

**ICANN Transcription
New gTLD Subsequent Procedures WG Call
Monday 02 May 2016 at 2200 UTC**

Note: The following is the output of transcribing from an audio recording of New gTLD Subsequent Procedures WG call on the Monday 02 May 2016 at 22:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

The audio is also available at:

<http://audio.icann.org/gnso/gnso-new-gtld-subsequent-02may16-en.mp3>

Coordinator: The recordings have started.

Woman: Great. Thank you (Sam). Good morning, good afternoon, good evening. Welcome to the new gTLD Subsequent Procedures Working Group call on the 2nd of May 2016 at 2200 UTC. In the interest of time today there will be no roll call as we have quite a few participants. Attendance will be taken via the Adobe Connect room. If you're only on the audio bridge could you please let yourself be known now.

All right thank you. I'd like to remind you all to please state your name before speaking for transcription purposes. Also please keep your phones and microphones on mute when not speaking to avoid any background noise. Steve I'd like to turn the call back over to you. Thank you.

Steve Coates: Thank you. This is Steve Coates. I'll be leading the call today. And let's go right to the agenda review. So number one, on the agenda, agenda review. number two, roll call and any updates to the statements of interest. Number three, review of action items. Number four, subject discussion 4.2.7 application assessment rounds continued from our last call to then number

five, 4.2.2 predictability continued from our last call. Number six, subject discussion 4.2.4 community engagement and then finally subject discussion assuming we get to it 4.216 application submission limits.

I will start with a roll call. We have everyone listed in the participants recorded as being present as well as anyone who chimed in as calling in. Number two any updates to the statements of interest if you have made any job changes, any interest changes that you need to update to your statement of interest to the GNSO please do so. Number three, review of action items. Jeff I think you were taking this one on. Am I remembering correctly? Apologies.

Jeff Neuman: Sure I can, totally fine. Are we going to display that or - there we go. Okay this is Jeff Neuman. So for those of you that have not seen this -- and I know we introduced this topic last week -- but this is a really good chart where we try to capture each of the action items from the previous calls. And you'll see it goes all the way back -- I don't know if everyone's got scroll control but it goes all the way back to the beginning. And it's got -- this one's not color-coded but it is color-coded on the actual page. So you can see the items that are closed, the items that are still under consideration and who specifically is assigned those tasks. I'm actually going to flip on mine to the colored ones because I think it's easier to monitor.

So you'll see for example on the colored one I know you can't see it now but I saw the wiki and it's under the working group documents. It's letter E as you can see. And so if it's complete its green and you can see that most of them are complete. There's a few of them that staff still has to complete. One is getting a Word version of the applicant guidebook. We are still looking at unless Steve you have an update on -- Steve Chan you have an update we have -- we're still looking at the geographic distribution to determine whether these are the most appropriate times for the call. So that's still something we need to finish up and hopefully set a deadline. Let's see if we can do this by the next call.

We have already started our action on 21. We started our coordination with the leadership of the CC TRT and have set a call every few weeks. And we have established as of the last call Avri I believe is leading the volunteer drafting team for questions. I don't think there's been a call yet out for actually having a first meeting unless Avri can tell me otherwise. And then each of the subjects that we've been reviewing is listed as the last item.

So each of the subjects the overall questions have their own Google doc page where we are typing in things like the pros and cons which we'll talk more about today with the predictability. And each of the other subject matters gets its own page. So I think it's a really good asset. I think everyone should go to that page to see where we are and what still needs to be done. If we missed something for whatever reason please let us know and we'll make sure it's added to the list. So I think that's it unless there's any questions.
Avri?

Avri Doria: Yes hi. Just to answer your question, no. With me coming to Geneva this week I did not start anything on the drafting. I did want to ask Steve we had talked somewhat about the timing of the call. And so I was wondering if yes especially now that I have to be in Europe and happen to be experiencing the lovely timing I was wondering, you know, how it was going in the time search just to let people know?

Steve Chan: Thanks Avri, thanks Jeff. This is Steve Chan from ICANN staff. So in regard to the timing of the call staff had performed some geographic or some analysis of geographical dispersion. We had actually done this prior to even scheduling any of the calls. And so what we thought this point is that the geographical dispersion really hasn't changed much. And what we see is actually about 90% of the membership has identified the Americas and EMEA or the European Middle East Africa as their preferred time zones. So realizing that the time can be challenging like actually this one in particular is challenging for Europe as Avri noted. And then the 1600 time is challenging for the Asia-Pacific.

Carlton can you hear me better now? I just saw the note from you waiting for a response. I'll just go ahead and go on. So realizing that these times are challenging we – there's really unfortunately no perfect time so there's no perfect solution. But I think we've seen a few people have concerns about the timing of these calls. But we're not able - what we're not able to determine is whether or not this is a widespread feeling whether or not the times, the rotating times that we have now if there's widespread challenges with these times. So I think if people have comments about that I would welcome then bringing these up either on this call or perhaps on the list, you know, realizing that there will always be a few people that have problems with the times. I wanted – we're trying to figure out whether or not it warrants actually changes to the scheduled calls to share the pain a little bit more than we already are. So if anyone has any comments now I'd welcome them now otherwise we welcome them on the list. Seeing no comments at this point I also had a comment on the...

Avri Doria: We did have one comment. We had one comment from Heather Forrest that said these calls are a little bit rough for Asia-Pacific Time Zone so I just wanted to make sure that was not me.

Steve Chan: Thank you Avri.

