

**ICANN  
Transcription  
New gTLD Subsequent Procedures Working Group call  
Tuesday, 31 July 2018 at 03:00 UTC**

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Coordinator: Recordings are started.

Julie Bisland: Ok great. Thank you. Well good morning, good afternoon and good evening everyone. Welcome to the New gTLD Subsequent Procedures Working Group call on Tuesday, the 31st of July 2018. 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? Hearing no names, I would like to remind all participants to please state 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'll turn it back over to Jeff Neuman.

Jeff Neuman: Thank you, Julie. Welcome, everyone. It seems to be we are starting to have the August summer/winter blues in terms of attendance but, you know, we'll still keep pressing on. This is Jeff Neuman for the record. The agenda for today is going to be to discuss the – a couple of the newer issues that were raised initially in Panama and also then to go over some things we've done with the work plan to – I think we started to discuss this on the last call but basically just going over the work plan from now until the ICANN 63. And then if there's any other business we'll take it at that point.

So is there any questions or anyone have anything that they want to add to the any other business at this point? Okay, not seeing any, then let me see – or issue a call, are there any changes to statements of interest? Anything that anyone wants to add to their statements? Okay, so with that said, we will I guess we have plenty of time here to discuss to important issues that we feel were not necessarily discussed in any great length in the initial report that went out for comment, which I'm sure all of you are working with your groups now to – on the comment back or multiple comments.

And one of those, the first one, is on private auctions and Christa led this discussion in Panama and it seemed to be a very active discussion and one that generated a lot of interest and certainly one that I know the community will be watching simply because there was expressed several times a fear that, you know, some – there's a perception out there that some applicants did better by losing a TLD in a private auction then they did – or then they would have had they actually won the private auction and been running the TLD.

So with that, Christa, I don't know if you tested out your microphone and are ready, but I will try to turn it over to you.

Julie Bisland: We are actually working on getting Christa hooked up.

Jeff Neuman: Oh okay. Well as you work maybe I can then hopefully Christa can hear what's going on.

((Crosstalk))

Jeff Neuman: Oh good, great. I hear you. Christa, are you there?

Christa Taylor: Yes, I am so I hope you can hear me. I was hoping to get a dial-out but if it breaks up well actually...

Jeff Neuman: Okay, it's – it was a little bit quiet, Christa, maybe just getting a little bit closer to the microphone or turning it up a little bit.

Christa Taylor: Hi there. I'm hoping you guys can still hear me? And I've been successfully connected through this. There's no notice. Okay. Thanks, Jim. So jumping right into the private auctions, we obviously discussed this as Jeff mentioned. And we're kind of going to go through a little bit of a rehash on what we discussed in Panama. So just to give you a little bit of background although Jeff has already touched on it, in the last round the auction process was not articulated until after the applications were submitted. However, in the next round we won't have this so applicants will be aware of the process and the potential benefit of losing an auction which may become part of their application strategy.

And a little bit of kind of background is there were companies offered private auction models to applicants where the proceeds were split amongst the losers in the contention sets, i.e. it wasn't – the money didn't go to ICANN to be disbursed afterwards. And although the specific details are not public about how much each string was won an auction for or about how much each loser made, some public companies have reported millions of dollars in income due to losing in private auctions.

And finally, some community members are concerned that if private auctions are allowed there would be a large number of speculators applying for strings hoping to be in a contention set so they can lose in the auction and receive a financial gain.

The next slide, in some of the summary – and there were only three or four comments in the CC2 comments was losing private auctions was extremely profitable and applications in the future may attempt to replicate this behavior, particularly now with the scale the interest is better known. And it does not justify a prohibition of applications arriving at private settlements and are

outside of the scope of this working group, although it could quote, lead to speculative applications and shouldn't be allowed.

So we had three questions in Panama and two of these are pretty easy just to cut right to it. So the first question is, do we believe this concern is legitimate? And if these concerns are, then should we do something about it? And in the discussions it wasn't overwhelming yes and I don't think anyone during that discussion thought it shouldn't be addressed. And secondly, should this working group investigate the issue further? And again, it was an overwhelming yes in the discussion group in Panama.

So kind of moving right along to Question 2, which was, can anything be done and if so, what? So the kind of overview of everyone in the discussion was one participant felt that a solution already existed via the FTC. Other members suggested to increase the application fee, however this alone might not be sufficient in solving the problems due to the size of the financial windfall, which is generally in the millions. And it was also detrimental to – it would also be detrimental to the other applicants by increasing the application fees so high that perhaps they wouldn't apply.

The volume of applications could reflect intention from the tracking perspective. So we thought as applicants had – perhaps fewer applications they'd be less likely to be trying to say, you know, game the system and try to go to private auction where they, you know, receive a financial windfall. And members liked the idea of only allowing public auctions where the resulting funds to be used to support gTLD related activities. For instance, universal acceptance, applicant support, perhaps maintenance fees, etcetera, etcetera.

And participants discussed the prevention of secret deals and whether the community should care. So it kind of jumps into the next one in the discussion of secret deals. So some members felt that the – one of the concerns around secret deals is that we would just be kind of pushing the deals underground and then how would we deal with that. And I see some comments Jim and

Maxim say FTC, does it refer to the Trade Commission? And I believe it does, Federal Trade Commission, although I'm not sure if we specified it in our discussions.

Moving along, some other members felt that the auction piece could impact the applicant's business model and its stability, for instance, if somebody spent \$10 million on winning an auction do they still have enough or sufficient funds to really support the TLD afterwards or are they increasing the risk based on that? Additionally, if some applicants who lost in one auction could use those additional funds from losing, to be used in another auction, so some people felt this was unfair to other participants in that the next auction.

Other members felt that private auctions were not in the best interest of applicants and should be prohibited while others thought applicants should resolve it themselves. So it was a kind of a mixed bag on there from the different points of view.

