
ICANN Transcription

New gTLD Subsequent Procedures PDP Working Group

Monday, 15 July 2019 at 1500 UTC

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TERRI AGNEW: Good morning, good afternoon, and good evening, all, and welcome to the New gTLD Subsequent Procedures Working Group call on Monday, the 15th of July 2019. In the interest of time, there will be 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?

RITA RODEN: Rita from Canada.

TERRI AGNEW: I'm so sorry. Who was that?

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.

RITA RODEN

Rita from Canada.

TERRI AGNEW:

Rita. Thank you so much. Thank you. Anyone else? Okay. I just want 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. Please begin, Jeff.

JEFF NEUMAN:

Thank you. It is July, right? It's still July. Welcome, everyone. This is our, as was said, July 15th and it's the first of two meetings this week. Just another note and we'll mention it again, that we do have a call on Thursday but the call is going to only be on Thursday for 60 minutes, one hour, instead of the normal 90 minutes because of a GNSO Council call that takes place on the same day, just after our meeting.

The agenda is up on the screen right now. We are going to finish applicant freedom of expression and then get into the universal acceptance topic. Let me ask to see if there are any updates to any statements of interest or any updates to agenda items. Okay, I am not seeing any hands. I'm not seeing anything in the chat, so I guess we are good to go straight into the content for this week. Sorry, it sounds like someone may have come off mute. No? Okay. I'm holding my microphone because apparently it was

sounding too soft when I wasn't holding it. I might be a little bit slower today.

Just to recap where we ended up on applicant freedom of expression. Last week, we spent probably about 15-20 minutes on this subject and, really, what it boiled down to from the first page or so was that it seemed to be that there's most of the commenters, so sort of high-level agreement, agreed that we should still follow the policy that was set in 2008, or actually approved in 2008, by the Board of making sure that freedom of expression rights should be considered. But the high-level agreement was that we needed to try to, at least in implementation guidance, try to get to be a little bit more specific with respect to how that consideration should take place. In other words, it's one thing to say that freedom of expression should be considered but it's another to actually put that into practice and it seems like, again, most of the commenters supported the notion of considering freedom of expression, but also where we wanted freedom of expression to be taken into consideration, that to the extent possible, we should give more concrete guidance in the implementation guidelines. Essentially, in the Applicant Guidebook wherever possible.

So, that's kind of an overall summary of where we ended up. Also, with the notion of the freedom of expression is broader than just freedom of speech. So, we should avoid, if possible, using those terms interchangeably. We should not use those interchangeably, and if I do, please someone correct me on the chat or in the comments because sometimes, just naturally, some of us do that.

Freedom of expression does include broader rights than just freedom of speech.

So, where we ended off, and if you could scroll down to the next page, this is page ten of the document that I believe – and I may have missed it – there is a link in the chat. Hopefully, someone put that in there. Actually, no, I don't see it in the chat, but maybe someone could just put the link to the Google Doc, I know it's in the agenda and it's the same link we've been using for a couple of sessions now. So, thank you, Steve.

Right now, we're talking about the implementation guidelines and what we should be providing more guidance on with respect to freedom of expression and I think ICANN Org in their comment really just summarized what we were just saying which is that where these expression rights are to be considered. We need to be as specific as possible, so that we're not leaving it up to panelists or evaluation – I call them, they're not judges, but the evaluation, those that are doing the evaluations to make sure that they have some concrete guidance.

The Non-Commercial Stakeholder Group, they state that the dispute service providers, I believe is DSPs – someone hopefully can correct me if I'm wrong – that they should be specifically instructed to consider applicant's freedom of expression rights.

Now, this kind of fits in with the overall theme, and the question I have is, well, what does that really mean? You can be given an instruction to consider freedom of expression rights, but as INTA put in their comment, there should be some, to the extent possible, examples put into or given to evaluators so that they

know how it's been applied previously in international law or, in this case, because they're the International Trademark Association, they specifically refer to adjudication of trademark disputes. Again, I see that as us providing or us agreeing with the notion of making sure that or trying to provide some more concreteness to this overall policy.

I see a hand from Christopher, please.

CHRISTOPHER WILKINSIN: Hi, good afternoon, good evening, good morning. Jeff, I just want to recall the positions in the public comments. Freedom of expression has to be balanced of applicants, has to be balanced with the freedom of expression of all users, and in the case of geographic names, all the population in the geographical areas concerned.

Personally, I do not understand international human rights for freedom of expression, extending to the concept of monopolizing a word, particularly a geographical term. So, I think, first of all, I fundamentally disagree with the position that NCSG has put forward. I think they know that and you will know that, too. But more to the point, the instructions – the detailed instructions – that we may or may not finish up giving to the evaluators must include a very strong statement to the effect that freedom of expression of the applicant has to be balanced with the freedom of expression and the rights to the freedom of expression of all users. Thank you.

JEFF NEUMAN: Thanks, Christopher. I think your comment is important because it stresses not only the notion of balance but also the fact that different people and entities interpret freedom of expression differently and different people have an understanding of how that balance should work which really just gives more credence to the high-level agreement that I think we do have which is that we need to be more concrete in our guidance.

And I'm not saying ... Again, this is not necessarily a view on geographic names in particular which is more the subject of work track 5, but more in the notion of we need to all, to the extent possible, get on the same page with how freedom of expression is defined and also balanced with other rights and whether that's geographic rights or trademark rights or others. The main point I think is that we get on the same page. Greg, please?

CHRISTOPHER WILKINSON: I think you've understood me, Jeff. As for WT5, it's my experience they hadn't got there yet. They're still stuck in other subjects which, from Marrakech, you know what they are. Thank you.

JEFF NEUMAN: Thanks, Christopher. Greg, please.

GREG SHATAN: Thanks. A few things. First, I'm not so sure we have general agreement here on changing the approach, whatever it currently may be, the freedom of expression. Clarity doesn't necessarily

mean a change. It could also mean a clarification of the current situation.