Avri Doria: And then Heather does go on so a rotation would be helpful to share the pain.

Steve Chan: Heather we always welcome specific suggestions. As I'm sure you read this is always challenging for all of this to make it work for everyone so certainly welcome suggestions. And so I also want to make comment about the constituency comment once drafting team that I think was mentioned by Jeff as well as Avri for a bit. So what I think I like to do is send a note around to the volunteers that put forth their names in the last meeting. And so I guess I just wanted to also highlight that this CC1 as Avri had called it I think is in regards to the set of subjects for this first set that we're looking at which

would include whether or not we should cancel subsequent procedures, predictability, community engagement, applications assessed in rounds whether or not there should be different TLD types and whether or not it should be application submission limits. So that is the overall scope of EC1.

I think we might want to entertain also seeking comment on the catalog advice and statements from SOs and ACs. There was a little bit of confusion between staff and the working group leadership whether or not that particular item was going to be included in CC1 or whether or not it was going to be a separate communication. I think it may have been a staff suggestion just to synchronize timing. I would welcome any comments on whether or not it makes sense to combine the communications going out in CC1 whether or not we want all six subjects plus that particular question to also be included. So if there's also any comments on that I would welcome those now. Avri, please go ahead.

Avri Doria: Yes thanks. This is every speaking. My issue with it was that I thought that those were something that we really did need to take a look at while we were doing these overall just to see whether there were any questions in these overarching issues contained in that we wanted to include. So I had felt that one of the reasons we had decided to put it as part of this first bit of work before sending out the CC1 was just so that we would know what the catalog of things that had already been said were as opposed to combining it there. So that had been my original reason or my original understanding for why we were going ahead with it right away as opposed to waiting. Thanks.

Steve Chan: This is Steve Chan from staff again. Jeff go ahead.

Jeff Neuman: Yes thanks Steve. This is Jeff Neuman. I agree with Avri. I think we should try – we should send out a communication, get as many statements cataloged as possible. And then at the end of the questions that we put out for public comment with the overall issues I think we should say we should have a link up to the documents and say, you know, this is what we have, is there

anything else that we've missed so kind of the catchall. But I do think a communication out to the chairs of or the leadership teams of each of the groups would be helpful to start collecting those statements.

Steve Chan: Thanks Jeff I – I'll go ahead and volunteer staff to start preparing some draft for that purpose. I think I had – I think that's all I had on the action items. I'll turn it back over to I guess Steve Coates at this point. Thanks.

Steve Coates: Thanks Steve. This is Steve Coates. I think this brings us back to subject discussion 4.2.7 agenda Item Number 4 on the list applications assessed in rounds continued. And I will turn it back over to Jeff.

Jeff Neuman: I think you're turning it over to Avri.

Steve Coates: Avri, I'm sorry. Avri?

Avri Doria: Quite all right. That's quite all right. I'm more than willing to let Jeff have it. But no let me go to it. Okay so we have – with this is the second pass through this one. We had actually it would be good to put up the list that we collected which was subject to the table of pros and cons that were collected last week in the picture as opposed to the write up. Thank you. Oh there it is, fantastic. Oh that's right you have then in different screens.

Okay so and if anybody wants to look on the wiki page it's actually been nicely formatted in boxes there so people can see it in table format if they wish to but going back to what's here. So we collected on the probes a set of 13 of them. And I don't know whether I need to read them through or whether anyone wants to basically start on the probes. Yes actually let me read them through quickly. It won't hurt.

So my first probe we had we should continue to have rounds until pent-up demand is exhausted. And we had discussed how one measures pent-up demand. Let me see predictability but it would have to be some informed time

to complete cycle six cycle basis as opposed to the sort of we're doing a cycle now and then they'll be another one but we don't know when which is the situation on the first one. Three, more cost-effective is the valuation procedures are extensive and repetitive; four, rights holders including registries do not have to be on their toes continuously watching for new TLD application; five predictability of cycle. I'm not sure how that's different from two. If it is different we probably need to say a bit more about five. If it's not different we can combine two and five I would think. And if anybody has a comment when I've read one please raise your hand. You don't need to wait for me to get to the end.

Six, identical applications, i.e., contention sets are easier to manage. Also arguably more fair to have contention sets rather (unintelligible) their search. Seven, global rules and board actions can address all new applicants prior to a round. So rounds allow for consistency in rules. Eight, rounds key up the applications for auctions that are continually open application window. I would note that this also assumes that auctions remain our decision of last resort which was a decision that was actually never made in the first policy on the policy round of 2007 because we were not able to come to a decision on that one. So we left that one up to the Implementation Team to figure out. We may want to review that. We may not.

Okay nine, rounds allow for subsequent reviews and a cycle of improvement; ten trademarks can be gained, 2K for a trademark in Europe. So trademarks by passing rounds is bad. Generic words will apply as trademarks. Eleven, rounds are appropriate if we have competing interest. Twelve, could end up like digital archery if we don't have round; 13 standard contracts can be applied as a base. Does anybody have any comment on those? Okay I see Jeff please.

Jeff Neuman: Yes I was – sorry this is Jeff Neuman. I was thinking about this the other day and I think we need to have kind of a definition of what it means to have rounds. And I know it sounds sort of obvious but if we did something like –

and I'm not suggesting this is a model but as an example what if you said, you know, the first three months of the year you would collect applications, the next three months you would post them up for notice so they could have any oppositions or challenges or whatever and then you would start again three months later. So you would basically have two I don't want to – I'm not going to call them rounds but two something, two opportunities per year to submit applications.

