

**ICANN
Transcription
GNSO New gTLD Subsequent Procedures PDP Working Group**

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<https://audio.icann.org/gnso/gnso-new-gtld-subsequent-19feb19-en.mp3> [audio.icann.org] Adobe

Connect recording: <https://participate.icann.org/p3zwz7ex92h/>

Attendance of the call is posted on agenda wiki page: <https://community.icann.org/x/fpsWBg>

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page
<http://gnso.icann.org/en/group-activities/calendar>

Julie Bisland:

Thank you. And good morning, good afternoon, good evening, everyone. Welcome to the New gTLD Subsequent Procedures Working Group call on Tuesday, the 19th of February, 2019.

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

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

With this, I'll turn it back over to Jeff Neuman. You can begin, Jeff.

Jeff Neuman:

Okay. Thanks, Julie. And welcome, everyone.

As usual, we have the draft agenda up on the top right hand of the screen, where we will talk a little bit about – give a reminder of the role of the GNSO Council Liaison, talk a little bit about the timeline and work plan, and then get right back into discussion of the comments on the Supplemental Initial Report, specifically dealing with continuing from the mechanisms of last resort and the private resolution of contention sets.

So, let's – I'm sorry. I missed – and also talk about, give a quick update on ICANN, which is coming, rapidly approaching us. And you will have seen the schedule, hopefully, that was posted by ICANN yesterday.

So, with that, are there are questions on the agenda or anything to add as any other business?

Okay. I am not seeing anything at this point. So, let's then turn to the GNSO Council Liaison. So, as most of you should be aware at this point, we have two new GNSO Council Liaisons, although I guess they've been in the role for several months at this point. So, the – so, they're not that new. But Elsa and Flip are our two Council liaisons. Flip's got the "GNSO Council Liaison" next to his name. Maybe I can ask Elsa to do the same.

The role of the GNSO Council Liaison has evolved in the last year or so, with what they're calling PDP 3.0, which really wasn't major changes to the PDP but just some clarifications and improvements. And one of those improvements was a further definition of the role of the GNSO Council Liaison, which was – really came out of a number of questions that or issues that came out of other PDP working groups and things that the Council has had to work through over the past couple of years and lessons learned.

So, the Council Liaison has taken on what I believe is a much more important role than in the past and certainly one that is, should, and will be, I believe, much more visible in the future. And so, their job is described on the – their role is described on the document that's on Adobe Connect at this point, which you should also – I think you got a link to that document in email at the end of last week.

So, the Liaison will not only serve as the important resources for us as a working group to rely upon to let us know what the Council is working on that may be related to our activities, but also is important for the entire Working Group to make sure that any concerns that you may have about this group or the sub-groups or, frankly, any of the decisions that Cheryl and/or I make or any of the team leads – obviously, we would first encourage you to raise any issues directly with us, but in the event that we can't help you resolve those issues or concerns, the Council Liaisons are there to help resolve those situations, either themselves or if they need to get the Council to take some sort of action it's their role to make sure that the Council is kept informed and is able to take any necessary action.

In addition, as we get closer to finishing this group and doing things like consensus calls and finalizing our final report, they will become instrumental in the case of any disputes that you might have with any of the decisions that we make, but also instrumental in making sure that the Council is aware of all the things that have been discussed and of the processes we've been following so that the Council doesn't engage in an exercise of trying to redo what we've done.

So, there are some real important roles for the GNSO Council Liaison, and we just wanted to take a couple of minutes to just go over that with you all so that if you need anything or need their assistance that you can go to them. I don't know if, Cheryl or Steve, if there's anything – I wasn't planning on reading the document in this call, reading it out loud, but is there anything, Steve, Julie, or Cheryl, that you – or actually, Elsa or Flip – that you wanted to add?

Okay. Nothing from Cheryl. Okay. So, it seems like it's been covered. So, again, they're an important resource for us. And if you have any issues, please see us, Cheryl or I, or any of the leads. But if we can't help you resolve the situation, then the Council Liaisons are there for you. And as Elsa said, this role is still being developed. And as we learn more, the role, I'm sure, of Council Liaisons will evolve further.

Okay. Why don't we then turn to the next item, which is the draft work plan, which is being brought up on Adobe right now but also was sent out with – in the email from Steve this weekend or, actually, before the weekend, I think. So, this is a draft work plan. It's – as we go through it, you'll see there are certain things that – we've made certain assumptions and the work plan will evolve. But to the extent possible, we are going to stick as close to the work plan that we can. It does envision the eventual joining up of Work Track 5 with the full group. So, that should be interesting and make for much more attended or widely attended calls, I think.

But what you'll see here is a plan that will hopefully finish two of the three sub-groups prior to the ICANN meeting in Kobe and one, Sub-Group B, which will hopefully finish after Kobe. It seems like – it would be late March and that seems like a long gap, but it's because of travel and the fact that we don't do meetings the week after Kobe. So, it's not too many more meetings that are left for Sub-Group B, but just it might take 'til the end of March to complete that work. But regardless of whether we are complete with the work from Sub-Group B, we will still be able to start some of the full Working Group reviews on some of the other topics even if Sub-Group B is not quite finished.

