ICANN Transcription
New gTLD Subsequent Procedures PDP Working Group
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JULIE BISLAND: Right. Well, good morning, good afternoon, and good evening. Welcome to the New GTLD Subsequent Procedures Working Group call on Thursday the 17th of September, 2020. In the interest of time, there will be no rollcall. Attendance will be taken by the Zoom room.

I would like to remind everyone to please state your name before speaking for transcription purposes and please keep phones and microphones on mute when not speaking to avoid background noise. As a reminder, those who take part in ICANN multi-stakeholder process are to comply with the expected standards of behavior. With this, I will turn it over to Jeff Neuman. You can begin, Jeff.

JEFFREY NEUMAN: Thank you very much. Welcome, everyone. I know a lot of you, if not all of you, were on the call on Monday. Actually, it wasn't a working group call. It was the webinar going over the report. We had some pretty good attendance there, so I guess that means that there is still interest in this topic, and we'll probably see a bunch of comments come in.

Before we get into the agenda, let me just ask if there are any updates to any statements of interest? Okay. Not seeing any. So, today we're going

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to spend some time talking about the CPE guidelines, specifically how they relate to the recommendations that we have already put forward and, hopefully, making sure that the guidelines still hold up. I'll get into a little bit more of that when we start that topic.

And then, if we have some time, then we'll go into applicant support. There, the specific question we're going to look at relates to the notion of applying a bid credit for those that qualify for applicant support in an ICANN-based auction, and to make sure that we understand how that works throughout the entire process.

So, let me just see if there are any questions on that. Okay. Great. Let me just ask, also, if there is any feedback on the webinar; anything we could have covered, should have covered, or any issues that you're aware of for the public comment period? Anything? Any issues come up with your groups?

Okay. I see an "any other business item" from Jim, so we can add that in, about interaction with ICANN Board staff about planning for new gTLDs. Okay. I'm seeing a comment that the webinar was well-received. Great. Thanks, Taylor. All right.

Okay. Let's get into CPE guidelines and working group recommendations. One more preface on this item, too. We received a comment from … And I want to make sure I get this right. I think it was a proposal by the At-Large. I'm still trying to figure out if that means it's just a few members of the At-Large or the At-Large as a whole. But we received that during the working group discussions.

Because it was pretty extensive and because it was really late in the process, we told them to, essentially, resubmit it during the public comment period and that, during the comment period, since we already had the proposal, we could discuss it. So, that's why you were sent, along with the agenda, the CPE guidelines, as well as the proposal by the At-Large.

Is there anyone that could clarify? Okay. It was a set of members of the At-Large, and they signed it as such. Okay. Thanks. In the document itself … Let me just see if, at the end, they signed the … Yeah. Okay. I think that's why. We didn't send the cover note that went with it. We only sent the attached document. So, I guess that's why I was needing the clarification. Okay.

Let's, then, get into it. let me just see if there are any questions/comments here. Thanks, Cheryl. Okay. So, actually, is this the document that has got both the interaction between the …? There was a document that's more the redlines. It's the interaction between … There we go. I think this one is easier to follow, just to make sure that the … Or just so we understand what it relates to and the interaction between the guidelines and the guidebook.

So, to go back a little bit in history, here, the guidebook was published in 2012, the final guidebook, but the guidelines were not published for some time afterward. It was published by the Economist Intelligence Unit, the EIU, that was responsible for the CPE evaluations.

They published this with the intent to increase the transparency of the process but, of course, as we know, and as is one of our

recommendations in the draft final report, for future subsequent rounds we would expect, and we recommend, that these types of guidelines, or interpretations, or whatever you want to call them, would need to be published in advance of the actual application window opening up, as opposed to after everyone's applications were already in, since the evaluation is based on what's in the application.

So, there were a lot of complaints from CPE applicants that, had they known what was in the guidelines when they were submitting the applications, obviously, they could have tailored their application responses a little bit better.

So, the redline that's there, actually, from … I believe that is from Anne. We would actually probably need to change, or at least harmonize with, the exact wording that's in our recommendation on this. We do have a recommendation or implementation guidance on conducting outside research. I haven't double-checked to see if this is the exact language, but we need to verify that, if we put that in here, it's the same language that we used in the draft final report.

Okay. So, if we scroll down to the next page, here. So, this document, again, is meant to break down the criteria that are in the guidebook and provide some guidelines as to the EIU, or whoever in the future will be evaluating this.

The major thing here that we would need to update or provide a recommendation for, or at least one of the things, is that the guidelines ask, "Has the community been active since at least September of 2007?"

My guess for that was that there is the criteria that says that it's pre-existing. And so, the evaluators chose five years prior to the—or approximately five years prior to the—application window opening up, I guess. Sorry. If you scroll down to "pre-existing"? I can't remember if there is a definition of that and whether … There you go. So, it was prior to 2007, it was in the guidebook itself.

We would need to make a recommendation, I would think. Sorry, it's above. It's actually up above. And it's there too, yeah. There it is. It's in two places. So, we would need to make a recommendation as far as, what time period prior to a round opening up would we recommend be included in the next Applicant Guidebook and subsequent rounds following that?

Do we just establish a rule that says that this criteria should be interpreted to mean "five years prior to the window opening up," four years, whatever it is? Let me open up the floor. I saw Paul's hand up briefly. Paul, did you want to get in? Okay. I don't see Paul back in the queue. Do I see Paul on the call still? Yes. Okay.

So, we're going to need to clarify a new definition for "pre-existing." We could leave it just as an implementation detail, but it's probably a good idea for us to state as a matter of policy what we believe "pre-existing" means, not as a definitive date but as some X-time-period prior to a round opening up.

Thoughts, comments? No comments. Okay. Well, let me put it out there. What do people think about four years, five years? Come on. People have

to have thoughts, here. What would you like to see as "pre-existing?" Anne, go ahead.

ANNE AIKMAN-SCALESE: Well, this is going to sound really weird, but I gather that this timeframe was developed to prevent gaming the system, but I'm not sure if we want to encourage community TLDs and see more of them. Do we really want this pre-existing commitment to be so strict? Are the rest of the guidelines actually the safety net, the guardrails, around what is a community? I know that sounds very strange.

