful ASP applicants in string contention. So that's what the paragraph refers to really. Yeah. So, I'm happy to answer to any objections that people have but it is what it is. Thanks.

JEFF NEUMAN: Yeah. Thanks. Can we scroll up a little bit? Do we have Elsa or Nick's discussion of the priority or is that all saved for a different section, the multiplier section? I can't remember. Can we scroll? Sorry. Emily has got her hand up. Okay, Emily, go ahead.

EMILY BARABAS: Hey, Jeff. This is Emily from staff. Easier to speak than to type. We had put the multiplier content with the auctions of last resort discussion while that was all being discussed together. But actually what we're going to do, because there's some additional provisions related to applicant support applicants, we're going to move that into the section and re-release the section with all of that. So it's not here now but everyone is going to have a chance to review it again with a focus on the proposal regarding the multiplier. And if folks agree, we can integrate the concept that Justine is raising here about priority as part of the discussion about the multiplier and there will be an additional opportunity to review what that all looks like together. Thanks.

JEFF NEUMAN: Yeah. Thanks, Emily. So, Justine, as Emily said, because we're rereleasing this section with that multiplier stuff, we'll make sure we have this concept in there and everyone will have this section again. We're re-releasing it with all that stuff in there. Because I think we have the multiplier discussion after we release this package five.

JUSTINE CHEW: Jeff, can I respond?

JEFF NEUMAN: Yeah. Please, go ahead.

JUSTINE CHEW:	Thanks. That's fine, the treatment as described by Emily. The point here under applicant support is just the fact that At-Large made the comment that successful ASP applicants should be given priority in string contention. That was the main point behind this paragraph anyway.
	So, if it's going to be cut and pasted into the multiplier section or the auction section of wherever Emily is proposing that it be, then I'll have a look at that, too. But as I said, the point here, under applicant support is that we commented that successful ASP applicants should be granted priority and string contention.
JEFF NEUMAN:	Yeah. Thanks, Justine. So we're re-releasing applicant support where it's going to contain also the multiplier. So, all of this is under the general heading of applicant support. So, yes. Does that help? Okay. Thanks, Justine. Your hand is still raised.
JUSTINE CHEW:	Yes. I wanted to make another point. If we go back up to rationale for recommendation and implementation guidance rationale 6, I think you sort of skipped over that—I think it's on the Google Docs on page 111. You sort of skipped over that by saying that it was ICANN getting involved in things.
	I disagree with that because this pertains to establishing funding for the program, for the ASP program. So, what it says is that

there needs to be a clear plan in place for funding the applicant support program. So that's the crux of the rationale.

We are suggesting that additional text be added to provide guidance for ICANN to do certain things to help secure funding for the applicant support program.

JEFF NEUMAN: Yeah. Sorry, yeah, I missed that. I'm sorry about that. So let's go over this one then. Basically, this one is saying that ICANN, in addition to the budget, should also liaise with national banks and aid agencies worldwide to participate in sponsoring applicants or funding for applicant support as well as taking steps to structure a mechanism to implement joint financing.

So, Christa, you're on the call. Was this discussed in work track one, from your recollection?

CHRISTA TAYLOR: Can you hear me?

JEFF NEUMAN: Yes.

CHRISTA TAYLOR: Sorry, it's Christa again for the record. Yeah. We did discuss alternative methods of financing and we did have a discussion on the initial seed of funding. We also realized that it might not—or it

was removed. So, I think it was initially funded by $2 million. That is no longer there.

So, as I read this, the question would be if ICANN can't fund it, then really how are we going to get that seed funding and when do we need it by?

For instance, let's do a worst-case scenario here. Let's say ICANN can't finance it for the next round. How are we going to raise sufficient funding in time for the next round?

To your point, secondly, is we did agree looking externally for other financing options.

JEFF NEUMAN: Okay. So, this would be in the rationale as opposed to the recommendation, but it's still saying ICANN Org should actively inform, encourage, and liaise with national banks ad aid agencies.

So, this is more like implementation guidance itself than it is a rationale and it's really specific. So, I don't know if ICANN has got any kind of … I don't know. Does anyone have any thoughts on this? Cheryl is asking to start from the top. I'm hoping you mean the top of this rationale.

So, the top of this rationale is just saying that ICANN needs to evaluate the extent to which funds provided from the budget … Sorry. Basically, ICANN needs to provide a budget is this rationale. I'm assuming that's what you meant from starting at the top. Donna, go ahead, and then Paul.

