

**ICANN
Transcription
New gTLD Subsequent Procedures Working Group
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Julie Bisland: Good morning, good afternoon and good evening to all. Welcome to the New gTLD Subsequent Procedures Working Group call on the 21st of May, 2018. In the interest of time today, there will be no roll call as we have quite a few participants on the call. If you happen to be only on the audio bridge today would you please let yourself be known now?

Cheryl Langdon-Orr: I'm only on audio at the moment. It's Cheryl. I'll join the room shortly.

Julie Bisland: Thank you, Cheryl. And as a reminder to all participants if you would 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 hand the meeting back over to Jeff Neuman. Please begin.

Jeff Neuman: Thank you very much. Welcome, everyone. I am just, for your information, FYI, I am at the INTA conference and I snuck into a conference room, hopefully they won't kick me out. If they do then hopefully someone will be able to take over fairly quickly.

But anyway, that said, I know it's been a busy couple weeks with people out for GDD Summit last week and the INTA conference, but it looks like we do have fairly decent attendance today so the agenda as was for the last couple

weeks, just to keep going on and reviewing the initial report. But before we do that, if I could just do a quick check to see if anyone has any updates to their statement of work? Okay, not seeing anyone.

And unfortunately we're still on WebEx so I will ask for others help and forgiveness if I miss people that are raising their hand or if there are things in the chat. But I will rely on Cheryl, when she logs in, and others, and ICANN staff to see if there's anyone in the queue.

So from what I understand, and I was not able to be on the last call, that we had left off, we had finished the applicant support in Section 1.5 so that being said, I think we will just start off right where we left which is 1.5.5, which is the last section of the full Section 1.5, which is a little bit different than the other sections, which this one deals with the applicant terms and conditions.

And for those of you that recall, this is the section that deals with the legal terms and conditions applicable to applicants. So these are the terms that govern the submission of the application up until the time in which an applicant either withdraws or signs an agreement for a contract. So this was really something I think that was added, for those of you that remember, fairly last minute. Sorry, sounded like someone wanted to speak?

Okay, so in this section there was really no policy guidance that was given on what applicants would agree to. There was certainly plenty of guidance on what a contract with registry operators would agree to but nothing really on what an applicant would agree to with respect to using the system, the ability of ICANN to accept or reject an application etcetera.

So what ICANN created was essentially what we call a clickwrap agreement, which applicants were forced to sign which in a lot of respects gives ICANN the discretion to accept or reject applications but also protects their liability as a nonprofit organization. As you can imagine there are lots of potential areas or pitfalls for ICANN accepting all of these applications.

And in going through the applicant terms and conditions, there were really only a couple of areas where the work track, which was Work Track 2, felt like there may need to be a couple of tweaks and some changes. So for example, one of the recommendations in Section 3 which basically states currently or which stated ICANN could deny any application for any reason, the work track believes that there should be an exception – or exceptions to that which is unless required under a specific law or ICANN Bylaws, ICANN should only permitted to reject an application if done so in accordance with the terms and conditions and – or sorry, of the Applicant Guidebook.

And in the event that an application is rejected, ICANN should be required to give an explanation and to cite the reason in the Guidebook for which the application was denied. This was viewed by a number of work track members as being important so that those that were denied, if they were, would fully understand the reasons why and to make sure that the reasons they were denied a TLD, or sorry, their application, was something that was actually mentioned in the Guidebook.

Two of the other recommendations include a revision to the Section 6 which currently some would call a covenant by the applicants that it would reach the terms and conditions, and because the work track was not the most comfortable with the current wording, there was a discussion that basically said that that as okay but only if there was an effective challenge and appeal mechanism that would allow an applicant to challenge the decision to reject an application based on substantive grounds, meaning that in the last round applicants were free to use the accountability measures to challenge ICANN's decision but in general at least at the time and even somewhat as the bylaws have been amended, there really wasn't a mechanism to challenge ICANN if they just plain, as some people said, got the decision wrong.

And so many of – many if not most, or almost all of the reconsideration requests were denied, simply because there was nothing that applicants could point to in the bylaws that allowed for the decision to reject an application to be overturned.

In addition, Section 14 – and then I'll get to questions, Section 14 allows ICANN a very general right to update the terms and conditions, which ICANN certainly took advantage of or sorry, it allows them to update the application with any updates at their sole discretion. And it did have some language in there to say that if there was a material impact I think was the language, on applicants that they had to consider that in their decision.

Here it's a little bit more, or at least the work track has – the work track believes or members of the work track believe that there should be more of a right of an applicant to withdraw if it wanted to and get a refund if there were changes to the terms and conditions or terms or changes to the application process that materially affected their ability or their business model for the proposed top level domain.

So those are the recommendations. I'm going to quickly look at the chat, see if there are any comments or questions. There's a hand up from Jim, so, Jim please.

Jim Prendergast: Yes, thanks Jeff. Jim Prendergast for the record. I think now we talked about a refund but I would sense that ICANN would argue, yes, refunds are possible and permitted under the current rules but I don't think there was ever the opportunity for a full refund and I think that's something that we talked about and I think we were pretty clear. So I haven't had a chance to go through the document ahead of time but as long as we capture the fact that, you know, the opportunity for a full refund if ICANN makes changes after application submission is captured here, I'm good with that. But I want to make sure that that full refund is an option that's available.

