
ICANN Transcription
GNSO New gTLD Subsequent Procedures Working Group
Tuesday, 23 July 2019 at 03:00 UTC

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MICHELLE DESMYTER:

Well, I'd like to welcome everyone. Good morning, good afternoon, and good evening. Welcome to the new gTLD Subsequent Procedures PDP Working Group call on the 23rd of July 2019. In the interest of time today, there will be no roll call. Attendance will be taken via the Zoom Room. So if you're only on a phone bridge, would you please let yourself be known now? All right, thank you.

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

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background noise. With this, I'll hand it back over to Jeff Neuman. Please begin.

JEFF NEUMAN:

Okay, thank you, Michelle. Welcome, everyone. I know it's late in the United States, very early in Europe, and probably mid-day in Australia I would guess, Cheryl. But welcome everyone and the agenda is up on the screen right now. As you will see, it's very similar to the agendas we've had in the past, where we're just going to continue to go through the topics that were indicated on the work plan. So today's topics will be the Application Fees, so a continuation of from the discussion last time. And then we'll get into Variable Fees, which is a component of application fees, or a topic that was covered in the initial report. And finally, we'll get to any other business. So before we get started, let me ask if there are any updates to any statements of interest, or any changes, or suggestions for the agenda?

Okay, I'm not seeing any hands raised or anything in the chat. So we'll assume that there's no additions or modifications to statements of interest. And Jim wants to make sure we have the two AOB items. So let's make sure we put those down under AOB. And then we can get to those -- Julie, if you can remind me if it's getting a little bit late, that we need some time to cover those.

Okay. Great. So Julie is the one from ICANN staff [inaudible] Steve, and Emily are not able to be on this call. And Barry Cobb is helping us out in case we need anything. So thank you to Barry and to Julie.

Okay, if we can then move over to the document that's called Application Submission Summary. And also, if we could post that link -- I know it was in the agenda and the email that went out but if someone could post that link on the chat for those that want to follow directly in the document itself. And so I'll just give it a second for the link to get on there.

Okay, so where we left off was at the section entitled disbursement of -- Wait, sorry. Timing of Disbursement of Excess Funds. I think that's where we ended off. Let me just double check. Yep. Okay, sorry, I'm flipping back between different sections.

So all I put a note in this for us to keep in mind, because we did talk about a subject that's very closely related on a previous call, probably a month or two ago, which was the discussion of what it means to end a round or to close a round. And the reason it's tied, obviously, if I go back a step, what we're talking about here is when we set the fees, or when I can't set the fees, there may either be a shortfall of fees, or there may be excess fees. And at this point, it doesn't matter. As part of the conversation, we're whether we're talking about, you know, if we did a completely cost recovery model or a cost recovery model with some sort of floor, which we talked about on the last call.

In either case, if there is Excess Funds, what we're talking about now is when would those excess funds be distributed? And again, I want to say distributed, and it's very general sense whether it goes back as a refund to applicants or whether it gets dispersed into other public interest areas that we talked about on the last call. This is really getting at when would these funds be cleared to be dispersed?

And so what we had here, really, essentially, the only new ideas that were presented -- whoops, okay, the only new things that were presented in the comments were that the INTA the International Trademark Association, believes that the disbursements should come at the end of each round, and should be subject perhaps to some sort of contingency fund. So the concept there is that, you know, you've if we do disperse those funds, that perhaps some amount of the excess funds should be saved, just in case. Now this would be -- we'd have to think if this is a good idea, we'd have to think about how this relates to the cost component of the fees, which is has been previously titled contingency fees.

So if you recall, in the 2012 round, there was a third of the cost or roughly a third of the cost, or the application fee was labeled, Contingency Fund, which essentially around \$60,000 - \$65,000 of the \$185,000, which was set aside to cover litigation expenses, or other unforeseen expenses that came out of the application round.

So that's one component of the fee. But even if the round does close, and we decide to disperse all of the excess funds, what INTA here is saying is that there should still be some sort of contingency fee that's retained no matter what to account for anything that could happen after that disbursement date. And the Registry Stakeholder Group, their main point of their comment, well, a couple points, one is that yes, you could do a kind of proportional disbursement so that you're not making all the disbursements at once, and that you have some in case of a contingency, but also that everything that the mechanism to disperse, including the timing is resolved prior to the application period.

Sounds like someone else has their line open? Is there someone that has a comment?

Kind of sounds like Michael, I don't know if your phone's open. Okay, so those were the comments on the timing of disbursements. My initial inclination is that since the initial report had talked about disbursements being made at round closure, and there were no comments that really oppose that, I think we can link this topic to the entire discussion on what it means to close around, and then just leave it at this point for now.

Any thoughts on this timing point? Let's scroll down, nope, not seen anything, okay.

Now, you know, it is also possible and I mentioned this at the beginning that we don't end up with excess funds, but we actually end up with a shortfall. And hopefully, that won't be the case. But you know all of the costs will be estimated and that's what the fees, the application fees, will be based on and it is quite possible that there would be a shortfall. So what do we do in that case? And so the comments we got were -- a few comments, one, was from the ALAC, which said that if we establish a fee floor, then we should consider at the time we set that floor to also think about whether there were shortfalls or set asides to as a contingency or whether we -- if there were a previous round that had excess funds, do we save that in a contingency to have on hand in case a subsequent round after the one that had an excess. If a subsequent round has a shortfall, then you could take the money from the excess from the previous round and apply that to the shortfall.

JULIE HEDLUND: And Jeff, we have a hand up from Greg Shatan.

JEFF NEUMAN: Okay, I don't know why I don't see that. But, Greg, please.

GREG SHATAN: Thanks, its Greg chat Shatan for the record. And Jeff, you don't see a hand next to my name? Well, hopefully, there's whatever the issue is, it will be resolved.