So, what you'll see is full Working Group calls from now until the Kobe meeting. We've actually – what probably should be on here is we may be canceling next week's call. I'm not sure if we've – I think we've done that already. So, I think we do need to make one change to that, because neither Cheryl nor I are available for next week. So, we may be making that one change to it already, or we have made it because I think you've all gotten the cancellation notice. So, we'll make that change and see what we can do about making up that material.

You'll see Work Track 5 is on here, as well. These are estimated based on the comments that have been received, although ICANN I believe is still kind of finalizing that comment matrix of all the comments that came in from Work Track 5. This – it was estimated that there would probably need to be five review sessions of those comments. We'll see as we get started – as Work Track 5 gets started on that material if that's too many or too little sessions. So, I'm sure there will be some evolution of that timeline.

The other thing you'll notice if you scroll down to the May – I think it's the May time frame. No. Sorry. June time frame. So, what we have not included in here at this point is definitively another comment period. That's not to say that we won't have another comment period, at all. It's just saying that we haven't figured it into the work plan yet because it hasn't definitely been decided. But you'll see a session – two sessions in June for us to consider as a group whether we need that comment period and, if we need it, what should that comment period be for. So, you'll see some discussions on the work plan of that very topic.

I'm not sure what else I should go over on this work plan, other than now you have it. You can review it. Please feel free to ask us any questions about it. We will continually have that work plan at that link. And so, if there are any changes we will make the changes directly into that work plan so that you can keep that link bookmarked. As Cheryl says, it's a living document.

Okay. Any questions on the work plan?

Jim, please.

Jim Prendergast:

Yes. Thanks, Jeff. Jim Prendergast. Very helpful. Good to see where sort of where the leadership's mindset is as far as the pace of what's going in front of us. One thing I would suggest we – the final meeting schedule for Kobe was just posted yesterday. So, it might be helpful to slate in the dates and times for the various meetings. I think there's three meetings each for both Work Track 5 and for the full Working Group.

Related to that, I think what would be helpful, too, is – I realize with the travel and all that, especially for this meeting it's a big trip for a lot of folks – but if there's any way to get a sense of what we will be covering during the in-person meetings in Kobe, including having any slides ahead of time for review, I think that will allow the group to digest that information before actually sitting down in the meeting, and I think it will be a much more fruitful discussion as we address those items that you want to cover in those meetings. I felt like when we were in Barcelona, I felt like we were having to react on the fly and that really didn't lead to any real good substantive discussion. So, if you could do that, that would be fantastic. Thanks.

Jeff Neuman:

Yes. Thanks, Jim. I think those are good suggestions. So, we will put as action items to amend this work plan to include the time slots of each of the sessions, both Work Track 5 of the rest of the SubPro Working Group. And then we will talk at this week's leadership meeting about – more specifically about the topics that we're going to cover at ICANN 64. And then if there are slides or things that we can prepare ahead of time, we'll get that out there, probably after the full Working Group meeting on March 4. So, I guess we can aim to have it by the Wednesday before ICANN, because I think that's probably when some people are going to start their travel, on Wednesday or Thursday.

Okay. Any other questions or comments?

Okay. Well, that being done, let's go to the next agenda item, which is continuing off on the mechanisms of last resort, a review of the Supplemental Initial Report comments. This – if you recall where we left off, there was a bunch of discussions on the use of auctions and the types of auction and that we've already covered. But now we're getting into some more detailed comments, I think, on some of the arguments against auctions and whether there are things that can be done to address those as a mechanism for last resort.

So, the first one is on the question of fairness and what we can do to make it more fair, because there were certainly a number of comments both prior to the comment period but also within the comments themselves about auctions may not be the fairest mechanism to – especially for those in the developing world or to nonprofit organizations that may not have the resources to participate in auctions.

And Steve has the link there on the Public Comment Review Tool for us to the Supplemental Report. We're on the Tab 2.1. We are on Line 62 – starting on Line 62. And it's sometimes easier to follow along on that, as opposed to the Adobe document.

So, on this question of fairness we got comments from the ALAC, the Registry Stakeholder Group, the IPC, Neustar, Non-Commercial Stakeholder Group, and the BRG. We've gotten some new ideas.

And so, the ALAC, as we have gone over in detail on the last call, supported the notion of a Vickrey sealed-bid auction. And so, they believe that that would be the most fair way to handle the mechanisms of last resort. As Justine says, we should probably – it's

actually a modified Vickrey auction, which was described in one of the previous comments above. So, we'll make that adjustment.

Then the Registry Stakeholder Group talks about that some of the members of the Stakeholder Group talked about the possibility of adding a multiplier for applicants that qualify to participate in the Applicant Support Program, but that they would need to make sure that there are appropriate safeguards in place to prevent bad actors from gaming the program. But some members of the Stakeholder Group do not believe that it's correct to assume that all applicants from the global south lack the financial resources. And therefore, they believe that there's some more data that needs to be collected in order to assess whether that this can be done.

The IPC wants to make sure that the fairness, the principle of fairness, doesn't conflict with established intellectual property rights. So, they don't want to disadvantage intellectual property rights based on – or that would result in consumer confusion.

The Registry Stakeholder Group also has – let me just double check and verify; yes, this is still the Registry Stakeholder Group – believe that applicants applying for one string and applicants applying for multiple strings should have the same opportunity without any advantages. And so, that each TLD needs to be treated on its own merits.

Neustar is urging that fairness not be considered in isolation and that creating new rules could result in unfairness to others. So, if there are any new rules, to make sure that we're careful about that.

