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**ICANN Transcription**  
**GNSO New gTLD Subsequent Procedures Working Group**  
**Thursday, 10 December 2019 at 03:00 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.

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**JULIE BISLAND:** Good morning, good afternoon, good evening, everyone. Welcome to the New gTLD Subsequent Procedures Working Group call on Thursday, the 10<sup>th</sup> of October 2019.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you're only on the audio bridge at this time, could you please let yourself be known now?

Alright, hearing no names, I would like to remind all to please state your name before speaking for transcription purposes, and please keep your phones and microphones on mute when not speaking to avoid background noise. With this, I will turn it back over to Jeff Neuman. You can begin, Jeff.

**JEFF NEUMAN:** Thank you very much. Just looking at the attendance, and it seems like the only non-ICANN staff and non-Cheryl or I as the co-leads, we have Elaine, Gemma, Jamie, Robin, Rubens – so I think I still want to go ahead because I still think that we can get some stuff done. And if nothing else, I think we can make some

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progress here. I know Jamie has had a lot of comments on this, and so I think we can at least discuss through some of the comments. We may not go the full 90 minutes, but let's just see where we get and we can encourage others to listen to the call.

Okay. So, today we're going to spend time on community applications. A note I'll put in there is about the CPE Providers Supplemental Guidelines. We'll walk a little bit about that moving forward. The next topic after this will be auctions. We will not get to that tonight but that's just a note for the next time.

Actually, before we get stated, let me just see if there's any updates to any Statements of Interest? Okay, not seeing any hands or anybody, I will just move ahead.

Just to follow up from the call we had on Monday, there is now that chart out or the chart is now revised on the appeals. And so, just to make sure we'll take a look at that. If there are any questions or comments, please put those into the draft and we will address those hopefully on the e-mail list. But other than that, let's just go start with communities. So, bring it up. Pull it up. Awesome.

Okay. So, with that the work that was really done on this was initially within Work Track 3. There was also solicitation of comments in the Community Comment #2 and then we had an initial report Section 2.9.1 where we had a bunch of preliminary recommendations and the hope is that we can move some of those preliminary recommendations into full recommendations with high-level agreement. The policy goals are pretty high level, so I don't think either the policy goals or the high-level agreements

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at this point are anything that are controversial but essentially we want the processes and rules related to community applications to be clear and transparent, and the implementation of the processes and rules are predictable and consistent. And so, that matches our high-level agreements as well with the second high-level agreement being that we need to make sure that all the evaluation procedures should be developed before the application process opens and made easily and readily available.

One of the CCT Review Team Recommendations, #34, also deals with the community applications and they too recommend that improvements be made to address the concerns that have been raised, ones we discussed within Work Track 3 and elsewhere in the community before the new gTLD application process is launched, and then to make a revisions or adjustments into the next version of the Guidebook.

One of the things that kind of struck me and although we didn't really – at least to my knowledge – discussed it in too much detail, other than the fact that it came out after applications were submitted, were the guidelines that were established by the economist/the evaluators for the Community Priority Evaluation. We did discuss and hopefully with the recommendations we have, we certainly discuss the fact that they were released late and that it was a little bit unfair – well, a lot unfair – because all these extra evaluation guidelines were added after the fact. But we never really delved into the substance of the evaluation guidelines, and I thought that's probably something we should be doing in the sense of – some of them make a lot of sense and if we had them in the Guidebook or release them prior to the next application

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round, I think a lot of them do make sense. And I don't want to put Jamie on the spot, but if I can ask Jamie a question which is – so putting aside the fact that it was released late, where there things in those evaluation guidelines themselves that were objectionable – again, putting side that they were released late but where there things in there that other than what you've already commented on below which we will get to, things like detailing the rationale and the research, were there evaluation guidelines that you believe were unfair or did not seem like they belong?

JAMIE BAXTER:

Yeah. Thanks, Jeff. It's been some time since I have reviewed those, so I apologize for not having anything on the tip of my tongue to speak specifically too, but I think many of the comments that I've provided already highlight the biggest concern which is that there were further definitions, things that had they been in the Guidebook may have had the applicants reconsider some of the language they used in their responses or how they may have approached the questions in the application. So, that's the key. To have that information only come out after the fact is really the biggest issue here. But I would have to go back and – it's probably fair for everybody to go back and have a look at those economist intelligence units additional guidelines to see if there is anything that has issues or is misaligned with what's actually in the Guidebook. I just don't know at the top of my head.

JEFF NEUMAN:

Thanks, Jamie. That totally make sense, and I think it is a worthwhile exercise that we'll put as an action item for after this

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call and we'll get to some of the things in a little bit on some of the substance. But it sounds to me – again, if we evaluate these guidelines in a manner such that if this were provided in advanced and everyone knew about them, would this be fair and beneficial guidelines because it seems to me that the most consistent comment that we got and it lines up with our high-level agreements anyway is that it needs to be predictable and people need to know what they're asking for and how they're going to evaluate these and making it transparent. If we can adopt these evaluation guidelines or even something derived from these guidelines, then that's more information that we can provide up front to the applicants, plus it will enable any future evaluator whether it's the economist or anyone else, it'll give them some guidelines so that they don't have to start at square zero and then create their own supplemental ones. Does that make sense to everyone? I'll pause just to let people speak or put some stuff in the chat.