In any case, I just want to take a step back. And maybe this isn't quite the right time to do it. But the whole idea of excess funds and shortfalls is kind of artificial. And I questioned whether it makes sense to even talk about it in that fashion, as if this were, you know, kind of an entirely kind of a restricted program. And as we've seen was -- now, I can, you know for the last few years, whether you say they were "Excess Funds" from the first round, you know, really seems to be theoretical given that the reserves were depleted and deed had to be restored to some extent from auction proceed. So some extent, that seems like an accounting question and the idea of whether there's a shortfall or excess funds, especially excess funds really seems to depend on kind of how you decide to think about the money that comes from the, the fees. And the idea that, you know, that you would somehow refund the fees rather than use that [inaudible] ICANN given that, you know, it's kind of feast or famine in terms of funds coming from rounds of [inaudible] was due to much smaller funds that come at other times. So I think this

whole question, or I would say rather, I question the whole idea of funds being either excess or for that matter, shortfall. Thanks.

JEFF NEUMAN:

Yeah, thanks, Greg. And if I can, and I don't know why I didn't see your hand. I don't know what's going on. But so if Julie can keep an eye out and remind me if there is, if your hand is up, or anyone else's, and I don't see it.

But so you have to go back to the original premise, right? When we first started talking about fees, we agreed on the notion that this program should be self-funded, it should not draw on funds from other ICANN programs, and that it should be essentially a cost recovery. The fee should be selling a cost recovery basis, all be potentially with a floor that we talked about on the last call.

I'm not sure why you're saying it's theoretical, because ICANN is accounting for these funds separately. ICANN knows that it has, at this point, I think it's somewhere around \$80 million or \$70 million of fees that it brought in through round one that it has not allocated either to pay back any costs or for that matter to disperse to the applicants, or to another part of ICANN.

So essentially, what we're saying on the front end is that this program should be self-funded, and that it should be treated separate and apart, and accounted for separate and apart from the rest of ICANN activities. So it does stand to reason that because it is a separate program, there will or could easily be access or funds or a shortfall. And the question is what we do with those? And right now ICANN doesn't have any kind of

guidance in terms of what to do -- well, with the existing access, but putting that aside, because we're not, this is not a policy that is able to be retroactive but this is a policy that's got to look to future rounds. So I'm not sure why you think it's theoretical at this point, because none of those funds have been reallocated anywhere else. They've been spent purely on things that at least ICANN staff has said are related to new gTLDs, whether that's universal acceptance, or litigation, or name collision stuff I think has been paid out of those funds.

So let me just read the chat. Cheryl saying, I think Greg is saying, why now stick to all of the original premise?

Well, I think the reason we're sticking to that original premise is because that's what we had in our initial report and that's what the comments seem to support. So no one had submitted any comments that ICANN should use funds from other areas of ICANN to fund the gTLD program and therefore the funds coming into the program should be used to fund other parts of ICANN. So I think as Donna said, the original premise is still in play.

Jim says, "Do we know for sure that there were no cross subsidization some funds from the last round?"

Well, absent a third party audit, Jim, certainly Xavier has represented to us, or the community that there were, at this point, no funds that were used from one area. Although he did mention the possibility for preparation for the next round, there may be some cross subsidization of funds as sort of a loan to -- that once fees come in for this next round, you can pay back that loan from anything that was borrowed

from the excess. But at this point, we've been told that there has been no cross subsidization.

Kurt says, I think I can estimate the cost is X, or if I can estimate the cost is X, then ICANN set the fee at one -- 25% above it, or 50% above it, or some sort of multiple, and then there's a 90% Kane of overrun and that overrun is refunded because there's an intentional cushion built into the fee.

So current in theory, that should be right, that that's how they build it. But I'm assuming that I can also probably as a low case an expected case and a high case, in which situation. You know, if it's a low case, in other words, there's not as many applications that come in that they had expected, then not multiple will just go to fund the program, as you say, and but if it's a high case or expected case, then there should be some access. And we talked about last time is that it seems like most of the community did favor some portion, at least some portion of it being refunded and also some portion of it being used to fund other types of new gTLD related programs and 90% chance. So that's what I was figuring Kurt, but I didn't know if there was some special terminology, you are new off.

And Greg, I do see your hand this time. So Greg, please.

GREG SHATAN:

Thanks. So Greg Shatan. And again, I don't want to pull us into the weeds of cost accounting. But just to clarify, I am -- I'm not questioning the premise that the fees should be set essentially in a cost recovery mode but in other words, that the fee should not be intentionally a cash

cow or ICANN or intentionally run a deficit. And so that, that not questioning background was the premise is. The question of wrote, you know, "Excess Funds" in the end and whether there would be refunds, and then we have the whole question of who gets a refund and the like?

Again, I think back to the question of ICANNs reserves, which I think, and I'm sorry for not being certain of this. I think that even with the amount of money that was siphoned off from the auction proceeds are still below the what's considered to be best practices for nonprofit corporation to maintain and reserves.

So question would be refund money, if there was put "An Excess of the Costs" while leaving ICANN financially unhealthy? In a sense, isn't the general health, and financial health, and well-being of ICANN and necessary adjunct to the idea of having a New gTLB Program? And so, you know what point you consider something "excess" when it comes to refunds? Is it another thing to say what we've paid for the program, and paid for itself, and there's something left over, but that's meant to say is that money should go back to applicants so at that point, actually, probably be mostly registers. You know, just, it seems to me that's the point at which it gets kind of artificial if ICANN, you know, is running a reserve, that's below amounts that are appropriate and that sort of thing. Thanks.

JEFF NEUMAN:

Yeah, thanks, Greg. I mean, I understand your point. I guess, the way the way I kind of look at it -- and again, this is sort of a personal view. But if we're saying that ICANN should not be funding the New gTLD

program out of ICANNs existing funds for that it gets, let's say, from gTLD registries, registrants, registrar's, etc., then why should we make the assumption that funds any excess funds from the -- you know, any funds that ICANN brings in that are above the costs that are specifically allocated for the gTLD Program? Why should we assume that those should automatically be used to go back into ICANN? You know that that seems a little odd to me, right? If you're going to say going in, you can't pay using ICANN existing funds, then shouldn't it also be logically or doesn't it flow also that you shouldn't take funds that come in from the program and fund other programs with ICANN including a reserve fund.

