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## ICANN Transcription

### GNSO New gTLD Subsequent Procedures PDP Working Group

**Thursday, 13 August 2020 at 20:00 UTC**

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. Attendance and recordings of the call are posted on agenda wiki page: <https://community.icann.org/x/1AGNC>

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**MICHELLE DESMYTER:** Welcome, everyone. Good morning, good afternoon, and good evening. And welcome to the New gTLD Subsequent Procedures PDP Working Group meeting on Thursday, the 13<sup>th</sup> of August 2020 at 20:00 UTC.

In the interest of time, there will be no roll call. Attendance will be taken via the Zoom room. So if you're only on the audio bridge today, would you please let yourselves be known now? Hearing no names, I would like to remind all participants, if you would please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when that speaking to avoid any background noise. As a reminder, those who take part in the ICANN multistakeholder process are to

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comply with the Expected Standards of Behavior. With this, I will turn the meeting over to Jeff Neuman. Please begin, Jeff.

JEFFREY NEUMAN:

Thanks. Sorry, I was just laughing, someone just sent me something. Anyway, thank you, everyone. Welcome to the call. We have a lot to do today. I sound a little weird. I'm outside of a friend's house and borrowing their Wi-Fi because the Wi-Fi at my house is down. So there you go. Hopefully, the noise isn't too great. But anyway, much to do today.

So before we dive right in, let me just see if anyone's got any updates to any Statements of Interest. Okay. I'm not seeing anyone.

Okay. Can we put up the agenda? There it is. Good. So as you can see there's a lot to cover. We had sent out a large number of documents in the past, I guess a week ago, and that's why we did not have a call this Monday so that everyone had time to review all of the documents. And I think what we'll do is we'll go in order of these documents to see if there were any comments and then just walk through those to see whether any changes need to be made.

The other thing I want to cover is that we do have a call right now scheduled, a call scheduled for the rest of the month. They're on your calendar. They're all on an "as needed" basis, so the hope is that we finish today or at the very latest on Monday's call. I want to get this draft Final Report out and then cancel the rest of the calls

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for the month and start up again the first Thursday. It's, I think, September 2 or 3 or whenever that Thursday is.

So that's the planned schedule. We have been busy revising or filling in the Google form with all the questions, taking into account all the comments that were made on the last call when we went through the form. Sorry, I'm going to put Julie on the spot here, but are we in a position where we could send like a PDF form of the questions as they currently are to the group, or is that not quite done yet? Sorry, Julie.

JULIE HEDLUND: Of the questions? I think that right now we'll – oh, I'm sorry. Go ahead, please.

JEFFREY NEUMAN: Yeah, the same thing that if someone were to go to the survey and download it all like on the first day of actual public comment –

JULIE HEDLUND: Oh, the survey. The full survey. Now, I'm sorry, the survey is dependent on whatever final wording is decided on this call and if there needs to be a Monday call. So the survey isn't populated yet because there's no point putting stuff in the survey and then having to rewrite it or edit it. That's in particular because we're discussing the draft Final Report change analysis today, and if there's any comments associated with that or changes then that final text will be what's populated into the survey.

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JEFFREY NEUMAN: Okay. Yeah. Thanks, Julie. It makes sense. But if we finalize it today, how long do you think it would take to get that PDF out to the group, just so they can have it?

JULIE HEDLUND: I would think by Monday.

JEFFREY NEUMAN: Great. Cool. Okay. Thank you. There's a question on here from Jim, "If the report is out for comment until the end of September, what will we be doing on the September calls?"

Good question. What we will be doing is, there are some topics that we already know now that we've sort of flagged as comments were submitted in the last, I don't know, a month or two, which were newer comments that we just had to certain people, "Hey, submit that during the public comment period," and we'll obviously take that into consideration. So for some of these comments, we know we can actually start looking at them even before the public comment period ends. There's also some issues if you are following the few e-mails back and forth with Jamie Baxter and others on community. There's a couple of issues that we still know of that we can tackle while we're waiting for comments come in. So we'll submit a list of those issues out shortly with the topics that we can discuss. So I don't want us to lose time during September whenever we run through the public comments but if we can get a head start on some of those areas.

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Donna had put in Work Track 5. Work Track 5, that is included in this draft Final Report, so we're not going to discuss that during the September timeframe. We'll only discuss that with respect to comments that we get back during this comment period.

Okay. So let's then turn to the first document or, well, the first part we'd like to review, which is essentially the preamble. I don't believe – and Emily can correct me because I know there's some e-mails that came in the last 24 hours. I think I got them all, but I don't think there were any comments that we got on the preamble. But if we can just put it up. Okay. Thanks. Thanks, Emily.

So while we wait for that to come on up, I might as well ... Hopefully, you've all read it, but the format really, some of it you've seen already like a month or two ago. This first part of the preamble is a discussion of what we sought to do here. If you could scroll down, the important part I think for everyone was – a little bit further down – where we talked about the – sorry, if you stop here for a sec. So right here we talk about the type of comments we're trying to get. And in bold here, you'll see that we're trying to discourage just submitting the same comments that you've submitted in the past, and we go into how we've gone into all these issues and really what we're looking for. And then if you go down a little bit more in this, you'll see this is the definitions that we gave to affirmation, affirmation with modification, recommendation, implementation guidance, no agreement, etc. So, that was all same as the document that we sent around a month or two ago. And then the rest, you have table of contents, and then you have a bunch of – they're not exactly boilerplate but their information about the working group, the charter, the work

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that we've done, again the outputs and the community input that we've already gotten, as well as what we're seeking. So that's the format of the preamble, essentially, in a nutshell. Like I said, we didn't get any comments on all of that sections or sections 1 or 2. Again, you've seen those in all of the PDP Working Group documents.

You'll notice, and I think we went over this, even the last time of the time before that that we've given everything new numbers that the 2.1.8 point whatever was just kind of onerous. So right now, we've given each discrete topic a actual whole number. So you'll see the overarching issues are topics 1 through 8, foundational issues, etc. So they're grouped that way.