JAMIE BAXTER: Yeah. Jeff, my hand is up.

JEFF NEUMAN: Cool. Thanks, Jamie.

JAMIE BAXTER: The think that I would probably add to that is – and for those of you that didn't go through the Community Priority Evaluation, it may seem like a bit of a distant thing, but as a community applicant, when reading through the Guidebook, there was a lot of

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vagueness, not only in terminology but a lot was left open for interpretation. And I think what's really important is that when community applicants were not given all the answers that they hoped to have when forming their applications, you take your interpretation of the language that's in the Guidebook and you craft your application. What happened when the EIU stepped into the picture well after applications were received was that they then had their own chance to interpret the Guidebook and produce these guidelines. What that did was it created restrictions on the way some of the community applicants may have interpreted the language of the Guidebook and their applications would've supported their interpretation of the Guidebook but then the EIU's guidelines created a misalignment with what was in the Guidebook. And that's what is completely wrong and needs to not happen the next time. So, just to sort of paint a clearer picture for those who were not involved in the community application process. Thanks.

JEFF NEUMAN:

Thanks, Jamie. I think it's certainly something we recognize and we'll recognize in the final report that was not fair and needs to be improved upon. Again, that's why potentially adopting these guidelines formally will enable them to be published in advanced so that there is more clarity for applicants to craft their answers and responses. If you scroll quickly through it again. Most people haven't read this but if you scroll down – yeah, just stop there, it's fine. You'll have the criteria on the left and that was in the Guidebook itself. They'll say that for the first factor of delineate or community establishment, you would get two points if it was a

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clearly delineated, organized, and pre-existing community. One point if it was clearly delineated pre-existing but not fulfilling the requirements for score of two, which again is really vague. So, on the right hand side, on the right hand column the EIU – the Economist Intelligence Unit I think – added these guidelines in to help them evaluate. These would be some additional questions that they're looking at in order to frame or to help them with the scoring. Now, obviously the last one on the list which is, has the community been active since at least September 2007, that's going to have to be changed to something else prior to the next round. But other than that, I think it drills a little bit more down into it.

So, without discussing the guidelines in more detail now, really what we're talking about – and thanks, Justine, for joining – is whether we should adopt these guidelines or something similar to these guidelines as part of the CPE process, so that these guidelines can be attached and made known to the applicants in advanced. So, the assignment really is to go through this, look for anything that you might find troubling or that may need to be improved upon or changed and so that we can add them.

So, Cheryl's having ... Did anyone else have problems with audio? Nope. Okay. Alright. Sorry, Cheryl, that may have just been you. Okay. So, let's go back to the document, the Google Doc. So, if we scroll down to the question here again, the first comment was suggestions on improving transparency and predictability of the CPE process. ICANN Org wants us to be as specific as possible. They want to know what needs to be more transparent and predictable and providing specific guidance.

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Again, to address that, I think if we adopted or recommended adoption of those guidelines or something similar that would go a long way in addressing ICANN Org's comment.

Justine says there's also need to be flexible with the definition of community. Certain communities aren't organized in a formal structure. I wonder if there's opportunity to update this. So, it actually takes us to the next bullet point which was from Internet DotTrademark Organization and also the BC, and I also think this comment was in the Council of Europe's Report that they had commissioned which is that there should be a clearer standard definition for communities that required – well, in this one says they require special consideration but I think in general a clearer definition.

So, the current definition I put in this document as a revision just so everyone could see it and then I put in an explanatory statement. I actually took the statement from the Council of Europe Report. So, I probably should cite that second bullet because I don't think that's an exact quote from the Guidebook. But essentially, an applicant for community-based gTLD is expected to:

- 1) Demonstrate an ongoing relationship with clearly delineated community.
- 2) Have applied for a gTLD strongly and specifically related to the community named in the application.
- 3) Have proposed dedicated registration and use policies for registrants and its proposed gTLD, including appropriate security



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verification procedures, commensurate with the community based purpose, it has names.

4) Have their applications endorsed in writing by one or more established institutions representing the community it has named.

The first bullet point, by the way, just to make clear is from the Guidebook itself. The second bullet point, it was a re-statement from the Council of Europe Report which I thought was pretty good.

Let's go through the rest of the comments because I know the ALAC addressed it then we'll come back to the definition.

The Registry Stakeholder Group suggested improved training for panelist. They want to look to the objection process and legal rights process because they think those were generally better models for the training, better documentation. Evaluation materials should be made public, should be a formal process by which applicants have an opportunity to comment on the CPE application and its supporting materials.

Council of Europe suggested that applicants should have more information about the time and cost of the procedure. We'll get to time and cost a little bit later down in this. It should be clear to applicants what criteria will be used in the selection process and in line with what scoring practice which I think could be helped with the guidelines that we just talked about. The panel should provide research supporting its findings or augmentation in the panel's determination, which we'll also get to below.