Jeff Neuman: Okay. Thanks, Jim. I think that you're right, we had this discussion maybe actually even with the full group in another section of this initial report so – it's synced up with that previous discussion and even at – we can always add it as well as a question of maybe if you look at Section E, which is things that we are seeking guidance – or sorry, feedback on, we can also put in a question there of, you know, under what conditions could – or would an applicant be entitled to a full refund to see if there are thoughts from the community on some guidelines that we can apply or ICANN could apply when an applicant seeks a full refund.

Kavouss Arasteh: Hello, do you hear me, please?

((Crosstalk))

Jeff Neuman: Yes, Kavouss and – but let me just check with Jim to see if that addresses his concern and then – okay, Jim says that would work. And then Kavouss, yes, please, you're in the queue.

Kavouss Arasteh: Yes, good afternoon, good morning, good evening. I am just on audio bridge (unintelligible) I don't have access to the system but audio bridge and listen to your discussion it is necessary I come in, otherwise I listen. Thank you.

Jeff Neuman: Okay, thank you Kavouss. We'll note you are here on audio. And also drawing to the next question, to Section E of this section it asks the question, you know, are there any other terms and conditions that others would recommend in the community that balances the right of ICANN to – or I should say balances ICANN's need for protecting itself as a nonprofit organization but also with the applicant's right to fair and equitable and transparent application process.

Are there any other thoughts or questions that anyone in the group can think of that we may have missed, with respect to terms and conditions or any other areas that we think we could provide more clarity on with respect to the

terms and conditions? I'll leave that for a second, take a look at the queue. And I'm not seeing any so that's good.

As I talked about on a couple calls ago, I'm not really going to go through the deliberation section on these calls but if you do find any issues on the deliberations either something that's inaccurately stated or some areas where we can provide more clarity, please do make sure that you send an email to us so that we can make sure to include it and go back through. We did as best we could to go through all of the transcripts and the presentations to make sure everything is included, but, you know, this is your opportunity to go through and make sure that we've captured everything.

Okay, I'm not seeing any questions or comments which is great, which means we can go onto the next section, which I believe is Section 1.6. So I will give – oh and it's already up there. Great. So this is a relatively short section in the Guidebook which deals with application processing. And really it deals with how to queue applications then they come in, meaning how – in what order does ICANN actually evaluate the applications and proceed with all of the other steps that are required before the application or up until the application becomes a registry and when it gets delegated.

So for those that – of you that remember, initially the only guidance that was given was in Guideline D, which did talk about a first come first serve processing schedule within the application would be implemented except if there were over 500 applications. That's what the Guidebook had added in. And so initially the thought was that if there were less than 500 applications, there would be a time stamp that was put on the application as it came into the system and the application would be reviewed or sorry, would be evaluated, in that order in which it came in.

As we all know, we got more than – almost four times as many applications and so there needed to be another system that was devised in order to process those applications. Initially ICANN created what was called

eventually Digital Archery, which was not fully defined in the Guidebook and was defined afterwards, after ICANN saw the number of applications and pretty much about I think it was close to a week before this process was supposed to begin ICANN was informed by a number of different parties that there were potential security issues with Digital Archery as well as mechanisms to game the system by, you know, either going to a server that was located as close as possible to ICANN's servers, or other mechanisms that certain parties were able to get better access than others.

So ICANN decided to scrap the Digital Archery and decided to do what was called a draw process. But that draw process, because it was in the state of California, required ICANN to get a license to operate that drawing, and which it was able to do, and after ICANN was able to get that license, it created a process whereby each applicant would pay an additional – if it wanted to participate in the drawing – would pay \$100 per application in order to participate in the priority draw.

And then ICANN's CEO, Fadi, also decided that he wanted to play an emphasis on internationalized domain names so there was a decision to put – to have a drawing first of internationalized domain names for which applicants elected to participate and purchase a ticket, then Drawing Number 2 would be non-internationalized domain names for which applicants purchased a ticket, Drawing 3 was internationalized domain names for which applicants did not purchase a ticket, and finally, the last drawing was of applicants for non-internationalized domain names that decided to not purchase a ticket.

Although that sounds fairly complicated, it was actually fairly well done in terms of there were – there was an event in California at a hotel in which ICANN was able to conduct the drawings and from a process standpoint was fairly smooth meaning there were, you know, not too many difficulties and there was, as far as I am aware, no complaints that were received from the operation of the drawing. So that said, the work track – and I believe this was

work track – if someone will help me as to which work track that was, I believe it was Work Track 3 or 1, I'm sorry if I forget which work track talked about this one.

And I'm sure someone will put it in the chat. That there were some discussion on these very issues and the first thing that was pretty clear from all of the work track members, and thank you, Christa, Work Track 1, was that we should not attempt to do something like Digital Archery again. So essentially what Digital Archery was called was a skill-based system. That is a term of art in – a legal term of art in California when someone wants to avoid something that's called a lottery. So it was clear that something like Digital Archery or creating something new for the purpose of developing a queue for applications was not in the best interest of the applicant or, frankly, the community.

So the recommendation also was made that ICANN to the extent possible, should again apply for a license in California to be able to conduct these types of priority drawings, and sorry, I'm just trying to scroll down a little bit, and also that there were other proposals -- I'm sorry, let me go back -- so ICANN should conduct – it should try to procure or secure a license and also giving an opportunity for applicants that wanted to be prioritized to choose the ability to buy a ticket in the draw, but those applicants who did not want to buy a ticket for this could also – you weren't forced to buy a ticket basically so that, you know, if you didn't want to buy a ticket you'd be processed after those that did but that you did not necessarily have to spend this extra money.