When I see the number of new ideas and so-called divergence, I question where the consensus lies and I think we need to be more clear than we currently are about whether there is in fact any consensus here and what it is. If the consensus is on clarification but no consensus on what clarification means, that's not much consensus at all. In this case, freedom of expression, if by freedom of expression all we mean is the ability to use a string or a word and to [inaudible] for it, that is only a tiny sliver of what freedom of expression covers.

And really it's not even necessarily all that on top it. It's really about expressing ideas and opinions, not about word choice standing alone. It's about avoiding censorship. It's about freedom of assembly. None of those things are implicated here unless they are in some way that I don't understand and perhaps it could be said that the inability to get a new gTLD might infringe on some group's freedom of expression, dot-[inaudible] or something might be an interesting case for freedom of assembly.

So, I think that kind of like global public interest and a couple of other things here, we talked about this without really any consistent understanding of what it means and maybe somewhat an "I know it when I see it" sort of thing but I don't think we all know the same thing when we see it. The idea of true issues of expression and censorship and the inability to say what one's opinions are seems to me to be a far cry from the issue of whether we use "freedom of expression" to somehow privilege a particular applicant or not. That doesn't mean that [inaudible] doesn't have

some ability to get the application through, but freedom of expression may not provide in reality much comfort in that area. Thanks.

JEFF NEUMAN:

Okay. Thanks, Greg. I'm much more of an optimist, Greg. I think agreeing that there needs to be clarity and that agreeing that there should be consistent rules applied actually is a step forward in the sense of it's not just left to individual panelists that there needs to be some sort of consistency and a consistent approach and clarity set forth in the guidebook I think is ... Whether or not we on this call or we in this group agree, I think providing the advice that we need to have consistency and clarity is a step forward.

Let me go to some of the comments in the chat before I get to I think Paul and then Kathy. If I cover your questions or things that you wrote in the chat, just let me know. Paul says in the chat just for some background on this and when this would be considered. Just a quick recap. This was policy advice provided in 2008 which was that freedom of expression should be considered – I'm paraphrasing – and not much more was provided in the policy on exactly how. I think the comments have come back now. As Greg said, there's a lot of divergence as to what the views are and what freedom of expression actually means when put into this category but the one consistent theme was – or two consistent themes are – that we need to be more clear and we need to be more consistent in the approach and not just leave it up to evaluators and third parties to just use their own view, whether it comes up in a dispute or evaluation or accountability mechanism or appeal or whatever it is at any stage.

So, just scrolling down the comments, Donna said, “Does freedom of expression in this context only relate to the string?” That’s a good question. Scrolling down, let me see here. Paul says, again, “Apologies. Can you provide ...” I think I just reread that. I don’t know if that was put in twice or if the scroll just moved up on me here. Greg says, “Agreeing that we need consistent rules doesn’t get us very far if we can’t decide whether we are playing football or chess.”

Paul, you are in the queue because I think Christopher’s hand is still up from before. Let me go to Paul and then Kathy.

PAUL MCGRADY: Hello?

JEFF NEUMAN: Hello, Paul. Yeah, I can hear you?

PAUL MCGRADY You can hear me? Great. I guess I just wanted to react to what Greg said, that you guys don’t seem to think that there are any freedom of expression issues implicated by the choice in a single word or a single phrase or words that could fit into a TLD. So, I guess I sort of disagree with that on two levels. I could certainly apply for [inaudible] and that would be an expression of free speech. I know that’s two words, not one.

Secondly, if there really is no concern about the importance of a top level as a space for free speech or a space for the right to

assemble, then why in the world do we have a community-based application process? Why do we favor those the way that we do?

Clearly, the folks who put the policy forward back in Paris back in the day and clearly the way it's been implicated – or the way that it has been implemented, rather – indicate that at least a big chunk of the community does believe that there is a free speech issue here or some sort of right of express, including I guess the right to assembly.

I would like for us to set aside the philosophical and not spend too much time on that but I didn't want Greg's comments to go unchallenged because I don't think that they really reflected the views of the community. Thank you.

JEFF NEUMAN: Thanks, Paul. I think that's a really good comment on the fact that there are certain examples where we certainly do consider the use or intended use of a string in these types of evaluations and it's not just purely looking at a string. Kathy, please.

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

JEFF NEUMAN: Yes.

KATHY KLEIMAN:

Okay. First, everybody, I apologize for being late. I have an update to my statement of interest, that I am now faculty of American University Washington College of Law and today's my first day and so why I was late in joining you.

So, Jeff, I've come back to both the initial report and the NCSG comment. The NCSG comment talks about both the rights of ... So, Principle G from the – I just think we need a lot of data here, so let me lay it out some information, then a lot of questions for you.

So, Principle G of the 2007 final report of ICANN's new gTLD policy talks about how the string evaluation process must not infringe the applicant's freedom of expression. The NCSG comment reflects both applicant's freedom of expression but also other's freedom of expression, including human rights protection that enshrines Article 19, the protection for freedom of expression which would include, for example, registrants' freedom of expression.

Our comments, the non-commercial comments, seem to speak to a balance to ensure that ICANN has a heightened duty – and here, I quote – to ensure its policies do not violate longstanding and internationally recognized freedom of expression principles. And I think those would include registrants and trademark owners and governments and communities and organizations and many, many other groups [harkening] to some of the freedom of assembly.

So, here are some of the questions. If work track 3 could give us some more background, I think it would be really, really helpful. I

seem to recall that there was some kind of – and this is not the right thing, name – there was some kind of morality and public order committee setting up some initial rules for what applicants could and could not apply for. It was very controversial but they came up with some clear guidelines so that you didn't have things that were really inflammatory or racist or discriminatory on their face.

So, somebody has to kind of help us go back to what those rules were because I don't think we want to preempt something if we don't remember what it was. So, question, what were those rules?

