ICANN Transcription
New gTLD Subsequent Procedures Working Group call
Thursday, 26 September 2019 at 03:00 UTC

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JULIE BISLAND: Alright. Well, good morning, good afternoon, good evening. Welcome to the New gTLD Subsequent Procedures Working Group call on Thursday, the 26th of September 2019.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you're only on the audio bridge at this time, could you please let yourself be known now? Alright. Hearing no names, I would like to remind all participants to please state your name before speaking for transcription purposes, and please keep your phones and microphones on mute when not speaking to avoid background noise. With this, I will turn it over to Jeff Neuman. Thank you.

JEFF NEUMAN: Thank you, Julie. Welcome, everyone. I know this is a good time for the Asia Pacific Region, and for other regions maybe not so good, but this is the time in the rotation. So, welcome, everyone.

Our agenda is, again, the same as it's been or same style as it's been in going through the summary documents. We will – knock

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on wood – hopefully finish objections today and then get a start on accountability mechanisms, and then the next topic, just so you can see ahead, are on community applications.

I want to ask before we get started if there are any updates to any Statements of Interest or anything that anyone wants to cover under Any Other Business? Nope. Okay. I don't think there's anyone that's raised their hand in the queue, so let's move on.

So, we're talking about objections. We've been talking about that for a couple of calls now. If you can recall from the last time, there are certain high-level agreements on objections that we've been discussing, and before we get back to the place where we left off. So, we've talked about providing more transparency in all the objection processes including conflicts of interest – a common conflict of interest policy to supplement the Code for Guidelines for Panelists. We've also been talking about applying a quick look mechanism to each of the types of objections – and this has been in the limited public interest objection but it's something that it seems like the group favors for each of the different types of objections not just the limited public interest. And then, there was discussion in the last couple of calls about things like – we talked a little bit about community-based objections and we'll talk a little bit more about them, and the difference to make sure that we distinguish between community-based objections and also – or to distinguish that between the Community Priority Evaluation opposition proceedings. So, we'll have to revisit that as well a little bit later in this call when we get to that section simply because we'll be dealing with the objections part of it but not opposition for Community Priority Evaluation.

Where we left off actually was not official or not objections that could be filed by the community in general but with GAC Advice, which although not technically an objection per se but it is a mechanism that the GAC governments have in order to express concerns or issues that they may have with the then current applications. So, with respect to the GAC Advice, we talked about – sorry, Julie. Actually, is it Steve? Who's got control of the documents? Sorry about that. Hey, Steve. Thanks. Yeah, if you could scroll up just a little bit just so that [inaudible].

So, we started talking about GAC Advice and that GAC can provide advice at any point in time, pursuant not to the Guidebook but pursuant to the Bylaws. But the Guidebook in 2012 added something additional, which was a presumption that if they provided GAC Advice, that the string would not be delegated. So, we started talking about the last time that there was general agreement from a number of the groups that they believe that because the Bylaws have changed since the point in time in which the Guidebook was originally published in the 2012 round that the Guidebook did not need to necessarily contain that extra presumption. We'll come back to that as well.

If we go down to page 8 on the document where we left off, the first thing that we need to talk about is GAC Advice. Even though in the 2012 round we had the notion of GAC consensus advice, there were also individual governments or a group of governments that also did provide non-consensus advice to the Board on various issues that they had with strings. And so, we had in the initial report laid out potential options of what the group should

consider about a role of GAC Advice in connection with the applications.

The next issue in here really deals with the time period. So, there was technically – or not technically – in the Guidebook there was a certain period to do Early Warnings, and we'll talk about that in a second, but there was no time period for filing GAC Advice that could impact applications. So if we look at where it's highlighted, what it says is the option listed in the initial report where GAC has advice on categories of strings that the community commented on the question on whether that advice that applied to categories – again, not individual strings but categories of strings – should be issued prior to the finalization of the next Applicant Guidebook. And it seems like there was wide level of agreement from at least the GNSO community as well as indicated in the CCT Review Team report that to the extent that there is advice on a set of strings that really that advice should be provided ideally in the Guidebook but certainly before the application period has begun. That came from ALAC, the Brand Registry Group, Neustar, the IPC, CCT Review Team report, the Non-Commercial Stakeholder Group, MarkMonitor, Registries Stakeholder Group, INTA. So, it was definitely a wide or definitely was general agreement from at least the GNSO community. Again, it's not we're not talking about individual strings at this point but nearly that while the 2012 round did apply to things that they call the category, so there was category 1 strings and category 2 strings, and category 1 strings were the so-called regulated or sensitive strings and category 2 were what eventually became the closed generics.

So, hopefully through all of these discussions and through everything that we've learned from the 2012 round, hopefully we've now discussed most of the categories that we can at least foresee for the next round. The registries also said that GAC Advice should be issued against specifically identified applications not strings because applications with the same string may propose vastly different business models. And also INTA had a suggestion that it sees no objection to advice being issued against groups of TLDs which share common factors, but the TLDs to which the advice relates ought to be identified to allow for certainty for all parties.

Just looking at the chat. Maxim says that there are no limits to number of texts called GAC Advice and to contents of those. Right. Again, we're walking a little bit of a line here, so we can't say that there can't be GAC Advice because that's not our role and that's the Bylaws allow GAC Advice at any point in time. But what we're really saying here is that to the extent that there's GAC Advice and that GAC Advice could have an impact on applications to the extent that it relates to a category of strings or a group of potential strings, that that should be provided before the Guidebook. Sorry, it should be brought in the Guidebook but ultimately it should be must be provided prior to the application period so that applicants are aware of this advice.

