<div style="text-align:center">

ICANN Transcription
GNSO New gTLD Subsequent Procedures Working Group
Thursday, 02 March 2020 at 15:00 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/PwVxBw
The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page
http://gnso.icann.org/en/group-activities/calendar

</div>

MICHELLE DESMYTER: Welcome, everyone. Good morning, good afternoon, and good evening. Welcome to the New gTLD Subsequent Procedures PDP Working Group call on the 2nd of March, 2020.

In the interest of time today, there will be no roll call. Attendance will be taken via the Zoom room.

As a friendly reminder, if you would please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise.

With this, I'll hand the meeting back over to Jeff Neuman. Please begin, Jeff.

JEFF NEUMAN: Thanks. Sorry about that. Took me a second to get off mute. Hello. This is Jeff Neuman. Welcome, everyone. Michelle, you're clapping as the host. Just thought I would let you know.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

The agenda is up on the screen right now. We will cover three topics today—well, hopefully cover up to three topics today—and then spend the last couple minutes under AOB talking about the topics that we plan on covering at the remote ICANN67.

Before we dive into that, let me just see if there are any updates to any statements of interest.

Okay. Let me scroll down and make sure. Nope. I don't see any hands raised. Okay.

Of the three topics we're going to cover today, we'll start with registrant protections and then go onto the registrar non-discrimination, separation, and standardization, and then a section that's called registrar support for new gTLDs. The titles for these three sections aren't necessary the best titles because some of them are broader than what we actually ended up covering. We'll see that as we go through.

The link to the document is on the PDF. Thank you. Let's see. Who's doing this. Is it Emily or Julie? Who's doing the document? So thanks, whoever it is. Great. So the link is up there.

When we're talking about registrant protections here, when we initially got this issue from the discussion group, it contained a number of different topics. Many of them we actually ended up moving into different sections early on. I think, at one point, PICs might have been in this section, but then we moved that to the global public interest section. We may have talked about abuse mitigation [inaudible]. That's mostly in its own section, although there is a reference to it here. There are other ones that were just

moved around because they fit in better with other sections that we were talking about.

When we're talking about registrant protections here, you'll see mostly a focus on two areas—the EBERO (Emergency Back End Registry Operator) and the background screening—that were originally noted by Kurt Pritz in a congressional hearing way back in, I want to say, 2010 or '11 or at some point during that period.

I noticed the comments from Kathy: "Is registrant protections the right term?" I'm not exactly sure, but I guess, at the end of the day, rather than focus on the title, let's look at the actual words in the affirmations and recommendations.

Kathy, I see your hand is raised, so please go ahead.

KATHY KLEIMAN: Thanks, Jeff. Can you hear me?

JEFF NEUMAN: Yes.

KATHY KLEIMAN: Okay, terrific. In light of everything we've done as we circle back to this, which I'm glad we're doing, I would modify this. When we think of registrant protections, often we think of free speech or free expression, due process, or privacy. This is something different. Would maybe object, though, that we modify this to be registrant protections for technical or stable or secure operations, or something like that? Because that's really what we're talking about

here. Not a huge issue, but it's misleading. It's misleading every time I see it. If we do that, I think everything becomes a lot clearer below, even though I've got questions and I see other people have questions as well. So registrant technical protections, or something along those lines. Thanks.

JEFF NEUMAN: Thanks, Kathy. It's not all technical, but I understand your comment. Maybe there's something we can just think of just on the list of something else to call it. Maybe we just call it EBERO/background screening, or something like that. I don't know.

Let's go on to Alan, please.

ALAN GREENBERG: Thank you. I'll start by saying I don't really care what the title is. I'll just note that these are protections of the registrant as a registrant – in other words, to ensure that they [stay] a registrant. Yes, they're not the protections that we often talk about, such as privacy, but these are in fact protecting their status as a registrant. So it may not be that bad. But, ultimately, I'm not sure how much time we want to spend changing the title. Thank you.

JEFF NEUMAN: Yeah. Okay, Alan. Thanks. Let's talk about that. Let's do that on the e-mail list. If we can brainstorm, that's fine. But I agree. Let's move on to the substance.

Alan, your hand is still up. I don't know if that's a new comment.

No? Okay. So the first one is affirmation. Well, Elaine asks a good question: "Does the title match the header in the 2012 Applicant Guidebook?" We'll check into that, Elaine. I don't know the answer to that at the moment. So we'll look into that.

So the first affirmation is just affirming the principle from the 2007 policy, which states that a set of technical criteria must be used for assessing a new gTLD registry applicant to minimize the risk of harming the operational stability, security, and global interoperability of the Internet. I'm going to move onto the next one because I think that's pretty non-controversial.

The next affirmation is—oops. If we could scroll back up. Sorry about that. Sorry. Let's just wait until we get back there. There we go. The working group affirms existing—I think Kathy may have put in "technical," so let me just go back to the original version now—registrant protections used in the 2012 round, including the EBERO and associated triggers for EBERO events and critical registry functions. In addition, as described in Section 2.7.7— that's basically the reviews—the substantive technical and operational evaluation is being maintained and, therefore, protections against registry failure, including registry continuity, registry transition, and failover testing continue to be important registrant protections. The working group also supports the registrant protections contained in Specification 6 of the registry agreement.

I just added a footnote there—so if we can scroll down—just to list what those are. That would be 2.2, which is the prohibition of …

Sorry. This is Specification 6, Section 2.2. (prohibition on wildcards), Section 3 (continuity), Section 4 (abuse mitigation)—although the only thing there, just to note for the record, is to have an abuse point of contact and to have it on your website; so it doesn't really deal with all the other aspects of abuse that we've been discussing over the last several months—and Section 5, which are initial and renewal periods.

I also put a note in here that says Section 6 deals with name collision and is addressed separately in … We'll just have to fill in the section where name collision is covered in this report. So hopefully that makes sense.