Then, what are the problems? Anyone in work track 3, refresh our recollection on what the problems were in the 2012 round that have led us to wanting this principle. And what would it change? What would it help? What would it change from the 2012 round? Because we're doing something affirmative and we should know what its implications are? And right now, I don't. Thanks, Jeff.

JEFF NEUMAN:

Okay. Thanks, Kathy. What we're trying to do here, if you look at ... So, there was – limited public interest objection I think was what the public [immorality], that whole discussion ended up being converted into after a whole bunch of discussion on the morality and public order that took place between the governments and with ICANN. So, essentially, all that got bottled up into the limited public interest objection.

There were no rules that said you couldn't apply for particular strings, only that there could be an objection either by the

independent objector or by others, based on a limited public interest. So, what work track 3 – I think it was work track 3 – did was to look at those decisions and ultimately, as reported in the initial report and as discussed within the work track, was that there were no clear guidelines and it was really just up to those evaluators, those panelist, to just kind of make the call.

Well, first, it was up to the independent objector to use their own analysis, whatever that was, to make an objection if it wasn't done by someone in the community. And second, that the evaluators just based it on their own beliefs.

So, I think what we're getting out of this is that most of the comments with respect to ... That we got were that, to the extent possible, we need to try to be more clear and provide more guidance than just overall "you should respect it and balance it".

So, I have Paul and Kathy, is that old hands or new ones? To answer Kathy's question, if you go to the Wiki, you will find the references to work track 3 and to the issues. There were a whole bunch of tracking documents that we had for each of the work tracks and the discussions. So, you can find those in the materials.

Greg says @Paul, "I think we have other issues if those two applications end up in a contention set." Sorry, going back to a previous conversation here. Did I miss a comment?

Then, Greg saying, "I also share Donna's puzzlement that [FOE rights] would be part of evaluating this or just about any other contentions sets." So, Kathy is now doing announcement from

2008. Right. Kathy, that is correct. That was the 2008 version of morality and public order but what that got converted into eventually through, if you look at the Brussels – what was it called? The scorecard discussion with the governments, everything kind of got morphed into this limited public interest exception.

Paul, your hand is still up. Do you want to make a comment?
Nope.

Okay. Let me just start going through some of the other more specifics here and that might raise some more comments. So, with respect to the legal rights objection, this is input on implementation guidelines. So, there were specific questions that were asked in the initial report. One of those was on the legal rights objection and how you really – this goes to the balance question of when a trademark owner brings a legal rights objection. How do you balance that with the trademark owner's – or balance the application with the trademark owner's rights?

With this, the Business Constituency says the proposed domain must not be a clear attempt at typo-squatting, doppelganger, domain, or IDN phishing. And I think that might come up in string similarity. Well, not the IDN phishing but that's their idea that we should put a guideline that says the proposed domain must not be a clear attempt at typo-squatting. I'm not sure what doppelganger domain is or IDN phishing. Can anyone help out on what a doppelganger domain is? Looking around, seeing if anyone is typing. Nope. Okay. Then, onto the next one. Oh, thanks. [Navek] has a link to the Wiki on doppelganger domains. It's just a term I'm not familiar with. Okay. There you go. I'll look at that later.

Then, the registrars, they basically say that case law shouldn't be limited to common law. Resolution service providers should take a broader look. The INTA says regarding fair use ... So, the question of fair use also naturally comes up when you talk about freedom of expression and was the subject of one of our questions basically asking how fair use should be considered. The INTA stated that there needs to be a consistent, agreed definition and mode of application. The working group should consider these rights and the legal effects in various jurisdictions and formulating guidelines.

Just looking at a comment from Paul, says, "[inaudible] Kathy, is freedom of expression and morality, public order, the same thing for purposes of this discussion or are they two concepts? It seems to me that they are both deserving of their own discussion." So, yes, Paul, I agree. They are two different things. Freedom of expression can be considered in a number of different aspects, whether it's morality, public order, or limited public interest objections or they are considered [illegal] rights objections, or frankly anywhere else in the process. Kathy is saying, "We're recreating the wheel here. I'm not sure I see that."

KATHY KLEIMAN: I have my hand raised to talk about that.

JEFF NEUMAN: Great. Sorry. Christopher, is your hand a new hand? Alright, Kathy, let me go to you.

KATHY KLEIMAN:

Sure. Okay. So, I do think we're recreating the wheel. I sent out ... The morality and public order group did a lot of thinking on this and I'm surprised we're not using any of the buzz terms and the discussion terms – buzz terms in the positive sense, not the negative sense – that we heard about ten years ago. There were really good people on this group. By way of disclaimer, I wasn't one of them, but [inaudible] was on it and others.

So, let's look at some of the grounds for limiting freedom of expression that this group found on page four of the last link I sent out. One, incitement to violent lawless action. Even under US law, where the First Amendment protects free expression broadly, incitement to lawless action is not protected speech. So, that would include a new gTLD.

Next bullet point. And this is from the memo that had a lot of researchers involved and a lot of input both from the community, from all parts of the community. Incitement to and promotion of discrimination based upon race, color, gender, ethnicity, religion, or national origin. This category is broad. It's very broad.

Incitement to a promotion of child pornography and other sexual abuse of children. So, in the summary, the conclusion – the conclusion of this research and consultations are provided. We should be referencing this, Jeff. And based on legal research and consultations, a set of standards is being finalized.

So, what it does is provide the panelist of the dispute resolution providers, whatever acronym it is for them, that they are allowed – they should have ... Now, I'm again reading. The panelists should have discretion to sustain objections if the panel determines that a

proposed TLD name rises to the level that it would be contrary to generally accepted legal norms related to morality and public order that are recognized under international principles of law.

Jeff, I think there's a reason in the last round we did not see things like killjews.org – I can say that, I'm Jewish – because we said that this would not be allowed. So, I think we have to. I think we should get staff to sit down and look at this material and I think we have to expressly reference it because it was very helpful, I think, in the 2012 round for what we didn't see, for objections that didn't have to be filed because there were ground rules and it looks like we're setting these aside and I don't think we need to do that. Thanks.

