ICANN Transcription

ICANN Board & GNSO Council on pending SubPro Recommendations Webinar

Monday, 22 May 2023 at 13:00 UTC

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https://icann.zoom.us/rec/play/PUF4OgZp37VSNrDivYWz8v4mkaNxlrqZ0S_NK6z8SYg5nJKCz0bUkyRO
9J5HVIJBFSjq7PFsaB1HSL2v.gOs99clwiOrefs3Y

Zoom Recording: https://icann.zoom.us/rec/share/dT97M-
K1ZRLyYhK3lRNOxntIEjbxpvzIFbn90KmZocYYJUZAxQzKqMY-
FbzbYr1g.0ZOSt1u2ZUrDy2Xv?startTime=1684760552000

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TERRI AGNEW: Good morning, good afternoon, and good evening, and welcome to the ICANN Board and GNSO Council on Pending SubPro Recommendations webinar, taking place on Monday, the 22nd of May 2023.

I would like to remind everyone to please state your name before speaking for recording purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

Recordings will be posted on the wiki page shortly after the end of this meeting. A reminder that we're in a Zoom webinar room. Councilors and Board members are panelists and can activate their microphones and participate in the chat once you have set your chat to everyone for all to be able to read the exchanges.

A warm welcome to attendees on the call who are silent observers, meaning they do not have access to their microphones nor the chat.

As a reminder, those who take part in ICANN multi-stakeholder process are to comply with the expected standards of behavior. With this, I'll turn it back over to the GNSO Chair, Sebastien Ducos. Please begin.

SEBASTIEN DUCOS: Thank you very much, Terri, and good evening, good afternoon, and good morning to everybody. This is a special session with the Council and the Board to present and discuss the work of a joint small team on the 38 pending recommendations.

You will see that the small team has done a phenomenal amount of work in a few weeks. This, as you can assume, has been quite intense, particularly because the small team turned out to be a very, very small team. There was only a handful of councilors and two Board members that dedicated all that time for it. And I wanted to thank them and thank them again and thank them loudly. You know who you are.

This said, we have a very full agenda. I wanted to make sure that we give as much to the agenda as possible. So I will be quiet now.

The only bit of admin that I would like to propose before I pass on the mic to Tripti is, as Paul has been fantastically well chairing this group. I don't know if that's very English, but anyway, he's done a fantastic job and I wanted to give him the hand to conduct the proceedings afterwards, and particularly the Q&As when they'll come and so on.

Now, I understand that he was having problem connecting, and I hope that he's been able to connect via the full Zoom to be able to do that. And should there be any problem with it, I'll take over, Paul. I'll be happy to. With this, I'd like to pass on the mic to Tripti, who will then be able to pass it on directly to Paul. Thank you.

TRIPTI SINHA: Sebastien, thank you very much. And on behalf of the Board, I'd really like to express our appreciation for all the work that's being conducted. I agree with you more on how swiftly and how earnestly everyone is working on the 38 pending recommendations, as well as the work plans and the timelines for the IDNs EPDP Phase 2 work, including the next steps on the facilitated dialogue on closed generics.

Clearly, the next round is a shared priority for the Council and for the Board. And I would like to reassure you that the Board is a partner to you as you resolve these pending issues as quickly as feasible, so that we can move on to planning the implementation. And again, deep, deep appreciation from the Board on all the work that's underway. And I'll turn it over to Paul now.

PAUL MCGRADY: Well, thank you, Tripti. This is Paul McGrady here, still trying to get into the Zoom room. Unfortunately, I'm trying now on a second device. Maybe I'll have some luck on that. Terri, maybe you can help me figure out how we do this. I remain hopeful that I'll be able to eventually get in this thing. I know there were some introductory slides. I wonder if we can call on Steve to go through those or something else while I continue to work on it over here. I apologize. I simply just can't see what everybody else is seeing.

TERRI AGNEW: Hi, Paul. It's Terri. I just sent you the email where the slides are posted, and we're currently looking at slide four. Would it be possible for you to get into the slides and we can announce each time which slide number we're on? Would that be helpful?

PAUL MCGRADY: Sure. Let's try that. I'm getting the same error on my second device. It's telling me to sign in to begin. I've just simply never seen a screen like that before, so I'm not sure what's going on. Okay. And I can't see chat or anything else.

MAARTEN BOTTERMAN: Sorry, Paul. Underneath there is attend as attendee, and there's a small print underneath. If you go there, you'll get the invitation to put in the password, which is also in the calendar invite.

PAUL MCGRADY:	Okay. I see that now. Thank you for that. That's excellent guidance. I'm sure that I'm inspiring everybody right now with my inability to even operate Zoom, but let's see here. It's actually letting me keep doing things here, so that's great. All right. Here we go. Okay. Well, I'm not discombobulated. Thanks, everybody, for your patience as I hopped in here.

I'm seeing page number four on the slideshow. Let's see here. I'm being promoted to join as a panelist. I apologize for all the time that we're losing. We didn't really have a ton of time to start with here, so I apologize for my problems.

Okay. So I guess as we all know, the Board sent along some concerns back to the GNSO Council with regard to 38 recommendations. Those really boiled down to 16 topics, and we agreed to a very aggressive timeline. So that's where we found ourselves with tons of work to do. I don't know who's controlling the slides, but I think we're probably done with this one. All right.

So already completed. We established a small team to triage the 38 recommendations. We were kind of agnostic about what happened after that. For us, the triage meant to fully understand what the concerns were about the recommendations that the Board placed in its pending status and to do an assessment of those reasons and then to come up with a path forward. We figured out that the various path forwards essentially boiled down to either addressing the concern with additional information or to engage in a dialogue with the Board or to suggest perhaps that it could be resolved in implementation.

So the small team put together that proposal. We had a meeting May 4th as a full Council to align ourselves on those paths forward. We went back and refreshed our output document, which had additional information and references from the SubPro final report, and that was communicated to the Board and also to the Council for more consideration. And that is where we find ourselves here today. So I am going to ask for the next slide.

Where do we need to go? Okay. So 22 May. That's us. We have a joint meeting today between the Council and the Board, hopefully to align ourselves on the path forward for as many of the 38 recommendations as we can. It's important because we have to stick to our plan and timeline for the resolution of all the various outputs. We need to have mutual agreement and understanding as the mechanism to address those four concerns.

If we don't have an alignment, we would have to take some additional steps. The development of the plan and timeline, we really were aiming for June 6th to have another special meeting of the Council to review all this and June 11th to finalize it all. So we are hoping to get some great input today, move quickly to finalize our work, at least of this initial triage step so that we can pass along a final output document for ICANN 77. So that is a very compressed timeline.

Here is the proposed cadence for today. If I'm reading somebody else's slides at this point, I'm just going to keep going. First, we'll have Avri and Becky briefly summarize the relevant concerns that the Board had. I'll do my best to explain the small team's proposed path forward on that. Then we'll have some discussion to determine if there's an alignment on the path going forward. Then

we'll proceed to the next group of recommendations. We have a lot to cover in a short amount of time. I blew a solid eight minutes of it trying to get on this call. I apologize for that. Let's move on to kicking off the conversation.

AVRI DORIA:

How do we go here? Do I just start here? Since topic three is showing up. First of all, I want to say a couple things about the small team and indeed wanted to appreciate the way we were able to work with them, the way we were able to go back and forth. I also want to mention the SubPro caucus and the group that has been following along on a weekly basis, talking about these things and helping to sort of shape up and try and keep up with the whole process. So that while there was a little bit of synchrony to it or asynchrony to it rather, we kept moving forward.

So this one is—and Becky, the next topic will be yours. So probably a good place for you to say a couple words too, unless you wanted to now. But just to try and catch up on time. Topic three was one that was really an initial question that was, how do we know when a round ends? I mean, we've seen how long—everybody complains about how long it is between them, but we're still in the tail of the previous round. But then that sort of brought up a question of, is there any way to do this in a continuous manner where we're not stopping and starting and stopping and starting? And we've gone through many terms. It's not first come, first serve. I've been shown that it's not steady state. But some sort of notion where we're not stopping and starting, where the staff isn't being diverted to other activities, where equipment is not going into disuse, etc. so that—and the decision on how to do that

will determine a lot of the other decisions that go through here in terms of making things predictable and answering some of the other requirements. So that's what we were looking for, is, is there a way to move that? There was never any notion that this first one wouldn't be around, and a little bit of confusion got in there. But it's what comes after this one? What comes immediately after this one? Thanks.

