

**ICANN
Transcription
New gTLD Subsequent Procedures PDP - Sub Group A
Thursday, 14 February 2019 at 20:00 UTC**

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Operator: The recording has started.

Julie Bisland: Thank you. Good morning, good afternoon, good evening, everyone. Welcome to the new gTLD Subsequent Procedures PDP Sup Group A Call held on Thursday the 14th of February, 2019. In the interest of time, there will be no roll call. Attendance will be taken by the Adobe Connect Room. If you are only on the audio bridge at this time, could you please let yourself be known now? I would like to remind all to please state your name before speaking for transcription purposes and please keep phones and microphones on mute when not speaking to avoid background noise. With this, I will turn it over to Jeff Neuman. Please begin.

Jeff Neuman: Thank you, Julie. Welcome, everyone, to this call. We are going to basically, the agenda is to really just keep going from where we left off, although we're going to try to pick up a little bit of speed on this one simply because I think we've gone over a lot of comments on some of these subjects already, and so some of them are just repeating earlier comments and so may enable us to go quicker.

But before we do that, I just want to see if there is any other business that someone wants to add or any changes to statements of work. So Cheryl is adding to her statement of interest that she is now cochair of the ATRT3 team. Which I don't know how she has time for everything, but she's amazing in being able to do that. So that's awesome. Okay, any other changes to statements of interest? Anybody have any additions to the agenda?

Okay, not seeing any, let's go straight into the Sub Group A initial report public comment analysis document. The link, I think Anne just put in the link, I think, to the spreadsheet which is good, so that's probably easier to

follow than what's going to be put up on Adobe. I think they are going to put this on Adobe, but I'm going to use the Excel spreadsheet just in case because it's really small trying to read it up on there anyway. So we are starting at line 79 of tab, or I should say 78 of tab 2.3.2 still talking about the global public interest. And where we left off last time was talking about PICs and the specific question that we discussed last time, or the last question we discussed, was whether there should be or could be voluntary PICs. And we seem to have agreement that for most of the groups, if not all of the groups, that yes, if someone wants to truly voluntarily suggest a PIC, then there is no reason why we should not allow them to do so.

So now the question comes up, well, line 78, 2.3.2.e.5, if a voluntary PIC does change the nature of an application, to what extent if any should there be a reopening of the public comment period, objection period, etc.? And on this question, the ALAC and INTA both agree that yes, if there is a -- there should be -- if there is a change to the application, and we kind of grouped this in with other changes, that there should be an opening up of the public comment period. And the IPC also agrees that if there are, if the PIC, a voluntary PIC is filed to address an objection or public comments, then that should be subject to a public comment period. But if the PIC itself is limited and it's not really to address a comment or an objection, then it may not need that public comment period. So the IPC is agreeing in some instances and diverging in others. The Business Constituency is I guess more of a word of caution to make sure that if there is public comment period, it might not need to be as long as the original public comment period given that we want to have a moving process or have a process to move this along. Where the Registries, Valideus and The Brand Registry Group all diverge from the notion of having another public comment period, for different reasons, although Valideus does say that if there is a change to something that was previously prohibited, then perhaps you could have a public comment period. But the BRG and the Registry Stakeholder Group do not believe that there should be another public comment period even if there is a change to address the objection or public comments. So with that said, let me turn to Cathy, please.

Cathy Kleiman:

Hi, Cathy Kleiman and I'm echoing. I'm sorry to have missed some of the earlier discussions, but there is, in your summary, it kind of said everyone is onboard with voluntary PICs. And maybe it's in a different section than the one we're looking at, but it needs to be brought here, because the noncommercial stakeholder group comments have a line, voluntary PICs should absolutely be barred from the new gTLD process as something that circumvents the bottom up consensus process and creates a constant incentive to force ICANN outside its scope and mission. And I guess EFS commented something similar. So if it's not there, it's got to be there, and it's got to be entered into every sub question where it's relevant that there is a major stakeholder group that opposes. Because these aren't public interest things at all. And so of course they should go through a long comment period. Nothing should be circumvented

because of the nature of what's being put into these voluntary commitments. But if it's not there, Jeff, we've got to put it in. Thanks.