Is that considered rounds or even having one quote opening a year do three months accepting applications, three months for oppositions and then six months to review and institute changes and then automatically start it up the next January? So and the question is I just want to all be on the same page as how we define rounds because Alan's in and there that I called them rounds but they could be over lapping rounds. So and that'll make a difference as we go further on to talk about how changes are made and also with predictability the next subject. Thanks.

Avri Doria: Okay thank you yes those windows are those collection points. Paul you have the next hand.

Paul McGrady: Thanks Avri, Paul McGrady for the record. And speaking of my role as an IPC member rather than as the GNSO Council liaison I think that we should – I agree with Jeff we should be very careful about how we define rounds and we should talk perhaps even build out multiple models to talk through how each would work. So for example if companies launching a new mega product right to know once a year whether or not the gTLD will be available is problematic, probably know every 90 days would be problematic to have that kind of waiting period where you essentially couldn't file for trademarks without tipping your hand and drawing squatters to the gTLD whereas a - an open round that closes every 30 days that what's filed during that 30 days is confidential and it's published for comments and objections. But the application window for that 30 days is closed and they're handled on a first-come first-served basis. That would provide some predictability to rolling out

new brands. We're not precluding anybody else applying for that that top level if they believe they - there's a generic use for it during that same 30 day window. Thanks.

Avri Doria: Thanks. This is Avri again. I have two questions that occur to me on listening to the first call discussion. One is couldn't – can we for this purpose define a round as what we did? In other words the process we just went through was properly called a round at the beginning. And then we could ask whether any – what you guys have described almost sounds like a rondo in music where you're constantly having them coming - come up. But basically we could ask whether, you know, should we have rounds as defined previously or should we have some other kind of cyclical message for this so we could really split the question up? I don't know I would recommend us going down the path at the moment of trying all the possible models. Somebody should mute themselves for coughing but I hope you feel better soon.

So I don't know that we want to necessary go down all the possible models that one could create for a cyclical method. I think I heard like three at least in the conversation there. So would it work to just ask the question in those two ways? Should we have preceding rounds as the last one or should we derive some other kind of cyclical method? So first I wanted to see if that was okay as a way to divide the question up. And then the other thing I wanted to understand Paul what you meant by you would be tipping somebody's hand of your thoughts for a trademark. Would that mean that people were applying for a trademark just because they wanted a TLD? Because otherwise I don't understand why anybody in the hold world applying for trademark would be necessarily be a factor one way or another? So I don't understand. Thanks.

Paul McGrady: Sure so this is Paul. I think that we can define round however we like. I think that what we just went through was assuming that there's a second something whatever that turns out to be could be considered a round. It's not really a round unless there's a second one I suppose otherwise it's just a window. But I don't want us to define what we just went through as the only

definition of round because there are all kinds of ways to time rounds. And importantly I think the guidebook talks about how the new gTLD program will be assessed in a number of rounds. And if we all define rounds as what we just went through we run the risk of somebody saying, "Ah ha, we have to go through again what we just went through," which add, you know, major flaws. And so that's my only concern about using the word round to describe what we just went through.

With regard to the second question I'm not talking about people who are applying for a trademark so that they can own a gTLD. I'm talking about the reality that if new gTLDs stick and they become an important thing for a brand owner to have in order to have the full, sort of you know the full complement of items that can be used to protect consumers from confusion then what we don't want to do is create a situation where we have an open ICANN round and we have people who are watching trademark applications followed by third parties and trying to decide whether or not they should then go in and file only to be, you know, to be in the way to end up in an auction to have something that they can profit from and a private auction to resolve the contention set. I think that we should have frequent closings of the window on a perpetual round and the filings during that maybe 30 day window or so should be confidential so that the party who is launching a new brand for a new product, a real product will have the confidence that they will both have the trademark registrations they need and also the gTLDs they need to protect their consumers. I hope that's helpful. Thanks.

Avri Doria: Thank you. That does help me understand your point. Hopefully - well it's probably already clear to others because no one raised their hand on it. On the round so if I understand it correctly you disagree with us using the word round at this point to indicate what we've done before cyclical mechanism to describe those things that are round like but not like our first one when you do the questions if I understood your point. Okay yes. And I did want to make clear that these points that I'm using here are not my own ideas. Perhaps my

understanding of them is my own but these were what was collected at the last meeting.

I see we have Kurt Pritz but let me go with these comments because I don't see any hands at the moment. Were there any points? There is Jay, workloads to display, a round needs to be measured. Then there was Ruben who's saying how long some contention sets from the 12th round will take the (solve). You will probably have overlapping rounds anyway. Then (Howard) in Number 10 you try to say that generic words can be manipulated as rounds. Again I'm not making any claims. I'm just reading what was there. So if it needs to be – if something needs to be said to take a meaning out that is disturbing please you must speak up and contribute some other wording or indicate what's wrong with that. It's what we came up with last time.

Carlton application opportunities in six time frame where all applications are resolved. I guess that's an alternate way of describing a round and that's a possible definition that we'd need to figure how to do that. And that's something that I don't want to get into wordsmithing in this meeting. That's something that we can we can certainly work on in the background and (unintelligible). (Carlos) we're getting closer to a definition of pipeline instead of rounds which is another way to go. Then Kurt had a rather long one. And I'm assuming you all want me to read them otherwise why would you put your hand up, start with the generic definition of rounds. A period of time with a specified opening and closing date. The new gTLD classifications are expected the ops evaluation when hallmark of an application round. If the timing of the application submission during the round is not used as a potential resolving criteria, i.e., first come first serve does not apply. Then discuss the allocation once a decision is made to have rounds.