If we go back up. While you're scrolling back up, I'll read Elaine's comment. "Not to reopen the debate, recognizing this has been discussed, EBERO has not proven effective in that the [slam] stats show there were several times a registry should have been EBEROed and was not. I think, somewhere along the line, the EBERO program needs to be reconsidered."

Elaine, we have discussed this issue. Essentially, ICANN has explained that, in each of the situations where the EBERO trigger is hit, there's also an analysis done by ICANN to determine whether transitioning to an EBERO would be more efficient and—what's the word I'm looking for?—safer than just relying on the registry to fix its issues. So what ICANN explained during those discussions … I think Francisco came in at one point for Work Track 4 and talked about the fact that many of these registries, when they hit the trigger, were in the process of fixing whatever it is that was at issue. Those issues were in fact resolved in faster time than it would have taken to transition to the EBERO and then

transition back to the registry that was now complying. So the EBERO is really just an option at the discretion of ICANN if it wants to transition over.

But, yeah, I don't disagree with … Elaine just put in there that she thinks that the concept needs to evolve. I think that may be right. I think that might be one thing that could be worked on separately if that's what the community wants to do. But I think, for this next round, the group discussed just keeping the triggers the same.

Let me just see—oh, Alan, please.

ALAN GREENBERG: Thank you. Just a note. There are two recommendations in the draft SSR2 report on EBERO. Although the report is not finalized yet, there's a probably a good chance they're going to stay in close form to that. I think we really should look at the text and make sure that we're considering it. Thank you.

JEFF NEUMAN: Thanks, Alan. I was aware of that, but that might because I haven't read it as closely as—

ALAN GREENBERG: It's Recommendation 25 and 26.

JEFF NEUMAN: Okay, thanks. Let me—

ALAN GREENBERG: I think. Well, sorry. Maybe it's only 26. But, in any case, somewhere around there.

JEFF NEUMAN: Thanks, Alan. Can I ask, while we move on in this discussion, if someone from ICANN policy can pull that up? We can discuss that after we go through these recommendations.

Okay. Kathy, please?

KATHY KLEIMAN: Thanks, Jeff. A question raised in the chat. EBERO. Can we define our acronyms? And has this acronym been defined loosely or technically within some accessible portion of this area? So something that people can refer to easily, or else can we put a footnote in? Because there are many people who are reading this who may not remember what EBERO means or where the rules regarding EBERO. Thanks.

JEFF NEUMAN: Thanks, Kathy. That's a good recommendation. The first time we mention it, I'm not sure if it's in this affirmation. I can't remember what was above it. But, yeah, I think let's spell it out the first time and then let's link to … ICANN has a page or several pages on their website talking about EBEROS. I think that's a good recommendation. If we can put that in there.

Julie, you had your hand raised, but I'm not sure if that was an accident.

Okay. Let me add Jim's comment. Jim's comment is, "I'd like to go a step further. The EBERO program is a crutch that keeps failing registration going out of business. I don't know of any other industry where unsuccessful businesses are propped up by this. I might be wrong" – no, you're actually right about this, Jim—"but WED has been in EBERO since 2017. It's still there."

ICANN does have a process for transitioning out a registry. It is there. It's just that they haven't triggered it. I think, when something is on EBERO, just keep in mind that it's only DNS that's operational. It's not the shared registration system, which means you can't renew registrations … Sorry, you might be able to renew them, but you can add new ones. You can't modify. So I think, even though it has been in EBERO, it's not really doing much of anything. But I think ICANN does have the processes to phase them out. They just haven't done it.

Let's go then back to the first recommendation that we have, which is: the working group supports Recommendation 2.2B in the program implementation review report. That's the report that ICANN staff—their post-mortem report—that they did, which states: Consider whether the background screening procedures and criteria could be adjusted to account for a meaningful review in a variety of cases. That would include newly-formed entities, publicly-traded companies, and companies in jurisdictions that do not provide readily-available information.

There's a little bit on this in the rationale. We've also, I think, talked about the background a little bit in the evaluation materials. Essentially, ICANN had some difficulty in doing background screenings in a number of jurisdictions where that information is not really there or doing a background check on a newly formed entity. That obviously is not going to review anything. So, really, although we do think and this group affirmed that this background screening is essential, this really just talks about ICANN looking into different ways to do that background screening or other things that might be able to screen for, which would be used for these new entities and jurisdictions.

Justine says, "I wonder …" Oh. Justine, I think you're referring to .wed being in EBERO. Okay.

Kathy is saying … right. Kathy's comment was, "Great about putting in the definition and a link to the EBERO materials on the ICANN site." Okay.

Any questions before we move on to the next one, which is the funding issue?

Okay. On this next recommendation, we had a number of discussions on different ways in which the EBERO could be funded. We certainly agreed, I think, in the group that the continuing operation instrument is something that should be scrapped because it was very difficult to obtain. It was not something that many jurisdictions knew what was intended [with it], and, frankly, has never been drawn upon, to my knowledge, at this point. Or maybe it has for .wed. I'm just not aware of it.

So this recommendation here states that the working group supports Recommendation 7.1A of the program implementation review report, which states: Explore whether there are more effective and efficient ways to fund emergency back-end registry operators in the event of a TLD failure.

I added in or we added in, in the brackets, "other than requiring the continuing operation instrument." That wasn't part of the quote in the recommendation, but that was what was intended. So I just wanted to make it clear, if someone is just reading the recommendation and not necessarily all the explanatory materials. So that bracket was added by us.

Donna makes a point, too, about that .wed into EBERO voluntarily because of a financial issue and not because of a technical issue.

Paul is stating that the COI was not for companies that were larger than ICANN and, in his view, it should have been the other way around.