Jim is saying, "I'd be curious to see that list. Not to be addressed now but my initial reaction is I'm kind of uncomfortable deliberating on something while it's out for comment. That's immediately changing what the community is being asked to comment on, isn't it?"

Thanks, Jim. It's a good point. Obviously, we don't want to be substituting our thoughts for the communities. But I think there's a couple areas that we flagged, like really specifically drilling down into the Community Guidelines document, for example, that was just one off the top of my head, that we do ask the public to comment on it but it also doesn't hurt for us to just take a look at it again, work through any of the updates that we know need to be made. So the intent is not to substitute our thoughts for that of the community. Things like the Closed Generics proposals to go through some of those maybe in more detail, to see if we want to start some work on that prior to getting some comments in. Again,

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it's really more to get a head start than it is to substitute for the comments that we're going to get. So we'll get that list out. I think that's fair.

Christopher's hand is up. So, Christopher, go ahead.

CHRISTOPHER WILKINSON: Hi. Good evening, everybody. Thank you, Jeff, for all your and your Staff's hard work on this. Just a personal comment on something you just said. I agree that from your point of view, it would be helpful not to have repetition of positions already expressed. But insofar as the positions that I have expressed have not been endorsed, ignored, and in some cases ignored, I reserve the right to repeat what I've said before in the context of subsequent consideration of the documents. Thank you.

JEFFREY NEUMAN: Yeah. Thanks, Christopher. Of course, we can't prevent any comments from coming in. I think we're just trying to encourage the new arguments. And when we get all of these, we can then talk about whether arguments that we get in were addressed or ignored and go into that. So, we can't stop anyone from actually making those comments.

CHRISTOPHER WILKINSON: Yeah. Thank you for that reassurance because I have spent a great deal of time on your calls and your documents, recommending what needs to be done and what needs to be changed in order to make the next round internationally

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acceptable and economically successful. I feel that several important considerations that I have raised have not yet been given adequate consideration by the PDP. Thank you.

JEFFREY NEUMAN:

Okay. I thought it was on mute. Sorry. Good. Thank you, Christopher. Just to read the last comment here from Alexander, and then I think we can go on to the next topic on the agenda. So what Alexander says is that “There is a strong interdependence between Work Track 5 and closed generics. We have never discussed how closed generics outside of Brand Spec-13 would be governed in regards to Geo terms. We always said either a string is protected by only being used by a brand or it was open for registration. With closed generics, all these assurances suddenly evaporate into air. So if we allowed close generics, we have to go back to Work Track 5.”

Okay. Thanks, Christopher. I don’t necessarily see that, but whether we allow closed generics or not, it’s really going to depend I think a lot on the public comment and our deliberations after that. So I think we can park that issue for now. I don’t think any of the options at this point are a given, whether to allow them, not allow them, or allow them only in certain circumstances. I think we’ll watch one of the ones – I think we’ll wait to see the comments that we get back.

Okay. So one of the topics that we asked for comments, there were three that we’ve been discussing for the last several weeks, the first one being Predictability and specifically the Predictability Model. We got a couple of comments in in the last week on that,



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and so let's scroll through them and see if we can address. Remember, these were supposed to be the "can't live with" comments.

So the first one is from Christopher. He'd like to delete the references to GNSO Council, replace with an alternate decisional entity. Christopher, essentially, if you read the rest of the comment, the rationale that Christopher believes the GNSO Council is not as credible as an arbiter in this context committed, in principle, to their 2007-2012 policies which have never been endorsed by the PDP dominated by incumbent interests and perceive conflicts of interest, inappropriate for any one of the SO/ACs to rule over a multistakeholder entity.

So on this one, Christopher, the only thing I can say is because we are a PDP constituted under the GNSO, the only thing we can actually recommend as a GNSO PDP is something for the GNSO Council or the GNSO to have oversight over. I think your comment is more of a meta issue and one that even if we wanted to make that recommendation, that it wasn't the GNSO, I don't think we would have the authority to make that kind of recommendation. Christopher, is this a new hand? Sorry, I just saw it but I don't know if it's new or an old hand.

CHRISTOPHER WILKINSON: That is a new hand.

JEFFREY NEUMAN: Okay, go ahead.

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CHRISTOPHER WILKINSON: On this specific issue, I understand the dilemma that you have because of the status of the PDP as a dependence as a daughter of GNSO. Excuse me. I have to drink some water to clear my throat. Frog in my throat as the expression goes. Excuse me.

But look, GNSO has it within its power to abstain from the authorities that it claims, whereas what we have been confronted with in the PDP and in WT 5 is GNSO, it read in tooth and claw. Your starting position has been that in the event of no consensus of the positions of 2007 and especially 2012 would prevail of those positions date from a period that is obsolete in current ICANN multistakeholder structures and policies. I don't want to take any more time of the call on this particular point, but I maintain the statement that I've made in the comment to the documents. Thank you.

JEFFREY NEUMAN: Okay. Thanks, Christopher. I think that would be something that you could file as a public comment. I don't think we're going to make any changes to the text at this point. But certainly, you're more than welcome to file that as a comment and ultimately, if this stays in, as part of your Minority Report. Thanks, Christopher.

Okay. Can you go to the next one? Okay. I think the next comments are on the actual model itself, if I remember correctly. Yes, as we're scrolling through. Okay. This was on the statement. I think this is related to the last comment. It's about the GNSO

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discretion. So I would make the same recommendation because it's just related to that other comment.

Okay. This came in from Kathy. We have two examples in there of possible policy level new proposals. But it did not include one of the examples that we discussed, like if someone wanted to add in a new rights protection mechanism. The reason why we removed that from this one is I think we all recognize – and let me just check and see if Kathy's on the call – but the reason we removed it from this section is that we thought it really fell in the next category, which is Category 4 – can you scroll down a little bit? I'm sorry. We don't have Category 4. Sorry, my mistake. That we felt that this one was so definitely policy, that someone recommended it that that would be clear on its face that it wouldn't even necessarily need to go to the SPIRT team because it was so rooted in policy that it would be known from the start that this should go straight to the GNSO.

