ICANN Transcription
New gTLD Subsequent Procedures Working Group
Monday, 19 December 2016 at 2000 UTC

Note: The following is the output of transcribing from an audio recording of New gTLD Subsequent Procedures Working Group call on the Monday, 19 December 2016 at 20:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.   Attendance may be found at:
mailto:https://community.icann.org/x/a5-DAw
The audio is also available at:

mailto: http://audio.icann.org/gnso/gnso-new-gtld-subsequent-19dec16-en.mp3

Coordinator: The recordings have started.

Michelle DeSmyter: Great, thank you JR. Well, good morning, good afternoon and good evening. Welcome to the New gTLD Subsequent Procedures Working Group call on the 19th of December, 2016. In the interest of time today there will be no roll call as we have quite a few participants online. Attendance will be taken via the Adobe Connect room so if you're only on the audio bridge please let yourself be known now. Great, thank you.

And as a reminder to all participants, please state your name before speaking for transcription purposes. And please keep your phones and microphones on mute when not speaking to avoid any background noise. With this I'll turn the call back to Avri Doria.

Avri Doria: Thank you. This is Avri speaking. Okay the next thing is to go through the agenda. So going through the agenda starts, then we go into the SOI check,

then there's a (unintelligible) new item which is brief working team sub group brief updates - working track.

Basically this meeting had meant to be a just CC 1 meeting, but we postponed it several times for various reasons and postponed it even though I think a regular meeting period. And so basically one of the asks the work tracks, just to give, if they had any announcements any critical issues that we needed to look at and so on, so really quite a quick pass through that. So hopefully that's okay with people.

Then the rest of the call we go into the CC 1 review starting at Question 4. Jeff will be leading it this time. See how far we get. Our object is to try and finish before the Christmas holiday because we've missed two meetings, that may be a challenge, but there still is time to schedule another meeting if we don't make it, and we can discuss that at the end.

Then there's any other business. So how does the agenda - does anybody have any questions or objections on the agenda? Changes? Okay, I see no hands, I hear no voices so I just proposed new 3 is in. And we'll move on to SOIs with this agenda.

Anybody who has changed their SOI, has changed circumstances, needs to record it. Does anybody have anything they would like to speak of in terms of change to SOI at this point? I see no hands, I hear no voices. Okay thanks.

So then the next thing is to move onto the work track brief updates. As I say, announcements, it's okay to say nothing. You know, we have nothing. It's okay to - or to bring up an issue you'd like the group to (unintelligible). So Work Track 1? Who do we have that will speak on that one?

Krista Papac: Hi, it's Krista. Can you hear me?

Avri Doria: Please. Yes, I can hear you fine.

Krista Papac: Just a quick update. On our last call - I'll just do a quick on the topics. So RFP accreditation, we're currently on hold until some details around the certification program are known and then we'll I guess figure out what areas we'll focus on. Applicant support, we're looking for some ideas and suggestions to overcome the current obstacles. The application process, we're needing some costing insight and Steve has a request into Finance.

Application types and fees, we're working on along with the submission period. So we're currently working on queuing. We ran out of time and hopefully we can jump on that in January. And currently we're a little bit on our timeline for two or three different topics but hopefully we can catch up in January once we have some of the information. And that's all I have unless Sara has something to add.

Avri Doria: Thank you. Anything to add? Okay, any questions? Sorry, I got distracted reading a chat. Any questions? Okay then move on to Work Track 2. Do we have anything? And that's what the chat was saying is that we may not have anyone for Work Track 2. Is either Phil or Michael on the call? Okay if not - oh, Phil is here now.

Phil, can you give us a quick - what I was asking was not for a full report but just if there were any announcements, any quick status update, any issues you wanted to bring to the full group, otherwise it's fine to say nothing to report. So, Phil, do you have anything that you would like to add? Are you mute? Phil is typing. Probably doesn't have voice support.

Okay while Phil is typing I'll move on to Work Track 3 and I'll read Phil's response later. Work Track 3, are there any issues, updates, changes, announcements, what have you that you'd like to make at this point? Who would like to speak for Work Track 3? Yes, Karen, please.

Karen Day: Hi, everyone. This is Karen. Just a reminder that we have a call tomorrow scheduled for the 2000 UTC hour, where we're going to continue our work on objections. So I hope that you will all be there. That's it for me. Robin, anything?

Robin Gross: Hi, this is Robin. No, I would just encourage people to take a look at some of the materials that have been put forward on the legal rights objections so we can have a conversation about them. In particular there's a WIPO final report, there's a INTA report and tabulation of statistics. And so really the hope is to get some good discussion going on on these materials in our next call so I'd just like - these materials are located on the wiki so I'd just like to encourage people to have a quick read at those before tomorrow's call so we can have a nice discussion on those materials. Thanks.

Avri Doria: Okay thank you, Karen, thank you, Robin. And Kavouss, I see your hand up.

Kavouss Arasteh: Yes, do we have the meeting of this group tomorrow? Today one meeting, tomorrow...

((Crosstalk))

Avri Doria: Yes, I believe that is the...

((Crosstalk))

Avri Doria: I believe that is the schedule because many meetings were missed and people are trying to meet their work schedules so they've scheduled meetings - and they were announced at least a week ago so that, yes, they were scheduled. Anything else?

((Crosstalk))

Kavouss Arasteh: In two days we have two meetings.

Avri Doria: Two different days, yes, that is the case this time. It's because of the whole end of the year and the various meetings that got canceled.

Kavouss Arasteh: So (unintelligible).

Avri Doria: Excuse me?

Kavouss Arasteh: Quickly done, badly done. This is...

((Crosstalk))

Avri Doria: Well...

Kavouss Arasteh: Yes?

((Crosstalk))

Avri Doria: We're trying to do it quickly. I'm sorry you're tired and I think we're all tired but we're all, you know, going to have a couple days without meetings coming up so - but I understand. But the meetings are on different topics so let's hope it works out.

Okay, Work Track 4, did you have an update? And who was going to speak? Rubens, I see your hand, thank you.

Rubens Kuhl: Thanks, Avri. Can you hear me?

Avri Doria: Yes, I can, thank you.

