
ICANN Transcription

Tuesday, 25 February 2020 at 03:00 UTC

New gTLD Subsequent Procedures PDP Working Group

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ANDREA GLANDON: Good morning, good afternoon, and good evening, and welcome to the New gTLD Subsequent Procedures PDP call being held on Tuesday, 25 February 2020, at 03:00 UTC.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you are only on the audio bridge, could you please let yourselves be known now? Thank you. Hearing no names, I would like to remind all participants to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise.

With this, I will turn it over to Jeff Neuman. Please begin.

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JEFF NEUMAN:

Thank you, Andrea. Thank you, everyone. Welcome. The agenda is up on the screen. We're going to plan on going through two topics today. We're going to go through applications submission limits and the role of application comment. I will note that because edits are continually being made to the document, the pages that are listed there may not be the exact pages that those topics are currently on but hopefully close enough so that you can find it by typing [and] finding the applications submission limits or the role of application comment.

Before we get started, let me just see if there are any updates to any statements of interest. And then I will just try to give a small update on ICANN 67, though I don't have too much information. So let me ask to see, are there any updates to any statements of interest? Okay, I am not seeing any.

Okay, so why don't we just do a quick recap of what we know so far for ICANN 67. The short answer is not a huge amount. I know that there have been some meetings already or at least one meeting with the [SGAC] constituency leaders. I know there's one tomorrow as well to discuss the scheduling. And they're seeking feedback from the community on what sessions we think should be held during this remote format.

The leadership team of this PDP is not involved in those calls, though we did still request if possible to keep the three sessions or at least the five and a half hours' worth of sessions because of progress that we had hoped that we would make face-to-face. We

do think that we can make a lot of progress in the remote format. So Cheryl and I have asked for the same amount of time.

Because we had planned, as you may remember, we had planned to have sessions that were conflict free with GAC members being able to and encouraged to participate so that we could get some good fruitful discussions on what our current thinking is, especially in areas that we've already discussed, and compare that to either previous GAC advice or previously stated positions of the GAC during comment periods or otherwise.

There are so few opportunities that we have to have direct dialogue with members from the GAC and members from the ALAC and everybody all in one place that we thought this would serve a couple purposes. Number one is have fruitful community discussions but, two, minimize the chances of or at least impact of GAC advice on some of these topics. Because it's our hope that when we do submit our final paper to the Board that we can show that there has been full community dialogue on these issues.

Now, of course, nothing will ever stop any advisory committee or supporting organization or otherwise from providing advice to the Board after the fact. But our goal has always been to make sure that we can demonstrate that there has been full community discussion on these topics.

So we still believe that these are going to be worthwhile sessions if we can have them. If you do agree with that and you are one of the leaders or want to let your stakeholder group, constituency, or advisory committee chairs know, it would be great for you to throw in a word of support for those sessions.

That's all I happen to know at this point. I can't answer any other questions as far as whether there will still be weekend sessions or what's ultimately going to be on the schedule. You all know as much as I do at this point.

There are some comments on the chat about, well, Jim, yeah, having a few hours of discussion is not, of course, full discussion. But this is a few hours on top of all the work in Work Track 5 plus all the other discussions that we've had with them, the presentations, meeting after meeting after meeting. So hopefully all of these do add up to having those types of dialogue.

Let me see if there's anything else. Okay, so there are some discussions on time, what timeline. Again, I have no other information other than what was just said. So we'll all find out around the same time.

But as a result of the sessions being fully remote, our plan was for next week initially it was only to meet on Monday and not have a second meeting on Thursday because people would have been in theory traveling. Since we are no longer traveling, we are putting that meeting back on the schedule.

In addition, we're going to put the meetings that were normally the week after an ICANN meeting. Again because people are traveling, we generally do not schedule meetings. But since there will be no traveling, we will put meetings on the schedule for that week as well in our normal rotation. This will also help us in ways to catch up or even get ahead so that we can beat our deadline with the GNSO Council with the change request that we had just asked for.

Any questions on that? You'll get calendar invites shortly for those meetings that we're now adding on. Okay, so I notice that Alan has posted that the virtual meeting hours will be 14:00-22:00 UTC. So that's a bit of news. Thanks, Alan. So that's good information. Okay, any other questions on the meetings that we're adding or on what our plan is?

Okay, so why don't we then get into the two topics for today, starting with applications submission limits which is now on Page 6. I think it used to say Page 7, but due to some movement of some things it's now on Page 6. I think the link may have been put into the chat earlier. If not, I'm sure someone can put that into the chat. If you want to follow along in the Google doc or you want to follow along here, that's fine.

This section is relatively short. All you'll see here is if you're at essentially now at the top of Page 7 which goes to the affirmation that we have, and then I'll go to a comment that I think Kathy put into the draft.

"The Working Group believes that there should continue to be no limits placed on the overall number of applications or the number of applications a particular entity may submit. This affirms the existing implementation as no limits were placed on the number of applications in total or from any particular entity in the 2012 application round."