For brands, there's another recommendation just after this one. I might as well go to since it's brought up. It states: Provide TLDs with exemptions from the Code of Conduct Specification 9, including .brand TLDs qualified for Specification 13, which an exemption from the COI requirements.

Probably, instead of COI, we should put in—I'm trying to think a better way to put it – what it subsequently becomes. So "COI or its successor" we probably should put in there because, if it's not a COI, it might be—who knows?—performance bond or whatever it

is. I think then intention is to exempt them from those types of requirements. So a note will be put in there.

Paul McGrady, please?

PAUL MCGRADY: Thanks. Just a drafting issue. This is a double negative here: "provide TLDs with exemptions from the code of conduct with an exemption from COI requirements." So it sounds like the code of conduct no longer applies except for the COI requirements. So can we get rid of that second "exemption" and say something like "including with"? "including not having to worry about the COI requirement and its successor," or some other language that makes it clear [inaudible] double negative there. Thanks.

JEFF NEUMAN: Thanks, Paul. We can make it clearer, but I think the exemption from then code of conduct does not exempt you from COI requirements. I know it's awkwardly worded. It's basically saying, if you qualify for an exemption of the code of conduct, you should also qualify for an exemption from the COI requirements.

Paul is saying, "And also [inaudible]." Yeah, that might be better. We'll rephrase it, but I understand what you're saying. It's a little bit awkward to read. And I had to read it a couple times, too, when I was going through this. So we'll work on that, but I think the concept is understand.

As Kathy said, "Yeah, if we're all confused, it's a good idea to clarify." Yeah, absolutely.

Paul, sorry. Is that a new hand or an old one?

Okay. Old one. Cool. So let's discuss some of the comments then in the deliberations section. I think some of those are just highlighted from Kathy about the term "registrant protections," which we'll skip from now but look into whether there's some better way of grouping these together.

If we go down a little bit more—here we go—this was a discussion that we had or several discussions, but we weren't able to assess whether we thought this could be moved into a recommendation or implementation guidance. So we should spend a few minutes talking about this.

I'll read this paragraph, which states: The working group notes ICANN org's comments on the initial report and a recommendation in the program implementation review report which suggests that additional consideration should be given to whether background screening would be performed during initial evaluation or at the time of contract execution (then you can see their recommendation). Because, one, there may have been a significant amount of time that has passed between the initial evaluation and the contracting stage, and, two, the changes that may be allowed to applications with respect to joint ventures or other allowable changes, many members of the working group were supportive of the background checks occurring at the time at contract execution. While the working group does not have any specific recommendations in this regard, it anticipates that this issue will be further considered in the implementation phase.

EN

That last sentence was just added in case we don't want to elevate this to a recommendation. Let's spend a couple minutes talking about. Really, implicit in this is the question of whether we do the background check only at contract execution or only when it's done now, which is initial evaluation. Or do we do some sort of hybrid, where you do it initially and then, if there are changes, you just make sure that it goes through the background screening again prior to the contract execution.

Any thoughts on that? By "background screening," it's the criminal, financial, and, I would guess, the cybersquatting one as well that was in the background screening requirements.

Cheryl is saying she'd like to see a hybrid. I think that makes sense. I think that's what ICANN has been doing anyway: if there was a change to personnel (directors or not), they did a background check on that new person. The only new thing here is that we are at least talking about, at this phase, being allowed to do things like joint ventures. Then that would be a much more extensive check than just doing one new director or a couple new directors. I do think it's important to make sure that, if there is a joint venture formed or some sort of changes to resolve contention, let's say, there should be that sort of check—at least some of the background checks.

Let me ask if anyone would object to putting something like that hybrid option as implementation guidance. Again, just to repeat what it would be, it would be that obviously the background check would occur during initial evaluation but, to the extent that there are any changes to the application, either in terms of key personnel, officers, directors, and/or the entity itself, then that

background screening would have to be redone prior to the contract signature. Of course, that cost, I guess, would have to be borne by the registry of the registry operator that's about to sign the contract.

Paul is saying, "Great to have another check if there's a change or just before contracting, but we cannot lose our gatekeeping check." Right. "It makes no sense to go through an auction when they shouldn't even necessarily be there." Okay.

So I think we can make that hybrid into an implementation guidance that talks about the background screening being done during initial evaluation and then again prior to contract signature if there's been a change in key personnel, officers, directors, or the entity.

Justine asked the question: "Have we considered whether there's an avenue for questioning outcomes of background checks?"

This would be [subject]—well, not the outcomes of the checks because ICANN doesn't publish anything other than it passes or doesn't pass. But certainly comments can be filed during the reviews. In fact, when we were talking about the role of application comment, I think we did have at least one or two discussions on commenting on background checks. I don't think we've ever entertained the notion of questioning a result, although there is, I suppose, an appeals mechanism that we've talked about that may cover that item.

Paul is saying, "@jeff, but is there a mechanism for ICANN to acknowledge the comment or respond to them? ICANN just ignored them last time."

When we get to the role of public comment again, you'll see that—actually, we might have already done that; I'm trying to remember if we've done that already—there's certainly—yeah I think we've already done that section – areas in there where it talks about ICANN needing to specify how it's going to use the comments and providing an opportunity for applicants to respond, especially if the evaluators are going to use those. I'm not sure there's anything specific that says ICANN cannot ignore them. So I'm not sure, Paul, how we address that comment. I don't know if ICANN would say that they ignored them.

Paul, please go ahead.

PAUL MCGRADY: Thanks. Whether or not ICANN said they ignored them doesn't really matter. ICANN ignored them. I do question whether or not, if somebody happens to know that somebody on some applicant's board somewhere is a felon or they're part of a criminal enterprise or something else that really matters, public comment is the place to raise those issues. So, if there is no mechanism to feed that information to ICANN, and ICANN has no obligation to acknowledge any receipt of any information or act on it or nothing, ICANN will do what it did last time, which is it'll just ignore it. So I think there's a big gap here that has not been addressed, and I think we need to fix it. Thanks.