Rules that apply to allocation might be length and frequency of round whether they start at a date each year as Jeff's idea (unintelligible). That was an aside. That wasn't in the (unintelligible) group. And rules still resolving contention. I think that's a good start at a definition. I don't know what other

people think. I don't know whether that satisfies you Paul in terms of your desire to not have rounds defined as what we used before. And that's okay. I see no hands.

Is first of all I guess those points are okay with people and those have been recorded. Are there any pros there that are missing that people thought of during this reading or in the elapsed time? I didn't see any notes on the list on the issues but I may have missed them. So - or is that list sufficient for now? It's obviously not a closed list. We'll be getting lots of comments and input from others but Jeff is that a sufficient list for now? I see no hands. I see Robin is typing always to what she has typed before moving on to Con. Okay this is Paul typing. We're getting this - oh no there's (a couple of things here).

Okay I had some other readings before I got to Robin's I didn't see. You had (Jerry), if workload per round takes two years the next round should be based on that load. Steve Coates I think we should bifurcate the application process. I love somebody using the word bifurcate. I think we should bifurcate the application process and contention process apart from the overall process as there are various ways it could be implemented. For example ongoing applications could be held and periodically posted (unintelligible).

Paul, what we just went through was one kind of round but we should be (premise) use the word round. I guess the kind of scenario I think that's been understood. How - Jeff had another one but I've tried to highlight the redaction. I know it's not of Avri's point of view. Carlton in my view applications is a distinct phase in a round where six - oh, it bounced. I lost it. With six (unintelligible).

Really it'd be really good to have you guys talk as opposed to just me read. In those process you can find (unintelligible). These timelines (unintelligible). But the grant and when all applications are adjudicated from application the process is validation or not. And Robin I think you should be first asking if we

want new gTLDs at all then only if the answer is yes to we determine if we want (unintelligible) rounds and what they should be.

Robin on that one the first question that we discussed that Jeff had walked us through if it was two weeks ago had been that particular question. And that is certainly one of questions that has its pros and cons and, you know will be asked in this first constituency comments round. We have not thought of just sending out that one question as opposed to sending out with the set of overarching questions. And I don't – and this is my personal opinion that just sending out that one and then going sequentially with all of the other questions would elongate the process by quite a bit. And I don't know if you're suggesting that.

But we definitely asking as the first question should there be new gTLDs at all? And all these other questions are kind of conditional on that being the case the second question which was the type, this question which was the rounds, et cetera. And Jeff had said that it's the overall question one and then how a fixed time could not do that as conditions for others interested. (Harold) I'll saw have to ask you to explain because I don't understand what I just read.

Man: Sorry Avri you were asking who?

Avri Doria: I was asking (Harold). He was addressing perhaps it's just Carlton but a question of fixed time could not be read as conditions for others interested. And I was just indicating that I did not understand what the comment meant.

Jeff Neuman: So this is Jeff Newman. I think there's an ongoing discussion as to on the chat as to whether you could...

Avri Doria: (Unintelligible) yes.

Jeff Neuman: ...bifurcate the application submitting applications from the evaluation process and so whether you would call if you did quote round whether it would be rounds of accepting applications or rounds of evaluating applications or some combination. I think that's what's kind of going back and forth on the chat.

Avri Doria: Okay thanks (unintelligible). Okay so being no other comments for (new Pros) in which case I see no hands in which case I'll move to Con. The Cons we selected were artificial to me barriers, that's number one to adding latency, increased time to market. Three, rounds are not an optimal process to solve and complete an interest. Auctions do solve them. IP rules also do solve them

Four, creates artificial demand and artificial scarcity. Five an open ended round to create artificial demand. Ted has to understand the distinction between four and five little bit better. Six, timing between rounds may lead to pent-up – excuse me, pent up demand. Okay I'd like to see if there are any comments. I don't see written in at the moment. Okay (David)'s typing. Let me see what I've missed here. I know Jeff you're the chat monitor. I don't know why I'm doing this. I should just ask you.

Jeff Neuman: Yes you can ask.

Avri Doria: Okay Jeff.

Jeff Neuman: Yes that's fine, sure. Yes so Jay is (Carlos) still talking about the – there's still some chat on the previous topic but so I think it's yes, it's talking about bifurcation of the two processes that we were just talking about. And then there's some comments still really on the last one about how, you know, it's on the whole trademark whether gaming. So Steve Coates said several trademark offices deal with contention in various ways for example and these where you can file a trademark application to establish a priority date but the terms of who is consider first the filing date is irrelevant. It could be

considered the same as a trademark filed a few months later. And so there's a way to manage in theory you could manage this process the same way. So I think it's still talking about the bifurcation.

I have not seen any chat comments on the Cons that you brought up. So if anyone whoever brought those up the last time if you have any comments on the what Avri pointed out the differences between three, four at least it seems to be the main Con as you're - they're talking about having a time lag creates this pent-up demand and a lag in the rush to kind of get in because you're afraid that another round will never open which by the way there were some applicants if you - when we do a survey I'm sure applicants some applicants will say that they got in now not because they necessarily knew what they were going to do with the TLD but because they wanted to make sure they weren't left out of the process.