PAUL MCGRADY: Thanks, Avri. And just a note on the color coding, you'll see that we have, there's a legend above. Orange is provision of clarifying information to the Board. We'll get into some the next set, which will be determination that an issue can be resolved during implementation. The other option was explore a bylaws process and then others. And that is dialogue between Council and the Board.

This one is a proposed clarifying information, and we won't go into the deliberations and issue synopsis on each of these. I will, for the sake of time, jump to the end. Here's some additional information that we thought would address the Board concern.

The rationale for recommendation 3.1 says, accordingly, at a minimum, the next application procedure should be processed in the form of a round. So this rationale indicates the PDP already contemplates the possibility of another application acceptance model in the future. While the PDP recommended rounds and envisioned that they would occur regularly, so an ongoing process, as Avri mentioned, that one where it's not start and stop and start and stop.

And the PDP considered the possibility of a first-come, first-served approach, acknowledging the simplicity it brings. But the PDP ultimately decided against it, stating that rounds enhance the predictability for applicants for preparation purposes, the community and other third-party observers to the program in relationship to public comments and objections.

So this essentially suggests an ongoing process may negatively impact those third-party observer programs. I don't necessarily think that, as I'm reading this, we really meant ongoing process. I think we really meant there that a first-come, first-served process would negatively impact third-party observers. But I don't think that an ongoing series of rounds would do that. So I think there's alignment there.

In the Working Group's initial report, we considered six different options, including first-come, first-served component. And there's quite a bit of detail in that. Ultimately, the Working Group's recommendations taken collectively was meant to provide clarity around the timing and criteria for initiating these subsequent procedures. In particular, Recommendation 3.5 states application procedures must take place at predictable, regularly occurring intervals without indeterminable periods of review. And so that is, in fact, a form of the steady state that the Board wants to see.

And then, of course, the important question is, do you have to close one round in order to open another one, right? Because if we have very long tails on some applications, which sometimes you do, that would, while one round might immediately follow the next one, that might create some very large timelines. And so in Implementation Guidance 3.3, the Working Group said a new

round may initiate even if steps related to the application processing and delegation for previous application rounds have not been fully completed.

So this implementation guidance, again, is indicative of the Working Group's intent to provide for predictable, regularly occurring intervals of rounds. In particular, it seeks to minimize the significance of the round closures, which is presumably important for all the financial elements that Avri was talking about of it not stopping and then restarting.

So it seems to us that with this additional information, we hope that that resolves the Board's concern on this particular one, because it sounds like what the Board was looking for, which was predictability, and the ability to not shut down the machine and restart the machine is addressed and is within what the Working Group had in mind. So it can be a steady state, but a steady state of rounds is what the Working Group intends. But certainly there is an intention that the very first application window is a round, and Avri, I think, has already said that that was also the Board's intent.

So I don't know if we're taking questions now or if we're going to take questions at the end of each section, but I think if we have any questions—I don't see hands up. So maybe we turn over the next topic to Becky. Avri, your hand's up.

AVRI DORIA: I just wanted to make sure that it wasn't that—we weren't asking—or perhaps we are, just for clarification questions, but if anybody from—because all the small team has heard pretty much is Becky

and I since we've been having all these And one of the hopes for this, even though not a lot to be said, but I just wanted to encourage fellow Board members that even if it's not a clarification specifically, but a short point, yes, the time is limited, but please jump in so that they do hear more than just Becky and I. Thank you.

BECKY BURR: So are we going on to nine? Is that the next one?

MAARTEN BOTTERMAN: Can I ask, so what Jeff explained in the chat, that that stands, right?

PAUL MCGRADY: I'm sorry, Maarten, I didn't catch the question.

MAARTEN BOTTERMAN: Okay, Jeff says in the in the chat, steady state according to the SubPro was round after round after round on a predictable basis. For example, every two years, or in terms of formula based, 50% of applications passed initial evaluation, then to announce the opening of the—that's where we stand.

PAUL MCGRADY: Thanks, Maarten. I think that I'm confident to say that the first part is correct, that the idea to for the steady state was a steady state of rounds that did not need to close out in order for the next one to

begin. I'm less confident in the formula that Jeff has put here. I'm not saying it's wrong. I'm just saying that I can't say with certainty that that that we've adopted some formula like that the two years or 50% and all that. But yes, the idea is that we—I guess that the Council doesn't view using rounds as inconsistent with steady state.

MAARTEN BOTTERMAN: Okay, so hands popping up.

AVRI DORIA: I just put my hand up quickly to remind us all that we're not necessarily trying to hit the solution today, unless we do, we're trying to see the path forward. And now we do have a clarification of where we're at, what perhaps discussions need to go on further. I worried, Maarten, when you said, and that is that. That doesn't mean it's what's decided. It means that that's the final presentation at this point. Yeah. Okay.

MAARTEN BOTTERMAN: I just wanted to check the status of his statement. That's all.

AVRI DORIA: [inaudible] recommendation. Thanks. So we're looking for [inaudible]. And I saw that Jeff had his hand up but it went down. So yeah, I think it's Becky.

BECKY BURR: Okay. So this recommendation is that single-registrant TLDs should have exemptions or waivers to mandatory PICs included in Spec 11(3)(a) and 11(3)(b). We've talked about this a little bit. The Board is just concerned that not all single-registrant TLDs are going to necessarily operate the same way. And so an across the board uniform waiver on these things could create problems that we don't foresee.

Obviously, some parts of this, if it's truly a single-registrant, there's no sub registrations whatsoever, maybe some of this makes sense, but the bottom line here is that unless we can be guaranteed that all single-registrant—registries are going to operate the same way across the board, carve out doesn't provide enough security here.

PAUL MCGRADY: Thanks, Becky. With this one, we were hoping that we provided some additional information. This might work to resolve the Board concern here. The rationale for this particular recommendation— so we've talked about how the working group concluded that the exemptions and waivers from the Specification 11 issues really related around—that the commitments included in Specification 11(3)(a) are required to be passed down to a registrar and from there to the registrant. In this case of a single-registrant TLD, they're not really relevant. A single-registrant registry would be required to include a provision in its RAA which itself requires a provision to their registration agreements that prohibits certain activities for registrants in this scenario, it creates a circular set of contractual requirements that really are not usual in nature.

The rationale states the working group further believes that security threat monitoring reporting requirements under Specification 11(3)(b) should not be applicable to single-registrant TLDs because the threat profile for such TLDs is much lower compared to TLDs that sell second-level domain names and a single-registrant registry, the registry operator would be in a position of conducting analysis on a TLD where it is the registrant for every domain name.

In other words, the registry operator, which is also the registrant of all domain names would both be the perpetrator of any abuse and also be required to report abuse in its domain space. In addition, the working group discussed that .brands in particular have a keen interest in monitoring your space to ensure it is not being used for abusive practices, mostly because it's part of their infrastructure. I think that comes to the end of that.

To boil it down, the bottom line is, especially for .brands, the registrants are the registry itself affiliated corporate entities and trademark licensees. And single-registrant, purely single-registrant TLDs, where there is only one registrant, anybody that would be registering abusive domain names is also the registry. And just to the working group, this one seemed like it was a requirement that simply doesn't fit the reality of those registries.

So that's kind of where the Council landed on this one. I should be careful. The Council has not affirmatively adopted this yet. This is where we are in the work. But this is what the thinking is, that essentially we see the Board's concern, but wanted to provide some additional assurance about the nature of the registries themselves and how they operate.