Rubens Kuhl: Rubens Kuhl for the record. On our last Work Track call we had some discussions following up on our Hyderabad face to face meeting on whether technical capabilities should be evaluated before or after the - or after the

process. We already have issued one consensus call that's still in the - ongoing for doing - is assessing technical capability after the process.

But - and we are discussing also financial. We originally have one Work Track call this week, December 22, but since we are facing very strong competition from Christmas and Santa Clause denied postponing Christmas this year, I need to ask if anyone has any objections on us canceling. So far our projected attendance seems to be very low so that's one time for - we're asking to have any objections on Work Track 4 session being cancelled or not. So let's give some time for people to think or type.

Avri Doria: Yes, I don't see any hands coming up to object. Anybody that objects to Work Track 4 canceling this week's meeting please put a - oh it should be an agree sign. No, no, it would be a disagree if you object it's a disagree. So a red cross if you object to Work Track 4 canceling this week. Okay I see no objections at all coming up so I think you're probably fine, Rubens. And it does partially answer the let's not put too much on people's plates this week issue. So thank you very much for helping with that issue.

Rubens Kuhl: Okay.

((Crosstalk))

Avri Doria: I just wanted to - I just wanted to remind people on Rubens' report that when he speaks of consensus call he's speaking of a Work Track consensus call and that just means that's what goes into their recommendations to this group. We'll go all through the consensus process again once we have a full document and with the full group. I just wanted to make sure I got that said since sometimes there's confusion on local consensus versus, you know, larger group consensus. So thanks on that.

Rubens, your hand is still up. Is that the old hand? Thank you. Okay, I never got anything from Phil. And he was typing, he's still listed as typing but I'll just

leave that alone for now and if we get something to read later I'll bring it in. And at this point would like to turn the call over to Jeff - oh wait a second, I didn't ask - any questions on the Work Track 4 report other than the cancellation nobody wanted to cancel. Okay great. With this, Jeff, the floor is yours for continuation of CC 1 review. Thank you.

Jeff Neuman: Okay. Thanks, Avri.

((Crosstalk))

Avri Doria: You want me to help with hands or you deal with that?

Jeff Neuman: Well I'll try to deal with it but if you see me falling behind feel free to jump in.

Avri Doria: Great.

Jeff Neuman: I have two different screens today so hopefully that'll work out. Okay so we are back on our CC 1. But unlike the first three topics that we discussed, these next few are I think much more procedural and hopefully we could get through a little bit quicker.

I tend to think, you know, personally speaking that some of these principles that we're going to be talking about like predictability, really the way you address them is through addressing the specific items to make them more predictable and then a process by which you could introduce sudden changes or things that would not disadvantage any of the applicants but also serve the community.

So with that said, the general concept Subject 4 is, "Predictability should be maintained or enhanced without sacrificing flexibility. In the end changes must be introduced into the new gTLD application process. The disruptive effect to all parties should be minimized."

Not surprisingly there is no one that submitted comments that disagreed with that notion. But there were some initial findings and conclusions that we had talked about as a group early on. I think were also reflected in the comments received from the GAC, the Registries and the IPC.

So as a general notion, we asked the question of, "Was the round of 2012 sufficiently predictable given external factors while balancing the need to be flexible?" And then obviously explain your answer.

And so with the three responses the GAC stated that it "Appreciated the importance of predictability at the pre-application, application and ongoing post-application phases especially during the 2012 round, the first of its kind, a kind that may have justified a number of adjustments during the implementation phase. However this should not be the prime or only consideration. It's difficult for the GAC, or anyone else, to assess whether the round was sufficiently predictable. The GAC responded and advised on emerging issues on their merits. Such a large scale exercise with what turned out to be few useful precedents. There's always going to require flexibility and adjustments."

Is there anyone from the GAC - I think the statement is pretty self-explanatory but is there anyone else from the GAC that wants to just add some flavor to that or anyone have any questions on their statement? Okay, again, these are a lot of - some of the procedural aspects so I don't expect too many questions. But the real question is whether we can devise a process that meets all these requirements.

So the Registries had a view that said, you know, no, that it was not sufficiently predictable reflecting on the 2007 policy. And they said the timeline was highly unpredictable. The process saw several last minute changes which did not follow from the GNSO policy recommendations and were not reflected in the Applicant Guidebook. And there were some examples cited like the strawman, which was the intellectual property

protection, specifically the Trademark +50, the Spec 11 changes which are still being discussed to this date, name collisions and the unilateral amendment provisions of the ICANN Registry Agreement.

Apparent inconsistencies and objection of community priority determinations further contributed to the applicant uncertainty. Now that the 2012 round is over and we can glean lessons from it, we all know how to fix it in the future, always open subsequent procedure.

So with that said, I know we have some participants from the Registries. Given that the Registries felt that the process was less than predicable, and then we'll get into this actually in some of the other statements, but is there anyone that's got questions for the Registries? So I think we get into some mechanisms a little bit later on.

Sorry, I'm just drinking some water as my voice is deteriorating. Okay, the IPC also made a similar comment in the fact that they didn't fully believe it was highly predictable. There are significant variations from the program as published in the Guidebook versus how it was actually implemented by staff.

For example, the midstream prohibition against closed generics, the announcement of and corresponding demise of Digital Archery as a prioritization methodology, the requirement to develop on the fly a process to address rights protection on the release of name collision names, and the ongoing challenges for creating a process for the treatment of country names and codes at the second level.

So what's interesting is that the IPC cites different examples than the Registries. And if you add all of them up, a lot of unpredictable or a lot of changes that were introduced into the process last minute. Is there - does anyone have any comments of how we can address these types of things in the future? Do people have - agree with the IPC and the Registries? What's

the general feeling out there? How do we address changes that still act in a predictable manner?

Kavouss and then Alan. Kavouss, you're free to speak. You may be on mute, Kavouss. Can you hear me? All right, I'm going to go to Alan and then we'll come back to Kavouss.

Alan Greenberg: Thank you. I'd like to think that a second time round, in whatever form the second time takes, we're going to do a better job than the first time. We learned an awful lot in the first time round. There were a whole host of changes that were introduced really only after we saw that the applications were like. Now presumably we have an idea, you know, the balance may change but we're not likely to see absolutely brand new types of applications.