Jeff Neuman: Okay, thanks, Cathy. So I see that comment on line 47, so you're right, we probably should copy that paragraph in line 47 that talks about voluntary PICs into the sections about voluntary PICs if it's not already in there.

Cathy Kleiman: Thank you, I appreciate it.

Jeff Neuman: Okay. Anne, please

Anne Aikman-Scalese: Hi, Jeff, thanks. It's Anne Aikman-Scalese for the transcript. I'm sorry to back pedal a little bit, but I had missed a previous call and I did listen to the chat and listened to the Adobe Connect MP3 and read the chat and all that. And I wanted to try to get a clarification regarding all the way back to 43 because we have a characterization in 43 of an IPC comment that says it's a new idea. What it says as the new idea is that ICANN Compliance have a role in ensuring that PICs are adhered to. And that's listed as a new idea. But as far as I know, unless there is something I'm missing, it's not at all new that ICANN Compliance has a role in enforcing PICs. I mean they not only take the complaints, and I sent around to the list the section from Compliance Department's website in which they discuss PICs and their roles in connection with PICs. And so they've even said, I asked Maggie at one face to face meeting, tell me about safeguards type of gTLDs and whether Compliance monitors these for eligibility issues. And she said that all they were dealing with at that moment was complaints because they didn't necessarily have capacity. But in the future, they plan to do some kind of auditing. I believe that's what she told me.

At any rate, it's incorrect in 43 in the Google doc to say that ICANN Compliance having a role in ensuring that PICS are adhered to is a new idea. It's not a new idea. In my opinion.

Jeff Neuman: Thanks, Anne. I think it was marked as new because it was not stated in the initial report. Remember, a new idea does not necessarily mean that it's new in the sense of it's something that hasn't been done before. It may mean it was not stated in the initial report. So I take your comment that it's not new as in a concept, but it is new in that we should include it, it's a recommendations to specifically include that in the final report. Does that make a little bit more sense, Anne?

Anne Aikman-Scalese: Well I think it would be a little bit confusing in that it sort of conveys the impression that it's not currently not the case. And maybe I don't -- new idea, while we certainly did not recite in the initial report everything that was policy under the old 2012 round, again, I'm not sure what we're doing. What are we doing with new ideas? I don't know what we're doing with them.

Jeff Neuman: Okay. We'll -- we can take out the new idea classification. I think it's fine, I think we'll just kind of not have something that we need to be a little bit more specific on in the initial, or sorry, in the final report. And Cathy, I was just going to read your comment, but since I see you in the queue, why don't I just call on you?

Cathy Kleiman: Okay. So my question, I have a response to Jim, but also a question that I typed in that says there's a very long section opposing voluntary public interest commitments in the EFF comments, very detailed. And the question doesn't appear to be there, especially if we're detecting consensus or agreement. So how do we -- like the NCSG question, how do we make sure that they are incorporated, Jeff? And I'll hold on for a second. Thank you. Because once you're opposed to something kind of unilaterally, then you'd be opposed to all the variations.

Jeff Neuman: Sure. So we will make sure that that's included as well. Let's see, Jim's question is, is it ICANN's position they currently don't enforce PICs but hope to in the future if they get more resources? I don't want to -- let's not get into that discussion now, because I think that could take forever and it's not really relevant at this point to review in the comments. So not that I want to shut it down, Cathy, but I do want to get through this document.

Cathy Kleiman: Okay, we'll take it offline. Thanks.