I suppose what we could do is to understand Kathy's example. I don't think it belongs in here. I'm just trying to think if there's another way we can express that. George just said, "Kathy's planning to be here but maybe a little late," which is okay. At this point, I'm trying to think of a way because we don't have that Category 4 in here, which is that if it's known to be policy rights without the need of going to a SPIRT team. Like this example here, suggesting a new rights protection mechanism. The reason why it's not in here is because it wouldn't go to SPIRT team. So we'll take that back and think about it a little bit. It doesn't necessarily belong in this section because it's a known policy as opposed to something that needs to be examined by the SPIRT

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team to see if it's policy. But perhaps we can include that example somewhere else in a place where it says that SPIRT team would not have to be consulted.

Christopher's hand is up. Again, is that an old one?

CHRISTOPHER WILKINSON: It's not an old one. But –

JEFFREY NEUMAN: Okay. Go ahead.

CHRISTOPHER WILKINSON: You jumped over the previous comment that I had made. This is a governance question within ICANN. All Supporting Organizations and Advisory Committees are equal in the multistakeholder structure of ICANN, and their weights and the importance of the contribution to the consensus should also be equal. But the very idea that you would create a subcommittee called, in this case, SPIRT, a lovely name, a beautiful name. I think Mr. Trump would be delighted to be a member of SPIRT. But you've created a SPIRT and somehow there is a there is a god above the SPIRT, and the god is part of the SPIRT but has the right to overrule and ignore or change the SPIRT.

This is not correct. As a governance proposition, it is not acceptable that one member of a multistakeholder entity should have the right to decide whether or not to accept the recommendations of that entity. GNSO has to learn to be a little bit

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more modest in the modern structure of ICANN. I think GNSO has not fully taken on board what we achieved in the context of the transition from U.S. oversight to the community. Thank you.

JEFFREY NEUMAN: All right. Thanks, Christopher. Susan, you're in the queue. Go ahead.

SUSAN PAYNE: Thanks. Christopher, hi. I think this is a conversation for a sort of different forum than the subsequent procedures. I want to be perfectly honest. I mean, it seems to me that you have a fundamental misunderstanding of what the ICANN Bylaws say and what the different structures roles and responsibilities are. And perhaps it would be helpful if you reflected on that when you're thinking about the role of the GNSO in this context. It's the GNSO's responsibility to develop policy in relation to gTLDs. But to give you some comfort, if you like, you seem to be under the impression that the GNSO is a single kind of unified structure with a single unified view, which is so far from being the case, that in fact there is no single GNSO view on pretty much any topic you can think about. And indeed, there are such strongly opposing views within the GNSO that in fact it can be incredibly difficult to make decisions on things. But your notion that the GNSO as a single structure is somehow [you're surfing] the role of all these other groups. I mean, if you're concerned about, for example, the issues of registrant rights or civil society, well, there are groups in the GNSO representing those interests. There are groups there representing the interests of contracted parties. There are groups

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representing the interests of Business and ISPs, and they all have different perspectives and experiences that they bring to the GNSO. As I say, I think you need to go back and look at the bylaws again and reflect on what the roles of the different groups are.

CHRISTOPHER WILKINSON: Thank you, Susan, for that tutorial. I shall do so. But I've been in this business for longer than you have. By the way, if you are right then it is bad tactics, to say the least, to import, to insert the GNSO issues –

CHERYL LANGDON-ORR: Christopher?

CHRISTOPHER WILKINSON: Yes?

CHERYL LANGDON-ORR: We are not progressing our agenda. This conversation is for a different forum. That's all that's being said and I think that's a very good –

CHRISTOPHER WILKINSON: Cheryl, I will just wind up now. If this was such an issue, it should not have been imported into this document. By shorthand, I'm referring to the GNSO Council. I understand the diversities of the GNSO itself.

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CHERYL LANGDON-ORR: Thank you, Christopher.

JEFFREY NEUMAN: Thank you, Christopher. All right. Let's then move on to the next one. Oh, Kathy's here now. So Kathy, I'm sorry, so your example that you pointed out, the reason why we didn't mention it here – I think we have it in there at one point – but the reason why we took it out is because we felt that a change to the rights protection mechanisms would be so clearly policy that it wouldn't go to the SPIRT team at all. It will go straight to the GNSO, right? So I think the way to address that example, and what we put a note in here, is to find a place in the text to put that example where it's clear that it wouldn't even go to SPIRT team to consider because it's known that that is policy. It wouldn't even need to go to SPIRT team is what we're trying to say. Does that make sense, Kathy? Go ahead.

KATHY KLEIMAN: Thanks so much and apologies for being late. It makes sense provided maybe that you footnote it here. I guess because it was here for so long, it made sense to me that it continue to be here, because what's so obvious to us may not be obvious to people reading it a little later. So if there's a way to create the cross reference or include it as an example here, something just so far outside the scope that it would definitely stay within the GNSO Council remit. Everything you just said made sense, but putting it right in front of people's eyeballs when they get to the section I

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thought made sense too and I missed it. I missed it when we got here and the example had changed. So maybe we could put in two examples, e.g., Public Interest Commitments and Rights Protection Mechanisms, and then reference some of those other areas. But it sounds like we're in agreement so thanks. And thanks so much for dialing back a bit when I got here. I appreciate it.

JEFFREY NEUMAN:

Sure, Kathy. I do like the suggestion of a footnote that we could put here to explain what we were discussing. So I think that might be a good way to do it. So while Emily puts that in – thanks, Emily. I'm always amazed at how staff can do all this real time. So thank you, Emily.

Okay. Then the next comment here was from Christopher. Again, I think this is related to the same issue. So I don't think there's a need to discuss it again. You all right, Cheryl? Is that you? Okay. So then let's scroll down.

Okay. This is from Kathy as well. So this is in the Conflicts of Interest section. Kathy would like to add the text – black or green, actually – below, the one that's being highlighted now. Essentially, that states that “In the issue of full transparency to other members of the SPIRT and to the public, members who SPIRT agree to disclose on a regular and ongoing basis that an issue being debated and discussed by the SPIRT involves an application of which a SPIRT member has a direct interest, including as applicant and/or through their firm company or clients. This disclosure shall be open, transparent, and on the public report of



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the SPIRT meeting and a Statement of Involvement or Direct Interest should start every SPIRT meeting.”