And two more points here were there was discussion on the financial benefit by preventing the funds from going to the loser's pocket and instead perhaps going to a charity. This would change the game as it would eliminate the financial incentive and can change the way applicants choose their TLD strings.

So I think that's pretty self-explanatory but if not I'll see if there's any questions? Nothing on the chat so far. And then finally, perhaps we should consider other avenues other than financial methods to resolve string contention. So that's kind of hopefully everything that was discussed in Panama. There was quite a bit of time spent on going down the different avenues. But, Jim, I see you have your hand raised so please go ahead.

Jim Prendergast: Yes, thanks a lot. Jim Prendergast for the record. You know, one of the things I was bouncing back and forth between this discussion group and the one on the ICANN auction of last resort. And one of the things that I think both

groups touched on and I think it's relevant for both groups is allowing other options for contention set resolution. I think one of the things we talked about was how ICANN had prohibited the forming of joint ventures as one possible solution.

And I know there's some concerns about that, would it constitute a new applicant? But I would think that there may be some ways to look at that part of the process that would allow new avenues for contention resolution that weren't available in the previous round which may take the pressure off the need to do these auctions as well. Thanks.

Christa Taylor: Thanks, Jim. And that's a great point and I think you did bring that back to the group while we were in Panama and I probably just didn't capture it fast enough. So hopefully kind of spurring some further discussion on it, I guess some of the questions that we can ponder for tonight that would hopefully help us kind of figure out where we'd like to go with it is, you know, one of the aspects that was brought up was if we increase the application fee, would that potentially resolve it? Or as was mentioned in the group, would that make it the harm to everyone else too much and not really a resolving solution there. Sorry of course somebody's got to drive by with their nice motorbike.

So that was one of the big concerns. And with the millions and millions of dollars that potentially people could win from an auction, I don't think an application fee even doubling or tripling it would resolve the kind of getting your ticket into the lottery aspect there.

I see Maxim saying, "Yes, selling shares after that would help avoiding auctions." I'm not sure if you're referring to joint ventures or you're referring to something else there. I see you're typing. You are referring to joint ventures, yes. And perhaps that is a viable solution. Christopher, please go ahead. I'm sure you can hear me, the mic shows that you're on mute. On mute so go ahead, we can hear you now.

Christopher Wilkinson: You can hear me now?

Christa Taylor: Yes, go ahead.

Christopher Wilkinson: Okay, a few very brief points. First I'm surprised that there's so much money in this. I think by now we all know it's quite difficult to make an economic success of a new TLD. But if the history thinks that this – these kinds of risks are worth running, I guess we can't stop that. Secondly, the – we should not increase the application fee. From the points of view of many other potential applicants the application fee is already very high. And thirdly, I think public auctions should be preferred – certainly preferred to allowing private auctions. This business of the losers making a profit out of the process is really kind of perverse wrench in this market which we should not encourage.

I would not go to go the Federal Trade Commission. We've gone to some length in recent years to extract ICANN from the purview of the United States administration; I think this is a problem that we should solve ourselves. And finally, I didn't know there was a ban on joint ventures in the previous round. I can't imagine why that would have been the case. And unless somebody wants to explain that to me, I feel that banning joint ventures would – is also a bit perverse. So that's enough for now. In summary, if we do have to go to auctions they should be public auctions and the proceeds should be used in a constructive manner by ICANN with policies – policy guidance from the community. Thank you.

Christa Taylor: Thanks, Christopher. I think you bring up a good point with the economic success of a TLD. The first round versus perhaps next round are going to be quite different and additionally kind of following along with that if people know that the next round is a year away and more the expectations are more aligned with the timeline that might also change it, but yes. And everyone I

think in the working group did agree that we shouldn't change the amount of the application fee. Jeff, I see you have your hand raised. Please go ahead.

Jeff Neuman: Thank you. This is Jeff. Sorry, it took me a second to get off mute. I just wanted to just respond to Christopher on the ban on joint ventures. It was – the reason why that ban was put into place were a couple reasons, at the time it was because of the fact that you were substituting out the ownership structure and the management structure and the officers from what was initially evaluated by ICANN, you know, in the background checks and all that other stuff.

And they so to from that joint venture meant that you would then have to go back and do all of those evaluations all over again because now you weren't talking about the original entity, you were talking about some new entity.

And then related to that as well is the fact that they were a little bit concerned or sort of a bait and switching meaning that the entity that applied, you know, you would then just kind of someone who was not necessarily in the forefront would then, you know, you would think it's Entity A that's running the TLD but then it turns out to be completely different from what was initially made public in the application.

So that's what was – I believe the original concepts for prohibiting the joint venture but I think we touched on this a little bit during the last call which is, you know, if we can have a change process where you can make changes to the application and those applications then if the changes were reasonable and had some sort of basis in making those changes that were deemed by the community to be valuable or reasonable changes to an application, then perhaps there may not be such a prohibition on a joint venture.

So I think these all sort of tie into each other and, you know, I think if we come up with good reasons as to why having a joint venture, even if that means that you have to redo some of the previous evaluations is more

preferential than dealing with these private auctions then that's a policy determination that we can make that kind of recommendation on. So I think moving forward it's certainly good points that you've raised, Christopher, and I just wanted to provide a little bit more background. Thanks.

Christa Taylor: Thanks, Jeff. So I see there's a few comments and it's scrolling a little bit too quick. Cheryl says, "@Jeff, we do not need to further discuss and perhaps consider recommendations relating to changes to applications to be allowed. And for the record, I agree with the sentiment that any price evaluations would never be sufficient to damp," I think it's damper down, "the profiteering from string auctions." And Maxim says, "ICANN is a legal body established in the US, that is why FTC might be applicable and amount of US dollars in the process."