Jeff Neuman: Yep, thank you, Cathy. Okay, going to the next question, so we are now on line 86. 2.3.2.e.6. These next couple of sections deal with the concept of - - oh, sorry, Julie, it's not EFF, it's comments under the name of Public Interest Community I think is the comment that EFF contributed to. Okay, sorry. So we're talking now about the verified TLD, concept of verified TLDs. And this is a comment that was raised by the Verified TLD Consortium and the National Association of Boards of Pharmacy that recommended that a registry should be required to operate as a verified TLD if it is linked to regulated or professional sectors, is likely to invoke a level of implied trust from consumers, or 3) has implications for consumer safety and well-being. And so we as a working group asked a number of questions based on that proposal to see if there was support or not from the community. You can see that it's kind of mixed. Not kind of, it is mixed, from the different groups. So you have the INTA, you have the ALAC, IPC and the CCT-RT Report that all have statements that seem to agree in general with this concept.

The CCT Report goes a little bit further and actually states that there should be incentives that are created in order to eliminate current disincentives for registries to meet end user expectations. And the ALAC also adds that there should be a panel skilled in the field of consumer trust that should look at these. And that the working group should identify and study several options to establish some more concrete recommendations. The IPC says that this should be looked at on an application by application basis rather than create or rather than trying to combine the likelihood of -- basically without giving everything a general

label. And the GAC has some concerns, but they do note that this is sort of in line with their advice in the sense that they had advice towards regulated sectors. They originally required registries to screen registrants for proper credentials at the time of registration. This is what the GAC had in their advice in I believe it was Beijing or sometime thereafter. And then they called for self. But ICANN didn't necessarily implement it in the way that the GAC had wanted it. So the GAC notes that -- and then it comments on what the CCT-RT Report does. But they do agree in general with that applications linked to highly regulated sectors should be supported. So there is some level of agreement there. From that comment though, I think you have some concerns from the BC and disagreement from the Registry Stakeholder Group. So the BC, it's not necessarily a concern, but they want clarification as to what it means for a TLD to be likely to involve a level of implied trust from consumers. And finally, the registries do not support requiring verified top level domains in general. And they think that all these concerns can be addressed through the other procedures involved during the application objection and evaluation process.

So those are the comments specifically on this sub question. Obviously if a group didn't support Public Interest Commitments, mandatory or voluntary, then they are not going to support this. Cathy, your hand is up.

Cathy Kleiman: Old hand, but I agree with what you just said. Sorry, I'll take it down.

Jeff Neuman: Okay. The next question is, okay, well let's say that there is a notion of verified top level domains, then how do you -- how would a registry be recognized to be in line with the criteria that was set in the vTLD NAVP proposal? And essentially, well INTA says INTA is in favor, it's basically the same comment. They are in favor of verified TLDs to control eligibility. Brand Registries on the other side are opposed to it. So nobody really answered that specific question. Because if you were against any kind of PICs, then you're not going to be in favor of this, so you wouldn't answer this question. And there were no other answers from those that do support this notion.

Next question, line 97, asks what types of conditions should be placed upon a registry if it is required to operate as a vTLD? Same thing, right? So if you were not in favor of the verified top level domains, then you're not really going to answer this one. INTA just gave the same response and the Business Constituency just mentions that we should at least require registries to abide with their own statements or standards and we shouldn't allow fake or false information to be provided to register a domain name. So it's not really responding, it's only a question. Cathy, please?

Cathy Kleiman: Yes, Jeff, a question, and sorry it's a basic one. If we're in voluntary PICs, are verified gTLDs the same thing as voluntary PICs? That to me doesn't seem to be the case in all situations.

