
**ICANN Transcription
GNSO New gTLD Subsequent Procedures Working Group
Thursday, 06 February 2020 at 20:00 UTC**

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ANDREA GLANDON: Good morning, good afternoon, and good evening. Welcome to the New gTLD Subsequent Procedures PDP call being held on Thursday, the 6th of February 2020 at 20:00 UTC.

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

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

ANNE AIKMAN SCALESE: Hi, I'm sorry. It's Anne Aikman Scalese. Can you hear me?

ANDREA GLANDON: Yes, Anne. We can hear you. Thank you so much.

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.

ANNE AIKMAN SCALESE: Okay. I'm on audio only for the first 10-15 minutes. Thank you.

ANDREA GLANDON: Okay, great. Thank you, Anne. You can go ahead, Jeff.

JEFF NEUMAN: Okay. Thanks. Welcome, everyone. The agenda is up on the screen. I'm going to ask if we can put in an agenda item actually between one and two, just to talk about the work plan and going forward so we can just give an update on that, just so we can start with that.

Okay, so agenda will be to discuss a little bit about the work plan and then the draft final recommendations on the two topics on the screen: Continuing Subsequent Procedures and Applications Assessed in Rounds. There's been a question on the ICANN schedule and I know Steve has put it in the chat, but we'll go over it again at the end of the call.

Before we get started, let me just ask if there are any other questions or things to put on the agenda and whether there are any updates to any Statements of Interest. There's a hand from Avri. Avri, please.

AVRI DORIA: Hi, just a quick – I guess it's a Statement of Interest change. As opposed to participating as just plain old me, I'll now be participating as one of

the Board liaisons to the group. So I just wanted to get that said.
Thanks.

JEFF NEUMAN:

Thanks, Avri. Welcome to the group as one of the liaisons. The other Board liaison is Becky Burr. We welcome both of you to our group and to participating as much as you can. Certainly, if you have any questions, please do weigh in as well. Great, okay.

Donna has got a question. Donna's question is, "What does that mean in terms of the role of the Board Liaison?" I think when I sent the group notice of being assigned Avri and Becky as liaisons, there was a letter from Martin who did go into it a little bit. But not to put you on the spot but, Avri or Becky, do you want to describe what that means?

AVRI DORIA:

I don't know if Becky is online.

BECKY BURR:

I am.

AVRI DORIA:

Oh, you are? Would you like to go and say it instead?

BECKY BURR:

Either way. You start it. Go.

AVRI DORIA: Okay. So basically, I mean, it's largely a constrained role. We're trying to carry things back and forth between the Board, especially the caucus that's following this and we'll be following it more, trying to bring questions back and forth and possibly answers. But it's a very constrained role. Thanks.

JEFF NEUMAN: Thanks, Avri. Becky, do you want to –

BECKY BURR: For what it's worth, the goal here is not for us to be participants in the policy development process but we want to avoid surprises. We don't want to be in a situation where if you're talking about something and it's likely that the Board will come back and say, "We can't possibly deal with that for a number of reasons." That's a pretty unusual thing to happen but we would definitely want to bring that to your attention earlier rather than later.

JEFF NEUMAN: Okay. Thanks. Everyone, please make sure your microphones are on mute if you're not speaking. Thanks.

Okay, so that brings us then to just a quick discussion of the work plan. The reason I want to bring this up is because as many of you know, the GNSO Council as part of PDP 3.0 is making a real effort to try to get realistic deadlines and to take stock of all of the work that's going on and use that for planning purposes for future PDP activity or, frankly, any other GNSO activity, and there's a lot that's on the GNSO's plate

already. One of the PDP 3.0 recommendations that has been implemented is the need for project change request if it looks like the deadlines that we originally gave may no longer be possible.

So as you may know, the Rights Protection Mechanism group submitted a project change request for the Council's January session and I think they're still in discussions on that change request and are working on a final work plan schedule. But we've been asked to submit a project change request for this upcoming GNSO Council meeting, which I believe is at some point next week or – oh, I'm sorry, the week after. So I think it's like the 20th of February. As part of that project change request, we've been asked to submit a modified work plan. So we put together a work plan that I think is, at least in my view, a kind of worst case scenario. We're doing that because I'd rather not have to go back to the Council and ask for another project change request, but I do believe that there are ways that we can bring the schedule in and shave off a couple of months within the schedule. But I do want the group to see it so it's not a surprise before we submit a project change request.

So what we have up here on the screen is the modified work plan, which starts at the end of last month and includes the topics that we've already addressed. It includes today's discussion on continuing subsequent procedures and applications assessed in rounds, and then you'll see all of the topics that we have to cover, including when the ICANN break is. And we'll go over what is the ICANN67 topic, so just ignore that for now. I will explain that under AOB.

If you scroll down a little bit, I just want to show you how many topics there are and potentially how long in theory it could take us to get to

the end, and “the end” meaning a final report to the Board. If you scroll down a little bit more ... keep going. Okay. If we do not do some things, which I have some ideas and I’ll go over that in a second, we could realistically be looking at finishing at the end of this year. I think we can do a lot better and we’ll talk about that in a second.

I know Jim has asked for a link to this document. At this point, we’re just giving a preview and we’re going to send a link out shortly after the meeting so that you could take a look at this. Certainly, the purpose of this work plan is for everybody to see but we’re just going to clean up the format and put it in a different document as opposed to this document that leadership is working off of.

So we will send around a link to that. As you can see, if you scroll up, this is if we continue on the two meeting per week schedule and this also provides some buffer for some of the topics that we think may take longer than one meeting. It may very well be and I think some of these topics may not take two full meetings, but we’ve put it on there to create some sort of buffer. Also, I think there are things that we can do in the future to streamline this a little bit.

One of the proposals I am going to throw out to the Council to see if they think this is a good idea – and I throw out to the group as well – is that I think that we could aim for a couple of what I’ll call extended sessions in April and May, because we’re not able to do things like face-to-face meetings where we could get through a lot of this stuff much more quickly if we planned well ahead of time for some extended calls, I think we can cover some of those two-session topics in actually one session. So still working with ICANN to come up with a few dates as to

when we think we can do that, but I think even if we held two sessions in April for three hours instead of the normal one-and-a-half-hour session and two in May, I think we can shave off a month or more just from doing that. Because we lose some momentum when we start a topic and then have to restart it on the next call just to provide an update, just a refresher. So I think a couple of extended sessions may go a long way.

