

**ICANN
Transcription
New gTLD Subsequent Procedures PDP - Sub Group C
Thursday, 3 January 2019 at 21:00 UTC**

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Coordinator: Super. Thank you. Well, good morning, good afternoon, good evening, everyone. Welcome to the New gTLD Subsequent Procedures PDP Sub-Group C call, held on Thursday, the 3rd of January, 2019.

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

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

With this, I'll turn it back over to Cheryl Langdon-Orr. You can begin, Cheryl.

Cheryl Langdon-Orr: Thank you very much, Julie. And Cheryl Langdon-Orr, for the record, and welcome to everyone who's joined us for today's call and the beginning of our 2019 calendar year of hopefully very productive work. Perhaps I should also introduce my chook. I know I am a bit of an old chook, but I notice that my chook has decided that this is a perfect time of day to start clacking. So, there will be a background theme for me talking of my chicken, who's – I don't know why chickens do these things, but that's what they do from time to time. Anyway, at least it's not the rooster.

So, with that aside, I'd just note that we had Katrin join briefly. She seems to have dropped off the audio Adobe Room. So, just perhaps, staff, you might want to reach out to her and see if there's a problem there. I'd just

note that we had one more than we do now. So, hopefully there's not too many problems with Adobe Connect.

Now, as usual we will ask for anyone who has got an update to their statements of interest, if you'd like to make yourselves known? Any sort of change in employment or status that requires an update of everyone? And of course you can always in terms of continuous disclosure send messages to the list when these things happen. But we do always ask that people do mention anything at the calls.

And I've filibustered sufficiently now that the Adobe Connect room document has loaded, but as usual it's also easier those of you who can open up the Google doc might find it far larger to look at the document that we're going to be covering today on a separate tab or screen or part of your screen. I certainly will be doing it that way. So, forgive me if there's a small delay in recognizing any hand as I switch between the views.

And today's agenda is a delightfully light one but, I hope, a productive one. We finished our Agenda Item 1 with the usual review of statements of interest, etc. And the substantive item for today's agenda is under Section 2, which is a discussion of our public comments continuing. We're going to take you back, first of all, for 2.1. If you can return to the tab 2.8.1, Objections, we're going to briefly ask you to look to line 53 in that tab and notice that we want to just make sure we are aware of the response to the questions, the clarifications that we had sent the ALAC. And then, we will move back to our tab that we finished on last meeting, which is 2.8.2, Accountability Mechanisms. And there, we will be starting from line 20, if you're looking at the Google sheet.

So, for now, if you can somehow make your Adobe Connect room switch across to a size that you can see, you should be looking at line 53 in 2.8.1, where we're going to note the ALAC response. And thank you to Justine, who's joined us, almost on queue, to sending the PDP mail list the clarifications on the questions sent so far to her from clearing up questions we were unsure of from the ALAC public comment point of view. And she has sent back something for each and every one of the work groups, but this one is ours.

And here – she'll probably get annoyed with me for paraphrasing her, but I'm going to – it basically says the concern was not so much an overall objection to the matter of community objections and the rights to withdraw applications and to receive a refund, but rather that there is no appeals mechanism in place for applicants to seek redress in the filing of an objection. And so, the ALAC wanted to draw our attention to the fact that they believe that the comment is still relevant and correctly marked as a concern by the sub-group. And so, to that, we thank the ALAC for the clarity there, and Justine will forgive me eventually for my paraphrasing of her far more eloquently put together words.

And I'll ask you now to change the view in the Adobe Connect room to 2.8.2. And 2.8.2 in Accountability Mechanisms, you will be going to line 20, which staff has even highlighted that that's where we will be beginning at.

I didn't actually ask – and I suppose I should – did anyone wish to ask further questions of Justine, seeing that she's on the call, but I think it's been made very clear what the ALAC's view is.

Not seeing any hands, let's get on with our – today, actually – blocks of response. Today, you'll note as we go down on a number of these issues that there seems to be reasonable unanimity in general response, if not the specifics and particulars, of the public comments. And do remember as we go down that the link to the pipe of mail does hold the complete and unabridged and unedited input from each of the applicants.