So I'm sure we're still going to have some corrections to make along the way because we will be - almost certainly will be introducing a lot of changes, and some of those may have an issue with them as we go forward. I think we're going to do a lot better than the last time. I'm not sure we can guarantee that there will not be changes to make sure we correct real problems or perceived problems. Thank you.

Jeff Neuman: Okay thanks, Alan. I'm going to go back to Kavouss. Are you able to speak now?

Kavouss Arasteh: I'm sorry, I lose the track of the paragraph where you're reading now.

Jeff Neuman: Oh...

((Crosstalk))

Jeff Neuman: Okay well hopefully you can grab a glass of water or something around you. Donna, your comments?

Donna Austin: Thanks, Jeff. Donna Austin. So largely I agree with Alan. I think we should have learned a lot from the (unintelligible).

Jeff Neuman: If you're not speaking could we please, put the mute on? Thanks.

Donna Austin: Thanks, Jeff. But I would say there's a couple of things that we can potentially flag. So GAC advice was a big factor in slowing down - well probably 2/3 of the applications. So to the extent that we can try to understand how we reduce the possibility of GAC advice coming in after applications are received this time it could be helpful. And sorry, it must be catching. And also we had a new CEO that came in with some different ideas about how things could be done. And that's resulted in some changes as well particularly as it related to the Registry Agreement and also some of the rights protection stuff.

So I agree with Alan, I think we should have learned a lot but I think there's a couple of red flags where we - to the extent that we can avoid getting GAC advice after applications are received this time should be - it should help in that regard to make sure that things are a bit more predictable next time around. Thanks, Jeff.

Jeff Neuman: Thanks, Donna. And, you know, I'm hoping and as hopeful as you and Alan are as well. And one thing that we - if you read the chart one thing that (unintelligible) as an anticipated outcome is to develop a framework that could be the basis of policy development. And so hopefully, like you said as well, a lot of these issues will have been sorted out and we've been working on a number of the issues. So hopefully that'll have reduced the unpredictability.

I do think your comments, Donna, on GAC advice, are interesting. And I think are something we're going to have to talk about in Work Track 3 in order to - how do we deal with GAC advice, you know, after the round has already started if it's a topic that was not anticipated prior to the round or application window beginning.

Alan.

Alan Greenberg: Thank you. I agree with both you and Donna on things like GAC advice. And I think part of the answer is we need to look at patterns of the kind of advice we got and try to make sure they're covered in whatever the processes we build so that - so that that thing does not come as a - out of the blue. We've already covered it and perhaps asked the registry in their application or prospective registry in their application to cover the kinds of things that might have been raised with the kind of GAC advice we saw.

Certainly the GAC advice forced us to look at how the TLDs would be used and the semantics of the name, something that we really didn't want to do to begin with. And maybe the message is we have to do that. Thank you.

Jeff Neuman: Okay thanks, Alan. I saw Klaus has his hand up for briefly but I guess dropped it. Or, Klaus, do you want to get in the queue or? Okay. Let me ask a question, let's say that - this is maybe just something to think about - but let's say that we do address the topic so let's say in Work Track 2 we somehow figure out and finalize the geographic names issue and it's completely done and final and everyone agrees upon it and it's in the Guidebook or whatever we call this next thing.

And then the process starts, but then someone submits an application and a government has an issue with that even though it wasn't mentioned in the Guidebook. Do - what are the thoughts here, you know, do we just have to let it go because that was what the GNSO and others decided? Is it - is there a policy against reopening up issues? What does everyone think about that? Anyone want to tackle that one? Alan?

Alan Greenberg: I don't see how within the bylaws we can say, sorry, you didn't say it earlier, you can - GAC, you can't give advice. I don't think that's something that we can do within our overall mandate. Maybe someone else sees a way.

Jeff Neuman: Okay thanks, Alan. But I guess I'm asking - right, we can't prevent advice coming in but could you say well I'm sorry, that that can't apply in this time around but, you know, we'll keep it in mind for the next time? Donna, do you have a response?

Donna Austin: Thanks, Jeff. It may not necessarily answer your question directly. But, you know, one of the conversations that we have in the Registry Stakeholder Group on a number of issues when the GAC raises issues, and this was certainly the point on two characters at the second level is that if there is any concern or GAC advice that it be based in some kind of standard like international law.

                  You know, the two character issue at the second level had a - it was a long-running conversation about a 2, 2.5 year period. And the - from the Registry Stakeholder Group perspective it was always the case that there are no rights attached to two characters at the second level even though, you know, they are country codes at the top level. And the - our argument was always that, you know, if the governments have claims to those, two letters at the second level, then it should be based in some kind of international law or something with authority.

                  So to the extent that we can tie it back to something like that it might be helpful but we might be getting a little bit ahead of ourselves at the moment because we just don't know what's going to come up next time around. Thanks, Jeff.

Jeff Neuman: Thanks, Donna. And we'll be discussing the geographic issue in Work Track 2 so I don't want to necessarily get into the specifics of that. I guess my question is, if the GAC or ALAC or anyone else provides advice that's contrary to what is already in the Guidebook once the round has started or already in the agreement or, you know, an applicant has already submitted

an application, is there - you know, what should be the response from ICANN to such advice?

Because that's one of the - one of the impediments to predictability is that, you know, ICANN hears from a substantial member of the community, whether the GAC in one case or whether it's, frankly the technical community on name collision, so let's not single out the GAC, you know, what should a standard be from the Board in order to make a change midway through a process?

Kavouss.

Kavouss Arasteh: Yes, I have seen this reference to international law. Why on this specific issue of the two letter use we want to have references to national law? Are there - are there any other things international law (unintelligible) that we want this particular (unintelligible) law be referenced? What international law? The people are looking for. You have seen the (province) of GAC even at the last meeting that we had and they are very, very strict and say that this is an important issue for the government, for the GAC. This two level use in the second - two letter in the second level and (unintelligible) want to listen to that and (unintelligible) national law. What international law you want to be used here? Thank you.

Jeff Neuman: Thanks, Kavouss. And without getting into the substantive - it's a good question. I think one that Work Track 2 will have to look a little bit when they're dealing with geographic names. I think the general issue, if I can bring it up a level, is what factors should we look at - we being the ICANN community - look at in order to decide whether an issue is important enough or merits the changing a process midway through?