I believe this is the one that Kathy had filed a comment on saying that there was—let me just doublecheck before I—can you scroll a little bit down? Or am I thinking this was something else? Maybe

not. Hold on. Let me go into the document. Yeah, I do see a comment as of maybe an hour and a half ago.

In the Google doc, Kathy had said: “This was the subject of huge discussion and disagreement; it seems entirely too simple a statement for our more complicated conclusion: some applicants want unlimited applications and other members of the Community are very concerned.”

So when we say that there’s a recommendation or an affirmation, we’re not saying that everybody in the community agrees or that there’s unanimity. Certainly, we’ve heard some members of the community state that they thought that there should be some submission limits. But if you go back in total to the community comment. I want to say it’s Number 2, but it could have been—yeah, I think it was community comment 2. Actually before the initial report, you go to the Work Track 1 that discussed this issue as well as the initial report and the comments back from the initial report that, yes, while there was a minority view that there should be submission limits and, in fact, I think there was one proposal for a particular number. I think though there was no evidence provided as to why that was the number selected. Overall in total, due to both the enforceability aspect as well as the overwhelming comments in support of no limits, this is why we believe the affirmation comes out here.

I notice Kathy has her hand so, Kathy, please?

KATHY KLEIMAN:

Thanks, Jeff. This is Kathy with a cold. Can you hear me?

JEFF NEUMAN: Yeah. Sorry, yes.

KATHY KLEIMAN: Okay, great. Yeah, I always go back on mute too. Okay, so I just don't think that this summary reflects the tremendous discussion that we had on this topic and the tremendous disagreement that we had on this topic. Certainly, the registries responded in great detail to our comment proceeding wanted unlimited applications, but a lot of other groups did not.

Which is why if you go farther down in this Section 2.2.5 you see what you summarized, but it really belongs here, was that there was severe disagreement on this and there was considerable discussion about how to express, better put in some kind of reasonable limits of parents subsidiaries, etc.

So I think what's really happening here is kind of an application of the Neuman Rule which at this point I don't think exists based on the discussions of the last few weeks. So I really think that for the purpose of the upcoming comment, we should put this back in which is that the working group could not come up with a consensus on application limits or non-limits and put it back out to the community for input.

I think we're going to have a much broader range of community input, and I think we should explain both sides. But what you did was a summary just of really one group's opinion on this, I'm afraid, and I think we had a much longer and much more diverse and much broader discussion. Thanks.

JEFF NEUMAN: Thanks, Kathy. Let me go to Christopher.

CHRISTOPHER WILKINSON: Good morning. Hey, it's 4:00 AM here, so I'm not going to preach sermons today. Very shortly I do not support this text. I recall that ICANN has a responsibility for facilitating the conditions of competition in this business. And the text as it stands, as was the case in 2012, facilitates speculation, facilitates concentration in the registry/registrar businesses with the result, indeed, that we now have several very large registry-cum-registrars. I think in segments of the future markets, notably IDNs and geographical names, pursuing this line would be politically and economically very damaging for ICANN. I just want to be on the record for my strong reservations about this text. Thank you.

JEFF NEUMAN: Yeah, thanks, Christopher. Let me go to Alan who I don't know if I'm seeing double or he's actually on the list two times. But, Alan, please.

ALAN GREENBERG: I am on there twice. The first one I died and I had to go back into Zoom and somehow it still thinks I'm on the first time and the phone is still on from the first time, so you're going to have to live with it.

Two points. Number one, I don't know this for a fact because I haven't looked at the document [in a sort of] standing back, but I think we are being inconsistent in how we are handling situations where we could not come to closure, we could not come to consensus, therefore, the last rules stands. Here, we're saying it's affirmation. Other places my gut tells me we've reported it in a different way. So I think we need to be consistent on these cases. And I do believe this is one where we did not come to consensus. Not that there was one outstanding person who didn't agree.

The other thing is, and I agree with Kathy perhaps for a different reason, that I don't think this reflects the discussion fully. I know that I and a number of other people when we had the initial discussions felt that we should put limits but there was no practical way to do it. That is, it would be too difficult to verify that it is not the same root organization disguised by who knows how many layers of corporate structures behind these applications. And since there was no way to clearly identify it, no way to easily police it, I certainly was willing to regrettably accept the fact that there won't be any limitations. But that doesn't get reflected here, and I think that's a really important aspect. Thank you.

JEFF NEUMAN:

Yeah, thanks. So I'm going to jump in here. So I'm trying to get—thank you. If you look here, this is not an area where there was strong disagreement. I just want to show you all from the comments from the Subgroup A which was the comments to the initial report. I want you to see that it was the ALAC, the Brand Registry Group, the Business Constituency. Sorry, if you could scroll down a little bit. XYZ, the registrars. Go down another one.