The NCSG believes that there should be some consultation with experts and weighing global south and other underserved community bidders may be a good start.

Finally, the BRG is supportive of the recommendation of auctions of last resort, but they are not convinced that the current process needs to be changed.

So, those are the comments we got on the fairness issue. Any questions on those comments?

Justine says, "Line 64 and 66, put the Registry Stakeholder Group comments together or reorder them one after the other," which I agree with. And yes, I think that's a good idea, to either combine them or order them next to each other.

All right. This takes us to Line 71, which talks about replacing – the notion of potentially replacing the mechanisms of last resort with a comparative evaluation process, whether that's some sort of RFP process, some advantages for community or minority-supported applicants or other factors, or even replacing the auction with a random draw. So, these are just new ideas that could replace an auction as a mechanism of last resort. And there were some interesting comments both in support of this notion but also some comments that were strongly against this notion, especially the comparative evaluation.

But the Business Constituency believes that an RFP process that advantages community-based applicants, minority-supported applicants, or other factors that may be developed sounds like a good idea. They support applicants – and they also support, if there is an auction, to have the sealed-bid auction. So, it seems like there is support there to explore

other mechanisms, especially in dealing with the global south or developing nations or community-based applicants.

The IPC opposes any kind of RFP process, but does have what they'll call "qualified support" for a draw, or a determinative draw process. They do not – they think that – they believe that a comparative evaluation may risk abridging the principle of freedom of expression.

The Registry Stakeholder Group, some members oppose any kind of comparative evaluation or random draw, but others do actually support that random draw. So, there's no one position of the Registry Stakeholder Group. But they acknowledge that it doesn't – if there is a random draw, even those that support it does not believe that it solves all of the issues that are on the table as satisfactorily as the Vickrey auction model.

Neustar does not support the RFP process, although it does believe that it's worth exploring other mechanisms of last resort such as a draw, but it does not – it goes on to say why it does not believe a comparative evaluation is a good idea, especially citing the inconsistencies in the community part of the evaluation process in 2012, saying that this could lead to more inconsistencies if we had some sort of comparative evaluation.

The Non-Commercial Stakeholder Group believes that, like other industries that have eliminated comparative evaluations because it's time-consuming, expensive, and difficult, they would also not support comparative evaluations in this context. However, among equally situated applicants – so, those that pass all of the other kinds of evaluation criteria – if they are not otherwise falling into an underserved category. So, they obviously would support the notion of financial support. But what they're saying is that auctions are still the best method of allocation because it's fair, efficient, and transparent and inexpensive.

The BRG just repeats its recommendation about auctions of last resort should remain.

And the ALAC again favors the adoption of the modified Vickrey. So, they just repeated that comment, as well.

Questions on the other options?

Okay. Line 78, moving down, this is the solution of – the proposed solution of adding a limit on the number of auctions an applicant can participate in as maybe one method of dealing with these auctions, though of course people in the Working Group – a number of people argue that that might be anti-competitive. So, we solicited comments.

The Non-Commercial Stakeholder Group, it sounds like they supported the notion of limiting how many auctions an applicant could participate in.

The BRG just reiterated its support for its auctions of last resort, in general, without change.

The ALAC agrees with the issue of deep pockets but does not agree on a limit; again, just supports its modified Vickrey auction.

The FEC believes that more data is needed to see if a concentrated ownership of TLDs is actually an issue before they deviate from – before they take a position on limiting auction participation.

And the Registry Stakeholder Group, again not a unified position, but certainly some members oppose placing any limits on auctions and some just support the Vickrey model. So, it's similar to the other comments that we've gotten.

And then, Neustar doesn't believe that there is really any evidence of a problem here. And so, that if there's no evidence of a problem, then why should we be solving it?

Jim says on the comments, "Not sure how it's transparent with all the NDAs around them and the fact we could only get one provider to share experiences." I think, Jim, that's more related to the private resolution as opposed to the mechanism of last resort, but certainly that – getting the data for private resolution of contention sets is certainly a challenge. But this I think is more referring to the public – the ICANN auction mechanism of last resort.

Any questions before we move on to the private resolution of contention sets?

Okay. Moving to Tab 2.2, which is Private Resolution of Contention Sets, I think if you were to kind of read all the comments, while there's certainly – well, when I read through the comments in total, I think there were two things that jumped out at me. One was that there's very little support for eliminating all forms of private resolution. Again, that includes not just private auctions, but negotiations, joint ventures, other changes, things like that. I did not see too many comments, if any, really supporting the elimination of all those mechanisms of private resolution. And I also did not see much support, if at all, on the notion of raising fees to reduce the private – the issues that come about because of a private resolution of a contention set. So, I think those two things certainly were a clear trend.

But with respect to others, it's a little bit harder to see overall trends, but there are certainly comments where I'm hoping that when we go through them with – especially on the substance – that we'll be able to come up with some sort of mechanism that allows the private resolution of contention sets but does solve some of these issues or at least mitigates some of the issues that have been pointed out and concerns.

And so, the first set of comments, starting on Line 4, are general comments, and most of these we've – some of these we've already seen from either earlier on in the last section or the general comments at the beginning. But certainly we've seen the ICANN Board comments about being concerned about applications – applicants only submitting applications to derive a financial benefit from withdrawing their application.