Sorry, Cheryl. Cheryl says, "We do need to discuss further." My apologies. So adding I guess more fuel to it, is let's say we're allowed to do changes to it and we can consider joint ventures, what would happen if, say, a person is applying for a portfolio of strings that are perhaps all seem to be very contentious or they end up being very popular strings in every one of the cases or a high probability of them, for instance, flights, travel and food and would that change if they were something similar, i.e. something related to travel. i.e. Travel, Hotel, Car, etcetera, etcetera.

And would we want to perhaps – how would we target those people who it's somewhat highly probably that they applied for them just for the potential of winning an auction or losing? Winning money but losing an auction. I see Christopher says, "Thanks, Jeff. There will always be some changes in management structure of registries and applicants." Maxim is typing.

So just a final – oh Maxim says, "What to do with Travel, Hotel, Card, Food, etcetera TLD claiming to be contentious with Travel and a Hotel and Car and Food?" I'm not sure I understand the claiming to be contentious with Travel and Hotel and Car and Food. The idea there was they're very different strings

and somebody probably chose them because they're likely to be applied for and therefore they're going to likely end up in auction versus somebody who might have done a similar theme that obviously is looking for their strings to be in a certain field, which might be their expertise. So I'm just throwing out an example in case perhaps we think they're different. (Unintelligible), oh good.

So finally I guess the last question I have is, you know, if private auctions are prohibited what are the implications to the applicant, perhaps ICANN and perhaps others. And is there any practical way to limit or prevent private auctions? Yay, Jeff, please go ahead.

Jeff Neuman: Yes, thanks. This is Jeff Neuman. Just I guess for discussion purposes, so I know that it's said a lot that there's no practical way to limit or prevent private auctions but I'm not sure I agree with that. I don't have a definitive answer but there were a couple things that we talked about during the ICANN meeting in Panama during the session. You know, one of those was that, you know, just the threat out there of if we find out that this was resolved via a private auction, the TLD can be taken away from them.

That threat alone may stop a lot of entities from agreeing to go to a private auction. And then the second area was that we probably needed to do some research as to how private auctions actually are banned in other types of industries and so there was a suggestion that we looked at the spectrum auctions, and again this is the United States, so it's very US specific, but the person that had recommended that was US-based and that's something that they had known, and it may have been Jim, it may have been you that suggested it.

But so there is some research that I think we can and should do because we do know in other areas that it is – that there are ways to prohibit it. And then even just using kind of other examples that we may not understand why this is the case but we know that auction houses, for example, that whether they

auction art, let's say, as just one example, you know, they ban these types of private type of auctions prior to going to the public auction. And so there must be ways in which they do that as well. But I think there's some research we probably need to do but there has to be ways that it can be maybe not completely eliminated but for the most part mitigated to a great extent.

Thanks.

Christa Taylor: Thanks, Jeff. It's Christa for the record. I see Jim says, "Make it part of a TMC and serve financial penalties or take back as Jeff just said." Yes, so that was one of the ideas that we discussed down in Panama which I guess you would think that fear would definitely deter that kind of actions. So Justine say, "Agree with Jeff and Jim. Ultimately can ICANN not withhold delegation related to gTLD which are subject to such private auctions?" Can ICANN not withhold?

So oh I see you mean no matter what they would eventually have to let that string be delegated. And I'm not sure if they could – would be forced to do it or not; I'm not a legal expertise in that and perhaps somebody else would know. But something to consider. And Jeff says, "There may be some prohibition in the real estate market on private auctions." Maxim says, "The current language of the AGB is an auction and applicants are encouraged to resolve string contentions among themselves prior to the string resolution stage. Formally it does not say that private auctions are forbidden."

Now, and that's a good point. So Jeff, hand up, hand down. Go ahead.

Jeff Neuman: Yes, thanks. Jeff Neuman and again. And Maxim points out that's important to – that statement in the Guidebook is a very important one that we would – if ultimately we as a group decide that the private auctions were not or shouldn't be allowed, then, you know, that sentence would obviously have to be revised to basically say that you're encouraged to resolve it but not in these prohibited manners. I'm not sure we should encourage – that we should encourage applicants to work it out amongst themselves, that is

something that we should talk about as part of this discussion. Should applicants actually have time to work it out amongst themselves or not?

And if the answer is yes, we still kind of like that because maybe someone will withdraw or maybe as we said, there could be these allowable joint ventures if we wanted that or as Karen brought up on the – I think it was the last call, or maybe it was in Panama, in her situation with SAS.

There was the airline that applied for SAS and then her company, which is the software related analytics company that applied, and had they been allowed to either – had one of them been allowed to choose another string like maybe SAS Air for SAS Airlines, then perhaps they would have not you know, they might have resolved it a little bit differently and they wouldn't have gone to – well they didn't go to an auction, but either way you're basically allowing them to work things out like that for themselves if you allow certain types of changes. Thanks.

Christa Taylor: Thanks, Jeff. I think that's a really great point because everyone was, from my experience, everyone was really trying to work it out amongst them. And sometimes there were big groups of people with a lot of people that got involved trying to resolve it and a lot of them sometimes did perhaps a joint venture afterwards or bought into the company just to make sure it was well funded afterwards as well. So there was kind of two avenues in there.

But a couple comments, Justine, "To allow a resolution by means that the group considers are desirable of course." Yes. So I guess the question is I guess do we want people to work it out, push it back to them to say work it out yourselves? And/or maybe add some rules around that, for instance there's perhaps a maximum of money that could be exchanged between those parties or some other avenue or a joint venture solution or do we want to send everyone to public auctions, so to speak, or the auction of last resort or any other feedback or thoughts on that.

Steve is typing. "I believe the context of encouraging applicants to work it out themselves was indeed because the ICANN auctions were supposed to be last resort." So okay. Jeff, please go ahead.

Jeff Neuman: Yes thanks. Jeff Neuman. I think in putting all of these topic from last time and these from today kind of all, you know, connecting all these all together it sounds like that, yes, applicants should be encouraged to work out to make these – whatever we decide, well, we the community, decide as allowable changes so that the public – or the ICANN auctions are truly, as Steve said, last resort.