But that said, in the discussion we had last week, when we did talk about the funds brought in being greater than the funds used to pay out costs related to the program the most of the community's comments did center on using a portion of it to refund to applicants. And then a portion being used to fund other new gTLD related type programs like universal access was mentioned as one example. And there were others.

Jim points out that it is important for ICANN to do a high low case or business case. But at this point, they've only kind of picked a number from, you know, out of the year, based on what happened last time. And so it still does remain for ICANN develop the business case. But I would argue at this point, it's a little early to do that kind of analysis, because you don't have the rest of it kind of figured out. But ICANN does want to use these assumptions to that it has created. And without going into the substance into that, because that's not really our within

our purview, but it's my understanding that ICANN is going to use it to develop that business case at some point in the future.

So Kurt says if the policy is that fees are set on a cost recovery, how is there any other conclusion than to return the access to the applicants?

So, uh, yeah, occurred that that. So it is cost recovery but there's also a concept of if cost recovery turns out to be too low. There is this notion that seemed to get some level of support within the community about setting a floor. So let's say the cost to -- we think the cost to run the program would average out to \$40,000 by making this up to evaluate per application to evaluate and delegate and do everything I do. But if a community thinks that that's too low, that would encourage some less favorable outcomes, like abuse and other stuff, then the community may decide it wants to set a floor a 50,000, because that number is the may make a difference in terms of behavior that a speculation that could occur. And in that case, Kurt, it's not a pure cost recovery. And by definition, because we've gone with the floor price, there will be an excess. So I think you're right, if we went purely on cost recovery, then logic would dictate that it would be refunded. But if we set a floor, then there's going to be some access that would need to be dispersed.

And Greg is saying there doesn't need to be any link between cost recovery based pricing and refunds.

Sure, the community could decide something different. But the -- I don't want to rehash the entire conversation from last week but it did seem that most of the comments that came in, and the discussion last week and from the group, you know, the past couple years has been to

do a cost recovery basis, and a portion going other -- at least a portion going to a refund to applicants. Okay. Let me just go back to the document. Oh, Greg, is that a new hand?

GREG SHATAN:

Yes, just a new hand just briefly. The way I look at it is that costs [inaudible] the question of how to set a -- is the theory of how to set the price. And that, you know, in and of itself does not generate the idea that if somehow the program is, God forbid profitable, in other words, it ends up with an access, that somehow that should be, you know, given back to the applicants, I look forward to any other nonprofit or otherwise, that has a successful campaign that somehow exceeds, you know, it's budgeted amount in terms of revenue, versus expenses returning that money. So I don't think it's in any way odd to, to see it the way I see it.

And I just think that, you know, both you and Kurt seem to somehow dismiss the very idea that because ICANN somehow may just run the program efficiently enough, or the pricing, you know, is there's a cushion, that somehow that goes back to the applicants. You know, clearly on an accounting basis, you can decide whether that money is dealt with on the books in some fashion. But the idea that it's somehow the program should not keep ICANN go in more generally in some, and should instead be run free funded back just to the applicant pool, that I think is equally bizarre with the idea that it shouldn't be. Thanks.

JEFF NEUMAN:

Okay, thanks, Greg. We're getting into stuff that we covered last week. If you want to just review that, I think it was on Thursday. You know, it was certainly covered as to a portion of it going back to applicants, but the other portions going through other places. But just to remind people that have been or those that have been involved with ICANN for a long period of time may remember and I'll have to remember exactly which round it was, whether it was in 2005 that round or I think it was actually the dot -- I think it might have been the .org procurement where ICANN did in fact refund excess fees that it got from the application period. It was either the .org procurement or it might have been the 2005 sponsored round. But there was some round that ICANN ran where it collected excess and then refunded that back. So it's not unheard of for ICANN do it. It's unheard of from the last you know, bunch of years but ICANN did at one point refund money back to those that applied when there was an excess.

Okay, I want to go back to the Shortfall Notion. The registries just really said that ICANN should take all precautions to avoid a shortfall and when in doubt, ICANN should err towards excess funds as opposed to ever having a shortfall. Okay, so when we were talking, I know we're kind of jumping around to some different topics, but the next set of comments came in on the notion of warehousing/squatting as potential deterrents. The reason this topic is here is because when we were talking about setting a floor, one of the reasons why supporters of setting a floor argued that if the costs to evaluate and run the program were too low, they had mentioned in their comments and statements prior, so even community comment #1 or #2, I'm trying to remember which one it was, people had said that if the price is too low, it would

encourage warehousing and squatting, and therefore a floor might be a good idea to keep the price a little bit higher, so that you would not have "warehousing or squatting."

So that's why I put in the note there that this is related to the notion of an application fee floor. Essentially, if you look at all the comments that came in, what we have from the registries, and the BRG, INTA, is the notion that they don't see at this point that there is any evidence of warehousing/squatting, but that if we do want to deter a certain type of behavior that we would classify as one of these, we have to be very careful in defining or creating definitions so that we understand what behavior we're trying to discourage. And right now there are no definitions of what it means to warehouse or squat on a top level domain.

So, if you look at the registries, they don't believe that there's any data that establishes this type of squatting, as well, the INTA has a similar notion that not all TLDs have the same type of drivers for their business model. So, what some may consider squatting for others may be considered a very legitimate purpose.

And finally, there's a notion in here that if there is some sort of use requirement, that brands not be subject to that policy. That came from the registrars. So, those are the types of comments, again, I think there definitely were comments in support of setting a floor if the fees were too low, but a lack of agreement in the comments as to what behavior we're trying to deter by setting that type of floor. It doesn't mean that we shouldn't have a floor, it doesn't mean that these aren't legitimate concerns. It's just that there is no agreement what this actually means.