The GAC also submitted comments saying that there should be measures to disincentivize private auctions. It's the concern about financially benefiting from withdrawing an application.

The Registrar Stakeholder Group is one of the few groups – a few comments in support of keeping application fees high as a mechanism to mitigate the issues that come about with private resolution of contention sets. But they also then propose that maybe some more thought should be given to the first-come, first-served model after we do a round or two. That may eliminate – that would, obviously, eliminate contention set resolution.

And then the registries, I think is the next comment – no, sorry. It's the ALAC. The At-Large is on Line 4 – sorry. Line 7, comment 4. They're against a total ban of any form of private resolution, but they do see some merit in the argument against allowing a losing party to financially benefit. And so, what you'll see from the ALAC comments are that this is difficult, but allowing certain types of change requests, in principle, is a good thing, and they still support that. But they also are not in favor of allowing certain forms of private resolution.

So, I think the comment in the Notes section, in Column B, while it says "strongly against private resolution," I think the ALAC is strongly against private resolution for financial benefit. I don't think they are strongly against private resolution, from reading the rest of the comments, that deal with certain change requests and things, even though they recognize that there are complications and resources that will have to be devoted. But Justine, am I characterizing that right?

Justine is typing. I just want to make sure I'm saying that right.

"Yes." Okay. So, they oppose private auctions but not all forms of private resolution, even though they recognize the difficulty of enforcing things.

Okay. So, those are the general comments.

Starting in Line 8, the specific questions, we expressed – "In the Supplemental Initial Report, the Working Group expressed concern from a number of members that the use of private auctions in the last round may encourage some people to apply in this next round solely for the purpose of selling their TLD or trying to make money or financially benefit from their application without the real intent of operating or administering a top-level domain." So, the question we ask is whether we should eliminate private resolution, if we change the Terms and Conditions to state that "the resolution of string contention via private resolution is disallowed."

So, the ALAC acknowledges that some harm could be mitigated if we amend the Terms and Conditions to eliminate private resolution where a party is paid to withdraw. They – and Justine just put a note in the chat on that. So, where they receive a financial benefit. But they – again, I don't think they're saying complete disallowing private resolutions. I think we might need to just clarify that in Column B. It's really just disallowing private resolution where there's a financial benefit, I think is the best way to summarize that.

The Registry Stakeholder Group was mixed, again pretty diverse in terms of the membership. So, some did support the notion of mitigating the issues associated with private resolution and prohibiting those. Others in the Registry Stakeholder Group did not believe it was the role of ICANN to interfere in private negotiations that take place between applicants. They believe that perhaps rather than eliminating that, some members of the Stakeholder Group believe that we should encourage more creative ways to resolve contention sets, rather than stifling any option. And so, "The Guidebook specifically called out private resolution as a first mechanism, employing the pro-competitive position that the parties to a dispute are encouraged to resolve their concerns amicably and as business needs permit." And ICANN specifically put in the auction as a last resort. Private mechanism does not necessarily mean private auction. And so, if there are other ways to resolve contention sets privately, those should be encouraged.

Any questions or comments on that? I thought I heard someone jump in.

No? Okay. The BRG doesn't believe that there should be any changes to the existing Guidebook in this manner. So, they do not support the notion of limiting or restricting private auctions.

And the IPC does not support any mechanism that would prohibit parties in a contention set from resolving their matter by negotiation. They would support other paths to resolve contention sets, maybe by eliminating the all-or-nothing nature. So, perhaps increasing the scope of change requests may be another way to mitigate some of the issues with a private auction. And we'll talk much more about change requests in Section 2.4 – Tab 2.4, later on.

And Neustar opposes, similar to their last – the general comment. They do not believe it's ICANN's role to interfere with private negotiations between applicants that want to resolve a contention set.

So, as you can see that there are – it does not seem like anyone really supports the notion of banning all private resolution completely, while some support private – eliminating private resolution where there's a financial benefit to withdraw. It does seem that most of the groups do support adding additional options on how to resolve contention sets that fall short of prohibiting private auctions completely. So, I think it's sort of a trend we see there.

2.2.d.2. So, starting on Line 14, "Some Working Group members believe that a simple 'no private auction' rule could be circumvented because there are other mechanisms of private resolution that could provide a financial benefit." And so, if we just said no private auctions, are we really saying no – are we really banning – should we really be banning all forms of private resolution which would result in a financial benefit?

Again, I think the Registry Stakeholder Group, a similar position. Some do not want to interfere with the freedom of parties to resolve a dispute however they see fit. Others believe that any private resolution could be adopted and prohibited in the Ts and Cs. But again, I'm not sure – although we'll have to ask the registries that are on the call – did that mean also prohibiting joint ventures and other kinds of changes that would be a private resolution? Because I thought in subsequent comments the registries were in support of that. So, let me ask this question, if anyone from the registries is on, does it really mean banning all forms of private resolution, that those members supported?

Donna Austin: Jeff, it's Donna Austin.

Jeff Neuman: Yes, please, Donna.

Donna Austin: I don't know the answer to the question, but this could be an area where there was disagreement within the RySG. So, perhaps it's some members have one view and other members have another view. So, that – I don't know if that answers your question or not, but I think that might explain it.