Neustar, okay, that's another registry. [inaudible] [Partner], the Registries Stakeholder Group, another [inaudible] [Valideus], Christopher Wilkinson opposed as you heard, and the Public Interest Community which was a comment from a few entities diverged. But as you can see here, it was not just the registries that were in support. You have the registries, the registrars, the BC. You have the Brand Registry Group and you have the ALAC. And I believe the IPC later on also does agree, although maybe not in this particular section. So I don't want to give the impression that this is where the Neuman Rule is because there's no consensus. At this point, we can't keep forgetting that there are years of discussions that have preceded this. And we should not be just because we have some new conversations on things not saying that there's consensus. So I would like other people to weigh in because I think this is important enough. This is not, at least in my mind, an application of a default here. This is pretty strong support with a minority view here. Again, we haven't taken any consensus calls officially, so I'm going to stay away from using the word consensus. But certainly very strong levels of support here. Paul please?

PAUL MCGRADY:

Thanks. I don't really see in these comments any real strong objection to the idea of keeping it the way it was. I think it's maybe a rhetorical vehicle, one way to say the working group thinks it should stay the same or do you just say the flip of that which is there wasn't enough support for the working group not to say that it should stay the same. But that actually seems less clear to me. So I think when we have situations like this where it's pretty clear,

we should state it pretty clearly. And I have no problem with the text as it stands now. Thanks.

JEFF NEUMAN: Yeah, thanks, Paul. If it's just a language issue, if we want to word it the same way we word it in the initial report, I think we can go back to that wording. But I think it would be too much to just put in here there is no agreement because I do think that there was lots of agreement on this particular point.

Christopher, your hand is up but I think it's an old hand, so I'm going to go to Anne. But, Christopher, if you are in the queue, then I'll come back. Anne, please?

ANNE AIKMAN-SCALESE: Yeah, hi, Jeff. I think, again, I would probably agree with those who say that there was no consensus on this and that should be noted. It's really good that we're having these tough cases so far on what has been drafted. The reason I say that is I don't think it works to just go back to fight the initial report public comment because that discounts the full discussion of the working group. It's as if participants in the working group, that all of the effort and time that's been put into this somehow doesn't count. This is not an issue that I have strong positions on or feelings about or an IPC position that's other than what's reflected in these comments. But if we are going to be very ready to ignore significant discussions that were the first time that the full working group had addressed the issue in full discussion, notwithstanding the work of subgroups, I don't think that's procedurally correct. Thank you.

JEFF NEUMAN:

Yeah, thanks, Anne. So the work of the subgroups and the working group—this was one of those issues, by the way, that was worked on by the full group. This was not one I believe that went to a particular work track, although I'll doublecheck on that one. But, of course, we're not discounting the work that was beforehand because that's the work that produced these recommendations that went out on the initial report and then all of these groups agreed with the initial report.

So if we want to go back and state the affirmation being the same as the language from the initial report, fine with doing that. But it would be a very—we can't ignore the work that was done beforehand either, and we can't have people come in late in the process or at any time in the process and have that override all the work that has taken place before. So coming up with these recommendations is a delicate balancing between all of the conversations. Not just the conversations on the phone but email and written comments.

So, yes, there are some vocal people on these calls. That is not being ignored. It's just that we don't make decisions on phone calls alone. We've always operated like that. So, yes, I understand Kathy, Christopher, and a couple other voices disagree with this, but that doesn't mean that we throw it all away and say that there's no consensus. We really have to pay attention to the questions we asked people, the answers that they gave, as well as the initial work from the group. Otherwise, we'll never get done with all of this and everything will just be no consensus on anything.

So I'd really like to hear from others on this call as well because it feels like there are some strong voices on this call, and I know there are others that have this same view but it seems like I'm the only one weighing in. It really should be others, and I'm trying to point to the comments that we got. Anne, I'm not 100% sure if that's a new hand, but let me go to you first, Anne, and then I'll go to Kathy and then Greg.

ANNE AIKMAN-SCALESE: Yeah, just very quickly, Jeff, I think you said that everyone agreed that the initial report should go out the way it did. Looking back to a long time ago when we all agreed to issuing initial report without consensus call it was based on the understanding and representation that all the issues would be subject to full discussion in the working group by working group participants. I think we're not saying here that this is—well, I think we're saying this is a case for the application of Neuman Rule. That's all that folks are saying is accurately reflect the discussions within the full working group and observe the Neuman Rule. Thanks.

JEFF NEUMAN: Thanks. Thanks, Anne. God, it's weird talking about a rule that's got my name in it, but I appreciate what you're saying, Anne. I just think this may be one of those areas where it is stronger agreement than just applying the default. At the end of the day, I know it may amount to the same thing or the same outcome, but I do think that we need to—Jim even says it in the chat—that we need to reflect the totality of the discussions that took place. And, of course, dissenting opinions and minority views are the purpose

of putting those into the discussion or deliberation items and, of course, filing minority reports. We'll go to Kathy and then Greg.

KATHY KLEIMAN:

Great. Coming off mute. Let's look at the phrasing of what's in the initial report public comment analysis versus what's in the recommendation that's going out. I'm now reading what's in front of us, 2.2.5.c.1:

"Although some members of the working group supported the notion of putting limits into place, ultimately the working group concluded that there were no effective, fair, and/or feasible mechanisms to enforce such limits. It therefore concluded that no limits should be imposed."