- Jeff Neuman: No, they are not the same thing.
- Cathy Kleiman: Thank you, okay.
- Jeff Neuman: But presumably a verified TLD would voluntarily commit to certain standards, which is why it was around this section.
- Cathy Kleiman: Okay, but they're not -- it's not an equal sign between them, they are 2 different concepts. Which makes sense to me.
- Jeff Neuman: Yep. Okay. So then we get into, from line 100 down, we are in kind of the miscellaneous category which is comments that were, that relate to this notion of a global public interest but did not neatly fit into any of the or necessarily fit into any of the previous questions. So we in this category we have a number of comments from -- well we have comments from the Council of Europe, from the Registrar Stakeholder Group, Christopher Wilkinson, CCT-RT, I think those generally cover the category of all the different commenters that put comments in the section. The Council of Europe as you can see, their proposed solutions are all under the guise of fairness and their proposed solutions include identifying the Global Public Interest based on human rights law to define specific procedures such as CPE and Community Priority Evaluation. Strongly recommended to clearly state which global public interest ICANN intends to protect through its policy, bylaws and implementation. A list of Global Public interest should include and then they have a number of different groups or values in there as to what they believe are in the global public interest.
- The Registrar Stakeholder Group though is concerned that if we keep having comment periods and the ability of everyone to comment on any aspect of an application, that we're going to have an endless loop of comments and the applicant needing to respond. They say the problem is that it appears to create a means to delay an application forever, so they are worried about that and state that an applicant must have a way to get out of the PIC process, maybe through dispute resolution or arbitration or mediation. Jim and then Cathy.
- Jim Prendergast: Thanks, Jeff. Jim Prendergast. Just backing up to the Council of Europe comment, I think I know the answer, but I just want to clarify. That is not related in any way to the observers that we had doing the human rights impact assessment, is that correct?
- Jeff Neuman: To my knowledge, and someone can correct me if I'm wrong, the observers that we had on some of the calls were there because of the Workstream 2 recommendations and implementing those. So it's not from the report or from the Council of Europe report, but it's from the CCWG accountability, the second work stream. Okay, other comments that were filed, we had one from the ICANN Board, which they --
- Cathy Kleiman: Wait, I think my hand is still up.

Jeff Neuman: Sorry, Cathy.

Cathy Kleiman: Two questions. Is there someplace to copy say the Council of Europe comments? And I haven't read the others in detail. We have a new idea, but it's really also a commentary on the PICs themselves and this concern that we create a prism through, of evaluating a lot of things, but including the voluntary PICs through a prism of human rights and free expression and peaceful assembly. A number of which are gutted by the voluntary PICs, frankly. So is there a place to copy this? Because this is a dumping ground. An important dumping ground, but a dumping ground that people aren't going to see when they're going through the specific issues. Is there a place to copy this so that we see that the Council of Europe, while they may have been not delicate in terms of where they put it, but it affects the voluntary PICs that we're talking about. So can we copy it?

And to the Registry comment, which I know we're not supposed to be commenting directly, if they'd stop making changes, people will stop wanting comments. I just had to say that. Thank you.

Jeff Neuman: Yeah, thanks, Cathy. Let me think a little bit more about the comment of the Council of Europe. There's other comments we're going to get to from the Council of Europe as well, so let's hold off on that and see if there's some unifying aspect of all of their comments. The ICANN -- just jumping ahead, the ICANN Board then states that with the growing reliance on PICs as a method of resolving public interest issues within an application, the Board remains concerned with the lack of definition of the term Global Public Interest, especially in the context of PICs and the PIC DRP, so dispute resolution policy where a third party can challenge. As discussed further below, so this is then further below in their letter, not further below in this comment matrix, the Board would like to see additional work fleshing out what is meant by public interest. So that's the board's comment. Not sure necessarily what to do with that comment since the Board is the one that actually created the concept of the public interest commitments, so I thought it was an interesting comment from the board and it's almost one that should kind of go back to them asking well you all created the notion of PIC, so I'm not sure it's our role to define the Global Public Interest. But that's just some side commentary.

Moving onto Christopher Wilkinson's comment, he is placing important freedom, the most important freedom is the freedom of speech and especially with respect to geographical names, the freedom, it's the freedom of speech of the registrars. I do not understand the scope and objectives of the eventual freedom of speech of registries. And then he goes on to talk about his thoughts on the mandatory and -- well the mandatory PICs. Okay, the CCT review team report has a number of sections that I believe we've already discussed in some capacity about the public interest and additional things, recommendations that seem to fit in this area including line 105, ensuring applicants are aware of public expectations. By directing or consider directing ICANN Org to negotiate amendments to existing agreements to provide, again, what we talked

about before, the incentives to be regulated or to have these commitments. That seems to be in particular around abuse and so line 107 is all about DNS abuse and trying to make sure that ICANN does enforce some mechanisms against registries and registrars about combatting abuse.

