

**ICANN
Transcription
New gTLD Subsequent Procedures Working Group
Monday, 04 February 2019 at 20:00 UTC**

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Julie Hedlund: Great. Thank you. Good morning, good afternoon, good evening, everyone, and welcome to the New gTLD Subsequent Procedures Working Group call on Monday, the 4th of February, 2019.

In the interest of time, there will be no roll call. Attendance will be taken via the Adobe Connect room. If you're only on the audio bridge at this time, could you please let yourself be known now?

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

And with this, I will turn it back over to Jeff Neuman. Please begin, Jeff.

Jeff Neuman: Thanks, and I apologize. There's a phone ringing in my background. So, I will have to just deal with that voice thing in the back. Welcome, everyone.

Okay. So, we have the agenda, as always, up on the top right-hand side, and we're going to do our normal statements of interest. And then, #2, actually, should say just "Review of Supplemental Initial Report Public Comment." The word "being" I think came from one of my emails where I said the second item being a review. Sorry about that.

And then, so we'll spend the bulk of the time – and I'm actually going to insert between #1 and #2 just a mention of the document that we just sent around just prior to this call, not for an extensive review of the document itself but just to give it a little bit of context, because I saw there were a

couple of emails back and forth anyway. So, might as well just give a quick discussion about that. And then any other business.

So, I'll ask now if there are any comments on the agenda or any other business to add?

"Update on the timeline." Okay. We'll put that under AOB.

Okay. Anybody else have any other questions or things to add?

Okay. Then let me ask if there are any changes to any statements of interest?

All right. Not seeing any. Okay. So, before we get into #2, I just wanted to just give a quick introduction to the document that you got probably an hour maybe before the call, if that. And I don't know, Steve – I'm asking you kind of last minute – I don't know if you could put it up there. But essentially it's a – oh, good – it's a – one of our action items was to go back and look at all of the applications for the TLDs and the strings that were still left, I'll just say, unresolved or were not closed, put it that way; and so, what started out as just an exercise of ICANN giving us kind of a printout of their formal database status. But then when I went through that, it didn't really help. It didn't have – all it had was the application status and, obviously, the application, the ID, and the string. But then it just, it really – and then their contention status and evaluation result, but it didn't put anything into context.

So, what I did is – and you see there it says "Neuman Classification," just because we wanted to be clear that it wasn't ICANN that had these official status updates. So, I went back and – we went back and we reviewed the strings. And this is as best as we can tell the status of each of the applications, and then there's some notes.

So, if you look at – I'll just skip to one that's got some notes – let's say, CPA, I was a little confused about, because it still says – the official status is "On Hold" for two of them, and then one of them it says "Evaluation Complete." So, I did some research. They're still in contention, but one of them failed CPE, and there's contention it seems with itself. And the third application from CPA Australia seemed to have been withdrawn very recently, like a week or so ago. So, I don't know if that's just that the status hasn't been updated.

So, there's one or two examples like that, where it's pretty – it's unclear as to what's happening. A second example of just where it wasn't very clear was LLP, where it says "In Contracting." And it's been in contracting for a long time. So, just not aware of what's going on there. So, those are in gray.

If they are in kind of this burnt orange type, that means that they were – that they should be closed, in theory, but for some reason an application has not been withdrawn. So, if you have, for example – I'll go with, like – dot-eco – Planet ECO, they lost the contention set, I believe. It was resolved. So, they lost the contention set, but they still have not withdrawn their application. So, technically, the ICANN system considers that to be open, I guess? But I put it in burnt orange because – or Steve did – because it's already been delegated to someone else. So, it's just the application itself hasn't been withdrawn. I'm not sure why that's the case.

You'll see the same things for "home" and "mail" and "corp," where the board has resolved not to proceed, but the applications have not been withdrawn and there are no pending accountability mechanisms that we know of.

And so, then you'll receive "salon" and "shop," I think, are two and "tata" and "thai," where they're not approved for the last two, the latter two. "Tata" and "thai" were not approved, but the applications haven't been withdrawn. And "salon" and "shop" were delegated to other applicants. But these applicants, the two – L'Oreal for "salon" and Commercial Connect LLC for "shop" – have now withdrawn.

So, the purpose of this chart is not because we are doing any policy development with respect to the last round, at all. What we're doing here and the reason why this was an action item was for the purpose of future discussions when we talk about the definition of what it means to have a round closed. And when we talk about whether there may be – you can start another round before – at what point can you start another round will be the discussion, and we'll be looking at things like this, saying, well, what if we still have 20 applications that are still pending accountability mechanisms? Or what if we have – could we still consider it ready to move on to the next phase?

So, that's really what the – that's really why we provided this chart. And if you want to go through it, too, I think to my best ability it's correct, but there may be a couple of things that have been updated. It's just not reflected on this chart. So, if you find any mistakes, happy to make those corrections.

Anne has a comment saying, "I don't think the ICANN system considers 'eco' open." It says, "will not proceed under the ICANN status." Well, yes, it's a good question. I don't know what ICANN considers it, because it's still in the system and it's still – Steve, maybe you can – when you guys happen to do a search – I guess the application is still pending because it hasn't been withdrawn even though it says it won't proceed. Is that right, Steve?

Steve Chan: Thanks, Jeff. This is Steve, from staff. Yes, indeed, it was just basically any applications that are either not delegated or not withdrawn, essentially. So, "pending" might not be the right word for all the applications listed in this list. So, as Jeff just mentioned, this one does not have a path to delegation, but still it's officially in the system because it has not been withdrawn by the applicant. So, this end space, it's not – "open" is probably not the right word again, but it will not proceed. But it has not been withdrawn. Thanks.

Jeff Neuman: Yes. So, that's – and some of them are, as you can see, pending accountability mechanisms, and those could – we don't know how long those will go on for. But obviously, you still have some fairly notable ones, like dot-music and dot-gay, that are – and dot-hotel, although "hotel" actually the one applicant prevailed on its PE. So, that does not have to go through contention resolution like the other two examples I just mentioned, in theory, if everything holds up the way it is.

Okay. Any –? Steve says, "Would add – and it's probably obvious – there's no requirement to withdraw your application in the 2012 round." Yes, that's a good point. There was no requirement. I'm not sure why someone wouldn't withdraw their application, because I do believe that even if it's after contention resolution isn't there some small refund? Yes. As Jim said, "They're leaving money on the table," even if it is after contention resolution.