The one additional change as well is the work track discussed a proposal but did not come out one way or the other was that if an applicant has more than one application that they could have the ability to choose which application to assign each priority number. So in other words, you know, you had say a company like Donuts that applied for several hundred domains it was given a

particular priority number that was tied to the application as opposed to tied to the company.

So and forgive me if I'm wrong on which ones Donuts applied for, but let's say one of them was Guru and another one was Photo, let's say in the drawing Guru got number 500 but Photo got number 800, there was a discussion on whether Donuts or the company that had multiple applications could switch that around and say, you know what, I would rather have Guru – or sorry, Photo be number 500 and Guru be 800 to allow them to switch which application they wanted in which priority.

So that was something that was discussed and so the work track is seeking feedback on that as well as the – a proposal that ICANN be able to collect the money for this so-called tickets at the time that an applicant applies for the top level domain as opposed to a secondary process months after the applications are – the application fees are collected. There were a number of especially of corporations and larger entities that applied for top level domains that found it difficult to go back to their companies or their entities and ask for yet a second amount of money to devote to the new TLD application. So that's another proposal that was discussed.

And the last thing that was discussed was that all applications submitted in the next round, regardless of whether delegated or not, must have priority over applications submitted in any subsequent rounds. So if we do go through a process ultimately that says, for example, in 2020 we do the first round, and then you know, no matter what happens in 2022 we're going to do the next round, if there are still applications that have not been processed from the 2020 round, those will continue prior to the processing of any application in the next round.

So hopefully that made sense. Let me turn to the queue if there is any...

((Crosstalk))

Kavouss Arasteh: ...comment please...

((Crosstalk))

Kavouss Arasteh: Excuse me...

Jeff Neuman: Okay so before – okay, thanks, Kavouss. Let me just check to see if anyone else is in the queue as well and I'm not seeing any so let me go to Kavouss.

Kavouss Arasteh: Yes, sorry. This Digital Archery or any other system replaced that does it have assure us that there is no human intervention to establishing a date of receipt? We called them date of receipt between date of receipt is date of priority so the processing would be based on the date of receipt of the information. Is there any assurance that this existing system or new system would not have any human intervention? Question 1.

Question 2, whether there would be an acknowledgement sent automatically to the applicant that your application has been received with this category of priority or with this date and so on so forth? And thirdly, whether the whole picture would be available to everybody to look at what is on the processing queue in general, not only by his own but for others to have a clear picture of the entire situation.

And lastly, you said that an applicant which have several application might associate a priority with the applications that means that would be a self-identification priority. What about the case that several applications made and all of them by the applicant have in the top priority or that would not be accepted because priority would be established by certain criteria but not by the self-identification of priority. These are the question if it has (unintelligible) I have no problem, if it has not I just need some sort of clarification. And I thank you very much. I'm sorry because of all the (unintelligible) I have to be this one. Thank you.

Jeff Neuman: Yes, thanks Kavouss. So let me give the opportunity to Christa, if you are in an area that you can answer some of these, if not I can – or Sara, I can weigh in, but let me give the first opportunity to them. So, Christa or Sara, would you like to answer some of these? Christa is grabbing a headset so I'll start and Christa, please jump in if you think I have anything wrong.

So I'm going to start with the last question first, which was on some thoughts or questions on the discussion of whether applicants could choose which application they wanted to assign to which priority number they were given. At this point it is a proposal that some of the work track members discussed, so I think all of the questions that you raised are excellent questions for those submitting comments to address if in fact that is a mechanism that the community believes should be adopted. So I don't have any answers because I'm not sure that the community – or sorry, that the work track discussed those questions in as much detail as you've asked them.

On some of the other questions that you asked, I think the plan was all along to – if the proposal for a drawing is adopted for at least the next round, then while there may be human intervention in assembling the applications, because it's a drawing, a randomization of the applications, there's not expected to be human intervention in selecting the order in which those are drawn. So the hope is with a randomization process it would be done through some sort of automated system and not through human intervention.

And as far as informing applicants of the status, I believe in the last round – or sorry, in 2012, that as soon as the applications were drawn it was made public, one, because the ceremony or the drawing was actually live and put on the web, but also afterwards, the order in which each application was selected was put into the status – application status page on – at the time newgtlds.icann.org. So I think – I believe the work track assumed it would be done in a similar manner.

But Christa, is there anything you want to add to that?

Christa Taylor: Yes...

((Crosstalk))

Kavouss Arasteh: I have another question, yes. I had one of the question was not answered.

After all of these would it be possible that everyone knows that what is the situation, not only the applicant but those who have not yet applied, they have a clear picture of the situation? Who in fact (gaming) and where they are, what priority they have, give a picture of the processing for a transparency manner, that is the last question. Sorry was one of the question I raised, I'm very sorry that that was not replied. Thank you.

Jeff Neuman: Okay thanks, Kavouss. I'm going to Christa, yes. Please, Christa.

Christa Taylor: Sorry. It's Christa Taylor for the record. Just a little bit of insight – when I'm going back – like we didn't discuss it to that level of detail as Jeff was mentioning. But it kind of overlaps with some of the system issues with the questions there. So in the system part of it was to ensure that everything was properly tested and would work correctly and to ensure that there were no security issues surrounding any of that.