Recommendations 16, again deals with abuse and more specifically, their domain abuse activity reporting, what they call DAR. And Recommendation 20, sorry, their recommendation number 23 does talk about highly regulated sectors and asking for surveys, a review of websites and inquiries to find out what -- basically collect a lot of data on what people are doing. Council of Europe also filed comments talking about concerns about fairness, transparency, accountability. They want to make sure that there is an opportunity to pay attention to achieving the public interest. This would require a genuine commitment to promote the interests of nonprofit organizations, local communities and their competition for gTLDs against commercial entities. And then they go into some more specifics about fairness in the next line, 111, which deals with just getting more attention on human rights and the promotion of human rights. And they are asking if the final report provides specific recommendations taking into account human rights, sustainable development and corporate responsibility perspective? So that's their comments. Not going to be an easy task.

Any questions or comments on the comments that we've gotten to the Global Public Interest? I see Cathy said same issue here about integrating the Council of Europe with other parts of the spreadsheet. Anne, please.

Anne Aikman-Scalese: Thanks, Jeff. I apologize for computer problems earlier. We're having some upgrades around here causing some issues. But I feel as though it may be worth asking the Compliance department what is their current degree of involvement with auditing public interest commitments? I'd like to know from Compliance, as we are developing policy for the next round, Cathy has mentioned several times well, gosh, we want to know what these commitments are and we want to be able to have public comment on them. I personally agree with that. I know that's a little bit different from exactly what the IPC comment says, so I'm commenting in an individual capacity. But it isn't well understood once a PIC is made and even if it's included in the Registry Agreement, exactly the degree to which Compliance is involved. Or does it require a complaint or are they doing auditing? Or what's the current practice and how do we make policy for the next round without knowing what the current practice is? It's something we need to know.

Jeff Neuman: Okay. So the questions you would have then are -- because on the website, and I think you put a link to it, I haven't clicked on that but I visited it before or have visited links before. They do talk about the PIC, the enforcement process. So the question is, there have been few PIC DRPs that have gone through the entire process. The question is whether

Compliance proactively audits the checks for PIC compliance, because they do, certainly do when someone files a complaint. Is that what we're trying to get at?

Anne Aikman-Scalese: Yes, Jeff, it's Anne again. That is one very important question because again, when in a face to face meeting with Maggie, and I don't remember where we were, what country it was, I asked that question, particularly in relation to the safeguarded type, eligibility type TLDs, was Compliance going to be involved in audition those? And I thought that Maggie's response was, what she indicated was that they'd be developing some kind of audit program. But staff perhaps were understaffed at the time. And I don't know, are we saying that PICs going forward it requires a complaint for any kind of PIC to be investigated as far as compliance with it? Or are we saying that it is a responsibility on a regular basis of the Compliance department? I just don't know the answer, and I think we need to know that when we're making policy about PICs.

Jeff Neuman: Okay, so let's see if we can get some clarification from -- sorry, let's see if we can get some clarification from ICANN. I think as Jim kind of puts it, are we talking about basically reactive versus proactive enforcement? Okay, Cathy, is your hand up?

Cathy Kleiman: Yep, thank you. New hand. And what are the limits? So in case people don't know, I'll just briefly recap that voluntary public, voluntary PICs were created by Fadi standing on one foot without any process. It wasn't -- we didn't create it as part of the Applicant Guidebook, as a place to put key -- I believe he thought it was a place to put kind of deals that were cut strictly with the GAC on some of the oppositions. But it wound up being the dumping ground for anything anyone wanted to put in including things that were discriminatory, illegal and way outside the scope and position of ICANN. And so are we going to be setting any limits on that? It creates a real bind for Compliance frankly on some of these. And just seeing many of the voluntary public interest commitments as, or as you probably know, of the existing TLDs, were never reviewed by the public. And not only they, they were never reviewed by ICANN staff. They were literally dumped in and signed into the contracts. ICANN legal says they didn't look at the vast majority of them. So this creates a real problem. So I'm glad we're creating hopefully much clearer and defined rules for these. Thanks.