So Kathy then says, “As part of the rationale we discussed and agreed that the SPIRT member herself/himself is in the best position to know that the direct interest is taking place and to disclose on a regular and ongoing basis. Now we further agree that recusal is not a requirement but disclosure on a regular, ongoing basis, as agreed by the working group.”

So there’s a lot here. Are there any thoughts or anyone want to make any comments to this? New addition. If we tackle it piece by piece, I think that there is a requirement now. So Anne is saying, “Rather than debate it or discuss, I would say address.” Okay.

So, Kathy, that text would then be – it wouldn’t replace anything, right? It would just be added to as a new bullet point.

KATHY KLEIMAN:

Right, right. And I actually thought at 12:30 in the morning, the last meeting that we talked about this, this is exactly what we agreed to. So more than receptive to word changing, but there’s nothing new. This is exactly – I remember going to sleep and thinking, “Okay.” I’m glad because we got to adjust before the end of one of the late night sessions on East Coast. And it’s what we agreed to and that when you’re debating something of which you’re directly involved in, you share it. It’s very clear. It’s very transparent, no one has to cross reference to your Statements of Interest or participation, and issues come up. In fact, I can remember that we even talked about what kind of disclosure would take place on the

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unusual situation they you have a client who has asked you not to disclose that you represent them, which is a special case. So we talked about this at length. But this idea for transparency, I thought that this is exactly what we agreed to. Back to you.

JEFFREY NEUMAN: Okay. Thank you, Kathy.

KATHY KLEIMAN: And I don't think it's covered by the other language. That's why I spent time drafting and on vacation, because I really don't think it is covered by the other bullet points.

JEFFREY NEUMAN: Okay. Thanks, Kathy. I think the concept makes sense and is what we discussed. I think Anne is suggesting some wordsmithing, which I think is fine too. I don't know if we want to create something new called a Statement of Involvement or Direct Interest, but I think we can just include that concept in the normal Statement of Interest. So when someone has asked at the beginning of every call to disclose anything or any changes to their Statement of Interest, I think we can include or that should be included in there, as opposed to creating a whole new document with a different name and for a very specific purpose. So I think that the concept is what we discussed. We will also take Anne's comments on some of the wordsmithing if you're okay with that, Kathy.

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KATHY KLEIMAN: I'm just taking a look. Okay. I had interpreted Anne's comment differently in terms of what she was talking about with address that this should be – absolutely. That's great. That's great.

JEFFREY NEUMAN: Okay, great. Okay, good. So we have a way forward on that one, which is good. Sorry for the silence there. I'm just waiting for Emily to type down the notes and go to the next one, which I don't think there was in that particular part.

So now we are on the Closed Generics paragraph that was added. Okay. So the language, the paragraph that we had set or we sent was just this one long paragraph here. We got some comments into that, including from Kathy and Marc Trachtenberg.

The first comment from Kathy is – and I think it's actually a really good one in the sense that it seems like I'm just paraphrasing Kathy, but the fact that this paragraph is pretty far down in the section, it could be considered buried or may not be viewable. I think the response to that is that in the Google survey form, we do specifically call these out and we will be putting links into the actual proposals, so if they missed it initially when looking at this report, hopefully we'll see it when the survey form directs their attention to that. So hopefully they'll see it there and it'll be pointed out to them.

One of the reasons we didn't put it higher up or give it more prominence is that these proposals, while a lot of effort went into them, some of them last minute, I would say. The reality is we haven't really discussed those proposals thoroughly and didn't

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want to give them more prominence than the several years' worth of work that had already gone on in this, so it wasn't intentionally to bury it but this is really just a recognition that really came up as the last item we were discussing towards the end.

Kathy, go ahead.

KATHY KLEIMAN: Great. Thanks, Jeff. First, I'm glad to know in the comments you don't have to – let me ask you. When someone's filling out the comments, they don't have to scroll through five pages of text to get to the three proposals, is that right?

JEFFREY NEUMAN: Yeah. We're going to have links to them directly.

KATHY KLEIMAN: Okay. So that's good. First of all, people are going to be using – the comments are really, really difficult. The comment survey form is really difficult for stakeholder groups and other groups that are trying to create – there is a PDF. But people/groups are going to be using this report probably to prepare their answers for the survey form. And often we work backwards. Often we start with the most recent where we were and work backwards to the history. So I think there really is good reason to move this up. And I think in this report, in particular, because it is the background, because it is where people are going to go for the background, the history, the context, I think we really do need to break out all three reports here, their authors, and links here in the report – this

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report as well – because we don't know what medium people will be using for their organizations and their companies to prepare their responses. I don't see any downside in moving this up and putting those three proposals squarely in front of people. I see what you're saying. But it's many, many pages of text here. So as long as we agree on whatever the text is, I don't see a downside in moving it up and kind of working chronologically backwards. And we've also got some other proposals, a few pages up that were one-person proposals. These are at least group proposals, kind of in the summation at the end of a lot of work. I don't know if that's clear. Back to you, Jeff. Thanks.

JEFFREY NEUMAN:

Yeah. Thanks, Kathy. So let me address. I think links to the proposals, I think, yeah, we should do that. I don't see any reason why not, especially because we're going to be asking for comments specifically on those.

Let us look at maybe putting that towards the beginning of the new ideas section. That might give it a little bit more prominence. Let us look and see where we can put it up and where it would make sense. So I think that addresses both of the comments, right? The first one was just on the links. Yeah, okay.

KATHY KLEIMAN:

All good. Your placement sounds great. The links – can we put in the titles and the authors? Just so people know what they're linking to. We would want to give them an incentive to link to all of

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this. So the more information they have, hopefully the more they'll be excited about linking and reading.