Whether or not – we didn't really get into, you know, was there some definitive list that would be different from the one – from the first round? We never really discussed anything around that to the best of my knowledge. And does anyone know the situation in the processing going forward, again, it's kind of tied to the same thing, there wasn't a definitive conversation on shall we create a new webpage or something like that that shows exactly like a red – some kind of methodology I guess that would show exactly where they're at. I think everyone probably expected that it would be similar to the first round that you could log in and see the application status as you were saying, Jeff. Thank you.

Jeff Neuman: Okay thanks, Christa. Just looking through the queue I don't see anyone else with their hand raised. And hopefully at some point soon we'll go to Adobe, which is a lot easier to see the queue. Okay, then I'll jump on and Christa started actually talking about it, which are the questions that the work track or the working group is seeking feedback on. One of them, the first one, is and it goes back to a topic we discussed several weeks ago, which is if there is a first come first serve process after this next application window, and we're not saying there is or – but it's just for the possibility since that's out for comment, how would ICANN implement that system in terms of application processing?

The next question is really an important one, so the CEO, Fadi, decided at the time in 2012, – yes, 2012, that internationalized domain name applications should get priority over all others in terms of this drawing. That was not a policy decision, that was not even a topic that was discussed by the community. But it seemed to be at the time something that the community seemed okay with given the fact that there were no generic internationalized domain top level domains at the time. But now, we're in a different position. We've seen what has happened in the world with internationalized domain names at the top level for better, you know, the good, the bad and in between.

So the question is, you know, should we consider for the next round doing that type of priority? Or should we just throw everything into the same pile for the processing of applications? And if we should prioritize or if there's a belief that there should be a priority, should we – is there any evidence that processing internationalized domain names met the stated goals in the 2012 round? We're not answering that on this call, it's a question for – out for comment.

And then also, ICANN was able to get a license in the last round for doing a randomization process, but what if they're not able to get a license this next time around? So if they can't do a random drawing and we don't want them to

do a first come first serve for a number of reasons we discussed on many occasions, how else could ICANN process the – those applications? So we're hoping to get some good comments in that.

And finally, not for discussion on the substance here, but there has been a discussion that some types of applications, whether they be brands or geos or, you know, whatever, should get priority over others in processing and so we're asking a general question to the community whether they believe that there are certain types of applications that should be processed before others, if so, why? And so hopefully we'll get some good feedback on that.

All of that said, are there any other questions that need clarification or questions that we've missed? I'll take a second to just go through. Okay, I'm not seeing anyone with their hands in the queue which is great, that means that we've asked the appropriate questions so that mean we can jump ahead to Section 1 point – what's the next one, someone remind me, I think 1.6, sorry, 1.10 I believe is the next one that we sent out. Great, cool, ICANN staff is way ahead of me.

So Section 1.10 deals with contracting. And although in the table it says 1.11.1 and 1.11.2, it should say 1.10.1 and 1.10.2. This section deals with both the standard base Registry Agreement as well as the – it's called registrar discrimination or sorry, nondiscrimination or registry registrar separation, as well as a topic on standardization, which are two very different things. Registrar nondiscrimination some have called vertical integration but the standardization is a topic that registrars have brought up on things like should each of the registry registrar agreements look somewhat similar? Are there certain things that would make life easier for registrars if registries did in a standard way?

So those are in general the topics under this Section 1.10. and these were issues that were addressed in Work Track 2. So the first section on the base Registry Agreement, the policy that guided the 2012 round were – there were

actually four recommendations and a couple of guidelines, implementation guidelines that governed the Registry Agreement. The first one dealt with saying that applicants should know when they apply at the very beginning what the contract says and that the term of the agreement must be of a – what's called commercially reasonable length and that there must be an expectation that if the registry is doing its job and that they can have that contract renewed and finally that all registries must adopt all existing and future consensus policies.

Those were the recommendations, the policy recommendations. And then the guidelines that were attached were that ICANN should take a consistent approach to establishing the registry fees. So these are the fees paid to ICANN every year, that's what we're talking about right now, as well as what was later called the TMCH fee, not the fees that they pay to apply. And then finally implementation guideline J was that the contract should also provide for a certain amount of flexibility so that registries could adapt as well as ICANN could adapt to a changing marketplace, and also allow for innovative business models.

So how was that implemented? In 2012 in the Guidebook there was a base – single base agreement that was attached to that appendix, I think it was Appendix 5 if I believe, if I'm right, and the base Registry Agreement contained a mostly the same agreement – well it was the same agreement that was applicable to everyone regardless of who they were and what they applied for meaning regardless of whether it was a community, a brand, a geo or any other type of top level domain with one exception which was that if the applicant was a – a government, either national or local government, or an international governmental organization, that there were several sections where there was an alternate that could be adopted by that government which was much more in line with the national law of those governments.

And so there were several applications that were applied for by governments and got to take advantage of those alternate clauses. Then attached to those

was a – a number of what was called specifications, there were initially 12 specifications but then there was a 13th that was added for brands later on. Those specifications were much more detailed in terms of things like public interest commitments, which were Specification 11. Specification 12 was on communities, and then a number of other specifications that were common amongst all applicants, things like what is the format of Whois, what are the SLAs, the – sorry, the service level agreements? What are the escrow agreements?

Now some of those have been thrown a little bit into flux in the last week or so with the temporary specification and GDPR but putting all of that aside for the moment, the question that the work track tackled or the questions, were things like should there be different forms of Registry Agreements for different types of top level domains? Should there be – are there ways to introduce more flexibility to innovative registries that come forward? Are there changes that are being recommended for public interest commitments? That was added after the fact, that was not something that was contemplated prior to the Applicant Guidebook coming out. That was something that came partially as a result of GAC early warnings.