Jeff Neuman: I think it could. I think it would be interesting to see – and maybe, Donna, this is something we can figure out from the overall context of the full Registry Stakeholder comments, as opposed to broken these down. So, we understand that there is not one

agreed position of the Stakeholder Group on private auctions. But does that mean that there's also a divergence – I guess maybe we'll find out when we look at the change requests – to all forms of private resolution, even from those that oppose the private auction? So, let's just keep note of that, and we'll look later on to those comments.

Okay. So, jumping to the BRG, again just restates its position on – "doesn't believe restrictions should be placed on parties to privately resolve their disputes however they see fit."

The ALAC does not favor banning all forms of private resolution, but does – "disapprove of private auctions and any private resolution that results in a financial benefit for a losing applicant to withdraw their application."

The IPC doesn't support any prohibition. They support increased mechanisms to resolve private disputes with change requests and things, but this does not support the notion of prohibiting all forms of private resolution by negotiation.

They also point to the notion that, "perhaps having a stronger legal rights objection would also help reduce the risk of a brand finding itself in a contention set with another applicant who may be financially motivated." That's an interesting parallel. I'm not sure we brought that up with the – in the group that's looking at objections. So, we might want to highlight that in blue, because it is an interesting new tie that we haven't seen.

And Neustar does not support the limits on private resolution.

A specific question was asked about random draw. And although previous comments addressed it – because previous comments addressed it, I'm not sure that we've seen any additional comments, other than the ones above. And the BRG comment here is really just a recitation of what was said above.

So, the hybrid, I'll say, solution that was proposed by a Working Group member was allowing certain forms of private resolution but not allowing others. And the example that was given was perhaps having ICANN approving the resolution and kind of enforcing the narrow financial benefit rule may be a good idea.

The ALAC supported the notion of allowing some forms of private resolution and not others. They're supportive of the concept of allowing people to make changes to their applications to address private negotiations in a contention set. And they strongly support the concept of allowing a new string to be selected, with certain provisos that we'll, I'm sure, go over or that we've gone over in other groups, but make sure that it's not subject to any name collision, doesn't put the name into another contention set, it's put out for public comment, objections can apply, etc. So, they do support that sort of hybrid approach.

The IPC also supports the option of allowing some forms of private resolution. And by broadening the scope of change requests they believe that that can be achieved. And also the notion of choosing a new string, again so long as it's not a name collision risk, it's out for public comment, and open for objections.

The Registry Stakeholder Group again had some members that disagree with the recommendation because those members believe that ICANN should not be involved in curtailing applicants' freedom to negotiate any solution that they want. Other members of

the Stakeholder Group do believe, though, as a public steward of the TLD asset it is appropriate for ICANN to manage this type of thing. And so, some members do support the prohibition of private auctions or those for financial benefit.

And then some members of the Stakeholder Group believe allowing parties to amend applications expands the number of options and will, therefore, reduce the number of contention sets that end up at private auction. So, as noted below, they have some serious concerns about gaming.

So, I'm hearing some beeping. Does anyone else hear that beeping?

Julie Hedlund:

I hear it, Jeff. I'm looking for the line.

Jeff Neuman:

Okay. Great. Thanks.

Neustar opposes, again in line with their previous comment. They don't support any notion of ICANN interfering in private negotiations. Neustar is – also does not support the notion of allowing a change of an applied-for string as a way to avoid a contention set.

And the BRG again does not support any restrictions on conducting private resolutions, including private auctions.

Questions or comments on those?

Okay. So, then the question comes – it says, okay, well, "Do you believe that issues with private resolution are equally problematic across the different types of...?" Oops. I think I skipped one. Sorry.

We're on Line 28. Sorry. I skipped one. Did not mean to do that. Line 28, 2.2.e.1, "Do you believe that private resolutions should be continued in the future?" And then, if so, should the funds – should we take some steps to make sure that the funds are utilized in some other way than distributing it out to the applicants?

So, the BRG does not believe that there should be any restrictions to private auctions. So, they support private resolution, going forward.

The ALAC does support private – certain forms of private resolution should be allowed to continue, but not others, as we talked about above. And then of course they lend support for their sealed-bid, modified Vickrey auctions. And so, that's expressed as a new idea here, though it's certainly mentioned several times in the mechanism of last resort.

Line 31, Neustar again doesn't see that any changes are needed. So, yes, private resolutions should apply in the future.

Registry Stakeholder Group does believe that – some members believe that private resolution should continue, as is, in the future. Others believe that it shouldn't, and they believe that private resolutions, including private auctions, should be prohibited. But if private resolution and auctions are allowed, then ICANN should conduct and publish an analysis of those activities, a legal analysis of those activities, and "all financial proceeds

should be used only to fund public interest initiatives as determined by the ICANN community."

If I could ask a question – again, it doesn't need to be answered on this call, but maybe one to take back – this is the first time I'm seeing a question on legal analysis. Is there some more background on that? Where is says, "ICANN must first conduct and publish a legal analysis of such activities." Is there some context for that, that I might have missed? And we won't put anyone on the spot. So, if we can just – I would be interested in getting some more context for that comment, if we can. I'll put that as an action item.

Okay. The Non-Commercial Stakeholder Group states that private auctions should not be continued in the future. They see no reason why applicants should make money for not getting a gTLD. And they don't believe any sort of private auction is fair for any type of gTLD.