Paul says, "Jeff, did you say there were no time limits on GAC consensus advice in the Guidebook?" There were time limits in the Guidebook on Early Warnings, and we'll talk about that in a little bit, but the GAC could file advice at any point in time. There were references in the Guidebook to when GAC Advice could

apply. I'm not sure that they were necessarily time limits in the Guidebook as to when the GAC could file advice and take advantage of – in the Guidebook, sorry – take advantage of the presumption against delegation but we'll get to that presumption in just a couple of minutes. Just looking at the comments.

Alexander says that dot weed and dot cannabis will be examples of strong single country objection. Heather, thanks for quote 1.1.2.7, that to be considered by the Board during evaluation process GAC Advice must be submitted by the closed of the objection filing period. So, that was in the Guidebook. I'm not sure obviously that that was ultimately followed, so ultimately at the end of the day the Board did consider GAC Advice as we know up until or still considering GAC Advice for the strings.

Heather says that was a quote but there was no time limit, just that if it to be considered "during the evaluation process," It had to be received per Module 3. Thanks, Heather for that. That was element I did forget, so thanks.

So, getting back. Yeah, that was cited in 3.1 but ultimately at the end of the day, again we can't impact the timing of when GAC Advice is provided, but certainly things like affecting categories of strings and what's currently in 3.1 of the Guidebook are things that we can discuss. But at the end of the day, it seems like just from past practice that the timing of GAC Advice has varied.

Jim is saying, "Having a defined window for GAC Advice would certainly contribute to predictability." I think we'll get there as well in a little bit later in this, but the first thing I just want to talk about is the notion of GAC consensus advice and the mechanism that's

used. The Bylaws again kind of describe a difference between just regular advice and GAC consensus advice now. And GAC consensus advice, in order to have the Bylaws mandated protections, namely that if there's GAC consensus advice, that the only way – sorry, not the only way – but that if the Board were inclined not to accept that GAC Advice, it would need to buy at least 60% of the Board to override that GAC Advice. But as we know and as I mentioned a little bit earlier, there were certain objections to strings that only individual governments had, and so there seem to be agreement from ALAC, BRG, INTA, Registries Stakeholder Group, MarkMonitor, IPC, that in order to take advantage of the GAC Advice mechanism that's put in the Guidebook, that it needs to be full consensus GAC Advice. If there are individual governments or a group of governments that do have issues with strings, that if they can't get GAC consensus advice, they really should use the normal objection procedures such as the Community Objection, String Confusion Objection, Legal Rights Objection and the Public Interest Objection.

Justine says we can only ask nicely. Okay. There's a plus one to Jim. Oh, that was about the predictability and the timing. Yes.

Another option that was listed in the initial report as something that we should consider, this relates to Early Warnings. Early Warnings were supposed to be delivered within the first 90 days after the applications were revealed. At that time it was assumed that – or not assumed – we had planned for the notion of up to 500 applications, and it turned out that we got close to 2000, and so there was an extension that was given for I believe it was over a year or pretty close to a year when the GAC was able to file its

Early Warnings. We said here that the application process we said in the initial report, The application process should define a specific time period during which GAC Early Warnings can be issued and require that the governments using such warnings include both a written rationale or basis and specific action requested of the applicant.

So, a number of governments did utilize the Early Warnings ultimately and some of them or a lot of them just said that we don't like the application for whatever string, but they didn't provide any way for applicants to either cure that concern that the governments had or [inaudible] is that – sorry, there's some background – is there someone in the queue that I'm missing here? Nope. Okay.

So, the ALAC Council – I should actually read the second part too which is, the applicant also should have an opportunity to engage in direct dialogue in response to such warning and amend the application during a specific time period. Another option might be the inclusion of Public Interest Commitments (PICs) to address any outstanding concerns about the application. I'll note the Non-Commercial Stakeholder Groups, at least in the calls that we've been having, the objections to using something called Public Interest Commitments, but certainly the notion of amending an application to address concerns provided that there's public or opportunity for public comment, was something that we seem to have general agreement on.

The INTA as new ideas stated that, the Early Warning notice should nominate and provide contact details for an authorized GAC contact who is knowledgeable about the grounds for the

potential objection and authorized to discuss solutions and settle the Early Warning notice. I note that the word "objection" here is used but I think they used objection in the generic sense here of for the potential concern. Or actually, no, I'm sorry. They used objection in the right way here. Or supposedly the role of GAC Advice was to give some sort of warning that there could be GAC Advice in the future on the concerns that they have.

Okay. Let me go back to the chat because it seems like there's some things here. Jim states that the Board in 2012 did not stick to the timelines. Okay, so this is what we talked about before. I'm just trying to summarize here.

There's a question from Taylor Bentley. It says, "Will categories also reference possible new categories being proposed by this group?"

We had a number of discussions on categories and we've covered that area. In this call I don't necessarily think we should talk about that or review that materials but we could provide a link in the action items to the section on the categories. But ultimately, yes, in this PDP we are identifying the types of categories that we see or that we'd like to recognize in the next rounds, and we could put that link in the notes from the call.

Oh, okay. Sorry. Paul's having some Zoom issues but I think he's got it. He's in India at the moment. Okay, great. So, back to the document.

The Non-Commercial Stakeholder Group states that if the applicant amends the application, the public and ICANN

Community should be given notice. Right. So this is what we talked about before in general with amendments to applications that there should be an opportunity for a public comment in response to those types of amendments.