And so there are – the work track discussed the role of public interest commitments. And at this point the only recommendations that the work track are considering or really discussed was that the original recommendations were right, that they believe that the contract should be available to all applicants up front, that it should be consistently applied, that there should be a reasonable length of the contract, that there should be some expectation of renewal, etcetera.

But the group then also discussed that there should be a clearer structured and efficient method for obtaining exemptions to certain requirements of the Registry Agreement which allows ICANN to consider unique aspects of registry operators, the strings, as well as the ability to accommodate a rapidly changing marketplace.

So there were a number of registries that tried to – or that had wanted to negotiate specific provisions in the Registry Agreement during the – I guess it's after – I guess when an application was approved and in the contracting phase, but ICANN pretty much rejected all of those citing that all of the agreements needed to be pretty much the same in order for them to be able to enforce the agreements and for a number of other reasons.

And so the work track discussed that there should be abilities, if there are innovative or different types of business models – and I use the term “business models” not as a commercial entity but as an operating model, if you will, whether for profit or not for profit if there's something different that the applicant registry wants to do but it may require changes to the agreement, ICANN should have a process for actually dealing with those different types of registries in a manner that allows for some form of flexibility.

Most of this then are reflected in the questions that we're seeking feedback on. So the first obvious question is, if there isn't an obligation to treat all registries equitably, meaning, you know, that it shouldn't discriminate in favor of one over others, how do you balance that with what we've just talked about which is the need for some flexibility? So what is the best way to have flexibility but also not be in a position where you're favoring one registry over another? That's a very difficult balance, and we all recognize that, but there needs to be – or there should be mechanisms to account for that.

And, you know, if there are exemptions that are to be granted, you know, what are potential justifications for ICANN granting those exceptions? And finally, not finally but another question, second question is, that there was a report – the public interest commitments standing panel evaluation report dated March 17, 2017, in a case of Adobe and others, that brought a challenge against an entity called (Fegistry), which was operated the dotFeedback registry, had an interesting statement in there that was pointed out in the comments that were received to CC2, Community Comment 2,

which was, “The panel noted that the PIC, Section 3A of Specification 11, imposed no obligations on a respondent as the registry operator itself to avoid fraudulent and deceptive practices.”

And the panel found that the agreement had no provision that said that the respondent, the registry, was not to engage in fraudulent and deceptive practices. And so what happened was in that case while the panel said that there were potentially some actions of the registry that seemed to be fraudulent, there was no remedy for the challenger against the fraud that was alleged to have been committed under the contract. And so the question to the community is, should we put a provision in the Registry Agreement or something whereby the registry operator agrees not to engage in fraudulent or deceptive practices? And if so, or if not, please explain.

So let me turn to the queue and to the chat to see if there are any questions or comments on this? Rubens says, “ICANN already sent the agreement in the government version for gov. applicants. There was no need to ask specifically for it.” Okay, so this is in reference to a comment I made that said that applicants could ask for – if they were governmental organizations they could ask for this alternate clause. And I think what Rubens is saying that the process actually was that to the extent that ICANN knew that the applicant was a government they were automatically given these alternate sections, so thank you for the correction.

Are there any questions on the section itself, the recommendations or on any additional questions we should be asking the community? I’ll pause for a minute.

Javier Rúa-Jovet: Jeff, this is Javier, can you hear me? Javier Rúa.

Jeff Neuman: Yes, thank you. Javier, please go ahead.

Javier Rúa-Jovet: Yes, no just know that I've been on the call and bridge and just for attendance purposes, I'm just listening. Thanks.

Jeff Neuman: Oh okay great. Thanks, Javier, we will note that for the record. Are there any other comments or questions on this particular section? Again, I recognize we're not going through the deliberations so homework for everyone is to make sure you go through the deliberation section, make sure it accurately reflects the discussions that we've had on this topic and if not, to make suggestions on any changes to both clarify the section but also to include anything that we may have missed. Okay, great.

So let's move onto the next section which is section – actually I should cover for one second, there is a – in Section G, are there any dependencies, it says for that last section on the Registry Agreement, one of the dependencies that the work track noted was that there may need to be changes to the base Registry Agreement based on the activities of the Rights Protection Mechanism PDP, for example, the policy development process on international – sorry, international governmental organizations, and also from recommendations that may come out of the CCT Review Team final report.

So and of course, sorry, I missed this, but of course Work Track 5 on geographic names. So we are watching all of those activities and to the extent that they result in consensus recommendations there is a recognition that the Registry Agreement and/or some of the specifications may have to change to implement those results. So if there are any other dependencies that the community can think of or that you all can think of please let us know by email so we can make sure that that's included.

Okay, moving onto registrar nondiscrimination, and registry registrar standardization, what is the relevant policy on this one? Well, in Recommendation 19, which was the only one that was included initially in the original policy it stated that registries must use only ICANN accredited

registrars in registering domain names and that registries may not discriminate amongst accredited registrars.

And for those of you that may have a background or have been involved in the ICANN world for a long time, there certainly were – this was certainly a heavy focus in the early days of ICANN especially when registrars were being – the whole notion of having competition within the registrar marketplace, this was certainly a very important topic back in the late 90s, early 2000s, but also proved to be a very large topic of discussion for the new round of top level domains in a separate policy development process that was launched in 2010 called a PDP on Vertical Integration.