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Actually, if we scroll down a little bit, I think – do any of these others refer to the definition? Let me scroll down to the ALAC comment. Okay. The ALAC states that the CPE process lacked transparency. Again, should know the information prior to the deadline, conflict of interest. I'm just trying to look for comments on the definition itself.

I think the NCSG had a comment on the definition. I just saw it below but – there we go. Great. Fantastic. I knew I've seen it before.

The Postal Service and Jamie Baxter support the existing definition. The IPC had some concerns because they did not want to see economic communities be excluded from the definition of community, which I think if we adopted something similar to the Council of Europe, they really viewed communities more in the non-economic community way. So, they cautioned against that. Jamie Baxter said that instead of allowing the definition of community to be the focus of the debate, more energy needs to be directed towards solutions that help ICANN and CPE providers understand the types of community seeking new gTLDs.

The ALAC suggest further describing community in terms similar to the definition of association use by the European Court of Human Rights and United Nations. Rather perfecting the definition, work needs to be done to ensure that members of the CPE have a full understanding of the types of communities bringing applications forward and are able to deal with them in a flexible way.

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Arbitrarily restricted interpretations and limited definitions applied on an ad hoc basis discriminate against valid community applications which do not fit into prevailing assumptions. Attributes described in 4.2.3 of the Guidebook are subject to interpretations that can hinder or facilitate valid community applications. The community deserves to be consulted about the conditions that will be applied at the outset of the process. And I think that community there refers to the ICANN Community, in that last sentence.

The Council of Europe actually thinks the concept of community is too broad and not connected to the global public interest and there's no policy of prioritizing communities generally serving public interest goals. Community applicants are not provided with equality of arms and accessibility safeguards.

Non-Commercial Stakeholder Group wants the definition of the community narrowed to marginalized interest, non-commercial interest and those who control legitimate need for special assistance in the application process. It's unfair to award automatic priority to any single group especially in a situation where there's little agreement on which interest and value should be prioritized over others.

Okay. There's a lot there. So, let me go got Jamie. I'll take a drink while Jamie talks.

JAMIE BAXTER:

Thanks, Jeff. I think this is one very specific situation where I would disagree with how the EIU's additional guidelines did restrict community in the definition in the way they view

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community. I think that is absolutely one area where I would diverge and suggest we don't follow what in the EIU guidelines that were created. Thanks.

JEFF NEUMAN: Jamie, is there anything in there that specifically you don't agree with, just an example?

JAMIE BAXTER: I don't remember the exact language in the guidelines. I'd have to go back and read through them, but if I recall correctly, it prioritized those who had a very structured system to the community. In other words, it didn't provide the access that the Guidebook provided to community. I just don't remember the exact way they worded it, but it became very clear that if you were some sort of a institutionalized or industry of some sort that that was the way they were interpreting community as opposed to populations and common interest, if I remember correctly. Thanks.

JEFF NEUMAN: Okay. Thanks, Jamie. So, there are some things in there – I'm just looking through the guidelines as we're going through it. There are I think are some good things in there. Looking at things like – well, maybe they're not good actually. Let me ask before I make that value statement. One of the things they talk about is do research on the community which would include things like looking at the mission statement, looking at entities website, charters, looking at websites of community members to see if there's any reference to those. So, I don't know what you think about those. But again, if

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we can look at this from the angle of all of these been known in advance, would it had been a good thing, not the unfairness of it coming out after the fact. So, let's put ourselves in the mindset of a 2020, whatever applicant that has all this information in advance. Jamie, I think I saw your hand up but I don't know if you put it down.

JAMIE BAXTER:

Yeah. Again, I'm trying to pull from memory on this. I apologize, I wasn't prepared to reference the EIU guidelines from way back when. But something is sitting in the tip of my tongue around the fact that if you were an industry-related organization and you may have only spoken for a very small portion of that community, the simple fact that you were a recognized industry organization somehow seem to give you more clout to speak on behalf of communities instead of organizations that represented groups outside of industry. Again, I'm just pulling this literally from air right now, trying to remember how I saw the harshness of the EIUs guidelines and how it sort of disadvantaged certain types of communities. But again, I had to give it a good read again. Thanks.

JEFF NEUMAN:

Okay. Thanks, Jamie, and I know I'm putting you on the spot but I certainly appreciate it and the examples. Again, if you think of anything after when you reread the guidelines, it's important to provide those.

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Justine states in the comments, “Does not accept loose associations. How about the possibility or feasibility of having community member serve as CPE panelist?” Justine, the issue there would be that you couldn’t appoint any panelist then until after all of the applications were in. Or are you talking about community members being like ICANN Community? Sorry, we use those interchangeably. The way I interpret your comment it’s that if someone apply – oh, the ICANN Community. So, how would that help over having some independent unit? Why would that be a good thing as opposed to you know someone that might be on there more as an emotional factor?

I’ll wait for people to type. Because I don’t think the complaint was against the evaluators themselves. I think it was that they’re just – okay, so Justine’s saying they understand nature communities from ICANN perspective. So, just to push back – I’m not sure any of us really understand the nature of communities because we – I mean we have ideas in our head, right? But my ideas may be different from Jamie’s or maybe different from yours, Justine. So, it’s all what someone brings in.