So I think that's really kind of the overall question is what are those factors? And Donna had said well, one factor may be international law which, again, would mean definition as you've pointed out. What are some other factors

that could influence whether we should look at factors midway through the process? Kavouss.

Kiran Malancharuvil: Jeff, this is Kiran. I'm only on audio. Can I get into the queue whenever? Thanks.

Jeff Neuman: Sure. So we have Kavouss and then Kiran. Kavouss.

Kavouss Arasteh: Yes, I think this issue was discussed at (unintelligible) meeting of GAC. And that there (unintelligible) of GAC. One (unintelligible) country, they have no difficulty to use of the two characters at the second level subject to some issuance, a letter. And if they don't reply within (unintelligible) they have no problem. (Unintelligible) others that (unintelligible) agreement. So you should - from that aspects what from international law.

And there are some cultural, there are some other issues associated with that ccTLD if it has come at a second level and the top level would be something else but if it comes immediately after that, you know, that week (unintelligible) country some of the (unintelligible) that may be (unintelligible) from cultural, from the (unintelligible) point of view and from many other things. So that is the issue why we put that (unintelligible) and specific agreement on one group and subject to (unintelligible) agreement on other group. That is that. That is (unintelligible) for international law. There is no international law. Thank you.

Jeff Neuman: Okay thanks, Kavouss. Kiran, you're next.

Kiran Malancharuvil: Great, thanks. So I apologize for only being on audio. I think that Jeff, your question is a really excellent one because the GAC has sort of been known to try to develop these kind of standards but always leave themselves a loophole to object later. So purely by way of example, and not to get into the debate, but the geographic names issue seems headed towards that

issue, right? Nobody seems to be willing to box themselves in within the GAC.

So my - I have a question back to you to take it back even at a higher level, isn't the accountability Work Stream 2 working on the role of governments and the way that their advice can interject into the GNSO policy process? And shouldn't that question be answered by them and not necessarily by us? Is there a way to get the GAC to agree somehow and somewhere in the ICANN process that they need to provide some sort of predictability if they're going to be willing to insert themselves into the policy process after everything has already been done? Thanks.

Jeff Neuman: Thanks, Kiran. Let me - I don't know the answer to your question. I'm not as familiar with the new ATRT process. Is there anyone that's on this call - does anyone know more about that? Is that a question that the new Accountability and Transparency Review Team will be working on when it's constituted. I'm just looking to see - Alan, you have your hand raised for this. Kavouss?

Avri Doria: And this is Avri jumping in. Also Mathieu who is the cochair of WS 2 indicates that Accountability Work Stream 2 is not addressing this. So just wanted to read that one in while we were talking.

((Crosstalk))

Jeff Neuman: Okay thank you for the clarification. So, Kavouss and - is that an old hand or something new?

Kavouss Arasteh: New hand. I don't think that the Work Stream 2 Accountability dealing with this issue. It has nothing to do with the accountability. And should not (unintelligible) that and the accountability Work Stream 2 has been something arise from the Work Stream 1 and there is nothing on Work Stream 1 on this issue. This is something to be dealt with different thank you.

Jeff Neuman: Okay thanks, Kavouss. And Alan.

Alan Greenberg: Thank you. Clearly the GAC is working with us. We have members on this group today and at other meetings. So presumably we will try to cover the issues, but I don't think there's anything that we can do to stop a sovereign government from issuing an objection. Now whether the GAC supports it as a group or not is a different issue. But I don't think we have any tools to prohibit us. Thank you.

Jeff Neuman: Yes, thanks Alan. You know, I guess my question wasn't, you know, whether we could prohibit advice, I mean, we could never prohibit it. But would ICANN be justified in saying well you initially said it was okay, you know, we understand you have comments now. Is it - can we change it midway or do we have to - does the ICANN Board have to say, well we'll apply that from the next, you know, the next round or the next window.

                 Jorge, great, you have a comment?

Jorge Cancio: Hello? Do you hear me okay?

Jeff Neuman: Great, yes. Thank you.

Jorge Cancio: Hello. This is Jorge Cancio, Swiss GAC representative for the record. I was kicked out of the Adobe room for a while so I wasn't able to follow all of the conversation. But I just wanted to come back to what the GAC said on this predictability issue. And I think it's very natural thing that during the first part, which was the first exercise of that kind, there were a lot of issues that couldn't be predicted when the process started.

                 So we - and there had been a lot of policy work by the GNSO and there had been also GAC principles on new gTLDs aspect for - as 2007. But at that period of time I think it's safe to say that cross community interaction between the GAC and the GNSO wasn't at its optimal level. So perhaps things that

was said by the GAC were not into the policy and into the Applicant Guidebook. Other things were built in in a way that the GAC didn't agree fully or other things popped up really after the launch of the 2012 round when the process of the application started.

So I think it's difficult to extrapolate the lessons learned by that process to the present situation where we have a much closer interaction although it may be improved between the GNSO and the GAC. And we already had the experience of the first round. So there's a lot of things where we can learn from and where we can really know whether the sticking points were and probably are between the GAC and the GNSO or between parts of the GAC and parts of the GNSO because - under certain topics there is not a closed or a uniform position (unintelligible) GNSO or in the GAC.

So I think that's something important to bear in mind. And on the other side, on the present day cooperation, especially with this PDP, I think we're trying to make efforts on both sides to have a conversation from the start on what are the issues that are really important to the GAC and trying to get the messages from the GAC into the GNSO PDP with the open sessions we had with the cochairs of this PDP working group both in Helsinki and in Hyderabad.

And I think this is a process which should be ongoing. It should be in line with recommendations that were adopted by the GNSO GAC Consultation Group that called for more pre-recommendation - pre-recommendation level interaction between the two groups. And so if we really live up to the spirit of these recommendations we will avoid a lot of diverging recommendations from one side and advice from the other side. So I think that we are still more or less at the start of this process and we could be able to provide a lot of the problems had in the 2012 round. Thank you.