Actually there's a number of people on this – this particular working group that were involved in that policy development process. It was a very difficult policy development process because there were very strong views on both ends of the spectrum. There were a number of parties that did not think registries and registrars should be integrated at all and there were others that felt of course that they should be completely integrated. And the policy development process actually did not produce any consensus based results.

So what happened was that the Board, the ICANN Board, ended up deciding on its own, with feedback from the community of course, that it would allow vertical integration, meaning registries to be registrars and registrars to be registries, provided that they agree to a specific code of conduct and also agree to things like nondiscrimination amongst registrars, and provisions relating to keeping certain data confidential and making sure that there was some form of separation between the registry and registrar units even if they were both under the same entity.

So how was all of that implemented? In 2012, as we talked about, there was a section in the base Registry Agreement on nondiscrimination between registrars and more specifically there was a Specification 9, called the code of conduct, which required that registries that used accredited – that – sorry,

required registries to use accredited registrars but also if they owned a registrar to maintain separate books and records, and also to make sure that data was not shared – or certain types of data was not shared between the registry and the registrar units.

There were exceptions to that code of conduct requirement. One that's in Specification 9 already itself, which says that if there are – if all of the registrations are registered to the entity itself that there were certain exemptions to the code of conduct. And then of course in Specification 13, which was added later, states that for brands, that if they were in fact complying with Specification 13, that they did not have to use all accredited ICANN registrars, they could limit it to one, two or three registrars should they choose to do so and that certain other requirements were not required because of the unique nature of those top level domains.

So what are the recommendations, if we can turn to the next page. Great, thank you. That the work track discussed that Recommendation 19 should be revised to be made current with the current environment meaning that registries must only use ICANN accredited registrars in registering domain names, and may not discriminate among such accredited registrars, and adding this language, “unless an exemption to the registry code of conduct is granted,” so that would be a change to the policy.

More specifically dealing with a number of questions that the work track is seeking feedback on, the first one is in response to feedback that we got in Community Comment Number 2, is that work track members have suggested that if dotBrand registries, as well as any registry operator granted an exemption from the code of conduct such as set forth in Specification 9, should not only be able to limit the number of registrars that they have to use, but also should have the ability to receive a complete exemption from using any ICANN accredited registrars at all in the operation of their top level domain by making them equally exempt from Section 2.9 of the Registry Agreement.

What that means essentially is that a registrar or someone that the brand wanted to use to distribute domains did not have to go through the formal ICANN accreditation process. And so that was a proposal that was discussed, that was not in any way adopted or even, you know, there was not even a testing of whether a majority of the work track supported it, it was just an idea that was floated, and then if something like that were to be adopted, a number of questions were – are being presented.

First is, should a complete exemption be available to these registries? And if so or if not, please explain. If complete exemptions are granted, are there any obligations that should be imposed on brand registries to ensure that any obligations or registrant protections normally found in the accreditation agreement that should also be included in the dotBrand Registry Agreement if they elect not to use any ICANN accredited registrars?

What that means is that there are a number of provisions in the accreditation agreement right now that ICANN – ICANN and the community believe are in there to protect registrants and if a brand registry, for example, is not required to use an ICANN accredited registrar, are there any provisions that should be borrowed from the accreditation agreement that should be put into the dotBrand specification that should make sure that registrants are still protected considering however, the nature of that top level domain which is – that all registrants are actually the registry itself. Hopefully that made sense?

And then the next question is that some work track members have suggested that input from the Registrar Stakeholder Group as well as the Brand Registry Group on this topic would benefit further deliberations and any final recommendations but also makes note that feedback from any parties will be considered fully and contribute to discussions.

So while the work track is saying it's particularly helpful if we get feedback from the Registrars and the Brand Registry Group we're also – we're not

favoring that – those recommendations over others, we're just making it clear that we really – if nothing else we would like to get comments from those two groups. Just looking for any comments or questions.

Okay, moving onto the next questions that's being asked, are there any other situations where exemptions to the code of conduct should be available? So as we said, it's available now for brand registries and for registries that are – that limit their registries to either their own entity or their affiliates but are there any other types of models that we can think of where exemptions should be available or in line with a previous recommendation of ICANN being flexible what would be the process for a registry to seek an exemption for some sort of business model perhaps or – and again I use business model not in a commercial sense but in an operating sense.

Are there any potential other models where exemptions should be – or at least ICANN should have the flexibility to grant exemptions? So looking at the chat, there was a comment from Kristina which says that, "For those of us that weren't on this work track, how did the work track propose to address the problem faced by at least one registry operator namely, that no registrars were willing to sign its Registry Registrar Agreement? It's my understanding that the situation has been resolved but it raises the potential for anti-competitive behavior by registrars that don't like a particular registry operator's business model.

Okay, so let me see is Michael Fleming on the call or Sofia to give them an opportunity to answer that? I do not see them on the list of attendees. So Michael, if you're on audio only, just jump in. If not my response to that is I don't believe there were very specific conversations on that particular registry operator. I know that there were discussions in general of what if there are not registries to – sorry – registrars willing to sell a – sorry, not even sell – to register domains for a registry, there were certainly discussions of those registries being able to seek an exemption but perhaps we can add a question to address that.

So, Kristina, let us take that back and see if we can put that into a question that's addresses exactly the issue that you've mentioned. Anyone else with any comments or questions on that?