So I want to stop there for now because we do have some substance to go into, but I do want to ask if there are any questions other than yes, we will get a link out to this after the call? Okay. I thought there'd be some more questions but certainly we'll send the link out and then ask for some feedback. I'll put also in the e-mail the ideas of trying to move this a little bit more quickly.

The other thing is that as we go through these topics, we've been spending a lot of time – this is not the first time we're going through any of these topics. It's not even the second, third. It's probably more like the fourth, fifth, or sixth time we've been going through a lot of these things. What I would ask – and it's sort of taking a lesson from the EPDPs that are going on right now – is that I'd really like us to focus not on the perfect situation or what we would love from an idealistic perspective. I think we need to start changing the mindset a little bit more to, what can we live with? What are things that we would, as they say in the EPDP, die in the ditch for versus what are solutions that we think we can live with as opposed to the perfect one?

With that, I'm going to stop. I see Christopher and Jim in the queue, so let me go to them and then we'll move on. Christopher, please. There you go. I can hear you now.

CHRISTOPHER WILKINSON: Just that I wanted you to confirm that the discussion and decisions on the multiple points that you've indicated in this new document that that will be conducted transparently in conference calls. Because some of us with very strong policy interests in this whole process will almost certainly not be able to come to ICANN meetings in the period that you described. Thank you.

JEFF NEUMAN: Yes. This is the schedule of conference calls that we have. Of course, all of them are open and all of them are transcribed and recorded. And so as Susan says on the chat, there's also remote participation at all of the ICANN meetings and that will continue when we go to Cancun and Kuala Lumpur, etc.

Okay. Let me go to Jim.

JIM PRENDERGAST: Thank, Jeff. As you mentioned, this looks like a listing of conference calls. So it's not really a timeline or a work plan. It's just what we're going to cover on calls. Is there some sort of timeline that overlays the public comment process on this or anything else, so we get a better sense of all the other parts to this? Oh, I see. Got it. It's just at the bottom of the screen. Got it. Alright, great. Thanks.

JEFF NEUMAN:

Okay, sure. Let me look at the chat here. Maxim says, "As I understand, the GNSO operating procedures do not envision any special role such as Board liaisons." Okay. That's asking about liaison. "Is it an informal role?" Yes.

Alexander says, "Some predictability would be good. I'm doing community outreach since over a year for several community applications and they naturally demand a timeline."

Robin states that "We have gone through these many times before, so please make choices and compromises."

Maxim is expressing a little bit of concern for the three hours but I think we can do it. Certainly, we can have a five-minute break in between that.

Donna is agreeing with Robin. So, great. Sorry, Donna's got her hand up. Christopher, I don't know if that's an old one. So, Donna, please.

DONNA AUSTIN:

Thanks, Jeff. Donna Austin from Neustar. I just wanted to pick on Robin's point, which I think is a really important one. I mean, it's great for you to identify what needs to be resolved and come up with a plan for the Council but I think it's up to us as a working group to commit to the timeline as well and finishing this off. I think that's as important in getting through this work as it is as getting the Council to sign up on it. So I think, Robin, that was a point well made.

JEFF NEUMAN:

Great. Yeah, thanks, Donna. I wholeheartedly agree. I'll just note there's a question on the chat: "By when does leadership need our comments on the revised work plan to be submitted to GNSO Council?"

So we are going to submit this. Steve, correct me if I'm wrong. I think early next week is our plan. This is not one of those documents that is being voted on, so it's not like it needs the full document deadline for us to get it to them. Our goal is to get it to them next week.

Jim mentions on the proposal for the three-hour calls, yes, Jim, I agree with you that we absolutely want to provide as much notice as possible on those. In fact, if we can get some approval on the dates that I've suggested to ICANN staff, I think we'll have more – if we give official notice next week, we'll have two months notice. So I would hope that that would be a fairly good amount of notice.

Okay, let's go to the first topic then, which hopefully shouldn't take us too long. This one is on the whole notion of continuing subsequent procedures, so this is one of the original overarching issues where we ask the question which was sort of the gate keeping or gateway item. If we had an opinion that we shouldn't continue this program then obviously we wouldn't have been working for the past several years on this.

Just as a reminder, for people that are just joining for the first time, the way we are structuring each of these sections – and this is the way they'll go out for comment as well – is having the first section be both Affirmations, Recommendations, and – although not in this case, for this

section – we also have things that were called Implementation Guidance. Affirmations are essentially the same thing as recommendations but they are really affirming what happened in 2012, either from the 2008 policy or from the way it was in the 2012 Guidebook. The recommendations are things that we believe must happen for the subsequent procedures and implementation guidance should happen – with the strong emphasis on “should” – unless there are other circumstances where those implementation guidance cannot be implemented exactly the way that we have prescribed, but hoping that it can be implemented as close as possible to the guidance that we’re giving.

Under this section, Section A, we have three affirmations. The first one being that “We recommend that the existing policy contained to the 2012 Applicant Guidebook that a systemized manner of applying for gTLDs be developed in the long term, that that policy be maintained.” Certainly, it was reflected that way in all of the comments that we got back.

The second affirmation, “The working group affirms Principle A.” For those of you that may not be familiar, Principle A refers to the final report from the GNSO back in 2007 and I think approved by the Board in 2008. So we probably – not probably – we will cite that. “The working group affirms Principle A and recommends that the New gTLD Program must continue to be administered ‘in an ongoing, orderly, timely, and predictable manner.’”

The third affirmation is “The working group affirms that the primary purposes of new gTLDs are to foster diversity, encourage competition, and enhance the utility of the DNS.”