DONNA AUSTIN: Yeah. Thanks, Jeff. Obviously, we're not on the language anymore, but it seems to go beyond ICANN's scope, I think. It's one thing to do education and outreach and make people available, that this program is available and there will be some funding available or some support provided to those applicants that may not be well placed as others.

But for ICANN to actually do outreach to banks and other financial entities seems a little bit beyond scope here, so I'm not sure that I agree with it.

JEFF NEUMAN: Yeah. This is a little bit beyond the other "can't live with" comments. I think it's an excellent point for the public comment period for the ALAC, which is why I asked Christa if this specifically was discussed. And although alternate funding was discussed, Christa seemed to indicate that this national banks and that kind of stuff wasn't necessarily discussed.

So, Justine, I'm going to … Well, let me go to Paul first. Sorry. Paul, go ahead.

PAUL MCGRADY: Thanks. So, I guess [inaudible] that work track one calls or they're just so far removed in time that I don't recall much about this. So, I apologize. But initially, there was … Am I right that there was initially a call for ICANN to provide funds? That didn't survive and

what we have is this thing is what is leftover from that, that ICANN would actively inform, encourage, and liaise with national banks.

But that first part doesn't bother me so much. I mean, I think ICANN is allowed to talk about its business to whoever it wants to talk about it. I don't think it's all that different from ICANN reaching out to the 100 biggest law firms in the US and asking them for pro bono help.

The part that I don't get and I think is more scope creep and operational creep, as Donna is concerned about, is the last part: as well as to take steps to structure a mechanism to implement joint financing. There, we have ICANN directly get involved in saying, "Hey, guys, you take 30%, you guys take 70%." That, to me, has been, in essence, ICANN has some skin in the game about whether or not the application makes it through evaluation and makes it through auction and all that. We don't want the evaluator to have skin in the game.

But the first part, I think, doesn't both me as much because it just looks like, "Hey, national banks, here's an opportunity you should know about." Okay. Thanks.

JEFF NEUMAN: Yeah. Thanks, Paul. Because the whole [concept] of the banks and aid agencies and others wasn't discussed in the work tracks, I'm going to ask Justine to have the ALAC make this as a comment to the report so that we can consider it when we consider the comments, as opposed to putting it in here.

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Like Paul, I don't think the first part is any harm, but I don't want to deviate from our principles of generally including things that I know we've discussed before. I think Justine is saying okay. Great.

So, let's remove that and then go on [inaudible] I wish ICANN talked about the [COIs] to banks. Yeah.

Okay. That's it from package five. Great. Cool.

So, we've got 25 minutes. Let's start the discussion on the auction private resolution stuff. I know there have been some emails that have gone back and forth, so I think that's great. We'll definitely get into that.

There's a ton of material in this section, but for now, I just want us to look at this proposal four because this is where, in trying to synthesize all of the comments, this is where I think we are, unless you all say otherwise, and some of the emails on the list were a little bit stronger than this. So, we'll have to start this discussion.

So, [inaudible] is that hybrid proposal two plus talked about balancing, allowing for creative methods to resolve contention and limiting the submission of speculative applications that seemed to take advantage of [inaudible] from private auctions, which could then be pocketed or leveraged [inaudible] in a resolution of other contention sets.

Many working group members remain concerned that allowing applicants to financially gain from losing a contention resolution

will serve as an incentive for applicants to submit applications with no intention to operate the gTLD.

However, a significant number of working group members believe that applicants should be allowed the freedom to resolve string contention in creative ways, including private resolution—for example, private auctions—so long as the applications are submitting with the genuine intent to operate the gTLD.

Therefore, these working group members believe that requiring applicants to agree to a bona fide use class will adequately prevent the submission of applications where there is no intention for the gTLD to be operated.

These working group members point out that the ICANN Board expressed concerns about applications being submitted as a means to engage in private auctions [inaudible] the Board concerns are not necessarily about mechanism of private auctions itself, and that a bona fide [use] clause adequately addresses that situation.

If we scroll down … So, this model would ensure that the then current Applicant Guidebook reflects that applicants will be permitted to creatively resolve contention sets in a multitude of manners, including but limited to partnerships or other forms of joint ventures and private resolutions including private auctions. Applications must be submitted with a bona fide good-faith intent to operate the gTLD.

Applicants must affirmatively attest to bona fide use clause for any and all applications that they submit on the elements [inaudible]

from hybrid two plus related to auction mechanisms of last resort apply here and are not being repeated.

So, lets start that discussion. Anyone any thoughts? Elaine said, "How do we enforce that? Who's going to determine if intent is bona fide or not?" [inaudible], Paul. I think this essentially … Yeah. Great. Thanks, Paul.