Any thoughts or comments on that? Or do people believe, at least on this call that no, we should just do cost recovery, you know maybe kind of a cost plus model that Kurt was saying, you build in a little bit for a cushion and you don't worry. If that comes out to \$150,000 per application or \$10,000 per application, it is what it is and we move on. Greg, please.

GREG SHATAN:

Thanks, Greg Shatan for the record. I think "it is what it is" would be a dangerous way to think about it, or more to the point, not to think about it, to have a mechanical cost recovery concept that paid no attention to what the policy outcomes are that are connected to the price charge, because there's certainly a price at which there would be a high degree of speculation or some degree of speculation in top level domains, unless you had rules that somehow managed to cut that off. And I think Alexander has been one who has raised that point a number of times.

So, I don't think this is a difficult concept to master, the idea that there is a price at which there are unintended consequences and effects and the idea of cost recovery as a best practice, in other words, I set a price where this isn't a money losing proposition for ICANN, nor is it a total cash cow, is a perfectly valid concept, but at the same time, that can't be the only concept on which we price and it can't be the only concept by which we account for the money. Anything that is just, you know, a blind obsession with cost recovery as a kind of a universal theory, I think, is, you know, ignores so many different concepts that we would need to deal with.

So, I think that rather than trying to list them now or anything like that, I think the point is the cost recovery. It was input to how prices set, but it is not the only way in which pricing needs to be determined and there certainly are prices that we would run into problems and create essentially an active secondary market and top level domain but there already is one obviously because the weak are selling out to the strong, but that should not be turned into a kind of permanent concept because prices are set so low that it now becomes valid to essentially take inventory of top level domains and see what you can do with them in a secondary market. Thanks.

JEFF NEUMAN:

Thanks, Greg, and I think towards the end of your comment you were sort of getting to the question that we're asking, which is what does speculation mean, where's the line between speculation and I guess you had said it was, well, don't want to paraphrase, but essentially a legitimate secondary market where I think what you said was the ones that weren't doing as well were selling out to the ones that could do something with it, again, I'm kind of paraphrasing, but what is that behavior that we're trying to deter by setting that floor?

And I think it's one of those things where people in their gut feel like there would be, I think a lot of people, Greg, agree with what you're saying and a lot of comments agreed with what you're saying, we just have a tough time putting on paper what it means, what the behavior is that we're trying to guard against so that when we do a review after the fact, we can say, you know what, it turns out that price was too low or that floor was too low, because we have this type of activity that's

occurring and therefore you know, using that test at the end of that round, we think we should increase or decrease the floor, whatever the review tells us. I think what we're looking for are criteria for which to review whether, I think Edmund put it sort of in his comment, how do you judge whether you've achieved your cost recovery goal? So, I'll let you think about that and go to Christopher.

CHRISTOPHER WILKINSON:

Good morning, Christopher Wilkinson for the record. I think I missed some of this discussion, because I had to log off to get rid of local interference. Basically Greg is right on this, on this point, and I generally support his remarks in this context. First of all, as I've already pointed out, we can't really discuss the concept of cost recovery until there is a budget and a policy for applicant support which I presume on the cost recovery basis, would have to be costed into the program. That hasn't been done at all to date, as far as I can see. In terms of what we're trying to prevent, well, actually, I think there has been speculation and I think there is a secondary market.

I don't really appreciate that, but as long as it's limited to English language generic words to very large extent in North America, we can't do very much about it, but the one thing that I absolutely wish to prevent is the third party registry registrar accumulation of Geographical Names without approval or agreement from the geographies authorities or communities concerned. Some of the registrars have conducted under vertical integration, which I'd also disagree with, have conducted the accumulation of hundreds of TLDs. If

that happens in the area of geographical names. I think we're in deep trouble.

JEFF NEUMAN:

Okay, thanks Christopher. Putting aside geographical at this point because I wanted to further work track five of that, I do think it's important that we try to -- no one's, well I shouldn't say no one, I'm not disagreeing with Greg and I don't think many of the comments disagree with Greg for the point there's certainly a fear that if the price is too low it will encourage some less desirable behaviors. And I think what we're being asked to do is to set out what we would think would be those less desirable behaviors such that when we do a subsequent review, we could say that price that was set before didn't work because of X, Y, and Z. So we're trying to establish some criteria and I think it'd be great if people could, not solely just on this call, but if you can think about what it is, what behavior we're trying to discourage.

I know that there are some people that don't like the fact that there are individuals or individual companies that have a portfolio of top level domains. But I think that is a matter of individual opinion. What I think we need to rather than just focus on the number of TLDs someone or an entity may have, we really need to think about what is the behavior that we're trying to discourage or deter. So, Justine asked the question, how much of the 80 million is held as a legal defense fund? Justine, well, all of it right now is being held as a contingency. But how much of the breakdown would be now left in that portion? I guess you would have to think about, what you'd have to do is take approximately one third of

the total fees that have been paid in and subtract whatever fees have already been paid out in terms of that legal defense fund.

I don't think ICANN has gone into that much detail in its financial reporting, but I will tell you that 80 million is a lot higher number than what ICANN was setting aside initially for just the legal defense fund. So I don't think that, there's at least a portion of that 80 million that has nothing to do with the contingency. But, they are holding on to it right now and they haven't dispersed it. Okay, Donna said Justine, you need to ask ICANN based on replies that the registries have received from ICANN, all of it being kept, right? Just in case. Yes.

Okay, so this is a conversation we really need to continue if we do want as a group to set a floor, which most of the comments and the initial report seem to express some support for that notion. So if we do set this floor, one thing obviously, there will have to be a formula to determine what the floor is, but another one is, what is the behavior we're trying to guard against so that when we do a review after the fact, we can assess whether that floor achieved its goal.

