ICANN Transcription

GNSO New gTLD Subsequent Procedures PDP Working Group

Thursday, 08 October 2020 at 15:00 UTC

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TERRI AGNEW: Good morning, good afternoon, good evening, and welcome to the new gTLD subsequent procedures working group call taking place on Thursday the 8th of October 2020 at 15:00.

In the interest of time, there'll be no roll call. Attendance will be taken by the Zoom room. If you're only on audio, could you please identify yourselves now? Hearing no one, I would like to remind all to please state your name before speaking for transcription and recording purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise.

As a reminder, those who take part in ICANN multi-stakeholder process are to comply with the expected standards of behavior.

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Before we begin, I did notice one person joined with an incognito name. I'm just double checking really quick before I turn it over to Jeff that they did update their name. So, whoever singed in as the Internet committee two, if you could please rename your line, I would appreciate it. You can hover over it and select "rename."

So Jeff, with that, I'll go ahead and turn it back over to you to begin. Thank you.

JEFF NEUMAN: Thanks, Terri. Welcome, everyone. It looks like that person changed their name, so that's good. So, welcome, everyone, to our regular meeting during the pre-ICANN week. I know that there's a bunch of sessions—I think there's a session that occurs right after this one. So we'll certainly end on time, if not try to let out a little bit early so people can go to that.

The agenda is up on the screen, and we'll get into today a little bit on ICANN 69, what we're going to do during our scheduled sessions, and then we will get into kind of the heart of the discussion today on some of the comments raised in the board letter, which I think someone dropped in a link—Martin, thanks—to the document. So we'll spend most of our time talking about that.

But before we do, let me see if there's any updates to any statements of interest.

CHERYL LANGDON-ORR: Jeff, can you just check your audio? It's not just me, a number of us are getting very loud crackles in your audio line. Maybe Terri

might need to establish a different connection with you if needs be, because I don't know about anybody else, but it's going to drive me to absolute distraction. Paul's got a hand up, though.

JEFF NEUMAN: Yeah, so Paul, why don't you go ahead, and then I'll rejoin under my—

CHERYL LANGDON-ORR: That's fine. I don't know what you've done, Jeff, you're fine again now. I have no idea. Don't move. Stay like that without any movement for the next 55 minutes.

JEFF NEUMAN: Okay. I will not [inaudible]. Sorry about that. Paul, go ahead.

PAUL MCGRADY: Thanks. I'm glad the crackling was Jeff and not me. I'm up a mountain today with dubious Internet connection, so I'm glad that it was you, Jeff, not me. I have a small update to my statements of interest in that I have been appointed by the IPC as the policy coordinator. It is a voluntary position. I don't think it's a major change or anything, but worth noting since I did update my SOI.

I also did some other cleanup edits to put some things in the past tense, such as serving on the GNSO council for the IPC, that kind of thing. So that's my update on the SOI.

Jeff, I also had a question about the agenda. When we say we're going to go through these, are we doing like an informational read through today, or are we expected to jump in and react to what the board had to say at this point. Thank you.

JEFF NEUMAN: Yeah. I'll get into that. It's just more of an informational kind of— just introducing it and seeing [if we understand] what those comments mean. [It's not by any means a] definitive discussion on these comments but more of just let's make sure we understand it and if we don't, then [inaudible] we may have some access to some board members, and [inaudible] there's a crackling. Sorry about that. I don't know what that is.

CHERYL LANGDON-ORR: Yeah, you moved. You promised not to move. I think you may have to come in with a phone line.

JEFF NEUMAN: Okay. I'm going to have it call out to me number. Just give me one sec and I will do that.

CHERYL LANGDON-ORR: It's positional, because you're back to perfect again. So whatever system you're using, wired, if it's wired, then there's an issue, and if it's Bluetooth, I'm not sure how far away you are from your receiver but it shouldn't be doing that. Anyway, sorry, but with do need to hear you. Yeah, if it was a wireless mic, as Alexander's

JEFF NEUMAN: Okay, I'm on the phone line now. Is that any better?

CHERYL LANGDON-ORR: Crystal clear. Thank you.

JEFF NEUMAN: Good. Okay. Sorry about that. So, before we get into the heart of the discussion on the board of directors' comments, I just want to take a couple minutes to talk about—give an update as to what's going on with the public comments, and what we'll be discussing at the ICANN session next week.

You should have all gotten an e-mail from Julie yesterday, I think it was, that the first thing that we have is the—we know that originally, when the comments were submitted and you tried to view the comments, it was really difficult to view the comments, there were many issues with formatting of the spreadsheet, so ICANN staff has cleaned up that formatting. So if you went into that link where the public comments were, where it says to view public comments, you'll now still see a spreadsheet, it's still very long, but it's a little bit easier to read.