JEFF NEUMAN:

Yeah. Thanks, Kathy. I don't think anyone is saying we're setting anything aside. In fact, that was incorporated into the guidebook. I'm trying to look for where – there it is. In the guidebook, section 3.5. – I'm looking for the specific one here, 3.5.3, limited public interest objection. Nobody is saying that we disregard what was in the guidebook. In fact, what they're saying is that we have a policy here and if there's any other way other than what's already in the guidebook, that we want to consider freedom of expression, then we need to be very specific as to what to do. And to the extent the comments that we got back were that the criteria that were in 3.5.3 were very still open to interpretation, as you saw with the interpretation by the independent objector when it decided to file limited public interest against things like dot-health, hospital and others, and you saw that there were decisions that went in different directions.

So, Kathy, I'm not sure why you're getting the impression that people are saying to ignore all the work. It's all documented in 3.5.3 of the guidebook and I think what people are saying is that with respect to freedom of expression, we need to – to the extent it's going to apply anywhere else in the guidebook or to the extent that it's already there, we need to try to be clear and provide examples and consistency.

So, let me look at the comments. "So, then we must expressly reference" – sorry, this is from Kathy – "the morality of public order findings and standards and referencing the new applicant freedom of expression." Sorry, why is this new here? I'm not sure what's new about this. Kathy, can you—

KATHY KLEIMAN:

It looks like we're elevating something over other things. If that's not the case, then we should just be referencing everything. It looks like we're changing something and clarifying can be changing. So, I don't see ... Jeff, can you share where "anything but morality and public order" is in the current [inaudible] foundation? The document that we're looking at now. Am I missing it? Is there anything in there about this?

JEFF NEUMAN:

No. This section is just on the notion of freedom of expression in general. When we get to the limited public interest objection, that's where you'll see all the references because that is where it has been applied to in the past. This is talking about in general freedom of expression going back to the policy that was in 2008

which says, if you look at the top – sorry, Steve, can you scroll up? A little bit more. Yeah, right there. Sorry, policy goals. This was the policy. This is all the original policy had stated in terms of freedom of expression rights. The applicant freedom of expression rights should be considered throughout the new gTLD evaluation and any applicable objection processes.

So, you're talking, Kathy, about the objection processes which has its own discussion topic but this is to the extent that freedom of expression needs to be considered in other areas of the gTLD evaluation process, application process, or anything else, this is saying that concrete examples and guidance would need to be provided in order to ... If this notion of freedom of expression were to be applied to other areas.

Let me go to Christopher again, then Donna, then Kathy.

CHRISTOPHER WILKINSON: I just wanted to pick up on something you said some time ago about freedom of expression and trademark rights. Trademark rights are very well codified, both nationally and internationally, and partly through the work of myself and others in the 1990s are very well protected by ICANN.

But I draw the line, first of all, that there is nothing in international trademark rights which authorizes monopolization of a term at the global level online. I think that's taking it a step too far. I'd really [inaudible] the idea that freedom of speech would be invoked to protect trademark rights at the top level. Trademark rights are very well protected indeed at the second level. As an industrial

economist, I see no particular advantage of operating a brand top-level domain, but that's [inaudible] to decide. But you cannot use freedom of speech as an argument for obtaining a top-level domain for unique trademark which is not protected or authorized by national and international trademark law. Thank you.

JEFF NEUMAN: Thanks, Christopher. Donna, please.

DONNA AUSTIN: Thanks, Jeff. Donna Austin from Neustar. I don't see any problem with Kathy's request in making these things explicit if that provides more clarity to the process. I'm still a little bit confused about whether we're specifically talking about the string, but I think the policy goals here – and Jeff, to your point – that what Kathy was talking about was immorality and public order and the objection process. This policy goal does actually draw in the objection process and request for consideration and [inaudible]. Maybe it doesn't hurt to be explicit and call out those things that Kathy highlighted if that is helpful for any applicant down the track. Thanks.

JEFF NEUMAN: Yeah. Thanks, Donna. To not reinvent the wheel, as I think the expression that Kathy used, I think we can reference the guidebook, but to go back and reference memos from like 2008, there was a lot of evolution of the thinking between 2008 and what ended up in the guidebook. At this point, unless there were issues that were pointed out, which there were not. As Kathy rightfully

noted, there were not real applications for the very controversial terms that she explicitly mentioned, which I won't again. But at this point, to go back and revisit memos that were drafted in 2008 I think would ignore all the compromises and everything else that were made between governments and others between 2008 and 2012.

So, what we can do or should do is reference the guidebook and any maybe explanatory memos that came with the guidebook, but to go back further I think is a little bit dangerous because now we're sort of relitigating what was done to end up with a compromise to the guidebook, unless we can show that there were problems with that compromise.

Let me go to Greg and then Kathy.

GREG SHATAN:

Thanks. Jeff, you said a lot of what I already wanted to say. I think that the morality and public order discussion evolved considerably. I don't often cite Milton Mueller favorably, but this time I will. 2010 he wrote a post in his [IVP] blog, writing about the cross-community working group at that time that [inaudible] kind of larger discussion of morality and public order conceptually and grounded it in principles of international law and in the specific four points that are listed in the guidebook.

So, I think that as we go back in the history of this process, we have to be careful to either pick where we ended up or make some very modern, today decisions to take on different results but not to say that any of the results that we picked that are different

from what's in the guidebook are based on something that happened in the past because that's all been superseded by where we stand in the guidebook and by the subsequent procedures development of the [LRO]. Thanks.

JEFF NEUMAN;

Yeah. Thanks, Greg. Let me go to Kathy for kind of a response and then I'd like to go on to the next couple of bullet points.