Okay, then were some comments that came in, some new ideas, and it's up to this group to decide whether we further explore some of those new ideas. But, we also have to consider the context of if we do go down the path, which it looks like we are, recommending, that you have more than one round, but you have some sort of continuous rounds or continuous application windows, then you need to think of cost recovery in a little bit different fashion. So I think that's what INTA is really pointing out, that revenue neutral may still mean that you have

contingencies for a subsequent round, just in case that one has less than expected fees that come in.

The registries, I think, support, which makes sense, some sort of periodic review of the application fees, such that they can be adjusted at least at a very minimum between rounds, and then finally Vonda also does talk about the continual monitoring and reporting to the community on the funds that are brought in. So, I guess if you kind of take these concepts. it's really to make sure we think about this in a holistic approach where you have multiple rounds. Number two, you provide some sort of periodic review, and three, that you can make adjustments as needed in between, at least in between one round and the next application window. Christopher, your hand is up, but I'm not sure if that's...

CHRISTOPHER WILKINSON: That is a new hand. Regarding interim reviews, we need to be careful not to close the stable door after the horses have bolted. I have a concern about that. Regarding WT5, the reason that I bring these matters up to the PDP is that my understanding of the GNSO rules is that the PDP is able to override whatever WT5 has to say about it, and that the GNSO itself may override. So, I think in this and other contexts, the work in WT5 is relevant to this discussion. Regarding the highlighted text on the screen, not in my wildest dreams would I envisage thousands of gTLDs at least until the IDN aspect has been cracked, but that's a different discussion.

JEFF NEUMAN: Thanks, Christopher. And just a quick note on Work Track 5, I think the reason why I'm a little hesitant, or we are hesitant as a group to talk about that is because we don't want to preempt the discussions going on with Work Track 5 now, and yes, in theory, the GNSO, according to GNSO rules, we certainly could override Work Track 5, that is not in any way our goal and our mission. We do not intend to rediscuss the issues that are discussed in Work Track 5 unless we can point to some either failure of Work Track 5 to consider all of the viewpoints or some sort of other failure. But the hope is that we do not exercise that right and revisit the topics that are being fully fleshed out in Work Track 5. So that's not our expectation that we do that. But, I understand Christopher, your point, but at this point we'll just wait and see what we get from Work Track 5.

CHRISTOPHER WILKINSON: Thank you.

JEFF NEUMAN: On the highlighted text, this was an interesting one. In fact, it came up initial from Akram, when Akram was still at ICANN and heading up GDP. He had pointed out that there was concern or could be concerned in the community about ICANN being a registry of registries, meaning that there were hundreds of thousands or millions of registries. But I think even though it fell in the initial report in this section because that's where we got the comments, I think these comments really refer to two other points. One is application submission limits and we already addressed that subject several weeks ago, and the other is on root

scaling, which we also addressed. And I think if we have become comfortable with how we've come out on those particular issues then I think these sort of relate to those items. So we're going to make sure that these items are moved from this section which deals with fees to the sections that deal with either application submission limits or root scaling. So I'm not going to take the time now because we would just rehash those discussions all over again.

So if we move down to the next section, there is a notion that came out through our discussions for the past couple of years, and through some comments that in addition to just looking at cost recovery, we want to also make sure that whatever fee we set or the formula for the fee we set takes into consideration encouraging competition and innovation. So that doesn't run against the notion of cost recovery at all. In fact, a lot of people would say that cost recovery in and of itself, a pure cost recovery would naturally encourage competition but it would have sort of the opposite if you set a fee floor that was higher than or some percentage higher than the cost, then in theory that could discourage competition because you're now raising the fees higher than what the market would set and therefore, in theory, eliminating a portion of potential competition.

So on this topic, really, if you look at the comments that are labeled new ideas I think what you get out of this is, and I put this in a comment attached, which is, it supports the notion of increasing competition by not artificially raising fees higher than the costs. Now again, that's not totally the opposite of setting a fee floor, but I think if you look at the comments of ALAC, INTA, the registries, going too much higher than the costs or cost recovery by setting a floor would likely or could likely

discourage competition and, at least according to these three comments that we got in, they would not be in favor of doing something like that. So Greg, your hand is up.

GREG SHATAN:

Thanks, it's Greg Shatan for the record. I need to go back and read the complete comments from which these excerpts come from. I spent the first decade of my legal career, maybe closer to the first 15 years, doing a lot of antitrust law, a lot of competition law. And by and large, the idea that ICANN's internal costs to run the program have anything to do with whether there is limiting competition among applicants or in the new TLD space, has no basis on antitrust economics or law. I was thinking of a less kind term for it, but I don't want to be that unkind. Whether ICANN's prices 10 cents or a million dollars, has a lot to do with whether there will be entrance into it, but what relationship that has to ICANN's cost has no relationship to whether there's more or less competition in the space.

So I think it makes no sense to couple the cost recovery question with a question whether pricing is so high that you freeze out all but the largest potential competitors are so low that you have other unintended consequences or that you, in essence, devalue TLDs to the point where competitors don't see it as a worthwhile place to try to make successful business successful policy or social gains. But, I just think the idea that there's any link between ICANN's internal cost structure and the external competitive market as such, I think, you know, fails, if it's analyzed, you under antitrust law and economics. Thanks.

JEFF NEUMAN:

Thanks, Greg. I don't think we're talking about a strict legal antitrust analysis. And I think what the comments are saying if you read them is they're agreeing with the notion that cost recovery is not a concept of where looking at ICANN's internal costs would have a negative impact on competition or be used in some sort of way to measure that. I think what they're saying is if you set a floor and that floor is higher than the cost recovery, then you need to make sure that whatever floor you are setting does not adversely impact competition, I think, is what they're saying.

So if your costs, so let's say the costs are well, I don't want to talk actual numbers because we're not getting to actual numbers, we're trying to develop formulas, but certainly the notion of a floor can be anti competitive. And that's something that we want to be very careful with and that's why we're not actually in this group going to set the floor or anything like that. We're just talking about the policy around the setting of the fees.