PAUL MCGRADY: Thanks. I support this. I think it reflects the reality on the ground, that there is not consensus in the working group to change the Applicant Guidebook to ban private auctions. I do think there appears to be a growing consensus that the thing to do is to address what the ICANN Board actually asks for, which is for us to limit applications that were filed without a bona fide intention of [one] the registry, so we could bake in here …

And I believe, Jeff, you may have put this in the chat at one point, but I thought it was brilliant. We could bake in examiners would be able to issue additional questions if it appeared that the business plan was too rudimentary or if there was evidence that the applicant does not really have the needed intent to run the application, and applicants would be required to supplement the record to assure the examiner.

So, if somebody puts in "our domain name will be a safe space for blah-blah-blah-blah" it basically gives … I think it was either question 18 or 15—I can't remember anymore—give the stock, standard response that everybody put in in the last round. The

examiner may write back and say, "No, tell us really, what are you going to do with this? So, I think that does it.

In terms of how to be policed … And by the way, I would even go so far, and if it helps assure others that we have a second thing, in addition to saying the application was filed with a bona fide intention to run the registry, I think you can also have a requirement saying the applicant is not being submitted solely for the purpose of being able to participate in a private auction. I think that's fine, too.

What we're trying to do is to get applicants that really want to run the thing and that they're not … It's not that private auctions are banned, but the idea isn't that you're trying to put together a private auction portfolio, but rather you really have an intention to run whatever you applied for. You can run it, you can prove financially that you can run them, you can prove to the examiner if you have any issues, that you really do have a business model that you thought through and that you're going to move forward.

In terms of how to police it, one if the applicant doesn't launch the registry if awarded or sells in the after market within two years of delegation, I think that should be noted for future rounds. And I think it could go so far as to create sort of a rebuttable presumption of non-intent for that next round.

If the applicant only sells applications and doesn't actually proceed with any of the contracting, I think again that could be noted for the next round.

I think we need to collect data from the next round, not assume malintent, not assume frivolity, and if an applicant violates the application terms and conditions, then that's going to be a problem for them in future rounds, just like cybersquatting applicants were supposed to be banned in the last round.

The bottom line is we need to trust our applicants. We need to give them a chance to break the rules before we start banning mechanisms to remedy rules that don't exist yet and have not been broken. Thank you.

JEFF NEUMAN: Yeah. Thanks, Paul. So, Elaine says what if an applicant changes their mind if they see other applications? So, saying that there should be another guardrail. [inaudible] applicant will not be able to sell its [POV] within a specified time post launch. Elaine says, "It's too easily [gamed]. I can think of ten ways around this."

And Jim says, "What is the purpose of preserving private auctions? Why are they still critical to this program, aside from allowing large portfolio players to game this?"

Justine says, "Penalized for next round. Why not penalize that round? Bad actor can reconstitute many ways to [inaudible] next round. How do we police that?

And Elaine says, "Trust the applicant. See [inaudible]." I'm just reading. That's not my comment.

Becky says, "Without taking a position, on the substance I'm agreeing that that intention not be assumed. We should be realistic about the ability to enforce any [inaudible] of intent."

And Donna says, "[inaudible] because it's an equitable means of resolving contention."

Okay. So, we still have a bunch of disagreements. What if we— and I'll get to Susan and Paul. What if we require complete transparency, that anyone using a private mechanism must reveal all the details of how that was resolved and disclose that to the community, including things like purchase price, including use of the funds, all of that? What if complete transparency is required? Food for thought. Susan and then Paul.

SUSAN PAYNE: Yeah. Thanks. So, I was just going to respond to why are we trying to retain private auctions, which Jim put in the chat. And I think it's just that many applicants are going into this and wanting to have … I agree that you're now talking about opening up the confidentiality. But would like the ability to resolve contention in potentially innovative ways or by reaching agreement or by making some kind of an "If you do this, I'll do that" kind of arrangement which is a compromise, if you like.

We've talked about this. We've just been talking about applicant change requests and so on. All of those are kind of envisaging various types of scenario where one party might agree to give up or one party might change a string or two or more applicants might agree to somehow collaborate jointly.

All of those mechanisms, if you remove the notion of private auction, then unless you're also going to remove all forms of private resolution, you will find parties finding a way around a ban on private auction by simply entering into something that isn't an auction but has the exact same effect.

So, unless you're actually saying here that we are banning all kinds of private resolution whatsoever, which I do not think is the way forward, then banning private auction is something else that will get gamed.