JEFFREY NEUMAN: Yeah.

ANNE AIKMAN-SCALESE: I'm not standing on it, but I just wanted to put it …

JEFFREY NEUMAN: I think you're right. Well, you're right on the fact that it was designed to prevent gaming and it was designed to prevent communities created for the sole purpose of applying for the TLD. Whether that's handled by the other criteria is a good question. Paul is in the queue, and Alan. Paul, go ahead.

PAUL MCGRADY: Thanks. Yeah. So, I think that this five-year restriction, or whatever it was, is a bit of a leftover thing. Gaming the system to get a community-based

application or community-based registry only lands you with a community-based registry, right? Which you have to run in a community-based way. So, I don't know that the reason for it being in here really is a reason.

I also worry about a long time period. So, for example, there are people who are just now being allowed to express who they are. For example, the trans community is just now coming out from underneath almost complete oppression.

And so, if we put a five-year window on that, will we be excluding communities that only in the last couple of years have been allowed to even say who they are? What about COVID survivors? There are going to be long-term consequences for those who got it. Are we excluding .covidsurvivors because of an arbitrary window?

So, if we're going to keep an arbitrary window, I'd like for it to be shorter, and I would like for there to be an "except for special circumstances" clause attached to it so that we aren't engaging in speech control. Thank you.

JEFFREY NEUMAN: Yeah. Thanks, Paul. Some good points raised there. Alan, go ahead.

ALAN GREENBERG: Thank you. If we keep a statement that sounds like this with almost any timeline on it, it almost guarantees that the concept of community applications will be restricted to an organization that can show an official paper with a starting date on it, which says it can't be a community of

people because they exist but they have to be organized, and have registered somewhere, and have a piece of paper.

So, I really think it has to be demonstrably a group, but putting a date on it guarantees that we're going to have a condition that we have pretty well said we don't want, I think. Certainly, many of us don't want it, and that is it has to be an officially sanctioned group with a documentable start-date. So, I think this has just got to go. Thank you.

Possibly, exceptions can address it, that if the community is a conceptual one and not a formally organized one, then the date is moot, or something like that. But just adding it, I think, goes into the problem that we identified last time, as opposed to trying to fix things. Thank you.

JEFFREY NEUMAN: Yeah. Thanks, Alan. Just to review some of the other comments in the draft, there are some others that agree with the getting rid of the pre-existing requirement. Or we could, rather than getting rid of it, just say it has to be pre-existing prior to the opening-up of the application window, which is essentially just saying that you don't …

What we're saying there is that we don't want to create a community solely for the purpose of applying for the TLD. And so I think, instead of getting rid of the criteria as a whole, we could just say "pre-existing" means prior to the window opening, whatever the applicable window is. Anne, go ahead.

ANNE AIKMAN-SCALESE: Yeah, Jeff. I was just trying to understand. I like the suggestion. I'm just trying to understand the subsequent windows. Does our recommendation say there will always be windows? How does it apply down the road?

JEFFREY NEUMAN: So, our current recommendation on that is that we have predictable windows that we're not recommending first-come-first-serve. So, the draft final report does say that there should be predictable windows that are either based on volume or time.

ANNE AIKMAN-SCALESE: Okay. Thanks.

JEFFREY NEUMAN: And so, there are a couple that say "drop it." I think if we drop it, that's going to have … If we scroll up to the criteria that's in the guidebook? My fear of dropping it completely is that that's a much more major change. I'm afraid of dropping it completely and people in the community complaining that they couldn't comment on dropping that from the criteria.

Sorry. Can you scroll up just a little bit higher, here? Right. So, you needed to have a clearly delineated and pre-existing community to get a point. If we completely illuminate it, I'm just afraid of that being a much more major change than what we need to make. Alan, and then Cheryl.

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ALAN GREENBERG: Thank you. If we don't illuminate it, there needs to be clear words saying one does not have to produce documentation to prove the "pre-existing." What's used in other ways … If you can show pre-existing use of the term in literature, or in newspaper articles, or something like that, that demonstrates that something existed before.

It's used heavily in many forms. Certainly, it's used in copyright. Were people using this term generically before you decided to copyright it? It's used in patents. So, "pre-existing" does not have to necessarily be documented proof, but demonstrable. So, if we leave the term in, we have to qualify it, saying that we're not looking for documentation. We're not looking for official documentation with a date on it, as such, but demonstrable use. Thank you.

JEFFREY NEUMAN: Yeah. Thanks. Well, Cheryl, go ahead.

CHERYL LANGDON-ORR: Thank you. This is absolutely from a personal point of view. I was one of those who said, "For heaven's sake, just drop it," and I'm going to stick with my guns on that one because I believe that, if we even follow Alan's sage-like wisdom and start doing specific definitions, just the one that he presented there, my immediate question, for example, then, is, "Oh, so we're only looking at utterly unique and a community that has no arguable alternatives and competition?"

I mean, we have so many rabbit holes we could end up tripping in if we start digging into this minutiae that this inadvertently—but with very

good intentions, I'm sure—causes, particularly in a model that doesn't have … Well, certainly not ten- and 20-year gaps between rounds, but even a model that has several years because of the volume or whatever criteria that may be used in the [patenting] of future [minimums], it's going to be a hugely contentious area.

I would suggest that the clearly delineated/organized/clearly defined, all of that type of language, should indeed be the [food] that an implementation review of this criteria does. I hear you, Jeff, about us making such a change as being too significant at this point, but I think we could certainly note it for the very particular and quite strenuous discourse that is required for such a change, and to consider to drop or not to drop in implementation, and with all that that now involves with appropriate [patents] that go from the review back to community if something is, in fact, deemed significant. Thank you.

JEFFREY NEUMAN: Yeah. Thanks, Cheryl. So, a couple of things, and I want to make sure I understand Alan's point, as well. So, Alan, the part that you are thinking about in the guidelines is where it says, "Does the entity have documented evidence of community activities?" That's okay, right? It's just the [B], right?

ALAN GREENBERG: No. I am looking at simply the phrase, "It must be pre-existing." The guy sitting on the bench, or the girl sitting on the bench says, "Prove it. Show me." Certainly, in the first round, there was a presumption that a

community was formally organized, and you had members, and things like that.