Okay. Then the new recommendation that we have here is “Accordingly, the working group recommends that meaningful metrics must be identified to understand the impact of the New gTLD Program. The metrics, broadly speaking, should focus on the areas of trust, competition, and choice. To review metrics, data must be collected at a logical time to create a basis against which future data can be compared.” Then I put a note – I didn’t want us to be presumptuous to say that, you know, to just list all of the data from Section 5 of the CCT final report, but I do think that report does provide a fairly comprehensive list of data that we do not need to recreate the wheel on. So let me throw that out there as an idea, possibly attaching it to this recommendation or maybe even just as an implementation guidance to look to those types of data.

Hand up from Christopher and from Donna. Christopher?

CHRISTOPHER WILKINSON: I’m unmuted. Thank you, Jeff. Two brief comments. First of all, regarding competition and diversity. There are elements in the rest of the document which, to my mind, do not actually foster competition and diversity. We can come back on to that later but I just like to put down the marker that we need to work on that.

The second point regards metrics. Look, we’ve been discussing metrics in this area for several years and I believe that the CCT Committee made

recommendations. I have never seen any commitment from ICANN org to actually collect and publish such metrics. I think the problem is they're more difficult than we imply. There are points later in the document which rely on metrics. And I don't know personally, as a practicing economist over the last few decades, I have no confidence that relevant metrics will be collected and published and will be able to be analyzed and used in the management of the program. Just a warning, I don't see how it's going to work, but I'd be delighted to be proved wrong. Thanks.

JEFF NEUMAN:

Thanks, Christopher. There's ample discussion in our initial report and as well or in the CCT Review Team report. There's also discussions that we've had that we will reference on the types of data that are now being collected. I think that you'll see that we do have a discussion of some of the things and I do think ICANN is aware of that and does have a schedule for the CCT Review Team recommendations and have been working on it since they got the report. Donna?

DONNA AUSTIN:

Thanks. Just to question about whether to include the CCT metrics in the recommendation. I hesitate to agree to that because there is still some uncertainty around what will be adopted in terms of the CCT review. I think I'd prefer that there is implementation guidance along the lines that – in concert with whatever is decided with the CCT review would be my preferred option.

JEFF NEUMAN: Thanks, Donna. That does make sense because we don't want to be – essentially, what we're saying and what you're saying is implement what you believe you should from the CCT Review Team report that section that deals with metrics. We're not trying to override ICANN's determinations there. So I think that does make sense as an implementation guidance.

Karen, please.

KAREN LENTZ: Thank you, Jeff. Can you hear me? Am I off mute?

JEFF NEUMAN: Yes, sorry.

KAREN LENTZ: I had a question and I'm sorry if I missed this earlier. Just from the way that the recommendation is worded right now that metrics would be identified – I guess to make sure that I'm understanding what the intent is there – is that part of the implementation of this policy? Is that referring just back to the competition choice and trust reviews that will continue to occur? Or is this some other framework that gets set up to be able to measure and develop metrics for these trust and competition goals over time? Thanks.

JEFF NEUMAN: Thanks, Karen. I think that's a great question in terms of some of, yes, some of it would be as part of the implementation but we got into some pretty thorny discussions of what types of data can be collected as part of the agreements, and so therefore, we wanted a general recommendation about developing metrics and collecting data but we didn't want to get into the whole debate over what data ICANN is entitled to. We didn't want to get into that whole debate. So, the long way of answering your question is that it's really being left to implementation to determine what types of data and when and how to collect those as opposed to being mandated by us. Does that make sense?

KAREN LENTZ: Yes. Thank you.

JEFF NEUMAN: Okay. Those are the recommendations and as per practice, we have a rationale for each of these affirmations and/or recommendations and, for that matter, implementation guidance when that comes into play. So if you scroll down – and we're not going to go over word for word, but I do want you to read this with an eye towards, again, providing enough rationale so that our recommendations, our affirmations are understood but not too much detail like our initial report which has an extensive history and background on all of these.

I think Anne just put in a comment in the draft. It says, "Was this particular recommendation adopted by the Board or no? Should we refer the data gathering in accordance with whatever Board adopts?" I

think we're going to add as implementation guidance to make it clear that we're not trying to override what the Board is doing now in their implementation process of the CCT Review Team report. So we'll put that in as implementation guidance and then put in a couple of sentences on the rationale.

Steve, please.

STEVE CHAN:

Thanks, Jeff. This is Steve from staff. I guess it's a little early but we will get to it momentarily. But in the rationale for the recommendation, it includes a footnote intended to not be prescriptive but some sources that could be, I guess, the source of metrics for identifying which metrics need to be identified. So to the extent that we want to turn this list or some similar list into implementation guidance, this footnote here could serve as the basis for that or potentially this guidance just resides in this rationale section and still guides the implementation team when they actually try to identify these metrics. But I just want to let you all know that this part of the report includes a short list of some of the potential source metrics. Thanks.

JEFF NEUMAN:

Yeah, thanks, Steve. I think one of the reasons we put this footnote is because the metrics are being collected through that project, so we didn't need to recommend that they continue doing something that they're already doing. But I think you're right that we could, to the extent we wanted to put some of that as implementation guidance.

Okay. I think again, just not wanting to spend too much time on going word for word through the rationale, I do think that some of it is good for – it's being connected both to the CCT Review Team report but as well as looking at previous comments on the program including the cost benefit analysis that was done according to the GAC Helsinki communiqué – if you scroll down – and the Montreal communiqué. So we do go into a lot of that. Please do read that. Make sure that you agree with it. I think that's as much time as we need to spend on this particular topic.

Any questions? Sorry, go down to the next section. No, we don't have any here but in other sections. Sorry, there's a Section C and D of each of these. For all of them, Section C is usually new issues that may have come about since publication of the initial report, none in this case. And Section D are dependencies or links with other areas of the report or external efforts. So we've linked this one to the section we're just about to go over which are applications assessed in rounds. I just want to point that out. We can scroll down to the next topic.

Okay. So for the affirmation for this particular one, the working group affirms Recommendation 13 from the 2007 policy, which states: "Applications must initially be assessed in rounds until the scale of demand is clear." However, the working group believes that the words "initially" and "until the scale of demand is clear" be removed from the sentence and should read "Applications must be assessed in rounds."

This is one of those where we've labeled it as an affirmation with modification. I'll pause there and see if anyone's got any questions on that one since we have modified it.