Jeff Neuman: Thanks, Jorge. And I agree with you, I think there's been a lot of progress. And Cheryl Langdon-Orr put in the chat, you know, we do recognize and we

completely appreciate the fact that the GAC is - through you all are now much more engaged and proactive and hopefully we'll lessen the need for any - lessen the need for any kind of subsequent advice if can adequately address these issues during this process.

And I want to go to Alan and then I want to get back into the matrix. Alan.

Alan Greenberg: Yes, thank you. I think the issue is easier to think about if we changed it from the GAC to SSAC. Clearly it's the SSAC, after the round is opened and we see who has applied, SSAC comes up with something equivalent to the name collision problem we had the first time, to what extent the Board is going to listen to the SSAC and take action, is going to be a judgment call.

Clearly if they believe that the SSAC is saying the whole Internet will stop working if we do this, they're likely to take action. If it's something more subtle they may not. And I think the same situation is going to be true with the GAC that based on the implications of what they're saying and obviously with the GAC the negotiations that will have to be held if they are not agreeing to it, it's going to be a judgment call. But I don't think you can rule it out completely.

Jeff Neuman: Thanks, Alan. And we've talked about one side of the equation, right, the need to provide advice and the need to make sure that issues are aired. I'm actually going to do something and switch to Question 4c before we come back to 4b because I think it's the other side of the equation, the other side of the balance, you know, what is the impact of - what is the impact of changing the process on applicants, users and related parties from a process that lacks predictability?

If everyone could mute their phones? So on the harm, if you will, or the impact we had statements filed by the Registry Stakeholder Group, the IPC and the GAC basically said that it was inappropriate for - to ask the applicants, you know, what the impacts were. So on that note, the Registries

submitted a - probably a shorter comment than they could have, I'm sure, stating that there are too many unforeseen post-application rule changes and delays as ICANN struggled to implement the process.

These changes and delays took their toll on a number of applicants and as a result many suffered financial or other losses while some had to eventually withdraw from the process. And then they pointed to dotGreen which was the community applicant with a clearly defined mission and was forced to abandon its application as resources were exhausted due to significant delays and complications with the application process. Predictability for applicants of any future mechanism should be a high priority.

And then they said - the IPC said that (unintelligible) investments, explicable changes of direction by ICANN while businesses bear the costs of such unpredictable actions and outcomes ICANN also bears the cost to its own credibility and reputation which were at an extremely low point during the early days of 2012. The lack of predictability also creates an ongoing skepticism and mistrust by applicants, users and others not least potential applicants.

If I can offer a personal comment as one that helped or assisted a number of brand applications just to kind of point to some facts that between the time that the brands applied or any applicants applied but between the time that some of the brands that we represented applied in 2012, and the time that they were able to get Specification 13 and they were able to actually sign a contract and get delegated, fully four years later, at the earliest, those companies had undergone changes in management, changes by virtue of acquisition, or divestiture.

You know, the average lifespan of a chief marketing officer in a Fortune 500 company is 18 months. So many of them had switched over sponsors within this corporation two or three times between the time that they submitted the application and the time that they were able to sign the agreement. And, you

know, there are a number of launches that have been significantly delayed because of that and some of them tie the unpredictable nature of ICANN and its process to these difficulties.

So if anyone else wants to get in the queue and talk about the harms or the impacts. Kavouss, you're in the queue. Kavouss. Okay, all right, we can't hear you, Kavouss. I think there's some chat on the subject. Martin had made a comment that we all agree or it appears that there's agreement, there's a lack of predictability. We should simply list the specific issues that have been raised, check where there's been a change since and whether those changes have improved predictability. Where no change has occurred against a specific issue, review and consider if a change is needed.

As we channel specifics through the work tracks we should also use this as a checkpoint to see if there's sufficiently improved predictability. I think that's a great comment from Martin. If staff can capture that and we can discuss that as to how we can best track those issues. I think we have been doing that but I think it'd be great to see it charted out like Martin has suggested.

And the reason I really came to this is at the end of the day even if we address all of the issues that we can think of or that came out of the last round, there theoretically may always be an issue that gets raised. And I'm wondering, not necessarily on this call, but I'm wondering if we could develop some sort of formula that the Board could apply in considering whether the balance of the requested change weighs in favor when you balance that with the harm caused by not making that change or conversely the harm caused by making the change, the harm caused to the applicant.

But I think at the end of the day is there some kind of formula that could be applied or some guidance given to the Board on how to take that advice? (Unintelligible). Okay we can't hear Kavouss.

Kavouss Arasteh: Yes, the example given by Alan (unintelligible) on the GAC saying that if there is a decision and SSAC mentioned that if that decision is implemented there would be no proper function of the ICANN Board sets in the - with the view that. He just put (unintelligible) that if GAC mentioned that this two character should not be given for the second level, should upside down the situations of the ICANN. Why not the same argument for the other side, GNSO? If this two character is not given to the second level that would be any (unintelligible) or any upside down of the entire process so it should be two sides.

GAC has some reasons why not some people, some policy does not agree with that so is that new (unintelligible) specific agreement does not mean that disagree but we want to have time to discuss and give (unintelligible) agreement we are not in favor of this (unintelligible), nothing wrong with that. Does not require any international law. But we will (unintelligible) in many cases exclusive agreement is required. And that is the right of the people who comment itself. So I don't think that the argument of Alan would be workable here. Thank you.

Jeff Neuman: Thanks, Kavouss. And I think, you know, Alan did make a statement that said, you know, what if it was the SSAC that gave the advice? Would we automatically agree with the Board to stop the process because they say that there's something technical. You know, again I'll take off my chair hat and just respond to Alan and say I don't think that would be automatic, Alan, I think that they'd still have to prove sufficiently that the balance of harms raised in favor of stopping the process.

I think there's always a balance test. And I kind of like what Kurt put up there, Kurt just made a comment - I got to scroll up now or unless someone put it in the notes. But Kurt has said, "Combining two of my earlier comments, Number 1, a risk to DNS stability or clear violation of some public interest; two, a change based on information that was unknowable when the process was developed."

And then there's some agreement with that. Martin says that we could test that formula out on the changes that were made during this last application phase. And I think the same test would be applied toward SSAC advice or ALAC advice or frankly GNSO input as well. Alan.