So, 2.8.2.c.3 – and now we have a dog chorus to join my chickens – is the question of post-delegation dispute resolution procedures. "The parties to a proceeding should be given the opportunity to agree upon a single panelist or a three-person panel, bearing the costs accordingly." That was the question put.

And what we found was that the Brand Registry Group agreed. INTA agreed. NewStar agreed. Registry Stakeholder Group agreed. IPC agreed.

And the ALAC, amongst this sea of green, had what they defined as a neutral stance of the ability to agree to a single- or a three-person panel. But they still have a concern, and that is their provision on this sort of slight issue – I wouldn't call it an overwhelming concern here – that the parties are made aware of and are prepared to accept the impact on both the timeline and the costs to them. So, more of a modification out of a neutral stance than rampant agreement as we saw with the rest of the group.

So, that's the inputs on there. Is there anyone who wishes to discuss any of those or all of those? I'll give you a moment.

And good to see you're all as agreeable as the inputs were.

Next, we'll go to line 27 on the Google document, and that is 2.8.2.c.4, and that states the question of post-delegation dispute resolution procedures, more continued with that. "Clearer, more detailed, and better-defined guidance on scope and adjudication process of proceedings and the role of all parties must be available to participants and panelists prior to the initiation of any post-delegation dispute resolution procedure."

Here, we are perhaps unsurprisingly going to see a fairly green slate, as well. We have the ALAC in agreement. We have the Brand Registry Group in agreement. We have INTA maintaining their agreement, along with NewStar, Registry Stakeholder Group, and the IPC. So, we have a total set of agreements here.

Does anyone wish to be disagreeable with all that agreement going on? You might also wish to discuss any matter.

Excellent. We are going to get through this section – well, until we come up to some concerns later – in short order if we continue on in this.

So, we'll now pay attention to line 34 out of the Google document. That is 2.8.2.e.1. Now, we talk about Limited Appeals Process. The question was, "What are the types of actions or inactions that should be subject to this new limited appeals process? Should it include both substantive and procedural appeals? Should all decisions made by ICANN, evaluators, dispute panels, etc., be subject to such an appeals process?" And we said, "Please explain."

So, here, let's go down and we will see that we do not have a single color in response to this, but when we ask such complicated questions I guess we shouldn't be surprised by that. First of all, Dot Trademark TLD Holding Company is in agreement. Now, what they're in agreement with is that it should include – that there should be a limited process and that it should include both substantive and procedural limitations. They, if memory serves – and Steve, I'm sure, will correct me if I'm wrong here – were somewhat silent on the matter of should all decisions made by them be subject to the appeals process, but if staff could double check my memory on that. But they are certainly in agreement with two, if not all three, of our sub-questions here.

Then we move to Jamie, and I welcome Jamie, particularly, for being on the call because he's full of new ideas in his comment on this question here. So, he certainly is substantive – is supportive of substantive reviews. But as someone who probably has more experience than, indeed, most of us put together in some of this, Jamie also made some very specific suggestions here. So, if we want any clarifying questions, we've got the man on site for our grilling, so to speak.

He's made some very substantive and very specific concerns linked to substantive matters – pardon all the "substantives" there – and he's listed those in dot points. I don't suppose I need to read them out because you can all read them in your own time, but these are new ideas.

Jamie was not the only one who came up with new ideas, however. ALAC were also full of new ideas. Again, support for substantive and procedural review, with these additional refinements. And again, I don't believe I need to go through the details of these refinements. They are not

duplicative of Jamie's. They did also raise something that we will find is echoed in some other comments, and that is the CPE process. And we will certainly have to look at what recent work has occurred at the end and beyond of the Accountability Work Stream to work on CPE and take that into account with anything we discuss with the full working group, as well.

We also have a new idea coming in from INTA, and this again supports both the process applying to substantive and procedural. But they specifically also include that the decisions of the ICANN board or staff and the decisions of the evaluations or DRP panelists should also be subject to this additional process, and they have offered us that as a new idea, as well.