JEFF NEUMAN: Thanks, Paul. The first thing is there should be a cross-reference here to the appeals because I can't remember off the top of my head how we came out on that: whether certain things are certain appealable. Well, I mean, I know an applicant could appeal a decision of a background check, but I'm not sure if we gave standing to third parties to appeal that. So we should certainly look for that.

In the role of application comments, what kind of statement would you put back into that section when we're dealing with application comments that could give you some comfort that they're not going to ignore the comments?

PAUL MCGRADY: Again, I guess I'm being asked to fit something into a section where it doesn't go. I'm not raising concerns about whether or not ICANN ignores public comments. Everybody on this call, I think, is a veteran, and we know precisely how much weight ICANN tends to give to public comments. I'm not talking about that. I'm talking about a mechanism to let ICANN know that there is something awry in an applicant's history that they should take into account for purposes of this applicant investigation and that ICANN has to at least acknowledge receipt and to confirm that they are looking into it. They may not be able to come back and say what the outcome was. If they approve somebody, then that means that they looked at the information and didn't find it credible and they've approved them anyways. But there at least needs to be some sort of communication. Again, I don't think that's a public comment. So

going back and trying to retrofit the public comment section doesn't really accomplish what we're trying to accomplish here.

I'm happy that there's an appeals mechanism now. I do remember that from before. So that's at least a step forward on this. But, again, appeals mechanisms are after decisions are made. It seems to me we would have some mechanism for ICANN to receive information. Anyways, thanks.

JEFF NEUMAN: Thanks, Paul. Especially something like comments on someone's background probably shouldn't be public anyway necessarily. Let's give that some thought because it may not be just uniquely a background check issue. There may be other aspects in there. So let's give that some thought and think of what we can put in here in terms of being able to submit information to ICANN that would help them in their evaluations but may not necessarily be appropriate for public comment periods.

Anyone else have any thoughts on that? Let me just throw that out there to see if anyone else wants to add.

I see Justine says she's concerned that there's no easy recourse to ICANN org making a mistake and completing a background check. Well, Justine, that's why we have the appeals. We have a note in here to look and make sure that … Because I know we had the fact, obviously, that an applicant can appeal a failure of a background check, but I can't remember if we gave standing to a third party. I know we discussed it. I just can't recall off then top of my head how we came out of it.

	Karen, please?
KAREN LENTZ:	Thank you, Jeff. Can you hear me?
JEFF NEUMAN:	Yeah. Thanks.
KAREN LENTZ:	Okay. I apologize. I came, I think, in the middle of the discussion. I'm having some issues with Zoom. In regard to the application comments, this was an interesting exercise to try to associate the comment or direct the comments that stakeholders might have on a particular application or applicant to the panel that is evaluating that particular area.

I think, to the points that Paul and others were raising, background screening is one of the areas where the information is not public. So there isn't necessarily a response in terms of the analysis or the action that is public. I think that might be the case in some of the other areas that weren't public as well. I don't know. Maybe the financial information or something like that.

To the question about the mechanism, I think that may be worth thinking about. And the point about providing a response or acknowledgement I think is certainly reasonable to expect. Thanks.

JEFF NEUMAN:	Thanks, Karen. Maybe it does say that, for those areas that aren't public, there should be this, as Paul says, although Paul limits it to the background screening. But I think we can just say ICANN must create a mechanism for submission of information related to confidential portions of the application, including background screening maybe as an example, which may not be appropriate for public comment. At a minimum, ICANN must confirm receipt and that the information is being reviewed.

Paul, would it be okay if we just broaden that a little bit to cover all of the non-public information?

"Yes." Okay. I'm trying to think of the best place to put it in the report, but we'll find a place. It might be in then public comment section just because that would make sense in that area. If you'd be okay with that, we can just revise your language, like what we just said, and then we'll put it into the public comment section because I think that is probably a more logical place.

Paul says, "As long as it's in there somewhere."

Justine says, "Less concerned about applicant appeals, more so about third parties against applicant getting okayed under gray circumstances, failing a threshold."

Right, Justine. Yeah, that's one of the elements. I am a little bit concerned of the applicant, too, because you never know what could in theory come up under a background check that may or may not be true. So that does a due process indication of applicants, if there's a background check that comes back with something that's not them.

I say that from experience. Many, many years ago, when I was in college, I was wrongly written up for something that wasn't me—it was another Jeff Neuman—that I got myself out of, of course, because the other Jeff Neuman was 6'5'' with blond hair and blue eyes. So, immediately upon seeing me, I got that dismissed. Anyway, just a little personal story just to lighten up the mood there.

Anyway, there's two things that we're going to move up. One is this paragraph in C. We're going to actually create that hybrid version and move it into implementation guidance. The second thing is a recommendation in line with what we've been discussing. Paul has put the language into the public comment area. So I think that's good. That's why we discuss these deliberation and point these out: to see if we can move these. Great.

Then you'll see that last paragraph—dependencies or external efforts that are underway—but I do want to put up—thank you to Alan for mentioning it—the SSR2 recommendation that Alan was talking about. This is a new one for me, so I'll be reading it at the same time as you all.

Donna is saying, "Maybe that's the other Jeff Neuman that appeared on the list as a day late."

I don't know. Wait, no. That's Derek – no. I don't know another Jeff Neuman in the ICANN world. He certainly is going to be taller than me.

EN

All right. So I'm reading this along with everyone here. It says an EBERO provider is temporarily activated if a gTLD operator is at risk. Sorry, I'm just skipping ahead. So there was a test that was done. It describes the test. However, the EBERO processes do not appear to be fully documented. No, actually I do know that that is not necessary true. The EBERO processes are pretty well documented because I've seen them when I was with Neustar. So I'm not sure how that statement is.