Speaking of India, the government of India expressed support for continuing the Early Warning mechanism. And I should state that – and I can't remember if it's in this section or other sections but it does seem like there was support in the community for continuing the GAC Early Warning mechanism with the caveat that as INTA mentions that there should be an opportunity for applicants to engage in dialogue with those that are concerned and amend their applications to address those concerns.

Just checking the chat. Okay, it seems like we're up to date. So, now we're going to talk about the presumption, and it's important to note … I think it's really talked about the last time. So, the GAC in the new Bylaws has a provision that says that when there's GAC consensus advice, the Board needs to – if they're going to not accept that GAC Advice, it needs to do so by at least 60% of the Board members voting to not accept that advice.

That is something that's new in the new version of the Bylaws that was not there in 2012, so given that the group or working group had put in the initial report that because the Bylaws have changed and have given the GAC this new – or at least has defined the mechanism, that there not need to be the presumption against delegation in the Applicant Guidebook. Some of the community have called those essentially a veto right, which just to distinguish between – okay, so some might ask, what's the difference between the GAC Advice and the presumption that's in the

Guidebook? Well, the presumption was something that was added that did not give the ICANN Board necessarily the flexibility to accept GAC Advice and then to recommend ways in which an application could be changed to adopt the GAC Advice other than the "will not proceed to delegation." And so, this was something again with the discussions that we had just above that really if the GAC has advice and that advice can be addressed through other means or through means other than not delegating the string at all, that there should be that flexibility again with the notion of public comments on those changes.

The first question that was asked, which really just kind of repeat sort of what I just said or ultimately concludes that was, is the presumption against delegation of veto right. And some of the groups – MARQUES said that governments should not have a veto right. The Board should have flexibility to accept GAC Advice and to address the concerns behind GAC Advice. That seems to be a common theme.

ALAC suggested the removal of all references to the strong presumption to be taken by the ICANN Board.

The BRG does agree that the language there is a veto right and should not have that veto right but also that GAC Advice should include a clearly articulated rationale which is also required under the new Bylaws as well, that the GAC provide the public policy rationale. And since the Bylaws have been revised, the GAC has always included a rationale for their consensus to advice.

INTA states that there has been the perception that there is a GAC veto. Subsequent IRPs challenging Board decisions based

on such GAC Advice have considered and rejected the notion of this "veto". And so, again they're just stating that GAC Advice should be treated the way it's treated in the Bylaws.

If we scroll down, because I don't think we need to go over all of these comments because a lot of them just repeat the same thing that we've been talking about, Non-commercial stakeholder group states that the provisions create a "veto right" that is inappropriate as a matter of law.

The community, the GNSO community and the ALAC do support the notion of not having that strong presumption in the Guidebook. Again, just to clarify, it does not change or interpret anything that's in the Bylaws. The GAC still has all of the rights – there's nothing we can say or do or should do about the provisions in the Bylaws, ICANN Bylaws that relate to GAC Advice, and so that's really what we're saying.

The next section it seems like there's general agreement is just in general we just talked about this, is the presumption should not exist. I think I merged these two discussions just now. So, again all of the groups, ALAC, INTA, Registries Stakeholder Group, NIPC on-Commercial Stakeholder Group, IPC state that we should remove the presumption. And the GAC states that the PDP should not make recommendations on GAC activities which are carried out in accordance with the Bylaws and GAC's internal procedures.

I think it's important and we will to the extent that there's still general agreement, which it seems like there is. We will specify in the final report that we are not making any recommendations on

changes to the ICANN Bylaws nor are we trying to govern or trying to change the way that the GAC deals internally. We are only referring to the current provision 3.1 which is in the Applicant Guidebook, which is not something that's in the Bylaws or the GAC's internal procedures. So, we will make that clear that we're not trying to change or comment on any of that.

In connection with that, the way we had these report, there were a number of overlapping questions and so this next one does overlap to a good extent with what we have just been talking about which is, does the presumption that's currently in there limit ICANN's ability to have some flexibility to address GAC or accept GAC Advice and then address it through means other than saying that the string won't proceed. And it seems like there's general agreement that the presumption currently does limit the ICANN Board's ability to accept the advice and come up with some other solution other than we will not proceed. That's why there's this recommendation that the presumption against delegation should not exist. And ALAC comments on how we worded the question and the overlap and so I think we've covered that.

Okay. There's a lot of material there on the GAC Advice and the presumption. I just wanted to stop here to see if there's any comments before we get to the independent objector. So, that's changing gears quite a bit.

Justine states that since the GAC Early Warning came after the 2012 AGB, will the next version of the Applicant Guidebook refer to GAC Early Warning?

Justine, the Early Warning process was actually, I believe, in the Applicant Guidebook, although now I'm questioning it. I think it was there and I think it said it had to be provided within 90 days after the reveal. If that was after the Guidebook, someone can correct me. So, if it's not there then we will refer to it, but I'm pretty sure it's there. So, I'm pausing to see if anyone is still awake and letting me know.

Justine said she had trouble finding it.

Okay, so we will come back to that. I'm sure there's someone looking right now. Thanks, Steve. 1.1.2.4 of the Guidebook, at least refers to the Early Warnings. Okay, thanks Steve. I thought I was in there and I'm glad you found that. Thanks. Great. Cool.