Okay. Any questions or other questions or comments? I'll just note Justine in the chat has said a comment there on moving an ALAC – sorry – moving a BRG comment. So, we'll take that on.

Okay. Now, the next question, which I accidentally started reading a little bit earlier, which is that if they believe that there are issues with private resolution, does that issue apply across the board for all types of top-level domains? Or should it only be limited with certain types of TLDs?

The BRG does not believe there should be any restrictions on any private auctions for any group.

Neustar does not take a position on this one way or the other.

The ALAC does believe that it is equally problematic. Private resolution of private auctions are equally problematic in all types of TLDs. And so, their position still holds. However, they believe that, "contemplated private resolutions for different types of TLDs may need different attention. For example, for private resolution of geographic name contention sets, the involvement or input of government or public authorities and communities should be prioritized in determining whether that attempt at private resolution should be allowed."

Okay. The Non-Commercial Stakeholder Group, they believe that private auctions are always problematic. So, it doesn't matter which type of TLD it applies to.

The Registry Stakeholder Group again is split, in the sense of some members believe that – are not – they say "wary" of characterizing TLDs by type. They oppose only allowing applicants with certain business plans to use private resolution mechanisms and reiterate – they oppose the notion of different rules for different types of TLDs and restate their position of not having ICANN be in a position to interfere with private negotiations. But other members of the Stakeholder Group believe that private resolution is equally problematic amongst all the types of TLDs.

So, I would state the position of the Registry Stakeholder Group as disagreeing with the notion of having different rules across different types of TLDs. I don't think there's any

support for that. The split is really in whether private resolutions should be allowed or not, as opposed to whether there should be different rules.

Then, Line 6 – sorry – Line 40, which is the IPC, they support the ability of each party to reach private resolution and does not believe – does not agree that there were issues in the past. "However, the IPC considers that to the extent there may be concerns about one party applying for a particular TLD in the future with a view to losing it for financial gain, the possibility cannot be entirely eliminated and means to disincentivize this should not be considered in isolation." And then they restate the notion of a stronger legal rights objection may reduce the or mitigate the temptation of someone to apply with the sole intent of financially benefiting.

Any questions on that before we go to the next one? And just a reminder, this call is 90 minutes. So, I fully expect to take advantage of all that time.

Okay. 2.2.e.3. "Do you agree with many Working Group members who believe that prohibitions in the Applicant Guidebook Terms and Conditions and in the Registry Agreement are the best way to prevent private resolutions in the future?" So, this question basically is asking that if we do adopt a position that prohibits private resolution, is it – do we do it in the Terms and Conditions and the Registry Agreement? And if so, is it – are the remedies withdrawing the application, or if it's already – it's not discovered until later on, a forfeiture of the TLD? "Do you believe other mechanisms may be more effective?"

And so, we've got a lot of opinions on this one – a lot of comments on this one. The .IN Registry, NIXI, states that, "instead of banning private resolutions, prohibitions could be included in the Applicant Guidebook Terms and Conditions and in the Registry Agreement to the effect that participation in a private resolution, including private auction, where applicants obtain financial benefit from withdrawing their application would result in the cancellation of the application or forfeiture of the TLD." So, they agree with that. But they say that the suggestion of raising fees to discourage speculative applications is not a good mechanism to use. And I think you'll see that across the board, with the exception from the registrars' comment from earlier.

The ALAC agrees with the notion of having it in the Terms and Conditions and in the Registry Agreement, but they don't believe that increasing the application fees is the way to deter the applications with the intent to profit.

The Registry Stakeholder Group, again kind of split. They disagree with the recommendation limiting – some disagree with any limits on private resolution of contention sets. Others believe that a sealed-bid auction is the way to go, and that would eliminate the majority of contention sets at the beginning of the process.

Non-Commercial Stakeholder Group, BRG, IPC, and Neustar oppose the notion of raising fees or limits on private resolution.

Except the Non-Commercial Stakeholder Group does agree that there should be a ban against specifically private auctions where winners pay their fees not to ICANN but to other gTLD applicants. The NCSG, though, does not agree with raising fees as being a more effective solution. And for all the reasons that have previously been stated, they believe that some private resolution can be win-win, but we need to further consider that.

BRG does not believe there should be any restrictions, as they have previously stated.

Same thing, as previously stated, by the IPC and Neustar. Their positions have previously been stated.

Any comments or questions before we go to 2.2.e.4?

This one is asking whether – is a complete ban of private resolution the only type of solution? Or is it possible – is it impossible to prevent private resolutions and, therefore, we should allow it?

The NCSG just wants to make sure that private resolution is open and transparent and the terms and conditions are shared with the community in order to prevent private auctions which enrich only the losing applicants and not ICANN.

The ALAC supports gathering more data, opposes ban on all private resolutions, but does support the notion of banning applicants from receiving financial benefit. So, that's similar comment to before.

The Registry Stakeholder Group – and then I'll get to Sarah's comment, because it relates to the Registry Stakeholder Group – again split. Same position that some have taken, which is there shouldn't be any limits on how parties voluntarily resolve their contention sets. Others believe that as public assets – as the public steward of TLD assets, that ICANN should have some limits. And also take private resolution money if it's in a deficit situation, as long as there are safeguards in place.