So, I'm not sure we'll ever know why, but at some point – this is the kind of thing we have to think about when we talk about the definition of closing a round or when it's ready to start the next one and things like that.

Oh, the other – sorry. The other point is – and I see Christa Taylor is typing – and this just kind of boggles my mind, because Christa is heading up – was one of the co-leaders of Sub-Group B, but they're talking about the issue of refunds and fees. And so, if there's going to be something like a refund issued, not for 2012 round but for future rounds, then this is something we – this discussion is also pertinent. And in fact, the board raised it, in a way, by asking us what the definition of a round being closed means, and that will come into play for the reasons we talked about.

Okay. Again, the point wasn't really to talk about this in much detail now, but just to give some context for future – a future conversation that we have on round closings and the ramifications.

Any questions?

So, there's some chat on why people may not have withdrawn, but we'll just let that chat go as is.

Anne, please?

Anne Aikman-Scalise: Thanks, Jeff. It's Anne. I'm wondering, did we – in our request for public comments, did we deal with the question of how closing a round is defined? And did we seek public comment on it, ever?

Jeff Neuman: Well, we did not in the sense – sorry. This is Jeff. We didn't in the sense of asking that direct of a question. We asked certain questions like, what – if we were to do one round after the next round, (inaudible) round could begin? There were also questions if there were refunds, when could that be given out? So, I don't think there was a question that said, "What is your definition of when a round closes?", but there were some comments – questions and comments that were received on triggering events for certain things to happen, if that makes any sense.

Anna Aikman-Scalise: Yes. Just quickly, a comment, follow-up. I think that on the question of if this group is going to as a policy matter define when a round closes, that probably needs to go out again for public – a supplemental public comment. But it looks like we have a few other issues, as well. And I hate – I know that our timing is tricky, but that seems like a pretty important question. Thank you.

Jeff Neuman: Okay. Thanks, Anne. Looking at the chats, okay. Just still some discussions on comments that did not – people that did not ask for a refund. And Anne said the comment which is "public comment on the definition on when a round closes."

Let's – we're going to hold off on that, Anne, just because we may or may not define what it means to close a round. We may just define the triggering events that were asked for during the already existing public comment period. So, I'm not going to – we're not going to prejudge on these calls what topics need to go out for public comment until we have something a little bit more concrete, and then we can decide whether that's something that needs to go out for public comments, or not, as a group.

Okay. Any other questions on this document before we turn to the comments from the Supplemental Initial Report?

Okay. Why don't we now put – Steve, if I can ask you – this is now, just to remind you, this is the Supplemental Initial Report on the five issues that Work Tracks 1 through 4, previous Work Tracks 1 through 4 had talked about. This is not the Supplemental Initial Report on geo names. That's not what this is. This is the Supplemental Initial Report on miscellaneous items.

And so, Steve has put – thank you, Steve, for putting the link to the Google document. Probably easier to read, and certainly I'm going to be looking mostly at that. So, if I can ask Cheryl to just mind the chat and let

me know if people are in the queue, because I'll be looking mostly at that Google doc. But I do see Jim. So, Jim, please?

Jim Prendergast: Thanks, Jeff. Jim Prendergast. I'd asked on the email list and I never got an answer. So, what exactly are we going to be doing with this document? Is this the comment triaging exercise that those of us who participated in the sub-groups went through? Or is it something different than that? Thanks.

Jeff Neuman: So, this is going to be – sorry. And Cheryl, you can jump in if you think I'm misstating. But I think we – this isn't the triaging that we're doing right now. Obviously, if – we're going to take notes of any of the substantive things that may come up with them, but at this point we're really – the point of this exercise is to review the comments, make sure we understand what the comments are saying, see if there's any clarifying questions we should be asking to these groups, but also making sure that if there are new ideas that come up in these that since we are bringing this up with the full group at this point, that the full group can start thinking about some of these questions, maybe even go back to their own groups and see if anyone's got thoughts on any new ideas that may have come up during these calls.

So, it's mostly triaging, but taking advantage of having the full group, seeing if there are ideas here that have not been considered by certain groups. Then, it's good to have so many people on that they can go back to their constituency stakeholder groups, advisory committees to get further thoughts.

So, Cheryl, Steve, anything you guys want to add to that? Did I state that right?

Cheryl Langdon-Orr: Yes, all good by me. Triage-plus is how I think about it. And the same exercises we've done in the sub-teams, but all of this will be dealt with by the – sorry; Cheryl, for the record – the Committee of the Whole; but not the discussions by the Committee of the Whole at this stage, rather the opportunity to make sure we've done justice to these public comments as we have with those that have come in in the original initial report, not this supplemental. And then it means we can integrate up to the full plenary the products of this triage with some perhaps extra annotations, just because we've got the full work group doing it, and that's coming up ABC and continue on in sync. Thanks, Jeff. Back to you.

Jeff Neuman: Okay. Thanks, Cheryl. So, we're going to start with the general comments, and there are really only two that we thought fit into this category. So, one of them we actually did talk about in some detail at a previous call, the board comments. And we've actually started discussion on some of these issues. So, for example, in the board comment they talk about making sure that one of their major concerns – actually, I'm going

to – sorry. I was reading it off the Adobe, but my eyes – I'm going to the Google doc.

So, they said one of the major concerns in reading the Supplemental Final Report relates to ways that – they're kind of curious to know if we've talked about some of the new things and whether some of those new things could lead to abuses and making sure that we have done our homework, essentially, in understanding what types of abuses may – we open up with some of our new recommendations. They say, "These concerns mostly center around the issues of auctions as a last resort and on private auctions. We take special note of the possible practice of participating in private auctions for the sole purpose of being paid to drop out. And we also take note of the abuse that becomes possible in alterations to the change request mechanism." They want to know – they have concerns about whether and in what ways the availability of private auctions incentivizes those to just apply, as opposed to actually wanting to use the string and how can we minimize that.

And then they ask a very general question which we solicited feedback on – so, I'll get to that in a second – where they remain "concerned about adding functions that may exceed ICANN scope and mission." And we did have a communication with – was it? – and I know Aubrey's on the call. So, I'm trying to remember who responded. But I think the response we got back when we asked them about that last part about exceeding the scope, whether – I think the question that came out of our previous discussion was, did they think that any of our recommendations that we had already made, were they concerned that any of them exceeded the scope? And I think the response back we got was, "No, we're just – not necessarily, we're just making sure that when you do make a recommendation that you think about whether it's within the scope of ICANN."