Going into the next part: improve the testing of the EBERO process. ICANN org should publicly document the EBERO processes, including decision points, actions, and exceptions. The document should describe the dependencies for every decision action, and exception. Where possible, ICANN org should automate these processes and test them annually. ICANN org should publicly conduct EBERO smoke testing at predetermined intervals using a test plan coordinator with the ICANN contracted parties in advance to ensure that all exceptions—I think it means "laws," not "legs," are exercised and publish the results. ICANN org should improve the process by allowing the escrow agent to send the data escrow deposit directly to the EBERO provider.

The only issue I have on this is I'm not sure how much SSR2 actually got this right or what they used.

Can you scroll up again in terms of the documents and the footnote that was up there?

Okay. They have a report, Tech Day, and they cite to a Domain Incite article, which is not—I love Kevin Murphy. Don't get me wrong. But I'm not sure how … okay.

So what I would say here is that … I don't know. I don't know what we can include here because, to be honest, I know that there's documentation out there. I think the first recommendation, if you scroll down, does make a lot of sense: they should make more of this information known publicly. So I think that does make sense.

The other ones, though, I'm not sure what we say on about because we haven't done any of this research.

Let me just go to the comments here. "Maybe what surprised the group was that ICANN made a decision to not put those registries in EBERO."

I agree. I think, along with that first recommendation, Jim (26.5), that seems to just basically say that ICANN should document its processes and what the decision-making tree essentially is when it decides either to go or not go with an EBERO. So it makes a lot of sense to me to include that.

Paul is in the queue, so, Paul, if you want to go over your comment as well in the chat, please go ahead.

PAUL MCGRADY: Thanks. I just had a question about whether or not the registry that's about to need an EBERO is allowed to select their EBERO provider, right now that, of EBERO provider, one set is in Canada, one set is in the United Kingdom, which I guess is no longer part of the E.U., and one set is in China. If you imagine yourself being a U.S.-based registry in need of an EBERO for some reason and you're looking at the export of your registrant data from the United States to Canada, which has its own scheme of data protection, to

the United Kingdom, which presumably has its own scheme or will that won't be GDPR anymore, or if you're looking at exporting your data to China, which of course we all know has its own scheme about data protection, there's some complication here. From a U.S. perspective, which of course is not the only perspective in the world, exporting your data across national lines is itself a huge problem. Not being able to pick from the roster, I think, would compound the problem.

So should we be addressing that issue? Because data protection crossing national lines has basically consumed the community the last three years. It seems like it should at least be a flicker here. Thanks.

JEFF NEUMAN: Thanks, Paul. I don't know if there's anyone on this call that's got knowledge of all of that. The only thing I can say is that, when I was with Neustar many years back and they were in discussions to be an EBERO provider, the documents that were being discussed were almost like a round robin, if you will. It would basically go to whatever EBERO could be up and ready and running, and then it would try to even the load. Of course, when we're talking about that, it was under the failure scenario of multiple registries failing. So I don't know what that has evolved into over the years, and I'm trying to see if there's anyone on this call that is part of an EBERO.

There doesn't appear to be. So let's take that question offline, or we'll ask that question to ICANN to see what other considerations are put into that. But I think, at a minimum, that 26.5 … Well,

EN

here's the thing. The SSR2 is still in the middle of its work and still taking comments. What we can do for now, since our final report is not coming out for a while, is put in that 26.5 as a reference of endorse that and then see how that evolves through the SSR2 process.

Is there support there for that? Then, Paul, we'll work on getting your answers. Certainly your question about GDPR and then the location of certain EBEROs and others, I think, was an issue that was discussed. Any thoughts from anyone on that first recommendation, 26.5? I think the other three are a little bit out of our expertise and we should leave that to the SSR2 process. But I think the first one certainly makes a lot of sense.

All right. I'm not seeing comments one way or the other but I'll assume everyone in the group is in favor of transparency. So— Donna, please?

DONNA AUSTIN: Thanks, Jeff. On the face of it, I don't necessarily have a problem with it, but this is new information to us. So maybe a cautious agreement at this point. But maybe we're taking this out of context. Who knows? I think it's just that this is new to most of us, so it's a little bit hard to make a decision on the spot.

JEFF NEUMAN: Thanks, Donna. What we could say is that, rather than making it a concrete recommendation, we're monitoring the work and perhaps just have it as a placeholder for now. The SSR2 should, in theory, be completing their work prior to when we finalize our

recommendations. So let's put something in brackets around that, and we'll certainly monitor the progress.

Christopher, please?

Christopher, you might still be on mute.

CHRISTOPHER WILKINSON: I beg your pardon. I seem to have been on mute. I'm now unmuted. Unfortunately, I have to spend a certain amount of time keeping track of the U.K. position on Brexit. All I can say in this context is that it is certain that U.K. data protection law is not stable through the end of this year. It is a subject of the negotiation. There are two views in the U.K., of course. There are companies who rely very much on the GDPR protection in order to facilitate their businesses in the E.U., and there are companies and certainly politicians who are eager to abandon GDPR and would like to go for something much more open and unprotected.

I say no more at this stage, but just to say that that particular point will be unstable through the end of this year. Thank you.

JEFF NEUMAN: Thanks, Christopher. We'll ask ICANN the question that Paul had put, which involves data protection issues. So we'll see if we can get some information. I think data protection laws are always changing, so it's something that affects everyone around the world.

Why don't we then—thank you, Alan for bringing this up— go to the next section? Thank you. So the next section – sorry. Emily is making a note there before we go on.

Okay. Now we're talking about registrar non-discrimination and registry/registrar standardization. It's interesting how far this issue has come since 2010, when I see some people in this group were certainly members of that vertical integration committee/work team/whatever we called ourselves that wasn't really able to come to any kind of conclusion. But now this topic does not seem like it's as big of an issue, so the only things that we were able to get out of the discussions are here. There's only one recommendation with a little bit of a modification.