Let’s move ahead. Let’s focus on some of the elements, let’s focus on some of the other comments and maybe this will help us kind of think of additional things to – I mean one of the problems – so, ICANN never really provided a definition of community, that it was this vague kind of dictionary definition and I think ICANN was relying on the scoring or the factors to delineate who should get priorities as opposed to coming up with some worldwide or global definition that everyone would agree to. And that’s why Jamie is saying that the original AGB definition suffices, however those

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interpreting can't be so closed minded. Right. Well, hopefully we can provide additional guidance because again they're coming – well, the Economist, by its very nature, is looking at things from almost the commercial perspective, so maybe it was sort of the choice of evaluators.

Let scroll back up if we can to – yeah keep going. Keep going up. Okay, sorry. A little bit down. Okay. Let's look at some other things to – sorry, scroll down a little bit more. Okay.

Jamie had some good suggestions in his comment, and so I want to go through those in order because I think this may relate to some of the items that other people had comments on, and so I think we've taken some of these and have solutions for it. So, let's go through these.

The first one was that in the 2012 round details about the panelist, support teams and CPE providers were hidden from the public. Suggestions to improve transparency:

1) Procedures – Details about all the procedures used in decision making must be available to applicants well in advance of the communication plan for subsequent rounds of gTLDs.

Jamie, I think publishing those evaluation guidelines in a way that we all can agree, I think will go a long way to at least make things a little bit more clear. So, I think number one can be least partially addressed by having a set of guidance to add to what was in the Guidebook. Oh, Justine's dropping off because she's double-booked. Sorry. Jamie says, "Yes, I think that would go a little bit of the way."

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2) Panelists – Background information about CPE participants, including support teams must be fully available to enable conflict of interest oversight.

So, I think formally adopting the conflict of interest policies that we talked about earlier and a way to challenge that through some sort of interlocutory appeal I think goes some way to that. I don't know if we'll get all the way to appoint – to know each individual that's within the EIU and information about them. That might be some sort of privacy issue, but certainly to the extent that we definitely expect to have a conflict of interest policy followed and adhered to.

Any comments on that? That's our conflict of interest recommendation from a number of sections. We said it I think initially during the objections, but would that address that comment? I'll just scroll through to see if there is any hands. Nope. Okay.

JAMIE BAXTER:

Sorry, Jeff. I'm not sure maybe you can't see my hand. I apologize. I did raise that question on the list after the last call because we're talking about panelist with respect to objections, but we also call these panelists in the evaluation. So in order to avoid confusion, I'll certainly give you a chance to respond to that question on the list.

The other thing I wanted to raise – and I apologize for not raising this before we started talking about community applications – but it's quite obvious that there is a tremendous amount of concern



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around this with the way this is implemented, and I fully understand the rules of this working group in that we need to get to consensus in order to change things, but it seem so important that around community applications that one naysayer shouldn't stop this from approving community applications. I think this is a very important area that needs to be fixed and fixed really well and there's been great suggestions but I would hate to think that somebody can block from getting consensus, in order to improve and change it in subsequent procedures. So, I just wanted to highlight that because it is a concern that somebody who wants to get in the way could get in the way of this. Thanks.

JEFF NEUMAN:

Thanks, Jamie, and I do remember reading that. That's I think a little further down and I think I did highlight that. So, to respond to the first point, yeah, I think the intent is to apply the conflict of interest to any evaluator or panelist or whatever other term may be used to someone who is reviewing something about an application. I think that should be applicable to everyone. Hopefully, I'll remember to post that on the list but I think that was the intent.

On the second one. Yeah, we'll get there on that criteria that was one the opposition criteria and I think that does make sense about having it be some sort of substantial or it's got to be substantial opposition or opposition not from an individual or one entity or group. I do remember seeing that below, so we'll get to that as well.

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Rubens asked, “Was there any traction to the discussions of changing the result of CPE from kicking other non-community applications to something in the middle with relative priority?” I think, Rubens, you’re referring to – if we still have auctions – some sort of multiplier. And I don’t think that got much traction from the group, but that’s certainly something we will discuss in the mechanisms for last resort, coming up on the next topic probably next week.

The next one is documents. This is from Jamie. It says, data/documentation/research materials consulted in decision making must be referenced and released as part of the decision. I think that comment was also made by the Council of Europe’s Report, if I remember correctly. I think it’s in the ALAC and NCSG comments, so what I put in the notes on the side is what if we have a preliminary recommendation or recommendation that says if there was research relied upon for the decision, it should be cited with a link to the information that should be in the decision itself. Would that type of recommendation, Jamie, address the concerns?

I only see a very small part of the participant list, so I don’t know why I can’t even see Jamie on the – there you go. Okay, +1 on providing research link. Okay.

If we can take that and move that to a recommendation, I don’t think that that’s going to be controversial, but certainly let’s call it out as a new recommendation that stems from the comments of Jamie as well as the comments from the ALAC, NCSG – there’s probably others that referenced the being transparent about the research and other documents that were used.