KATHY KLEIMAN:

Yeah. Greg, Milton never agreed with what the morality and public order group did. So be it. Never agreed but yet it did it and it reported out. Jeff, I'm not sure what we've decided about limited rights objections, so just referencing the guidebook broadly and waiving our hands I don't think does it. What I am recommending is under high-level agreements. We expressly have a second bullet point that talks about the morality and public order memos and discussions and limitations because they were in effect and that will stop. If we don't do that, I promise you, every arbitration will start with the bullet point on applicant freedom of expression no matter what the TLD is and we'll say that we have agreed here and now that it's superior to everything else. We've already agreed that's not true.

So, to what Donna said earlier, I appreciate it. I think we have to put something into high-level agreements, otherwise we have to take out the high-level agreement. Thanks, Jeff.

JEFF NEUMAN:

Yeah. Thanks, Kathy. So, a couple of things. For high-level agreement, right now it says that it would be helpful to provide additional implementation guidance in relation to protecting applicant freedom of expression rights. We'd have to obviously get high-level agreement, so we can't just say it. I think what you're saying is that what is in the guidebook now should ... Sorry, I'm a little tough for words here because you were referring to memos and other things and I think the comments that we've gotten from Greg and others was all of that was incorporated into the guidebook and the result of many years of discussions and compromise. So, I think what you're saying is high-level agreement that what was in the guidebook is right or should be continued. I'm not sure. Sorry, Kathy, I'm a little bit lost.

KATHY KLEIMAN:

The guidebook runs hundreds of pages. I don't know what we're referencing, so without a specific reference to the guidebook ... And again, we haven't even decided that we're going to have limited rights objections, but we still do have this high-level agreement going back to the early days and it sounds like it still exists here on this morality and public order which seem to have been very effective in the first round. I'm just saying we have to recognize the balance that we've been talking about for the last hour was and put that in the second bullet point under high-level agreement, that we're not protecting registrant freedom of expression rights to the exclusion of other recognized rights, and probably reference morality and public order.

Per Cheryl's consideration or comment in chat, I can certainly provide some language. Not going to do it on [inaudible]. I can provide it after the call.

JEFF NEUMAN:

Okay. Let's remember that this section is called the applicant freedom of expression. So, to the extent that there is language in there to make sure that there's balance between an applicant's freedom of expression and third parties, other recognized rights, I think that's kind of important to put in there as well.

I did, as Donna said, identify the sections of the guidebook. So, we'll take the notes from this and see what we can come up with to have that balance. I don't think we finished with the legal rights objection, if we can scroll down to ... And of course the legal rights objection is going to be its own topic, so I don't want to focus too much on the specifics of the legal rights objection, even though there were some comments on it. In fact, I'd like to just refer those to the legal rights objection section. So, if we can put a note in there so that we don't get into details of legal rights objection at this point. So, if we can just take that paragraph of four bullets and just make sure we consider it when we talk about the legal rights objection.

I don't want to miss the other ones, so there was a comment from INTA and a comment from IPC to make sure that ... So, the [inaudible] suggests a two-step evaluation process, but I think this goes to a legal rights objection as well. So why don't we put all those in with the legal rights objection? Someone is typing kind of loud, so if you can go on mute there, thanks.

Then, the additional comments. The initial report states that module three of the Applicant Guidebook addressed only legal rights related to trademarks. However, freedom of expression is discussed in module three in connection with limited public interest, [inaudible]. Initial report states evaluators were tasked with weighing different policy values, goals, recommendations, and finding an appropriate balance. However, this description is not accurate. Evaluators were asked to apply specific criteria.

I'd like to get that [inaudible] specific criteria and then make sure that those are incorporated into the specific limited public interest objection topic when we talk about that.

So, a lot of this – and then Christopher Wilkinson made a comment more specific to geo-names about place of incorporation, which will – they were talking about this. I don't want to preempt discussions in work track 5.

So, a lot of this is really – if I could summarize what I think we're doing here is that with respect to the specific objections, we are going to move these comments into those objections to make sure that we consider them. So that's for the limited rights objection and the limited public interest – sorry, legal rights objection and the limited public interest objection. The suggestions are for anywhere else that freedom of expression needs to be considered, there needs to be concrete guidelines or guidance along with potential examples so that evaluators and others understand what the new criteria could be. Let me scroll down. Sorry, Christopher, is there anything else? Steve, sorry, I was reading language. Steve, can you scroll down a little and see if there's anything else. No.

Let me go back to the chat. Kathy wants a note just in there to say that we're working on some language to reflect balance and fairness. Okay. Any other comments or questions?

It's a tough subject, freedom of expression, because without putting it into specific examples, or discussing it in very concrete – with concrete topics, it's very ambiguous. Not ambiguous, sorry – that's not the right word. It's just hard to talk about in the abstract. That's what I was looking for.

Okay, let's go on to universal acceptance. This one should be fairly straightforward, I believe, and I'm hoping we can get through this topic. Just before we close out, Paul says, "I think it was tougher because we mixed in the public morality and order issue." Yeah. I think, Paul, just to address that, again when you talk about a topic in the abstract, it's very difficult to come up with recommendations until you think about how it's applied and I think that's why we sort of got into that discussion. But I agree that when we get into those specific things, it'll be made a little bit easier, I think.

So, for universal acceptance, I'm actually going to go to my own notes here because I think it's just having a tougher time reading the screen for whatever reason. So, just to go back and summarize what we did and how we're adjusting this topic, there was some comment in community comment number one. We addressed this in 2.3.4 of the initial report.

And then when we got comments back, they were analyzed by subgroup A and essentially, when we drilled down on it, the policy goals that we were seeking to accomplish were, number one, that

awareness of issues related to universal acceptance should be increased. So there was certainly a lot of recognition that there are efforts underway within the ICANN community, but most of the comments and the group felt that there's just not enough awareness of those activities that are going on.

The second one is that initiatives related to universal acceptance should be supported and promoted as appropriate. So, where we came out with the high-level agreements, where this all came from, before we go over the high level first agreement was Principle B of the 2007/2008 GNSO policy that was approved by the Board. We have suggested that they amend that language from the original policy, so that it should say some new generic top-level domains should be internationalized domain names, although applicants should be made aware of universal acceptance challenges in ASCII and IDN TLDs and given access to all applicable information about universal acceptance currently maintained on ICANN's universal acceptance initiative page through the universal acceptance steering group as well as future efforts. So it takes that initial concept of saying that some new gTLDs should be IDNs and adds all this other information on top of it.