Of course it continues a little bit. Now let's flip over to the recommendation. It's saying for feasibility reasons not for preference reasons or logic reasons or fairness reasons. And then 2.2.5 Applications Submission Limits what we're saying is:

"The Working Group believes that there should continue to be no limits placed on the overall number of applications or the number of applications a particular entity may submit."

I don't think that's true. I do not think that reflects what it says in our underlying report or the extent of the disagreement which frankly is really broad among the user community. So I think we have to edit what we're looking at here because it makes it sound so clear and so certain, and you've already heard that's not the case. Thanks.

JEFF NEUMAN: Okay, thanks, Kathy. Let me go to Greg and then perhaps a recommendation to try to put this all together. Greg?

GREG SHATAN: Thanks. First, I'd like to put in a plug for the continued vitality of the Neuman Rule. I think the discussions about the unique nature of the Board's opinions on closed generics in the prior round caused a discussion that may have caused some to believe that the Neuman Rule itself was problematic. But I think that's not the case, so all hail the Neuman Rule.

Personally, my belief is that there should not be limits. In terms of how many people or how many types of stakeholders agree with that or agree at least that the status quo should be maintained versus those that are opposed or think that there is disagreement, without counting noses, again, I really just have no idea. I don't recall there being broad dissent. I recall there being some sharp disagreement but nothing that to my mind went so broad as to mean a lack of consensus as we understand it. And you do mention a minority view, which clearly by itself means that there is not unanimity.

So the question is whether in terms of our deliberations perhaps there needs to be more said about the opinions, in essence the minority opinions, unless we're at a point where that should be relegated or left to a minority report or a minority statement. I'm not sure we're there yet, but that's considerations. But ultimately, if

we have to try to figure this out again, we have to try to figure it out again. Thanks.

JEFF NEUMAN:

Thanks, Greg. If we reworded this paragraph to be more like what we stated in the initial report, namely that although some members—instead of the working group we would say the community because we did get comment—say something like although some members of the community supported the notion of putting limits into place, the working group concludes however that there are no effective, fair, and/or feasible mechanisms to enforce such limit. Therefore, no limits should be imposed on either the number of applications in total or the number of applications from any particular entity.

Does that get us where we need to be? And, of course, making sure that some of those views are represented in brief format. But at the end of the day, we don't want to replicate the deliberations from the initial report because we're trying not to have a 400-500-page report. Let me throw that out there to see if that would ease some of the concerns as opposed to putting the language that we have in there right now. Anne and then Paul. Anne, I can't hear you. I don't know if you're still on mute. Oh, that was an old hand. Sorry. Okay, Paul, please.

PAUL MCGRADY:

Thanks. No, I think that's worse. I think we've gone from having a pretty clear statement that nobody really was speaking up for this except for a handful of people. We have huge chunks of the

GNSO who have said that they are not for any of these limitations. And the way you formulated it, Jeff, sort of implies that, well, gee whiz, everybody was for these limitations, but we just couldn't figure out how to make them work. That's not what happened.

Alan expressed that view that he would like limitations but he couldn't figure out how to make them work as the only person that I've heard say that. I don't think it's fair to say that was the conclusion the working group came to.

I think we could keep your language and at most tack on a dependent clause that said something like but there was a minority of people who disagreed with this or something like that. But to rework it and cast it as we all thought it was a great idea but we're just stumped, I don't think that's what happened at all. Thanks.

JEFF NEUMAN: Yeah, thanks, Paul. Kathy, and then I'm going to try to wrap this up.

KATHY KLEIMAN: Yeah, I think you got it because you were reading the language from 2.2.5.c.1 which is right in front of us. "...ultimately the working group concluded that there were no effective, fair, and/or feasible mechanisms to enforce such limits. It therefore concluded that no limits should be imposed on either the number of applications in total or the number of applications from any particular entity."

That's what we concluded. To say otherwise is kind of to rewrite history. So I think we've got that language in front of us. I think we said it, and I think we should be honest with people about why we came to the conclusion that we came to. So I support your recommendation. Thank you.

JEFF NEUMAN:

Yeah, thanks, Kathy. I do want to consider Paul's comment too as well because Paul is correct because there is a dependent clause in there that almost hints at if there was a fair, effective, if someone could ultimately find a fair, effective way to put limits on the number of applications, then one could assume if we made this statement that those limits should therefore be placed. But Paul is correct in stating that a lot of these comments that were in support of having no limits didn't have that dependency. I don't know if that made sense. It's late.

So to state it all with that dependency is not necessarily accurately portraying the comments. But at the end of the day, we do need to have some final recommendation and outcome. Let me go to Greg for a final word on this, and then we will wrap it up. Greg, please?

GREG SHATAN:

Thanks. I tend to agree with Paul. However, it seems that there are at least three schools of thought: those that favor having no limitations; those that might favor having limitations or would favor having limitations but don't see a feasible, equitable way to do it and therefore it being unimplementable are willing and satisfied with going with the status quo; and then those that oppose the

status quo and believe that there are feasible, equitable ways or at least the possibility and haven't gotten to the point where they want to give up on that idea and therefore continue to support that.