BECKY BURR: Thanks, Paul. Let me just add that part of the issue here is on the DNS abuse issue of compromised sites. And that is something that could happen with single-registrant registries, as well as it's not peculiar to open or non-brand TLDs. So I think that our anxiety remains around whether we have enough tools and whether people are fully, whether registries are doing everything that they can to prevent DNS abuse. And in particular, we understand that single-registrant registries are not likely to be sources of DNS abuse, except as a compromised site, but we do still think that's an issue.

PAUL MCGRADY: Thank you, Becky. Yeah, and I think that the small team's reaction to that was that because the registry is part of the infrastructure, as opposed to in the situation where there are sales of registrations at the second level outside, that the heightened level of concern, because it is your own infrastructure, takes care of that concern. But that's where it rests. I know we're not trying to get to an ultimate decision today, but that's the thinking. It's not that we don't recognize that concern. It's just that because this is a piece of infrastructure, we were hoping that might provide some comfort.

BECKY BURR: All right. Okay, I think we're going on to topic 18, and this 18.3, where the GNSO SubPro and the Council recommended that the terms of use could only contain a covenant not to sue if the

appeals mechanisms set forth under topic 32 are introduced into the program. I think while the Board is not opposed to additional in-line appeals mechanisms, we're still looking at those issues, but the bottom line here is that we have accountability mechanisms, the IRP and the like, and registrants have in the past demonstrated that they're fully capable of using those, so it seems reasonable to us to say the options that are available to you are the ICANN provided accountability mechanisms in the form of reconsideration and IRPs.

Ultimately, so whether or not—and as I said, the Board is still looking at and the Org is still looking at whether these in-line appeals mechanisms can be made to work, but here I think the Board is concerned that this is an unnecessary limitation.

PAUL MCGRADY: Thanks, Becky. And so I guess there's sort of two issues. There's a great big issue, which we really don't address in the small teamwork, and that is I think that the working group is trying to find a balance, right, between a covenant not to sue contained in the terms and conditions, and I guess there was a fairness analysis, and in trying to come to some balance on that, suggested this appeals and challenge mechanisms.

Obviously, the IRP and other things like that existed when the working group did their work, and so there is obviously concern that those mechanisms weren't necessarily fit for purpose. They do take years. They're incredibly expensive. And so in trying to find something more streamlined, that's why the working group came up with this.

I think the concern that we addressed as a small team is what the Board raised, which was there was some concern that someone who might lose that challenge would then go on to claim that the covenant not to sue should not work, should not be effective, because they were not satisfied with the outcome of their in-line appeal. And so that's the issue that we addressed, not sort of the bigger issue, and we wanted to point out that the working group did not intend there to be a satisfaction requirement, merely that the process existed.

And so there's that information, and there may be another potential step that Council might do to provide some comfort to the Board, specifically a written statement that makes it clear that the requirement of recommendation 18.3 for the appeals and challenge mechanism is needed, but it does not include requirements that the challenger be satisfied with the result. The mere implementation existence of an appeals and challenge mechanism is all that was intended by the recommendation, not that the ultimate applicant is happy with that outcome. And so I know that you guys, the Board, are considering the in-line appeal issue sort of more broadly, but perhaps in that process we can bring some comfort by saying that we don't think that the benefit of having the appeals mechanism – it's not destroyed by some requirement that the challenging applicant be happy at the end of the day. So, Avri, your hand's up, so I'll turn it back to you.

AVRI DORIA: Thank you. Just wanted to make a quick point on those statements. We have those, as you suggest, in several places, the sort of clarifying statements on what SubPro meant or GNSO

saying this is what was meant. And one of the things that we're still confirming, and that would go into the path to follow, is that we have a form of these statements that legal and [inaudible] feel is a statement that actually works in the case of the problem. So it's great appreciation for the notion of adding clarifying statements to it, but we're still in the process of making sure. So when we're looking at the path forward on this, I'm not sure whether this one ends up kind of moot if the appeals mechanism goes in, but still that statement remains very necessary. So just wanted to make that out. But it looks like there's a path that we're exploring on this one going forward. I just wanted to bring that out and make sure no one disagrees with me that there's a path forward that we're following.

PAUL MCGRADY: Thanks, Avri. I think that probably takes us on to the next one.

AVRI DORIA: And that one is me. Okay, I've got this one. In case you couldn't tell, Becky and I sort of did a division beforehand, of which we would take, trying to be fair and even about it. On the application queuing one, basically this is one where it's sort of talking about proportionality in terms of things, but it's also laid out a specific set of batch size of 500. And basically, in looking through the ODA and such, basically, there was a fear, there was a concern, not a fear, a concern that perhaps this 500 was a strict limitation and 450 or 550 would be against the recommendations.

Now, we've received a certain amount of assurance that, no, they never meant for there to be batches at all. So a limitation on batches, and perhaps I'm almost answering your question, so limitation on batches is not a point. And so that's kind of where I understood we were, that it's a misunderstanding that can be clarified, but please let me pass it on.

PAUL MCGRADY: Thanks, Avri. Yes, I think that's exactly right, which is this is one where I think the working group got into the weeds a bit. But after digging back through the record and discussing it as a small team and as a Council, that's absolutely where we came out, which is this batches were not meant to be recommended in this, and we didn't need to be prescribing any particular thing. Basically, the core of the recommendation is about how to determine the priority ordering. And the concern about that is because we want to make sure that IDN applications are not left behind in the process. And so it's not about prescribing batch size, it's about sort of that little kernel having to do with the internationalized domain names, which are very important to the Council and to the working group. All right. Moving to the next one.

AVRI DORIA: Yeah, no comments on that one. Okay.

BECKY BURR: Okay, this recommendation from the Council is that brand TLDs, or TLDs that have an exemption from the Code of Conduct, that we talked about before, including .brand TLDs, also receive an

exemption from having to provide a continued operations instrument, those requirements. And I think the Board has expressed its concern here that we cannot foresee all of the ways in which a brand registry, for example, might use its space. And if it permitted second level registrations from consumers, for example, then for stability and security purposes, we may be required at some point to put one of those TLDs into EBERO. And without the continuing operations, the COI, there would be a negative financial impact on ICANN for having to essentially pay the full freight of the EBERO.

PAUL MCGRADY: Thanks, Becky. And there was community feedback sought by the working group on this one while working on the initial report, which included this topic. And the public comments received nearly unanimously were in favor of limiting the registrant protections for .brand qualified under Specification 13. And ultimately, what the working group agreed upon was since all the domain names in that particular registry are in the name of the registry itself, an affiliate, or a trademark licensee in a .brand registry, that the concerns about registrant protections simply, they're just not a factor. Generally speaking, consumers that we think about in the ordinary sense don't take a trademark license from whatever business they are dealing with. Those are commercial arrangements between businesses most often.

And so in this case, we certainly understand the Board's concern. We think that for .brand, it's a completely different group of second-level registrants, very limited in nature, usually businesses. And again, the .brand registry is part of the

infrastructure of the operating entity, rather than being the traditional second-level sales model.

And so that's the reasoning behind it. Again, I don't know that we're necessarily meant to come to an agreement on this call about that, but that was the reason why the working group thought that this COI was really not relevant. And I can tell you, having gone through the process for some .brands as they're—helping them apply in the last round, it was not nothing. I mean, it's quite a hassle, the COI process. And so I think that that's one of the reasons why the working group landed where they did.

BECKY BURR: So Paul, just if I can make one suggestion, and again, the Board is still thinking about all of these things, but it's possible that putting aside the blanket exemption, that the IRT could be asked to investigate or work with the IRT to investigate during implementation what circumstances under which it would be appropriate to waive the COI requirement. So in other words, we're not saying it's never appropriate to waive it, but the blanket nature of the exemption is a matter of how that would come up with a criteria for the exemption, as opposed to doing the blanket to begin with.

PAUL MCGRADY: Thank you, Becky. That's good feedback. We will take that on. All right. Let's move on to the next one.

AVRI DORIA: Okay, the next one. That's emojis and domain names. Let me start out by saying that there's no one in the Board that's advocating emojis in domain names. And in fact, I think there's a certain part of the Board that sort of says they're prohibited by the IDNA 2008. So the concern is that by taking a recommendation and approving it, that basically has us start to regulate at the third level—something we don't do, except perhaps inside contracts, but not in the general realm of the policy does ICANN either force compliance or regulate at the third level there. So we're concerned about that taking us out of our mission.