Then, some commenters agree that no additional work should be proposed beyond that being done by the universal acceptance initiative and the universal acceptance steering group. This came out of the notion that the work track 4, where this issue initially was, was starting to go down a path of doing its own research and found that it was really just duplicating efforts, so out of that group

came the recommendation that we just not reinvent the wheel and that we should stick with those efforts already underway.

Let me go back to the chat and see are there any comments on this language. Cheryl, sorry, your hand is up. Sorry about that. I missed you.

CHERYL LANGDON-ORR: No, it's only just gone up, Jeff. Thanks very much. Cheryl Langdon-Orr for the record, and it's for the record, I just want to have on the record that work track 4 did not start going down its own research pathway. Work track 4 very specifically engaged with the leadership of the universal acceptance steering group from the very beginnings of its work in all of this and we recognized quite early on, which is I think reflected in a language as proposed here that a link, a nexus, a clear marking up of and referencing to the work that had progressed significantly between the 2012 round and Applicant Guidebook development and the current state of play with universal acceptance was worthy. Thank you. Taking off my work track 4 leadership hat, obviously.

JEFF NEUMAN: Yeah. Thanks, Cheryl. You said it better than I did. I got a little tongue-tied, but yes, rather than doing its own research, it brought in the UASG. Had a presentation, I believe, as well as lots of questions and good work done. So, thanks, Cheryl. Let me go to Christopher.

CHRISTOPHER WILKINSON: Jeff, I don't follow universal acceptance in detail in addition to everything else that we have to do but allow me to recall two specific comments. The first is that universal acceptance should be an integral part of the registrar contract with ICANN. Otherwise, ICANN is misleading the public by accrediting and delegating TLDs that are not going to be accepted. I think this should go straight into the registrar's contract.

Secondly, and some of you will know that since 2010 I opposed vertical integration, as was eventually developed for the 2012 AGP. This is direct consequence of vertical integration. Registrars that own registries do not have an incentive to respect universal acceptance. On the contrary. Registrars that own registries have an in-built, and if I may say so, inappropriate incentive to accept principally the registries that they own.

I think the staff should, possibly in cooperation with the CCT group, the staff should evaluate the extent to which vertical integration has contributed to the problem of universal acceptance. Thank you.

JEFF NEUMAN: Okay. Thanks, Christopher. I think if we look at some of the outstanding items, I think the ALAC did have a new idea on registries and registrars, so we'll get there. The first one was actually from the BC, so we'll go over that one first and then go back to the ALAC one – that all IDN applicants should receive a letter/memo from the UASG describing the UASG status and future plans, as well as challenges that IDNs face. These

applicants should be required to confirm their willingness to continue with the application. Thoughts on that requirement?

I mean, we already do have ... There's high-level agreement that information should be given – or, sorry, given access ... If we look back at the high-level agreement, given access to all applicable information about universal acceptance currently maintained on ICANN's universal acceptance initiative page, through the universal acceptance steering group. So, does that cover the BC comment? Or I think the BC is being a little bit more explicit in wanting very specific information to be given to the applicant. So, are there thoughts on that particular idea?

CHRISTOPHER WILKINSON: Yeah, there are. It sounds to me like a threatening letter. Apply for an IDN at your own risk. I hope I'm wrong.

JEFF NEUMAN: Okay. Thanks, Christopher. I mean, right now it does say in the guidebook – and I don't have the exact language at my fingertip, but I do believe it says, it does mention very broadly that not all strings may work and that there is some language in there – sorry, I should have pulled it up before the meeting – that is sort of a warning. But this is much more explicit. I guess it's like a checkbox or something, if someone does submit an application that would say that they've read the materials and that they want to go forward with it anyway. So, any other thoughts? Christopher doesn't think that that's a good idea. Anyone else?

Let me ask. Is there support for this? Because all these suggestions and new ideas, unless they get legs from people in this group that want to talk about including it, they're not going to be included. This goes for all the subjects. Just want to do that reminder. And it's okay if people don't want to include it. That's totally fine. These are just new ideas that have come up.

CHRISTOPHER WILKINSON: Well, Jeff, if you put it that way, it is down to ICANN not to recommend the delegation of a TLD which is likely to suffer from non-recognition, non-acceptance. ICANN's got to get its [inaudible] in order first. If you delegate a TLD, it has to be universally accepted, particularly if it's a gTLD by any other name.

JEFF NEUMAN: Okay, thanks.

CHRISTOPHER WILKINSON: I think the cart is going before the horse. If registrars refuse to accept new TLDs, either ICANN has to impose a contract which ensures that the registrars accept new TLDs or ICANN has to say, "Sorry, guys, next time perhaps, but this time around we cannot guarantee the acceptance of the string that you've ..." In all other respects, confirm to all the requirements including [inaudible] fee, etc. You get the idea.

JEFF NEUMAN:

Yes. So, let's just be careful because the ability of a registrar to accept certain types of applications is one very ... It's one small component of universal acceptance. Usually, when we talk about this, it's more about third-party applications and usage of IDN or – not just IDN, but all domains.

So, let's go to the ALAC comment and let's see if there's any desire from the group to want to explore it or think about this new idea from ALAC which says, "Registries and registrars, if they are owned by the same entity, should be universal acceptance ready as part of their application. This means that their systems should be ready for IDN registrations, ready to handle IDN and non-IDN new gTLDs consistently on name servers and other machines, and able to manage any e-mail address internationalization i.e. nativelylanguage@idn.idn as part of the contact information and be able to send and receive emails from these type of addresses. In addition, registries and registrars should make affirmative actions to ensure that their suppliers are also UA ready."

So, there's a lot in that statement. They also want to note that some of this – no, never mind. I was going to say something about IDN guidelines but that doesn't address these things.