Moving down now to the Registry Stakeholder Group, who also support the option of a narrow appeals process for all applicants where parties identify reasonable inconsistencies in outcomes or a specific argument as to why a panel failed to apply proper standards, which was a previous issue they had raised. They – and of course my screen is just awkward enough to not want to scroll properly through there – were again supportive, with modifying new ideas and particular details that they have given for our consideration.

I'll just jump to the IPC now, on line 41. Again, support here and a new idea in as much that the IPC thinks there should be an appeal in regard to decisions of ICANN evaluators and dispute panelist by parties directly impacted by the decision. But I want you to now move back up to #40, line 40, where Valideus has made a very specific point here, that the decisions should be made by independent dispute panels, as opposed to ICANN itself or the original evaluators.

So, we have a plethora of refinements. It seems that the energy and enthusiasm offered by our public commenters to have this as an option but also to build a good model to do so is quite extensive. I am not going to suggest that we, other than gather these together in a shopping list of recommendations, do much more with these. Just say that is supported, and here are specifics offered by the community for implementation – consideration and implementation.

But now, let's open the floor on that section, especially so I can have a sip of my coffee while hopefully someone, even perhaps Jamie, wants to embellish in greater detail what I just reviewed. The floor is open on that.

Jamie, did you want to jump in? Go ahead, Jamie.

Jamie Baxter:

Thanks, Cheryl. It's Jamie Baxter, for the record. After hearing you go through these, it actually made me wonder if the original question included the ability of the panelists themselves being part of this, because a number of respondents have included them as definitely being those

who should be subject to appeals. And I think that's an important thing to capture here if it wasn't part of the original question. It seems to resonate through many of the responses.

Thank you.

Cheryl Langdon-Orr: Jamie, I don't read it as part of the original question. I read it as a particular point raised by the public commenters. So, you're right. It's an important point to pull out. And you gave me perfect time to have at least two sips of my still warm coffee. So, thank you for that.

Any other comments on this section?

We're going to have to present that, I think, as a significant agenda item. There is a lot to discuss, a lot coming out of all those contributions, a lot of valuable input. And I believe we might want to, at one of our future meetings as we go through and finalize how we're putting things together for the review of the full working group, I think make sure that we have properly captured all the nuances and offerings in this set of new ideas before we go forward with it as a set of proposals.

Steve, are you clear enough now on what Jamie said? Or Jamie, can you respond either in chat or verbally? Ah, hand up. Over to you, Jamie, please. Go ahead.

Jamie Baxter: Sorry. Jamie, for the record. I accidentally put up my hand when I thought I was trying to type. But I think, Steve, that clarifies the question. Thanks.

Cheryl Langdon-Orr: Very fragile. Sometimes when I type, my hand goes up and I wonder why people are calling on me. So, it must be a little foible of some of our tracking devices on our computers.

Okay, then. Well, with that, and we will have, as I say, quite a lot to pass on to the discussion of the full working group, let's move on to sub-section 2.8.2.e.2, and that is line 42 now. And here, the question, again under Limited Appeals Process, is "Who should have standing to file an appeal? Does this depend on the particular action or inaction?"

And we again have all of these wonderful blue new ideas. So, our first tab off the road is again Jamie. Here, he notes that obviously applicants should have standing and states in a new idea mode that "applicants that feel they have been mistreated by ICANN.org and the board or evaluators, dispute panelists, etc., should have standing to file an appeal based on action/inaction or related decisions about their application."

Moving down to ALAC, the ALAC again suggested "any party which is directly aggrieved by an event, action, or inaction can file." So, that's a proposal of a slightly wider set of standing parties. And here, that's

something which will take a great deal of discussion on implementation, I'm sure. But ALAC's view is obviously quite broad here.

Moving down to INTA, they suggest that "any directly impacted parties should have the right to file an appeal." Obviously, those of you of legal mind will want to look at differences between a "directly aggrieved" and a "directly impacted" party when we look towards the two inputs from ALAC and INTA. But INTA go on to state that "directly impacted parties should have a right to file an appeal in some context. This may include an applicant not directly a party to the original decision; for example, because they are in a contention set."