Let me go to Sarah's comment. She answers, "Jeff, to give some color to the RySG comment around the request for ICANN to complete a legal analysis on private resolutions, I recall that it is around the discussion that collusive private auctions could violate civil and criminal laws. Sorry not to mention that earlier. Joined a bit later than expected." Okay. I gotcha. Is it just private auctions, Sarah? Or all kinds of private resolution?

Sarah: Hi, Jeff. I think – sorry. Can you hear me? I think it was – we were discussing it really more around private auctions versus private resolutions. But it could, in theory, apply to both.

Jeff Neuman: Okay. That's helpful. And I think that does give the context for the Stakeholder Group statement that was sort of missing. So, we'll make sure we put that in the notes.

Okay. Going back to Line 53, where the BRG, IPC, and Neustar restate their previous positions, which essentially is let private actors do what they do without ICANN interference. And if that's any – if that's an auction or other form of private resolution, so be it. So, I think again it's just restating some of the previous points.

And then the next question, Line 56, says, okay, well, if you do support the notion of allowing some forms of private resolution and not allowing others, how can you enforce that? How and what other – and who can enforce that? And what are the remedies?

So, the Non-Commercial Stakeholder Group says that there may be some private resolutions that are appropriate. So, the example they raise is working with a global south

applicant to team up, which could be win-win. But in all events, private resolutions should be open and transparent and terms and conditions shared with the community. Therefore, we can make sure that private auctions are not being used.

So, it doesn't really – other than posting everything allowing for the objections and comments, there's no additional comments on the "who" would be the determiner and how. So, I guess what they're saying is that more transparency should make issues stand out.

ALAC is saying it's hard to do on a one-size-fits-all. So, a case-by-case analysis, so long as it's transparent, should be utilized.

I think the Registry Stakeholder Group just reiterated its comments from above. Same thing with the BRG, the IPC, and with Neustar.

So, we're still left with the question of if we do go down this hybrid approach, who would be the enforcer of this and how.

Maxim is saying that, "I guess a boxing match between applicants could be a form of private resolution." I will not comment on that. I would certainly lose any of those contention sets, personally. But no other comment.

Okay. On to Line 63. This is a question, we're saying – this is on the notion of, well, if you raise the application fees, that, in theory, could deter applicants from applying with the intent of financially benefiting from withdrawing because the fees, in theory, would be too high to get into the game. And although there's not too much agreement on a lot of the other subjects, I think we could say that there seems to be, with the exception of the Registry Stakeholder Group – some members of the Registry Stakeholder Group; so it's not a unified position – with the exception of those members, there really was not much support with the IPC, BRG, Neustar, ALAC, NCSG that higher application fees would be a good idea.

But the IPC does state that, "if a higher application fee is introduced with the intent to be a deterrent, the IPC suggests offering discount fees to community and brand applicants and partial refunds to applicants who have strings delegated to them. The discounts or refunds could then be used in administering or running the TLD." So, the IPC's first position is they don't believe it will deter or it's a good idea. But if that is what ends up happening, then we should consider this other notion of discounts and/or refunds.

Christa Taylor says, "One of the thoughts that came up was that if it was ever disclosed, the winner would lose the TLD." Right. So, Christa, I think that's the remedy that came up and was asked about when we were talking about the applicant Terms and Conditions. If it was done during the application process and found out, they would have to withdraw the application. If it came up during the – after they already got the TLD, it could result in forfeiture.

People are typing.

The other comment in here, from Neustar, I think it's a little bit different from ones that we've read before. Neustar "supports maintaining the application fee of \$185,000, that raising the fee may deter applicants but it may have the unintended consequence of

reducing the overall pool of applicants, to the detriment of competition and innovation." So, it's against raising the fees, but it does – in line with what's being talked about I think in Sub-Group B, right? Christa, that's your group – it supports keeping the application fee what it was.

Christopher says, "On here, the fee for the first application should not be increased, but subsequent, additional applications could be on a fee increase to strongly discourage warehousing and portfolio registries." And I guess, Christopher, that would mean that if something like that were adopted, there would have to be some mechanism for those applicants to state which is their first priority, second priority, etc., to determine that.

Okay. I think we are done with the private resolution of contention sets. Are there any –? Christopher, please?

Christopher, I think you may be on mute, because we can't hear you.

Okay. Can we figure out –? Julie is typing. So, Christopher, let's figure out what the issue is.

And in the meantime, can we go to the next subject, which is the role of application comments.

Okay. So, I think what we'll do is we'll cover the general comments in here. This was the section in the Supplemental Initial Report that, while recognizing that the Applicant Guidebook had a role for a public comment period, it really – and other than saying that it could be used by evaluators, it really did not provide ample detail on how those comments were to be used, when the comment period would – well, it may have said when it should close, but it didn't close when it said it should close. And so, there's a whole bunch of questions around how do we use public comment in the future.

So, the GAC has a fairly lengthy comment in there about early warnings, and it's related to the public comment period and having a direct dialogue with applicants. So, I think it's a really – it's an interesting comment. I'm not sure it's 100% related to the public comment period, other than it's during that period usually – in the last round, where early warnings were issued or should have been issued. The GAC notes that the change – "if there's a change to likely operator of a gTLD, then there should be a notification and potential reevaluation, including public comment." So, it's an additional area where public comment should be included. And they do also in that last paragraph talk about having public comment for material changes.