And I'm not quite sure why the requirement perhaps is necessary, given that the protocol prohibits it, and such. So that's pretty much the concern. It's not that we want to institute emoji third level names or seventh level names. It's that we're really worried about the mission line, and there are prohibitions in the protocol already. Thanks.

PAUL MCGRADY: Thanks, Avri. And I think it's the prohibitions already in place that sort of support why the working group did what it did. And to a certain extent, this is one where I think everybody thinks the ship's already sailed on this. And so, specifically, the working group cited SAC095, where the working group notes that emojis are already not permitted by the underlying technology, for example, adherence to the internationalized domain names and application specification, and that the standard would need to be willfully broken in order to support them.

The working group believed that an explicit disallowance of emojis at any level is needed since RFCs and standards can change, even if infrequently. Recommendation 26.9 is in line with recommendation 2 from SAC095, which states, because the risks identified in this advisory cannot be adequately mitigated without significant changes to Unicode or IDNA or both, the SSAC strongly discourages the registration of any domain names that includes emoji in any of its labels.

And the working group noted the fact that the recommendation mentioned any of its labels specifically. And so, while not part of the working group's deliberation, the Council notes that there are a number of existing references and requirements in the agreements that apply to any levels, not just the top. In addition, ICANN has entered into new contracts with those same any-level provisions post-transition.

So, again, we understand the Board's concern about not going outside of its mission, but from the small team point of view, it seems that this particular issue has already left the harbor to a certain extent. So, anyway, that's kind of why the recommendation was in the final report in the first place. And, again, I know we're not meant to get to any particular final resolution on this call, just introduce the topics and take feedback back, but there was a good basis in community documents already when the working group proposed this recommendation.

AVRI DORIA: Yep. And this is Avri again. See that point and understand, I think the overtaken by events or ships has sailed argument is pretty

much the same argument that we're making, is it isn't needed to achieve the purpose, and yet it puts a risk on the mission being stretched. What other things can we, should we do at the policy level on third levels? And there's a creeping.

So, at one point I thought we had sort of discussed, is there again a way to sort of limit this so that it can be accepted, perhaps, without the risk of mission creep? Because it seems to invite mission creep, if you look at it a certain way. And I see Jeff has his hand up, and I spoke without putting my hand up.

PAUL MCGRADY: I don't know if we're running a formal queue or not, but Jeff, thanks for raising your hand. Go ahead.

JEFF NEUMAN: Yeah, thanks. So, just to add a little bit of color, and I put it into the chat. If you go back to the SubPro reports and the initial [Board] and all the information and discussions, which unfortunately I have cramped in my head, the intent was to basically prohibit emojis in any level in which the registry is distributing names. Because we know sometimes registries operate at the second level when they distribute names, and sometimes they operate at third level or distribute third level names. And so the intent was wherever the registry is distributing names, that's where the prohibition should be. And it's the same thing that ICANN does with fees, right? So that registries can't avoid fees by just being a third level registry instead of a second level registry. That was what the discussions were. Not that registrants who register second or third level names

can't put an A record in that has an emoji in it, which we obviously can't control. It was really for the registry level. Thanks.

PAUL MCGRADY: Thanks, Jeff. And I see Jim and Edmon are both sort of plus oneing what your comment is. And it looks like it may be some additional updating to this document that we can do as a takeaway here.

AVRI DORIA: Okay, so a clarification. Is this another one where a clarification note is possibly at the end of the path or something else?

PAUL MCGRADY: So, I mean, we can take all this back. Maybe there's a clarification note that would make this one go down a little smoother. I mean, ultimately the Board's always free to reject anything that they want to reject. That's another way out of this. But if we can provide you with something that gives comfort and stays faithful to what the working group is trying to accomplish, then that to me seems very much worth the effort.

AVRI DORIA: Yeah. And I think the Board realizes that it cannot accept, as it were, any of them, but it's trying to avoid that. And also just in terms of the speed of getting to an AGB and stuff, any process of non-acceptance slash rejection involves additional steps, additional processes. That if we can get things solved in this first

part, so that there's security where you can accept something that you might have tended not to accept, because there's an explanatory, I think that that sort of saves us both confusion and perhaps time in terms of getting to our targets. And that I think is the kind of thinking that at least partially is being engaged in is, can we nail this down so that it doesn't open the risk? And if we can, then there's—but again, I'm glad that people from the Board are speaking in the chat. I wish some of them would speak. But if not, I'll stop now.

PAUL MCGRADY: Thanks, Avri. Yeah, we can certainly take this back as one where if we can get you that comfort level, I agree, that's a far better outcome. Jeff, this just means you need to sharpen up your drafting pencil, my friend. So, all right. Let's move on to the next one.

AVRI DORIA: Next one, 29, that is mine again. So, basically, at this point, we've been taking sort of the route out that says we're waiting for NCAP 2 studies. There was a possibility of 3. We now, looking into the future, seems like 3 is less likely. But we're still waiting for the NCAP 2 report before making any decisions on name collisions and you give us some other advice. So, please.

PAUL MCGRADY: All right. So, again, this was one where it's just providing some further background. Recommendation 29.1 states the mechanism to evaluate the risk of name collision in the new gTLD process as

well as during the transition period to delegation phase is needed. But it doesn't prescribe exactly how it has to be done.

And the affirmation 29.2 states it affirms the continued use of the new gTLD collision occurrence management framework unless and until the Board adopts a new mitigation framework. So, again, not calling for any prescriptive approach nor any change right now. And so, taken together, we believe that 29.1 is about the need for risk mitigation, which we think will persist into the future. And affirmation 29.2 just says how it should be accomplished, but specifically calls out the possibility of a new mitigation framework stemming from those NCAP studies.

The bottom line is we think that this gives the Board plenty of room to operate, depending on what comes out of the NCAP study. And we think this one should just be approved as it stands. But happy to take feedback. And I especially love Edmon's emoji in the chat. About emoji. All right. Questions or comments?

AVRI DORIA: I think that's good. You know, I think we should take that back. We'll talk about it. It may be, it may be a simple path to, oh yeah, they're right. It may also be that we get the NCAP 2 report in plenty of time and it becomes a moot issue.

PAUL MCGRADY: Perfect. Thanks, Avri. All right, let us move on.

BECKY BURR: Topic 32, the limited challenge and appeal mechanism. I just want to say, before we start, that this scorecard and all of the work that the small team did putting this together. And as Avri would say, citing chapter and verse is really very helpful and very much appreciated. We certainly know it was a big deal to put this together. So on these, this limited challenge appeal mechanisms, as I said earlier, the Board is still trying to think through this and so we don't have a definitive position here, but we are concerned about a couple of things.

As you know, one is how this impacts the schedule and the cost of actually processing an application. What it does to predictability for opening and closing periods and the scope of parties who have standing, as well as just a sort of endless loop of challenges here. So I think the issue is not that there's concern about providing well crafted, narrowly crafted mechanisms that would help us avoid the more elaborate accountability mechanisms so we could resolve issues before it gets to that. That seems like a good thing. The question is just how to do this. A bunch of the concerns were described in the ODA and in greater detail. And so we're looking for more information about how those concerns were considered. And also, we're just still working through this.

PAUL MCGRADY: Thanks, Becky. Then this is one of the topics that's most directly connected to the ODA. And so the small team pulled together some text from the ODA. I'll walk through it. It's kind of chunky, but I think it's worth walking through pretty quickly. So the first concern was extending a limited challenge appeal mechanism to cover evaluation decisions made by ICANN or third-party providers may

cause unnecessary costs and delay, given the availability and purpose of extended evaluation.

So we dug back through. It became pretty clear the work group did not specifically discuss the interplay between the challenge and appeal mechanism and extended evaluation. The recommendation 32.10 does note that the limited challenge appeal process must be designed in a manner that does not cause excessive or unnecessary costs or delays in the application process as described in the implementation guidance. As such, the interplay could likely be explored during implementation. So in other words, the work group shared the same concern that the Board did and thinks that careful implementation here can solve that particular cost and delay concern.