And then putting some qualifications around what working it out may not do, but also leaving some flexibility on the things that they may do. So whether it's – if we agree that joint ventures or that – other types of combinations or potentially changes in strings, under certain circumstances, if those are desirable outcomes, then ye, we should have a period of time where applicants should be encouraged to work things out but then discourage the private auctions. Thanks.

Christa Taylor: Thanks, Jeff. Any other comments? Going once. Okay, so I guess no one has anything else to say on private auctions, but as Jeff said, perhaps we can wrap the two together and come up with some kind of combinations that would work and hopefully solve a bunch of the issues going forward. So yes, I guess we're onto the next topic, so Jeff, I'll turn it back over to you.

Jeff Neuman: Great, thanks. Thanks, Christa. I think that was a really good discussion and certainly one I think we need to have. And just as kind of a – well no, I'll save that for the proposed work plan. So why don't we switch gears completely and right now go to the next topic which is the role of application comments. So to just kind of introduce it a little bit, as Martin gears up and as we move the slides to the next one, then so as everyone hopefully recalls, in the Guidebook there was a period of time in which applicants were – or I should

say where third parties, the public, was invited to put public comments in on the applications. And so this is really addressing that particular subject.

So Martin, are you on, because I don't – oh there you are, you're moved up.  
Great, cool. Martin, over to you.

Martin Sutton: Thanks, Jeff. Morning, evening everyone. So just go through a little bit more background just to make sure everybody's clear on this. The application comment period was provided for every application. So when these were first published, there was a period of time allowed for the public to submit any comments and these could relate to elements of the evaluation, including the community priority evaluation.

It wasn't expected to be the sort of formal objection process but it could be an opportunity for anybody to raise any particular information that they thought was relevant to an application. So those comments would then be utilized by the evaluators and if there was anything that would impact on the scoring, it would typically mean that a clarification notice would be issued to the applicant in order for them to respond. And then that would be drawn up as well as – in any scoring impact, it would be highlighted.

So I think the other point was that when there was other changes that were introduced, the PIC elements or any changes to the application, this particular process was also utilized to gather any comments, public comments in. So that's just the sort of a flavor of what the purpose and intent was for that application comment period.

If we move onto the next slide please? When the review report was published in 2016, that identified that there was a large number of comments submitted over the period of time, nearly 13,000 comments. I think if I remember rightly from the report it was only a small number – I think it was even just 1% of that total actually triggered any clarifying questions, I think from the evaluators but

staff will correct me if I'm wrong on that I'm sure. But I think it was a smallish number.

So typically you would have seen a lot of comments coming in that may even be in support of applications so they may have drummed up quite a bit of support to push that channel. There could be also a large portion of objections that have been raised but they are not formal objections but could be used by the evaluators when they're assessing the oral application.

If we move onto the next slide? So when we raised this up in ICANN 62, there was some good opportunities to bring up some of the issues that people felt about the application comment period. One of the most significant items, I recall from the discussions was the fact that the applicant didn't have a suitable way to respond to any comments in that the process I think was all Web-based system so comments would go in but there wasn't any particular mechanism I don't think for an applicant to then respond directly to those comments.

So there was the concern that there would be opportunities for frivolous complaints to be raised during that comment period but not necessarily a public response through that channel from the – offered to the applicants. So that was a – one that we discussed quite a lot during the process. And then – and we should bear in mind here as noted that the – those comments could affect the scoring. So I know I referenced, you know, 1% but, you know, that's still a reasonable number that could have triggered off some clarifying questions and potentially have affected scoring. So it was felt that the applicants might – we might want to address something here that could support the applicant ability to respond.

There was also the issue of process and practicality. So we had 1900 odd applications in the last round, a lot higher than what was anticipated. And I think that actually ended up prompting an extension to the public comment period to allow the community sufficient time to go through all of the

applications and offer some comments where they felt appropriate. So there was some issues with that.

Filtering through a lot of the comments would be difficult because it was essentially free format and whilst there were limitations on the number of characters that could be applied, I think there was some people obviously worked out the best way to emphasize their point was to put in multiple comments so that their full text could be gradually sucked into the system so they didn't limit their comment to that one single input; they would cover it over multiple inputs to defeat the restrictions in the system.

Okay so I think if we move to the next slide? The other points that we discussed was whether any changes may be needed to the way the application comment process is conducted? So this referenced the issues around the time period, was it long enough? Should it be restricted? Or should we leave it open to just request extensions if needed depending on perhaps the number of applications that come through in a certain application window.

So those are the areas that we discussed during ICANN 62. And therefore what we'd like to do today is to perhaps close the following questions and put these out for discussion for our group today.

So if I run through these quickly, we've got in terms of the application comments being responded to applicants, whilst applicants were informed of a comment that may impact scoring and had the opportunity to provide clarification in response to clarifying questions, be interesting to find out from everybody here on the work group to see if there is any concerns with the actual process here and do we in fact need to open this up to make sure that applicants have an ability to respond more effectively to the public comment rather than leave it just for the evaluators to pick out clarifying questions and then respond to those. So I'd like to open that up for further comments today.

So I've got a queue forming, so just starting on that question then, Jamie, Jim and Jeff, so Jamie, please go ahead.

Jamie Baxter: Yes, Jamie Baxter for the record. I think what's still a little bit unclear is what are the rules around the public comments because there is certainly a difference allocated to the amount (unintelligible) people could comment on standard applications versus community applications, specifically because community applications had to go through extended evaluation should they show (unintelligible) CPE. And so community – or comments continued to come in even after the standard applicants had closed comments essentially because they had finished their evaluation.

So I guess the question I have is around the fairness of that; is there really a reason to have a longer comment period for community applicants? Was that intended? Or is there a purpose behind it? It seems like if folks are going to comment on applications, that there should be a period of time they have to do it and that it's closed just like our comment periods happen within the ICANN community. So I don't know for sure that any of the comments that came in late were ever used or affected any application, no doubt there was provided on that and no clarity has ever been provided on that.