So, any questions on that or questions on the board comments? Also keeping in mind on the substance and the other comments on auctions, we'll get to those when we get to those sections.

Christopher Wilkinson says, "How does this relate to the public comment review issues of which I have two versions undated?" I'm not sure. Are you talking – Christopher, is your question about the sub-group comments? That was on the initial report, not the supplemental report.

Okay. Well, if you could just type that in, I'm not 100% sure of the question.

Okay. Is that Christopher? Are you online? Oh, he's typing.

Okay. So, while Christopher is typing, the only other general comment we got was from the Registry Stakeholder Group, and that comment basically states that – I'm jumping between two documents here – that, "There are

71 members of the registry operators and they span a lot of different business models and interests and some of the questions, therefore, were difficult to reach complete agreement on because of the diverse nature of their membership. And so, rather than saying 'no comment' where they disagreed or where there was divergence, the Registry Stakeholder Group has opted to submit responses that in some instances represent more than one point of view or opinion, and these are generally characterized as the opinion of some members. The Registry Stakeholder Group believes that this approach is more informative for Subsequent Procedures Working Group, as it provides some insight into the reasons for disagreement and demonstrates the sensitivities that surround issues – some of the issues described in the Supplemental Report."

I notice there are people from the stakeholder groups that are on this call, but I think that was pretty self-explanatory. But Anne, you have a question?

Anne Aikman-Scalise: Yes. Thanks, Jeff. And it's not related to Christopher's question. I guess I'm dealing with a version that would be the last one that staff has sent out. And my comment related to the board's general comments because I thought we were discussing those a bit. And it's kind of a procedural question, because the board's comments, the second paragraph of their general comments, in the very last sentence the board says that they'd like to understand "how subjects that did not currently reach consensus can be further reviewed at a later time without the necessity for future gaps in subsequent application procedures." And so, the board is asking that question. And I think, in part, this relates to items that we've tagged as "new idea." But I'd sort of like to get leadership's take on this particular board advice and the fact that we've labeled a number of things as "new idea." Kind of, where as leadership do you see those items headed in the overall scheme of things?

Jeff Neuman: Yes. Thanks, Anne. So, I'm – I think we would probably put it as a – it's a good question. It's not really an idea. It's a question. We did actually flag this issue. We had initial conversation on it with the full Working Group a number of weeks back, but it is slated to be the subject of another call later on. So, this is a separate question that certainly merits discussion. We did have – and I see Aubrey with raised hand. So, actually, let me just jump to Aubrey since probably better coming from Aubrey. So, Aubrey, please?

Aubrey Pennyman: (inaudible)

Julie Hedlund: Aubrey? Aubrey? Aubrey, this is Julie, from staff. We're having trouble hearing you. You're – we're hearing – Aubrey, we're hearing some distortion in your – Darth Vader. Okay. Please private message me, Aubrey, if you'd like to be dialed.

Jeff Neuman: It sounds like Aubrey has one of those voice-masking personalities. But okay. Aubrey is typing. Am I still hearing a little bit of that in the background?

Okay. So, we'll wait to see what Aubrey is typing. I think one of the key tenets here that we had was that if we didn't reach consensus on a topic, then the default was going back to the way it was done in 2012. I think that's still the way we're operating. But there has been some discussion on if the group though reaches consensus that there was an issue with the way it happened in 2012 but is unable to come to a consensus on a solution to that, then that's something we need to talk about as a group, and there are choices that we can make at that point, which is either even if we all agree that we have concern still do it the way we did it in 2012, or you could say let the board make the call. There's different ways. I'm not saying there's a preference for one way or the other. But that is the subject of a later conversation that we will have on the substance.

Christopher, please?

Christopher Wilkinson: Thank you. Good evening. Christopher Wilkinson, for the record. Jeff, I'd just like to pick you up on that default. I think there's a defect in this concept of the defaults because it delays – it inhibits improvements in the 2012 situation in so far as it provides de facto incentive for participants who really want to maintain the 2012 arrangements, warts and all, essentially to discourage or prevent consensus. I think that there's a logical default in that default. Thank you.

Jeff Neuman: Yes. Thank you, Christopher. And we're going to save that to when we talk about the substance. I think Aubrey's comment below is a good one, that we do also as part of that conversation, which is, how do we find ourselves – if we're going to do rounds and we're going to do (inaudible) by the next, how do we avoid the long intervals? So far, it's been, what, seven years. It's been over seven years now since the application period started in 2012. So, it's a question we'll deal with, again related to the round closing and related to the other discussions.

Anne's comment is, "Agree with your summary. Not sure that this reasoning applies to items which are labeled 'new idea.' It seems to fit more in the category of items that could need ongoing policy work as indicated on the board comments." Okay. Fair enough.

Okay. Now let's dive into the next section, which is 2.1, which is the Mechanisms of Last Resort. I know it's entitled Auctions Mechanisms of Last Resort, but if you remember when just before we finished the drafting of the Supplemental Initial Report we actually reworked it a little bit to talk about different types of mechanisms of last resort, as opposed to just auctions. So, that's a little bit misleading title, but certainly we'll get into the substance.

So, on tab 2.1 for everyone that's paying attention, and we are starting on Line #4. So, this is where just general comments on mechanisms of last resort. So, they didn't quite fit into one of the sub-questions. So, we have a general comment from the registrars; the board, which we already actually went over; the GAC; and ALAC. There may be some others; I just got a little stuck here for a sec. Oh, the BC and ICANN Org. Cool.

Okay. So, in using – for those of you that have not been on the sub-group call – and this relates to Anne's comment from just before – we have a kind of color coding scheme. And so, if you see something in green, it means that they agree with what was said in the, in this case, the Supplemental Initial Report. If it is in red, it means that they disagree or diverge from what was in the Supplemental Initial Report. And then if it's blue, that means that it is a new idea, something that we may not have touched on in the Supplemental Initial Report or, for that matter, the Initial Report. And then, finally – I don't see it in this first one – but there could be a brownish kind of color, and that brown color is not where they diverge necessarily; they may agree with the concept, but they have some concerns about it. So, they would say things like, "Well, yes, we like that idea, but we're worried that 'x,' 'y,' and 'z' will happen." So, that's when you'll see it as a brown color.