Steve Chan: Hi, Jeff. This is Steve from staff. You actually have a question or a hand from Greg Shatan.

Jeff Neuman: Thanks, Steve. Thanks for helping me out. Greg, please.

Greg Shatan: Thanks. It's Greg Shatan for the record just wondering whether there's any consideration given to considering these – rather than being exemptions in all cases to at least in some cases such as dotBrands being – making it the registry registrar code of conduct inapplicable, to the situation, I ask that primarily because I believe there's some provisions in the Registrar Stakeholder Group charter that disfavors those who have sought exemptions from the registrar code of conduct and I think, you know, if it's phrased that way it does seem like you're trying to get out from under something that's intended to protect registrars as well as registrants.

So it might be less prejudicial to have this – to have at least certain circumstances be considered to be a case that the registrar code of conduct does not apply rather than the idea that an exemption has been sought and granted. Thank you.

Jeff Neuman: Thanks, Greg. That's a great comment. I don't think – I don't believe that the work track even thought of any kind of connection between the terms that we were using and the registrar – the proposed changes to the Registrar charter but that's a very good question and probably something that we could put in as a question but I don't believe that that was – the connection – I don't believe anyone made the connection within the work track at that time.

So I think that that's a good point and we can try to figure out how to incorporate using the term "doesn't apply" as opposed to "exemption" although I would guess that some registrars would then – I think the registrars used the term "exemption" because that was the term that's currently used in the – in the agreement itself. So it would be – I'm sure something the registrars might want to comment on as well, though I don't have any knowledge of that.

Okay, thanks, Steve, for pointing out Greg's comment. Is there anyone else that's in the queue? All right, great, we're moving right along here. Why don't we go to Section 1 point – I think 11 is the next one. Awesome. Okay, this one is a fairly short section in that although by no means that is not a sign of importance but this section deals with registry system testing or pre delegation testing.

And so there are a couple of recommendations that dealt with pre delegation testing in some sort of way which basically said in Recommendations 7 and Recommendations 8 which said that applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that applicant sets out and Recommendation 8, applicants must be able to demonstrate their financial and organizational operational capability. So how was that implemented? In 2012, there was a – something called pre delegation testing, referred to as PDT, which was to verify that the applicant was able to meet certain operational criteria that were described in Module 2 of the Guidebook and an entity based – dotSE country code operator was selected by ICANN to be the entity to perform the pre delegation testing for every individual top level domain prior to the delegation.

This consisted both of some operational tests as well as requiring some self-certifications from the registry operator although most of them, well it was mostly the backend registry service provider that was the entity that was making those certifications through the registry operator. And, you know, because it was every – it was done on a per TLD basis, as opposed to a per

entity basis, there were a number of backend registry service providers that went through the same exact pre delegation testing hundreds of times.

So it meant that if there was an applicant that applied for 100 top level domains and they used the same registry service provider, that same exact test, those same exact certifications were done 100 different times. And in addition, I should say, ICANN was also, as you can expect, ICANN and the tester were, you know, had limited resources and so they could only, at least at the beginning, test up to 20 top level domains per week, although they were able to increase that to test up to 100 top level domains. And what happened was that resulted in some delays in delegations because of this resource constraint.

Given all of that, I'm sorry, I missed something, that as well, there were beta testing programs and pilot testing programs so that backend registry service providers could help the pre delegation testing provider refine its testing procedures prior to actually rolling out the official pre delegation testing. And then finally, though it wasn't the subject of this working group, we also noted that the pre delegation testing was also used post delegation for any registries that wanted approval from ICANN to change backend providers. You know, it's still being used today.

So if a company gets acquired or if a top level domains gets acquired and then switched to a new registry service provider, those same tests are done on the new or sometimes called gaining registry service – or registry operator registry service provider.

So one of the recommendations or preliminary recommendations, the first thing is that the – we use the term RST, registry system testing, should be split between overall RFP matters and specific application TLD testing, that a number of the self-certification requirements were at least to Work Track 4, which discussed this, seemed to not be – or shouldn't be required, that service level agreement monitoring should be relied upon for – instead of

some of the testing that was done, and that the internationalized domain name testing that was performed were – should be limited and that the – that additional tests should be included on DNS SEC contingencies, things like key rollover, zone resigning.

Finally – or I shouldn't say finally – but also that applicants must be – that you would change the language from the policy to actually say, "Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that an applicant sets out either by submitting it to an evaluation at application time or agreeing to use a previously approved infrastructure." And this ties to the whole notion of the RSP preapproval program that we discussed in – I can't remember the section number now but I want to say it was something Section 1.2 or 1.4, that we discussed a while ago.

Moving on to the questions that we're seeking feedback on, there were, aside from the one typo there, should say ICANN as opposed CANNs, so the technical services group provided a whole bunch of recommendations, which are included in the footnote to the work track on what it believed were improvements that could be made to testing and to service level monitoring. And although the work track discussed the letter, it did not reach any consensus on those recommendations and felt that it was appropriate to put that letter out for comment.

And so there were specifically a couple of the recommendations, Number 1, 2, 3, 4, 6, 7, 8 in particular that we are seeking comment on. So if you could go to the next page, ICANN? And so there were other recommendations including Number 4 from this technical letter that – sorry, letter from the technical services group that was received by Work Track 4 that are discussed in accordance with the RSP pre-approval program which is Section 1.2.6 of the report.

Is there anyone that has any questions on this section or the questions we asked or questions that we should be asking?