So I think if you add up the first two schools of thought together, you end up with the conclusion. I think that to make it sound more like a conclusion is either entirely based on those for whom there is a dependent clause or entirely those for whom it isn't would be incorrect. So perhaps what needs to be said is that there were a number who did not support limitations, others who could not find a way to implement limitations and therefore supported the status quo, and others that objected. And that taking the first two groups together, the recommendation is to keep the status quo.

JEFF NEUMAN:

Right. So I think we'll make some edits in here. The goal is not to put the rationale into the recommendation or affirmation language here. We think we can soften it a bit to keep in mind Greg's summation of the three different groups or the three different positions or variations, but I think we're there.

We've got to make sure that the rationale and that everyone has what they're comfortable in the rationale or deliberations. But at the end of the day, the affirmation is still the affirmation that no limits should be placed on the applications, right? At the end of the day, that's the affirmation, but we just need to make sure that all the views are expressed in Sections B and C. Section B being the deliberations and C an indication of new issues that may have come about since the initial report.

Let's move on then. Given that guidance, I don't think we need to go word-for-word through B and C. If we can just scroll down though, in C it did talk about the number of applications that one of the commenters had about the number 24. So that is in there in Section C. There are no dependencies on other areas in Section D. So I think we can move on to the next section.

Not Universal Acceptance because that was done already. We're going to jump all the way ahead at least in this version of the report to the role of application comment. I'm hoping that we seem to be in agreement on most of these or all of these, but let's of course go through them and make sure that the leadership got this right.

The first affirmation is affirming "Implementation Guideline C from 2007 which states that ICANN will provide frequent communications with applicants and the public, including comment forums." The second one being "as was the case in the 2012 round, applicants should continue to be given the opportunity through clarifying questions to respond to comments that might impact scoring."

Let me just read the comment that Kathy has here because these are [dealing with] the affirmations. Kathy is saying, "Don't we have need [for another] affirmation here: As was the case in the 2012 round, Community members will continue to be given the opportunity to comment on submitted applications via a Public Comment process where their comments are visible to other members of the Community, Applicants, and those processing the Applications (including ICANN and third parties) can review and consider the comments." Let's hold on to that. Let's see if that

concept is reflected in the recommendations and if not, we can circle back to that.

Rubens says the CQ phrase is backwards. Let's go back to that. Sorry, Rubens, make sure I understand what you're saying. What do mean the CQ phrase is backwards? Let's read that again: "As was the case in the 2012 round, applicants should continue to be given the opportunity through clarifying questions to respond to comments that might impact scoring."

Okay, I see that is a little bit awkwardly worded in the sense that later on we do have a recommendation that there be a period of time that applicants can respond. Cause X consequence. I'm reading Rubens' comment here. So, Rubens, is it just the wording here that you think should be changed? If so, can you perhaps maybe suggest some wording that might work better? You don't have to do it now, just on the list. Thanks.

Okay, so we're not skipping Kathy's affirmation. Let's just see if the concept is covered elsewhere. The first recommendation: "For purposes of transparency and to reduce the possibility of gaming, there should be clear and accurate information available about the identity of a person commenting on an application as described in the Implementation Guidance below."

Then we state in the implementation guidance: "The system used to collect application comment should continue to require that affirmative confirmation be received for email addresses prior to use in submission of comments. To the extent possible, ICANN org should seek to verify the identity of the person submitting the comment."

Then the second one is: “In addition, each commenter should be asked whether they are employed by, are under contract with, have a financial interest in, or are submitting the comment on behalf of an applicant. If so, they must reveal that relationship and whether their comment is being filed on behalf of that applicant.”

Any questions, comments on that? Okay, I’m not seeing any. The next recommendation: “Systems supporting application comment should emphasize usability for those submitting comments and those reviewing the comments submitted. This recommendation is consistent with Program Implementation Review Report recommendation 1.3.a, which states: ‘Explore implementing additional functionality that will improve the usability of the Application Comment Forum.’”

Just for a reminder, that program implementation review report was the postmortem report done by ICANN Org a few years back.

Then we have some implementation guidance on that: “The system used to collect application comment should better support filtering and sorting of comments to help those reviewing comments find relevant responses, particularly when there is a large number of entries. One example is an ability to search comments for substantive text within the comment itself. In the 2012 New gTLD Round a search can be done on categories of comments, but not a search of the actual text within the comment itself.”

The next one is: “The system used to collect application comment should allow those submitting comments to include attachments.

ICANN should investigate whether there are any commercially reasonable mechanisms to search attachments.”

That last sentence is in there because ICANN in the 2012 round did try to explore some of those mechanisms and didn't find one that was available for attachments. But perhaps by the time we launch, there might be some commercial software out there.

Next recommendation: “The New gTLD Program should be clear and transparent about the role of application comment in the evaluation of applications.”

The implementation guidance on this one says: “The community should develop guidelines about how public comments are to be utilized or taken into account by the relevant evaluators and panels, and these guidelines should be included in the AGB. The AGB should also be clear to what extent different types of comments will or will not impact scoring.”

Then the next recommendation: “Applicants should have a clear, consistent, and fair opportunity to respond to the public comments on their application prior to the consideration of those comments in the evaluation process.”