JEFFREY NEUMAN: Yeah. I think that's doable as well. I think on the call, where we were discussing the proposals, each of the authors had said it was fine to attribute. So I think that's fine as well. When my name is listed by one of them, I'm going to make sure it says "in individual capacity," just so it doesn't sway. I don't want them to think it's a proposal from the Chair, as the Chair, if that makes sense.

KATHY KLEIMAN: Sure. That makes sense.

JEFFREY NEUMAN: Okay, great. Okay. Marc's got a long comment in here. And I know Marc is not on the call and he's on vacation, a well-deserved vacation, but Marc's comment here I think interpreted above where it said Option 4 – actually, let me go back a step. As you may recall, Marc and others had submitted – or actually, it was under Kurt's name, Kurt and Marc – submitted a comment about more towards a proposal allowing closed generics and explain the rationale why. Even though we have an option that's above that was considered way early on, that was not option. Option 4 was something that was different. I know it sounds like it's identical. Perhaps moving this up in placement might be less confusing. So I think that that part of his comment I think will be addressed.

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If we can go scroll back down, I just want to make sure that that one was covered as well. And then Marc has got a reword. In reading his reword, there's some bold language in there that he wanted to add, which is clarifying that it wasn't just proposals that were limiting the use of closed generics but they were proposals to – sorry, let me restate. The way Marc's language, what it does is it changes it from the presumption that the proposals are limiting these closed generics when one proposal is talking about the availability. I think Marc's rewording does make some sense, but I want people to review it because I don't want it to change the meaning. I didn't think it changed the meaning of it, but I certainly want others to make sure that they're comfortable with it.

So, for example, it now says, "However, the working groups are interested in community feedback regarding the three proposals received. In regards to both the high level principles and the details (where provided)" – moving the added language – "as well as any other proposals members in the community may have..." There's probably a word in there – "with respect to the availability of closed generics and then also soliciting other..." Later on it says, "The working groups particularly interested to hear from the community about which proposal, if any, they believe warrant further consideration by the working group, and why. Or if there are any other proposals that members of the community may have with respect to the availability of closed generics."

So, Kathy, I think we're missing word "made" in Marc's sentence, but I think it makes sense because we don't mean to limit the comments that we get to those that would limit the use of closed

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generics. If there are members of the community, I believe it should be available.

Does anyone disagree? I see Christopher's hand is up. Christopher, is your hand up with respect to this particular language, or something else?

CHRISTOPHER WILKINSON: It's with respect to this section of the document.

JEFFREY NEUMAN: Okay, go ahead.

CHRISTOPHER WILKINSON: My recollection is that Marc's comments were based on the claim, which I think I shared, that his opinion had not been adequately reflected in the document. I say I share that point of view but from the opposite policy position. I would like it to be made very clear in the document that certain participants were totally opposed to the resolution of contention sets by private auctions. I think that should be said in black and white. Otherwise, the document appears to be desperately fishing for arguments and cases from the community to permit the privatization of generic words, which I think both the Board and the GAC made very clear would be very difficult to accept. But I speak for neither the Board or certainly not the GAC. As a matter of personal policy and principle, I think private auctions in this context should be banned. Thank you.



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JEFFREY NEUMAN:           Okay. Thanks, Christopher.

CHRISTOPHER WILKINSON:       And that should be reflected in the document. There's a certain tendency for the Staff and the co-Leads to pick and choose as to what you think is correct and appropriate to report upon. Thank you.

JEFFREY NEUMAN:           Okay. So, Christopher, is that comment, though, related more towards private auctions or more towards closed generics? If it's private auctions, we're not at that section yet. So this is a Closed Generics section here. Sorry, Christopher, did you want to respond to that? Okay, let me go to Anne. Go ahead.

ANNE AIKMAN-SCALESE:       Thanks, Jeff. My question regarding Marc's addition is whether the language proposals made would be accurate? Because it looks to me like we're saying we're looking for public comment on these and then possibly any other proposals that public commenters may wish to make. I don't know if in his change if we're talking about proposals the community made or this working group made versus proposals a community may wish to make. Do you see what I mean?

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JEFFREY NEUMAN: Yeah. I interpreted Marc says both, to comment on the ones that are in the section but also if they have any other ideas. So I kind of interpreted his comments to ask for both.

ANNE AIKMAN-SCALESE: So I think rather than changing “may” to “made,” we have to say “made” or “wish to make” or something that actually covers both. Just a wordsmithing thing.

JEFFREY NEUMAN: So Emily highlighted that portion there which now says, “Or if there are any other proposals that members of the community may have with respect to the availability of closed generics.” And then Emily states in the chat, “Perhaps the missing word is ‘have’ to reflect his other addition.”

ANNE AIKMAN-SCALESE: Yeah. I think that works. Concise. Thanks.

JEFFREY NEUMAN: Okay. Thanks, Emily. And thanks, Anne. Christopher, your hand is up but I don’t know if that’s an old hand or a new one. Kathy, go ahead.

KATHY KLEIMAN: Thanks, Jeff. Quick question. What this does do is change the text of the paragraph in two places to request additional proposals from members of the public. And I wanted to ask you and Cheryl,

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is that what you want? Is that what we agreed to? We've got many different proposals now in the section and to know where people align, what's strongest, what's not. I mean, there's a lot of material already out there. If we get a lot of new proposals – let me just throw out, we may be spending a lot of time sorting through them versus asking the proponents of possible new proposals – where do you align in the spectrum we've already given you? Kind of a timing question, but I just wanted to point out what appears to significantly change the impetus of the paragraph where it's going.

JEFFREY NEUMAN:

Thanks. Thank you for bringing that up. I didn't want to, as the Chair, bring that up but I'm glad you did. I think as the Chairs of the group, we would love comments on existing proposals and we want to discourage people away from bringing completely new proposals because I think we've seen it all. So I agree with that, although of course we can't stop anyone from submitting a new proposal. So perhaps and we'll take this offline to see if there's a way where we can reword it where we're not so directly asking for new proposals. And I see that Paul posted in there in the chat.

CHERYL LANGDON-ORR: That's my recommendation. I have no urge. Absolutely no urge to open up some more.