Alan Greenberg: Thank you. To be clear, I didn't say anything was automatic. I said it would be a judgment call. So I think we're agreeing completely.

Jeff Neuman: Oh okay great. Thanks. Thanks, Alan. So what does everyone think of, you know, Kurt's test, if you will, or Kurt's factors? Are people generally in agreement with those? Is that something we - obviously I'm not asking to - of any kind of final decision here. But does that sound like we can work towards those two principles? And maybe there's others as well. There's - Jorge says that we have to be aware that the role of GAC early warning and GAC consensus advice is part of the Guidebook of 2012 and therefore part of the rules of the game.

Okay, and then Vanda says we could put our green to give you a better view. Okay. Why don't we do that, Vanda, and then I'll come back to Jorge - Jorge's comment. So if - for those that think agreeing with Kurt's initial factors that we should keep working with those, if you could just let me know with a checkmark, a green checkmark, is a good basis to start. All right, we're seeing a couple. Good.

All right we see a few. We see some other - okay, does anyone disagree that those two factors should not be considered at all? If you disagree put in a red X. Okay. Well hardly a basis for an informal poll but I think we could start working on those factors and then hopefully we can get more agreement from others.

Steve.

Steve Chan: Thanks, Jeff. This is Steve Chan from staff. And so I just wanted to perhaps tie this discussion back to the anticipated outcomes that you mentioned earlier, Jeff, about a framework for predictability. And so I guess my understanding of the starting point is that perhaps if there's agreement that a framework for predictability still makes sense that they could - this could be the starting basis for that framework.

And assuming if that's the case then perhaps it would be a good idea to make progress or one way to make progress is to perhaps ask for volunteers for perhaps a drafting team or perhaps it's something that the chairs could work on or staff. Just throwing that out there to find ways to progress this aspect. Thanks.

Jeff Neuman: Okay thanks, Steve. Avri, you want to address Steve's point or do you want to...

Avri Doria: Yes, I wanted to jump in on Steve's point. I had dropped my hand because I definitely agreed with him in terms of the framework and in terms of using this as one of the starting places. I think if we've got people that want to volunteer and right now that's good, but I think once we get through this pass on this I think we're going to have to sit down and look at the various places for drafting teams.

So great if we have somebody that wants to get in the drafting now but I wouldn't want to start the drafting teams just yet until we actually lay out the work ahead of us after this path. Thanks.

Jeff Neuman: Okay, thanks, Avri. I do want to point out Jorge's comment on the chat as well. I think, you know, his points of politics and policy are difficult to be reduced to a formula. I do think we need to consider that. I think whatever formula we come up with has to have a balance of that. So your point, Jorge, is well taken. And Steve, I agree with Avri, let's get these points down and

then when we kind of meet and boil all CC 1 responses down we'll form some drafting teams on the different elements. But this is a good area to have one.

Okay, going back, because we skipped 4b, but I think we can cover it. It really is asking whether the community believes that some of the changes that came about from the 2000 - I forgot the year now - but basically the cross community working group on policy and implementation whether that helps to maintain predictability while at the same time provides the needed flexibility to address changes of circumstances.

And so the comment from the GAC was that the cross community working environment is essential for the development of policies that are both workable and maximize benefits to all relevant stakeholders. The GAC is committed to participate in cross community processes to the extent that its resources permit. Cross community work also needs the involvement of all relevant SOs and ACs performing their roles as defined in the ICANN framework.

The GNSO PDP processes provide for early and continued engagement of other SO/AC participants, however, it remains a GNSO process which needs to be complemented by the inputs from other SOs and ACs, including (unintelligible) and prior feedback from such constituencies has not been appropriately reflected in the results of the PDP process.

And then the Registries have said that, yes, we believe that these frameworks should allow for gradual improvements to be made in the gTLD - new gTLD application processes without having to gate the initiation of the subsequent application process.

And the IPC, you know, their terms (unintelligible) 2012 and offered (unintelligible) to any future application. I guess the (word) is still out. Would anyone like to offer any comment on their own statement or questions that

you may have for the GAC, Registries or IPC? Avri, you had your hand raised, no more? There we go.

Avri Doria: My hand was raised. My hand was raised to comment beyond that, but when you were asking for someone from the GAC, Registry or IPC that wanted to comment on their own I wasn't one of those so that's why I withdrew my hand. But this is Avri and while I'm speaking, I think one of the things that needs to be looked at is that the Implementation Review Team, as currently conceived, remain a GNSO process.

Now by and large, I think that's okay since they are open to all. You know, and basically when one of those is put together by the working group it can constitute a very large variety of people from all SOs and ACs. Having said that, there is no really fixed implementation of an implementation review team so if this group got to the point later where it had a consensus on some specific ways in which an implementation review team could work to better take into account the sort of implementation stage concerns of other SOs and ACs, we could do that later.

That would certainly not be something that was in the initial part of our work but towards the end of our process when we got into talking about okay, we've got recommendations and we're about to send them forward, but we also need to plan the implementation review team, we could take up issues then of exactly how that thing can work, because it isn't fixed. I think what we've got is good but we can talk about it. Thanks.

Jeff Neuman: Thanks, Avri. Sorry, took me a second to get off mute. Some comments from the chat are mostly that they have to leave. Never mind. This call, by the way, does go until the half past so I think it was scheduled on the calendar, am I correct on that?

Avri Doria: Yes.

Jeff Neuman: It was scheduled for 90 minutes?

Avri Doria: Yes, and this is the 30 minute time check so yes, this is half hour to go.

Jeff Neuman: Great. Well I think in moving on to 4d, which is just kind of any miscellaneous issues on the subject, the GAC has said that many gTLD policy issues require resolution at the global rather than national level. In many (unintelligible) in practice this means resolution within ICANN processes to ensure consistency as application of national laws country by country may not be sufficient.

The GAC and others need a degree of flexibility to respond to emerging issues in this global space, which is operated by ICANN and the community according to contractual arrangements and community developed policies and procedures. The need for such flexibility continues after the conclusion of a PDP.

So I think that's just - if there's anyone from the GAC that wants to speak to that, I think it's much of what Jorge and others have made that point as well. Okay any last words on Subject 5 before - sorry - 4 before we go to 5? Okay, seeing none, moving onto 5.