Okay. Then the first recommendation in this section states, “Upon the commencement of the next Application Submission Period...” that’s a term we’re using to define what others call the application window, but because we have another section called Application Submission Period that we talked about, we’re using that term. So, “Upon the commencement of the next Application Submission Period, there must be clarity around the timing and/or criteria for initiating subsequent procedures from that point forth. More specifically, prior to the commencement of the next Application Submission Period, ICANN shall publish either (a) the date in which the next subsequent introduction of new gTLDs will take place or (b) the specific set of criteria and/or events that must occur prior to the opening up of the next subsequent...” I guess we could say now because our affirmation is “round,” we could say “the next subsequent round.”

Under that, we have two implementation guidance and then I’ll stop for questions and also talk about Steve’s comment as well. Implementation guidance. The first one is: “A new round may initiate even if steps related to application processing and delegation from previous application windows have not been completed.” Then we have two options for the next implementation guidance. So we’d like to talk about these and really get one nailed down, which is either. “It should not be possible to apply for a string that is still being processed from a previous application opportunity,” or do we say, “Do not process applications further than the reveal stage for a string that is still being processed from a previous application opportunity, unless and/or until the applications from the previous round that match those strings have had their final disposition”?

There is a clear difference between the two options we have there. One is that you can't even apply for a string that's still being processed. The second one is you can apply but it's not going to be looked at. It's not going to be evaluated or anything else until after there's a final disposition of the string from the previous round.

I'm going to stop there and go to Steve's comment. Thanks, Steve. Steve has said, "It may be worth seeing if the working group can narrow in on a preference here or perhaps this makes sense as an unless in a sense, so that date is the preference, unless there's a non-exhausted list of things that would prevent the timely launch."

Okay. So this refers to whether we would like ICANN to set a date or to set specific criteria and/or events that must occur prior to opening up the next subsequent round. What that means, essentially, is do we say that ICANN must launch the next round exactly two years to the date that it launches the initial next round? Or do we say – and we got comment on each of these – that it should be when ICANN should say something to the effect of six months after ICANN has completed processing X number of applications?

The reason why we went with an either/or is because the comments were – if you look back on them, they were pretty much all over the place in terms of getting agreement on what date would seem natural or what kind of timeframe versus what criteria would be used. Some comments said it's when things are done with initial evaluation. Other comments were, "No, we should wait until contract time." So there was a lot of kind of back and forth. In drilling that down, it didn't seem to us

to have one concrete proposal moving forward but would love to discuss this a little bit more.

Jim, you have a comment in the chat but I'll let you – since you got your hand raised as well, please go ahead.

JIM PRENDERGAST:

Yeah, sure. Thanks, Jeff. Where this gets pretty complicated and allowing to apply for strings that are still on a previous round is when you're trying to determine contention sets. I don't know how you can do that. You can't let somebody come along 10 years later and suddenly enter into a contention set, or at least I don't think you should be able to allow somebody come in 10 years later and apply for a string that's been on a contention set or held up for 10 years. I'm not sure if that's what this would allow or not. Maybe some folks could sort of explain it further. That's why I asked for maybe a live example from the previous round that could help illustrate it. Thanks.

JEFF NEUMAN:

Sorry. It took me a second to get off mute. So the intent, no, this recommendation and guidance is not meant to allow anyone to get into an already existing contention set. I think and I'm not sure if it's here because I've read so many things so many times, I know that in both of these cases, nothing is going to be processed from an application in a subsequent round unless and until everything in the previous round has had final disposition. And by final disposition, we mean if there was a contention set in the previous round, that contention set is resolved and done. So that was the intention. It was not to allow people to jump in.

Reading just some of the comments in the chat. The first caption says, “The first option adds to predictability for applicants. Else applicants may be in limbo for an unknown period of time.” I do agree with that in a sense, but I think referring back to the discussions that we had on a number of occasions, it’s also possible we may get 10,000 applications – I don’t think we will but someone mentioned that as a number – or some high level that it’s going to take a lot longer to process than originally contemplated. So if you do it on a date certain, you may be committing to start the next round when you’re not nearly through a lot of the steps of the previous round. So I think that’s where the criteria option came in. But I do understand – and Donna says as well – the recommendation is that ICANN publish a date. Also Donna says, “Preference is that it should not be possible to apply for a string that is still being processed from a previous application opportunity.” And Susan has got a plus one to that.

Let me see if we can get some thoughts. So we got Anne and we got Alan.

ANNE AIKMAN SCALESE:

Yes. Thank you, Jeff. As I recall in this discussion, I think I’ve raised this before, the number one point would be that I certainly agree with you and Jim that a subsequent applicant for the same string would not be entitled to be in string contention. With respect to these two options about the prohibition against applying for a string or the option of you can apply for it but you got to sit around and wait and take the risk with respect to the previous application, that I think is the principle that is in line with applicant freedom of expression, which was in the goals of the

program originally. I think beyond that, the thing I have mentioned before was, this issue that there could be policies that are developed in connection with the next round that folks from previous application rounds may not have agreed to and may not be willing to agree to. So if they're not willing to agree to an applicable new policy that's developed for this round, that might mean that all of previous applications would fall away and that TLD would not be delegated. I believe that new applicants who are willing to meet new policy requirements that are developed and applied should be able to get in line and take the risk themselves of what happens with the first contention set, because there may very well be new policies that apply.

JEFF NEUMAN:

Thanks, Anne. Let me go to Alan and Greg.

ALAN GREENBERG:

Thank you very much. I'm saying this knowing full well how much work has gone into this and what the prior world it was we were looking at. This next round is essentially – although we're calling it the second round in the 2008 series of rounds – it's really going to be the first one. Because the amount of time elapsed and the amount of effort that's gone into this process really makes this a new ball game to a large extent. And we're demanding under the name of predictability that before the round starts, ICANN commits to either a date or a set of conditions.