Jeff Neuman: Thanks, Cathy. There is comment, or question actually, Steve points out that we need to differentiate between mandatory and voluntary PICs. The comment Anne was talking about in 43 was a section on voluntary PICs. So I think the question probably still holds as to what Anne was asking which is, is it both proactive and reactive? I can tell you that there are, from my experience, taking off my chair hat, with mandatory PICs there is some level, at least with the Spec 11.3.b which is the I guess it's been referred to as the security one, there has been both proactive and reactive auditing of that section. And in fact, the registries were just asked to complete a proactive audit of that section towards the need of last year,

I think. Yeah, towards the end of last year. But not sure about the voluntary one. Okay, well we'll find out some more information on that. I think we are ready then to jump over to what's related although different section in here, is a discussion on freedom of expression. So this is 2.3.3, the tab 2.3.3. And this starts on the third line and says in general, so we got a general comment from GAC which talks about freedom of expression for rights for registrants and end users generally could reasonably be considered to be of at least equal importance. So that's I think going to be important. They are not just talking about the freedom of expression of registrants, but are equating that with the freedom of expression of end users. Freedom of expression especially from commercial players is important but not absolute. As in any fundamental rights analysis, all effective rights have to be considered including IP rights, applicable national laws on protection of certain terms, and this means that the procedures have to be inclusive of all parties whose interests and rights are affected. And then they cite to a whole bunch of their previous advice. Cathy, please.

Cathy Kleiman: It's a comment after we finish the review of this one. Just a comment that there should be -- NCSG had a very long, broad introductory overview that I think belongs here as well under general comments.

Jeff Neuman: Okay. Cathy, can you -- let me just scroll down to PICs below, a quick scroll. I don't necessarily see it, so if you can point out which section that is and just put it on the chat, we'll make sure we put something in there.

Cathy Kleiman: Okay, thanks.

Jeff Neuman: Then the next question or topic says Work Track 3 discussed the protection of an applicant's freedom of expression rights and how to ensure that evaluators in dispute resolution matters perform their roles in such a manner as to protect these fundamental rights. The Work Track generally believes that the implementation guidelines should be clarified to ensure that dispute resolution service providers and evaluators are aware that freedom of expression rights are to be considered throughout the evaluation and any applicable objection processes as well as any other requests for consideration, independent review, etc. To do this, each policy principle should not be evaluated in isolation from other policy principles, but rather should involve a balancing of legitimate interests where approved policy goals are not completely congruent or otherwise seen in conflict. Applicant freedom of expression is an important policy goal in the new gTLD process and therefore should be fully implemented in accordance with applicants' freedom of expression rights that exist under law.

So notice the initial report here talks mostly, or just talks about applicants' freedom of expression rights. The GAC general comment talks about both applicants and registrants. BC comment, pretty simple, one word, agreed. So there you go. The NCSG, okay, so here's the comment from the NCSG, I don't know how I missed that scrolling down, but there it is. Line

7. And a long comment talking about the importance to note the NCSG considers that freedom of expression rights should be fully implemented and that there is the principle from the original policy, principle G, it talks about it. And then they cite to GAC advice as well. And do mention that brand privileges can infringe, create expression, so care must be taken to ensure free expression principles are not subjugated to GAC advice or these other processes. And then they say to dispute resolution providers, ICANN staff and other process facilitators should be given the same guidance to ensure that they protect -- or give them the same guidance that they have with respect to protection of intellectual property, giving the same guidance towards protection of freedom of expression. And then there is I guess a sort of new idea which talks about civil society experts on free expression should be included in the development of such materials to ensure that freedom of expression rights are protected. And those include things like fair use and other things they have in their comments. Any questions or comments on the NCSG one? And Cathy, please?