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Okay. Then we go on to the predictable nature. There's a couple of things that need to be predictable. I'll do number two first because I think we've already talked about that, so that's publishing the evaluation guidelines. Maybe as a group we can endorse those, and so that would take care of that number two.

But then going back to cost, this one's a lot more difficult. Have the entire CPE portion of the new gTLD process contracted and financially scoped before opening the communication period for subsequent rounds. I think that is not very controversial. Maybe not the communication period but certainly before the window opens, maybe you say that seems more doable, but again, I think the real important thing is to make sure that the financial component is well understood and transparent prior.

Now, there are other comments in there that – not Jamie's comment at least in the summary – but certainly a bunch of others have commented that the cost of the Community Priority Evaluation process should be lower. And also the timing of the review should be quicker. So, I added sort of a comment in there about it's going to be hard for us to just without providing any guidance as to what can be done to reduce the cost, which I don't think we're in a position to do. Perhaps just a recommendation to the IRT and to ICANN staff to look for efficiencies in the process that would help mitigate – or sorry, not mitigate – would help lower the cost and get more efficiencies so that we can both lower the cost and shorten the time period for the evaluation. I'm not sure what else we can do as a group because we just don't have the expertise on what it takes to do these evaluations but certainly

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ICANN should have that or is at a better position to get that information.

Let me look on the chat. Is that you, Jamie? Is there a hand up?  
Let me –

JAMIE BAXTER:

Yeah. Thanks, Jeff. I would certainly hope that after the 2012 round that there is enough information to share with any potential service provider on Community Priority Evaluations to get a very good sense of what is expected as part of this work scope. If the service provider is going to be awarded this job based on the price estimates that they provide to ICANN, my feeling again is that they need to be held accountable for that. It needs to be on the service provider to come in under budget to make this possible or at least take responsibility for providing incorrect information that [inaudible] applicants because ... I think in the last round we're not talking about a thousand dollar difference. We're talking about double the price and that's just acceptable by any means.

JEFF NEUMAN:

Thanks, Jamie. I'm not even sure that ICANN when it did it called for panelists or providers. Actually, I don't even know if price was even a factor, but certainly I think the best recommendation ... Certainly the transparency – the cost and timing should be known up front. That's an easier recommendation. Then just asking ICANN or the Implementation Team to use its best effort to limit the cost and establish a [inaudible] for the applicant. I think we can certainly do something with that. And a lot of comments did say

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the cost needs to be lower, which is not very helpful guidance to anyone. We all recognize that the cost were way too much but I think we need to just ask ICANN to do its best to find the cost efficiencies and mitigate the cost as much as possible. Cool.

Okay, let me scroll through the chat here. Moving on to the next comment. This is on the ALAC, which I think we may have covered most of it. Well, there is this notion for the ALAC and it's similar to what Justine mentioned earlier which is "It's important that the CPE evaluation team" – this is the last sentence – "includes representatives from grassroots community organizations. The ALAC can provide appropriate ICANN community volunteers to serve as panel members or advisors."

Anyone have thoughts on that? Just scroll down. The tough thing about making a recommendation – that's be ALAC members or other community volunteers – is that we have to go back to what ICANN was looking for in panelists and providers. I think they were looking for some level of expertise in doing these types of evaluations. The EIU seemed to have some experience in evaluating certain aspects of other kinds of procurements and things.

What worries me about anyone from the ICANN community is although they're certainly passionate about ICANN but they all bring in their own biases, whereas it's an independent unit, in theory, would not have any conflicts and be able to do everything from a purely objective standpoint. But that objectivity comes with a cost of not having an understanding of what we're all trying to achieve. So it is a tough one.

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Perhaps something like – I don't want to say an oversight panel – but perhaps this is something that if there are any – I'm hoping that the guidelines that we established could be enough to help the evaluators. But let's see if others have comments on members of the community being on this. Does anybody else have any thoughts? I know you guys do have thoughts. You might just not be saying it but of community members either serving as advisers to whoever selected to be the panelist or being one of the panelists.

Okay, alright. Let's move on then. We had a preliminary recommendation that evaluations should be completed in a shorter period of time. We talked about this.

All evaluation procedures should be developed before. We talked about that.

The next one is CPE process should include a process for evaluators to ask clarifying questions and where appropriate engage in a dialogue with the applicant during the CPE process. ICANN responded to this and said that the evaluators did ask clarifying questions, and so that should be built into the process. What we can do is – I'm not sure if it was stated in the Guidebook that there could be clarifying questions on this, so we'll have to perhaps make that an explicit recommendation that we agree with the notion of having clarifying questions. So, something that formalizes it.

Now, this is the part and I highlighted it where ICANN seemed to have an issue that we should discuss, which is we had recommended, "Where appropriate engage in a dialogue." ICANN

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Org was worried that oral conversations could lead to things like lobbying and maybe a lack of transparency. So perhaps splitting that or coming up with a compromise is that the panelists – no, there are evaluators here – could ask a series of questions and do back and forth so long as it's all in written form and not in oral discussions and as long as it provides the same type of opportunities for all of the applicants and certainly all of the dialogue back and forth is captured and made transparent. That is really in line with the recommendation we had and I think also gets or somewhat mitigates the lobbying efforts that are able to be made.