Okay, and I think Cheryl's comment is important too, that the ALAC is more concerned with not disadvantaging opportunity for disadvantaged or underserved communities, ccTLDs as opposed to competition, per se. Okay, scrolling down a little bit, Julie, if you're still with us, I know you are, I'm just kidding.

The next area, I think I'm going to go to the follow up items which I don't think we need to actually spend a lot of time on because I think they're addressed or we don't need to at this point. So, there was a

notion in the discussions that we had prior to the initial report and even in the initial report that said that the price of the fee for applying for a TLD It should be a relatively high fee or the floor should be high to reflect the public interest responsibility associated with operating a TLD.

So because you're operating a critical piece of infrastructure the fee should be set at some high level because you're performing an important function that only serious, I'm trying to think of the way that it was put in those discussions, but only serious applicants should essentially apply. I think with this one, really what it's saying. And from the followup, we did with the registry statement, really what the registries are saying is that if you artificially set a floor that doesn't bear at least some relationship to the cost, then those registries would not support doing something like that. So I think that's the notion of their comments.

The next section deals with subjects that were referring to other sections, so we're not discussing it on this call. But one of those is just on looking at financial capabilities to determine fees or some other way of looking at variable pricing or looking at reviews and INTA talks about, I'm not sure why this was in this section, but it really deals with objections and it's about the costs of a legal rights objection. So we're going to just refer that comment to Section 2.8.1 when we get there.

Okay. so that brings us to variable fees, which what this refers to is the notion of charging one set of applications or charging different sets of applications different rates. So an example maybe do you charge one set of fees for brand TLDs and another one for communities and another one for generics and that was the question that were posed in

the initial report and were discussed, I think, at length with that work track. I think it was Work Track 1 and subsequently and the analysis we did with Subgroup B.

And if we look at the policy goal which doesn't directly adjust variable fees, but indirectly, our policy that we are, I think the comments do still support what we talked about just in the last section, it's really to recover costs associated with the new gTLD program. We have to make sure that whatever fee is set that it fully funds the program being revenue and that it's not subsidized by existing contributions. So that is the principle that no matter what we do with variable pricing, we need to keep in the back of our mind. So what do we have? We had comments all over the place on this one. There were a number of comments, a lot of the comments, probably the most diverse group of comments supported the notion that no, we should just have the same price per application, no matter what they are applying for.

So whether it's a community TLD, Geo TLD, generic TLD brand, it should all be the same rate with the ALAC pointing out a very important distinction is with the exception of those that may qualify for applicants support. Obviously those applications may have some different financial arrangement. But other than that, the BC, some of the registries, and the ALAC did support the notion of same fee for no matter what type of application. ICANN Org, I don't think it's really a concern, but if we labeled it as a concern, does state that what we're really talking about is the same base application fee amount.

So for example, if someone needs an extra technical evaluation than just the normal technical one, because they're proposing new services

or they're applying for a community and they need an additional evaluation, that there may be additional fees associated with that. We're not saying that that shouldn't be the case, what we're saying is that in general for the same type of reviews, applicants should be charged the same amount. Can you scroll up just a little bit, no I'm sorry, down, yeah. But there were some comments from some groups that talked about potential differential fees for different groups, none of these had by any means any kind of strong support from other groups, necessarily, but there were some comments that talked about well, brand, let's say if brand TLDs cost less to evaluate, perhaps they should be charged less.

We also got comments from the ALAC and the Council of Europe that said if you're applying for a community and you have nonprofit intentions, perhaps the fees for those applications should be less, but note that the Government of India said that cost base is suitable, but they do want better representation for local communities and developing countries. The noncommercial stakeholder group said that there should be lower fees for applicants using preapproved RSPs, which I think is the case, it's not necessarily lower fees, it's just that there is a fee to be evaluated technically, and if you select a preapproved RSP then you won't be charged that technical fee or the technical evaluation fee, unless of course you are suggesting an additional technical service above the base. So I think even though it's labeled here as a new idea, I think that is the concept of having a preapproval program for RSPs, so that's certainly in there.

Now this is an interesting one. I highlighted it because I do think this is a little bit different than what we've been talking about. I know it's

come up on in comments and in some discussions, but I don't think we've really paid a huge amount of attention to it. And that is the notion of what if you apply for a TLD and you want to apply for it in multiple languages or multiple scripts? Should we continue what happened in 2012 which is that no matter what type application, you have to pay the same fee so there would not be any discount. Let's say if you applied for three ID inversions of the same TLD or even if you applied for, well, at this point we don't know what's happening with variants so I'll just put that aside.

But do we think in this group, and we'll put this out to the list as well, but do we think we should have further discussions? Is there support for the notion if someone wants to apply for multiple strings that there should be some kind of discount because in theory, you don't have to do the full evaluation every single time, and it may promote as Maxime says, additional IDN languages. Any thoughts on that issue? I think it's an important one, which we kind of haven't really discussed. Jim, please.

JIM PRENDERGAST:

Yeah, thanks Jeff. Jim Prendergast for the record. So, you know, when you see same entity applying for multiple strings, we need to, I think, drill down on that a little further, because are we talking same legal entity, same parent entity? We we all talk about donuts as the collective but the reality is donuts supplied using several hundred separate legal entities, or many different legal entities, I don't know if there was one for each of their applications, but that seemed to be a practice that not only donuts, but several other portfolio applicants

applied. So, would those still have to be treated as individual applications and not the same, or is it sort of as we talk about a registrar world with families.