The next issue identified in the ODA was the potential that this potentially challenges the ability to predictably plan for opening and closing of the application submission period. And we wanted to point out that there are several recommendations and implementation guidance that will likely mitigate these concerns, including implementation guidance 32.7 which limits the scope of what can be appealed. 32.12 would suggest a quick look mechanism to eliminate frivolous activity and 32.12 which limits challenge to a single round. So hopefully those provide some comfort.

The concern that the ODA specifically cites, RSP pre-evaluation, that's the registry service providers, the back end folks, as potentially creating timing issues in the context of a challenge and appeals mechanism. The working group reviewed the new gTLD program implementation review report as part of its deliberations.

One of the elements that was important in the working group's recommendation on RSP pre-evaluation was the limited number of RSPs. The ODA estimates on page 319 that there are about 40 RSPs in the gTLD space now. This number is not expected to increase significantly. However, for capacity planning purposes, ICAM will plan for 60 RSPs to go through evaluation. The limited number of entities going through the process should also limit the reliance on the challenge mechanism. So in other words, yes, RSPs can use the challenge mechanism, but there is a sort of a known small universe of those back end providers. So hopefully that contains that concern somewhat.

The next ODP issue is the broad scope of parties who are recommended in the final report to have standing to potentially open the door to gaming and manipulating the process. Again, the working group believes that there are several recommendations that will collectively aid in mitigating this particular concern, including implementation guidance 32.3, which establishes the limited set of parties that should have standing to initiate a challenge or appeals process. 32.7, which limits the scope of what can be appealed. 32.8, which generally makes the party bringing the challenge responsible for paying for the challenge. That's always a great way to rate limit. 32.11, which provides for timeframes for appeals. And 32.12, which suggests a quick look mechanism to eliminate frivolous activity. So again, these are sort of mitigation factors based into the final report.

The fourth issue raised in the ODA, ICANN Org notes another potential challenge related to the possibility for an endless loop of challenge appeals regarding an application. Implementation

guidance 32.13 states that a party should be limited to a single round of challenge appeals for an issue. As the concern notes, 32.13 makes clear a party should be limited to a single round of challenge and appeals for an issue, not an endless loop. And specifically, the guidance states parties should only be permitted to challenge appeal the final decision of an evaluation or objection. This text would appear to address the concern of numerous appeals against appeals. So we think that the particular recommendations of the implementation guidance should provide comfort there fairly clearly.

And then the fifth issue raised by the ODA, finding suitable arbiters to hear the challenge and appeals. The rationale for 32.5 notes that the working group believes that it is important for the mechanism to remain lightweight and cost effective and therefore believes that it is appropriate to use the original entity panel that conducted the evaluation or handled the objection to also consider the challenge and appeal. This rationale goes on to describe other options that were considered, which could presumably be considered during implementation if the specific mechanisms and implementation guidance 32.5 proves to not be feasible.

That's a lot of words, but the bottom line on number five is that this would be part of the service of whoever ICANN brings on to do these evaluations. And if they don't have enough suitable arbiters to hear the challenge and appeal, then presumably they won't get the contract. And so we think four and five are sort of the easier ones, if that makes sense. But that's where the working group was coming from. And that's what the small team was able to dig up in terms of additional information. I hope there's some comfort there.

BECKY BURR: Thanks. I mean, as I said, the Board is still working through this and needs some more time to work through its views on it. I think it introduces some additional complexity into the system we have to figure out if we can get comfortable with.

PAUL MCGRADY: Thanks, Becky. All right. Next topic.

AVRI DORIA: Okay, that one's me. Okay, this one is on community applications. It's basically criteria for choosing who does the community priority evaluation. And part of the concern that we had, and so hopefully this one can be dealt with with some sort of explanatory mechanism, is that the involvement in guidelines for the skill set or whatever that are being looked for is indeed an area for discussion. But there's concern about the contractual information, any personal information, any of the sort of business end of working with the CPE providers. And so it's really trying to make sure that while there is input on the criteria of what one can do and its skills and its talents and its tendencies, there is not the same level of guidance on contractual conditions with the CPE provider. And that, I think, is what needs to be differentiated here. And that's where the Board's concern has been.

PAUL MCGRADY: Thanks, Avri. This particular one, we hope the additional information provides comfort that there's alignment on that. The

working group in its process did document a number of concerns related to not having complete information, especially with regard to applying for community-based applications. And these included in the supplemental CPE guidelines being released after the application submission and perceived lack of transparency, predictability, third-party evaluator contracts and outcomes. In other words, being a community applicant was the easiest thing in the last round.

And so the purpose of this particular recommendation was to provide greater transparency and a role for the ICANN community in the process to develop evaluation and selection criteria that will be used to choose the community priority evaluation provider. And this is also a key element of recommendation 34.12. But this is, I guess, the important chunk that we hope provides comfort. 34.12, when it's referring to the CPE provider's contract, it says it would exclude, presumably exclude, confidential terms like fees and payments that have no connection to the CPE process for applicants. And so it sounds like there's a certain subset of information that the Board believes should remain confidential. Sounds like the working group agrees with that. It's the other stuff that we think that the community would like to have some input on.

AVRI DORIA: So on this one, it sounds like there'll be a certain amount of deciding which information is in which pile at some point. And perhaps that is an IRT issue or what have you. But that delineation will need to be clear. But thanks.

EN

PAUL MCGRADY: Thanks, Avri. I think that's right. It's a good question of who gets to sort the pile. But it sounds like that might be one for the IRT. But definitely the goal here wasn't to have everything out. You know, all the laundry on display. So, all right. Next up.

BECKY BURR: Recommendation 35. So, I think that the question about applications being submitted with a bona fide good faith intention to operate the gTLD, that issue isn't so controversial. What concerns us are the numerous references to private auctions and the issue of whether, in fact, this is really intended to establish policy for private auctions. You know, what's going on here in terms of this stuff? And that's what we are working through.

As far as we're concerned, there's really sort of no policy on private auctions. I understand that there was no policy the last time around and they occurred. But if this is essentially establishing policy on private auctions, we have said we want to engage an expert on auctions to help us work through these issues. But I think what we need here is a clarification that if the Board accepts this, we're not accepting policy on private auctions.

PAUL MCGRADY: Thanks, Becky. And so I wonder if staff can kind of scroll to the end of the proposed clarifying information. There's a lot of background there, but I want to be sort of cognizant of time here. So, yeah, the goal of the recommendation was never to inadvertently make private auctions a policy. It simply was meant to recognize the fact that they did exist in the last round. And

absent a policy against them, I guess they will continue to exist. The working group, and this was a long discussed topic, and I was one of the people who pushed for the bona fide intention language because it sort of tracks the trademarks, right, a little bit in the intent to use process. But we thought that might be a way to resolve the concern between those who were concerned that private auctions were abusive and those that saw no concerns related to them.

But, again, the goal was not to develop a policy on whether or not private auctions should exist or not, but rather just to acknowledge the fact that they do and that there was a way to hold applicants to a higher standard. And so we think that perhaps the next step would be for Council to make a written statement that makes it clear that the references to private auctions in recommendations 35.3 and 35.5 are simply acknowledging that they existed in 2012 and it should not be seen as an endorsement or a prohibition on their continued practice in future iterations in the new utility program, but while not undoing the bona fide intention factors. So hopefully that provides some comfort where we're not trying to inadvertently bless them or inadvertently prohibit them. That's just something that the working group couldn't come to an agreement on.

BECKY BURR: Thanks. I think that will address our concerns.

PAUL MCGRADY: Terrific. All right, we're moving on to the next one.

AVRI DORIA: Six. I have that one. On the registry service provider, I think this is one of those where it's a roles and responsibilities type of division, again, where certainly in terms of the guidelines for how such a test is done, etc., he pre-evaluation program is one thing where the input of the implementation team would be involved, but not in terms of, again, the contracting, the pricing and all of that. So basically that same division we were talking about before. And so basically looking for that same kind of clarification that there are some things that are part of the community's role, and some that remain with the staff and the implementation team.