Anyone have any thoughts on that? Okay, I think we'll bracket that as a recommendation. We'll revise that recommendation to make it clear that the dialogue we're talking about is in written form and is transparent and non-discriminatory and things like that.

Alright, okay. I know Steve is trying to do this single-handedly, so I appreciate it, Steve.

The next preliminary recommendation is to be less restrictive word count for communities to engage in clarifying and providing information.

JAMIE BAXTER:

Jeff, sorry. If I can jump in before you move on.

JEFF NEUMAN:  
yes, please.

Sorry, Jamie. I don't know why I don't see your hand, but

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JAMIE BAXTER: That's okay. I think what's also important to understand here is that community applicants cannot change their applications – or at least they couldn't in the 2012 round. So the concern about lobbying seems a little off because you can't twist your own words. Your application is what it is. And dialogue, if anything, gives you the opportunity to illustrate it in better form.

I guess I'm just really put off by the idea that it would be considered lobbying because you can't change it, it is what it is. It's more about the opportunity to illustrate it in a way that perhaps the evaluators or not understanding. I think that would be the benefit to having dialogue. Thanks.

JEFF NEUMAN: Thanks, Jamie. If again the middle ground there of just making sure everything is in writing, you're still able to provide examples and illustrating they're still able to ask questions. I think it's better for everyone involved if it's all in writing, so that if there's some sort of appeal or objection, it wouldn't be well. This is what was on the call and subject to what one party may have taken out of a call versus another one. I think that's what ICANN is also worried about.

The next question out of that might be, should the panelist be able to send questions to opposition? If the panelists are asking clarifying questions to the applicants, can they send clarifying questions to those that file opposition letters? That's a thorny one.



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Jamie says that's interesting. Let's put that as a footnote or bracketed, yeah. Thank you, Steve.

On the word count, which is the next one, I don't remember. There was a word limitation of character limitation in that. There were a couple of questions dealing with community. Does anyone recall what the word count restriction was? I don't remember what that was but the ALAC did not agree with the recommendation. They believed the more informative and clear the written requirements, the more crisp and precise the provided information will be. And even though the answer had to be within a certain number of words, I believe you were allowed to attach whatever you wanted, not in terms of substance for changing your answer but for like letters of endorsement and charters and things like that.

On the last one ... Let me read Steve's comment first. This is all CQs, how a word count restriction ... I don't recall if they were different for different types of evaluations. Steve, I don't remember. Is this only on CQs? I think this recommendation was for both the initial sections of the application as well as the CQs. I think that's what this recommendation went to, but maybe it was just clarifying questions. I'm not 100% sure. Okay, yeah. Jamie is saying there were word count restrictions, but we don't remember the amount.

Probably something to just delve into a little bit more deeply but do note the ALAC divergence as well. We'll do a little bit more research on that, but at this point it didn't have too many comments or any comments in support and only one comment from ALAC that was diverging from that.

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Okay. I'll wait until Steve is done typing. Oh, Jamie, please.

JAMIE BAXTER:

Now that I'm thinking about your concept of having clarifying questions – the issue to any opposition to community applicants – is probably a wise thing because it not only [assesses] out the validity in that opposition by engaging them in a dialogue, when in fact sometimes that opposition wouldn't even have a dialogue with the applicant, it does help bring more clarity to what the opposition is and if it's legitimate or not. So instead of just taking a letter of opposition on its face value for what it says in words, I think it actually might be a smart idea that the evaluators have the ability to question the opposition that's been submitted. I think that's a very smart idea. It's unfortunate it didn't happen the last time, especially given our situation. Thanks.

JEFF NEUMAN:

Thanks, Jamie. That is something, as I think about it, I too agree that it may make sense. It's also important to make a distinction that these are letters. The letters of opposition as opposed – this is not talking about community-based objections so we need to be very clear, so I take that comment as well that you put in the chat. Cool. Just letting Steve type that out.

Let's then go on to ... We already did definition of community. I think we went over all of that. So the ALAC had suggested a new idea for providing access to experts to assist communities, particularly those from underserved regions in preparing applications in order to level the playing field. This sort of fits in

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with the notion of when we talked about applicant support, so it's linked to that. We talked about not just monetary support but also support of experts' expertise, so I think we can loop this comment in with that. Since it is to the underserved regions, I think it should be moved to that section.

This is about the threshold. The threshold for scoring was very high. It was 14 out of 16 points, so when you look at the breakdown of criteria, it really is striking that so many areas – if you lost one point in certain areas – and one of those being one that Jamie just brought up that we will talk about in the next paragraph – it was very hard to get 14 points.

The NCSG agrees with some form of giving benefits if it's below the threshold. So if they score 12 or 13, to somehow give them some kind of incentive. I'm not sure what that is. They had suggested financial or technical support.

The ALAC had a new idea, which is altering the scoring is not needed but assistance the first time community applications should be set up. Again, that's in line with the applicant support recommendation.