Then in implementation guidance: “Applicants should be given a fixed amount of time to respond to the public comments on their application prior to the consideration of those comments in the evaluation process.”

So I know that the last two sound very similar, but the implementation guidance is really more about let's say that there's a 60-day public comment period, whatever it is. What we're saying

here is that there should be a fixed period after that for applicants to respond to the comments.

Kathy does have a comment in here, and Emily does as well. Emily's I'll read first: "Does the WG want to provide any more specific guidance on what should those new rules and guidelines be? Also, suggest removing this sentence."

Which sentence is that? If we could just highlight that. Oh, sorry, remove the sentence, "In addition, to the extent that public comments are to be taken into account by the evaluators, panels, etc., applicants must have an opportunity to respond to those comments.' If different from the affirmation above, we may want to rephrase to be more explicit."

So, Emily, that sentence was about the fixed—oh, I'm sorry. I see what you're saying. Let's go back to the affirmation. In the affirmation which Rubens says he wants to reword, we do state that applicants should continue to be given the opportunity through clarifying questions to respond to comments that might impact scoring. And then, sorry, can we go back again to the sentence that Emily had the comment on? In addition to the extent public comments are to be taken into account by the evaluators, applicants must have an opportunity to respond to those comments.

I think you might be right that they may be similar, but I don't think it hurts to have it restated in this way. I think this way this is a little bit more specific, but we can look at that. And then I do want to go over Kathy's comment, and then Kathy has her hand raised.

Actually, Kathy, since you have your hand raised, why don't you just explain the comment? It might just be easier.

KATHY KLEIMAN: Hi, Jeff. Actually, I have an earlier question before we get there. Implementation Guidance Rationale 4 that starts: "The community should develop guidelines about how public comments are to be utilized." The community or the implementation review team? What do we mean by that? Thanks.

JEFF NEUMAN: That's a good question. I think in general we mean the implementation review team. Actually, I think that's a good suggestion. So I think we should probably put implementation review team in there since they are required anyway to include community feedback. So I think that's a good change and makes it more clear.

KATHY KLEIMAN: Great, thanks. And I'm happy if you want me to, to talk about the suggestion that I offered here below.

JEFF NEUMAN: Yeah, let me just—I'm trying to look at the chat to see if there was anything on that. Yeah, Kathy, why don't you go ahead, and then maybe I'll put Steve in the queue because I'm not sure what that was in reference to. Oh, I'm sorry. I think what Steve is saying that you don't even need to say who. You could just say, "Guidelines

should be developed about how public comments....” I think it’s okay to have implementation review team here because then it’s more specific and I think it does specifically call out the IRT so that they know it’s for them to develop. I actually think in this case it might be okay to keep implementation review team. But let me go to Kathy for her comment on these last sections.

KATHY KLEIMAN:

Terrific. Thanks. Here I’m referencing my comment lower down not the comment above which you said we’d go back to, so Recommendation Rationale 5. Here I’m just trying to balance everything in as fair a way as possible. Public comment is, of course, the tension—for lack of a better word—between the public commenters and the applicant. It’s really a discussion between the commenters and the applicant. I see a lot of things to help the applicant in the discussion, so I’m trying to make sure that it’s balanced on both sides.

So Rationale 5 says: “Applicants should have a clear, consistent, and fair opportunity to respond to the public comments on their application prior to the consideration of those comments in the evaluation process.” Now let’s say the applicant modifies their application in response to the public comment. What I’m suggesting is that there should be a way to directly notify the commenters of the change to the application. And then the commenters will have the opportunity to say, I support that change or to argue maybe it doesn’t go far enough or maybe to argue it totally missed the point of whatever issue that they were trying to raise.

We've said that most commenters would be identified. I do want to talk about ask about that or talk about that as well. But again here, the recommendation is that should applicants modify their applications in response to public comment, there should be a way to directly notify the commenters of the change to the application so they can go back and know that there's an opportunity to review it and further comment. It seems part of the fair exchange here. Thanks.

JEFF NEUMAN:

Thanks, Kathy. Let's take that apart because there are a couple different components in there. If an applicant changes their application—and maybe ICANN Org or someone can correct me if I'm wrong—but if they change their application the separate change process would kick in and that would automatically kick in the new comment period on the change.

So I'm not sure we need to affirmatively state that the public comment period itself needs to have almost like a reply period but maybe an acknowledgement that if an applicant changes their application as a result of the public comments, then essentially please see change process section so we have a tie-in between the two.

I see that very different than having a reply period which is let's say a commenter makes a comment and the applicant disagrees and states why it disagrees. That to me is not what we're saying should have a reply period. But if there's a change it would go into the change process which would include. So I want to make sure that we're separating this out into its different components.

Kathy, are you saying that there should be a reply period? Or are you just saying, which is what I thought you were saying, if there's a change request, then of course the public should be able to comment on those change requests? Which is the case anyway.