There was a Recommendation 19 in the original policy that stated that registries must use only ICANN-accredited registrars in registering domain names and may not discriminate among such accredited registrars. So that was the original recommendation, but there were exemptions to the code of conduct that modified this to some extent. Therefore, the working group recommends updating Recommendation 19 to state: Registries must only use ICANN-accredited registrars in registering domain names and may not discriminate among such accredited registrars unless an exemption to the registry code of conduct is granted.

Makes sense. We can go into the deliberations and talk a little bit more about why that's there. Again, it talks about the removal of the cross-ownership requirements. Then, just about halfway through, it talks about Specification 9 of the base agreement. Specification 9 contained a registry code of conduct which required registries to utilize accredited registrars and to maintain

separate books and records with respect to cross-owned organizations. Certain exemptions to the code of contact were subsequently approved by the ICANN Board of Directors, particularly with brand TLD registries, as well as with respect to entities that restricted their TLDs to only themselves and/or their affiliates. Updated policy language acknowledges these exemptions.

If we scroll down to the new issues, I want to go over this as well just to make sure that everyone understands it and to see whether we should make this a recommendation or not. The working group spent considerable time discussing whether registry operators that wanted to be registrars could complete the registrar accreditation process at the same time as during registry operator contracting and whether all of the provisions could be included in one overall agreement. This would especially apply in cases where a registry operator was given an exemption from the code of conduct. Although an exemption to the code of conduct means you can use a limited number of registrars, you still may only use ICANN-accredited registrars. This means that, if such an entity wanted to be its own registrar, it would have to still go through the lengthy ICANN accreditation process to become a registrar. The group discussed ways in which this could be combined with the registry operator agreement. Though the group believes this issue should be explored in the future, it does not make a recommendation on this area at this time.

So that's the way leadership and ICANN policy staff has read the discussions to date. I wanted to discuss that.

I see Paul says that "affiliates" should actually be "affiliates and trademark licensees". Yes. For Specification 13, that's the case. We can make sure that that's fixed. Where is that? That would be … sorry. I'm just for where that would be. But, yeah, we can make that fix, Paul.

"Bottom of B." Oh, sorry. Bottom of B. Let's see. Certain exemptions for conduct were approved—okay, right—with respect to entities that restricted to only themselves and/or their affiliates or licensees. Or "and" licenses. "Trademark licensees" are the exact words, right?

Thanks, Paul. Let me go to Christopher.

CHRISTOPHER WILKINSON: Thank you. Look, Jeff, going back to 2010, my position on vertical integration is well known and fully documented. I won't comment further at this point in time, except to say that the text that is before us seems to open a vast hall, a vast exception, to the registry/registrar code of conduct. Basically, we're saying that the likes of a large registry—some of them are very large—who own vast portfolios of registries can ask for an exemption. I think vertical integration has seriously undermined the principle of non-discrimination, and it's very damaging.

I'm more interested, in fact, in the effect that it will have on new independent registries who will be desperately looking for ICANN-accredited registrars to facilitate that business. But, in this context, I think we're on a slippery slope, and it's wrong. But what is no

wrong is this big of drafting. What is wrong is the vertical integration concept in the first place. Thank you.

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

DONNA AUSTIN: Thanks, Jeff. I'm not sure whether this is covered elsewhere, but, to pick up on something that Christopher just mentioned—it's something that has come up within the Registry Stakeholder Group and the presentation that I gave to the Board in Montreal, and myself and Greg did a presentation to the Board—one of the challenges for new gTLD registry operators that came onboard that wanted to do something different was that registrars weren't too eager to carry anything that wasn't based on the similar operations to what they've been doing business on previously. So that made it difficult for a number of registry operators to get registrars to support them. If your premium names were set up differently from most of the registry operators, then that was complicated. I think even some of the restricted TLDs had some challenges getting registrars to carry their business.

So that is a problem. I'm not sure whether we're discussing that problem right now, but I do have concerns that, with the phrasing here that the group believes this issue should be explored in the future, if the next round of new gTLDs don't come online for another two years, then we're doing them a disservice if we don't try to tackle this issue now.

So maybe I'm talking to the wrong point here, Jeff, but this is a problem. Registrars are on a very small margin, as I understand it, so they're not willing or they don't have the ability to explore how they can help a registry operator that's trying to do something innovative or different. They just want to do stock standard.

Is there anything we can do in this process that might overcome that problem? Thanks, Jeff.

JEFF NEUMAN: Thanks, Donna. The next section, which we're not going to just yet, is on registrar support for new gTLDs. That section is all about the issues that you've just been talking about, but I'm not sure the recommendation, actually, when we get there, will address your concern because I don't think the group came to any sort of conclusion on what a registry could do in those situations. So this here is just the narrow issue of allowing the registry to become its own registrar for closed TLDs already—now, we're not talking about closed generics; we're just talking about brand TLDs at this point—so that they can do this efficiently in one process and not be forced to necessarily use a third-party registrar. Most of those issues, Donna, we'll get to in a few minutes when we talk about the registrar support.

So, when we're saying here that it should be explored, we're not saying … Maybe we say "may be explored" because I think "should" is a little bit strong there because I don't think we consider it a perquisite or anything to the next round. It's just a suggestion, I guess.

Would anyone be opposed to adding, instead of that … Because it's not a recommendation or implementation guidance anyway, that last sentence should be a "may." "This group believes that this issue may be explored in the future," or something like that.