JEFFREY NEUMAN:

Okay. Good. I'm glad you're comfortable. It seems like at least from Paul and from Cheryl and Kathy, sounds comfortable with doing something like that. So we will work on that text as well.

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That's a relatively quick fix. Okay. Can we go on to the next one then? Sorry. Emily, are we going to the next part or is that it? Oh, that's the end of the section? Good. Great. Thank you.

All right. Thank you, everyone, on the closed generics. Let's go straight to the – oh, there are a few proposals. I think we went over some of them that were in the gray text where we didn't ask for comments. I think some of the ones I think we already went over. This one I think was the one that I was talking about. It seems to confuse Option 4 with what Marc's proposal was, and that wasn't it. So I think we'll work that one out with Marc. We'll just let them know that that – and if there's a way we can make it clear that Option 4 was not his current proposal. Option 4 was something that was long time ago.

Okay. I think the rest of it's all like that. I think we can move on to the Predictability. I'm sorry, not Predictability. We did that. The auction stuff. Okay. Jim proposed adding a bracketed text to this paragraph, which I think makes sense because we did talk about making certain things clear in the terms and conditions. That's currently Module 5 of what an applicant agrees to when submitting its application, and so we had talked about making a change in terms of conditions, essentially giving notice that ICANN has the right to submit something to Competition Authority. I'm not rewording that very well, but essentially we did have that discussion. So I think that that addition is fine. Does anyone have any issues with Jim's proposed text? Okay, good. We can take that one.

Okay. This one I think it's going to require a little bit of discussion. So what we say here are "All private resolutions reached by

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means of forming business combinations or other joint ventures resulting in the withdrawal of one or more applications are likely to result in material changes to the surviving application and to the extent they do, they must follow the Application Change process.”

So I think Jim would like to delete this last part by stating that “Material changes may not always be the result in a private resolution settlement. The terms of a business combination may not meet the requirements for terms of material changes. Also, the use of the word ‘likely’ and ‘to the extent they do’ do not present a value add to this statement. They actually introduce an opportunity for applicants to subjectively determine if they must follow the Application Change process.”

I think the intent there that we’ve discussed is that these types of private resolutions where it’s business combinations or joint ventures must be submitted through the Application Change process, and I think we state that elsewhere. So I agree that this language is confusing. And I think Jim’s point about deleting this language makes sense. Anybody have any comments on that? Paul, go ahead.

PAUL MCGRADY:

Okay. Just a quick question. I think then in that by deleting this, we’re sort of then presupposing that a material change has occurred. I can’t imagine every infinite possibility out there so I can’t give you an example of a time when this would happen, that a material change would not have occurred. But can we put in some “if” language? “Must follow the Application Change processes set forth under Topic 20, if a material change has

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occurred or...” I just think that this jumps to the conclusion that a material change has happened as opposed to saying if/when this happen then you need to do this.

And I take Jim’s point that we don’t want to make it subjective. On the other hand, if the applicant doesn’t do it and a material change has occurred, then their application is going to get kicked out. So I think there’s already a safeguard there. Thank you.

JEFFREY NEUMAN:

Okay. So I’m seeing some people agree with the notion of deleting the language, and then I’m seeing Susan agrees with Paul. Elaine has said that as all material changes required is there. Right. So the end of the sentence it says, “All private resolutions reached by means of forming business combinations or other joint ventures resulting in the withdrawal of one or more applications” – without that language, it would say “must follow the Application Change process set forth under Topic 20 as all material changes require.”

I have two thoughts on this one. The first one is that I see the point on not having this automatically be declared material. But I do think what we’ve discussed was, because this was a private resolution and the forming of a business combination, I think that what the working group had wanted was that this would go through the change request anyway regardless of whether it is [inaudible] or not, because this is so new that we wanted information and data about it, an opportunity to comment and all that other stuff. It’s almost like we don’t need to reach the conclusion that it’s “material” – or we can handle one of two ways.

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Either we can deem it material or we can just say, “Regardless of whether it’s being material or not, this should be disclosed.”

Donna is saying, “Can we just delete ‘are likely to result’?” So then the language would say, “All private resolutions reached by means of forming business combinations or other joint ventures resulting in the withdrawal of one or more applications...” I don’t know if we can do that, Donna.

DONNA AUSTIN: One or more applications may result in material changes. So it’s a “may” rather than “are likely to”.

JEFFREY NEUMAN: Yeah. Donna, that’s sort of in line with Paul’s suggestion but I think that goes against sort of what the group was looking for here. The group was looking to basically not get into the debate of whether it was material or not, and basically trying to say that this needs to be disclosed, regardless of whether one leads it to be material or not.

Paul’s back in the queue. So Paul, go ahead. Oh, Paul’s not in the queue.

Anne is saying, “It’s less clear than just referring to the application section.” Yeah. I think that’s right. So I think it just says it must follow the Application Change processes, if we took out the language. I think if we take out the language that says “are likely to result,” the language that Jim has crossed out, and take out the language “as all material changes require,” because then we’re

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not making the judgment that it's "material" but we're still saying it needs to follow the process.

There you go. I think that makes sense. Paul, does that work?  
Susan, go ahead.

SUSAN PAYNE:

This may be irrelevant now because people seem to be agreeing, but I was just going to ask – and apologies, I don't have Topic 20 in front of me – but does the Application Change process in Topic 20 include criteria for when you follow the change process so that it sets out the situation or the criteria that are met that require you to follow the process? Because if it does, then just reminding people to review and comply with that process would be fine because whether you're caught by it or not is contained within that Topic 20. So, it's kind of a question for you. Basically, is that the case? Does Topic 20 control when it applies, as well as setting out what the process is?

JEFFREY NEUMAN:

Topic 20 does have some criteria. I don't think in that section it has this specific example. But it does lay out in general what the criteria is. I'm not speaking correctly. So I think we need to review that section. I think it's a good question. We'll make a note to review that section to make sure that by putting in this cross reference, it makes sense.

Paul is suggesting, also just saying, instead of "must follow the Application Change process," to just say "are subject to the



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Application Change process.” I think that’s fine too. I don’t think that changes the meaning.