But it seems like if we're talking about the role of the application comment period, we should probably provide more guidance to the implementation team as to how this is supposed to work. Thanks.

Martin Sutton: Thanks, Jamie. So I'm just trying to recall, and because I never went through this process, or had any questions when I – for the application that I was in charge of. I'm unfamiliar with the time – any time restrictions for particularly extended evaluations so perhaps if, as we go through the queue, if staff would come back to us on that just to clarify, that would be helpful as well just so that we understand that.

But essentially what you're indicating there is that, you know, make it clearer and, you know, if there is a need to apply a time restriction to the initial public comment period, and if there is any then follow on public comment period triggered by something like the extended evaluation then perhaps we need to put a time limit on that. Is that – does that capture what...

Jamie Baxter: I think...

((Crosstalk))

Jamie Baxter: Yes, sorry. Jamie again. I think what I'm trying to highlight is the fact that public comment obviously can impact initial evaluation. I think it obviously happens before initial evaluations happen. And that's understood that every application is going to be treated equally that way. But what happens for those who go through community priority is that there's a secondary evaluation and it doesn't seem that the comment period was actually closed or cut off at any specific time so that those who were going through community priority evaluation were subjected to a longer period of comments against the applications.

So again, I don't know that there's any proof to show that that was detrimental to any of the community applications, but it also seemed like there was really no clarity coming from ICANN on whether that was supposed to be happening or not happening. And I think if you go to the comment period today you'll see you could probably still comment on any application you wanted to which doesn't make a whole lot of sense, but so I'm just – I'm asking for more clarity on it and if there is a purpose for forcing community applicants to be subject to community comment longer, what is the purpose to that so that it's transparent from day one.

Martin Sutton: Okay. Thanks. And, Jamie, that does tie in neatly with a couple of other questions I think further down the list here that we've got. So I think we'll come back to that. I note that Steve's in the queue as well, so we'll come

back to that shortly but in the meantime I'd just ask for Jim and Jeff to go, so Jim, please go ahead.

Jim Prendergast: Yes, great. Thanks. Jim Prendergast. Jamie, I think just to elaborate on your point I think if I'm not mistaken all the applications were open for a 30-day initial comment period but for the – those that elected CPE, I mean, it was nine if not 12 months of comments that you had to deal with. Which sort of sparked my thought on this is, I think I remember that the way for the applicants to respond to those comments was indeed to file a comment on your own application, I don't think especially in the community applicant when it came to CPE, I don't think there was any opportunity to clarify or respond directly to the evaluators on that.

I don't know if that's the same case for the initial evaluation questions. So if we do know of examples where applicants could comment directly to the evaluators to respond to anything that was raised in those public comment periods, that'd be a helpful piece of information as we sort of tackle this whole thing. Thanks.

Martin Sutton: Thanks, Jim. And I think we'll try and see if Steve can help us out with that in a minute. I'll go to Jeff first and then I'll go to Steve and then we've got Christopher in the queue. Thanks, Jim. Jeff.

Jeff Neuman: Yes, thanks. I think we need to separate public comments for communities out for public comments for everybody else. I think because communities had as elements of the evaluation levels of support or levels of opposition, that is very unique to community-based applications and weren't relevant to – maybe there's a case I'm not thinking about but they really weren't relevant to other types of applications. So I think it's important to separate that out from everything else.

Part of the issues with the public comment period on everything else was that, you know, comments could be submitted by competitors trying to

discredit other applications, which were done in a lot of circumstances. There were a number of comments that were submitted by either anonymously or through pseudonyms of fake names of people. And so I think to the extent that we have a public comment period continue, we need to discuss whether we want to allow anonymity or these have to be related to the elements that are being scored and not to other elements. So we need to make sure that the comments have some relationship to the purpose in which comments are solicited. So I think that's important.

But we can – I would strongly encourage us not to get down the community based rabbit hole right now because that's part of a whole bunch of other issues and talk about general public comments for now. The community ones I think we'll also address by Work Track 3 and also reflected in the initial report. So let's – other than for how long a comment period stays open, let's be careful not to go down that rabbit hole during this conversation. Thanks.

Martin Sutton: Thanks, Jeff. I'll move to Steve if you don't mind just if you can help us clarify a few of the points there, Steve.

Steve Chan: Sure. Thanks, Martin. This is Steve Chan from staff. And I think there's a bit of a long list so I'll try to see if I can keep track of all of them. So the first one is about I guess in relation to the comments made by Jamie. So the closing of the – I guess the application comment period and the closing of it were tied to when the process began to take place. So let's say for the things in initial evaluation, the idea was to close the application comment period by a reasonable time period beforehand to allow them to be collated and provided to the evaluators.

So in that same regard, the – that approach was taken for the CPE as well as far as I understand. And so based on the chronology of the process that as Jamie said, allowed for quite a bit more time for comments relative to that evaluation process. So as far as I understand I don't think it was any intentional purpose to try to allow the period to extend longer, it was just a

matter of where that process happened to be or where it happened to take place within the overall process.

So there's another question about whether or not applicants had the opportunity to respond to comments or whether or not they needed to. And so I think this first question actually ties into that. So the applicants were of course welcome to respond in the public comment fora if they wanted to. But I guess the nature by which – whether or not the comments were going to affect the overall score of that played into whether or not the applicants needed to address it from the evaluator standpoint.

So if the evaluators thought it may impact the final score a CQ was issued to the applicant and they were given – sorry, CQ is a clarifying question – and so they were given an opportunity to respond to the question and provide clarification. So in regards to the number of comments, the evaluators performed some level of due diligence on the comments and so without placing a judgment on this, you know, that the figure that Martin mentioned of less than 1% resulting in CQs, I guess indicates I think the level that the application comments were going to actually result in impact to the score. But I think that was all I recall coming up but if there's anything else I can helpfully clarify, happy to jump back in. Thanks.