Since Donna has already brought this up, which is a good segue, when we got to registrar support, we had a number of discussions. This was actually a relatively new subject that was brought up at one of the ICANN meetings from some of those registries that were not able to get adequate support for their TLDs. If we scroll down, we had a number of discussions and there were several discussions about, "Well, should we require registrars to have to carry every single TLD, no matter what? Or, in those case that that wasn't realistic, should we require ICANN to set up this registrar of" – I don't know. Last – not last resort, because that usually refers to abuse. There were a lot of discussions on it but no sort of indication of agreement on anything except for this one item, which is that, well, obviously we're going to [update] the language of 19, but, if you look at the affirmation, it's really: the working group affirms existing practice that it's up to a registrar to determine which TLDs/gTLDs it carries.

So that goes a little bit against what you were saying, Donna, although you did acknowledge that margins are very small for registrars and that forcing it to carry every single gTLD I'm not sure is realistic anyway.

So we had a number of deliberations on this, if you scroll down. A whole bunch of options were presented. If we go back to, I think, the supplemental initial report, we just couldn't get any sort of agreement on any of those types of recommendations like I said,

where it was requiring ICANN to set up this registrar. People didn't like that because they didn't like the idea of the "regulator" also becoming a sales engine. I'm not sure ICANN was too thrilled with that idea, either. So, yeah, there were a set of proposals that we had put in that initial report, but the public comments were equally divided on whether those should be pursued any further or not. Therefore, we didn't make any recommendation on this topic.

If you go to the new issues, the working group considered whether it would be beneficial and appropriate for ICANN to warn applicants in the New gTLD Program that delegating a gTLD does not guarantee registrations and that registries will need to be a sales channel if their business model relies on sales. Some support was expressed for this proposal, but the working group did not reach agreement on that this should be included in the recommendations.

Thoughts on that?

Donna, if we come back to you, it's not the most satisfying response, but …

DONNA AUSTIN: Yeah, Jeff, it's not. I must admit that I'm looking at this with fresh eyes now, having been through that process with Graeme and the conversation we had with the Board. This really is unsatisfactory. We're trying to create an environment for innovation and new ideas and ways of doing things and this doesn't help at all. This is a real problem, and it's already happening now with some of the new gTLDs. If we look at .wed, they wanted to do something

which was extraordinary different to what we'd seen in most gTLD registry operations and just weren't able to pull it off. Now, whether that was because they couldn't find a registrar to help them—maybe there were other reasons—it really does restrict innovation if a registrar isn't willing to sell domain names.

Maybe if we can make exceptions for brands, is there a way that we can make exceptions for registry operators that have been through a process over a couple months and can't get any registrars on board so that there's a way for them to become a registrar to sell their own? I think we really do need to try to find a solution for this. I don't think it's reasonable to kick this off to somewhere else. If this process isn't going to result in new gTLDs coming down the pipe for another two years, that means we know we have a problem that's going to be in place for new registry operators. That doesn't seem reasonable to me. Thanks, Jeff.

JEFF NEUMAN: Thanks, Donna. A couple things. They are able to become registrars. It's just that they don't have the exemption. So that means that they still have to separation of books and records and a separate legal entity to do that. They still have to treat all registrars that want to carry the product in a non-discriminatory manner.

So in the real issue that we're talking about here dealing with the code of conduct and getting an exemption to the code of conduct? Or is it something else?

While you think about that, let me go to Christopher and then I'll come back to Donna, if you want to get back in the queue.

CHRISTOPHER WILKINSON: Thank you, Jeff. I'd like to support Donna's question and her approach. There's a circularity in these discussions. Since I was out of circulation for more than a year, I think we're going back to something I may have said two if not three years ago.

Look, the only major qualification that I've made to my concern and criticism of vertical integration as it has transpired was indeed that a new independent registry should be allowed to function as its sole registrar, up to and including a certain threshold to be discussed and decided.

But the idea that you launch independent registries onto the ocean of the Internet with an obligation to go through ICANN registrars, where increasingly ICANN registrars are concentrated with their own interests in their own registries, is not realistic. Actually, it's seriously unfair. I could go on about this, but this has just cropped up in this conference call.

So I think you will find that there is a very strong argument that, either for a certain limited period of time or up to and including a significant threshold of registrations, new registries—I would include IDNs and other more specialized registries—should be granted an exemption to the code of conduct. Thank you.

JEFF NEUMAN: Okay—

CHRISTOPHER WILKINSON: I mean independent registries. As you read the text here, this is just for Donuts, right?

JEFF NEUMAN: Actually, no, Christopher. Donuts would not qualify for this because Donuts is not eligible for an exemption to the code of conduct—well—unless they have a band TLD, .donuts, for just themselves. Put aside the whole closed generic issue. But, no, this would not apply to portfolio players. The previous recommendation, the previous section, only applies to those that get an exemption from the code of conduct, which means you either have to be brand TLD or a non-closed generic that otherwise operates a closed model to only themselves and/or their affiliates and/or their licensees. So it would not apply to Donuts or portfolio players for open TLDs.

Let me go to Alan and then see if I can make a suggestion.

ALAN GREENBERG: Thank you. I was going to comment on Christopher's comment. On some level, it makes sense. On the other hand, the cost of setting up a registrar operation for a limited amount of time or knowing that it might be forced to disappear, it would be rather a large hardship on a small registry. It's equivalent to saying they will pay the registrar to take on their domains. I don't know if any of the registries that Donna mentioned actually attempted to

convince a registrar to take on their domains for [our] cost instead of money flowing the other way. But I'm not sure there's a simple answer that is really equitable to this problem and yet perhaps it's the main reason that we're saying we're justifying new gTLDs: for innovation. It's curious. Thank you.

JEFF NEUMAN: Thanks, Alan. It all depends on what type of registrar you're talking about. If you're talking about being a registrar for a small, closed TLD, it wouldn't be that difficult or costly to do. If you're talking about an open TLD registrar that also sells other services associated with that, then that's a whole other story. I think being a registry/registrar for a brand registry is pretty simple because you don't have to worry about a lot of the aspects that apply to when you sell registrations to third parties. It becomes a lot more streamlined.