We're trying to get rid of that right now, and I want to make sure that the concept of "pre-existing" is not one that is presumed to have been formally organized and, therefore, there are documents with a date and someone's official signature on it. I want to use "pre-existing" as … If we use "pre-existing," it has to be in the patent definition or patent usage of "it was around." You can't patent it or copyright it if it's in general use before then. So, that's it my concern. Thank you.

JEFFREY NEUMAN: Okay. Sorry. Let me go to Paul. Paul, go ahead.

PAUL MCGRADY: Thanks. So, I'm super-confused by all the copyright and patent references. I don't know what they have to do with this. We're not talking about an application-based [planning] sort of IP right that I know of.

But setting all that aside—and hopefully it was just meant by way of analogy and not by way of baking something like that into this—I think I get what Alan's trying to say, which is one means of proving your community is to have a not-for-profit corporation set up that has been blessed by whatever state, or municipality, or province you live in, and you've been around, whatever. That's a method, and it sounds like it was the required method in the last round.

I think what Alan is trying to do, and I agree with, is that we could democratize it such that a loose association of folks who don't have

anything that has been blessed by a government, necessarily, could show up and say, "Hey, we're a community," and that makes sense to me.

So, it sounds to me like what we need to do is not necessarily eliminate the governmental forms of proof, but just make it clear that's only one method of evidencing the fact that a community exists, because communities pop up all the time, right?

And they're not always intergalactic. They're not always huge. Sometimes, they're small. .sallysurvivors after the hurricane, they could be a community and that could go on the rest of their lives. So, I think democratizing the evidence makes sense. Not eliminating the evidence— I don't think it should be a free-for-all.

And I do like Jeff's suggestion that it be as of the application date because we don't want people speculating, and ".2026 pandemic," right? So, we don't want speculation in the space. So, like I said, setting aside the IP stuff, which I don't understand, I think I get it, and I think that what Alan's saying is right. Thanks.

JEFFREY NEUMAN: Sorry. It took me a second to get off mute. I guess the part I'm still a little confused about is, where in the guidelines does it say you have to have documented proof or documented …? I guess that's what I don't understand, what we're trying to clarify. Well, let me go to Alexander, and then to Alan.

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ALEXANDER SCHUBERT:	Okay, yeah. Hi. So, as someone who applied, co-funded, and funded to applications that were designed as community applications, and doing only community applications in the next round, I have thought a lot about it.

If you look, for example, at the string like .airport, if airports would not be organized if they would not have annual assemblies, if they would not have associations and whatnot, if they would simply … Each airport would exist for themselves.

Would airports build a community? Probably not. They're just airports that are sitting there and each works for themselves. What makes them a community is that they are highly, highly organized on an international level, on a national level, on a state level in the U.S., for example.

They have a lot of organizations and associations that … They always have their own associations. They have assemblies and rules and whatnot. That makes them a community. It almost doesn't matter how long they really exist. They have to show that they have this kind of almost organization or community behavior.

Just because, let's say crypto. I don't know how well the crypto community is organized, but just because "crypto" is a term that is only used for crypto, you cannot say there is a crypto community. They would have to have some kind of memberships, organization, and meetings that galvanize a community around them, or around the string, "crypto." Thank you.

JEFFREY NEUMAN:	Yeah. Thanks, Alexander. Alan, go ahead.

ALAN GREENBERG:	Thank you. To try to clear up the confusion that I have caused, my concern was not where it says we need documentation. First, I'm addressing your confusion. But the concept that, if you ask for proof of pre-existence, it will be construed as requiring that, and I was saying that, if we use the term "must exist before," we need to be really clear that we are not implying the need for such documents.
	My references to patents and copyrights was not because this was a patent or copyright. I was saying we should use pre-existence in a similar way to how patent and copyright rules talk about prior use, or pre-existing, or the usage of the term in common vernacular, or, for patents, that we can demonstrate that other people were doing this before, and this is not new.
	So, I was simply using the prior use, in those cases, is similar to what I was talking about, that you need to be able to demonstrate it, but not necessarily a formal document with an official signature on it and a date. Thank you. I hope that clarified both of those issues.

JEFFREY NEUMAN:	Thanks, Alan. A little bit, because I think it's almost conflating the issue of priority rights, of whether one community would have priority over another, which it doesn't say here, and it doesn't matter at that point. It doesn't matter if there are two applicants for a community and one existed prior to the other. That's not one of the elements in this.

Again, I think the easiest thing for us to do, without opening up a lot of holes, rabbit holes, is to just make it that, when we say "pre-existing," we mean it had to have had activities prior to the then-current application round … The then-current … What do we call it? Staff, if you can help me? The application window? No. There's a term that we have in the draft final report. Application … Essentially, the application window, but we call it something else. Okay. Anne, go ahead.

ANNE AIKMAN-SCALESE: Yeah, Jeff. I just noticed that, in our definitions, we start with this. I guess the second or third sentence down, notably, "As 'community' is used throughout the application, there should be, A, and awareness," and I'm not sure what it says after that.

But I think, in a way, that definition of community, as used throughout the application, should govern the language that you're talking about as we potentially eliminate "pre-existing," because that language seems to me to still be relevant.

"Recognition of community among its members and understanding of the community's existence prior to the application window opening," if we're going to move to that standard of application window opening. It seems like we should rely on that language, rather than creating new language about its activities prior to the window opening. Thank you.

JEFFREY NEUMAN: Yeah. Thanks. Again, what I see, and I'm seeing some other comments, too … And Cheryl says, "I still propose this be sorted out in specific

implementation. My fear is that, if we don't say anything about this and just send it to implementation, they could make an assumption, incorrectly, from our point of view.

They could make the assumption that, "Okay, well, it was four-and-a-half years before the application window opened up." I'm sorry. "It was at the time that the policy was approved the last time." And so, for the next round, the policy was approved in 2021, or whenever the board approves it. Actually, this was when the GNSO approved it. So, it could be 2020.

Inadvertently, then, the implementation team can say, "Okay, well, the cut-off is December 2020, because that's in-line with the past implementation." So, I do believe we need to give guidance to the implementation team, and I think Cheryl's agreeing, basically saying that, by "pre-existing," we mean prior to the application window opening up. I don't think we need to do anything other than that. Anne, is that an old hand, or …?