So, let me hear. Are there any thoughts? Greg, please.

GREG SHATAN:

Thanks. This is an area where I do share Christopher's concern about universal acceptance, though I don't think it's a I agree with you that it's not just or not even primarily an issue of registrar

acceptance, but more broadly, all the legacy code that's out there and much more needs to be done to resolve this issue.

I think this is a neighboring issue, so to speak, to name collision. That also needs to be dealt with much more before the fact. Clearly, it came up in a very much midstream way in the last round but that wasn't intentional. We certainly ... I know there's work going on in that area but we need to keep an eye on that and coordinate with that as well so that we don't somehow back into a situation where name collision is an issue with applied-for strings. Thanks.

JEFF NEUMAN:

Thanks, Greg. Let me just go to the comments. Kathy has said, "Did we hear from any universal acceptance groups?" Let me just read the comments and then we'll address them. Kristine says, "Registry domain names and IDNs is fine. It's the other systems (email, websites, etc.) that registries and registrars don't control that make it hard for end users to use IDNs they purchase." Steve says, "Kathy has just mentioned the leadership of the UASG presented and answered questions with work track 4." Cheryl says, "And some commenters, such as the ALAC, are regularly updated by and work with the UASG."

There is work being done by the IDN – sorry, there's IDN guidelines. There's a draft version 4 that's still being kind of circulated and I know that Council is starting some efforts on the guidelines version 4. I seem to remember in registry agreements, when they want to do IDNs – and I can't remember if this came from the guidelines or where it came from but there was, or is,

requirement that if you, as a registry, offer IDNs that you're supposed to provide capabilities of providing support in that language, although I don't know why I'm remembering that because it seems like a number of years ago but we could try to see if that's still in the guidelines or the contracts or where that came from.

So, any other thoughts on this, for or against this new idea? Donna, please.

DONNA AUSTIN:

Thanks, Jeff. Just taking into account Kristine's point that she's made in chat, I'm not sure – I'd like clarification from the ALAC about what they mean by this. My understanding is universal acceptance is not necessarily a registry or registrar issue. It is broader than that. Other people that provide services online. Some places, some don't recognize characters in a TLD that go beyond three letters, things like that. So, I don't understand why ALAC think this is a good idea because I don't believe it's the registries and registrars that are the problem here. Maybe I just need a little bit more education from ALAC about why they're recommending this as a suggestion.

JEFF NEUMAN:

Yeah. Thanks, Donna. I think – and someone can correct me if I'm wrong because I remember being in one of the ALAC discussions a number of months ago – what they were saying was that if you are offering registrations in, let's say, the Chinese language, that

you should be able to get and have email that is in that language about your registration, not about ... Well, let's break it down.

So, if you have support questions in that language, if you're offering Chinese, that you should provide support both in terms of email and other supports, so that you can receive and send emails in that language.

They got a little bit further in the ALAC comments. So, if you have website tools, in general, like web-building tools, that those should be IDN capable. Or if you have third-party suppliers of services, those should be IDN capable. So, I think the ALAC comment is fairly sweeping in what they're asking for. We could get more information if we need to.

Let me ask Kathy, who is next in the queue.

KATHY KLEIMAN:

Jeff, I know we're on some of the lower points, but the high-level agreements, I just wanted to point out that in this area, they don't appear to be high-level agreements yet. The first bullet point talks about commenters expressed, and then the second bullet point talks about some commenters. So, at some point, we have to rephrase those to be the high-level agreements.

I wanted to see if ... I mean, I wouldn't think that there's much opposition to the idea of communication, education, that ALAC was talking about – the communication and the language of the IDN. That's certainly going to be the expectation of the registrant, that they can work and that they'll communicate to the registries and the registrars in that language. I wanted to see if there was

any objection to that and if we could add that into the high-level agreement.

The other is rather than just reflecting this idea that's pretty passive in the second high-level agreement, some commenters agree that no additional work should be proposed beyond that being done by the universal acceptance initiative and the universal acceptance steering group. Should we be urging some kind of demonstrable progress? I mean, really kind of pushing to fix the problems that we had in the current round, in the 2012 round? Something a little more affirmative, because we do know that there were problems. Thanks.

JEFF NEUMAN:

Yeah. Thanks, Kathy. As I note in the chat, we do need to reword those. I think we just copied the language straight from the initial report because it seemed like the public comments we got in the group seemed to be accepting these concepts. So, yes, we do – we should rewrite those. We will rewrite those.

And on the second one, let me ask the group. Do you think we need to push for the UASG to be doing more work on this or do we just leave that as completely separate and just say we defer to their work, and then separately anyone can petition the UASG to do some more or additional kinds of work? How do people feel? I see Jim in the queue. I notice that Donna and Kathy's hands are up but I think they're leftover. So, let me go to Jim. Yes, thank you. Jim?

JIM GALVIN: Yeah. Great. Thanks, Jeff. I put this in chat and I know it's tough to catch it while you're moderating. Since the comments came in, there has been a tremendous amount of emphasis on universal acceptance, both within ICANN and then other spaces such as the IGF. And it would be good I think to get sort of a state of UA update from them since the last round because I know a lot of the ... We've got an open mic somewhere. Thanks.

So, I think getting an update from them on the progress that's been made and where they think they need to go or need to get to before another round launches would be helpful in determining exactly how these things synch up. It would be unfortunate if we had another round happen and those new operators who were applying for IDN TLDs and their users experience the same thing that folks who applied and are operating for six or seven years now are experiencing. It doesn't make sense that we wouldn't somehow improve this key aspect to it. Thanks.

JEFF NEUMAN: Yeah. Thanks, Jim. Let me go to Cheryl and then Christopher.