Moving down now to Registry Stakeholder Group, here they state "the limited appeals process should be available to the losing party of one of the four objection processes who can identify either a reasonable inconsistency in outcome as compared to similarly situated objections and parties or a specific argument as to why the panel failed to apply the proper standard." So, here, the definition is not only of the standing, but the specificity as to why such standing would be – I'm going to have use it again – (inaudible).

Moving down to IPC, "appeals should be available to those directly impacted by a decision." So, a very general view there.

And here, Valideus' comment goes back to the earlier section 2.8.2.c.1. And I shall scroll up to where hopefully we can still find that, which, yes, is line 8, because I colored it sort of a funny little musty color so that we can refer to that again with greater ease. So, take yourselves back up – sorry, not to line 8 – Part 8, line 11 on this tab. It's the original Valideus' response. And then you can see that we will also actually be needing to look at that a couple of other times through today as we go through their input.

However, what they are not supporting is a broader appeal mechanism that would look into whether ICANN.org, we'll say now – staff or board – violate the bylaws by making or not making a certain decision. And they go on to state that with the many thousands of hours of volunteer time recently taken in development of accountability mechanisms that those accountability mechanisms should be given sufficient time to run their course. So that whilst they support such appeals mechanisms, they want to have an ability to let the new accountability mechanisms run their course, see how successful they are, before they give that right to this group.

Which now takes us down to – scrolling back up. Where are we? Line 49, I believe. So, before we move on to that, let's now see if anyone wishes to discuss anything about that last potpourri of new ideas but general support about the limited appeals process.

Not seeing anybody's hands raised or hearing any voice, let's now get on to 2.8.2.e.3. Here, under again Limited Appeals Process discussion, the question raised was "What measures can be employed to ensure that frivolous appeals are not filed? What would be considered a frivolous appeal?" The bane of everyone's existence, but a tricky question.

Jamie has a new idea. He suggests a measure to limit frivolous appeals would be a quick-look mechanism. And so, he goes on to say that by use of a quick-look mechanism one could weed out – I suppose is the best way of suggesting it rather than "avoid," because avoidance is a pretty tricky thing to do. There's always going to be someone who wishes to just be a difficult individual or group and launch frivolous appeals to make everyone else's life miserable. But a quick-look system may be a good way of approaching that.

The ALAC, their new idea is to do this that there should be an administrative quick look to ensure that there is, in fact, grounds for the appeal. So, they're suggesting that it is an administrative check to be undertaken to establish the bona fides of the filing.

Going down to INTA, their idea was that "such actions should incorporate a summary of judgment process," and they feel that that is a tool by which frivolous suits could be stemmed.

Moving to the IPC, again they support, and they also suggest a quick-look mechanism. And they also add that to perhaps a very poignant tool, a very useful tool in other areas, and that is a loser-pays system. So, again, supportive of a quick-look mechanism to minimize the impact of such frivolous appeals but additional introduction of a loser-pays on appeals, which they believe would somehow manage maliciousness here.

And then the Registry Stakeholder Group, the statement here is that "limited appeals process should be available to losing party of one of the four objections." If you think this is déjà-vu, you are correct because it's what we've read out in the previous section. And the question in our Column D here is that it really – this particular response doesn't seem to be specific to the questions of how we should manage the issue of frivolous suits. So, unless someone from the Registry Stakeholder Group was the pen-holder on this and is present on this call, if so I'd like them to speak now. Or we might wish to follow up with the Registry Stakeholder Group to see if there is something we've missed or mischaracterized in their comment in this section.

Kristine, over to you.

Kristine Dorrain:

Thanks. Kristine Dorrain, Amazon. But I'm a member of the Registry Stakeholder Group. I am trying to wrack my brain as to why this response was slightly – was not more responsive to the question. So, I'm going to go back and look through my notes.

But in some cases, I think in this specific case, I'm sort of thinking that this idea of having a standard of identifying limited reasons for appeals – it says, "limited appeals process would be limited to situations where there the losing party can claim that there's an inconsistency in outcome or a specific argument as to why the panel failed to apply the proper standard." So, I think we're thinking that by specifically limiting the reasons for appeal you would eliminate frivolous appeals from people that didn't have those reasons.