ANNE AIKMAN-SCALESE: I'm certainly agreeing with you, Jeff, but all I'm saying is that, for the implementation team, we would just say that it meets the definition of community, as used in these guidelines, prior to the application window opening, so that you don't have two different references for how the term "community" is used.

If you put in new language about its activities that it has to have prior to the window opening, you are actually creating a somewhat different standard from the way that we have defined community and what community means already in the rest of it.

So, I'm agreeing with you about the application window opening and the community, yes, exists before then, or whatever. But I'm saying that you refer to how the term "community" is used already in the guidelines when you talk about it, rather than creating a different standard related to its activities.

JEFFREY NEUMAN: Yeah. Thanks, Anne. And just to be clear, I guess my proposal is just literally, if you scroll up to the first time that September 2007 is mentioned, it would be the same. Okay. Let's say that that's the first time. All it would do is say, "Some understanding of the community's existence prior to," and then we would put in parentheses or brackets, "the application window launch date."

So, it wouldn't say … That's the only change that we're making. It's very minor. It's just putting in a date. Therefore, not changing any of the other parts of the guidebook or interpretation. So, it's a very minor change. We're not changing anything else. That's my proposal. I think it's the easiest thing and it doesn't run into other collateral issues. Okay.

I want to scroll up to make sure that we didn't miss anything on that. Justine is on the call now, so welcome, Justine. I just want to go back up to your comment. Justine says, "The At-Large proposal proposes prior to the launch of the application window, this meaning the applicable application window." That is, essentially, what I'm proposing as well. Okay. All right.

Let's now, then, move down a little bit. I'm going to make sure we've gotten some other comments that were made. Okay. Delineation. So, I

want to go up. So, delineation is part of criteria 1A. And so, each community has to be—I think the words are—"clearly delineated."

And so, the guidebook states that "delineation relates to the membership of a community where a clear and straightforward membership definition scores high, which an unclear, dispersed, or unbound definition scores low." The guidelines added a list of none … Well, before they add the list, they say, "Delineation also refers to the extent to which community has the requisite awareness and recognition from its members.

The following non-exhaustive list denotes elements of straightforward member definitions: fee, skill, accreditation requirements, privileges, benefits, certifications aligned with the community goals, etc."

This had a comment from Jamie which … In re-reading Jamie's comment, I believe, as well, that there is a bias toward a formal … With the guidelines, the EIU created a bias toward formalized membership entities as opposed to any other forms of community.

That was not in the guidebook. That's not how the guidebook defined it. That's not to say that we can't adopt that definition and keep it, but it's just a point that … Whether we want to either add some non-exhaustive list of factors, or whether we want ones added that aren't necessarily so formalistic.

Because I'm not sure all communities need to have an organization that imposes fees, and accreditation, and certifications, things like that. I think that's more of an economic community, as opposed to linguistic, cultural,

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or other kinds of communities. Are there thoughts with that? Jamie, go ahead.

JAMIE BAXTER: Yeah. Thanks, Jeff. I think the mistake here was the deeper-dive that the EIU did into describing what delineation means, because I truly believe that it does have a level of discrimination as to what's going to be considered a community, and that goes against the way community members in a community may perceive themselves as being members of a community.

The example I highlighted in my comment was around linguistics and cultural communities. Just because I don't have a card that says I speak French doesn't mean I'm not in the French community.

So, I think by creating these very specific examples, it does eliminate the opportunity for many communities to participate and, therefore, will discourage them from participating when they, based on the way the guidebook was written, clearly would have had an opportunity to participate in this program. Thanks.

JEFFREY NEUMAN: All right. There we go. Sorry. I was trying to get myself off mute and it took a couple of clicks. Yeah. Jamie, I think that's right. I definitely think that this did create a bias. Justine, go ahead.

JUSTINE CHEW:	Thanks, Jeff. How do I say this? When I said "we," I referred to At-Large. We didn't actually put comments into the version of the document that you see on the screen now, I guess because, when we were looking at the guidelines that we see now, we found that it didn't flow properly. So, what we end up doing is to redraft the whole thing, which means that it made no sense to try and put comments into so many places that would end up making the document unwieldy.

So, insofar as At-Large's comments go, I would actually defer to or refer people to the document that we submitted, that I submitted, on the other At-Large. And in echoing what Jamie has said, yes, the way that delineation has been set out by the EIU certainly does favor groupings that are more structured, more easily identifiable, and definitely biased toward commercial-oriented settings, such as trade organizations and groupings of that kind, simply because they can demonstrate a clear, structured membership framework—you have membership-carrying card members in that group.

And you can't have that because that just simply places an advantage toward this group over other, less-structured groupings like, for example, a linguistic community. You may not have a club or association that represents that, but there is still a community, you see?

So, what we did was we recognized that, obviously, it's easy to identify something more structured. So, we said that that could remain. But at the same time, we provided, also, clarity, or a looser definition, of a community, one that is without a clear and straightforward membership, like the one that's provided here in this copy of the guidelines at the moment.

But that could still be a community, so long as there is some kind of recognition, for example, like an international organization towards human-rights-type grouping, and which could include marginalized and minority groups: linguistic, cultural, ethnic groups, groupings of traditional knowledge and indigenous communities. Those ones may not be totally, fully well-structured but, yet, they're still a community, and we shouldn't discriminate against them. Thanks.

JEFFREY NEUMAN: Yeah. Thanks, Justine. I appreciate the effort. So, when you say the At-Large, I just want to clarify it's from the few At-Large members that drafted it, or that worked on it. I just want to clarify.

JUSTINE CHEW: It went through our regular process of coming to positions, and we used the At-Large Consolidated Policy Working Group mechanism, which basically proposes stuff for At-Large to endorse. So, you can't say that it's just from the few of us who have drafted a thing. It has received endorsement from At-Large, as far as I'm concerned.

JEFFREY NEUMAN: Okay. Thanks, Justine. Okay. The only reason I was clarifying is it was said earlier that this was part of the proposal that was just from the few which wasn't endorsed, but this is an endorsed document. Okay. And that wasn't saying anything negative. I wasn't trying to imply anything negative or judgment about it. I was just trying to figure out who it's from.