KATHY KLEIMAN:

Right. I'm saying that we should take it one step further and let the initial commenters know that there has been a change and that there's a new comment period that's open so that they know where to go. So applicants are going to have that ability. Applicants are going to see the comments, have the ability to respond including to make changes. So it's not a reply. It's exactly what you said. There will be, if they post a change, that change is posted but how do the original commenters know. It may or may not address, as I think somebody said in the chat, the original commenter's changes but they should know and we're separating the processes. Let's just link them with some notice. Thanks.

JEFF NEUMAN:

Yeah, thanks, Kathy. Perhaps that could be as an overall comment when we talk about the useable system and being searchable. Perhaps include something there about notifications about specific applications as kind of an implementation guidance. Again, it's a should, and we don't want to devise a system that's so complex that it can't be implemented. But I think that refers more to just the usability, searchability. Perhaps we can include an element there to be notified about status changes or other things like that.

Kathy says should we put it in here too? What I'm trying to do is consolidate it in one place so that when the implementation team is looking at this they don't have to look in every single section for their particular references. So I don't know the answer to that about whether we should duplicate it, but I think we understand the crux of the comment. And we see Rubens has a comment here too. So I think we can put it in a place that makes sense.

But I do want to go up, Kathy, to your initial comment in here because there is actually no affirmation that says that community members should be given the opportunity to comment, right? And I think that's the crux of your first comment here is that we have an affirmation saying that there will be frequent communications [not] there will be an opportunity to respond. But there's no affirmation that says there will be an opportunity to comment on submitted applications via a public comment process. So I think that makes sense.

Let me ask if anyone disagrees with that. If we add another affirmation, probably it would be the second affirmation if not the first, talking about affirming what the comment forum is supposed to be. I do think that makes sense. Does anyone disagree with that? It seems pretty logical to me. Okay, so hearing no disagreement, we will take what Kathy has written and put in affirmation [inaudible] probably move that to either the first or the second affirmation.

Okay, let's scroll down a little bit. We need to also create that tie between the change process. Why don't we go, sorry to skip ahead to Section D which I think that's the tie-in to dependencies. Okay, we already do have the change requests in there as the tie-

in. Good. Okay, I just wanted to doublecheck that it was there, so thank you. The tie-in is there.

Let's scroll up a little bit to the rationale section again. There's a lot of rationale here. There's one rationale for each of the recommendations and implementation guidelines. Although, some of the implementation guidelines are combined in one rationale. So please do review that. Make sure it accurately states the reasons why we're making these recommendations and implementation guidance.

I'm thinking that we might need to expand Rationale 1. I'm sorry, we'll probably, yes, we'll probably need to expand Rationale 1 to include the rationale for Kathy's affirmation that she has proposed which just includes the purpose of the public comment forum. But other than that, I'm not sure we need to make any other changes. So if we can just note that as an action item to just make sure that there's rationale for Kathy's addition.

Then let's go to Kathy's comment. Scroll down a little bit here if we can. So this is at the end of that rationale. Kathy's note is, "If the commenter cannot be identified, evaluation panelists can always take this into account. It's possible someone might not want their comments to a .POLICE or .KGB gTLD to be identified back to them."

So, of course, that's an extreme example but the point is that some commenters may want to be anonymous. What does the group feel about that? How does the group feel about that, the first part which is, "if the commenter cannot be identified or does not

want to be identified, evaluation panels should take that into consideration”?

Rubens is saying it sounds contradictory to other recommendations. Right, so one of the important things, Kathy, is that in the many discussions on this topic there were concerns expressed that competitors and those that may not have the best of intentions may have been filing comments in order to harm other applications. So requiring someone to state their affiliations was deemed an important part of the recommendations for members of the working group when we had those discussions.

Let me turn it over to Paul and see what his comments are. Paul, please? Paul, you might still be on mute.

PAUL MCGRADY:

Thanks, Jeff. Sorry about that. I had to figure out how to get myself off of double mute at 10:00 PM. I don't know why we would change direction on this. Again, [we have to be] a little bit careful that at the end of the day working groups don't make decisions based on who speaks last. There's a lot of thought going into making sure that everybody knows who is making these comments. Again, this whole process is supposed to be open and transparent, so I don't think we should abandon that principle here nor should we abandon the work of the working group at the last minute. Thank you.

JEFF NEUMAN:

Yeah, thanks, Paul. Do we have other comments on this? Rubens states that the two statements are incompatible, so I think Rubens

is agreeing with Paul here. Justine is saying seek true identity but not necessarily publish it. Justine, that would address the sentence that we say the evaluators should try to identify them. But it's still not compatible with essentially filing a statement of interest, if you will, behind your comment so that at least one could ascertain the true intentions.

Kathy, go ahead, please.

KATHY KLEIMAN:

Yeah, in this case, I actually don't remember the discussion as well as I remember other discussions here. But this confirming the true identity of all contributors to public comment is just an enormous burden on whoever is doing it. I agree we can ask for statements and backgrounds, and most people will provide them. And those who don't, you can weigh their comments accordingly and particularly see if there's gaming going on or if there could be other motivations like protection for people who want to express their comments but fear some kind of retaliation. So we're going to have both sides. But I also just want to note the enormous—every time you see “true identity” of anything online, you're looking at an enormous cost of time and energy. Thanks.