PAUL MCGRADY: Thanks, Avri. On this particular one, the Council understands this concern and how our recommendation could be read in that way. However, the Council looked at the final report, other working group documents, and we believe the intent behind the recommendation is aligned with the Board's view. The Council understands that recommendation to mean that the staff, working with the IRT, will determine those fees for the program, but the actual calculation of fees are the role of ICANN Org and not that of the IRT.

So I think this was sort of just crummy drafting in the final report. And as a member of the working group, we're sorry. There are a lot of words that went into the thing and maybe we could have done a little bit better. So we hope that if Council—one potential step is for Council to do a further clarification statement, written statement, making it clear that the Council recognize the proper

	roles and responsibilities during implementation that ultimately Org is going to have to get out their calculators and not the other way around.
AVRI DORIA:	Thank you. We should probably keep moving on. We don't have that much time left. Okay, I've got 16. The application submission period. This is another one where it seems too constraining in terms of what if there is an emergency, what if there is a problem, at which point, the small team has pointed out the words extenuating or extraordinary, which can capture a lot of emergencies. So basically, it's in that clarification space again. Thanks.
PAUL MCGRADY:	And Steve pointed out in chat that I think we are in the section of our topics that we think that these are the items that we think that can be more easily worked out during implementation. And so just to address this particular concern, Council understands the concern, but it's hoped that during implementation definitions of extenuating or extraordinary can be worked out. And so we think this is one that should just go to the IRT and charge them to work on that clarification. All right.
BECKY BURR:	Okay, Topic 18, terms and conditions, which is to provide some type of refund if there are substantive changes that are likely to have a material impact on applicants. And again, this is a clarification issue. We think that just substantive and material are

subject to interpretation and could lead to gaming. So we'd like to see that tightened up.

PAUL MCGRADY: Thanks, Becky. And I think this one is much like the last one, which is we think the IRT can do that tightening. We totally understand where you're coming from on that. And we think that the IRT can—we can send it to them and charge them with putting definitions around substantive and material. Nobody wants gaming. So I think there's alignment here between the Council and the Board on that. All right.

And now going on to the next set of topics, which are exploring starting a bylaws process. So these are the fun ones. All right. Becky.

BECKY BURR: Okay, so we've talked about this with the small team quite a bit. The current bylaws provide that ICANN can enforce contract provisions in furtherance of its mission. We understand that some people read that to mean that basically ICANN can enforce registry voluntary commitments. We also are aware that some people may not read the bylaws provision that way and that enforcing an RVC that, for example, had some kind of a content implication could be challenged. And that would then make, for example, if we were to lose that challenge, that would mean that a lot of RVCs couldn't be enforced. And the one thing we do not want to do is put anything in the contracts that cannot be enforced.

So the question is, in order to avoid disputes about this, and in order to ensure that RVCs can be enforced, and therefore people can respond to GAC early warnings through RVCs, one approach would be to amend the bylaws to clarify that ICANN has the authority to enforce contract provisions in the form of RVCs, even if they, for example, touch on content.

Now, let me just add, sort of as a corollary to this, if I have anything to say about it, and everybody heard me say this, I want RVCs to come in with sort of in-built descriptions of the enforcement mechanism and a clear statement about the objective means by which ICANN can determine whether somebody is in compliance or out of compliance. But the question here is there are pretty big downsides with proceeding to attempt to get a bylaws amendment and not getting it. And there are significant downsides with losing an accountability mechanism contest that would, in a binding way, because our accountability mechanisms are ultimately binding, make it impossible for ICANN to enforce RVCs.

So I think this is something that is very complicated, and people can see the upsides and downsides of any of these approaches. One question we have for the Council, and understanding it's not simply the GNSO, but it is the GNSO—because we're talking to the GNSO Council here, is what do you think? Could we get a bylaws amendment passed that would clarify this and, therefore, ensure that, going forward, we have the ability to enforce RVCs?

PAUL MCGRADY: Thanks, Becky. And I apologize in advance for the sports metaphor, but this is the metaphorical baseball pickle, right, where if you don't do something, you're worried about it. If you do do something, and it doesn't work out, that's not great either. So, for what it's worth, and the working group, as you guys know, relied heavily on PICs and RVCs in a number of places throughout the final report to, basically, to solve problems. Often in the context of trying to address concerns that would potentially allow applicants to move forward with their applications, and the Council unanimously approved the relevant recommendations. And so, presumably, the Council would not have done that if they thought that PICs and RVCs were not enforceable. So, maybe there's a nugget of comfort there.

And the small team noted that it can be argued that the current bylaws allow ICANN to enter into and enforce PICs and RVCs, kind of list out the sections there, so maybe some comfort there. However, if that's not enough comfort, the Board believes it's prudent to explore a bylaws amendment regarding the enforceability of PICs and RVCs. The Council is open to discussing that, obviously, with the Board.

The Council believes that it's important to provide context when discussing possible bylaws amendments. In this particular instance, the Council expects that an amendment would be narrow and focus specifically on the enforceability of PICs and RVCs. It should not seek in any way to more broadly allow ICANN to regulate content. And I think the Board is most likely on board with that notion.

And if the Board wishes to explore a bylaws amendment in order to accept the PICs and RVCs related to recommendations, the Council stands by the willing partner. We want to help in the dialogue and emphasize that if and when conversation is brought into other community groups, the scope of the potential bylaws amendment has to be made clear to avoid the issue being made more complex or contentious than it needs to be.

So, in other words, we lead with this is not meant to expand ICANN's ability to be in the content business. It's just for these narrow contractual provisions. And sort of, and I don't like always bringing a lawyer's hat to this, but we have to keep in mind that I guess anybody that could challenge the enforceability of PICs or RVCs is someone who's already signed the contract.

I just made Becky shake her head no. So, Becky, I guess that's true.

BECKY BURR: It's the registrant that would challenge it. And that's the problem. And as I said, there's a big risk of going for a bylaws change and not getting it. But it is, in fact, the same risk of not going for a bylaws change and having a challenge that is accepted and that in a binding way says we can't enforce RVCs. So, it's pretty high stakes either way. I see Avri's hand.

AVRI DORIA: Yeah, I just wanted to quickly add, and I'm glad people talked about it, that getting the language of that is extremely important of a bylaws change. And I'm as worried about what it opens up as

any. And one other thing was mentioned briefly, but it came up in Board conversations, so I wanted to pass it on, is that at the point at which we're thinking about doing a bylaws change, we need to go out to the entire community and all of the SOAC. Just because at that point, it's a beyond Board and GNSO question. It becomes a whole community. And that was a big part of a Board discussion. And I just wanted to make sure that I'd thrown it in here, that the issue is wider than just these two groups. Thanks.

PAUL MCGRADY: Thanks, Avri. And before we move on, I stepped on a nerve and I want to understand it a little bit better, if that's okay. This is kind of good feedback on the slide. Because I guess in my head, the primary concern was that some registry signed up for a PIC or RVC in order to get past a GAC advice concern or something else. And then realized that it affected their ability to sell second level registrations at the volumes that they needed. And that that's where the challenge would come from.

And I was taking some comfort from the idea that it's kind of hard to challenge if you've agreed to it, right, and there's a history of why you agreed to it and all of that. I mean, that to me is a harder argument for that registry. Becky's concerned that this will happen at the retail level, that a second level registrant will challenge these ... Becky, do you mind just doing a few sentences on what that scenario would look like? I'm not sure that it's one that at least I have not thought a lot about and maybe everybody else on the small team did.

BECKY BURR: Well, if somebody registers something and ICANN goes to enforce it based on the RVC, then they would have standing under the IRP. I mean, this is one of the issues in the IRP IOT that we've talked about for four years, is when ICANN goes to enforce that, they would be materially affected by the enforcement that results in a takedown. And therefore, they'd have standing under this. And we spent a lot of time, as I said, for all of those who've been in the IRP IOT, this is essentially the issue that we've talked about for four years, as far as I can tell.