I mean, I read the At-Large proposal and I appreciate the fact that you didn't want to just insert it in here, but it made it really difficult for us to see what was changed and what wasn't because it wasn't a redline. And so, at least for me, as I was going back and forth, I couldn't figure out what was changed, what wasn't changed. And so, it just made it a lot more complicated to track.

So, let me go back to what we have in here and ask … I know, Greg, your hand is up, but I want to ask the specific question of, does the group agree with the notion that this current definition, as interpreted by the guidelines from the EIU, is too narrowly focused and geared toward economic types of communities, where we believe that other types, as both Justine and Jamie had mentioned, can exist that may not be as clearly delineated as what is portrayed here? So, let me go to Greg, please.

GREG SHATAN: Thanks. I am concerned that this is too narrow. I look at it a slightly different way, which is that I think that everything that's done in yellow, basically, favors membership organizations, as opposed to communities, and that when we say "professional and trade communities," we're really talking about professional and trade organizations.

It doesn't necessarily mean that every member of the profession needs to be in that organization, but by talking about things like fees and privileges and benefits entitled to members, it's going further off the rails and more toward a membership application as opposed to a community application.

It really ignores the whole idea of an actual living community, a community that is organic in nature, and that's defined by the affinities of people. That can be just as clearly defined, but not by these criteria, which really would be more suitable for .club than for the community application process.

So, I think there is a kind of bad aim problem, here, and really need to get away from this emphasis on identifying an organization and then identifying features that don't identify communities but rather identify organizations.

That's problematic and that's going to particularly get … It's going to miss the main purpose of this, which is, in my mind, to use the Internet to draw together diverse communities that don't already have a single, perhaps, gathering space on the Internet.

If your organization is the footwear manufacturer's organization, you have plenty … And it's a trade association. You already have a website, and you have meetings, and you have places to go. If you're a more organic community, that may not be nearly as true, depending on the level of organization that's there.

So, I think a community can be just as clearly delineated without using the proxy of a membership organization or, even worse, a non-membership organization, to try to identify what a community is. I would try to get away from that whole line of thinking. Thanks.

JEFFREY NEUMAN: Yeah. Thanks, Greg. Steve can't raise his hand but I think Steve wants to be in the queue.

STEVE CHAN: Thanks, Jeff. I just wanted to, I don't know, maybe make a point of clarification here. I do wade into this cautiously, into this conversation. So, I just wanted to make it abundantly clear that, the left side of this document that we're looking at on the screen right now, the entire section on the left is actually pulled from the Applicant Guidebook, and then the right side is what the EIU developed as additional guidance in assessing the left-hand side.

So, if you look at the delineation aspect, for instance, it talks about the membership of the community scoring higher, while an unclear, dispersed, or unbound definition scores low. So, some of these aspects of a formal structure for the community did exist in the Applicant Guidebook, and the intention from the EIU, as I understand it, was to provide more clarity and more binary outcomes for assessing the criteria.

So, what I think I am hearing from some of the folks on the call right now is that the criteria on the left, as existing in the guidebook, is potentially problematic, and that is, I think, a different conversation for you all, to see if there is, I think, agreement to actually change the scope of what CPE is about.

Because I don't know if it's just an issue with the way that the EIU interpreted it, but rather a fundamental concern about how the CPE is structured, itself. So, I hope that helps, that what you're looking at on the left is actually text from the Applicant Guidebook. Thanks.

EN

GREG SHATAN: Can I respond briefly?

[JEFFREY NEUMAN:]   Yeah, sure. go ahead.

GREG SHATAN: I would say that the language on the left is highly prone to misinterpretation, and that the EIU proved that by actually misinterpreting it and leaning toward, by using the word "membership"

… The left-hand side does not mention "membership organizations," but the right side clearly does when they talk about things like privileges or benefits entitled to members and fees, which have nothing to do with defining a community but have everything to do, potentially, with defining an organization.

So, they got it wrong because, the way that this one was structured … It could be read correctly. It could be read wrong. We had an entire round where it was read wrong and we ended up with a result based on an improper premise. We can decide that, "Well, maybe the next time around, people will interpret it correctly," and we could add some clarifying language.

But frankly, I think it needs to be rewritten. Probably the word "membership" needs to disappear because that sounds like something you join, as opposed to something you are. If you're gay, it's not because you joined an organization and paid a fee.

Once the EIU had established what they did on the right, they basically cut out anything that was not organized around a non-profit, or some sort of other organization, or severely handicapped them. The best way to clear up the mess is to clear up the AGB and avoid the possibility of future misinterpretations. Thank you.

JEFFREY NEUMAN: Yeah. Thanks, Greg. I think changing the AGB is probably a bigger deal than just changing the guidelines so that what's in the guidebook is read correctly. We can leave it to an implementation team to decide whether the definition needs to be changed within the guidebook, but if we can make a recommendation basically stating that, by delineation, this is what was actually meant, as opposed to the narrow way it was interpreted by the EIU …

I guess what I'm saying is I'd rather not spend time now rewriting what's in the guidebook if we don't absolutely have to. And I think, from hearing what you said, Greg, although I'd like to hear from others as well, we can keep that, or at least not make a recommendation to change that, but rather just make the more minor change of making recommendations to change the interpretation of that, as was done by the EIU.

And so Cheryl says, "Back to implementation guidance." I'm not sure. So, Cheryl, what do you mean by "back to implementation guidance?" I think it's for us to tell the implementation team that we don't think they got it right. Yeah, go ahead.

CHERYL LANGDON-ORR: Thank you, Jeff. I think the term "implementation" and "guidance" bleedingly clear. We need to be very specific and quite articulate about some of the concerns, if not all of the issues, that have been discussed, even just here today in this meeting. But I don't think we get, in the time we have left in our working group activities, to hammer out the specificities of the wordings and particular changes. Now, you want to put another six months on our work? Absolutely, and I'll be in for it, not a problem. Sign up for it tomorrow.

JEFFREY NEUMAN: Yeah. Thanks, Cheryl. That's what I'm trying to avoid, so that's why I'm saying we could provide … I guess what you meant by implementation guidance is we could add an implementation guidance stating that it's our belief that the EIU narrowly, or too narrowly, interpreted the Applicant Guidebook definition of delineation and should … Whereas we think delineation should cover whatever it is. So, I think that may get us there for now. Alan and Justine.