Cathy Kleiman: Yeah. So this is under a subpoint, which I appreciate whoever built the spreadsheet doing. But it was actually directed at -- it was written in the comment under 2.3.3. So it's possible that what we're saying, that what NCSG is saying here is actually applicable to numerous subpoints. So I just wanted to point that out and we'll have to figure out how to incorporate that. But yes, this is the comment that I was talking about. But it was meant to be kind of broadly applicable to the general discussion. Thanks.

Jeff Neuman: Thanks, Cathy. The comment from the Council of Europe does also talk about freedom of expression. And it says that the initial report provides interesting considerations and that would have a positive impact on entering the rule of law standards within ICANN. But they are concerned that the proposed framing -- they're concerned that the proposed framing is too narrow of the issue and does not focus on protection of the end users' freedom of expression which could also be affected by ICANN decisions. So that's just again reiterating their general comments about having to consider more than just freedom of expression rights or registries or applicants.

The INTA agrees that the guidelines should be clarified. Sorry, the implementation guidelines should be clarified, and they caution and state that it's just one of the interests, the competing interests, that needs to be weighed. So they are also talking about the coexistence of freedom of expression and trademark rights in the real world and that needs to also exist in the application process. INTA notes that the overall majority of legal rights objections cases found for the applicant and against brand owners indicating that concerns about the consideration of freedom of expression within legal rights objection appear to be unfounded. If anything, it may reflect an insufficient consideration of trademark interests. That's the INTA comment.

The IPC does again talk about the coexistence of the trademark and freedom of expression rights and needs to be a balance, like one should not -- freedom of expression should not trump the established IP rights, so they are calling for balance. And the ICANN organization wants more information on how they are going to be, how freedom of expression rights are able to be considered in the evaluation. So they are looking for just more details. Any questions on those comments?

Next one, line 12 and 13, what specific advice should be given -- sorry, should dispute resolution services providers that adjudicate objections, proceedings and other evaluators be given to ensure that they are protecting freedom of expression? The only one that related -- the only comment that related specifically to this question talked about practical examples from INTA, the International Trademark Association. Practical examples should be provided at the time the principle has been applied under international law in relation to the adjudication of name trademark disputes so the evaluators can see how the principle can and should be applied in deciding things like string contention and legal rights objections.

The next set of comments are on the when considering legal rights objections, what are some guidelines specifically on legal rights objections? What guidelines can we give to resolution service providers on things like fair use, parody and other forms of expression, freedom of expression, as to whether the sting infringes on the legal rights of others? So Business Constituency has a principle of not having clear attempts at typo squatting, doppelganger domains or IDN phishing. Registrar Stakeholder Group states that caselaw shouldn't be limited to common law, resolution service providers should take a broader look. INTA says concepts of fair use and the legal effect when applied to competing legitimate rights also vary country to country. Applicants from different countries are likely to expect that these principles would be applied with similar effect in any legal rights objections when this is not necessarily the case. So we need a consistent definition to ensure that it is enforced throughout the world. Those are some of the new ideas that are proposed. Let me just jump to -- actually, let me stop there, because the other comments disagree or diverge, so I'll stop there for Anne. Please.

Anne Aikman-Scalese: Thanks, Jeff. Just very quickly on the registrar comment, and I don't know, maybe Donna could enlighten us on Line 15. I'm unsure what is meant by caselaw shouldn't be limited to common law. Because normally common law is just something a bit -- well the cases in the LRO, as far as I know, were cases that are considered, but it was really not any sort of precedent or caselaw that was applied necessarily in LROs. It was a standard set out by the ICANN objection process. So I didn't know if Donna could help explain that.

Jeff Neuman: I won't -- this is Jeff. I won't put Donna on the hook. Donna is with the Registry Stakeholder Group, so it was made by the registrars.

Anne Aikman-Scalese: Oh, sorry.