Martin Sutton: Thanks, Steve. There was just one actually, just kind of flagged by Jeff there which was he didn't raise it as a direct question but it was a point that there were some comments put in that could not be tied back to a particular individual, it wasn't clear who it was so they're under a different name or as such like. Was there any – could you just explain to the – if there was any mechanisms in the submission of public comments that helped to identify individuals or is that a problem inherent in any of these things where there is the opportunity for people to create a pseudonym?

Steve Chan: Thanks, Martin. This is Steve again from staff. And to be perfectly honest, I don't remember exactly what the process was. And, you know, I actually

never submitted a comment myself so I'm not entirely sure how it worked. But to your point though, to the extent someone wants to provide a false name, despite the fact that you require an email and a name, there's nothing that would necessarily make that have to be true and accurate email and name. But that can be something we can check into if you'd like. Thanks.

Martin Sutton: Okay. And I'll move onto Question 2 in a second after we've gone to Christopher. But perhaps I can relay some more comments back that were suggested during the discussions at ICANN 62 where Jeff referenced, you know, there was a various assortment of comments and types that came in but I'll come to that in a minute. Christopher, please go ahead.

Christopher Wilkinson: Yes, good morning. Well I think Jeff's most recent comment covered the main points I had in mind so I'll just very briefly emphasize the risks of a necessary part of the process, i.e. public comments, being perverted by gaming the system. It occurred to me that it's extremely important that the origin of comments in this context must be transparent and that any conflict of interest must be declared.

And the process to look into the viability and the validity of those points, otherwise it becomes too easy to pollute the comment period with points which frankly the – if the evaluators knew where they were coming from and particularly if it was competitors, it would change the weights that the evaluators would give to such comments. There is a problem essentially and I think Jeff said actually of transparency and conflict of interest. Thank you.

Martin Sutton: Thank you, Christopher. And yes, so all of these comments kind of resonate with the conversations that were happening in a small group in ICANN 62 which it was important to know where these comments were coming from. And importantly it was indeed necessary for those reading these comments to understand where the origins of those comments were so that they can make their own judgment I suppose on the value of the comments being supplied and I think that's an important one. So I think we should capture

these points in terms of being able to, you know, know where these comments are originating from so this transparency element is key.

And to move on slightly to the next point, is there an elegant way for the community to review the comments submitted? What we were discussing at ICANN 62 was perhaps an opportunity to simplify the collection of the information by putting it into, you know, sort of tick boxes, so perhaps, you know, if you just wanted to show some support, tick the box to make sure that, you know, this is relevant to create support or there's something that is – I'd like to object to on this, so to tick the objection box or something else. So perhaps we can highlight some of the key types of comments that were coming in so that they can be categorized and put together or easily then digested and fed through to the community to evaluate as well as the evaluators themselves making it clearer for them.

So okay, some good points there. Does anybody have any other ideas in terms of this Question 2 since applications were per application as well? Is there more easier way for community to review those comments submitted? So I've kind of highlighted there could be an option for, you know, tick boxes so that it fits into a particular category. But certainly where there's multiple applications submitted there might be sleeker ways to handle that. So I've got – I don't know, Christopher, is that an old hand or are you back on this topic as well?

All right, then we'll go straight to Jamie.

Jamie Baxter: Yes, Jamie Baxter for the record. I'm sorry, Martin, I don't have an answer to that question but I want to circle back to something I think I heard Jeff say to get clarity on because I think he mentioned that there was a public comment period and then there was a community priority evaluation comment period, which I disagree that that's actually what existed. There was a public comment period but then there was a long period, well over a year, where people still were allowed to submit letters of opposition.

And I think what I was trying to point out earlier in my comment was that is that actually fair? Is that correct? Is that what was intended? Or if a letter of opposition was to come in on an application, such as the community application, should it have come in during the public comment period? Because what we experienced was no substantial public comments happening then going to the objection process and then out of the blue just before CPE started, a letter of opposition popped into the inbox of ICANN.

Which means we – there was competitive advantage to go out and rally some more organization to submit a letter a year and a half after we had already went through the public comment period. So that's what I'm trying to narrow down here. I don't believe there was actually a period for community priority evaluation comments, opposition to be submitted. That isn't the way the plan as detailed in the Guidebook. So what I would like to get clarity on is should that initial public comment period be the one and only time that opposition or support can be shown for an application? I hope that clarifies. Thanks.

Martin Sutton: Thanks, Jamie. I think that's – I'm kind of sensing it might be worth us just plotting out what did happen with the public comment periods. So if it was, you know, moved on from the initial public comment period, and then utilized the same process or system was then utilized for other aspects of public comments in terms of different stages along the application process. I think it would be helpful for us as the working group to see that broken down.

I don't – I read through the review report, the implementation review report and I don't think I sensed anything in there apart from the fact that it commented on that the same system process was reused for the community priority evaluation and perhaps some other elements when there were change requests put in. So I think that might be worth us just revisiting and plotting out easily so that we can digest that and be a bit clearer. And I think that that might actually help then to revert back to one of your other suggestions which is it's going to be clearer and more understandable as to

what these processes are, what they achieve when they take place. So I think that that might be an action that we need to take away from this discussion.

Christopher, I've got you next in the queue.

Christopher Wilkinson: Yes, Christopher Wilkinson. Thank you, Martin. This discussion of letters of opposition leads me to enter a simple caveat on behalf of the Work Track 5 of some of us, must say that it does not include myself, but some of us are arguing that the public authorities concerned by a particular application should voice their position through eventually a letter of support or a letter of opposition. That is a different process, that is not – not going to be possible to subsume that process if it materializes into the public comment and letters of opposition process that we're discussing here now.

I haven't thought this through in detail because it – there are some complexities. But I just wanted to introduce that caveat that this is not – this does not include letters of opposition or comments from the public authority concerned by a particular geographical name application. Thank you.