I guess the first question I'll ask is what's the penalty if that date comes and goes and ICANN doesn't start a new round because it's just

impossible or the set of conditions is such that ... You know, I'm just wondering, are we setting ourselves up for failure here in the name of predictability? I must admit I'm having second thoughts about whether we shouldn't have a third option saying we'll do it as soon as we can but let's not make stupid commitments we almost know we can't keep. Just look at the questions we've been asking here about, "How do you handle situations that may well come up?" and we really don't have an answer for that. I don't know. It looks like we're setting ourselves up for a fiasco by providing these as the only options we can give. Thank you.

JEFF NEUMAN:

Thanks, Alan. There are some other recommendations coming up that touch on your point. But let me go to Greg, Susan, and then I'll jump in.

GREG SHATAN:

Thanks. Going back to what Anne was discussing. Broadly speaking, I agree with Anne, and I have reservations about treating what may be moribund applications that were made a decade ago as reservations for, as Alan put it, the first round. The phrase that's used as a little bit vague is still being processed. Are the name collisions that weren't withdrawn still being processed, or are they just hanging around? I don't know. It's still being processed mean that there's actually a process that's been going on. I know some of these things took forever and people went back and forth. One number changed and then all of a sudden all process had to be – I don't think it makes sense to say to somebody, "Okay, you're just out of time. We know you've been working diligently through what has somehow become a very long, slow, old process." But

for those essentially have been taken out of commission, whether they were withdrawn or not, it seems to me that those should be in fair game and equal standing. If we look back at the very beginning of the prior round, there were a number of lawsuits from entities that had applied to ICANN in even earlier round that were insisting that they had reservations, that they had prior rights that were being violated by allowing new applications for, say, .web. ICANN won all those lawsuits. I don't think we should undo that precedent here by creating a new precedent.

Finally, I'd be concerned too by turning these into commodities. You can apply for something and then sell it because it's hanging around. Not because you want to apply for it yourself but you figured that, well, eventually, if it's still considered being processed, I'll just have it. It becomes essentially TLD speculation or investing. I don't think either of those things are good. Thanks.

JEFF NEUMAN:

Okay. Let me go to the chat. Susan had said, "I feel that Anne's suggestion disadvantages the less sophisticated applicant, less wealthy, who does not have the benefit of advice from someone who has been engaged throughout. There's a real risk that they apply, not understanding that they will be on hold for potentially years. What is the harm in keeping a particular string closed for new apps until the previous applicants have fallen by the wayside? Then it opens up again for all." Donna agrees. Anne says, "Because the window for application is closed at that point and we haven't said that a new window could open if they all fail."

Donna states, “@Anne, if there is agreement that rounds are the path forward, then if a string does not go through in one round, it will become available in another.”

Susan says, “I think we have – that’s one of our recommendations that there will be a series of windows.” Correct.

Let me ask the question in this way. With the concept before, can anyone not live with the second part of that “do not process the applications further than...” I’m sorry. With the first option, sorry. “It should not be possible to apply for a string in the subsequent round that is being processed from a previous application round.” Is there anyone that would die in a ditch for this one versus the second part of “do not process applications further”?

Greg is saying, “We have to distinguish between slowpokes and those that have not gone through but have not been withdrawn.” Greg, we can come up with I think a way to further define what it means as being processed. I think it would be easy, for example, to say that those that are in the status of “shall not proceed” or “we can work that out” – I think that’s an implementation detail – as opposed to something where it would mean that we need to go with the second option.

We go to Donna and then Greg.

DONNA AUSTIN:

Thanks, Jeff. I think I actually prefer the language that was there before you made the changes, Steve. It gets a little bit confusing, so I prefer it should not be possible to apply for a string that is still being processed

from a previous application round. That inclusion of the “in the subsequent round” confuses me. Maybe it’s just me but I think the language before was cleaner.

JEFF NEUMAN: Okay. Thanks, Donna. Yeah, Steve will reject that, his suggestion. Okay, Greg, please.

GREG SHATAN: Thanks. I think as between the two options, I’m not particularly happy with either of them but I would favor the second. Again, we’re using terms like “final disposition” as opposed to “do not proceed.” I think we need to distinguish here again. I don’t want to disadvantage any unsophisticated applicants who are just having a devil of a time completing the process from those who have essentially been stopped in their tracks but may be thinking that they can hold on to some sort of vestigial right that they can then revive.

So I think the final disposition is problematic because disposition has been awfully vague in some cases. I do think that this is a policy, not an implementation question because it really goes to the policy question of what happens as between a clean sweep that’s essentially in a round that you could take the draconian idea that a round actually ends, there’s a final date by which things have to be delegated or die, and that’s a possibility, or that they have to reach a certain stage or they die. I was just involved in a massive migration where everyone had to get their projects to stage gate 5 or they would be back at stage gate zero after the migration. So anybody who has a stage gate 2, 3, or 4 became

frantic. So something like that. But the idea that this is open-ended sort of zombie applications, that's what I'm concerned about.

Susan's concern is one I'm running up against, the less sophisticated applicant that is just having a long, hard slog. For instance, the name collisions and others that might have been stopped for technical reasons or that have made no progress or maybe have been not progressed on purpose so that they can become tradable assets. I'm not usually one who likes to think of gamesmanship scenarios, but one can start thinking them up. And obviously, investing in domain names for resale is at the top level and the second level is big business, so it's not a real far-fetched thing.

JEFF NEUMAN:

Thanks, Greg. Donna and then Anne. Then I might put myself in the queue as well, so let me raise my hand. There we go. Donna?

DONNA AUSTIN:

Thanks, Jeff. I'm not 100% sure that I'm following the logic of Greg and Anne, so I apologize for that. But from a pragmatic perspective, if we think about the process, I think if we allow for applicants to submit applications for a string that is already in process, I think that adds layers of complexity to the process that we would then need to figure out, how do we deal with this if this happens or if that happens? I think we've agreed that we move forward in rounds, so every 12 months there's a cycle of applications. If at some point the completion of that string that was outstanding means that it hasn't gone forward to

delegation and that string becomes available again, then there will be an opportunity for that entity to apply for that string.

My concern here is that I think we're adding layers of complexity to the process that really aren't going to see much value at the end of the day. Thanks.

JEFF NEUMAN:

Thanks, Donna. I see a note from Greg: "I did not suggest allowing new applications for strings 'in process.' Maybe that's where the misunderstanding stands." Greg, that's the way I interpreted your comment as well, so I was a little bit confused. But let me go to Anne. Anne, please.