What Susan is saying, “If the criteria are met then you follow the process. We don’t necessarily have to have the example.” I think there’s a note in there for us to review that section. We know the point that everyone’s making. I think everyone’s in agreement on the concept. So we’ll go back and make sure that that works.

The next comment is from Christa, which is just putting the correct title in there, which I think is right. I don’t see any controversial thing there. The next one – actually, I think we missed – sorry, no. We didn’t miss but I’m trying to see who this comment of adding ICANN in came from. We have that in parentheses, didn’t we? Okay. So this right now it says, “Applications must be submitted with a good faith intention to operate the gTLD, applicants must affirmatively test to a bona fide use (intent clause).” So the question is whether we need to have that word in there, and this is from Justine. Justine would like to see the word use be intent. I think what you’re saying is at this point, it’s an application when you apply and therefore it’s really your intention to operate it that way as opposed to use. And we don’t have a good definition of word use. So I think that completely makes sense and I think we were supposed to make that change anyway and just may not have gotten to it. Paul, go ahead.

PAUL MCGRADY:

Sorry for the delay, I’m double muted. I think maybe the phrase we’re looking for is bona fide intention to operate the registry. Something like that. Sort of taking and modifying the USPTO

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language a bit. That's what we're getting at, right? I don't know what a bona fide use intent is necessarily, but a bona fide intention to operate the registry, I think that's what we're getting at. Sorry, I'm being redundant, but I'm also pulled over at a truck stop on my drive home from Nashville.

JEFFREY NEUMAN: Hopefully it's a luxurious truck stop.

PAUL MCGRADY: Elegant. Thank you.

JEFFREY NEUMAN: We have that language in the previous sentence. Why don't we just restate it rather than come up with a new clause? I know that that's just restating what's in the previous sentence, but that's fine, I think, rather than paraphrasing, it make sense. I think that's in line with Justine's comment.

Okay. The next comment is from Jim.

CHERYL LANGDON-ORR: You've got a hand up.

JEFFREY NEUMAN: Oh, I'm sorry. Sorry. Go ahead, Alexander.

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ALEXANDER SCHUBERT: Hi. You just called me?

JEFFREY NEUMAN: Yes, sir. Go ahead.

ALEXANDER SCHUBERT: Good. Okay. I was switching the [call] mode. Paul makes a good remark here. He is comparing it to the U.S. Patent and Trademark Office. The U.S. Patent and Trademark Office doesn't say, "Okay, you can use your trademark or patent or whatever it is in 10 or 20 years. That's fine." Or they say, "Hey, you have to use it within whatever the time is, probably six months. Otherwise, you're going to lose your protections." We have already hundreds of TLDs that are in the root and completely unused, have maybe one domain, some of them don't even have any domains root. You can try nic dot whatever it is and there is not even a website. I have tried it. So I think if we are asking people, "Do you intend to use it?" and we have already the example of hundreds of TLDs that are not used in any way, form, or shape, then we have to add a qualifier. For example, "Are you going to use it within X, Y, Z years?" Thank you.

JEFFREY NEUMAN: So I think, again, that the language – what we had agreed upon the last time is not to have the word "use" in there because it was too difficult. We don't have a definition. Paul was only comparing it to the Patent and Trademark Office just because he borrowed some language but wasn't he trying to compare this to a trademark.

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ALEXANDER SCHUBERT: If I can have a follow up.

JEFFREY NEUMAN: Yes, sure. Go ahead.

ALEXANDER SCHUBERT: I mean, the issue I have is there might be a lot of entities who are creating, essentially, protective applications. They never intend to use this TLD. It's just kind of a protective application for their brand. They never intend to use their brand TLD. They just apply for it to have it protected. Or they might apply for a generic term just to bury it because they don't want that anyone else is operating it. I think that was what we tried to exclude here when we said, "You have to apply for your TLD with the intent to use it," had was the speculative portion that people might apply just to lose an option. But the other part was also that we do not need applications or TLDs in the root that are in the root for whatever reasons, but not for the reason to be operated as a TLD.

JEFFREY NEUMAN: Alexander, I think that the concept there is covered in the non-exhaustive list of factors, which has got its own issues or comments that we need to discuss. I think the place to cover that – let's hold that comment for a couple minutes or at least until we get down to the list of factors. So let me just cover one quick thing before that, which is Jim's comment that it should be not just evaluated, but it's evaluated in ICANN because both evaluators

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and ICANN have the ability to ask clarifying questions. So I think it makes sense to have ICANN there.

And then we get into – sorry, Alan and Anne’s hand is up. Okay. Alan, go ahead, and Anne. And then what I’m going to propose we do is cut it off there. We’re going to have a call on Monday but it might not take as long as the full time there, but then we can finish going through the rest of these. I do want to go over one other item with the questions on the survey forms. Alan, go ahead then Anne. Then we’ll cut queue and start the next one – I’ll start on Monday at this point. Alan, go ahead.

ALAN GREENBERG:

Thank you very much. I support the intent of what this is trying to do but from several different levels, I’m not sure how implementable it is and how effective it is. From a point of view of private resolution, I can say, with all good faith, I really did intend to operate it but this deal is just too good to pass up. That doesn’t say I didn’t have the intent to do it but the world changes and then suddenly, they’re offering me \$100 million. Hey, I’m not stupid. So the intent is not necessarily sufficient in this case. And if you look at the recommendation and its own ground, not related to private resolutions, but as Alexander’s pointed out, there’s lots and lots of TLDs out there that clearly no one has any intent to use. Unless we put words in that are specific enough, it’s a hard rule that is completely unenforceable because compliance is not going to take action. If someone says, “Hey, I have five domains out there. I have nic and www and whatever. That’s sufficient, I’m using it.” So on several different levels, I find this really problematic even though I completely support the intent on both levels. Thank you.

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JEFFREY NEUMAN: Thank you, Alan. It is certainly a difficult subject. Your comments make a lot of sense and we're going to start off here anyway on the next call, but let me go to Alan and Christopher. I'm sorry, not Alan. Anne and Christopher. Sorry, guys.