Okay, I don't think though that we came to a conclusion now that I think about it, on the timing of the Early Warning. I think in the Guidebook it was 90 days, but the 90 days given the volume of applications was not sufficient for the GAC to provide it's Early Warnings, so we should probably pause here and talk about whether that 90 days that's currently in the Guidebook should be extended – and we don't have to say exactly how long, we can leave that to an Implementation Review Team.

If we want we have a recommendation that the time for Early Warnings could be dependent on the number of applications, we could also say that the Early Warnings could be – since we are saying that they should be string and application specific, we could use the priority order that's assigned through the processes we've previously talked about as a way. Let's say there's 1000 applications, we could say that there the GAC Early Warnings for

applications number 1 through 250 could be 90 days or 60 days and 251 to 500. There are different ways that we can do it. Let me just open it up and see if anyone's got a thought on that.

Steve says, "In the Applicant Guidebook it's concurrent with the application comment period which is supposed to 60 days." Okay. Thanks Steve. Sorry, for some reason I thought it was 90 but 60 days. So, the question still remains, should we have some sort of extension for Early Warnings for governments given the volume of applications? And if there is no thoughts on that now, that's fine. It's kind of putting everyone on the spot but we can talk online about this question.

Justine saying maybe we could ask the GAC. We could, we certainly can do that. We could also again pump this to Implementation Review Team with something general in our policy documentation again stating that we recognize that 60 days may not be enough time for if there is an increased volume of applications, and so therefore we recommend the Implementation Review Team consider possible extensions based on the volume or something like that.

Taylor Bentley from Canada states, "For our consideration, what are the timeframes for other types of objection mechanisms meant to address issues early in the process?" Taylor, with all the other objections, there is a defined period of time after the strings are revealed to file those objections, and that defined time period as Steve had point in the chat just before was 60 days. So that was the time period that the GAC was held to as well for – I'm sorry, not the GAC, the individual governments or I suppose the GAC

could in theory issue an Early Warning as a whole but Early Warnings were supposed to correspond to that same timeframe.

Okay, so that's obviously something that's open at this point in time, so we should certainly discuss that issue a little bit more on the list to see if we have any recommendations.

Steve said, "Rather than saying it should be 90, 60 or whatever, we could come up with a principle or a period saying it should be like what it is now, concurrent with the public comment period or some other kind of principle." So, we'll kick that issue off to the list because again it's something that I think we're thinking about now really for the first time, so let's put that on the list.

Okay. So, switching gears completely or semi-completely to the independent objector. In the Applicant Guidebook, because of the extensive discussions about things like who has standing to bring certain types of objections and that there are rules with each of the objections as to who would have that standing to bring that kind of objection, the Guidebook or the ICANN community created this notion of an independent objector with respect to two specific types of objections. Those were the community based objections and the limited public interest objection which some call the objection based on public morality – no, wait – morality of public order, that's it.

So, this is what the independent objector did in 2012. It was independent although its budget was funded by ICANN, it had its own website, if I remember at that time and issued its thoughts on the applications and then also later on filed specific objections against strings. So, there was an opportunity to address some

concerns. I think if I'm remembering it correctly, with the independent objector but ultimately the independent objector filed objections based on community and limited public interest. There was a rule that stated that in order to file an objection based on one of these or both of these grounds, that that there had to be at least one comment in the public comment forum that discusses the same basis for having concerns with an application.

There was actually one objection – I believe one objection that was filed that did not have the concern or the support of a concern in the comment forum and I believe that was thrown out because again, the rule was that the independent objector could only object to those strings that had at least one comment in the comment forum, that expressed a similar concern.

The first question that we asked was that, should ICANN continue funding the independent objector and I think overwhelmingly – actually I shouldn't say that. I think each of the groups except the Non-Commercial Stakeholder Group did support continuing the funding of the independent objector. So, that included the ALAC, Council of Europe, BRG, INTA, the Registries, and IPC. The registries had a – it was like a qualified support that's contingent on adopting some recommended reforms. One of those is the conflict of interest policy which we've already discussed having high-level agreement on having that conflict of interest policy. There's also this extraordinary circumstances exception that we'll talk about in a minute, and that naming identification of one or more parties that initiated or supported the objection. That's basically a reference to the comment in the public comment forum that had that basis.

The Non-Commercial Stakeholder Group though does not support the notion of an independent objector but that if it's kept the role should be significantly reduced given the track record they had and the expense. So, the independent objector should be able to obtain background procedural information from ICANN Legal. Actions of the independent objector should be transparent. With the 2012 round something certainly discussed by – it was back then was Work Track 3 that initially discussed this topic. There were concerns expressed that the independent objector lost a good majority of the objections that they filed because a number of them went beyond the scope of what the independent objector were supposed to object to, namely the definitions of community and also the morality of public order, limited public interest. It broadly interpreted those terms and where it broadly interpret those terms it lost the objections. And I think there was several million dollars budget for the independent objector. But all that said, it does seem like the majority of groups do still support funding from ICANN of the independent objector, subject to what we'll be discussing now and the high-level agreements that it seems like we've already reached.

The question then we ask in the initial report was should there be a limit to the number of objections filed by the independent objector? And the group that responded to this question stated no, that there is really no way to or no rationale to limit the number of objections. That came from the ALAC, Council of Europe, BRG, Registries Stakeholder Group. So, not every group address that question, but those that did said that there should not be a limit.

Should the independent objector continue to be allowed only under extraordinary circumstances to file an objection through an application where an objection had already been filed on the same ground. Okay. A little background of this one. For those that may not remember, there was also a rule that the independent objector should not be filing its own objection if there were objections filed by others in the community of the same or similar grounds, absent extraordinary circumstances.