Whenever someone doesn't want something to happen, they talk about the risk of gaming of that particular outcome, but they never consider the risk of gaming of their proposal instead and all of these will get games. Just as if you forced everyone into an ICANN auction, then they'll do a deal behind the scenes. One of the later parties will later pay auction price plus X to the winner and they'll do a private deal behind the scenes in that way. They'll be gaming in the after market of TLDs, which in fact we already saw last time around.

So, let's be realistic here. People are going to game, but don't keep assuming that just because you don't like a particular path that that's the only gaming that matters. Let's try and find a way to allow this to work that gives parties the flexibility that I think many of the are asking for, many of us are saying is necessary and useful. And recognize that there will be a bit of gaming but we're trying to put some guardrails in here to minimize the gaming.

JEFF NEUMAN:	Yeah. Thanks, Susan. Paul and then Greg.
PAUL CGRADY:	Just to briefly respond to something that Becky Burr put in the chat. She raised concerns about enforceability of the certifications. There are all kinds of things in the application that we have to trust applicants for. And in relationship to actually having an applicant out there running a registry, this particular concern, which I don't share but other people have it and I acknowledge—just because I don't share it doesn't mean that other people aren't allowed to have the concern. But compared to a registry out there that we don't trust doing all kinds of DNS abuse things out there, this is a small-time problem compared to that.

So, if through the ICANN process we can't get comfort that the applicant is a good guy, then we have bigger problems than just this. So, just to address that.

Secondly, I don't believe in pre-banning mechanisms based upon presumptive violations from the last round. If you don't like private auctions, then words are used like frivolous and things like that.

But the reality of it is that, for a lot of folks, private auctions was lemonade for lemons. You put all this money to applying for a TLD and somebody else had the same really good idea, and now—bummer—you're stuck having to deal with a contention set.

So, we can label them rhetorically however we'd like, but the bottom line is that what other people think might be gaming is probably people making lemonade out of lemons. Let's at least have a certification for the next round, see if it in fact is the

problem, people are in fact violating those certifications, and then build an appropriate sanction. Let's not pre-sanction everybody by eliminating mechanisms because people didn't like a particular way things worked out. Thanks.

JEFF NEUMAN: Okay. Thanks, Paul. Greg?

GREG SHATAN: Thanks. I am sympathetic with some concerns about private auctions but more from the point of view that they tend to enforce the golden rule, i.e. that he who has the gold rules, and that he who has the most money—or she or it who has the most money—is not necessarily proof of who is the best applicant.

But short of exploring qualitative methods for resolving contention sets, it seems to me that if we were to ban private auctions, what we'll end up with are just private negotiations over price, again with the threat in the background that if that's not successful, there will be a last resort auction where essentially the losers get nothing.

So, it seems to me that allowing for the possibility of the private auction along with other forms of private resolution, where the golden rule also applies, seems appropriate.

If there were particular gaming scenarios that were identified, we should figure out how to block those, but not to throw out the entire concept entirely.

And finally, Jeff, I do support at least, without thinking about it very much, the idea of more transparency in these auction processes, particularly since I think the last chance auctions are more transparent. We'd lose any transparency if we just relied on deals among contention sets to be the only essential resolution other than the last chance auction. Thanks.

JEFF NEUMAN: Yeah. Thanks, Greg. Any other thoughts on the transparency aspect. If we say everything has to be disclosed, that if there's some private resolution, all details of that private resolution must be disclosed at a minimum to ICANN, perhaps to the community. This way, people could still enter into their … Resolve it privately but that's going to be known publicly what happened. Still preserves flexibility. It's just they can't keep it private. Donna, go ahead.

DONNA AUSTIN: Thanks, Jeff. I'm willing to explore the transparency angle, but I'd just like to go to Jim's comment, which is the one that he made about Donuts. And I think Rubens picked up on this.

One of the realities of 2012 is that there was a surprise at the number of applications, which meant that people ended up— maybe some strings ended up in a contention set.

And I think a lot of applicants had to reconsider what this meant to their business model, particularly when it became evident that some strings were going for considerable amounts of money.

And while you could say that, well, it's because it was in private auction and amounts were pushed up by means of collusion or whatever, we were still seeing extraordinary amounts of money paid through ICANN's auction of last resort as well. So, even the portfolio applicants, they weren't recouping money if they lost in ICANN's auction of last resort.

So, I think we need to be careful with some of the assumptions we're making here, even though some portfolio applicants might have made some money out of the auction process, they probably lost money as well, particularly if it went through an ICANN auction of last resort.