JEFF NEUMAN:

Thanks Jim. That leads to an important question. I want to tackle the higher level question first, to see if there's support for the notion of if you apply for multiple versions of the same string if there's support there for that high level concept and if it does seem like there's support, then absolutely we need to tackle what is it ok now that there is support for that, then we do need to say, what is it, what does it really mean to have different versions of the same string? You know, does that mean if you applied for some kind of let's say you applied for DOD Communications, or whatever it is, what does it mean to have different versions of the same string? Absolutely, we need to drill down on that, but only if there's support for the high level concept of multiple applications for the same string or is it supported by this group. Does that make sense? I don't know if I worded that well, it's late. But we're going through the high level first and then go down to details.

Let me look at some of the comments, ALAC would likely support discounted fees for Heidi and variance tied to a principal new gTLD. For that, I would just say we need to be careful when we use the term variance, because that's got a very specific meaning. At this point, you're not allowed to apply for a variant of an existing TLD, that may change, but I think Justine do mean translations or are you really talking about variance here? Maxim is saying audience not necessarily variants. I see Greg's hand, but let me go to these written comments first. Jim is

saying, trying to provide bulk discounts gets real tricky real fast. Absolutely. Best to say that at the outset an application costs X, your cost will be X times your number of applications and full stop. Right. That is the concept that is the policy right now. Justine is clarifying that she meant it IBNs. Not variants. Greg agrees with Jim, Greg, your hand is up, so let's go to you, or were you just going to agree?

GREG SHATAN:

Greg Shatan, no I could never possibly merely agree. The point I wanted to make was kind of a bigger one. I think that we can't just look at this kind of bulk or volume discount for IDN families or the like. That itself is going too far down. I think we need to start where Jim pegged it, which is are we going to get into the game of variable pricing or not? Because if we do, then I think we have to examine every possible argument or at least every plausible and probable argument for discounts and I could, depending on what highlight I see a personal of you toward discounts for communities or discounts for brands or discounts for others and for other people might see others but on a policy basis, not a parochial basis I'm with Jim, I think that if we go down this road, it's a complete rabbit hole and ultimately just ends up making all kinds of value decisions and probably also power based decisions on who gets cheaper TLDs and for what. I think applicant support for less advantaged applicants, hoping that they, other than the fact that they need to be able to run a TLD which is largely separate from this, but this whole question has to be dealt with at its root. Thank you.

JEFF NEUMAN: Thanks, Greg. Let me ask the basic question. Is there any form that you personally would support. Is there any form where you think by what you just said, it's just too much of a hassle. No, you're not in favor of even going down this rabbit hole?

GREG SHATAN: Thanks, Jeff. I don't think it's based on hassle, things that are difficult aren't necessarily wrong to do and that's certainly not the only reason to give up on doing anything. But I think it's more a question of the number of different value judgments that we'd make about who and for what reason one would get a cut price on a particular application. It just gets into all sorts of questions I think that we're not well suited to answer. I don't think we want to get into the issue of granting certain types or concept discounts and others not. You know, one could argue against discounts in the opposite direction. I think some people were going in the direction of capping of the number of applications. One could argue that you should be paying more, the more that you apply for.

JEFF NEUMAN: Okay, thanks Greg. I'll put you in the no, you're not in favor of going down this path. I'm getting only a smattering of comments of people that would be in favor of going down this path. A couple points I do want to raise that I missed. Donna makes an important point that even if you have different strings or IDN versions of ASCII strings or IDN versions of other IDN strings, you're still going to have to do other types of evaluation like string similarity and objections and all that other stuff,

so your processing costs may not be too different. Edmon points out something I tried to make the point that we're not talking about variants here, what we're talking about are different versions of strings like IDN version of an ASCII or an ASCII of an IDN, or an IDN version of another IDN, that's what we're talking about.

There is a comment, and I'm sorry, Vaibhav, I hope I said that right. I'm sorry if I butchered that, says that it definitely makes sense for a cost structure to have a combination for multiple applications by the same entity but if we do that then we open the floodgates and in my opinion will not be making commercial sense for others to spend millions so discounting will make it noncompetitive, which will not make sense. Edmon Chung says it's possible to consider a financial support discount program and we will get into financial support applicant support on the next call, I think, or the one after that, I have to check the work plan. And there we go.

Okay, so I'm getting the sense that it's not something that this group really, well, there's a couple people that may want to go down this path, I'm getting the feeling and from the comments as well that this is not something we're going to explore further. But we will raise it on the list to make sure that we've gotten further input from the group. I don't want to completely discount, and no pun intended, discount this conversation.

So, if we go to the next one, I'm assuming, Julie, you are on there, the use of excess fees, there's some additional comments which we've already discussed. So we're going to move that up. Changes in fees, this is again addressing what if ICANN was wrong. And I think we've

already discussed most of these notions and then the ALAC had an important point of clarification which I think we have talked about, when it was talking about communities and so it clarifies its language on the nonprofit intentions and so it's just a clarification of what it had above, and I think this one the NCSG I think we already talked about this comment, which is that if you use a preapproved RSP then you should not have to, in essence, double pay for another technical evaluation because you've already been evaluated from at least those basic technical services.

Okay, I know we're moving along here to just start the application submission period. This section deals with the period of time in which an applicant has from the opening up of the round until the time it has to submit its application. So in the last 2012 round it was supposed to be, I believe 90 days, because of the so called glitch. It ended up being a lot longer, but we will assume that 2012 was in theory supposed to be 90 days. So I think the policy goal we have here that most of the comments agreed with and what we discussed in the initial report, is that it should be long enough to provide a fair opportunity for all prospective applicants to submit an application. It's very high level. I don't think anyone could really argue with that.

But now let's see where we think we have some high level agreements and where we may not, and actually we will just stop after the high level agreements and get to the other topics. So we think there's high level agreement that if the next application opportunity structured as a round which I think we're there but, if it's a round then the comments are supporting the fixed application window of at least three months, some believe that three months is sufficient, while others though

thought that a longer period may be necessary or beneficial. So, a minimum, there's high level agreement of a minimum of three months and then comments did support the proposal that in the event that following the next round of new gTLDs application opportunities are organized as a series of application windows, then in theory steps related to application processing delegation should be able to occur in parallel with the opening of subsequent application windows.