ALAN GREENBERG: Thank you. I'm not quite sure why you're worried about us suggesting what the guidebook should say. We're ultimately making an infinite number of changes in the Applicant Guidebook, so I really don't understand the great distinction. I don't want to spend time crafting a paragraph that we dictate must be there verbatim, but saying what should be in the Applicant Guidebook is why we're here. I'm not quite sure what your concern is. Thank you.

JEFFREY NEUMAN:	Yeah. Thanks, Alan. The concern is on drafting the right language for the guidebook, basically saying that … So, the implementation guidance we would provide is basically saying that "the EIU interpreted this too narrowly. We think, in subsequent rounds, delineation should be interpreted as whatever it is," and then leave it to the implementation team. If they want to revise the guidebook wording and draft the specific paragraph, that's fine, but I don't think we need to be that specific is all I'm saying.
ALAN GREENBERG:	Yeah. But Jeff, if we feel delineation was the wrong word then we need to say that, not just, "Let's interpret it in a way which is going to be safe, which might not be something that others feel comfortable with." That's all I'm saying. Thank you.
JEFFREY NEUMAN:	Thanks, Alan, but I'm not hearing that the word "delineation" was wrong. All I'm hearing is that, from the people that have commented, it was interpreted wrong. Greg thinks "membership" is a problem because that was taken out of context, but let me go to Justine. Justine, please.
JUSTINE CHEW:	Thanks, Jeff. I don't actually think "delineation" is the wrong word, but my concern here is the phrase, "Where a clear and straightforward membership definition scores high." So, again, even if we were to change the interpretation of it, that phrase that I just said could still imply that any membership grouping that is clear and straightforward will score

high, as opposed to a grouping that is less clear and less straightforward—in terms of membership, whatever that means, would not score high.

So, again, if I use the example of a trade association where you have members, actual members, that is a clear, straightforward membership-type organization. That will score high. But a loose community of, say, a linguistic grouping, for example, which doesn't have a clear and straightforward membership definition, wouldn't actually score high if we used the same words here. But why should they not score as the same level? Why should they be discriminated against and not score high? Thanks.

JEFFREY NEUMAN: Yeah. Thanks, Justine. So, that's a much more substantive discussion, and I'm not sure that … I mean, we're not hearing from others in the group, but that's a much bigger change that we would need full working group input on, whereas, an interpretation of the word "delineation," which is much more in line, as Greg and some others said, that's not changing the scoring at all. That's just changing the interpretation. So, I think that needs to … That's a much more major change. I'm a little reluctant to do that because—

GREG SHATAN: Jeff, I hate to cut in, but I'm late for a business call. I just want to say that I think Justine is just giving an example of the problem that I cited. I don't think it's any bigger than that. It's an example. The example is that membership organizations are favored over organically assembled

members, like Yiddish speakers don't have to be card-carrying Yiddish speakers, but it's just as clear. Either you speak Yiddish or you don't. So, it's just the same thing. She's not saying anything bigger and, therefore, too hard to handle. Apologies. Got to go. Have fun. Bye.

JEFFREY NEUMAN: Thanks, Greg. Yeah. So, understood. But we can fix that within the guidelines, as opposed to changing the guidebook and the policy behind it. Alan, is that a new hand or an old one? Okay. Go ahead, Anne.

ANNE AIKMAN-SCALESE: Jeff, I understand why you're reluctant to change AGB language, and I know that it would mean, probably, issuing a supplemental final draft report and all that, but I agree with Justine about the scoring issue with respect to membership. You get a high score if you have a membership structure and you get a low score if you don't have a formal membership structure, and I think that's a problem.

So, I'm not sure it's the only problem we're going to face. I think we have to leave this open as to whether the AGB needs to be changed or not, and maybe consider it further after public comment. I agree with Justine's comments and I saw some other plus-ones on Justine. Thank you.

JEFFREY NEUMAN: Yeah. Thanks, Anne. Remember, this subject on communities has been discussed for years. We've had many calls on that and we have not had agreement to change the criteria at all. So, we're not talking about, now,

absent clear working group direction, changing the scoring, necessarily, or the elements of the scoring.

What we're really talking about here is talking about the interpretation that the EIU gave to it. That's what we're focusing on here because we are too late in the process at this point to change that, especially when our draft final report says that we generally agree with what the criteria is in the guidebook. Okay. Karen, please go ahead.

KAREN LENTZ: Thank you, Jeff. This is, maybe, a suggestion, not taking any position on where it goes. I think we have heard a lot from the working group members about what you don't want: "Here's what we don't want to see, and we see this as having been an issue." My suggestion was to kind of flip it to the positive: what would you like to see, or what would you add here?

I've looked at the ALAC write-up that Justine mentioned. That does provide a suggestion, there. Or yeah, I've heard people talk about linguistic and cultural communities. So, if there is a way to address, what else … Or how would you expect those to be accounted for if you're looking for a score on delineation? That's just a note on that. Thanks.

JEFFREY NEUMAN: Yeah. Thanks, Karen. I think we can do that, and I agree with that. I think we can do that within the comments to the guidelines by saying, "Delineation refers to," and we can list the positive of what we think it should also apply to. Jamie, and then Anne.

JAMIE BAXTER:	Yeah. Thanks, Jeff. I think it's important to note that there has been tremendous support for this being an issue and it needing to be addressed, and there hasn't been any opposition, so that's a very important point to make here.
	What I'd like to bring forward is the fact that being a member of a community does not mean that you have membership in the community, and I think that is what is confusing here. It's because the term is pliable in different ways, and that's where the clarity needs to come from because, when you read the definition in the guidebook, just because it says "where a clear and straightforward membership definition scores high," to me, in my reading, that doesn't mean "card-carrying membership."
	It means that you're a member of, and you consider a member of, that community. And obviously, the EIU took a very specific turn on the way they interpreted that word, which I believe is incorrect. So I think, whether it means changing the word or having more clarity in the guidebook, it needs to happen because there is clear agreement here that there is a problem with this. Thanks.
JEFFREY NEUMAN:	Yeah. Thanks, Jamie. I think we're all in agreement, here. I think we all agree that the way this was interpreted by the EIU was not what was intended, or at least what people had thought of as being community. So, taking Karen's approach in, basically, saying that "we believe the EIU's definition of delineation was interpreted incorrectly, or was too narrow,

and, therefore, we believe "delineation" should refer to," and then, state it in the positive.