PAUL MCGRADY: Thanks, Becky. So even though ICANN compliance action would be against the registry or perhaps the registrar, ultimately, it would follow down to the registrant and that that's where the concern lies.

BECKY BURR: Right, because the registrar says, I had to do this because ICANN told me I had to do it. Or the registry that says that.

PAUL MCGRADY: Thanks, Becky. I think that's helpful context. And again, if I was focusing at the wrong level, I think this is good stuff. The bottom line is, I'm not sure that it changes the output here, although we can certainly take this back as a small team to think through it a bit more. But the bottom line is, we see the pickle that you guys are in and we want to be helpful to you as you work through resolving it. All right.

AVRI DORIA: 24. I'm not clear whether Becky or I were taking it, but I'll start it since it hadn't been clear. 24, which is the string similarity. plural, singulars, etc. In some sense, seems like the previous discussion on steroids. In other words, each and every one of those is a determination of, we will use it for this kind of content, we will use it for that kind of content, and any adjudication is very contentful.

In addition, it's slightly different than perhaps some of the other RVC issues in that there's two of them operating in sort of a mutually exclusive type of arrangement, and I'm not quite sure how that will actually work in terms of setting the contracts. You take this, I take that. So I think that this is that kind of issue. Becky, I don't know if you wanted to add since this is often one of your favorite issues.

BECKY BURR: Well, aside from the fact that I'd say just say no to singulars and plurals. But what Avri said is exactly right. This is the RVC issue on steroids because somebody is going to affirmatively be making a representation about what the subject of second level registrations in that TLD will be. And if suddenly there are registrations that would be appropriate in the singular or plural of the other one, then we just have a basic fundamental content enforcement issue.

PAUL MCGRADY: Thanks, Avri and Becky. And this particular one I know, like you said, it's the one that's on steroids. But if we can scroll down a bit,

obviously the Council thinks that the potential bylaw amendment could address the concern for this recommendation as well. And again, it's limited to the intended use aspect in this particular situation. So again, this is all part of that more complex issue related to mission. So we're willing to listen and help as best we can to help with this particular one.

BECKY BURR: Great. Thanks.

AVRI DORIA: Did we just pass by one? Passed by two? 30 and 31? I forgot them too when I was working through who was going to speak on which.

STEVE CHAN: Avri, this is Steve. I don't think so.

AVRI DORIA: Oh, okay. Sorry, then. I have trouble. Yeah, there was 30, there was GAC. Sorry. There. Topic 30, we just passed it. GAC consensus advice and GAC. They're so short, they're easy to miss. Or is this not something we need to cover? Or is just 9-1? Is that—No.

PAUL MCGRADY: I think that's right. Both of these, it is basically how to, using RVCs to address the GAC warnings and consensus advice. This is

essentially just noting the RVCs as a tool to help applicants make peace with GAC concerns.

AVRI DORIA: Okay. Thank you.

BECKY BURR: I think 31 is in the same bucket.

AVRI DORIA: Okay. In which case it falls to applicant support, which was on my list. Here, the issue, and this one falls in the dialogue, we really need to talk about these further in terms of the extent of applicant support. In the past, the applicant support was largely covered by deferral of fees, reduction of fees, etc. And there was external pro bono or external help, and some matchmaking between them, though last time, it didn't work as well as it was one hope would work this time.

The other recommendations though concern sort of the external costs of paying for services externally, of paying for legal services externally, so that third party support is one part of the issues of concern. And the other part of the issues of concern is the sort of limitless—to what extent can those fees rise, and are they at all bounded? And so those really are the two focal points of the Board's concerns on them at the moment, is third party and unbounded fees. Thanks.

PAUL MCGRADY:	Thanks, Avri. And the Council certainly understand those concerns. Nobody likes the idea of blank checks. And, and there's concerns about whether or not application writing fees and attorney's fees were meant to be the universe, right, of those third party costs. We put this one into the dialogue between Council and Board, because we think maybe some additional talking around this issue would be useful. We also think, though, that ultimately, this is one that the IRT could work out to provide some guardrails around those kinds of spend items, like their identity, and also guardrails around the nature that how the scope of the spend, how many dollars.
	So this is one where I don't know if the Board wants to keep talking about this one, or if it's one that maybe the Board can get comfortable that the IRT could work out, but where the Council wants to listen in here.
BECKY BURR:	On to 18, terms and conditions. Go ahead. So basically, on to 18 terms and conditions. Go ahead.
AVRI DORIA:	We've got the previous one, so we'll leave that one as we'll have some further conversations both in the small group and then figuring out how to bring the Board into the discussions more as it evolves. Is that our path?

PAUL MCGRADY: I think that's right. If the Board can get comfortable with this going to the IRT, it will be supremely helpful for the IRT if the Council and Board can say the same thing to them, which is you know, we want you to define the universe, we want you to put guardrails around the spend and give them some practical guidance about how to do that. Rather than just handing them the same ambiguity that the Board discovered in the recommendation language itself, which the Council acknowledges is there, if that makes sense.

And so ultimately a clarifying statement from the Council to the Board, which you can pass on to the IRT or some sort of joint arrangement between the Council and the Board or whatever, we think that this one could be solved. The ambiguity can be dealt with, but we have to talk through exactly. It won't resolve the ambiguity if the Council comes up with a giant laundry list of free stuff that we would like for the support applicants to get. I think most of us on the Council are very, very sympathetic to these applicants that do need support, and so our Christmas list may be longer or shorter than what the Board had in mind, but I think we should talk about it.

AVRI DORIA: Okay, fantastic. Thanks. Sorry, Becky.

BECKY BURR: Okay. Topic 18, terms and conditions, which recommends that unless required by specific laws, our fiduciary obligations or the ICANN bylaws, ICANN must only reject an application in

accordance with the provisions of the Applicant Guidebook and have to explain with specificity why it did this.

So first of all, let me just say no problem with the explaining with specificity. I think it's quite clear, based on a number of things, that ICANN has to do this. I think the bottom line here is that this recommendation introduces a kind of dispute wildcard where it's not necessary. ICANN cannot act except in accordance with the bylaws, and if ICANN was going to reject an application, it could do so on the grounds that it was inconsistent with the Applicant Guidebook, which is covered here, or it wasn't in the global public interest, in which case ICANN would have to still apply the commitments and core values. It would still have to not single out any individual applicant for specific unique treatment, unless there was substantial cause to do so, with all of the other commitments and core values that have been cited in numerous IRPs in terms of how the Board considers these things.

And finally, I think we have binding precedent in the form of three IRPs that say, essentially, if we're going to reject something, we have to have an articulated public—based on GAC consensus advice, at least we have to have an articulated public policy reason for doing so.

So we think that all of the things you are trying to achieve are actually achieved by the existing arrangement of the Applicant Guidebook and the bylaws and the like. And if you just put this in here, this just gives people something else, some other sort of lateral attack on the system.

So I personally, and I think all of the members of the Board are very sympathetic to what's going on here and what's driving this, but I do think that those protections are in place. And just to your point, what's wrong with saying it in the T's and C's is because then somebody has the ability to bring a case on this, on the basis of this, as opposed to a violation of the bylaws.

PAUL MCGRADY: Thanks, Becky. Yeah, I think that where this concern came from, I believe, and the working group days are a long ago at this point, was just the concern that it seemed that ultimately the Applicant Guidebook didn't always govern, right? Like people, like an applicant would [inaudible] right? That goes back to predictability for applicants. And so I think that's where this bubbled up from.

The working group tried to make the carve outs very broad, including a fiduciary duty of the Board members. So it's not really clear what wouldn't fit into these allowable reasons. And there is some fear of unknown unknowns.

So we have listed out a lot of reactions here, and I don't want to, just for the sake of time, dig too far into them. But the concern remains for applicants might be concerned, especially if they ask, well I'm new to this process. What happened last time? Was the Applicant Guidebook always followed? That they will hear all kinds of stories about how it wasn't always followed and that there were surprises along the way.