Avri Doria: Okay thank you. Are there new Cons that need to be added to the list? Okay hearing none seeing no hands so Julie has captured the notes. We obviously have the transcript and we have the chat list as well. Have we captured what needs to be captured on this reading? Anybody feel we have not captured what needs to be captured on this reading? No in which case I can at least momentarily pass the end of four onto Steve to see whether he's ready for us to move on to five and to make sure I'm not jumping the gun at calling this meeting of four done for now. Steve back to you for (unintelligible).

Steve Coates: This is Steve Coates. I said no hands and no comments in chat so I think we can move on to Subject 5, subject discussion 4.2.2 predictability. And forgive me, I can't recall who was doing this.

Jeff Neuman: This is Avri again.

Steve Coates: Avri back to you.

Avri Doria: Oh yes I was talking. I just hadn't unmuted myself...

Steve Coates: Got it.

Avri Doria: Yes. I have this one and I think it was on the hook for doing the first at the next one and then I got to turn it over to Jeff. Okay so this is the point we collected on predictability. We had in this case we went beyond pros and cons. We had pros, we had cons and then we had standard of predictability we discussed. And then we had mitigating factors which we discussed. And as I say on the wiki page (unintelligible) has been made that we'll be doing the table the feelings and notes at our presentation. So I will do - is the - before I do is the reading through is the right thing to be doing or does anybody objects to my reading (these through)? Don't see any red minuses or whatever they are (saying stop reading). I do not. Okay in which case I will proceed with reading the posts.

So number one predictability offers the chance to improve the communication of the introduction process of new gTLDs. Three, liaison application processes are still being worked out and argued. So it's nice to have predictability by having those issues worked out ahead of time. I think that one's a little difficult to parse. Three, develop adaptations to policy based on cross community efforts from the start. They had learned a lot since the first application guidebook and work in silos is going to be superseded by cross community work. And then four another reason for unpredictability is GAC advice and the NCUC response. Five, there were a lot of entities that applied that lost a lot of money due to unpredictability. Six, public perfect application for new applicants to read and give better guidelines to each answer and requirement sort of a best practices type of thing. Seven, lack of predictability causes applicants to lose faith and trust in the process.

So the first question is and are there any hands is are the posed worded correctly? As I say I had a little trouble with the parsing of two in terms of what's past, what's future and predictability while legal and application processes are still being worked out and so I don't really quite understand the

juxtaposition of those two sentences in that. So if there's anybody who can speak to it I'd be glad. And Heather your hand is up (unintelligible).

Heather Forrest: Thanks very much Avri. This is Heather Forrest. I'm sorry I can't answer the question you've just asked. I'm afraid I know have another question entirely which is this list has there been any and likewise the previous list, has there been any attempt let's say to prioritize these one to seven because I think arguably some of these are more compelling or urgent than others. Thanks.

Avri Doria: No, there hasn't been. At this point you've just been collecting. I think the idea of prioritizing is good. I would actually suggest leaving that first cut at that kind of exercise to the drafting teams that are turning those into the requests for (unintelligible) comments. And when asking the question perhaps they could suggest a priority as opposed to us trying to do one in live on a call unless people think that that's something we should try to do. I think it's probably a good idea goth in terms of priority and I think in terms of just a priority that makes sense. So you may not put something that's more important in a higher priority but something general case first and get down to the more specific case later or some such method. But I would leave that kind of work in the first instance to the (factors) that we collect and then we'll come back to the group with them.

I don't know if you think that that's a good way to do it. And, you know, I'll look for an indicator in the chat or perhaps you raise your hand again. I see Jeff has his hand up.

Jeff Neuman: Yes thanks Avri. This is Jeff Newman. In an attempt to try and interpret Number 2 I think what was meant was that the fact that, you know, we're now four – over four years since the application period started the fact that we still have legal some litigation and certainly independent reviews going on tells us that there wasn't the amount of predictability in the last round that we had hoped. And so therefore having greater predictability should in theory lead to less judicial intervention or less litigious situations. I'm not sure that that's

necessarily a provable fact at this point but I believe that, you know, I think the statement really goes to the fact that, you know, if we had worked everything out in theory there wouldn't be a lot of these independent reviews. And I think there is some merit to that right if we had worked out for example that plurals and singulars were confusingly similar or were not and that was a settled issue then we wouldn't have some disputes based on that. I think that's what number two goes to.

Avri Doria: Thank you. That certainly makes sense as a reading as an interpretation of those (two points). So I thank you. And I don't see anybody raising their hand to saying, "No, no that's not what it meant." So I'll take it that that's what's meant. And Jeff it looks like we can come to you again because we have some fairly extensive chat action from Heather and Kurt.

Jeff Neuman: Yes this is Jeff. So on the chat Kurt is - I might be going backwards but Kurt's asking what we discussing? Are we discussing the pros and cons of predictability? Predictability is the current GNSO policy. And then he's quoted the - all applicants for new gTLD registration registries should therefore be evaluated against transparent predictable criteria. I think Kurt what we're really discussing I mean that's the first part of question is the pros versus cons. But I think what we're also discussing is kind of the balance of predictability versus the ability to have some flexibility to make changes throughout the process. And so as we all know Kurt in this round, in this is last round, you know, they're right the policy was predictability and the guidebook tried to create some predictability. But obviously certain things were changed midway which I guess goes against the principle predictability.