And then, also, in that note, say that we also want to note that "membership" in a community does not necessarily mean a member of a membership organization. I think we can do all of that in clarifying or providing implementation guidance to the way EIU interpreted this. I guess that's my main point. I think we can do this all without touching whether delineation should be a factor or not, and how high it should be scored. Anne, go ahead.

ANNE AIKMAN-SCALESE: Yeah. Thanks, Jeff. That's an optimistic view. Let's see if we can get it done that way. I want to raise a separate question that I hope is not too much of a Pandora's box. Does what we're doing here in relation to definitions of community affect community objections at all? Is there any inter-relationship between the definition of community in CPE and the definition of community in community objections?

JEFFREY NEUMAN: I don't know the answer to that off the top of my head, but I don't believe, even though the same term is being used, in order to provide a community-based objection you need to prove all of these factors. I think you just need to show that you are an organization that represents the community to which a TLD is being targeted, but I don't think it has … There is no scoring to determine whether you are, in fact, an organization that represents that community.

EN

ANNE AIKMAN-SCALESE: Yeah. I think there are, actually, four factors, Jeff, just to follow-up quickly. One of those factors is whether you have significant support from the community. And so, the issue might be … I think there is delineation about a clearly defined community and whether or not you have significant support from that community. So, unless we want to have very different definitions for objections from those that we have for—and we may—applications, it just is something that should be looked at.

JEFFREY NEUMAN: Yeah. So, we'll note that, and I think, after we're done reviewing these community guidelines, we'll have to then see if it has got any impact on things like the community objections, or any other parts of the program. Okay.

I want to jump into the next comment that was raised. So, I think that's a little bit further down. Let's see. Who made this one? Anne. So, this is in the definition of "organized," mainly. Right. It has got to be, "Organized implies that there is at least one entity mainly dedicated to the community with documented evidence of community activities." That's from the guidebook.

And so, the EIU then said, "Mainly could imply that the entity administering the community may have additional roles/functions beyond administering the community, but one of the key or primary purposes/functions of the entity is to administer the community or community organization."

And then it says, "Consider the following: was the entity established to administer the community?" Anne's comment is, "There is language about awarding points based on the idea that the [applicant] was formed to administer the community."

"Does this requirement make sense when we are trying to encourage community TLDs? For purposes of applicant freedom of expression, it would seem more appropriate to talk about an entity that has formed for the purpose of administering the TLD for a clearly defined community. Is there an assumption here that all communities are somewhat 'administered'?"

So I think, for this one … Well, let me just look at some of the chat here. Giacomo, is that for this element here, that it was for mostly professional and trade? Okay. Maybe that was back from the previous discussion. Sorry.

GIACOMO MAZZONE: No, no. This was exactly on the point.

JEFFREY NEUMAN: Oh, okay.

GIACOMO MAZZONE: For a [tribal] group, who is the person, the chief, of the tribe? You have to produce a document in Swahili that the chief of the tribe is the chief of the tribe. That's quite complicated. I think that we need to be flexible in criteria.

The problem we had with the previous EIU work was that they were looking through the filter of professional and trade association communities as all the communities, and this was the big mistake, because there are a lot of communities that didn't fit into that metric that they created. This is the problem that is a recurring problem we will have in [the thoughts] of other points in the discussion, again and again.

JEFFREY NEUMAN: Yeah. Thanks, Giacomo. That's what we're trying to figure out, how to … I think you're right, and I think that's why we're trying to figure out how to change or comment on the EIU's guidelines to make it more in-line with what we all had as ideas of communities.

And so, to go back to Anne's question, I don't think we want to say that the organization was formed to administer the TLD for a clearly defined community. I think we do want to say that, whatever the community/the entity is, it does act in some way on behalf of the community.

I'm trying to choose my words correctly. I think we're trying to avoid entities that are solely set up just to establish a TLD. What we're trying to do is say, "Look, is the applicant one that is responsible for organizing community activities," or something like that, without using it in the economic kind of way. So, a chief of a tribe is a person that's responsible for the activities or actions of a community, I guess you could say. Jamie, go ahead.

EN

JAMIE BAXTER: Yeah. Thanks, Jeff. I think that there has also been a very narrow approach taken by the EIU here, because the assumption they make is that one entity, or at least one entity, administers every aspect of the community. For example, what I'll put in front of everybody is that—and this was rooted in our application for the .gay community application—there are different entities that administer—"administer" is really a bad word, I think—or that address different issues for the community.

So, it appeared as though there was only really one organization that was even recognized as administering on behalf of the gay community, when what they deal with is human rights and whatnot, but there are other entities that deal with sports, that deal with legal issues, and there are a lot of different entities that administer different portions of the community.

That was completely missed in all of this because the assumption that the EIU made is that one organization administers everything for that community, and I think that's the wrong assertion.

I'm sure that the gay community is not exclusive in this breakdown of being administered, but it's something that needs to be considered and addressed so that it opens this opportunity to more communities who are going to look at this and not see themselves in it, because they're not going to be represented in the way that it is being narrowly interpreted by the EIU. Thanks.

JEFFREY NEUMAN: Yeah. Thanks, Jamie. And I think, just to … And there is some support there in the chat. But again, I think we also need to keep in the back of

our minds that this is not saying communities can't apply for TLDs and run it as restrictive, or however they want to. It's just what we're saying here is that, in order to get priority in the case of string contention, it needs to meet these more stringent definitions of community.

So, to look at Paul's comment, the Southern Baptist Convention could certainly apply for .christian, and even apply for it as a "community," as opposed to a "Community," but we're talking about it getting preferential rights in string contention, or priority rights in string contention, if there are others that apply for it. So, we're not preventing anyone from applying. We're just saying that, where there is string contention, those that pass CPE are the ones that are going to get priority.