So, looking at the registrars first, they do support the notion that there should be alternatives to ICANN auctions, including the options that were listed in c.2 of the Supplemental Initial Report. They believe that auctions should only be used when all other viable options have been exhausted. And they are in support of allowing applicants to "voluntarily resolve contention sets by mutual agreement and/or allowing applicants to change elements of their application to resolve contention sets earlier in the process."

The ICANN board, we already read that comment. They want to make sure that we have thought about abuses. So, they're not agreeing or disagreeing with anything in here; they're just trying to make sure that we've taken note of any new things that we've suggested and what potential abuses we're opening this up to.

The next comment, from the GAC. The GAC actually does oppose the use of auctions. And so, they should not be used to resolve contentions between commercial and non-commercial applicants. So, it's actually divergence, in part. They oppose the auctions for if there's a contention between commercial and a non-commercial applicant. I don't know – and maybe someone can remember – I don't believe they think it's – I don't believe they oppose it if it's two commercial or two or more commercial entities that are vying for a string. But in looking at that quote, I don't know if anyone's got any more information about that. Just looking at the chat, seeing if anyone's got more information.

And if no one is sure, then maybe we can frame that as a question. It might be in more detail in the actual comment. But let's frame that as a question to make sure that there's no opposition if it's completely commercial applicants.

Christopher, please?

Christopher Wilkinson: Hi. Christopher Wilkinson again, for the record. Just a brief comment on that last point. I have no idea what the rationale or the scope of the GAC comment is, but my personal comment would be to recall what I said in a previous call, that I would foresee that very serious political problems arising if geographical terms were to be subject to auctions, particularly an ICANN auction and, even worse, a private auction. This would in my view inevitably engender a negative response from the authorities and the communities in the geographies concerned.

Jeff Neuman: Okay. Thanks. Thanks, Christopher. Just to clarify, what we're doing now is discussing the comments and making sure we understand what each group is saying. It's not that we don't value our opinion, Christopher; we do. It's just we're trying to make sure that we understand what each group is saying. But if there are questions or comments on what their comment is, that's what we're trying to elicit now.

Christopher Wilkinson: Yes, I get it. But as a codicil, I would also point out texts of the documents that are on the screen are in such small fonts that until I've printed them out, enlarged them, and tried to read them, I have no idea what they say.

Jeff Neuman: Fair enough.

Christopher Wilkinson: Steve, you and your colleagues might look into this. Many of the documents that we see on screen in these calls have such small fonts, and even if you try and blow them up they don't contain on the screen. It's very difficult. Thank you.

Jeff Neuman: Yes. Thanks, Christopher. Okay. Tom, please?

Tom Dale: Hi. Thank you, Jeff. Tom Dale here, for the record. Just to complete that quote from the GAC's comments that are there – I've just checked because I actually drafted that when I was doing that work for the GAC in a previous life – the full comment from the GAC reads, "Auctions of last resort should not be used to resolve contentions between commercial and non-commercial applications." It then goes on to say, "As to private auctions, incentives should be created to strongly disincentivize that instrument." So, there's a second sentence there, as well.

As to the rationale, the GAC did not elaborate on it. But there are two parts to that: one on the commercial/non-commercial contention and one to private auctions, more generally, which the GAC doesn't like, basically.

That's in the written comments that were submitted publicly. I hope that helps. Thank you.

Jeff Neuman:

Thanks, Tom. And I'll just reiterate, many of you know Tom as formerly being with the Secretariat of the GAC. But now he is, as Cheryl has posted, a member of the Asia-Pacific At-Large – APAC. Sorry. From the ALAC, at large. So, thank you for posting that, Cheryl, and thanks, Tom. And so glad you actually stayed involved. So, thank you, Tom.

Okay. The next comment that we received was from – I'm switching back and forth between documents here. So, the next comment was – oops, it's stuck. I think everyone's viewing this document at the moment, on Google.

Okay. I think is it the ICANN Org? No. Why does it keep jumping? All right. Sorry about that. I'm going to go back a screen here, to ALAC. Okay. That's why. Because it's a very large comment. I gotcha.

Okay. The ALAC "strongly opposes the retention of the regular highest bid auction process which was used in the 2012 round" – they call that regular auctions – "as the mechanism of last resort for resolution of contention sets within the programs." That's pretty strong. And then they, in blue – you'll see it in blue because it's a new idea – they propose that the "ICANN community explore the introduction of a multiplier-enhanced Vickrey auction" as described in their response "in place of regular auctions, while strongly advocating for more guidance and resources to be put in place to help applicants get out of contention sets voluntarily, thereby avoiding going through auctions to resolve the contention set." However, it's also "modified Vickrey auctions should be conducted by ICANN-appointed auction service providers."

So, just as a reminder for those of you that were not on our call, our last Working Group call I think was a good one to go back and – especially if you were not on the call – where Monte Cahn from Right of the Dot, among other things, described a bunch of different mechanisms for auctions and also talked about the concept of multipliers and enhancements. And so, I strongly recommend everyone listen to that or read the transcript, because I think it was very helpful for us and it provided a lot of information that we didn't all necessarily know.

So, the ALAC then goes on to talk about why they disfavor auctions and then some more rationale for their comment on other mechanisms.

So, there's some other things in here that – sorry if you hear noise in the background. My dog just decided it was now time for her water break. So, she's drinking water very loudly, and I apologize for that.

Any questions on the ALAC comment? It's a very detailed one. So, I strongly recommend you all reading it. But I'm just going to summarize what they said.

Okay. The next comment was from the Business Constituency. And they support rules to promote usage of TLDs, and they recognize there's games – that there is gaming certain applications. They want more – they support more studies. And ultimately, their concern is that "auctions may in the end make it more difficult for developing-world applicants and other less well-financed participants who might have less access to capital (inaudible)." And the newish idea is that they support the Vickrey auction method to eliminate private (inaudible) and to replace the ICANN last resort auctions.