Council of Europe and ALAC support maintaining this extraordinary circumstances provision. INTA believes that we should define what is extraordinary up front. The BRG, Neustar, Registries support removing the extraordinary circumstances provision.

So then the next obvious question was, "What constitutes extraordinary circumstances?" To see if we could define that to this question, the ALAC suggested that where the reasons for which the independent objector files its objection, if the reasons differ or the rationale differs substantially to those raised by the other objector. This would also mean the nature of bases raised by the independent objector and the other objector would likely not coincide. Where the independent objector's bases its objection are wider and more far-reaching in scope than those presented by the other objection.

INTA states that we should review how this concept in treated under generally accepted international law and suggest a draft definition for public review and comment. For example, a likely gross miscarriage of justice may constitute an extraordinary circumstance, perhaps an objection filed on the same ground was

fraudulently or incompetently filed to prevent another objection proceeding on the same grounds.

Let me stop and see if there are any comments. I think these suggestions from the ALAC and the INTA do make a lot of sense. I think we don't have to define exactly what extraordinary circumstances are, but if we could express these that have been stated by the ALAC and INTA as examples of extraordinary circumstances, I think that would go a good way to address what was perceived as an issue in the last round. Any thoughts from the members of the working group on what has been suggested by ALAC and INTA? Jamie, please.

JAMIE BAXTER: Thanks, Jeff. I actually just had a question about this one. In the case that somebody files an objection and the independent objector also does, where does it go from there under some of the suggestions that only one should go forward? Is there a conversation between the two to see who might drop their object? Especially if the non-independent objector objection is from a group that feels that they would be more apt to spend their funds somewhere else and not put them into an objection if the independent objector was doing that. I'm just curious to understand how [inaudible]. Thanks.

JEFF NEUMAN: Thanks, Jamie. In the 2012 round in the Guidebook, the independent objector had a longer time period to file objections, and this was to give the independent objector time to see what

objections were filed and to not file its own objection unless extraordinary circumstances existed. There was no dialogue between objectors and the independent objector. There was no dialogue that was built into the Guidebook. I don't know if the independent objector reached out to those that did object, but certainly there was nothing formal in the Guidebook about that. But essentially, the Guidebook did recognize that the independent objector, in order to follow this rule, you needed to know what objections were out there, and so it was given a longer period of time to file its objections.

Jamie says thanks for the clarity.

Steve states that per the Applicant Guidebook … Oh sorry, too late.

Taylor Bentley stated that perhaps if there's a GAC early warning that that could constitute an extraordinary circumstance that would support the independent objector objection even if there's another objection.

Steve states that per the Applicant Guidebook in Section 1.1.2.4: The GAC Early Warning is a notice only, so it's not a formal objection, nor does it directly lead to a process that can result in rejection of the application.

If I understand, Taylor, Steve, I think what Taylor is stating is that it could constitute an extraordinary circumstance if someone else had filed an objection. Yeah, okay.

We now have some – from the ALAC, INTA, from what Taylor had put in here, I think we have some things we can put in a note that

we send around to the group as potential examples of extraordinary circumstances or illustrative examples. I'm not sure that we have the expertise to completely define exactly what is extraordinary circumstances but I think even providing illustrative examples will aid the independent objector in the next round, and I think that's a good idea if we can do so and have agreement. So we will send around a note to start this discussion or to continue this discussion, I should say. Just pausing a minute.

Okay, the next topic was the question of should we keep limitation on independent objector only filing based on Limited Public Interest and Community Objections? Just to review that really only limits the ability to file a String Confusion Objection and a Legal Rights Objection. Those are the other two types of objections that are recognized in the Guidebook.

Council of Europe, BRG, INTA, Registries Stakeholder Group support keeping this limitation.

The Registries Stakeholder Group does – as we talked about before – believe that the independent objector should name one or more parties that initiated or supported the objection but would otherwise be unable to file.

The ALAC had considered lifting the two-ground limit on the IO's ability to file objections. But I'm not sure it provided additional information. If we think about it, the notion of a String Confusion Objection, the standing for that is someone who's filed an application that is similar, that believes it should be in the same contention set, or one that has an existing TLD that believes that the string is confusing, and therefore should not be allowed to

proceed. As far as an independent objector doing a string confusion, it doesn't necessarily make sense. The Legal Rights Objection generally is based on principles of trademark law, and so it makes sense that only those that believe it's legal rights are being infringed in some way should have standing to file those objections.

I'm not sure, Justine, if ALAC had provided some additional information on that, on what the independent objector should be able to file an objection on, but it seemed to make sense at least at the time of doing the Guidebook that the independent objector should only have those two grounds. Justine, please.

JUSTINE CHEW: Thanks, Jeff. I think in terms of the ALAC response, it was in consideration of the possibility to not limit the standing for string confusion option objections to what it is now. In the event that the parties who are currently having standing to object to a string confusion does not – and the situation actually does present a risk for string confusion, then that could be a situation where the independent objector could step in to file something along the lines of String Confusion Objection. Thanks. That was the intent anyway. That's what I understood.

JEFF NEUMAN: Thanks, Justine. That does make sense. And we will get to String Confusion Objections after this one or after Community later on in this document. So we might bring that up again. So let's highlight that comment and just remember to – if we do agree or there's

agreement to change the standing requirement, then we can address this. If there's not, then it remains the same. Then we do not need to address. We may not need to address this.