This is just something that we were able to do once the public comment period closed. But this is not ultimately the document that we will use. ICANN staff is putting together what they're

calling the public comment review tool, which will group all of the comments by topic and by position, if you will, and so that is ultimately the document we're going to use to help us understand what comments were received. But if you'd like to review the comments at this point, you can do so by clicking on the link to view the comments from the original public comment solicitation and you can go into the spreadsheet. It's still not the easiest thing in the world to view, but you can view it and you can also download that spreadsheet and manipulate it if you so desire.

The first part of the public comment tool should be out within a week, because we're going to use that to review certain topics at the ICANN meeting during our sessions. Those topics are listed in the e-mail that you got form Julie, so the public comment review tool should be done with regards to applicant support, community applications, limited challenge appeal mechanism, the registry voluntary commitments, application change requests, auctions and private resolutions, predictability, and closed generics, and then shortly after that or within a week after that, I think, we should have the rest of the topics in that public comment tool. Again, it'll be a much easier document for us to follow and us to base discussions on.

Before I go any further, let me just ask if there's any questions on that. Okay. So we're aiming to get that out as soon as possible, at least for the topics that are at the ICANN meeting or that we'll be discussing at the ICANN meeting. And with that, just looking to see if there's anything in the chat or any comments. I'm not seeing any.

I do want to say that we did have a good amount, substantial amount of comments. There were obviously a number of comments from the stakeholder groups, constituencies, advisory committees, etc., and there were a number of comments from individuals or organizations as well. So there's a lot of good stuff in there. I have not yet made my way through all of those comments or even most of those comments, but we will do so starting next week,

But what I also want to say before we leave this topic or this area is that there's a lot of work for us to do from now until the end of the year. We have to finalize this report, we have to send it to the council by the end of the year. There is a workplan. I don't know if we can post it or send it out—or both, actually. Sorry to put Steve—I don't know if it's Steve, Julie or Emily that is in control of the screen, but we do have a workplan, and what you'll see in the workplan is that there'll be a number of topics that we will discuss during each of our working group calls and what we're going to expect when we get to those calls is that you will have thoroughly reviewed the public comment tool for those subjects and that we're going to not go through every single comment word for word by any means, but we're going to start those calls and those subjects by asking if there are any questions about the comments or anything in the comments that you believe is either new information that would change our recommendations or that is information where there's, from whatever it is in the comments, a reason to look at that particular part of the topic.

So remember, this was a draft final report that went out, and even though we didn't take consensus calls, the expectation is that

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we're not planning on going in-depth into every single subject, especially those subjects that got very few, if any, comments or those subjects that got an overwhelming support from the community. So we will provide that workplan. It seems like there's an issue with getting it up on the screen, but we'll send that shortly after the call.

Paul's asking, is this a new information standard of review? Yeah, Paul, I think—oh, there it is, thanks. So this is going to be— without having reviewed the comments, so this is kind of the expectation for now, but yes, it's really going to be, is there anything in the comments which we as a working group need to discuss that may change the view of the group? So it's not really going to be—and again, I haven't reviewed all the comments, so I can't say for sure that the comments say this or not, but we're not going to just do a rehashing of old discussions that already took place. So if someone put in their comments that this is new information but it turns out that we've already discussed that issue in detail, then we're not going to affirmatively—we as the leadership of the group are not going to affirmatively bring that up for the call.

So, what we as the leadership are planning to do is that before each call, we will send out the areas within those topics that we think, as the leadership team, bring up discussion points. Now, of course, that's going to be just what we, the leadership, think, and we'll start out each call asking the participants whether there are other parts of those comments that we really need to discuss.

So again, we're going to be much more strict in terms of the discussions that we have, and we're really going to be following

the guideline that this is not to rehash any old ground. Martin, go ahead.

MARTIN SUTTON: Hi Jeff. Thanks. I just wanted to clarify, because reading through a lot of the comments, the way that we formatted the questions and options to answer, there are quite a few that I observed through the spreadsheet response at least that seem to gather the same responses, either accept or no opinion, something like that. So, absent of new information or absent any objections to particular topics, do you foresee that any of these may simply be observed as that status, and therefore we may not need time to include them in certain working group meetings? And if that's the case, is there flexibility in this just to move forward onto the next topic? So, are you going to structure it so that we only need to cover those items in each of those meetings as people are [seeing] at the moment?