Jamie has a concern about this. Any benefit considered should be done so in the interest of helping to realize the larger interests of the community that that community application represents, improving their chances of securing the TLD without an auction.

Then I think the actual changes or the weight or scoring – one of Jamie's concerns that we just talked about, or that Jamie just brought up a little bit ago, was that basically if there was one letter

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of opposition or very few letters of opposition, even if they represented a very small part of the community that had a large impact on the scoring, even subtracting one point was very harmful to applications because they only had two points to spare. So Jamie has a recommendation which we should probably highlight in there, essentially is that opposition should really represent a significant percentage of the community in order to be counted against the scoring.

JAMIE BAXTER: Jeff, can I jump in here?

JEFF NEUMAN: Yes, please.

JAMIE BAXTER: I think it's important to illustrate the real-life example here so that people fully understand this. The community support for our application was over 260 organizations from around the world. One of those organizations was an umbrella organization that has over a hundred different community centers as part of their membership. One of those community centers submitted a letter of opposition and that ultimately resulted in one of the two points being taken away.

That's why I think it's important that the percentage of that relevance is calculated in, not just the fact that there are in fact an organization inside the community but that they have some weight in what that opposition represents, because that was a point that

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was not expected to be taken away, given the lack of relevance overall against the support that was given. Hopefully, that illustration puts in perspective what it is we're talking about here. Thanks.

JEFF NEUMAN:

Thanks, Jamie. Putting it also into perspective, if they took away a point based on a smaller group, that's half the scoring for that item. I do think that makes sense. I'm wondering if almost a corollary – if it makes sense to just put the same thing in. If you're trying to get to be a community then would it take a substantial portion of the community to oppose it in order to take away from the scoring? I'm not sure it should be that substantial or as substantial as the affirmative establishing a community, but certainly it does make sense what you're saying about making it much more than just one comment or having some sort of further definition around that.

Does anybody disagree with that, given Jamie's example and the discussion we're having? As Jamie says, "Balancing opposition against the support is key." Alright, people are quiet, so I'm going to take that as that's not a very controversial item at least to put in there for now. I'm thinking that some of these new ideas might have to go out for public comment anyway, so putting that in there now does not seem to be a bad idea.

Okay. Jamie also suggested to add criteria around benefit to registrants, community members and Internet users. Award points for applications that provide solutions for community challenges or goals through the operation of the TLD.

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Jamie, when you say that, are you making it kind of like an extra credit or an actual criteria so that if someone doesn't provide a solution for community challenge, they would not get any points, and therefore that would cut against whatever score we end up. If you add criteria, I'm assuming it might be a higher score than you might need to get or to out of the higher denominator that you would need.

JAMIE BAXTER:

I certainly wouldn't want to speak on behalf of all community applicants because they do take different shapes and sizes and purposes, but your suggestion just now of having that perhaps be a way of getting extra credit I think does feed into the whole public interest question. If you are an innovation at the same time, and so if you are solving a problem or helping a community elevate itself in some way, maybe that needs to be considered because the applicants were required to quite extensively explain their purpose and what they were doing. Yet none of it was actually scored in a way that gave them points. So, yeah, I think somehow incorporating that in, otherwise what is the incentive for some of them if they're not trying to help or solve a problem inside of their community. Again, I don't want to speak on behalf of all communities, but in our particular case, I think that that is relevant.

JEFF NEUMAN:

It's interesting also because it may help – even if you kept the scoring at 14, let's say, out of 16, if you lost 3 points but then can get extra credit on something like this, like a point back, that might be another interesting way to deal with it. Plus, I think that does

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address some of the public interest comments from the Council of Europe. That's an interesting idea. I kind of like that.

Any thoughts on this from anyone else? There's other people on this call. I don't want to ... I know you all have thoughts on communities.

Alright, Steve is writing in the notes about the extra credit point or something like that to add this in. It's not a requirement but certainly it would be something to maybe make up for a point that might have been lost on something else.

JAMIE BAXTER:

Jeff, sorry. Just to clarify, it is actually a requirement of the application already. Whether that gets translated into the evaluation criteria is, I guess, the question. So, applicants are already filling that part out. It's just that it was never scored in any way, shape, or form. It was really only there to be transferred into the contract should they be successful so as part of their commitment to the community.

JEFF NEUMAN:

Thanks, Jamie. That does make it better – or not better but certainly because it's already required to be in the application, it is something that you're not asking applicants to fill out more than they otherwise would have to.

Alright, let's move on then to preferential treatment. I think this was just on the whole notion of, should communities still be given

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preferential treatment if they succeed as a community? I think this is generally agreed upon.

This, ALAC and Jamie support. The NCSG concern is I think it's the same as what we talked about before about the definition of community. I think we addressed that part.

Then the Registrars do not agree. They would like to see the concept of community removed. But I think they're the only ones that said that.