Five talks about community engagement in the new gTLD application process. When we discussed this issue early on, months ago, the initial findings were that community engagement is one factor that has an impact on the predictability of the program. There are new engagement mechanisms in place that were not in existence in 2007, such as liaisons, and outreach. And, you know, the fact that we have such a diverse participation from the SOs and ACs in this group is one of those things that's significantly changed from 2007.

But no matter how robust and inclusive the PDP is, it's likely impossible to account for every possible scenario. Reliable and predictable mechanisms

need to be in place to highlight unforeseen issues, determine the scope of the issues, designate mechanisms to mitigate the issue, implement the solution and anticipated outcomes.

Preliminarily the working group has determined that it may be beneficial to establish a change control framework that could help mitigate the destabilizing effect from unforeseen issues encountered after policy implementation.

So at best - as an overall subject, specifically the questions that were asked, Number 5a, are there circumstances in which the application window should be frozen by unforeseen policy issues are considered and resolved? If so, should there be a threshold or standard that must be reached before considering freezing an application window?

The GAC had no comment on this. Registries said it's unlikely, it'd be better to continue to evaluate and accept applications to keep from disenfranchising potential applicants. This would also throw more unpredictability into the mix.

And then the IPC - their comment is, this question presupposes windows, which we shouldn't assume. Second, policy questions arise with some regularity can be dealt with in the context of an ongoing process, lightweight policy processes developed by the Policy and Implementation Working Group should help deal with these in a timely and orderly fashion. We can foresee no reason to freeze an application process for a policy issue. Any threshold to do so would have to be incredibly high, essentially cataclysmic. However, there may be operational issues of severity sufficient to freeze a round, for example, financial failure of ICANN.

And, Steve, I don't know, why my thing is cut off here? But, you know what the rest of that said?

Steve Chan: Hi, Jeff. This is Steve. Where did you leave off?

Jeff Neuman: The last sentence of the IPC in 5a. It's just - I don't know...

((Crosstalk))

Steve Chan: Sure, I think it says, "However, there may be operational issues of a severity sufficient to freeze a round, for example, financial failure by ICANN, disaster and recovery or external force majeure." Thanks.

Jeff Neuman: Okay, thanks, Steve. So this is whether to freeze an application process. I think the Registries and the IPC seem to agree that it has to be incredibly severe in order to stop applications from coming in. Anyone have any thoughts, questions, comments on that? Okay, seeing none, I think that supports our initial findings.

Five B, the question is, "If the Board is faced with questions that cannot be addressed by the policy recommendations that they were sent, must the Board bring the issue back to the GNSO and PDP processes?" And we do have new processes like the expedited PDP or the GNSO guidance process.

So there were certain issues, for example, the trademark claims +50 was an example that did not go back to the PDP. There were no processes like this, I believe, at the time. Changes to the Registry Agreement didn't go back to the PDP or the GNSO. So there were some changes that did not go through this.

To this the GAC responds, "The GAC would expect the Board to have regard to all available evidence of advice including advice from the GAC reverting to applicable GNSO and PDP processes appears to be one of a range of options the Board can consider. Others might include seeking expert advice on specialized issues. Experience from the recent rounds suggests that conclusion of a PDP on such a wide ranging set of issues is unlikely to be an endpoint, agreed all stakeholders in practice. The GAC will make every effort to participate in any agreed post-PDP policy."

The Registries have stated generally, "Yes, particularly as matters at hand could contradict established policy, we (unintelligible) the role of the GAC, the Board and GNSO resolving issues that arise during any ongoing mechanism should be well understood and," sorry, "documented."

And then the IPC states, "Yes, but such a question should not trigger an all-stop for applications already filed. The new policy can be developed and implemented on a date certain affecting only applications after that date at least in a continuous process this is how the development and adoption of consensus policy works."

Thoughts, questions? Donna had raised in the chat, "Who would make the determination on what is severe?" I think this was in response to the last question of when the Board could freeze an application process. And Avri, without her chair - oh a joke. Okay, I guess partially a joke. Everyone yelling the sky is falling. And then the Board deciding it was so without the empowered community objecting. That would seem to be pretty extreme.

Anyone else have any comments on that? Okay, and then the last - no, 5c, sorry, it's not the last one. "Should a standard be established to discriminate between issues that must be solved during an open application window and those that could be postponed until a subsequent application window? Give an example."

The GAC had no comments on this. The Registries basically said that we should narrow our focus on issues where change in policy is required and where most of the community believes the issues have such significance that it should block the initiation of future application process.

As examples, we believe the last hour policy changes to the program, name collision, closed generic restrictions, Spec 13, may merit revisiting so that they could be properly reflected in the applicable policy. Issues that are not

matters of policy but warrant improvements should not be the focus of our PDP. ICANN staff should work with narrow implementation teams to address these issues without delaying the work of the overall PDP."

"Similarly, issues that may warrant policy revisions but need not impede a subsequent application process should be addressed on an ongoing basis through the policy development process. Staff are justified in blocking future applicants that are willing to proceed within the current framework."

And the IPC says, no, there should be a policy standard - or should not be a standard for policy issues. Operational issues, yes. And examples were mentioned above, financial crisis, etcetera.

Okay. Any thoughts on those? Okay, and then finally any other issues related to the subject, (unintelligible) on the Registries said no. And the GAC said, "Procedures for implementing new expansion should ensure and enable participation from all levels of stakeholders from the affected communities both empowering them to take part as applicants especially from underserved regions and to how the (unintelligible) say when they are legitimate interests that are affected by TLD applications."

And the IPC said, "Stakeholders need to participate fully as policy is developed rather than leaving the work to others and depending on ex post facto (unintelligible) to make changes."

Any last questions on that? These all seem to be related to predictability. I'm just trying to catch up in the chat here. I think there's still more discussion on the test - testing these out. Okay seeing no comments, I think we can jump to 6.

Six is fairly - is the topic about should the number of applications in total be limited or be limited per entity during an application window. And it seemed like that when we discussed this issue months ago the group seemed to be

leaning towards against application limits or a limit per entity. And it was (unintelligible) had agreed that establishing application limits are seemingly anticompetitive and possibly contrary to the original principles of competition. And it seemed not as being realistic.