JAMIE BAXTER: Yeah. If I might, Jeff, I think what's written here, though, had clear output that needs to be addressed, because this language is suggesting that the EIU is going to really focus on those who have one entity that oversees the entire community. Is that really what we're looking to do, or are there communities that may have various entities that oversee them, and they should still be able to score and pass CPE?

JEFFREY NEUMAN: Yeah. I take that point. I think that's something we can clarify in the guidelines, that it should not be interpreted to mean that there is only one entity that can address … Or that is dedicated to the community. I want to use the same language as the guidebook.

So, I think that's something that we could check, and I think the other concerns may be handled through other criteria. Okay. Let's scroll down a little bit more. Okay. 1B deals with extension, so this is dealing with the community. The scoring is: communities have considerable size and longevity, scoring two; scoring one would be a community of either considerable size or longevity but not fulfilling the requirements for a score of two, which is not really helpful; and then you have extension and size are defined below.

So, a comment from Anne: "It's a bit confusing that the one point is defined as not meeting the two-point. Is the only difference here the fact that two points emphasizes considerable size and longevity, where one point can mean either considerable size or longevity, or could the entity be of less considerable size but not lots of longevity?"

So, any comments or questions on that? I'm not sure what to do here. Anne's question seems to go toward what the guidebook scoring is, as opposed to the way it was interpreted. Anne, go ahead.

ANNE AIKMAN-SCALESE: Yeah, Jeff. You're correct that the issue I had in relation to this was about scoring, and we know how important these points become, the point system becomes. We are now saying that we want to encourage community applications.

We're going to really shorten that time period and say, "You have to exist as a community before the application window," but we have a scoring mechanism that makes a difference in relation to longevity.

I mean, I gather that the issue of the scoring and the number of points just gets to be really, really important. Particularly in light of the changes we're proposing to fix the guidelines in relation to longevity, I think we need to understand what the longevity means. I guess longevity as in the AGB. Is that correct, or is it not in the AGB? I realize I'm …

JEFFREY NEUMAN: It is. The stuff on the left side is in the AGB.

ANNE AIKMAN-SCALESE: I got my chat window in front of that.

JEFFREY NEUMAN: Well, yeah, [inaudible].

ANNE AIKMAN-SCALESE: You're saying we're sort of stuck with longevity, and the question, then, for me, is how that changes when we say, "Okay. We're going to talk about communities that have less than this five years or whatever," and they're not going to be capable of getting two points because they're not going to have that longevity.

JEFFREY NEUMAN: Thanks, Anne. The way I interpreted "longevity" is that it's not a backward-looking thing but a forward-looking thing, that it is a community that is foreseen to be in existence for at least a last … Yeah, it says here "for a lasting nature." So, I think they're two very different

things. I guess it would be like someone applying for a community TLD for the 2024 Olympic Games, right?

I mean, again, it's kind of a wacky example, but it's one where there would be a community, I theory, for a year, or two years, three years, whatever it is, but then it would go away. This is forward-looking as opposed to backward-looking.

And Justine says, "Right, like not a fad. It will continue to exist in the future." So, the EIU then states in what's on-screen now, "Is the community a relatively short-lived congregation, eg. a group that forms to represent a one-off event, or is the community forward-looking, i.e. will continue to exist in the future?"

ANNE AIKMAN-SCALESE: Oh, okay. Thank you. I didn't realize it was that clear that it's forward-looking. Thank you.

JEFFREY NEUMAN: Yeah. Well, that's how the EIU interpreted it, too, and I think we agree with that, right? I don't see disagreement. Okay. If we go down a little bit more, we're into nexus, but we're at the end of the call, so I don't want to start nexus. I think this is a helpful discussion, and I think we should continue some of this online.

Let's really, again, focus on how … And Justine, I know, and I've read the At-Large comment. I think it's really good. But what I'd ask of you is to help us in a way that we can rewrite or make comments on the evaluation

guidelines, as opposed to providing exact language for both what the AGB and the guidelines say.

And I know that's going to be a little bit of an exercise, but I think it will help us as we go forward. There are some really good comments in there but it was really difficult to parse out what was new and what was already in the guidebook from those comments. Justine, your hand is up, so please go ahead.

JUSTINE CHEW: Thanks, Jeff. Sure, I could possibly do that. The question is, how, and how much time do I have? Thanks.

JEFFREY NEUMAN: So, we're going to pick up on this topic on the next call. So, if you can look at evaluation as the nexus going on, and just see what you can do by then, just to help us talk through it?

JUSTINE CHEW: Sure. The question … Okay. We've answered the "when." The question of "how"? Because what you're seeing now is a … Is it a PDF document, or is it still a Google Doc that I can put comments on? Is it too late to put comments on?

JEFFREY NEUMAN: No, I believe there is both a Word or a Google Doc version and a PDF.

JUSTINE CHEW: Okay. So, meaning to say that the Google Doc is still accessible and I am still able to put comments into it?

JEFFREY NEUMAN: I believe so.

JUSTINE CHEW: Okay. Cool. If I could get someone to send me the link to the Google Doc, I'll make sure to do that over the weekend.

JEFFREY NEUMAN: Yeah. Thank you.

JUSTINE CHEW: Thanks.

JEFFREY NEUMAN: I know there was a question, an AOB, from Jim on "any further interaction." Jim, we did have one call last week, maybe two weeks ago now, that Cheryl and I were on with the GNSO leadership—sorry, the council leadership, and Göran and Karen was on it, and Theresa from ICANN Org, and then Avri was on it from the ICANN Board, Becky was supposed to be on it, Becky Burr, but for whatever reason just couldn't make it.

So, we can actually put that as a first agenda item to talk about the next time. There is nothing truly monumental in it. I think it was almost like

getting the band back together, just because these calls stopped once Cyrus had left, and there was a re-org, and it was really just a, "Let's get back together just to see where we are."

But we can provide an update either on e-mail or as a first agenda item on the next call. Sorry about that. I know we're kind of out of time now. All right. Yep. Thanks, everyone. Our next call, if we could post that time?

Let's see. So, the next call is Thursday 24th at 20:00 UTC for 90 minutes. Thank you, everyone. This is important stuff and I'm glad we're taking the time to go through it. We'll talk next Thursday. Thank you, everyone.

CHERYL LANGDON-ORR: Bye for now.

[END OF TRANSCRIPTION]