Now, I guess it would be up to the panel at that point to note that somebody didn't have one of those two reasons to bring the appeal. But I believe that our intention here was to say that the limited appeals process should just be limited to those specific types of appeals. And that might be what we were thinking there, but I'm going to go back and try to see if I can check my notes, too.

Cheryl Langdon-Orr: Thank you, Kristine, and we really would appreciate you doing that. That's great. It's certainly not a lack of support for the process, but it's the specificity that you're suggesting. And I guess one that if what you say is confirmed at our next meeting or with an email will do, the additional material that (inaudible) new ideas when we bring that through to the full working group, they may end up as embellishments because some of those are working to counter to such position, but complementary. But that's obviously up to the full working group to manage. So, thank you for that.

Terrific. Well, as we continue on, we are now in line 55 on the Google doc, and we're going to move into 2.8.2.e.4, still with Limited Appeals Process. And here, the question is, "If there is an appeals process, how can we ensure that we do not have a system which allows multiple appeals?"

Here, we have, first off, a new idea from the ALAC. Here, ALAC suggests that the appeals process paths be clearly laid out and incorporate a stipulation that this allows multiple appeals. So, this would be a process and process flow of procedures, documentation, and obviously there would be a degree of, I assume, outreach, knowledge, and education that would need to go along with that, as well.

With the INTA response, they have suggested that with judicial systems there is a court of final appeal. A comparable approach could be taken, for example, by designating that there is only one round of appeal on any decision. They also maintain the very important point here that this requires independence of any such appeals process. So, the designation of a single round of appeal is the approach INTA are suggesting.

Registry Stakeholder Group give us a very particular mechanism for limiting the number of appeals here. They – as examples from the URS,

which echos what previously the "only one round allowed" that other people have put forward. But they go on to say other ideas include "allowing the parties and panels to consolidate appeals that are related; for instance, relate to the same misapplication of the guidebook or other limitations such as a 'final decision' rule so that appeals are only available based on a final decision rather than allow parties interlocutory appeals as the process progresses." That's a deeply thought-out suggestion and one that I think we've captured with "consolidate appeals and allows only on final decision," that the implementation of that of course will need some refinement. And I am hopeful that along with all of the other new ideas in this section, when we take these through to the full working group that we have members from each of the groups in that call available to support, respond, and perhaps pitch their concepts, if need be.

IPC maintain that rules could be drafted that there is only one round of appeal in relation to a decision. So, again we've got this process and procedures work to be done here.

The comment by Valideus will bring us back to again that earlier line that I had dragged you all up to which talks about the desirability for some of the accountability issues should they arise in terms of the ICANN.org and staff, etc., action and inaction to not be subject to a separate limited appeals process, because they would like to see the relatively new and untested accountability mechanisms out of Work Stream 2 have a decent run. And so, we will note that yet again.

With the next section – she says, scrolling back up – and thank you also to note that the Valideus also suggests the single round of appeal. On line 61 – that was my error for not articulating that. Thanks for catching that Steve or Julie or whoever is being clever, perhaps Emily.

Line 61 is our next matter – and we are powering through this, and I'm delighted to see us progress so well – again still under Limited Appeals Process, here comes a good one. I do like these ones. "Who should bear the costs of an appeal? Should it be a loser-pay model?" Sorry. Certain things make me smile; this is one of them.

Before we go into that, Jamie, your hand is up. Over to you.

Jamie Baxter:

Thanks, Cheryl. Jamie Baxter, for the record. I want to actually go back to what we were just talking about. I have a question for those who are on the call who may have been part of responding. When you all talk about the inconsistency of standards in your comment, is it understood that you're also addressing how deeper extraction of those standards may have been applied to some when it wasn't even addressed in others? Or is that considered inconsistency of standards to those who are on the call? A question. Thanks.