In the last round, there was only one independent objector that was appointed. This asks whether multiple independent objector should be appointed, especially if we have conflicts of interest, policies that are strictly enforced. We may not have a choice to – if the independent objector that is appointed is conflicted out or should have conflicts, then in theory – or not in theory – if that independent objector is conflicted out then there'd be no independent objector for that string or application. So it would make sense to have multiple ones, but the comments that we got –

INTA states that a small standing panel should be appointed as the independent objector so that an alternative panelist can be appointed if there's a conflict of interest.

The IPC agrees with the notion of the Standing Panel.

Registries are not opposed to an alternate independent objector to serve if the other IO has a conflict.

The Non-Commercial Stakeholder Group and ALAC states there's no need for independent objectors unless there is a conflict of interest. Then the ALAC goes into some detail into their rationale.

The BC (Business Constituency) states that if there are multiple independent objectors, it should include one from an emerging market ideally with private sector/association experience.

Let me take a look here. I guess for conflict of interest, even a Non-Commercial Stakeholder Group state that there may be a need for an additional independent objector. So let's throw that out there to the group. There are some support for having – whether it's a panel or multiple independent objectors, I think again, to the extent that we have a conflict of interest policy that's strictly enforced, we don't want to be in a situation where the appointed independent objector who's conflicted out and no one could file an objection because of that, I think it does make sense for us to recommend either a panel or an alternate, but let me pause to see if there are comments, either in favor or against that.

You're a quiet group today. It could be because of the hour for some. I do think that this is something we should strongly consider. Again, we don't have to come up with the actual implementation of it because that will go to an implementation group, but we could say that the working group believes that to the extent we do have this conflict of interest policy that's strictly enforced, there should be a mechanism to have an alternate panelist.

Steve said, "Maybe just recommend generally, a way to handle conflicts of interest?" It seems like that has agreement.

Okay, Jamie, please.

JAMIE BAXTER: Thanks, Jeff. I just wanted to add my support here for having at minimum an alternative and providing rationale for it. We saw in the 2012 round that when there was not an alternative to service

providers that the only option was to go back to the same service provider, and I don't think that necessarily gets anybody to a place of confidence in the final decision. That would be the purpose for me supporting having at minimum an alternative so that if there is a conflict, or even worse, if there is some sort of accountability mechanism that kicks it back that you actually have a new place to go to get a less deluded solution. Thanks.

JEFF NEUMAN: Thanks, Jamie. It does make logical sense, and I think it is important. For now, everyone think about that general principle of having an alternative in cases where there are conflicts, especially because it is a high-level recommendation that we have a strong conflicts of interest policy that's enforced. Then again, like I said, we can leave the implementation of that to a review team if we cannot come up with a specific recommendation of either a panel or some other way of having an alternate.

Okay. That is it with respect to Independent Objections. Now we talk about Community Objections. Again, I want to stress here that this is not the same thing as opposition to a community application which is something that's done in the Community Priority Evaluation as a scoring mechanism or that has a score as to whether a community passes its evaluation. These objections are a different process, although a number of entities that oppose the application did also file an objection. We'll talk about that in a second. But let's remember that as we go into this discussion.

The first question – and what we saw happen in 2012 – was that you had applicants that applied as a community for a particular

string objected to other applications that did not file on a community basis but it objected pursuant to a Community Objection. That sounded confusing, so let me get to an example.

If we look at something like dot sport I think was one of those cases. I'm just trying to provide an example so people could understand. In that case – or at least as I remember that case – you had one applicant that applied for dot sport as a community and ultimately got it, but there were several other organizations that applied for dot sport as an open, unrestricted TLD. So the community-based applicant objected to the other applications based on a Community Objection. This occurred prior to the Community Priority Evaluation process. Some had viewed this as perhaps something we should review to see whether if something like this is appropriate.

The Council of Europe and the ALAC supported, still allowing a community-based applicant to file a Community Objection against the other applications, stating that there is a public interest in allowing all concerned parties to be heard and there is no justification for prohibiting it.

The Registries Stakeholder Group and Non-Commercial Stakeholder Group opposed, allowing this and considered it unfair in a form of double dipping. Essentially, what they're saying is that a Community Priority Evaluation – if someone is accepted as a community, that means that they get priority over the other strings in a contention process. But if you win on a community-based objection, you kick out all of those other applications, and so what the Registries and Non-Commercial Group are saying is that it was used as a mechanism for those community applicants to have

two bites at the apple or two ways to go against other applicants. So they considered it unfair.

But the ALAC raised the concern about a situation where community-based gTLD applicant were to file two different types of objections, with diverging determinations based on different definitions of "community" adopted by each Dispute Resolution Service Provider. Unless the evaluation of criteria for "community" can be harmonized across all Dispute Resolution Service Providers, we suggest that it be stipulated that a community-based gTLD applicant may file a Community Objection or a String Contention Objection. I think that means String Confusion Objection.

Going to the comments, the chat right now. Sorry, I think I'm going back here. There are some questions on Jamie's comment. Jamie states that the point that was being made was that not having alternatives is a good strategy. Got it.

Alexander states that, "I think they only discussed alternates for the IO." Okay, this is still on the independent objector.

Going back to the Community Objections, it seems like there's good arguments on both sides of either allowing this or not allowing it. If we allow it or continue to support allowing it then is there a way to address the concerns raised by the Registries and Non-Commercial Stakeholder Group so that it's not double dipping. Thoughts? Comments?