So an example was there was a base contract that was included in the guidebook in the quote final guidebook but then one Friday at command as CEO he stated he wanted to come a completely different agreement with respect to certain - or he wanted completely different provisions with respect to certain rights in there and so that was changed. And so the question Kurt is not is predictability a good thing or bad thing. It's how do we balance

predictability which is in the GNSO policy with a material or substantial need of some flexibility in cases of whatever we determine that standard to be.

Then let's see, Robin says there's too many contentious became beauty contests and therefore it was totally unpredictable. Carlton says Jeff I beg to suggest that would be a crapshoot. Anybody not just folks with more money than sense would wish to reserve the right to judicial review. I should think so long as ICANN is or remains a California public benefit corporation the right to petition the District Court cannot be predicted or denied. Carlton this is just I guess my response. I'm not suggesting that we deny a right for judicial review. I'm merely suggesting that the greater the predictability and objectivity in a process in theory the less there should be a need to go to judicial review.

No obviously we cannot stop people from seeking judicial review but again like I said the theory is the more predictability you have in the rule the more objective criteria the less in theory you would have parties seeking that judicial review based on interpretations. So that was my only point. (Tara) says I'm not a California lawyer but I would expect that now judicial review wouldn't be supported in local law. I agree with that. Knowing – sorry this is Jeff, did not mean to imply that we deny judicial review to anyone. I'm just saying again that having clear objective rules in theory should reduce the need for interpretations and therefore having those interpretations challenged. So thanks Heather. That's the chat. Avri back to you.

Avri Doria: That's the chat yes okay. Before going on to the Cons though we did mention the Cons already which was too much predictability (unintelligible). I'm going to ask whether Robin was willing to explain how the contention became beauty contest. I know one of the arguments that we had in talking about that the policy that it became a policy in 2007 was that if we didn't have auctions then things became beauty contests. But I was wondering if Robin you could explain in what sense we had beauty contests in the current round - if you will?

Robin Gross: Hi this is Robin. Can you hear me?

Avri Doria: Yes I can.

Robin Gross: Oh great. Okay I just sort of connected my audio so wasn't sure that was going to work. So when - was it seems like a lot of the contentions ended up being beauty contests in that, you know, sort of how is the more worth - who's the more worthy better applicant in many things? And I think in the community applications in particular it really just comes down to a coin toss for, you know, who gets letters sent and who gets, you know, famous celebrities to be on their side or, you know, it just seems like a lot of it - this whole notion of community - the TLDs to sort of open the door for creating a, you know, it's really just ultimately a beauty contest decision for who ultimately ends up with it. Pretty arbitrary.

Avri Doria: Okay thank you. So the issue was much more a community evaluation issue but basically - so I would understand that one of the issues somehow to include in predictability is that - not quite sure how it would be put - that having community applications have somehow - is contrary to predictability or, you know...

Robin Gross: Yes, I think that's...

((Crosstalk))

Avri Doria: ...in the terms of predictability.

Robin Gross: Yes, I think that's a fair assessment that, you know, the way that the community applications were designed or the way they ended up, rather, led to the kind of arbitrary, unpredictable evaluations and so, you know, I think like Carlton said, it really just became a crap shoot for who ultimately would end up with something. And so it wasn't predictable. And would it had been more predictable I think we'd have a lot happier applicants today.

Avri Doria: Okay thank you. And, you know, good (unintelligible) the comment on it.
Okay, Jeff, you have your hand up.

Jeff Neuman: Yes, thanks. This is Jeff Neuman. I was going to take that concept and take community out of it to just make a much more generic principle since I think that there may be arguments, both pros and cons on communities. But you could say that a lack of predictability leads to selection of registries based on arbitrary criteria example. And you could say, i.e. a beauty contest or something like that, which is what we were trying – as you said, Avri, what we're trying to avoid.

So if we take out – and I understand Robin's view and others may view the community process as a beauty contest, I think we're going to get comments on whether it was or wasn't so I kind of like this more generic way of wording it if Robin is good with that.

Avri Doria: And would point out – this is Avri again – would point out that in our latest streams of work we definitely will be having extensive discussions on community and to have or not to have and if to have in what manner to have so that they are predictable, et cetera. So it's certainly not a subject that we'll lose from this discussion.

Robin, are you okay with Jeff's rewording? Robin is typing. Okay, typing stopped. Please, you know, speak up if Jeff's rewording is not adequate. And as I say, we will be getting back to communities to have or not to have, et cetera, extensively later in this process.

Okay, so I've covered cons. Are there any cons that are missing? Any other reasons why we may not want predictability or we may not want too much or overbearing predictability or predictability as in 100% certainty, not that I believe such exists. But any other cons that anyone would want to add?
Okay, I see a hand – yes, Jeff.

Jeff Neuman: Yes, and again I'm not saying this as a – it's my belief or anything but I'm just trying to come up with cons. If we have too much predictability – and I guess it sort of goes on with number one – but if we have too much predictability then – or too much objectivity in the criteria then it doesn't leave room for groups to object to TLDs that they may find – or may have sensitivities or other issues with.

So for example, when dotHealth came up if there was too much objectivity and too much predictability, then the ALAC may not have had the ability to object to it. Now I know it didn't succeed but that's kind of the point. Like if there's too much predictability, too much objectivity then there's no room to hear objections from the community or there's no way to have your – does that make any sense? I'm trying to figure out a way – I'm probably not saying that well but some may argue that.

((Crosstalk))

Avri Doria: ...it's basically cultural sensitivity you're arguing about. And I see Heather's hand up so I'll defer to Heather. Heather.