Cheryl Langdon-Orr: Thanks, Jamie. And I'm going to suggest we ask people to take that as a question with notice. But I certainly would suggest that Justine, for example, may be in a position to type in chat the strongly held views of the ALAC, because they were particularly scathing in other parts of their public commentary on the matter of inconsistency between how one panel or another or one process or another could be applied, would be applied, and should be applied. So, perhaps she may – as may anyone else – step up during the call. But let's take that as a question with notice because it's an important question, and I do thank you for raising it. So, can we make that as also an action item to follow up on that, Steve, staff? I'd appreciate that. Thanks for that, Jamie.

Back to line 61 and the loser-pays model. And to begin with, the what was familiar earlier on sea of green, we get agreement from the Brand Registry Group.

We get agreement from INTA, and the INTA does suggest that the option should be studied and the advantages and disadvantages of the loser-pay system be evaluated.

The Registry Stakeholder Group supports loser-pays model.

The IPC supports loser-pays model.

And this is one of the reasons I was glad Jamie was at the call today, but I'm going to jump down to line 67 first and cover off the ALAC, who also suggests that the loser-pays model should be considered but have an embellishment here which is listing as a new idea, where they state the embellishment is "provided the cost of an appeal be fixed in advance and all parties involved are given prior notice of the same." So, ALAC were supportive of the model but with an embellishment.

Now, back to Jamie. He's got it all. He's got convergence, new ideas, and divergence. So, Jamie, I'm going to – guess who I'm going to call on in a moment? So, be prepared. He's certainly maintained that substantive appeals with standing should have no additional costs to the appealing party when involving decisions from evaluators or panelists. That's his first divergence.

He has a concern that is outlined that if a provider fails to thoroughly and accurately support the decisions then he feels they've technically not earned the right to have compensation for their service.

And we also get the new idea that when a provider performs a service in a flawed or insufficient manner that there is the matter of not only payment, but that they should not be compensated for defending their decisions or the efforts to correct decisions determined to be flawed or insufficient.

Now, having paraphrased him appallingly, it all wraps up to no costs to an appealing party. But Jamie, I'm going to hand the microphone back to you and just make sure that we all understand that you are properly recorded here. Over to you, Jamie.

Jamie Baxter:

Thanks, Cheryl. Jamie Baxter, for the record. I think you've encapsulated it. The premise here is that whatever work is done by the panelists I feel that they should be supporting their work and that it should not and we should be cautious of it becoming an opportunity for them to simply have it go to an appeals that they can once again make further money to defend their decision. So, if it's a point that needs defending because the information was not all provided or that the backup or the support was not provided in the evaluation and an appeal is required in order to get that to understand it better, it shouldn't be at the expense of anyone except the evaluators who, as we all experience in the real world, if you're providing a service you have to provide the service, and if it takes you a little bit longer to get it done it takes you a little bit longer.

So, I don't feel like this should become an opportunity for providers to just squeeze more money out of anyone. They should be able to defend their decisions, and it should be done – if it needs to be done through the appeal mechanism, perhaps that's a method to do it. I think what we saw in the 2012 round was a tremendous amount of, "This is all we did. We're not going to show you any more. We're not going to give you our backup." And I don't think that's the approach that we should be taking, going forward. So, that's why I don't support charging the applicant for an appeal when part of that is actually just trying to get the provider to show or do the proper amount of work that they were asked to do in the first place.

Hopefully that makes some sense.

Cheryl Langdon-Orr:

Thanks. It does, Jamie. And I'm glad you took the time with us to make sure we were very clear on the rationale there. So, I appreciate that. And we will make sure that that is properly passed on to the full working group, as well.

I think this now brings us to – if the document stops jumping around in front of me; I'm not responsible for that, people – line 68 in the Google doc and again still in Limited Appeals Process but powering towards the end of what we need to do in this tab. And that is, "What are the possible remedies for a successful appellant?"

Here, we have again a new idea from Jamie. He suggests that this should depend on the process under appeal. However, it makes sense to him that the requested remedy be a required part of the written appeal. And challenges to scores, for example, may be the least complex to sort out and offering a remedy score adjustment if the appeal party is successful

may be sufficient. So, he's given a clear example there. So, there's some good ideas there.