Kavouss Arasteh: Yes, I have a question, yes.

Jeff Neuman: Great. And then I'll line up Rubens to answer hopefully if you're in a position to answer, Rubens. Please, Kavouss.

Kavouss Arasteh: Yes, my question is that perhaps the reply different part of your explanation, the Recommendations 7 and 8 talk about the demonstrate the capability and so on so forth, my question was the modality of that demonstration. You refer to that giving the plan (unintelligible) so on so forth, who decides whether that is not a claim but that reflects the reality? That is Question 1. Question 2, has there been any occasion during the 2012 that any of these demonstrations of capability have not been accepted or rejected or if that is the case, whether the applicant will be given the opportunity to provide further details or further argument proving its capability?

These are the question that I raised, if I remember, at the level of the work track but since I was not able to follow up the discussion at the subsequent meeting, I didn't know whether it has been pursued or not. So modality of the demonstration and the procedure by which this demonstration of capabilities is verified, and possibility that applicant if is not accepted will have the opportunity to further provide argument, and the last one, whether there has been any case that the demonstration of this capability was rejected definitively. Thank you.

Jeff Neuman: Thanks, Kavouss. Rubens, are you or Cheryl in a position to answer those questions?

Rubens Kuhl: I believe I am, Jeff.

Jeff Neuman: Great, yes.

Rubens Kuhl: Can you hear me?

Jeff Neuman: Thank you. Yes, great we can hear you. Thanks.

Rubens Kuhl: From the end, I don't believe there was any registry that failed pre delegation testing definitely meaning that all eventually passed the test. But there are some occasions where ICANN said oh, you need to change these or that to pass the test. So there were some – there was some benefit of that – of those tests being run. The tests – the tests were a mixture of some self-certification where applicants were asked some questions that would need to send text responses and those responses were evaluated but not verified, and some actual tests. There was some actual live tests which were done by the registry system testing system and that made some queries to the registry infrastructure and those were evaluated.

So what were (unintelligible) suggested is to focus more on the actual live tests than on the self-certification. We didn't close the road for any type of self-certification, if someone makes (unintelligible) guidance that the more practical (unintelligible) with more interest for assuring capabilities of the registries then the self-certification.

On the modality, it was ICANN that determined what was the profile of the test, I believe ICANN has consulted some applicants to see if (unintelligible) part of the pilot program, but it was eventually a staff decision of what was the ruler, what was the ruler that registries have to jump, you need to get this far, this was mostly a staff decision. And none of Work Track 4 recommendations is suggesting us to change that. Thanks.

Jeff Neuman: Thanks, Rubens. Kavouss, that hopefully answers your questions. I also would encourage – oh, I'm sorry, go on.

Kavouss Arasteh: Yes, I'm sorry. Thank you for the reply but I think it was not completely address the question but I can't ask more because the answer was very, very general without going to specific answer to specific questions that the one

modality of a demonstration. Second, who checked this demonstration? And three, if the demonstration is a self-declaration or there are ways and means to see whether that is a simple claim or that reflect the reality and four, room for further arguments? Some answer was given, I thank the author very, very much but not to get – I leave it to you, Jeff, to see to what extent that could be further clarified. Thank you.

Jeff Neuman: Yes, thanks, Kavouss. And I'll also note there is some good discussion in the deliberation section on the SLA monitoring so service level monitoring and, you know, how emphasis is put on later monitoring to prove or disprove I guess but whether those certifications initially were correct. So there's certainly – I would encourage reading that section and if there are questions or clarifications from that or like you said, Kavouss, things that contributions you may have made that are not included please we'll look for it as well but please make sure you provide that in email.

Is there anyone else that's in the queue for this particular section? And if I could ask ICANN to just – staff to just turn the page to go to dependencies? Yes, thank you. So in Section G I would just note that there are two dependencies that are indicated for this section. One is of course the RSP preapproval program which is discussed in Section 1.2.6, which would if approved be a testing of registry operators – sorry, registry services providers prior to the opening up of the round and so any comments on the testing would apply to anyone that's preapproved as well.

And then finally, there is a reference with a footnote to a discussion of how ICANN's service level agreement monitoring has evolved over the past several years, so those are other dependencies on this particular section.

Great. I am very pleased with the progress we have made on this call. I think we've gone through a number of sections. There still are several sections that are out there that we will address on the next call as well as some new sections that will likely come out this week. So please continue to make

comments on email and let's continue this great progress so that we can get the initial report out for comment. Let me ask Cheryl, do you have any comments that you want to make?

Cheryl Langdon-Orr: No, Jeff, I'm like you, delighted. Cheryl for the record, by the way. I'm delighted with the progress we've made through these sections today. And just a reminder I suppose of the homework as you go through in particular the deliberations section of any of the parts we covered today, in particular 1.6, 1.10 and 1.11 but I would suspect mainly 1.6. If you've got any suggestions on better text for us to consider please send those to the email list. We did capture a couple of typos, particularly in this last section, and we've also noted a couple of additional questions that we need to create some text around as well so other than that, Jeff, I think we're – I'm very pleased with the progress we've made today.

Jeff Neuman: Great. Thanks, everyone. Fantastic meeting and look on your schedules for the next call and I look forward to talking to everyone next week. Thank you, everyone. We can end the meeting.

Julie Bisland: Thanks, Jeff. Again, the meeting has been adjourned. Operator, please stop the recordings and disconnect all remaining lines. Have a great day, everyone.

END