The ICANN Org, again the general comment. They provide clarification about change request criteria, especially around the word "material." So, I think we had said that if there are – there should be certain changes that go through certain processes if they are material. And the section in the Supplemental Initial Report states "applicants were precluded from making material changes," and they were seeking – they're providing some more information here to be noted that the "change request criteria from the 2012 round were carefully developed to enable applicants to make necessary changes to their applications, while ensuring a fair and equitable process for all applicants."

And so, there are questions. And then they note Module 6, the Terms and Conditions, has a requirement that "an applicant may not resell, assign, or transfer any of the applicant's rights or obligations in connection with the application." And so, I guess the point there – and maybe we can put that in brown, I guess, Steve, maybe, just to make sure we keep that in mind – because if we do allow certain types of changes to be made, we're going to have to think about how that interacts with the Terms and Conditions. So, in other words, if we allow certain changes, then how do we know whether that violates the Terms and Conditions language that prohibits the resale or assignment of an application and are they conflicting? So, I think we're going to have to – let's put that in, I guess, brown is a concern or something to think about as we go through this discussion.

Any questions?

Okay. Okay. So, now we are on 2.1.c.1, and that is, as Cheryl posted, that's Line 11. And this is – the question – "Many in the Working Group believe that ICANN auctions of last resort should remain in place within the program." And we have agreement from the BRG; from Neustar; some agreement from the Registry Stakeholder Group, with some new ideas; some agreement from the IPC.

And then we have a bunch of concerns from – it's hard for me to say – is that the ALAC? It's hard for me to see this in the Google doc because of

the page turn. Yes, I think that's the ALAC, if I'm not mistaken. Oh, it's ICANN Org. Sorry. I don't know why when I change in Google the document it's hard for me to see, but I guess looking at the PDF you can see that it is, in fact, ICANN Org. And then the ALAC, of course, they have their divergence with the auctions. So, that does make sense now. Sometimes reading the Adobe one is actually easier, even though it's much, much smaller.

Okay. Going back to the – I'm going to skip the ones that just generally agree but go to the Registry Stakeholder Group, because theirs are both an agree and then some new ideas. And what it says is that, "The Registry Stakeholder Group members are open to considering other mechanisms like a sealed-bid auction so long as a sealed-bid auction is held after the evaluations are complete so the true contention set is understood and the applications have a chance to participate in private mechanisms." So, if you recall, there were a couple of different options in the sealed bid. One was doing it before evaluation; so, you're only going to evaluate the one that's got the highest bid. And if that passes, that's the one you go with. The second option was a sealed bid only after the evaluations and you knew who was left. And the registries are supporting that latter option, the one where you only do the sealed bid auction, if you do that, after it's known who the applicants are. But then there is other members of the Stakeholder Group that say, "It's more efficient and equitable if contention sets are resolved at the beginning of the evaluation process."

So, there's kind of a – not "kind of" – there's a split between members, and there's some rationale as to why they support that. And they talk about that in the FCC allocation – the Federal Communication Commission in the U.S. – of toll-free codes.

Donna, please?

Donna Austin:

Thanks, Jeff. Donna Austin, from Neustar. So, Jim made mention in the chat that having Monte Cahn on the last plenary session to talk about auctions was really helpful. And I think one of the things that we discussed with him was – not to pick apart the registry comments – but we did have a discussion around benefits or not of having the sealed bid come in at the time of the application or at the time that the contention set is. So, for those who weren't on that call, I think it was – I think Monte had some really good insights. So, it'd be worth a listen. Thanks, Jeff.

Jeff Neuman:

Thanks. Sorry about that. Okay. Anyone else? I'm just reading the comments here. Oh, it's just some comments on what the date was of the call. So, it's January 22.

Okay. So, okay. Sorry. Just some comments on administrative stuff. And thanks, Donna, for helping to provide the explanation.

Moving to the IPC comment, they supported the recommendation, but then they believe that this should be done in the context of "greater flexibility to enable private resolution of contention sets, thereby assisting parties to try and find an alternative solution and so minimizing the need to rely on ICANN auctions of last resort." Okay.

Then, any questions on that one?

I'm not seeing any. Okay. Looking in the chat.

ICANN Org has a whole bunch of concerns that we need to make sure that we address when we talk more of the substance of our recommendation. ICANN Org notes that, "It is possible that mutual agreement as a contention resolution mechanism could create an unintended secondary market for applications. The PDP Working Group might want to take this into consideration when discussing additional options for contention resolution. And it would be helpful if the PDP Working Group could clarify what is meant by 'earlier in the process'." Because we talk about try to provide more incentives for people to resolve this earlier, and they have some questions about that.

And finally – not finally, but there is also questions on joint ventures and how do we deal with things like GAC advice and objections and making sure we fit all of the – if we do allow those changes, to make sure that we carefully think about how that fits into all the different processes.

And then some more discussion of regarding changes. "ICANN Org would like to note that this could cause major disruptions to the program. Any changes to be applied for a string would necessitate a review of" and then they go through the different types of things that need to be redone. So, we need to think about those in our discussion, as well.

Any questions? Or Trang, is Trang on? I thought she was. Nope. So, if anyone's got any comments or questions for ICANN – while people are thinking, Jim posted, "Application evaluation cost \$100,000 in the last round. If three applicants for the same string, not sure why you'd spend the extra \$200,000 on evaluation if those two applicants were not viable as their bid was not the winning one." And then there's a response from Donna. So, Donna is – okay. So, that's some good discussion on the substance, but we'll save that for that actual question when we talk the substance.

Okay. c.2 is where we said, "The Working Group considered whether there should be additional options for applicants to voluntarily resolve contention sets by mutual agreement." This does relate a lot to the comments that were in the past section. Remember, dividing these comments up between questions was not an exact science. So, there's definitely a bunch of overlap, both in the questions and in the, especially,

the comments that came back. So, we may be discussing things several times.

"The Working Group focused mainly on allowing applicants to change certain elements of their applications as a potential way to resolve contention sets earlier in the process." And this is what ICANN asked about, what "earlier in the process" meant. And so, we point to a different section on change requests.

So, you'll see here that there was agreement from the ALAC, IPC, and Neustar to allowing certain types of changes or – I shouldn't say necessarily "changes," but certainly – well, I guess, yes. Changes or resolving things by voluntarily – sorry – voluntarily resolving contention sets.

Christopher, please?

Christopher Wilkinson: Yes. Just on this last point, just to recall that I do believe that improved use of change requests and the request for comments – requests for proposals in the case of geographical names, would be a better solution. Thank you.