They are supposed to serve two different purposes. So it is possible that a community applicant does not succeed on a

Community Priority Evaluation, which looks at a number of factors that may not be looked at in a community-based objection because the outcome is different for the two. So there may be a basis or a good rationale to continue to allow those because they're based on different things. It's not only the definition of what constitutes a community but a community applicant in order to get that priority, it does have to show a level of support for them being the appropriate entity to represent the community for a TLD which may be different than them having standing to object to an application on behalf of a community. I hope I didn't confuse things a little bit, but at least in my mind I could see different rationales that could exist for allowing both. But then is there a way to satisfy or to address the gaming concerns. So I don't think we have high-level agreement on any side on this particular issue, but if there's a way to address concerns that the Registries or Non-Commercial Stakeholder Group have then perhaps that could be something that's agreed upon.

Justine says that the merit of the objection should be looked at to determine if there's gaming. I think that's right. Perhaps there's some sort of consequence for someone who files a frivolous type of objection. Remember if you lose an objection, at least according to the current rules, then it's a "loser pays" model, so they are forfeiting a substantial amount of money.

Is there anything else? Again, we don't need answers now but it's something to think about. At this point, we don't have high-level agreement on one way or the other. Jamie, please.

JAMIE BAXTER:	Thanks, Jeff. I'm trying to fully understand this because it would seem like a bit of a double standard to then say that standard applicants are allowed to support or encourage a community organization to file a Community Objection, and then also have that have an effect on community opposition scores and CPE. So it seems like a bit of a double standard being suggested now that I'm hearing it from what you're saying. Thanks.
JEFF NEUMAN:	Thanks, Jamie. It could, certainly if one is gaming it but it could also have a legitimate purpose because remember the outcome of those two things are very different. The outcome of a community-based objection is that the application dies, that it doesn't proceed. The output of an opposition through a Community Priority Evaluation, it doesn't kill the application, it just results in a score that could be lower which may not enable the community-based applicant to achieve community status, but it doesn't kill the application. The application – if it doesn't meet the community standard for the priority evaluation, it's not as if the application dies, it just goes into the pool with all the other applications. So it has a very different outcome. That's something we just need to keep in mind that they serve different purposes.
	Justine says, "Hence, the quick look." Thank you, Justine. That may address what we're talking about. It seems like we have high-level agreement on extending the quick look to all the types of applications, this may be something that's picked up in a quick look. I think that's a good connection.

Okay, while everyone is thinking about that, let's go on to the next one which relates to the fees for community-based objections. Certainly the fee for any of those that were involved, were in some cases in the six figures in U.S. dollars, so that was extremely expensive even to defend an objection. Although it's a "loser pays" model, there was still a fairly substantial quote administrative fee that was not able to be recovered. So even if you've lost the community-based objection, you still did lose some funds as well. So the question was what can be done to lower the fees and make them more predictable? The other aspect was that the fees weren't determined in advance. There was a maximum like a guideline I think that ICANN had, but at the end of the day, it was hundreds of thousands of dollars. So what can be done to lower it?

Jamie stated that ICANN should negotiate the fees better and publish cost projections with more care.

The ALAC states that the costs were unpredictable and high. ICANN should facilitate a meeting of the minds with the pricing.

Neustar states that the fees should be communicated to participants up front.

The Registries Stakeholder Group states that costs should be transparent up front.

Part of the problem was that this was such a new thing at the time. Nobody knew really what the cost would be or how extensive the evaluation would be because there's not much that's out there in

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the world like this. But now that we have experience, hopefully cost could be better estimated.

The Non-Commercial Stakeholder Group states that the arbitrator forums could shorten the learning curve for arbitrators by providing education and DNS background.

So, certainly those are all good suggestions, but I think while it would be difficult for us to recommend specific pricing because we don't have that kind of expertise, and also recognizing the fact that ICANN does not like to be in a position of regulating fees, I think these are good suggestions to give more predictability to the fees even if we can't set the dollar amount. Certainly having those fees set up front prior to the applications window closing, certainly we'd be very helpful certainly before objections are due. Again, I think these are all good areas where I think we can have high-level agreement at least on the principles.

Alexander states, "Should non-profits be able to defend themselves at no cost?" Alexander, I think this was a topic that was discussed not only by our group but certainly before the process in 2012, and I remember the governments discussing this as well. Ultimately, it came out to the principles of this program should be self-funded, so it should not have additional funds that are committed by ICANN for this program, that there obviously is a cost to the dispute provider the substantial cost. Not knowing who's going to object up front makes it impossible to ensure that objections from some entities will cover the cost of any non-profits. So I don't think that in reality, that we could do that. Remember, not-for-profit doesn't mean that they don't have income or that they don't have money. It just means that they're not in it for profit.

That gives many non-profits that have a lot more money than for-profits.

Justine states, "No cost doesn't exist, because someone still has to pay the dispute providers." Right. And it would only be if dispute providers do it on a pro bono basis, but given how extensive these disputes are, especially done correctly, this is not something that we necessarily could get dispute providers to do.

Okay, next question is: what is your view on allowing those filing a Community Objection to specify commitments they would want to apply to the string, and if the objector prevails, these PICs become mandatory for any applicant that wins the contention set.

The ALAC and Jamie Baxter agree with this. The caveat from the ALAC is the applicant must have the option of withdrawing its application as well. Jamie states that this will require further instruction in the community objection filing procedures. It may subsequently be necessary to include a negotiation period between the objector and the winning applicant in order to reach agreement on the final language of the PIC.