Heather Forrest: Thanks, Avri. Just maybe following up on Jeff's comment. I think it's important that we differentiate. I confess I'm not really sure, are we talking about predictability in the assessment or predictability in the applications criteria, let's say, in the application procedures? Because I think there are fairly few cons to predictability in the assessment procedures while there are some clear cons in predictability in the other – sorry, I've gotten myself tongue tied.

But I think in terms of, you know, one of the problems that we've noticed is that applications – similar applications being assessed differently. That's a very different thing from the – the assessment is a very different thing from the applications rules or procedures. So I think maybe that could be clarified in our list. I notice that our point at the top is 2.5.4, applications assessed. But

in the discussion that we've just had I don't think it's super clear in my mind.
Thanks.

Avri Doria: So basically it's looking for – and perhaps this is just a – whether it's a mitigating factor or a con in this case it's predictability in application processing versus application assessment need to be judged separately, something like that without prejudging the situation. Would that be a fair restatement? Heather, your hand is still up so if you want to say yes or no that's fair or correct me. Okay you put your hand down. So I'll assume that you're going to go away. You did go away. (Unintelligible).

In the meantime, Alan, please.

Alan Greenberg: Thank you. I'm not sure predictability is the right word in what we're discussing right now and certainly what Jeff brought up. Really the question is whether the criteria have – are more or less objective or subjective and whether there's judgment calls involved in assessing how the criteria are met. I mean, if you have an objection process that implies that you're allowing different people's positions to be viewed and then someone will make a judgment call on who's right, so to speak.

Completely objective criteria doesn't require that level of judgment call. And as soon as you have any level of judgment involvement in the decision it's obviously less predictable. So predictability I think is the result of to what extent your criteria – your criteria allows subjective issues to be looked at.
Thank you.

Avri Doria: Okay thank you. Any other comments on this first set of pros and cons before I go to standards, to be accepted - expected of predictability.

Alan Greenberg: Avri, you're fading out.

Avri Doria: Yes, I am. Sorry. Okay as I say, no other issues on the pros and cons at this point so I'll move down to standards to be expected of predictability. And as I say, we will have a drafting team on this and we'll come back to it before we actually send it out for constituency comments.

So standards to be accepted – expected of predictability pros. And there's a question here include here or under predictability. Develop adaptations to policy based on a cross community effort from the start. We have learned a lot since (unintelligible) and work in silos is slowly being superseded by cross community work.

Now a side on that one we could discuss it a fair amount and did note that, you know, this is a GNSO PDP though this working group is probably as cross community as most things we've been doing lately in cross community. So I just leave that standing there.

Two, a definitive list of names banned should be shown to applicants ahead of applying, such as dotHome, dotCorp, et cetera. I would just note that those have not yet been banned, they're just merely on a suspect list and so I think we should not necessarily call them banned.

Three, predictability on deadlines both from applicants and ICANN such as response times for application review, negotiation process, et cetera. And to go back to 2, what I think we're talking about there is a list of reserve names and perhaps other restricted names. Now a question is is there a list of prohibited names other than the reserved name list? And I'm not sure where that question belongs.

At the moment, though, the reserve name list was sort of the original list of banned names such as Local and such, then the board eventually did add geographical names. And of course we have the at least temporary addition of the Red Cross type names that have also been put in a kind of banned class.

So we may need to make a note for ourselves that we do need to have further discussions later because I think we had a fairly definite notion that names that were not allowable were indeed listed up front, it's just that more names made that list later. And so there may be issues to talk about in a variable size reserve name list.

I see a couple hands so I'll go to the hands. Maybe I got myself in trouble.
Alan, please.

Alan Greenberg: Thank you. I think on item 2 on reserve names or banned names, I don't like the term "banned" by the way, I think we need to differentiate between the kinds of ones. We started off with a reserve name list, which was cut down significant in this round, so to speak, at least of the beginning of it, to ones where we felt there was potentially serious problems if we used them.

We – along the way we added in a whole bunch for what I would consider essentially political reasons, whether the geographic ones are Red Cross or things like that, we started making judgment calls saying if we allowed these bad things will happen to someone. And of course there's judgment calls involved in all of those. And I think we really have to distinguish those from Home and Corp.

Those ended up being restricted, you know, maybe ultimately banned, not because we didn't make the right judgment call but because to a large extent didn't think about it. If we had understood the issue of name collision, and there were people in the world who were talking about it before the round, but not in the right places obviously, if we had understood the potential implications of giving out those TLDs, there's no question they would have been on the initial list of restricted names.

So to identify those and say don't do that again is equivalent to saying don't make a mistake again. And I don't think we can guarantee that. But there's a

whole other bunch of them that were added for reasons that are not nearly as solid and strong. Thank you.

Avri Doria: Thank you. Heather, please.

Heather Forrest: Thanks, Avri. And apologies, I'll do my best not to hang up the end of this intervention. Another question, do we have scope within this group to go back to the work of the reserve names working group and their report to evaluate that and see if we have any changes on that view or is that out of scope? Thank you.

Avri Doria: I would believe that it was in scope but I'll allow other people to (unintelligible) but I see absolutely no reason why that (would be out of) scope. Jeff, you have your hand up and please with whatever you were going to say also feel free to chime in on the scope issue.

Jeff Neuman: Yes thanks, Avri. And that's what I was going to comment. Just to Heather I would say that we have to go back to the reserve names working group as that's still outstanding GNSO policy so we would go back to that and then we would update it with anything we've learned from this past round and include those on – or include those findings in the – in this – for this report or for this group.