Then going into some of the feedback from the Council of Europe, which I reread again at least the executive summary before this call. I thought there were some good comments in there but there was also some major comments in there or some comments in there that would majorly change the program. They seem to endorse the notion of, if it doesn't get qualified for its community completely then perhaps in a contention set, you still do some sort of – they called it the beauty parade I think is what they called it. That is not something that has really gotten much support from the community.

But the ALAC said, "The CPE did not endanger freedom of expression or association but the process discredited many forms of association that had great merit." I think that is really just if we improve the process then perhaps we can address the freedom of expression concerns.

The NCSG on the opposite side said that there was an impact on freedom of expression rights. Evaluators should take into account the legal right for people to identify themselves as they choose. It



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cautions against the beauty contest – that’s what we talked about. I’m just thinking about the sentence, “Evaluators should take into account the legal right for people to identify themselves as they choose.”

I’m not sure what that really pertains to. I don’t know how the CPE process ... I guess it found that there were groups that were not considered a community for purposes of getting priority but I don’t think that was ever intended to not say that they’re not a community in the small C sense of a word. It wasn’t intended to be the same thing. Does anybody have any comments or perhaps maybe a better understanding than I have of the Non-Commercial Stakeholder Group concerns? Nope. Okay, we’ll move on then.

The IPC community application should not be restricted based on content or worthy goals. This is what we talked about in terms of freedom of expression applying both to commercial ... it’s a non-commercial and commercial concerns and that they would not be in favor of what the Council of Europe had in their recommendations which was to restrict communities to nonprofits.

Cheryl has just put a T in the ... oh, time check. Thanks. Cool. I think we’re almost done. We’ll get through this fairly within time. That’s great.

To what extent should evaluators be able to deviate from pre-published guidance and guidelines?

ALAC says that there should be great flexibility in evaluating letters of support as some applications and their letters of support might be unconventional.

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Jamie says, “There should not be deviation at all without the consent of the applicant. Unapproved alterations could empower the CPE. Any deviation perceived as a shortcut or scope of work incompleteness.”

I think we talked about the pre-published guidelines and adhering to them. I think we all agree. I think the ALAC comment is basically just saying that not every letter of support may come in the format that is suggested and that because some of these may be underserved regions or smaller communities that the evaluator should be lenient on format, which I don’t think that’s objectionable. I’ll direct that to Jamie.

JAMIE BAXTER:

Yeah. I’m not necessarily responding to the ALAC comment but it did seem as though there were additional interpretations of what the Guidebook said. With respect to letters of support, there were some suggested things that should be in it but during the evaluation process, the evaluators came up with additional things that they expected in the letters in order to support the application and the string that was chosen, which I found to be very confusing and outside of the rules. But everybody that looked at it from a reconsideration perspective, they consider that policy and procedures were followed. Again, it all goes back to just transparency up front. Anytime rules get bent or changed, not only does it open up ICANN for reconsideration request for not following the process that’s outlined in the Guidebook, but it also creates concerns for the applicants, I would think.

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JEFF NEUMAN: Again, I'll ask the same question, Jamie. If they were known up front, these extra things that were added before the application was written, would those criteria or those guidelines make sense to add in. If the answer to that is yes then perhaps that's something again, another reason to establish or formally adopt guidelines but keep these in there. When you go back and look at the guidelines, let's look at it from that perspective, and see if they're worth keeping.

JAMIE BAXTER: Yeah, that makes sense. I'll definitely take another look at those and in particular a list of things that might be a concern, for sure.

JEFF NEUMAN: Thanks, Jamie. Then getting to the last thing on here. Additional considerations on selection of panelists and program goals. From the Council of Europe report: the panel members examining Community Objections or dealing with CPE despite having relevant legal knowledge, understanding of ICANN Bylaws and procedures, should also have the necessary expertise concerning the broad spectrum of community and, more broadly, human rights. Then the last one was ICANN rules should facilitate the application for gTLDs and post-delegation operations by communities serving the global public interest (GPI).

I think what ICANN would say to that is by incorporating the community applications into Spec 12 that that is ensuring that the commitments made by the applicant are adhered to, though whether those commitments serve the global public interest I think

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is a whole other can of worms that ICANN is again in the process of trying to figure out what the definition of global public interest is. So I'm not sure what we can do there, pending the whole outcome of that process.

Okay. We made it through a lot of material and I realized that this call did not have a huge amount of people, but I do appreciate it. I think what we'll do is have action items in the notes and then send some e-mails around to try to stir discussion on this, let them know the outcomes, some interesting things that came up and also, importantly, make sure that the guidelines are looked at and that members of the working group consider the recommendation of formally approving those or some version of those for the next version of the Applicant Guidebook.

Great. Okay, so next call is Tuesday, October 15 at 15:00 UTC for 90 minutes. We'll end a little bit early. I will just tell you that the Washington Nationals have just hit a grand slam homerun. So it looks like it's the top of the 10<sup>th</sup> inning for those of you that are paying attention. Anyway, I'm now in a better mood, so that's great. Thanks, everyone. I will talk to you all on Tuesday.

CHERYL LANGDON-ORR: Thanks, everyone. Bye for now.

JULIE BISLAND: Bye all. Have a good night or day.

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**[END OF TRANSCRIPTION]**