JEFF NEUMAN:

Yeah, thanks, Kathy. I'm sure when the implementation team is working on this with ICANN, they'll interpret that in a commercially reasonable fashion. I think that's why we have it as implementation guidance as opposed to a must, that they must identify or they must verify the identity. We do say that they should

seek opportunities to verify but agree that to try to require that verification is just impossible in an online world. Paul, please?

PAUL MCGRADY:

Thanks. I don't mean to belabor this, but I don't think it's an enormous burden to identify yourself. And I don't think it's outrageous that the commenter should do so. And I think if they don't, then I don't know how much credibility a comment made by an anonymous person or organization or whomever should be taken seriously by anybody. And lastly, I've not heard of any stories of people afraid of retaliation from commenting on a new gTLD application. I think we're grasping here to find reasons why we should make this process opaque instead of transparent. I don't see any reason to change direction at the last minute. Thanks.

JEFF NEUMAN:

Thanks, Paul. Can we just go back up to the recommendation/implementation guidance that this relates to? What we're saying in the recommendations is that—sorry, can you go up just a little bit more? Thank you. So we're requiring that they basically confirm the email address so that it's a real email address. We're also saying that they should seek to verify. And then finally, we're saying that they should be asked these questions.

So I don't think, you know, Kathy, I hear what you're saying, but nothing in here prevents someone from submitting an anonymous comment. So I'm not sure that we need something in here

because it doesn't say that you're not allowed to submit an anonymous one. I think we're actually okay, as long as they have a real email address. And we're not saying that ICANN needs to publish the real email address. We're just saying that ICANN needs to confirm that it's a real email address which is pretty easy to do in this day and age. So, good. I think we're all good. And Kathy thinks we're all good. Fantastic.

Can we go down then to the new section? Sorry, it's not a new section. It's the section about new issues raised in the deliberations since publication of the initial report. This is important to just go over: "The Working Group discussed whether the public comment period for Community Priority Applications should be longer than the public comment period for standard applications, as was the case in the 2012 round, or if the two periods should be equal in length. The Working Group did not reach any agreement to change the 2012 practice, and therefore has not made any recommendations in this regard."

Then the next paragraph talks about: "In discussion of Implementation Guidance, which recommends that applicants are given a fixed amount of time to respond to public comments, the Working Group discussed whether the community should have an opportunity to comment." So this is the reply, and we not come to any kind of conclusion on that.

I do also want to note that in the community application section when we get back to that, there was a concern that was expressed that the public comment period for community applications was basically—it never ended. When we talk about the community applications, we do fix that or we will be fixing that

in our recommendations to state that it should not be this never-ending public comment period. So we'll address the CPE comment period in that section. Hopefully, that makes sense.

Okay, yeah, so Justine says good to know on CPE comments. Yeah, I just didn't want the group to think we're ignoring it, the CPE, because we had lengthy discussions about that. But we're placing that in the CPE section and not this general public comment period section. And that's why there's a dependency on community applications, etc.

Okay, so it seems like we made really good progress here, and we finished the two topics. So before we close out this meeting, please do check the work plan. Because we have these additional sessions, we have a meeting this Thursday and then we'll have another one next Monday and then we're adding one in for the following Thursday, we're going to be moving some of the topics up in the work plan. We're just trying to figure out which sections are ready for that review.

But we do know that starting on the next call, the topic will be I believe it's applicant reviews. Someone can correct me if I am wrong. But I'm actually just going through the work plan as we are speaking. I don't know if someone can pull that up. Oh, perfect. Never mind. It's already pulled up. So what we're going to do is we will discuss on Thursday applicant reviews. Then on Monday we'll also likely continue applicant reviews. Now this talks about technical, operational, and financial as well as the background reviews. So those are all covered in those sessions.

We will likely move them probably not applicant freedom of expression because we don't want to separate those two out. So we'll probably move one of the shorter review ones which may be down a little bit further. But I do need to check with our policy staff to see if they've already completed those sections.

Can you scroll down just a little bit more? I know you're trying to revise this on the spot. But my guess is that for March 5 we'll do something like the registrar support for new gTLDs, nondiscrimination registry/registrar standardization since those are one-off topics as opposed to dividing up something like applicant freedom of expression or objections, one before the ICANN remote, one after. Hopefully, that makes sense.

We'll also get back to on the sessions on ICANN 67 when we are made aware of what we're going to be doing. So I think we're actually in a good position to move some things up and to save us some more time. We'll also then doublecheck on the dates at the end of April or May for an extended session.

I see the link was posted—great—to this work plan. Please do keep checking this work plan. This is the official one that we update if we either get through subjects quicker than we thought or the reverse or we have extra sessions. So we will be changing those TBDs into actual topics.

So with that, the applicant review section should be going out shortly for review along with the agenda. And the next call is on Thursday, and someone will post the time which is up there, 20:00 UTC, February 27.

So thank you, everyone. Have a good night, good day wherever you are in the world. Thanks, everyone.

[END OF TRANSCRIPTION]