So there is certainly innovation that can be done if we made it easier for the entity that's the registry to be the registrar with in brand TLDs or others that are eligible for the code of conduct.

Having said that, Kathy is asking if there are representatives of GoDaddy, [BlockKnight], or Tucows on this call. I don't know.

Alan is saying, "I was not talking about brands but rather the different registry with unusual registration rules."

It depends on how unusual the registration rules are, and it depends on what they're doing with it and how difficult it is to set up a registrar for that business. We tend to think that, when we think of the third party or sale to third-party registrants, yes, that

becomes complicated, but there could easily be very non-complicated registrar functions associated with a registry that is an innovative model.

At this point, I think there's certainly more discussion on the code of conduct exemption. Actually, we could have that discussion—and I think we do—with the legal agreement, if I'm not mistaken. That would be something to the effect of—I think it was Donna that said (I paraphrased) essentially: A registry that makes a good-faith effort to get registrars on board but is, for whatever reason, unable to do so for whatever period of time should have the option for seeking a code of conduct exemption. I think that was the point that Donna was making.

Does that sound right? Donna, please?

DONNA AUSTIN: Thanks, Jeff. My knowledge of the code of conduct exemption is a little bit old, so I don't recall it. But the way you are describing it seems to be making sense. So maybe we have found a way around it. I guess there will be concerns from people about gaming and what's a good-faith attempt. People are just trying to circumvent the registrar. I think we do need to have something in there because this is a situation that has a reason in this round. So it will be there and in the next round as well. Thanks, Jeff.

JEFF NEUMAN: Thanks, Donna. Just to go over what the exemption means, because I think it is important for this discussion, right now, today, you are allowed to be your own registrar for any TLD—open,

closed, or whatnot. It's just that, if you do have a registrar or are affiliated with a registrar, you have to have separate books and records of that registrar business from your registry business. But you are always required, regardless of whether you have an exemption to the code of conduct or not, to treat all registrars in a non-discriminatory manner. So, really, the code of conduct exemption … All it gets you is not having to separate your books and records and then some confidentiality requirements of data.

But, other than that, Section 2.9 of the agreement still applies, which requires you to treat all registrars in a non-discriminatory manner. So, to the extent that other registrars want to be a registrar in your TLD, you still then have to use them and still have to treat them in a non-discriminatory manner, unless you also have Spec 13 because that specific specification allows you to limit the number of registrars to up to three. I know that's complicated, but it is something we can talk about further when we go into the legal agreement.

Kathy is asking if we can continue this topic on the next meeting. I'm not sure we need to consider this topic. I think we are removing that code of conduct exemption discussion to the legal agreement because I think that's where it belongs. This is just saying, if you have a code of conduct exemption, then certain things apply. But I think the whole code of conduct exemption is, unless … ICANN, can you guy correct me if I'm wrong on that one? I could be wrong, but I'm pretty sure.

Anyway, Alan your hand is up?

ALAN GREENBERG: Sorry. That's an old one.

JEFF NEUMAN: Oh, okay. So let us check. If not, we will certainly add that topic to the legal agreement to make sure that we have that discussion on the exemptions to the code of conduct.

We do have a meeting scheduled for this Thursday. Since we've covered most of the subjects, I think we do have the non-discrimination … hold on. Can we scroll up just a little bit in this document here? So I think we have still have the non-discrimination section next, so maybe that where the code of conduct is, if I'm not mistaken. Let me just double-check here. Can we scroll up a little bit more? No, we did cover the non-discrimination. Never mind.

So, since we are a little bit head, we will get back to you guys as to the next subjects that we're going to cover on the next call. We did this would take a little bit longer. So perhaps we can do a recap on the next call and then we'll get back to you some other agenda topics.

In the meantime, let me just also state that, for ICANN67, we're busy putting together all of the materials. As you know, we do want to get those materials out as soon as possible, and we're going to try to get at least some of them out today and tomorrow. The topics that we're going to cover at ICANN include, if you go back to the agenda—I think it was written on there—from the top of my head, we have applicant support … Actually, let me go back a step. The topics that we're going to cover are topics that we

believe—well, we've had discussions with GAC leadership—to be important subjects to the governments. So we picked the topics based on areas where it was either important to them, where we might have recommendations that may not necessarily be inline with some of their previous advice, or just other areas of interest. So it includes applicant support, the closed generic issue, which we're going to update in the process of updating to include the different proposals that were presented on the list, community applications, global public interest, which really talks a lot about what are now called the PICs—we may change the name; we'll talk about that—and then the role of GAC advice or GAC early warnings.

We have three sessions scheduled at ICANN in the remote schedule. That would be one session on Monday, one session on Tuesday, and one session on Thursday. So there's a lot of time.

But also, if you look at the workplan, we'll pick up on those conversations on those topics after ICANN as well so that we can try to wrap up some of those topics with ICANN and the meetings afterwards.

Any questions on that?

Paul is asking for calendar invites for those sessions. Yeah, that would actually be helpful. I don't know. Is that something, Steve, Julie, Emily, you all can do?

MICHELLE DEMSYTER: Actually, this is Michelle. We have a wiki page set up. We're just putting all the links on there, to make sure everyone is updated,

which will have the schedule. You can download that to your Outlook calendar or whatever calendar you do use. We're actually getting all the links updated today. So just stand by and you can actually download those to your calendar as well. That should help.

JEFF NEUMAN: Great. Thanks. Once that's done, we'll let the group know.

All right. Thanks, everyone. Lots of progress today. We'll talk to you all on Thursday, March 5th, at 20:00 UTC. We will get to you, along with the notes, a list of the topics that we'll cover on that call. We're actually moving ahead more quickly, which is great for a number of reasons. So thank you all very much. Talk to you Thursday.

[END OF TRANSCRIPTION]