So, I'm a little bit concerned with how we're skewing this in terms of what happened in last round. Jeff, I'm willing to consider the transparency angle, if that's a means that would mitigate the concerns that others have raised about people are just sending in applications to make a little bit of lemonade. I'm willing to explore that, but I still am not willing to outlaw private auctions. Thanks.

JEFF NEUMAN: Yeah. Thanks, Donna. And the transparency angle, frankly, is the only angle that will get us some data that Paul is talking about. If we allow private resolutions the way we did the last time, like this time we'll have no data. Everything will be hidden.

But if we allow or even sanction certain private auctions that require that ICANN have insight into that and ICANN gets the data from it and it's disclosed, maybe we'll have some data for the next time. Maybe we'll see whether it's good.

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The other thing, by the way, is that portfolio players had a huge advantage in private auctions, especially the single applicant, because they knew how much strings were going for. They could plan … By participating in a bunch of auctions, they could move funds around. They could afford to re … If they lose on auction, they could take the money, put it towards other auctions. There's a ton of advantages.

Well, they could still do that if there's transparency, but at least everyone will know what strings they're going for and everyone will be at least on a level playing field with respect to information.

So, if we can't get rid of private auctions, perhaps regulating the private auctions might make sense. Paul and then Donna.

PAUL MCGRADY: Thanks. So, like Donna, I'm open to thinking through the transparency suggestion. Whenever that sweeping sweeps in, you do need some time to think through unintended consequences and things like that. And I know we've got four minutes left on the call. But really happy to take that on board and consider that as a way to supplement the current model that's in front of us. So, yeah, that's all. Just saying that I think that that is something worthy of consideration. Thank you.

JEFF NEUMAN: Great. Thanks, Paul. And Donna?

DONNA AUSTIN: Yeah. Thanks, Jeff. To your point that portfolio applicants had a huge advantage, there's a question of at what point in the process did they have that advantage?

And there's differences when we talk about portfolio applicants as well, because Google had … They're an established business, as are Amazon. We had others that went out and raised capital for the purpose of running a portfolio of gTLD registries.

So, we need to think about this in the context of the benefit to the industry as well, right? The portfolio applicants that we had, some may not be doing as well as others, but as we work through the program and what gTLD registries are successful or whatever, we need to think it's a little bit longer term than just the short term.

So, portfolio applicants may have had the advantage, but at what point do they understand how the process was playing out and the big money that was involved in some of those auctions?

We need to be careful how we think about this and the longer-term impact on the industry as well, I think. So, let's think about this in a much broader context than just trying to narrowly focus on one element, which Elaine has said she can find ten ways to game something that we thought of. And Susan has actually pointed to other elements that can be gamed in the aftermarket.

So let's be careful about what we do in this specific instance because it's going to have broader ramifications and we're not going to solve all the problems anyway. But let's think of the longer-term impact as well. Thanks.

JEFF NEUMAN:	Yeah. Thanks, Donna. So, we are going to come back to this obviously on the next call, but there's also those suggesting a Vickrey Auction up front which would eliminate all the private auctions and everything else. But even a Vickrey auction afterwards is still okay if they have to put in their bid beforehand.

But again, there are many ways to handle this and it doesn't have to be an outright ban, but it could also be more transparency, more things that are disclosed, and that disclosure could lead to better practices. And if nothing else, even to just quote Paul, right? We need to see the data from … We should be looking at the data before we make any rash decisions. But we all know we couldn't get the data because it was all confidential.

So, there's got to be some way. We need to get that data even if we don't ban it this time, but there should still be reasonable transparency to see what's going on. Otherwise, people are just going to make assumptions and not make assumptions based on what they think as opposed to actual data.

All right. So, we're going to talk about this next time. I made a mistake. We forgot to go over the work track five stuff. It's on package five, the geographic stuff. So, we're going to start there on the next call. Then we're going to get back to the predictability stuff and then to the auction stuff. So, that's the plan for the next time.

Lots to think about, as Cheryl says. But let's be creative here because we know that there are as many people who are talking in favor of private auctions today, there's certainly at least as

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many that are against it and we need to try to find some kind of solution if we can.

So, thanks, everyone. We'll talk to you on Thursday, 03:00 UTC. So, Wednesday night for some of us. Thank you, everyone.

TERRI AGNEW: Thank you, everyone. Once again, the meeting has been adjourned. Please remember to disconnect all remaining lines and stay well.

[END OF TRANSCRIPTION]