And so if you ultimately—some things to think about, and specifically if the Council is concerned that if the Board reasonably

adopts a standard prohibiting a string or class of string from proceeding in order to meet its obligations under the bylaws or to protect the security and stability of the DNS, then the rejection of those kinds of applications—and I'm running out of room here for those controlling the screen. Those kinds of things, those sorts of rejections, if done in a fair and consistent application, in a very consistent way, would fall inside the parameters of this recommendation.

Anyway, that's a lot of words. I think what we're trying to convey is that if there is a fiduciary reason why the Board can't approve an application, that falls within. If there's a reason in the Applicant Guidebook, then that falls within. If there are strings or classes of strings that would disrupt the DNS, that would fall within. And so I guess at the end of the day, I understand what you're saying, Becky, but the Council is just having a hard time coming up with a scenario that wouldn't fall within. S

So, again, this is, I believe, under the continued dialogue. We're not going to solve it today, but can we keep talking about this one to see if we can get there?

BECKY BURR: All right. Absolutely.

PAUL MCGRADY: Topic 30.

AVRI DORIA: Okay. So, actually, I really think that this is pretty close to the last answer from the last discussion on a substantive perspective. So we have this provision in the Applicant Guidebook that says that GAC consensus advice will create a strong presumption for the ICANN Board that the application should not be approved. And on that basis, several applications were, in fact, rejected in the last round.

So the working group is urging us to omit this language from future versions of the Applicant Guidebook. And as the note shows here, the GAC has expressed concern, not—we don't have consensus advice on that in particular, but it has expressed concern about this.

I think the first thing is that the Board needs to talk to GAC about these kinds of things. Yes, Jeff, concern by some members of the GAC. Just as a matter of complying with our obligations to the GAC, we need to have the conversation with them.

I think the bottom line is that the cases, the IRP cases that have come through have made it very clear that the Board cannot rely on GAC advice, consensus advice, to reject an application absent a well-reasoned public policy basis for doing so. So I think that ultimately precedent, because we did make the IRPs binding now, is going to address this issue. We just have to have a conversation with the GAC about it.

PAUL MCGRADY: Thanks, Becky. And this is one where the Council wants to be helpful, also wants to stay in its lane. And so we welcome being

part of that dialogue. And if it's helpful to include us—we understand it's a bilateral discussion, but if it helps to include us with a dotted line in some proper way, we are happy to engage. Avri?

AVRI DORIA: Yeah, I just wanted to ask a quick question. I know that GAC is having some direct conversations with the GNSO. And I was wondering, is this one among the topics you plan to discuss with them in your bilaterals?

PAUL MCGRADY: So, Avri, that may be a great question for Seb. I hate to put him on the spot. Or our GAC liaison, Jeff Neuman. Jeff, go ahead.

JEFF NEUMAN: Yeah, this is one of the topics that's been proposed to be discussed. The leadership of the GAC and GNSO are going to meet to confirm the agenda. But that is certainly something that's been proposed. And if I were to guess, I'm sure that this will be discussed. I also just wanted to add to what Paul had said, because one of the other reasons for taking out the presumption wasn't just because the bylaws now, there are new provisions in the bylaws dealing with GAC advice that didn't exist at the time the presumption was put into the guidebook, but also that the presumption was literally a black and white. The presumption is that it shouldn't be delegated. And the working group discussed several times that that unnecessarily limited the Board and staff's discretion to work with the applicant and the GAC to try to come

up with some way to still go forward, but addressing GAC concerns. And so that was also another strong reason for what was in the working group report. Thanks.

PAUL MCGRADY: Thanks, Jeff. And that's a very good point, right, that it wasn't just because we are wanting to align everything with the current state of the bylaws. It was about wiggle room for the Board, which is important. But so it sounds like we are very likely to be having that conversation. And we still want to be helpful to the Board in any way that we can. And hopefully we'll have something to report back from that discussion that will prove helpful.

All right. I think that's topic 30.

BECKY BURR: I think the other pieces of recommendation 30 essentially fall into the same bucket. We need to have a conversation with the GAC about this.

PAUL MCGRADY: Sounds great.

BECKY BURR: Which is not to say we agree or disagree with you. We just have to have a conversation with the GAC.

PAUL MCGRADY: Thanks, Becky. And let us know how we can be helpful. And as we also discuss it with the GAC, please view that as good faith stuff and not meddling. And whatever we learn, we can come back to you with more inputs or maybe what we learn from them helps provide some clarity on all of this. And is that it, Steve? Are we done?

STEVE CHAN: I think so. We are. Congratulations. You made it through the entire set of the working document.

PAUL MCGRADY: Well, thank you. And again, because of my tech troubles at the beginning, I didn't get a chance to not only properly thank the small team members, many of which are on this call, who did an enormous amount of work very, very quickly, but also to really applaud Becky and Avri for sticking with us through this whole process. And giving us good input and guidance all along the way. The Board is full of exceptional people and Becky and Avri are at the very top of the list as far as I'm concerned. So thank you both for sticking with us. And I see Avri's hand up.-I'll turn it back to the Board and see what's next. Thank you.

AVRI DORIA: Thank you. Yeah. And I wanted to thank, and before moving on to the next steps, I just wanted to make sure that no one on the Board or on the Council side had any sort of pent-up comments that they wanted to get in before we went to the next steps. But while talking about the next steps, I think we went through a lot of

them. Hopefully they got recorded in terms of—but I think also I'm sure that Becky and I and all of you from the small team probably remember what they are. And so I think one of the next steps would be getting a compiled list of these things that both the small team, the SubPro caucus, and by extension the Board can look at and make sure that, yep, those look like the next steps and where we weren't quite clear enough, make them clearer so that we have a definitive thing coming out of this.

And then we probably have at some point to schedule those lengthier discussions sort of perhaps single topic discussions I would think on some of those pending issues of discussion. That would be my thought on our proceeding. I don't know whether there's already a thought on how you all will be proceeding with this. And yeah, we appreciate working with you guys. It's been great.

BECKY BURR: Yeah, let me second that. This has been a great collaboration and you guys been working really hard.

PAUL MCGRADY: Thank you both. All right, Steve. So just a reminder of where we need to go. We're here. Like a map. You are here. May 22nd, the joint meeting. It seems to me that there are some of these things that sounded like we are—again, we didn't get to a firm yes on things, but I think certainly on the Council side, we understand better where the Board's coming from. It sounds like some of these really can be dealt with with clarifying statements and things

like that. And as Avri just said, that could be a good next step for the Council, because we can start to narrow the agenda of items remaining.

And it does sound like there needs to be a bit more discussion on some of these particular things. And I think that's part of the— again, this is a triage document. This isn't the discussions themselves. And so there is, as we're racing towards this June 11 deadline, it's not that we will resolve all those things or have those conversations necessarily by June 11, but we will at least understand what the plan is. And the goal remains for the Council to have these deliveries for you by June 15 so that you at least will know what our work plan is from here going forward. And it sounds like there may be some inputs needed from the gap all along the way.

So that's kind of where—seems like after this call, we're still on track, which is good. And Tripti's hand is up. I'm hoping she says she is going to take us the rest of the way home. Thanks, Tripti.

TRIPTI SINHA: So, Paul, thank you very much for running us through all these issues. And clearly a lot of hard work has gone into it. And you are correct. We gave you the best, Becky and Avri. So thank you so much for your dedication and to the small team. This is not easy. This is hard work, and we will eventually get to where we need to be. So deep appreciation from us. We'll get through this and we look forward to how it all culminates on June 15.

PAUL MCGRADY:	Thank you, Tripti. And Steve, staff, anything else we need to, or do we call it?
STEVE CHAN:	Thanks, Paul. This is Steve. I think that's about it unless Sebastien wants to add anything at the end as well.
SEBASTIEN DUCOS:	No, I'll just follow the Paul rule, which is the call is finished when it's finished and top of the hour is it. So thank you, everybody. And let's keep that conversation going and get everything lined up for the 15th.
TERRI AGNEW:	Thanks, everyone. The meeting has been adjourned. I will stop the recordings and disconnect all remaining lines. Stay well and thank you for your patience at the beginning.

[END OF TRANSCRIPTION]