CHERYL LANGDON-ORR: To some extent, following on from Jim, and reminding everybody that even at the recent policy meeting in Marrakech, I think I attended five. There may have been more updates from the UASG Working Group on current initiatives. There's plenty of updating going on and it will continue to work. So, putting something into our final documentation which links to [and notes] the ongoing work I think has merit, whether or not each and every

one of us need to be fully up to speed. Hastening to add that I am a member of UASG in a number of the new working parties and many others will be as well. May or may not be as useful.

But the UASG work has ramped up in recent times, and in this calendar year has seen a great number of communication efforts and improvements in communication as well as the availability of easy-to-use [testing] tools, so there is a [inaudible] of resources for usage, including by third-party providers, that simply did not exist or were not easy to find back in 2012 [inaudible].

An enormous amount has happened but it will also continue to happen, so it's not a static thing that we can try and take a snapshot of. I think we just need to be very aware of that. Thank you.

JEFF NEUMAN: Thanks, Cheryl. I'll go to Christopher and then I'll raise my hand for the queue. So, Christopher, please.

CHRISTOPHER WILKINSON: Allow me at this late stage to provide 30 seconds of light relief. Up the hill from here, there's a large field. The owner and the real estate agencies are desperate to sell off portions of the field as lots for house construction. But local authority is dragging its feet and has not agreed to provide either a road or services. This has got to be done together.

And if ICANN's right hand, at the advice of the PDP, and the GNSO, and the Board is going to allocate lots called gTLDs but

ICANN's left hand is not able to ensure that the uses, whether they be drivers or cyclists or tractors, can't guarantee that the users can get there because there's no universal acceptance, this is not going to work. Enough said. This is not an unusual situation in terms of public access to private property rights. But I think I've made my point. It has to be [sorted] and it is wrong to delegate TLDs whether they're IDNs or not. It's wrong to delegate TLDs which look pretty on the list but actually can't be used because of lack of acceptance by registrars and registries and the rest of the infrastructure.

JEFF NEUMAN:

Yeah. Thanks. I'm going to just do a personal comment here. This is why I raised my hand. So, now the [inaudible]. You can put the timer on for me.

Look, first of all, I think we need to be very careful on how we word things. TLDs work. They work. What we're talking about here is not whether the TLDs work. We're talking about third-party applications on top of the DNS. There is no issue with IDN registrations getting registered, resolving and doing what it's supposed to do. The question is, or the issue we're dealing with here, is whether they work on third-party systems and what applications work.

So, for us to kind of make a statement saying that we shouldn't delegate or we delay delegating new TLDs until such time as we show that they work is just not a correct statement because they do work.

The other thing is that some people may have a view that the more we make additional TLDs available in these other languages – because frankly there were only 100-and-something that were applied for, maybe it was 200 – the more we make these available and the more, let's say, brands that use them and others that use them, the more it may give an incentive for other third parties to pay attention and use it.

So, I think we need to be very careful on how we talk about the IDN – sorry, the universal acceptance issue, especially when almost all of this is outside the control of ICANN. So, we already have a solution that the UASG has and they have for code. We just need more awareness of the solution and I'm not sure that's completely within ICANN's control.

Now I will go back to put my chair hat on and go to the comments. Donna agrees. Sorry, before that, Donna asks how we define significant progress, in response to Jim. Jim says leave that to the UA experts. Donna agrees with my comment. Kathy says there seems to be unaddressed problems in 2012 IDNs and how do we urge their solution?

I'll put on my personal hat again, that there are no unaddressed problems in the 2012 IDNs by ICANN. All of the problems have been addressed by ICANN. It's the rest of the world that needs to come up to speed with and adopt these solutions that the UASG has come up with and I don't know, again personally speaking, how we as the SubPro group can influence that and why we, as the SubPro group, should do anything other than urge people following UASG and urge ICANN to keep its work up and that applicants read all solutions that are out there. Personal hat off.

Chair hat back on. Kristine say yes. Okay.

I do want to make it through real quick. If we go to the next page on UASG, there's not much more. The BC says there needs to be more outreach. The community needs to involve itself more in the outreach efforts. The registrars say ICANN should invest heavily in educating online service providers. Then, other comments, UASG should include and consult ALAC in developing initiatives that better advance principles of UA. I don't see that as a SubPro issue.

Then, the ALAC says primary obstacle and successful expansion of the domain name space is the rejection of these new strings by legacy code. Yes.

I think all of these comments are great and we should certainly – I think we do have high-level agreement on the work that the UASG doing, the positive that it should do more and all sorts of things. But I guess my question to end this call and for email is what more can we, as a SubPro group, do policy-wise than what's already being done by the UASG or than what's already in here from high-level agreement perspectives?

Now, there is a proposal that the ALAC has on registries and registrars, so I think if this group wants to deal with that issue, then we should have those comments and discussion on email.

Jim says in the comments, "Maybe one solution is stronger language from ICANN elaborating on the potential problems IDN applicants could face with usage of their domains. Clearly ICANN knows it's a problem. They have spent millions on the effort but

the last communication was not good for new applicants and players in the gTLD space.” Thanks, Jim. I think that supports the high-level agreement in there of making much more information available on the current status of where the UASG is and the problems that we do know of and potential ways to address those. Okay, thanks.

With that, let me see. Is there anything else that people want to address other than I will admit my failure in starting that mailing list for the two other issues which I will do today. That is on my plate and we’ll start those communications going.

Donna asks if we have any information from IDN ccTLDs that might be helpful on this topic. We did get some comments from community comment number one and we did ask for input from those but I don’t think we’ve had anything other than what you will have seen in the comments that came back.

Our next meeting will be 60 minutes on Thursday. It’s not 90 minutes because the Council call. The work plan which will be continuously updated, I’m not sure what the topic is on the next call. My assumption. I should know that but unfortunately it’s not off the top of my head. So, if anyone knows what the topic is, that’s great. If not, we’ll put out the agenda very quickly and make sure that we know what the topic is or at least a link to where the work plan is which has the topic on there.

Alright. Any other questions, comments?

Thank you, everyone, for some great conversation and talk to you on Thursday. Thanks.

[END OF TRANSCRIPTION]