So most of the comments said you did not have to be completely done with the processing of all applications in a previous round before you open up a subsequent window. And we'll talk further about the details about that on the next call. I want to stop there because I want to hit Jim's two AOB items. So Jim, can you remind the group as to what those AOB items were?

JIM PRENDERGAST:

Yeah, sure. Jeff So the first was regarding some email traffic I saw on the GNSO Council list regarding string similarity procedures and efforts underway by the ccNSO and a decision taken by the sub pro leadership to not participate, that's where I kind of get lost in it. There was a question of what the ccNSO is doing on string similarity versus what this group is doing on string similarity and a question of whether or not we sync up with them or not. And my concern is if we don't, there could be the potential for two processes within the broader ICANN community that differ, but are dealing with the same issue.

And then the second item was just an update on the briefing that you and Cheryl did with the GNSO Council last week, just get a sense of what the temperature of the room was and all that fun stuff. Thanks.

JEFF NEUMAN:

Okay, thanks, Jim. So for the first item, Cheryl and I sent a note, okay, actually let me go back a step. So the ccNSO Council and the GNSO Council at one of their sessions, I'm going to say it was in Kobe, I think, yeah, in the Kobe meeting met, and the ccNSO was talking about work that it was thinking about doing on string similarity analysis in their fast track process with respect to IDNs. And so the ccNSO knows that this is obviously an issue for, string similarity in general is an issue for gTLDs and so there was a mention of creating the potential of creating a cross community Working Group on this subject.

Cheryl and I went through and discuss with the rest of the leadership team as well, so that included the members of Work Track 5, it included Michael Fleming and Krista and Robin Gross and I'm forgetting Pete Rubens, and in our discussions, what we came down to was the fact that the processes that the ccNSO has in the fast track are very different than the processes that we have with respect to new gTLDs. So, in the analysis for fast track, there's only a visual similarity check, but there's no kind of process for objections. There's nothing else. And so while there is a common element of visual analysis, there are multiple elements that are very different in the gTLD process than the ccTLDs. So, that's number one.

Number two is that we've already been discussing those issues. We have a bunch of recommendations that we'll get into in subsequent weeks or months or whenever we get to it, weeks, hopefully, so we're already very far down that path. Our PDPs are open to anyone that wants to participate. There are some CCs that are participating but, you know, we're so far down that path to start a new group just didn't make sense to us rather than encouraging ccTLDs to come in and participate in our discussions.

And then finally, regardless of what happens if you create a CCWG. You then still have to do a PDP policy development process in order to ratify it. So the thinking was that we would not be in favor of forming a new group just to talk about this one small issue because of those reasons, but we would encourage ccTLDs if they wanted to come in and be part of our conversations on this topic. So that is the basis for our conversation ultimately at the end of the day the Council will have to decide what it wants to do, but our recommendation was that we keep moving with the process that we're going down now to the extent that we are not covering any issues related to gTLDs, we told the Council to let us know so we can make sure we do include those and then but at the end of the day, would not be our recommendation to have a completely different group. So that was the thinking behind it, and so that was the recommendation.

The second item that you asked about the meeting with Council. We had a session, All of the PDP leadership teams had a discussion with the GNSO Council on their call last week where we essentially repeated a lot of what we had presented before Marrakech which was the status of where we were, and I'm sure the slides are posted, but if not, we can

certainly send them to the group, but we said, you know, Cheryl and I presented on where we thought we could use the Council's help or what it needed to look out for. So we presented the challenges in this group and areas that we think the Council should be paying attention to so and encourage discussions to take place within our PDP for substantive discussions on new gTLD processes and to make sure that to the extent they're discussing, the Council should try to avoid substantive discussions on the new gTLD program and refer all those to us, but to the extent that they do want to engage in those discussions that they should loop us being this full working group in with those discussions. I think that's really what we presented. Cheryl, anything else that you think?

CHERYL LANGDON-ORR:

No, that pretty well covers it, especially for the meeting briefing in the GNSO Council meeting, of course we've got several members of Council that sit on our group here anyway. But I just want to make it really clear that, of course, the GNSO Council and the ccNSO Council do meet very regularly, it won't be the last opportunity for them to share information or even discuss the possibilities of some communally interested group getting together on strings similarities or otherwise, but I did want to point out that, of course, if it affects the CC then it's the ccNSO PDP, then it affects the GNSO PDP. But ccNSO PDPs quite literally have seats at their policy development table for other parts of the ICANN community and that's an important thing.

So whilst they're not the same designers as GNSO ones, they certainly engage and involve seats at their table for all sorts of other groups,

including the GNSO, should that be desired. So, you know, we can have that discussion another time, but what's important is to get to a PDP point the ccNSO has to go through a study group first. So there's also a timing issue as to when any sort of mutuality might happen, and our work plan.

JEFF NEUMAN:

Yes, thanks Cheryl. So this is an ongoing topic I'm sure that will be discussed and, you know, to the extent that any of you have contacts with the ccNSO members that are interested in this subject, please have them participate, even if it's just on that one topic, their thoughts would certainly be of interest to us. And, you know, we should be considering those no matter what. But do recognize that the processes are very different and we have additional, the ramifications of being similar are different than with the ccNSO and while it's titled the same subject, string similarity, they have different inputs and different outputs. Okay, thank you Jim, I made the point of we should be remembering to put these on the agenda, anyway, so I'm glad you brought them up as AOB.

We will have a call on Thursday, if someone could post the time on Thursday, where we will pick up application submission period and then hopefully get into, I believe the next subject after that, which I can't remember off the top of my head. So, we will talk to everyone on Thursday. This has been a good call. And keep the discussions going on the list. Thanks everyone.

MICHELLE DESMYTER: Thank you Jeff, the meeting has been adjourn. Have a great rest of your day.

[END OF TRANSCRIPTION]