Moving to the ALAC, again they suggest that it is important to have such remedies, but it depends on the nature and substance of the appeal, which is remedy-dependent.

INTA also have a "depends on the remedy" response, stating that the possible remedies must surely depend on the circumstances of the appeal. If, for example, the appeal is against a decision on evaluation that rejected an application, than an appropriate remedy would be reinstatement of that application, as an example.

So, moving down to Registry Stakeholder Group, again they are saying it depends on the facts of the case and the reasons for the appeal. They suggest the appropriate remedy for a successful appellant may vary and that can be totally dependent on the facts of the case, and there's a reviewing party may have to take that in consideration, and give the example of the URS as to how it may be most efficient for a de novo review where the appellant panel's decision stands as one of the remedy options.

Moving down to the IPC, the IPC again believe it depends upon the decision being appealed. A general remedy would be the reversal of the decision. The remedy would to some extent depend on what type of decision is made and what's being appealed. But generally, the appropriate remedy is likely to be a reversal.

So, whilst many of those things are not brand spanking new concepts and ideas, they are modifiers or delimiters and I think they're ones that are certainly important and I think, in the main, complementary.

But now let's open the floor on that and see if anyone wishes to make any comments or statements regarding it. Yes, do try and keep your organizing to a minimum. It will give me a headache, remembering I haven't had much of my coffee, yet, Steve. Thank you.

Okay. Seeing nothing, let's power through to line 74 in the Google doc, which is 2.8.2.e.7. And yes, ladies and gentlemen, we are still with the Limited Appeals Process. At this point, it doesn't feel like terribly limited to me, but anyway. "Who should be the arbiter of such an appeal?"

And with that, we can move to Jamie again. And here, his point is that to have a standing panel to handle appeals, populated with individuals experienced in appellant case proceeding and familiar with balancing process, public interest, and fairness. It seems to be the way forward that he is suggesting.

The ALAC suggests that board Accountability Mechanisms Committee be the arbiter of such an appeal, supported by a subject matter expert or experts if need be.

INTA suggests that it's essential that independence is considered in this process and saying that it would therefore be important that these are handled by a third-party dispute resolution provider in the same way that IRPs are, but providing that the same party making the original decision is obviously not deciding the appeal, and underlining independence of a third-party provider there.

Registry Stakeholder Group suggested ICANN should designate independent organizations, third-party providers, to provide additional guidance, that they should find an organization that's independent and with sufficient expertise to handle these appeals on such matters, and ICANN should consider costs to the parties, competence, neutrality, and experience of the entity, and the panel's overall competence and experience in the industry. Though cost is important, it should not be the sole deciding factor, according to them.

And finally, the IPC also maintain that it is important that these mechanisms be managed by an independent dispute resolution provider.

And I see, Jamie, your hand is up. You have the floor.

Jamie Baxter:

Thanks, Cheryl. It's Jamie Baxter, for the record. I apologize if I may have not included the full rationale for the statement, and I apologize I don't have the ability to click back and forth right now to make sure it was there. But the point I really wanted to make sure was included in this was that much of the appeals, in my opinion, revolve around the way evaluators interpreted words in the guidebook different than the way the applicant interpreted them. And that's why I think it's important that some standing panel that isn't so linked to the way the evaluators interpreted it but are open to the possibility of how the applicant may have interpreted something is what can help insert fairness into the whole process.

So, if that isn't part of my comments – I see it's not captured here – that's really the essence of what I'm trying to get at here, is that a standing panel that is separate from this whole process, who could say legitimately, "Yes, the way you interpreted that is very fair, and the way that the panelist interpreted it is completely different but it doesn't mean that you were wrong."

So, I apologize if that's not part of my comment. That was part of the intent behind it. Thanks.

Cheryl Langdon-Orr: Well, thank you for the clarification, Jamie. Appreciate that. And I'm sure the notes have captured that accurately, but please do take a moment to look at pod and make sure that that is the case. Thank you.