Jeff Neuman: That's okay. I don't see anyone here from the Registrar Stakeholder Group, so we're going to have to take that back as a question and send it to the stakeholder group. It's a good question. I'm not 100% sure what was trying to be said. And it could be evident in the context of that full paragraph, but we don't have it here in front of us.

Anne Aikman-Scalese: Okay, thanks, Jeff.

Jeff Neuman: Sure. A number of groups disagree with the notion of providing guidelines on fair use parody. That includes BRG, the Registry Stakeholder Group, Valideus and the IPC. The Brand Registry Group thinks that the current mechanism or current criteria is good enough. The Registry Stakeholder Group I think also has the same -- yeah, same view, which is the current criteria are adequately balanced to right to trademark holders. Valideus, and again just for the record, I say this every time, but I am an employee of Valideus, but they drafted these comments without me and I did not see them until it was filed, so I kept my separation from that. They state that they don't believe that the concern of freedom of expression seems unfounded. The fact that the majority of cases were won by the applicant and against the brand owner indicates that again that they think the concern about lack of freedom of expression is unfounded. The IPC thinks that fair use of parody should not be available defenses to a legal rights objection where the applicant seeks to commandeer an entire TLD. So that diverges from what was in the initial report. Any comments or questions on any of those comments? Anne, your hand is up. I don't know if that's left over? Okay, next one, line 22 tries to get into more specifics. Yes, please?

Anne Aikman-Scalese: I apologize, I think there's an entry from NCSG, I'll put it into the comments because it's not that long, that belongs here as well. Commenting on fair use. I'll put it into the comments, but it belongs to the section we just finished.

Jeff Neuman: Okay, thanks. So the next question is, what criteria can ICANN or its evaluators apply to ensure that the refusal of the delegation of a particular string will not infringe an applicant's freedom of expression rights? So the last question was about the balance and issues like fair use and parody. This one is a question kind of the other side of the coin which is if -- what would hold ICANN back from refusing to delegate a string and impacting an applicant's freedom of expression rights? The Registrars state that freedom of speech cases where the rights of others are infringed upon, the evaluation should be done the other way around. So does the infringement of the rights of others serve as a limit to freedom of speech? INTA suggests a 2-pronged evaluation process where this is likely to come up in a contentious string or an objection process where third parties are disputing an applicant's entitlement to hold a gTLD. It is but one factor in deciding claims in relation to legitimate competing interests and legally provides a defense to what otherwise would be regarded as

an infringing use of a word string. And the IPC states that applicants can express freedom of expression by applying for a string that does not infringe trademark rights. Cathy, please.

Cathy Kleiman: Sorry, old hand, Jeff.

Jeff Neuman: Oh, okay. So I think -- we do have a couple of more minutes, there are some other comments in this section that were filed. There was a comment from ICANN Org that I guess comments that this is stated in the negative. So the string evaluation process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law. It's difficult to determine what the gap is because it's stated in the negative, so they look forward to us providing clarity. They note that the freedom of expression is discussed in module 3 in conjunction with the limited public interest objection and it's important that evaluators for the string reviews were not asked to use legal principles, rather they were asked to apply specified criteria.

The US Postal Service believes that no new exception should be established that diminish a trademark holder's rights. Because they believe considering the high burden required to establish a legal rights objection, no exceptions, no new exception should be created that would diminish trademark holders' rights. And then finally, a comment from Christopher Wilkinson talking about the balance between expression of rights -- sorry, freedom of expression of registrants and that of the registry. And he states that there cannot be a distinction between the jurisdiction of the territory and the jurisdiction of the registry. It's a much more complicated, involved discussion of jurisdiction.

Questions or comments? Okay, a number of people have to leave now to go to the Council call, so I'm going to let everybody, let you all drop. But I think we made really good progress today. Very happy with where we are. And there's a possibility that we can close this out, close this subgroup out of review of comments perhaps on the next call, but certainly not more than 2 more calls. So let's, everyone, let's close this call. Thank you very much and those of you on the Council, go to that call and I'm going to listen into that as well. Thank you, everyone.