Jeff Neuman: Thanks, Christopher. Again, another caveat on this discussion is that we – geographic TLDs may have a different solution than what we come up with here in this discussion.

So, there's more questions about – okay, more questions about the merits or lack thereof of doing a sealed bid prior to evaluation or post evaluation.

Jumping then to the next comment, which is the Registry Stakeholder Group, and I'm going to have to go to the main document because my eyes can't see this here. Okay. So, the Stakeholder Group have some members – once again – some members have concerns to allowing any changes to the strings because they think that could be gamed. But some members of the group, however, did generally support the notion of changing the string to resolve contentions amicably. And that if SubPro ultimately makes this recommendation, "it's crucial that private resolution settlement negotiations should be strictly confidential and optional so that ICANN, a panel, the auction house, and the community can't substitute their business judgment for that of the parties. These members feel that joint ventures should be included on the list of potential settlement options" and that we as a Working Group should not be too prescriptive of what ideas may be used to voluntarily resolve contention sets. Any suggestions we as a Working Group make should be non-exhaustive lists. And the other members of the Registry Stakeholder Group believe that, "It's more efficient and equitable to leverage the second price in a sealed-bid auction at the beginning of the evaluation process but only when contention set Community Priority Evaluations and applicant support assessments have been completed."

Okay. I'm just going to check back in the room here.

Okay. No questions on that one.

All right. Jumping to the next one. We are on Line 22, which is – I think this is the ICANN Org comments. Wait. Did I say "22"? I think we're passed that, actually, aren't we? Sorry. Nope. I'm sorry. It is – it's the ICANN Org comments, but I think a lot of these are the same ones that we went over, or no? Yes. So, they ask again about mutual – yes, please?

Christopher?

Christopher Wilkinson: Well, just let me back up to the previous text that you read out. I don't want to take everybody's time with this. I would just say that what you have read out is a prima facie example of what (inaudible) a text that the staff has produced, some interested procedural initiatives which defy the original goals of the (inaudible) process. We've got to draw the line somewhere. We cannot have incumbent interests determining the rules for new entrants. I repeat: you cannot have incumbent interests determining the rules for new entrants. Thank you.

Jeff Neuman: Thanks, Christopher. I think the important comment there is, as well, is when we are going over these comments right now, we're just trying to understand what their comments state. But when we review the comments, obviously everyone should keep in mind what interests may be, not just of incumbents or new entrants or other constituencies and stakeholder groups, as well, as we evaluate the comments. And so, on a go-forward basis it's very important to understand backgrounds.

So, going back – sorry – to the ICANN Org comment, lots of concerns and questions about mutual agreement leading to an unintended secondary market. These are the same comments that we reviewed the last time. Questions about joint ventures and gaming and how do we view this in light of the early warnings, GAC advice, objection filing, redoing evaluations, etc. So, these are the same comments that were from above.

And the BRG again just reiterates its comments in support of auctions of last resort.

Any questions before we go to 2.1.d.1?

Okay. 2.1.d.1, which if you're on Adobe is – well, the question is on Page 7; the comments start on Page 8. And in the Google doc, Cheryl says it's Line 24-25 to 30.

So, this basically was the part of the report that talked about the different types of auctions. And so, it talked about sealed-bid. It talked about – just

a bunch of the mechanics and how to essentially eliminate contention sets at the beginning. So, this relates to the discussion that actually was just happening between Jim and Donna and others in this chat room.

So, the at-large, the ALAC, state they support the modified version of the Vickrey as we previously talked about in their general comments. They then go into a little bit of detail about this. And they also talk about their – the enhanced multiplier in their comment. And they go on to basically state that, "the undesirability of auctions favoring applicants with deep pockets can also be tempered by adding a multiplier feature in favor of certain qualified applicants to assist them in the Vickrey auction." And they talk about the Applicant Support Program, as well.

The IPC supports the sealed bids when contention set is established. Alternatively, they support sealed bids at application submission only where the sealed bid – where a bid is unsealed – okay. I'm sorry. I'm reading that wrong. So, they support the sealed bid at the time of application submission only if it's opened up if there's actually a contention set. So, they wouldn't want – I guess what they're saying is that they wouldn't want a sealed bid to be opened if there was never a contention set and none of them have past Community Priority Evaluation.

They're open to the idea of sealed bid – sorry. I'm going to jump back to the larger document here. Just a sec.

All right. They're open to the idea of the sealed-bid auctions as an alternative to the ascending clock auction mechanism. And their new idea is that they "alternatively support the use of sealed-bid auctions where bids are submitted at the time of application only where the bid is unsealed when there are multiple contenders" – okay, that's what we just said – "for the same string and none of the contenders have obtained Community Priority." So, they're basically pointing out that they believe the information is very confidential and contains sensitive commercial information. And so, they're expressing concern that that might be revealed – that that shouldn't be revealed.

Any questions or comments?

Okay. Then jumping from the IPC to the Registry Stakeholder Group, this is another one where there's members on both sides. Some members welcome "new ideas for types of ICANN-sponsored auctions and recognize there are drawbacks and advantages to the various auction formats, including the sealed-bid auction format. They believe all applications should be judged on their merits and auctions and other resolutions should take place after the applications pass review." They do not support sorting applicants by bid amount. But, "Others are okay with the sealed-bid approach and believe that a second-price, sealed-bid auction, sometimes known as a Vickrey auction, as described in the

Supplemental Report, which is being considered by the U.S. Federal Communication Commission for toll-free numbers, would eliminate the need of a majority of auctions of last resort."

So, there's definitely a mix within the Stakeholder Group. It doesn't – the registries don't give us an indication of which one has more support or less, but they just say that there are different groups within the Registry Stakeholder Group that have different opinions.

Okay. Some questions about the sealed-bid auction in the chat.

Okay. The next commenters were Neustar. Neustar, they support the notion of considering the Vickrey auction, but they do not support the idea that applicants be required to submit a bid at the same time they submit their application.

And the BRG just reiterates its earlier comment that it should be basically the way auctions of last resort remain in place within the program. And they just want to make sure that any new things improve the process and avoid new negative issues. And they view the current process as reasonable.

Questions? Comments? Donna is typing.