If I understand this proposal – or remember my understanding – what it means is that the community applicant would prevail the objection but it doesn't necessarily affect or have an impact on the Community Priority Evaluation. So, in essence, it would still allow the application to remain in the contention set but the applicant would still need to pass the Community Priority Evaluation in order to get priority.

INTA, Neustar, Registries Stakeholder Group, and the Non-Commercials do not agree with this proposal. The objectives could include some PIC suggestions according to INTA, and the parties could use the starting point for discussions to resolve the objection by way of negotiated settlement. The biggest obstacle for settlements in the last round was that we did not allow any material amendments. In this round, while we still have to talk about the subject in some more detail, there does seem to be general agreement that provided there's a public comment period and another opportunity to object, we do seem to support the notion of allowing amendments, so that may not be an obstacle in the next round.

Neustar's new idea is if an objector identifies PICs that they believe could be applied to the TLD to resolve the objection, the parties should resolve the issue cooperatively.

Registries: where the objector identifies a PIC that the applicant can agree do, the parties should be permitted to resolve the dispute.

Nothing in the current rules prevent the applicant from working with the objector. If we could scroll up just a little bit, I'm trying to figure out what the divergence is too if we go back. It doesn't seem like there's opposition to allowing this back and forth into allowing amendments, to address the objections to settle the objection, what is the divergence to? Sorry, maybe the hour for me. Jamie, please.

JAMIE BAXTER:	Thanks, Jeff. I think the NCSG comment there is slightly misguided because I want to remind everybody that community applicants were not permitted to make changes to their application. So the "modify the application" comment there isn't necessarily true. I believe that that's being changed in the subsequent procedures, but in the 2012 round that was certainly not the case. Thanks.
JEFF NEUMAN:	Yeah, definitely, Jamie. Like I said, I think we're leaning towards at least at this point with the group in the discussions that we've had, it seems like we're leaning towards allowing amendments, provided that there's an opportunity for comments and objection, etc.
	Steve and Justine pointed out that the divergence is really to the mandatory nature, but it doesn't seem like there's objection to allowing settlements and amendments. I guess the question though is whether it's called a PIC or something else, if there's an objection and the dispute is settled, presumably it's settled based on certain commitments or understandings, and if they're not mandatory then how is the settlement enforced? Is it just a private contractual settlement agreement? I guess this question is for INTA, Neustar, Registries, and Non-Commercial if it's really to the mandatory PIC.
	Something to consider, again if we can distill this to high-level agreement on at least the ability to settle and to amend applications then at least that part of it could have high-level

agreement and we could stay silent on whether it becomes a mandatory PIC or something else.

Okay, let's move down if we can. I think because we're sort of running out of time, I want to start this subject but I think this is one where we may need to continue on the next call because there are some concepts here. Jamie, please. Sorry, your hand is up.

JAMIE BAXTER: Yeah. That's okay. Thanks, Jeff. I think perhaps the word "mandatory" was suggesting that the PIC has to go in in order to clear the objection. Maybe that's just the way that was worded perhaps. At least that's the way I interpreted that. If the objector can agree with the applicant on a PIC, it does need to become mandatory in something they don't strip out later. Maybe that's what it meant. Thanks.

JEFF NEUMAN: Thanks, Jamie. It could also be because there's a general objection from a Non-Commercial Stakeholder Group, at least with their comment that they object to PICs or the notion of PICs. So it's something I think we need some clarification on, but at least I think in going forward, it seems like we do have some guidance on the notion of amending applications and having that.

Steve says, "I think it being mandatory in connection with the objector providing the exact PIC." Oh, okay. That would be an objector providing what commitment would satisfy their objection. It could be one of the areas.

Alright, let's seek clarification. But I do think that there are some things to pull out of it that do seem to maybe not that specific requirement but certainly allowing settlements and changing applications seem to have agreement.

We're definitely not going to have time to address the string confusion. I do want people to think about some of these. There's not a huge amount of comments on string confusion, and it mostly relates to the notion of comments filed by the NABP (National Association Boards of Pharmacy) with respect to allowing other grounds for objecting based on confusion, and in their case based on a highly regulated or sensitive string. I do think that it's something that we should be thinking about whether additional confusion grounds are a good idea or not.

So we will start there on Monday, if someone could post the time for Monday's call. It's actually Tuesday – oh great – this time. How we ended up with two in a row, I think it's because we have a separate rotation for the two calls, and so it's possible to get the same time. So, that is the time for the next call.

Let me just stop and see if there's any other comments. I do want to remind everyone, I think there's an ICANN schedule that's out and it does or it may state that Work Track 5 is meeting on the first day Saturday in the morning. I want to remind everyone that it's not going to just be Work Track 5. It's a full working group or they're full working group sessions where Work Track 5 will be presenting to the full working group the outcomes of that group. Unfortunately we could not get it changed, the wording for the first version. But hopefully for future versions, that will be changed.

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So if you are planning your travel or have not planned it yet, please make sure that you are there for all four of the sessions of subsequent procedures. There's lots for us to do. I think we've made good progress. Thanks, Cheryl. And everyone else, thank you for discussions. I look forward to talking to everyone on Tuesday. Thanks, everyone.

CHERYL LANGDON-ORR: Bye for now.

JULIE BISLAND: Thanks, Jeff.

JEFF NEUMAN: Thank you.

[END OF TRANSCRIPTION]