Martin Sutton: Thanks, Christopher. Okay, so I'm conscious of the time so we've got five more minute really to discuss any other points on here. There was a couple of other questions to throw out here and just one more on the next slide. So I'll just run through these, just trying to get an indication of was the period – so let's focus on the initial comment period, was that sufficient time? Did that work okay in terms of then the extension that was provided for the first time around?

Question 4 is, was the way in which application comment considered in each of the various evaluation areas appropriate? And is it going to be more relevant to those that were involved with any comments received or responded to or put in and it would be interesting if anybody has any experiences to include there. And if we just go to the next slide and we'll just capture the – and there's one more question so that if anybody has got any

comments on these, well the next one I'll read – is there any additional functionality needed for submitting application comments? And this refers back to the character limit that was applied and the fact that also there was no attachment, you couldn't apply any attachments to the comments either.

So we have a few more minutes left, very interested to hear if anybody's got any comments on those points or any of the other questions that we have covered today? And sorry, Question 5, yes you're right, Steve, and I think this refers to some extent to some of comments from Jamie, but does it make sense to keep the application comments system continuously open even after additional comments are not expected to impact the evaluation elements? So Jamie, please go ahead.

Jamie Baxter: Yes, Jamie for the record. That's sort of my point because for standard applicants, once they're finished initial evaluation, it doesn't matter what other comments come in about their application because in no way shape or form going to affect their evaluation or ability to compete in auction. But with community applications, they're subjected to a longer comment period because even though ICANN may bundle and send the existing comments that were there, it's public information and it was reiterated time and time again that the evaluators can look at any public information, so nothing stops the evaluators from going back and looking at comments that came in after the comment period closed.

And they were more than welcome to use those. Again, I have no proof to show that they did or that it affected anybody, but again it's just a balance of equal application of the rules to everybody because you know, like I pointed out, we had a letter of opposition that came in a year – over a year and a half after the public comment period ended, which seems a little ridiculous. But, you know, obviously somebody's competitive strategy to try to knock us out of CPE and ultimately that did cost us a point.

So what is fair I think needs to be a discussion here. Should some applications be subjected to longer public comment periods whether those come in the form of comments on the website or letters of opposition or whatever they might be, what is fair to everybody, not just to some?

Martin Sutton: And Jamie, I suppose the other aspect there is that, you know, there was a process and a system used for this gathering of public comments, but it doesn't really matter I suppose because even absent of that there could have been letters submitted directly to ICANN and published on the normal correspondence pages. But it's – but what you're suggesting there is that if the time limit, so even whichever channel is used is there a time limit then for these public comments to be relevant and used for evaluation? Now my – is that correct?

Jamie Baxter: Yes, this is Jamie again. Yes, that is correct because, you know, Steve is pointing out in the chat that there was a cutoff but the cutoff meant nothing because the letter of opposition that took a point away from us in CPE came in a year and a half after the public comment period closed. So what are the – what was the rule supposed to be? What's fair to everybody? Or are community applicants always going to be subjected to much more than anybody else?

Martin Sutton: Okay. Thanks, Jamie. I think again, you know, trying to clarify exactly what all of these periods were and purpose would be helpful. And we've got one minute – or we're – we've got Christa and then I'll have to close the queue here so we can move on. Christa, please go ahead.

Christa Taylor: Hi, it's Christa for the record. Into the response of whether attachments would be helpful, I believe it certainly would because people would post comments that may or may not be completely accurate, and being able to – especially as the community application to be able to post a letter or a response kind of reflecting otherwise or the actual facts would be really helpful and would probably save a lot of time.

And to Jamie's point, it always – I always found that it would come to two directions. One, there would be a public comment and then you would also get the ICANN you know, information request a well. So it was kind of one was just kind of a heads up of what was to come but being able to respond through some kind of attachments or just show that perhaps something that was said was inaccurate would be certainly a lot helpful and would probably prevent further cycles on some of those questions. Thanks.

Martin Sutton: Thank you, Christa. And thanks, everyone, for the input there; that's really helpful and I think will be valuable input for this particular topic as we move forward. Many thanks and I'll hand the baton back to Jeff.

Jeff Neuman: Yes thank you, Martin. Thanks, everyone for these discussions. I think we're going to turn to the work plan now which in part relates to, okay, now that we've had these discussions on the last two calls of four topics, and we have one more topic coming up on the next call, so the next call is scheduled for August 13 and on that call we'll finish up the five topics or the fifth of the five topics that we started at ICANN 62 which is registrar support for new registries.

That's a shorthand way of saying what happens when registries – or if registries, especially open registries, are unable to find a registrar to carry their top level domains. Are there any special rules or things that those registries could do? So that's the last of five topics.

And then we'll talk again about not a new topic but, you know, just the process that Cheryl and I are thinking of using for determining consensus and defining that. And then a little bit about ICANN 63. So ultimately what we believe we need to do is come out with a supplemental initial report on the five issues and so this work plan takes us through how we can do that while also addressing some of the CCT Review Team recommendations, the final report, which hopefully will come out by the end of the – by the end of the

Northern Hemisphere summer. See, Cheryl, I corrected myself before I finished that sentence.

And then also then be ready to address the public comments that go in by the – in September so the due date for comments is around September 5. And so hopefully begin reviewing those comments the week of September 17. So this work plan is out there. You all have copies of it now. Without asking for input now because you really just got it this weekend I think, or – yes, today's Monday, so right, or Tuesday for some people, so please take a look at this work plan, let us know if you have any questions. But the plan is to continue to meet throughout August even though we have lots of vacations for whichever hemisphere you're in. And then the plan then would be by mid-September to really start breaking up into three subgroups and then during that time period to have calls starting September 17 of the subgroups as well as continuing some of the full working group calls so that we can get a supplemental initial report out before if possible ICANN 63 on those five new topics.