ANNE AIKMAN-SCALESE: Jeff, congrats on being able to keep us all straight as much as you have under the circumstances of sitting outside somebody else's house. Sorry to take up time.

I agree with the change that Jim suggested about ICANN and I think that's relevant.

With respect to Alan's comment, I think we probably have already crossed that bridge. I appreciate that it's going to be difficult to make the assessment, but I think rather than a Compliance department, we were referring to an evaluator here.

Then with respect to Alexander's comment, to me the phrase "intent to operate" is about use and bona fide the intent to use. I'm not sure exactly what change Alexander might be requesting, because operate and use mean the same thing to me.

Then lastly, this phrase – I think I must have listened to recording because I may have been on vacation. This phrase, "non-good faith intent," my recollection is Paul said, "I don't know what that means." And I thought maybe there was already going to be a change that appeared here that instead said "lack of good faith

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intent” rather than “non-good faith intent.” I think it could be much clearer if we just say a lack of good faith intent. Thanks.

JEFFREY NEUMAN:

Thanks. Thank you, Anne. I know we made that change in at least one place, but we may have missed one. So you’re correct on that, that it should be lack of good faith. So we will make sure – or, Anne, if you could help us maybe offline find exactly where that is, but we’ll look for that. But you’re right on that one.

Okay, Christopher, quickly, and then we’re going to go to the questions. Christopher, go ahead.

CHRISTOPHER WILKINSON:

Jeff, I’m not into wordsmithing at this time of night, but I want to make it very clear that the policy objective that I support is that we will not facilitate the accumulation of portfolios of speculative TLDs. And we should not even be supporting the accumulation of TLDs which was such a bad idea that after 10 years, they’re still not economically viable. This goes to the evaluation process and it goes to the attitudes towards portfolio investments in TLDs. There’s a discussion somewhere about what to do about an applicant who applies for five TLDs. No, if the applicant applies for more than one, he or she must be required to prioritize them, put them in a list as to which they want first, and they’d be lucky if they get the top one. But this lacks attitude, which unfortunately was prevalent in 2012, which resulted in the situations which Paul has referred to in the recent chat. That won’t do. We’re in here to change, we’re in here to correct, we’re

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intended to do better than they did in 2012 around this particular point. TLDs that are delegated must be used, i.e., open to registration. Sorry to insist again. But there is a certain lack of sympathy in this PDP for anything that departs from the comfortable and lax situation that prevailed in 2012. Thank you.

JEFFREY NEUMAN: Thank you, Christopher. I think with this retrospect, we are trying to address speculative applications. And I think when we get into the discussion next time on the non-exhaustive list of factors, I think we'll get into a little bit of that as well. Let me go to –

CHRISTOPHER WILKINSON: Let's try harder.

JEFFREY NEUMAN: Okay. Thanks, Christopher. So in the last five minutes, I just wanted to point people to the Description of Differences document, which is forming the basis of the questions that we'll have in the survey form. This is important for us, obviously, because we want to populate the survey and we want to do that sooner rather than later. But what I specifically want to point out is Emily, Steve, Julie went through all of the sections again and found that there were four areas that we said in the text that we wanted to ask the community a specific question, but we did not initially put those on the Description of Differences document.

So you will see on that link that Emily has just sent, I think it's four questions that are highlighted, that we just added over the last



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couple days when we went back to those sections. If you could please look at those four added questions and make sure you're comfortable with the way they're worded between now and Monday at the latest, that would be great. Again, these are specific places where in the Recommendations or in the Deliberation section we said that we wanted to ask a question on this very thing. So I want to thank Emily, and Steve and Julie for finding those in the sections and to make sure we will be including those on the Google survey form. Any questions on that?

Okay. I'm not seeing any questions. Again, I know that we have not received any or I don't think we've received any comments on this document. But this document is important, again, because it will be the text that's above the area where we're going to ask whether people agree or support the change or does not support but can live with. I'm not wording it the right way because we changed those pursuant to the conversation last time.

For the next call on Monday, which will be our last before the draft Final Report goes out, we will cover the rest of the Auction section, specifically the non-exhaustive list, and we will then cover the – I'd like to make sure all those questions, the description of differences are good to go. Perhaps we can show some more of the pre-filled in survey form so everyone can get a good feel of what they're going to see. The last thing I want to say before ending this call is – Donna is asking for the link to the doc out now. Donna, is that the Word document? That's the draft Final Report or the document with the differences?

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DONNA AUSTIN: The one that we're working through now. I'm not sure what the distinction is, Jeff.

JEFFREY NEUMAN: Well, there's a document that has the description of differences that will form the basis of the things that are on the Google survey form and questions. But the Auctions document, Emily just put that out.

DONN AUSTIN: Right. That's the one. Thank you.

JEFFREY NEUMAN: Okay, good, great. Thanks. I want to also highlight in the last two minutes that once we release the draft Final Report for comments, our plan is to hold a – well, Julie's going to do a pre-recorded session, I guess a tutorial on how to fill in that Google survey form. So that will be up as well at the beginning of the public comment period. Then our plan is to hold one webinar either September 10 or 14. We'll put this in writing so everyone knows this on e-mail, to kind of just discuss the report and to answer any questions that people might have. Then the due date of the comments will be the last day of September. I think there's 30 days in September, so it will be September 30. Let me ask Cheryl or Emily or Julie, is there anything else that I missed that we didn't cover?

CHERYL LANGDON-ORR: Not that I can think of, Jeff. No.

JEFFREY NEUMAN: Okay. Emily says she doesn't believe so. Okay, great. Well, I think we make great progress. We are really getting there. The next call, I think it was posted already in the chat. It's Monday at – sorry, it keeps scrolling up – 15:00 UTC. I look forward to seeing everyone or actually hearing everyone virtually there. Thanks, everyone. Great call today. Thank you.

MICHELLE DESMYTER: Thanks, Jeff. And thank you, everyone. The meeting has been adjourned.

**[END OF TRANSCRIPTION]**