Okay. Moving on to line 80 in the Google doc, which is section 2.8.2.e.8. And yes, ladies and gentlemen, we are still with the Limited Appeals Process. "In utilizing a limited appeals process, what should be the impact, if any, on an applicant's ability to pursue any accountability mechanisms made available in the ICANN bylaws?"

And here, we have Jamie again, saying that he believes that such process should not limit access to accountability mechanisms. "Adding a limited appeals process should not impact or change any applicant's ability to pursue accountability mechanisms made available by the ICANN bylaws."

We have the ALAC stating – recognizing of course they were following on from their earlier new idea of using the AMC, the board Accountability Mechanisms Committee – that if they are made the arbiter then accountability mechanisms made available in the ICANN bylaws would automatically be incorporated.

The INTA view is that – and remember again following on from the importance in their response of independence – that "as the processes are independent, the accountability mechanisms that deal with actions whilst being taken in breach of the bylaws while having pursued an appeal should not remove an applicant's recourse to the accountability mechanism. It seems likely that an unsuccessful appeal would substantially reduce the likelihood of successfully pursuing these other mechanisms." So, again it should not be limited, but are also making a note on the likelihood of success here.

Registry Stakeholder Group state again they support the limited mechanism, but "all available accountability mechanisms should continue to remain available to the applicant, whether they use the limited appeal or not. To encourage use of the limited appeal, ICANN should allow for appropriate tolling of any statute of limitation associated with an accountability mechanism where parties do take advantage of the limited appeal. A party should not be precluded from raising issues because it took advantage of all available mechanisms to resolve dispute."

And finally under this section, the IPC's new idea, wrapping up our sea of blue, is that "limited appeals process should not serve to remove access to the accountability mechanisms set forth in the bylaws. However, where a party has had recourse to an appeals mechanism, it seems like less likely that they would therefore be able to establish grounds for reconsideration request, in the example of an IRP." And that echos what INTA has said earlier on. So, should not be limited, but obviously are making a note on potential effects on the success.

Any discussion or interactions on that section? Because if at all possible, I would love to just cover off the next two lines.

So, if you will indulge me, let's go to line 86 in the Google document, and that is the Limited Appeals Process, "Do you have any additional input regarding details of such mechanism?"

And we got two responses here. From Jamie, "the mechanism could likely mimic many qualities of the reconsideration request form, which is focused on question/response in written format. It could also be beneficial to include a hearing or testimonial component, where applicable." Thank you for that new idea, Jamie.

And the Registry Stakeholder Group response harks back to earlier reactions to – I believe it was our CC2; it might have been CC1. It's a bit of a blur. Anyway, on their May 24th/27th comment, they went into significant suggestions, and the feedback there is where they're being quoted.

Right. Now, at the top of the hour, we will start with a brief review on our next call of where we've got to. We will begin looking at the Other Comments or, as I am tempted to have them listed in the agenda, Other Concerns. We will probably need to take a little bit more time on the input that we received from people from line 89 of the Google doc on, because there are quite a number of concerns raised by people. So, it would behoove us all if we could read over those concerns and have given them a little bit of thought, to ensure we understand them. We're not going to argue the point; we're not going to debate them; but we understand them and see if we have any clarifying questions we need to ask about them in our next call.

And our next call will be – if I can take staff to just briefly let me know – it's going to be 15:00 UTC, I believe, on the 8th or 7th or 8th of January? 10th of January, at 15:00 UTC. If I could just remember. Thank you, Julie. It was a particularly unfriendly hour for me.

Thank you very much, ladies and gentlemen. I really do appreciate your time today. And I particularly want to thank you all for the amount of work we've got through. And I do want to note that if you do your homework we will definitely be finishing this tab in next week's call.

Thank you, one and all. Thank you, staff. And especially a fond farewell to our Emily. We will miss you very much as you leave for your maternity leave. We wish you well, and we look forward to you returning and in the interim updating us from time to time with exciting news when it happens.

Thank you, everybody, and bye for now.

Coordinator:

Thank you, Cheryl. Thanks, everyone, for joining. You can disconnect your lines. This meeting is adjourned. Have a good rest of your day.