ANNE AIKMAN SCALESE:

I do think it'd be helpful to talk about what it means in relation to applications for strings are in process and how we define that. It's very important to note here that this would be applying to strings in the future that we haven't even considered certain fact situations that may come into play in the future. When folks say, "Will there be an opportunity in the next round?" my goodness, folks, this round took 10 years or will have taken at least 10 years to get to the next round. So it's not very great assurance in terms of applicant freedom of expression for future rounds to say, "Well, if those applications previously applied for all fail, they can just wait until the next round." We don't have a system in place that says that that's a real opportunity. We did not get a consensus on continuing application period. We still have windows. So it doesn't make sense to say that people cannot get in line if prior

applications fail. People should be able to get in line, they should be waiting their turn for sure, but it's not equitable to say they can't apply at all. It violates the applicant freedom of expression and there is no guarantee that they'll get an opportunity. Unless you want to open a new window, we never prior set a string when that name fails. Thanks.

JEFF NEUMAN:

Thanks, Anne. The point of the first recommendation is that ICANN will set out at the beginning of each round a date certain for the next round and/or a specific set of criteria for when the next round would begin. So we're not going to have the 10 years or anything like that, assuming that it's a date certain, and we're not saying that there should be review periods like indeterminate review periods like there are now. We're trying to get to a steady state process. So there will be another round and it's not going to be the 10 years or indeterminate amount of time. That's the purpose of the first recommendation.

I put my hand up because one of the things, when thinking about this, if someone could apply for a string that's still in process – and I'll talk about the "in process" in a second – what we may be encouraging are applicants that have not yet been fully processed to apply again in the next round to cover the situation in which they maybe fail or feel like they're going to fail in the previous round. It seems to me that we're encouraging a lot more games in the chip than if we say the first part, which is, "It should not be possible to apply for a string that's being processed from a previous application round," and then we define what "being processed" means. The part that I said in the last statement of "We can leave that to implementation," that's what I'm saying.

Implementation can define what “in process” means or we can define that. I’m still trying to see how this violates the applicant freedom of expression. I’m having a tough time with that one just personally too. But let me go to Steve and Greg.

STEVE CHAN:

Thanks, Jeff. I think Greg’s hand was up first. I’m not sure if he wants to go but I just have a quick comment. So I don’t know. Greg, do you want to go first? Silent. I’ll just go very quickly.

I was just wondering if it might make sense to take a look at the new gTLD applications status page. It seems to me that there’s a bit of a struggle understanding what “in process” means and maybe it would actually help to look at concrete examples. It doesn’t mean that the working group needs to make a determination now but at least it makes it a little less abstract of a discussion if you're looking at real examples. Thanks.

JEFF NEUMAN:

Yeah, thanks, Steve. I was going to suggest something a little bit similar to that as well that there are concrete statuses that we can look through to help us define it, which would mean that regardless of whether an applicant has voluntarily withdrawn or not, if we agree what final disposition is, which let’s say we mean it’s signing of a contract or whatever it is, then it wouldn’t matter that an applicant has involuntarily withdrawn that has been processed. Let me go to Greg.

GREG SHATAN:

Thanks. Again, it goes back to “in process.” Somehow, I don’t know why Donna is giving examples about delegated strings because I don’t think anybody – Anne and I surely didn’t bring that up. That’s clearly not going to happen. That’s not even on the table. It’s not even in the room. So let’s try to stick to reasonable scenarios.

Again, the question of “in process.” If rounds are every year, of course, nobody is going to say, “You have to be delegated in 12 months or somebody else can bid for that.” That’s also silly. The point here is the zombies. The point here is those that, for all intents and purposes, are not in process. So I think we really need to define what it means to be in process. It can’t be just anything that has not been withdrawn. There needs to be some sort of idea that it’s actually being processed. I think we need to [inaudible] to refine that, but the point here is to try to avoid hangovers that are not just slow rollers.

To go to the point about the time between rounds – and not to open up a whole new can of worms – but I suggest that at some point in our process, we need to look at why it took 10 years and understand those variables before we can put it up ... If we could put up a date certain, we would have to account for every one of those variables not happening the way they did the last time. If we don’t, if we’re just writing semi-blind then we can’t possible put up a date certain because we won’t have learned our lessons yet or we don’t know what lesson to be learned. Thanks.

JEFF NEUMAN:

On that one, Greg, I'm going to just cut you off a little bit for two reasons. Number one is we can go through the statuses. And number two, we can go through the next couple of recommendations, which I think help provide a little bit more clarity. So, hold on to that question. I'm not saying it's not important, but let's go through the rest of these and get back to it because I think it may cut down on some of the uncertainty. The first part, which thanks for Steve for putting this up, is there are a whole bunch of statuses that we have in the New gTLD Program. Certainly, anything that's listed as active, in contracting, in PDT, there are certain statuses that are pretty easy to determine that's in process, right? One would say that if it's in those statuses. Now, certainly one would say if something is withdrawn, if the RA is terminated, if it's delegated, then those are also after, those have already been processed and there's been a final disposition. Obviously, if something is delegated, you can't apply for it because it's just not available. So I do think that if ICANN sticks to its deadlines, then I think that we can make a determination.

Anne says, "What about the status called 'not approved'?" Okay. That's a good question. On the not approved, then those are the gray area ones where they could be subject to a challenge. So we have appeals and we have that we'll be discussing it in further detail or we've been discussing. We have accountability mechanisms. So at the end of the day, my answer to that would be that not approved would only be considered final disposition once it's been through all of the timelines. So there's a certain time in which you have to file an appeal. There's a certain time in which you have to exercise an accountability mechanism. There are certain statute of limitations for lawsuits and things like that.

Sure, there's going to be one or two very gray areas, edge cases, but I think for most of them, we pretty much, looking at the list, would know which ones are no longer in process for whatever the meaning of the term is. We can look at that issue and ask implementation team to look at it in more detail, but I do think it is a solvable problem. I don't think this is one where we would be encouraging people to slow roll it because there will be timelines and we do say in other areas that it's important for ICANN to stick to those timelines and to acquire applicants to stick to those timelines.