The other general comments that was received was – oops. The ALAC supports some of the recommendations to "optimize the application comment period and for ICANN to be more explicit on how it uses the public comment period." And they are supportive of the idea of "limiting the comment period for CPEs to run parallel to the initial evaluation comment period," and think it's appropriate to "allow applicants an additional, but limited, period of seven days after the close of the 60-day public comment period to respond, if they want." So, they're supportive of that.

The BC is also supportive of allowing an applicant to respond, especially – they are also supportive of the notion of confirming the identity of a commenter. And finally, "a longer public comment period for community evaluations makes sense to allow for the

communities impacted to become aware of the application and provide comments, if appropriate." So, they're saying a longer period, but not necessarily indefinite period.

And the Registrar Stakeholder Group states that, "transparency is the key for public comments. And so, if the comments could be made public there should be transparency as to who is commenting, the identity of the commenter." And anonymous comments should not be permitted. "Furthermore, once a comment is received, the applicant should be permitted to respond."

So, I think there's uniform agreement on allowing a response. So, that's definitely a good thing.

You know what? I'm going to stop after the general comments, because we do have an agenda item talking about ICANN. So, this might be a good place to – after I take Jamie's question, we'll stop. So, Jamie, please?

Jamie Baxter:

Thanks, Jeff. Jamie Baxter, for the record. I think this is also a really good point to sort of review the whole concept of public comments. Because if you look at the 2012 Applicant Guidebook, there were basically two opportunities to provide input in the form of comment. One was the public comment period, which had a very definitive deadline. And then there was the objections process, where you could also, in a sense, formalize your comments as an objection. And that also had a very definitive deadline.

And I think it's just important for everybody to really understand that the game was changed in the process, extending this opportunity for further opposition to be submitted against community applicants simply because they were at the end of the evaluation process. I think only if you think that there should really be a "gotcha" opportunity to derail a community applicant would you think that it – that this issue doesn't need to get addressed.

So, I just want to sort of interject that as we start talking about public comments and how they impact applications, specifically community applications, who are and were clearly targeted during the 2012 round. Thanks.

Julie Hedlund:

Jeff, I'm not able to hear you.

Jeff Neuman:

Can you guys hear me now?

Julie Hedlund:

Yes, I can hear you now.

Jeff Neuman:

Okay. I don't know what happened there. Sorry.

Okay. So, why don't we – sorry about that. Why don't we – on March 4, we will continue the discussion on the comment application – role of application comments. That's our next call.

But let's turn quickly for the last few minutes on ICANN 64 in Kobe. You will note that the schedule, definitive schedule has come out. So, as we expected, the Subsequent Procedures PDP is going to be mostly on the first day, on the Saturday, with Work Track 5 being in the morning and the rest of the subject matter on Wednesday – I'm sorry – on

the afternoon on that Saturday, and then continuing on Wednesday afternoon. Sorry about that.

So, the rest of the group sessions are split between again Saturday afternoon and then on Wednesday afternoon. And we thought that was a good thing because we can take then the discussions that we have on the Saturday and see if anything – if that gives an indication of things that we should talk about on the Wednesday.

So, going back to Jim's point about making sure that we have materials up there, we will certainly have materials and an outline of the subjects that we intend to discuss at those sessions, but recognize that depending on how things evolve we may change the Wednesday session if anything comes up that we think we should devote additional time to.

So, the Work Track 5 will go into their subjects on their next call, which I believe is this week. And so, they can talk about their session.

On ours, on our call, I think what we may do is pick out some of the full group subjects that we need to make progress on, to continue some discussions on there. So, one of those, for example, is the notion of the close of an application round and the ramifications of defining a close to the round on things like refunds, on the start of a subsequent round, things like that. So, I think that's a good subject – it's an example of one of the subjects we'll likely cover with the full Working Group session in the afternoon. And we'll try to come up with ways to make it a productive section, maybe at first recapping the comments that we already have and where we are, so that we can move forward and not just have kind of an open, free-for-all discussion.

So, as leaders, we're going to talk about that more this week in our leadership meeting. We'll make sure we provide more details on the lists on that.

Okay. Any other questions on ICANN 64? I know that there are some conflicts, but I think as far as conflicts this meeting seems to be better than past ones. Yes, we have the EPDP that will – because it's so many sessions, I'm sure that there will be a lot of conflicts with that. But from the other – I think most of the other conflicts are with closed groups or ones that shouldn't hopefully be conflicts for too many people.

On the question, yes, there will be remote participation, as far as I understand. I don't think there's any changes to that. I believe the remote links will be put on the schedule and, if not, sent out to the full Working Group beforehand. And there is a time difference, obviously, depending on where you live. So, just make sure you take account of that.

Okay. Any other questions on ICANN 64?

All right. Any other business we should cover? Any other questions?

Julie has confirmed there will be remote participation, as usual. Great. And Cheryl has confirmed that she is double-booked, which is better than usual because usually you're triple- or quadruple-booked. So, I see that as a win.

Okay. Thanks, everyone. We will – we do have another meeting of the full group. Not next week, but on Monday, March 4. They'll post the time on here, and we'll send – probably has already sent out an invite. So, talk to everyone then.

Thank you, everyone.

Julie Hedlund:

Thanks, Jeff. All right. Today's meeting is adjourned, and you all can disconnect your lines. Have a good rest of your day or night. And an invite will be sent out shortly. Thank you.