So if anyone has any questions at this point, that's our current thinking on what will take us through to the ICANN meeting. We do have built in there, you'll see as well the starting of discussions on the CCT Review Team recommendations if and when that comes out. I'm just looking at the comments, I think they're all on the weather, summer/winter/vacations.

But there's a question from Jim that says, "How would the potential extension of the comment period discussed for the GAC impact the work plan?" At this point I don't think it will even if the GAC had some extra time even call it until the end of ICANN 63, we'll still be in subgroups discussing those comments, I believe, on those existing topics.

So I think to the extent that if they did get some kind of extension then I think it would just neatly kind of fit into the subgroups at the time that they're talking about it. So I don't really think that it would throw off anything too much. So

the plan is not really to give extensions but if the GAC needs to have, because of their processes, needs to have a face to face in order to officially submit those comments then we probably would be in a position to wait but hopefully get a heads up on to what some of those comments would be if possible so that we can start discussing those.

So as we get closer to the September date, you know, we'll try to coordinate with the ICANN staff that assists the GAC to see if we can get an idea of what those comments are going to be even if they're not officially out yet or approved or at least if we can't do that, to try to get some GAC members on some of those September/early October calls to help us understand what their viewpoints are. Again, maybe a head start.

Jim, please, you have your hand up.

Jim Prendergast: Yes thanks, Jeff. Jim Prendergast for the record. Yes, I would agree, if anything we can do to get a heads up from the GAC because what I fear is, you know, frankly because of the weight that their comments have in this process more than anybody and the potential for them to issue GAC Advice when we're all said and done, I'd hate for us to have to come back and have discussions about issues that we thought we had put to bed and the GAC's coming from a slightly different angle or a completely different angle and we have to go back and re-deliberate or re-litigate those issues based upon the feedback we get from the Community Comment 2, so anything we can do to get that signal on what they're focused on and what their issues are I think will help us – prevent us from having to go back and redo a lot of work.

Thanks.

Jeff Neuman: Yes, thanks Jim. This is Jeff. I think – I would think that everyone on this call and the group agrees with you. Anything we can do to avoid last minute advice or advice after we've wrapped up work is certainly preferable. And I'm pretty confident that, you know, by the end of the ICANN meeting we're still going to be in subgroups and so even if worse case scenario we can't get a

heads up until on the comments until after the ICANN meeting, I think we'll still be in a good position.

Looking at Maxim says, that GAC seems to be issuing bits of text only when they had some work done on those particular issues between ICANN meetings. Yes, I think Maxim, the other interesting thing, and I have not been following these discussions, but I do – I know that the – or at least the last time I talked to the GAC secretariat, to Tom, I believe his term ends as secretariat at the end of the annual meeting and so it'll be interesting – I know as Tom's been helping the GAC organize in between meetings and helping them collect their thoughts on the topics, on the known topics, I don't know what's going to happen once Tom's group is no longer the secretariat. So that'll be – that'll be an issue we'll have to deal with when that time comes.

And I'm hoping that in the last month since that ICANN meeting things are being worked out or that there's other things in the works but I just have not been privy to that. Okay, any other comments or questions on the proposed work plan? I did want to also bring up, while you're thinking about that, that we did as we discussed on the last call, we did file a request for a session with the powers that be that do the coordination of sessions for the ICANN meetings, so we did submit a request for a cross community/high interest session and or at least an outline of that session.

I'm not sure exactly when we'll find out whether that's been granted. I do know that there are less cross community/high interest topic sessions at this meeting for a number of reasons, and I know obviously that – or I'm sure that GDPR/EPDP stuff will be high in everyone's mind so I don't know if we'll get that high interest/community session that we talked about on the last call but we certainly put in for one that talks about, you know, implementation and how we get to that next round.

So let's keep our fingers crossed and hopefully we'll get that session but that's no guarantee. I think each – if I remember correctly and maybe Heather

or someone can correct me if I'm wrong, but I do think that obviously the SO and AC leadership, or whoever participates in the – in those sessions do have a say, so if you think this is important and you think that having a session talking about implementation and how we get towards that next round if you think that's important certainly talk to your SO and AC leadership officers and put in a good word.

Heather is saying, "We have some say but maybe how much we're not really sure." And oh Steve points out there is a separate request for a Work Track 5 session, a non-conflicted Work Track 5 session so we're hopeful that we'll get that as well. Steve is typing. Okay, as I wait, is there any other questions on that, the work plan or the request for meeting at ICANN 63? Okay, seeing none, Steve, I see that you're still typing. Is there anything you wanted to say before we wrap up or at least get to any other business?

Steve says these high interest sessions/cross community would be in addition – oh thank you, Steve, yes. We will have face to face sessions in – at ICANN 63 in Barcelona. But those will be your normal working group meetings, most likely during either the weekend session so that's like Day 1 and Day 2, Saturday, Sunday, when there is time but of course those sessions will likely have conflicts with other sessions that are going on with certainly other supporting organizations and advisory committees. So these are – the request was for a session that is in addition to those. Thanks, Steve.

Is there any – I know we have two minutes, any other business, any other any other business? Okay, Jim is typing. So Jim says, "So plan on starting work two days before opening ceremony." If the opening ceremony is again on Monday, I think now they've officially recognized that Day 1 is in fact Saturday so we will not have any meetings prior to Day 1 but that still does usually mean before the opening ceremony. But it's not like we're planning to start on Friday or anything like that.

Okay, all right, some more comments coming in. I agree with Cheryl, thanks everyone. I think this is a great discussion. And I look forward to talking to everyone in two weeks. So thank you, everyone.

Cheryl Langdon-Orr:: Thanks Jeff. Thanks, Martin. Thanks, Christa. Bye for now.

Julie Bisland: Great. Thanks, everyone, for joining. Today's meeting has been adjourned. (Sara), can you please stop the recordings? And then have a good rest of the day.

END