Greg and Anne, and then I do want to go through some of the other recommendations because I think they do bear on some of these as well. Oh, I got disconnected.

ANDREA GLANDON: Jeff, you're still connected. I think Anne has her [lined up on] muted.

JEFF NEUMAN: I thought I disconnected myself here.

ANDREA GLANDON: No.

JEFF NEUMAN: I can't see the Zoom room. Huh, okay. Anne, I'm going to work out my own technical problem here. Oh, there it is. Okay, sorry.

ANNE AIKMAN SCALESE: Oh no, sorry. I wasn't sure you had asked me to go ahead.

JEFF NEUMAN: Go ahead, Anne.

ANNE AIKMAN SCALESE: Thanks, okay. I think the biggest problem that I have with the approach that you can't apply for a string that is still in a potential appeal situation or whatever is that if the reason for the not approved status in the prior round is a policy reason and there's new policy on that issue, essentially you have the applicants from the prior round in a position to block the string from ever going forward based on whatever the new policy is. So they have too much of an upper hand to deny the new policy work.

JEFF NEUMAN: Hold on. I'm not following that. Can you give an example?

ANNE AIKMAN SCALESE: Sure. I'll give an example. Let's say that we're talking about the name collisions issue, by way of example, and strings that were not approved based on name collision issues and the pressure that was brought to bear on the Board on those issues, and you now have the name collision analysis project where new policy may be developed by the Board coming out of that. And so if those name collision strings can essentially block any future applications for those same strings – I mean, they obviously should have priority if they're willing to come up to the new

policy that's adopted by the Board. If they're not willing to come up to new policy adopted by the Board, they shouldn't be in a position to block new applicants. The policy reason is the refusal and the not approval status is for a policy reason. Thanks.

JEFF NEUMAN: I'm still not clear but maybe, Susan, can you help clear my misunderstanding?

SUSAN PAYNE: Well, I'm not sure I can do that. Thanks, Jeff. I see what you're saying, Anne, about the blocking. But I would say that that same blocking would happen anyway. Like if you let your poor applicant from the undeveloped South apply for a string that they think they can have and then discover that they're hanging around waiting because some other people haven't withdrawn an application, they're still blocked because the people haven't withdrawn their application, unless and until we've come up with our criteria for when an application or a set of applications are deemed dead. But without that, absent that, it really doesn't matter whether someone's allowed to apply or whether they're not allowed to apply. They're still blocked. And it seems to be far better to have the clean scenario when no one can apply until the applications are dead and then everyone can start afresh on a level playing field. That seems to be far fairer to the people who don't have the benefit of your expertise or my expertise or the expertise of everyone else on this call who understands the rules we just created. I just think we're setting

people up to have a very expensive disappointing experience if we go down your path.

JEFF NEUMAN:

Okay, I want us to look at the next implementation guidance and recommendations so that perhaps we can shed some light on this or maybe clear up some things. So if we look at the next recommendation, "Application procedures must take place at predictable, regular occurring intervals without indeterminable periods of review unless the GNSO Council recommends pausing the program and such recommendation is approved by the Board." Then scroll down a little bit more. "Unless and until other procedures are recommended by the GNSO Council and approved by the ICANN Board, ICANN must only use rounds as part of the New gTLD Program."

I think this gets at, Greg, one of the lessons learned. One of the reasons why we have had such a delay is because we've mandated that after each round or after that first round, there'd be this extensive review before you can start another one. What we're saying now and what we're setting up especially with the creation of the SPIRIT team, the predictability framework and others, is that you don't have these indeterminable periods of review but you have these predictable ways to discuss changes to the program, which, by the way, don't take effect immediately. They take effect as we discussed previously in the predictability program. They take effect upon the start of the next round and not in the one that you're currently in. I think that may be even in the next couple of recommendations. So I think by not having

these indeterminable periods and making that recommendation that we are going to set it up so we can have regular occurring rounds.

So there's still some discussion on consensus policies and gaming and all that kind of stuff, but let's focus on this one. Does anyone have any comments on this particular recommendation? I think it makes sense but let's –

Okay. We go on to the next one, which states, "Absent extraordinary circumstances, future reviews and/or policy development processes, including the next CCT Review, should take place concurrently with subsequent application rounds. In other words, future reviews and/or policy development processes must not stop or delay subsequent new gTLD rounds."

That's a further emphasis or being specific on one of the causes of the indeterminable delays that we've had between these rounds. Okay, sorry, Greg, hand's up. Good.

GREG SHATAN:

I think these two recommendations need to be looked at together and maybe ones after that as well. The indeterminable periods of review, I started thinking about that after we've moved on a bit. So far, ICANN or at least I should say the community and the working group system only works through indeterminable periods of review. So basically, that saying that there could never be a working group unless somehow we figure out how to run a working group against the schedule and actually have it meet that schedule, or say that the period of review is X years. In a sense, that somewhat solved by the next one which basically says that

future reviews essentially take place in the background while new rounds take place under the existing rules. Then I think that only brings up the question of, when do the next new rules come in? I guess the answer to that is the next round. But then you at least have two parallel tracks – one is kind of your production server, if you will, of actual rounds going on and then your development is separate. You don't stop production for development. Then that makes sense. I guess the reason we did it this time is that we really, I guess, wanted to make sure that what we had created here worked because this was really the first mega round in the history of ICANN. Thanks.

JEFF NEUMAN:

Yeah, thanks, Greg. I do think that you're right in terms of the mega round that we had, and I do think that the plan is, instead of having these big, huge reviews like the PDP we're doing right now, is that hopefully we've solved enough issues that we're not going to have to do wholesale changes, and so changes can be introduced in their time when needed for the next round and that you have now this predictability framework to introduce changes to the program whenever changes need to be introduced as opposed to waiting. So I'm hoping that all of these taken together make more sense.

Let me read some of these comments here. Sorry. Scrolling up here. Anne: "If the previous not approved applicants will meet the requirements specified in new policy, they should be grandfathered and be able to proceed. Any new applicant for that string is just getting in line and taking the risk."