But I also think that there needs to be – it's more than just a list itself but it needs to be a predictable process on how to get to whether to reserve names in the future. So right now, for example, we have the governments trying to decide what the best way is of reserve names. But – hold on a SEC. Sorry, had a child come in here.

So we need to figure out a process, a predictable process on how to additional reserve names because right now you have the governments talking about what names should be on it and they're going straight to the board as opposed to having it through policy development. So having a

predictable process as well as having this list is going to help us in the future.
Thanks.

Avri Doria: Okay thank you. I see no other hands up. Is there anything, Jeff, that we've missed in the chat? You don't need to read it all through but are there any issues that came up there that didn't get...

Jeff Neuman: Yes, this is Jeff. I think most of what was discussed on the chat were on just, you know, whether to call things blocked or banned or there's a bunch of back and forth on there. But I think other than that it seems like we've covered most of it.

Avri Doria: And I agree, blocked words does sound much better than banned words (may just be) emotional. Okay degree to – so anything else on the standards before I move on to briefly describe (unintelligible) final and should be (unintelligible) is that a con for standards or is that – because it's kind of bold or was it a category? Julie, can you clear for me what category that degree to which Guidebook is final and should be (unintelligible). Is that a standard of predictability in which case is it a con? (Unintelligible) clarify on that or we'll just leave it there under Con and see how it works out when we're doing the drafting. Oh that was a fun noise.

Okay, and we have a note from Steve here – Steve Chan saying that those names (unintelligible) Section 4.3.1 and so we'll definitely be getting to that. And then we have Jay just put in saying censored words (unintelligible) content management which makes ICANN (unintelligible). And it is true, we must stay away from content control. And so if names are blocked they are not blocked solely because of their content, yes. (Unintelligible) to be discussed.

Mitigating factors, so I'll move on then. I see no hands, no objections to moving on. Mitigating factors, pros, there was a suggestion that ICANN Board analyze these and make a decision on GAC input, the final AGB principles

and agree with GAC not to change rules for applicants after applications have been submitted. In this way we would not experience such things as (unintelligible) two letter (release) applications, et cetera, et cetera.

And then two, as mitigation we might have approval with the same mechanisms already in place in registry agreements for changes to the process that are not (unintelligible). Is this a reference to the RCEP process? I'm just asking if that's what's meant. Any clarifications, comments, additions to the pros in mitigation? Oh, Rubens says, no, it was to the Registry Amendment process. Thank you.

(Unintelligible) no that applies to the second as Julie was typing that one needs to be on the second so not the first one. Thank you. Okay any other comments on the mitigation factors pros and cons? Pros. Cons, we had none. Okay, and I want to thank Julie for the typing she's doing and keeping track of this.

So we've got our way through the predictability, extensive set of discussions (unintelligible) we'll have a good piece of work to occupy them. So is there anything else on these before we call it done for the moment? And move to the next step which is drafting team. And as people noticed there's going to be a lot of drafting teams.

So I'm hoping there's lots of people that volunteer and I'm hoping that, you know, there's a variety of people volunteer perhaps for one but not necessarily for all unless you're a totally mad, you know, wordsmith in which case, you know, having you volunteer everywhere would be wonderful. But, you know, volunteer for the one where you have the clear sense please.

Okay, before I move on I want to notice that we essentially have 10 minutes left. Jeff says he has a nasty thunderstorm here so if he gets disconnected that is why but he's still here for now. Thank you, Jeff and good luck with the

thunderstorm. Okay so if there's nothing else on this, really – here too and tornado in the area. Definitely be safe.

Okay so we're finished on this so hand it back to you, Steve, and ask whether you believe we have enough time to go into 6, which is community engagement at this point with 10 minutes left or whether we should hold it to the next meeting?

Steve Coates: This is Steve Coates. And I'll defer to Jeff but given that he's – okay Jeff thinks we should do it.

((Crosstalk))

Avri Doria: I still had the token on that one – on community engagement, I still had the token and then it was – then Jeff was taking over on application submission limits which I'm sure we're not getting to today.

Steve Coates: Yes.

Avri Doria: Jeff says he thinks we should go to any other business. I'm fine with that. I will not argue with that. We would have to start off 7 anyhow with a description from Steve Chan on the excerpt that he's put out. Hopefully everybody's had a chance to read that excerpt. I'll note that that one is a little different from the others and actually seems more directed at the process of this working group and such than it does actually at the application procedure. But I'll certainly – am willing to have us move on to any other business with 9 minutes left.

Steve, I think it's in your hands at the moment. Steve Coates, as meeting chair.

Steve Coates: This is Steve Coates. I see no hands and I see no comments being created so I think we can officially close.

Avri Doria: Okay so nobody has any other business, okay.

Steve Coates: Seeing no business I will officially close the call.

((Crosstalk))

Avri Doria: Thank you very much to everyone. Thank you. Thank you, Julie and Steve for giving us all these words.

((Crosstalk))

Avri Doria: Bye.

Cheryl Langdon-Orr: Bye.

Avri Doria: And good luck with the tornadoes, folks.

Julie Hedlund: Yes, hopefully it won't get us. Thanks.

Michelle DeSmyter: Thank you. (Unintelligible) been adjourned. Operator, please stop the recordings and disconnect all remaining lines. Everyone, enjoy the remainder of your day.

END