Okay. 2.1.d.2.1. This is on the notion of requests for proposals. This is the notion of deciding contention sets by who, I guess, proposes the best application that is most in line with the – some criteria that's set forth also by ICANN.

The IPC has concerns about the predictability of such a mechanism. However, diversity criteria are inherently subjective and require value judgments, and they're concerned that that's open to challenge, and not allowing an appeals mechanism would undermine the credibility of the decision making process.

Furthermore, "IPC supports that evaluations based on content or worthy goals, such as priority given to communities or minority applicants or even others such as brands, abridge the principle of applicant freedom of expression." That's an interesting comment from the IPC. They are including brands in that, as well, saying that even giving priority on brands might be a violation of the applicant freedom of expression.

The ALAC has some concerns, as well. Based on the 2012 round with CPE, they're not confident that an alternate mechanism based on comparative evaluation could be established easily, if at all. Its development would require extensive consultation with all stakeholder groups.

The Registry Stakeholder Group strongly opposes this recommendation.

The BRG, I think even though it's not here it is definitely divergence, as well. They do not – they support the way it is now.

And Neustar opposes it.

So, I think other than – I think we're all pretty much – "we all," I shouldn't say "we all" – the comments are all pretty much opposed to the notion of an RFP, request for proposal, type process. Any comments or questions?

Christopher, please?

Christopher Wilkinson: Christopher Wilkinson again, for the record. Two short comments, Jeff. First of all, the most successful new TLD that I'm aware of that, because I had some personal interest in it a long time ago, was definitely based on the evaluation of a request for proposals. This is not impossible. It's widely used. And I think that the expertise necessary would reside in the staff and the consultants concerned.

I've listened to your comments – your reading of the comments that we've received, and I refer back to my previous statements. It is not conceivable that the incumbent interests determine the terms and the conditions of new entrants.

Jeff Neuman: Okay. Thank you, Christopher. Anne, please?

Anne Aikman-Scalise: Thanks, Jeff. It's Anne Aikman-Scalise, for the transcript. I may have misheard you, but I thought I heard you say that the IPC comment is interesting because it shows concerns that the IPC does not think that it would be kosher to have any priority for brands. I thought I heard you say that. But I wanted to say – and I don't know when is the appropriate time for it – but in fact, the IPC, when we consulted with them on Neustar's proposal for the next round to put the dot-brands in an initial window because they're easier to deal with, the IPC formally responded that they support the portion of Neustar's proposal that deals with the windows and the order of those windows, which I think was – and Donna can clarify – but I think it was dot-brand, dot-geo, and after that generics and Community Priority Evaluations since those involve the most complicated topics.

The IPC does not have a current position with respect to the first-come, first-served portion of the Neustar proposal, but as a group we do support the windows that were proposed by Neustar. And as you know, that definitely involves a priority round for the dot-brand window, in that these are simpler applications.

Thank you.

Jeff Neuman:

Yes. Thanks, Anne. Yes, when I was reading the comment I may have read it wrong. So, I'm going to read it again. It says, "Further, IPC supports the position that evaluations based on content or worthy goals such that priority given to community-focused or minority applicants over others such as brands abridge the principle of applicant freedom of expression." So, giving others priority over (inaudible) brands would abridge the principle of applicant freedom of expression. So, I think I misspoke, but I just wanted to clarify what it says. And thanks, Anne. I knew there was a reason I stopped on it, because it didn't – okay. There you go.

So, let's go back to the document. On this one, let's see. We are now going to talk about then the random draw. So, that was proposed by one of the Working Group members had discussed it's always an option to do a random draw if you have everybody makes it through an (inaudible), everyone makes it through the objections, and now you're left with a contention set. Could you do it by a random draw?

There is some support for a random draw, that says it should be an option, but it should only be a valid way to resolve auctions of last resort if the contention set voluntarily enters into it. So, I guess what they're saying is – well, not "I guess." They say, "However, we would not support the random draw as mandatory." So, it's an option for contention sets, I guess, if everyone in the contention set wants to do it. But it's not a – they don't want it forced upon all of the registries. That's Neustar's position.

The IPC agrees that if a draw is used, then "proper licensing should be obtained." So, I guess that's ICANN would need a license to be able to do the random draw. So, they agree with – they would be okay with the random draw.

Opposition from some of the registries, where some of the registries claim the drawbacks are that "it increases the likelihood that the winner will simply flip the application to the highest bidder later, and it removes the ability of applicant businesses to make decisions for their business, including which applications are worth more than others. For instance, an applicant may have three choices for strings for its idea, and they randomly end up with the third choice or even no choice under this option. This is an example of Solomon's choice: all parties are likely to end up equally dissatisfied."

But, "Other members of the Registry Stakeholder Group do agree that this is worthy of consideration, but would point out that it does not solve all of the issues on the table as thoroughly as the Vickrey auction model."

Let's see if there's any questions or comments on the Registry Stakeholder Group.

Okay. The BRG just reiterates its position.

And then the ALAC opposes random draw. They – even though it eliminates the weaknesses identified by the Working Group, their position is based on the following considerations: "the ability and opportunity to apply any form of meritorious comparative evaluation of priority, which is far more valuable in our opinion and completely lost here; and licensing requirements for ICANN to conduct properly sanctioned random draws."

Okay. Questions on the ALAC statements?

Not seeing any. All right. Jumping right then to the next one. This is whether a system of graduated fees could be used as (inaudible) to resolve contention sets, to reduce the size of the pool's total applications. Did the commenters find this to be a (inaudible) solution?

The BRG says no. The ALAC says no. The registries say no. IPC says no. And Neustar says no. So, I'm not going to go into the rationale, but I think you can clearly see that a system of graduated fees was not a supported mechanism to resolve contention sets.

Okay. Anybody have any comments on that? As Cheryl said, that's pretty clear guidance.

All right. Now we are on – okay. We are on Line 49 in the Google doc – actually, 48. So, this basically says that, "The preliminary recommendation that was that we do the auctions of last resort, but some participants in the Working Group believe that they are inherently unfair, should be modified/restricted. One of the main arguments is that auctions reward only those with the most amount of money, rather than those that may best operate the TLD in the public interest. In addition, they believe that auctions discriminate against applicants in the developing world who may not have the resources to compete in an auction." The question asks whether commenters agreed or disagreed with that statement and then to provide a rationale.