So the first question says - basically asks about whether we should have a limit from a single entity. Should a limit for number of - limit on number of applications from a single entity. So for example, you had - the largest applicants were Donuts with over 300, you had Google with over 100 initially and others that had dozens of applications.

And at this point there's no comments to that from the GAC. The Registries do not support that. And the IPC also does not support that. And then the follow up was well, if there was a limit, how would you establish the limit? Since nobody agreed that there should be a limit there were no comments. Essentially there's no - the Registries basically said there's no rational basis for limits.

The third part of the question is, do you limit the total number of applications in the application window? It says, what mechanisms could you have to do it? And they - Part B asks what the total number of applications would be and C said what would be the mechanism. And in both of those you got the same responses from all three of the groups here, that is not applicable or that it was - there's no rational basis to do it.

And then since there was no one that believed that you should limit it, it said, well, how would that impact the fees and the GAC had no comments, the Registries said, "Regardless of the number of applications, ICANN standard is to look to the financial stability of the company including all applied-for an currently owned TLDs. There's no rational basis to change this."

And the Registries - or sorry the IPC stated that fees would have to increase as ICANN may have to defend itself against an antitrust claim. I guess this is

if they limited the number of applications. The - seeing no comments I want to ask is there any comments here? Does anyone feel differently than we used to or that the IPC and Registries - does anyone believe that there should be limits? Has anyone changed their mind?

Vanda had said - those limits not realistic at all, is for free competition and open opportunity to all who want to apply. So Annebeth asks a question, "Is it fair, Vanda, that those companies with a lot of money could afford to apply for many but newcomers have problems doing that? Wasn't one of the reasons behind opening up that there should be fair competition?"

Does anyone want to say anything about those comments? Kurt's typing. Others are typing. You know, I think Work Track 1 is considering how we do outreach and how to ensure that those that may not have the resources are able to apply. That may address Annebeth, part of your - part of your comments.

Okay, people are typing but I'll go onto the next one and then read the chat if anyone wants to step in. Next question says, well, is it - essentially would limits to number of applications in total or by a single entity would that be anticompetitive? GAC had no comments. The Registries said, potentially. We believe that limitations of this nature could prevent registries from succeeding through their (unintelligible) business model. And the IPC said, see the answer above, which (unintelligible) did view that to be anticompetitive.

Next question, do limits (unintelligible) applications for the application window and/or from a single entity favor insiders? Interesting question. GAC did not have an answer. The Registries say it's unclear whether this would be the case. We believe in an open unrestricted continuous process would be greatly beneficial to - or generally beneficial to insiders and the applicants alike.

The IPC said, if there's a closed window process similar to 2012 it would favor insiders but more broadly any process that is complex and subject to rules that can be gamed rule favor insiders. Going back to the chat, Kurt has written that @Annebeth, I think interfering with markets in a way to vet less financial applicants is not workable. I think your concern is best addressed by the applicant support question. And Rubens says, I think the competitive angle is per string. So those who apply for many are diluting their string low or high among many strings and making it actually easier for the focused applicants, (unintelligible) registries are examples of that from 2012 round.

Okay, any other questions? I mean, it seems like the - it seems like most of the group that's been speaking and made comments are not in favor of limits but, you know, some have noted that we should make sure that we should ensure fairness and an applicant support program and others to ensure that the process is not dominated by insiders and give opportunities to those that may not be insiders or those that may not have the sufficient resources to actually apply.

Okay, and then finally, some open questions. Are there any other overarching issues that we should be considering was asked of the groups. The Registries believe that the - we should narrow our focus to significant policy issues that must be addressed and defer other issues to staff to develop implementation guidance to better policy efforts that need (unintelligible) the PDP otherwise this process will be stymied both in terms of time and ability to reach consensus.

And the IPC has no further issues but may (unintelligible) reserves its right to provide future comments. And there were some additional resources that were submitted by different groups, take a look at in reaching our conclusions eventually on a number of different issues.

A lot of people are agreeing with Jorge so let me go back and see what his comment was. Jorge says, "The key is again having effective outreach and

interested stakeholders have a fair say vis-à-vis strings that may interest them, that community-based applications work and the applicant support program really work."

And everyone - I agree with that statement. I think that's right. Cheryl Langdon-Orr, "Annebeth, agree with that." Okay, I think we've made it through this document. I know we went a little fast but I'm glad we can make it through which will leave Avri and I and the leadership team with some good drafting work over the next few weeks to make sure that we come up with some principles based on the responses to this document and the discussions we've had over the last few weeks.

I appreciate everyone's feedback on this and patience throughout this process. And I want to turn it back to Avri.

Avri Doria: This is Avri speaking. Thank you, Jeff, thank you everybody. It's really exciting that we've actually reached the end of this reading. So at this point I'd like to - and I'd like to go to any other business. I have one piece of any other business that I want to mention before we close.

There'll be a poll on this issue coming soon. It's a scheduling issue. There have been several issue with the 3 UTC Monday meeting. The 3 UTC Monday meeting falls on Sunday night for a large sector of people. And that is maybe unpleasant for them. So what's being asked is to substitute that time slot for 3 UTC Tuesday. So the meeting would fall for the people in the minus UTC time zones, would fall on Monday night in the same time as it would have been on Sunday night but at least it's not breaking up their Sunday.

So we'll be doing a poll on that. And I just wanted to alert you all to look for that poll and get it in and basically we would just change that scheduled slot by one day. Any questions on that? If not, anybody else have any other business? I see nobody having any other business. I hear nobody having any

other business. I think it's wonderful that I could end this meeting six minutes before its time.

I wish you all a really, really happy holiday though I hope to see some of you at Work Track 3's meeting or hear several of you at Work Track 3's meeting. But otherwise, happy holidays, Christmas, Hanukkah, New Years, Festivus, whatever. So thanks a lot and see you in the new year for the most part. Thank you.

Cheryl Langdon-Orr: Thanks, everyone. Bye.

Michelle DeSmyter: Thank you again. The meeting has been adjourned. Operator, please stop the recordings and disconnect all remaining lines. Have a great day, everyone.

END