“Registries have to follow consensus policies, so eventually they will have to.”

“An applicant from a prior round who does not want to meet new policy recommendations can block a string forever.” I don’t understand that, Anne, especially if we’re pretty clear that things need to follow certain timelines or they’re done. They can’t just not withdraw, that ICANN will change it to a status of, let’s say, not approved in all of the timelines for them to appeal would, I believe, run out eventually. And therefore, I don’t believe they can block. Anne, please.

ANNE AIKMAN SCALESE:

I just want to suggest to compromise in that if the applicants from the prior round will verify that they are willing to meet the policy requirements of the new round and you got them to do that, then you can prohibit new applications. I mean, my concern again in relation to this is that a string – that there be a cut-off that requires new policy that developed to be applied in situations where policy is the basis for the denial. So if you can get the prior round applicants to agree that they’ll upgrade to the new policy for the next round, then you’ve eliminated that problem.

JEFF NEUMAN:

Thanks, Anne. I’m still trying to think of the scenario where – let’s take the name collision as an example. Let’s say the Board, for whatever reason, let’s say they have this name collision test and it declares that something is high risk, and therefore, you can’t go forward in this round. Then I guess what you’re saying is that something comes to light to the

Board while the round is going on, where ICANN may change its mind and say that if you do mitigation thing X, Y, and Z, you can go through. I'm trying to figure out how it's not a consensus policy that would apply no matter what, or if it's a new policy, it wouldn't apply until the next round. In which case, they could apply again under the new rules. I'm just, again, trying to figure out this thing and maybe I'm the only one. Maybe I'll take a step back and think of how this can come up.

Greg is saying, "Let's not trip on the word policy. If an existing applicant can't go to delegation in the new round, they're out."

Martin says, "And we won't know every scenario/fringe case to incorporate into policy."

Donna: "Are we talking about .home, .corp or .mail?"

I think at the end of the day, it would have to be a consideration in the new policy as to what to do if there's an existing applicant that might be impacted while it's still in the application process. I think it's very fringe. I don't think it's something that's really likely to happen. But again, let me go to Greg, Anne, Kathy. Really, again, I want us to focus on what we can live with and what's absolutely a huge issue that we know or an issue that we know is going to emerge that we're going to die in the ditch for. Greg, Anne, and Kathy.

GREG SHATAN:

Just to continue this conversation a little bit, here's an example, let's just say that it's determined that .home can move forward but only as a closed generic or .brand, where there are no third party registrations, so

it's basically a one registrant TLD. What if one of the applicants for .home has no interest in that? They want to sell 10 million domain names. Their application needs to be dead, and it can't just be sold off to somebody who might change the policy. I think that's what Anne is getting at in terms of a change in policy or technical requirement or some sort of change in the landscape to avoid any kind of word/term we can argue about.

JEFF NEUMAN:

Thanks, Greg. I'm being warned about time here. Anne, are you okay if I let Kathy jump the queue because she hasn't participated? Then I'll come back to you, Anne. Alright, Kathy then Anne.

KATHY KLEIMAN:

I just wanted to check and see. I apologize for being so late. But it seems to me what I heard was that if the rules change, applicants don't have to reapply. If they didn't withdraw, for example, in the prior round then they can just change and be included in the new round. If that's the case then I object because we have a set of rules per round and we have applicants that didn't follow those rules. We have applicants that did not withdraw when they were supposed to withdraw. So I think it wouldn't be fair for those who did withdraw because of the policies of whatever round they were part of. I think we have to set a baseline. These are the rules of that round, you follow them. And if the rules change then reapply, but if the rules change and some have withdrawn and some haven't, I don't think that's fair. You're bound by the rules of your round. Thanks.

JEFF NEUMAN: Thanks, Kathy. I think that's what we're saying. But I think Anne might be saying something different. Anne, let me go to you.

ANNE AIKMAN SCALESE: Yeah, Jeff, I just want to say I think the discussion demonstrates there are some of us who can't live with the way this is drafted now. Thanks.

JEFF NEUMAN: Okay. Thanks, Anne. Let me ask the question, if you can't live with the way that it's drafted now, please provide some drafting or changes or ways in which you think it could become a way you could live with so that we can discuss that on the list. I think that would be helpful. I'm going to Donna real quick and then try to wrap this up. Donna?

DONNA AUSTIN: Thanks, Jeff. In line of the conversation that we've just had, I'm not sure this is where we're at. This is maybe just to park this, but I'm not confident that this is where we need to fix the problem. I think there's another issue that we need to discuss, which is about standing of applications from the 2012 round. We need to fix that problem. But I think moving forward, what we're talking about here is to me is okay, but I think what the problem is here is fixing those applications that are outstanding from 2012. So maybe we need to have a discussion about – for one of the better word – how do we kill those? It's going to be another, I don't know, 12 months, two years before we kick off this next round based on the timeline you had earlier today. So I think maybe we

just need to deal with that as a separate issue about how do we deal with the applications that are outstanding from 2012.

JEFF NEUMAN:

Yeah, thanks. As we get towards the end, Donna, I do agree that the issue of what happens with those 2012 applications, it needs to be figured out but that's not our job. That's not in our charter. So I think when the Board implements this program, I think they're going to have to figure out whether each of those are dead or not and they may use some criteria that we use or recommend going forward with the future rounds, but our job is not, unfortunately, to [a pine] on that. So I just need to say that.

I know that there's people in the queue that want to talk. If you scroll down a little bit, we pretty much have covered the recommendations in this section, so please do read the rationale. There's some questions in there. We'll spend maybe a couple of minutes of the next time looking at it but then we're going to on to the next topic which is going to be the RSP pre-approval program. We'll send out the materials shortly for that call on Monday when the next call is – sorry, I was waiting for someone to post it but it's Monday. If someone can post that next call.

Alan, sorry to cut off the queue but we are already a minute past. We see the comments that are posted and we'll try to answer some of these questions. Thanks, everyone. Sorry to close off the queue but we do need to end this call. Thanks, everyone.

ANDREA GLANDON: Thank you. This concludes today's conference. Please remember to disconnect all lines and have a wonderful rest of your day.

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