The ALAC, I believe, since they did oppose auctions, indicated that they believe "a modified version of the Vickrey auction could be the most viable resolution mechanism of last resort." They did not favor the initial way that we did it – that ICANN did it. But they do have a proposal, as we said, for the modified Vickrey.

The Registry Stakeholder Group agree with the notion that there is a benefit for some applicants with auctions. They support considering new ideas. Some support a sealed bid. Some support Vickrey. And then there's a couple of other ideas in there again about the sealed-bid auction. But others disagree with the Vickrey. So, there's lots of – as we talked about in previous answers or previous comments, there's some variability within the Registry Stakeholder Group. But they – but these are some of the comments from I think that we've already kind of went over.

Questions? Comments? No?

All right. We are moving along swimmingly here. Where am I here? Oh, I missed some comments here. Sorry. The IPC disagrees with the notion that auctions of last resort are inherently unfair.

Neustar also disagrees with that notion. They believe that it needs to remain in place. They understand the concern of it being unfair, but they believe some of this could be addressed by "making more options available for those in a contention set to enable them to resolve the contention amongst themselves and, thereby, removing the reliance on the auction of last resort."

And the NCSG, the Non-Commercial Stakeholder Group, does not believe that auctions are inherently unfair. They believe that auctions are a "fair and traditional method of distributing valuable items such as spectrum and gTLDs among equally positioned bidders." They talk about how auctions, just applicants pay what they value and then go on some more as to how they're, if they're transparent, they allocate resources efficiently and they avoid windfall profits.

Questions about those three: the Non-Commercials, the IPC, or the – sorry – Non-Commercials, Neustar, IPC?

None? Okay. The next question said, "Should other aspects, non-financial aspects, be introduced to make auctions of last resort more fair?" So, this is the example of, let's say, a multiplier. So, giving someone from the global south double credit for – they maybe bid \$100. And if a global south applicant bids that \$100, they're really only bidding \$50 or paying \$50. So, counting as double, or some other multiplier.

The ALAC supports this notion, as is in their modified Vickrey model.

Neustar is open, but – so, they're open to considering it, but it's not – I guess it is support, but it's really just kind of an openness, a willingness to consider.

The NCSG agrees with the "introduction of new aspects in order to make auctions of last resort more fair and applying some weight mechanism may be one of the ways to do that."

The Registry Stakeholder Group again here was split. Some believe that "introduction of a multiplier within clearly defined safeguards in place to prevent any bad actors from gaming is okay. But others do not believe it's correct to assume that all applications in the global south lack financial resources. Accordingly, more data is needed to assess the need for and the efficacy of such a recommendation." So, the registries are concerned.

BRG, again, just their original recommendation.

And the IPC is opposed, thinking that this would – saying that, "This would incentivize applicants to abuse the process or using a company as a front in order to gain competitive advantage."

I'm going to stop right here, because we do have an AOB. Let me see. Any last questions on this?

Okay. Thank you, everyone. We're going to go to the AOB real quick, an update on the timeline. Steve, correct me if I'm overstating, but I do remember going over a timeline on our last leadership. Have we presented that or posted that?

Steve Chan: Hi, Jeff. This is Steve, from staff. So, that draft timeline has not been circulated to the group as of yet. It's been circulated to the leadership team for now. But what it does try to do is tie in – if you want me to go over a high-level description, I don't mind doing that, too, if you'd like?

Jeff Neuman: Yes. Well, let me just – right. The leadership team has until this Wednesday – right? – to give comments, and then we were going to distribute it to the group. But yes, please, Steve, explain it, and then we will – at the high level, and then we'll send it later this week.

Steve Chan: Thanks, Jeff. This is Steve again, from staff. So, the idea is to try to identify when the sub-groups intend to or, I guess, are planning to complete their work. But from there it tries to plan out also the full Working Group calls, as well. So, before ICANN 64, I think there will be maybe one or two back-to-back meetings for the full Working Group. And that's sort of the emphasis after ICANN 64, as well, where the sub-groups should almost in full be complete at that point, I think with the exception of Sub-Group B. But the function then is that the full Working Group will then meet on a weekly basis, as opposed to a number of sub-groups meeting. And then I think we'll be dedicated to then taking summary reports from the sub-group and trying to make progress and conducting deliberate discussions at that point.

So, at a high level, that's what it looks like. It maps out things through, I believe, ICANN 65, at this point. But yes, as Jeff mentioned, it's a subject of the leadership team for discussion on Wednesday, and we hope to share it soon after. Thanks.

Jeff Neuman: Yes. Thanks, Steve. I apologize for that. I knew it. But we'll get it out after Wednesday. I just wanted the leadership to make sure that I wasn't crazy in some of the estimates and make sure we put everything on there. We'll submit it, we'll turn it around.

To answer Donna's question, there are – actually, I don't want to speak. There are (inaudible) for the SubPro Working Group. There are two

sessions, I believe, or two days that we're going to have sessions. One is on the Saturday and one is on the Wednesday. So, we'll have a couple of sessions on those two days. So, please plan on both Saturday and Wednesday, and I believe Saturday is also Work Track 5, as well. So, make sure you're there. That's the first day. I know people will be tired. But that's what we're going to do.

And because I didn't want all the sessions in one day, we split it out over two days, and Wednesday was the second – was the best we can get for the second day. That will also give us time – Cheryl and I and the leadership – to modify some of the elements of the last session if we feel like we need to.

So, Jim, I know your hand was up, but it's down now. (inaudible) also included.

Jim Prendergast: I was just going to say I'd just put it in the chat just because I know we're getting close on time.

Jeff Neuman: Yes. Okay. Thanks, Jim. It's basically to reconcile with Work Track 5. So, we'll make sure we do that, as well. Dates for that are difficult, as yet. But we owe that to you.

Okay. Anyone else have any questions or comments?

Thank you, everyone. I know this was a long call. But thank you, everyone, and we got through a lot of comments. Next call is Tuesday, February 19, at 15:00 UTC for 90 minutes.

And Justine is asking (inaudible), and I'm actually seconding that, Justine. I think that's right. Okay. Thank you, everyone. We're going to end the call. Thanks.

Cheryl Langdon-Orr: Thanks, everyone. Bye.

Julie Hedlund: Thanks, Jeff. Everyone can disconnect your lines. This meeting is adjourned. Have a good rest of your day.