JEFF NEUMAN: Yeah, I think that's exactly right. So, where there are those areas—and again, having not gone through all of them, if there are areas where everybody either supports of can live with those areas, then yes, what we'll do before the call is the leadership will send out a note saying that we do not believe there are any substantive opposition to the recommendations or implementation guidance we made in this section, in fact, everyone supported it, or something like that, and then during the call that discusses that topic, we'll repeat that and ask if there's any disagreement with that assessment, and if so, what parts of that section or that topic

does this working group think we need to go over? So I think that's the approach we're going to be taking on that. Jim, go ahead.

JIM PREDNERGAST: Thanks, Jeff. Obviously, I do think this timeline is going to require some sort of flexibility, and as Cheryl said, a living document. What's prompting me on that is having read through the staff comments and the board comments, not having had a chance to sort through the spreadsheet, but those two sets of comments in particular are very instructive in some sections, directing us or asking us to go back and do more work on some topics. So our ability to knock out three or four topics in a 90-miunute call, I think, is going to be hampered by the amount of work I think we actually have to do once we get into these comments. So if you haven't read through both of those documents, I'd suggest people do that soon as they can, because it's a little daunting, what we have in front of us, in my opinion. Thanks.

JEFF NEUMAN: Thanks. And I have read through those. I think some of the— there's a bunch of comments, especially in the ICANN Org ones, where we can acknowledge those comments and then say that can be worked out during implementation, or we understand the comments and we as a working group can say we think we've already addressed it. There's different sections, and there are very good comments. I don't necessarily view a lot of those comments as being in opposition to any of our recommendations or implementation guidance, just some of them asking for some more detail, and I think in a lot of those areas, we can decide as a

working group whether we want to provide that level of detail or whether we send it on to the implementation team saying we need you to look at these ten things, or whatever it is.

So, as we come across them—and we're trying to talk in generalities, but it doesn't mean we need to necessarily discuss all of these in detail. I think some of the board ones do, and I think that's why we're getting kind of a head start on that today.

So, this draft up here, by the way, I know that it said it's a flexible document. What's not flexible is the December 23rd. So whether topics can be moved around to different days, that December 23rd is a hard date that we have to meet. There's no reason why we can't meet that date, and we're going to do everything in our power to meet that, which is why I think, again, it's going to be incredibly important for everyone to make sure that they read the public comment tool, if not the full comments, on that area, or those areas that we're discussing, before the call, and also to make sure they come prepared to indicate areas that they think we need to discuss that are above and beyond what the leadership has indicated.

And I take your point, Jim, that we need to be careful about adding too much to implementation, understand, but we will meet this timeline and we'll have to do whatever work it requires to meet it. I know we can do it.

Okay, any other questions? By the way, we will put a version of this, either we'll send around a link to it on e-mail or we will send a PDF version out so you can all see it.

Okay, let's get into the board comments. The link, I know, has been posted in the chat, but also in the agenda, and we're not going in-depth on each one of the board's comments because a lot of these comments can be grouped in with the particular sections when we get to those, but what I'm going to highlight here are those comments that either were not raised or not likely to have been raised by others, or comments that were at a much higher level, dealing with ICANN as an organization or ICANN's bylaws, or something to that effect where we really haven't necessarily discussed to a great deal.

And again, we're not solving the issues today, unless it's easily solvable and we all kind of agree, but the goal is really to make sure we understand them and can get clarifying information in areas that we need clarifying information.

Okay, the first area on there is on predictability, and it is section— well, that's under topic two and it's on the second page on C, which the board says, with regards to the proposed Standing Predictability Implementation Review Team (SPIRT), the Board encourages the PDP WG to consider whether there are established processes within the GNSO (or within ICANN's multistakeholder model) that might serve the intended role(s) of the SPIRT, rather than creating new ones.

From my perspective—and again, there may be differences of opinion, I do believe that we have already considered those. I do believe that we thought about whether it's kind of the council to do it or an official—whether it would be through like one of the policy implementation framework recommendations that were added, like the GNSO guidance process and the EPDP and stuff like that.

So I'm of the view that we did discuss this, we did consider it, and because of the fact that—again, this kind of came out through our discussions on this topic, because councilors are really elected to be policy managers and deal with policy issues, much of the work of the SPIRT is not envisioned to be that policy work or policy management and we had decided as a working group that there was really not an existing mechanism that did what we wanted it to do.

So I just wanted to throw that out there and get some views from the working group. Anne, go ahead.

ANNE AIKMAN-SCALESE: Yeah, Jeff, I tend to agree with you that these processes were considered, kind of at length, because I remember early on, I was really pushing for sticking with the processes that were already in place. So I think the working group has spent a great deal of time on this.

I would want to emphasize however that there is a section talking about the existing processes being able to invoke those at any time and the council processes taking precedent over the SPIRT team and that that needs to be moved from implementation guidance to recommendation. And I believe that this would help address the board comment. Thank you.

JEFF NEUMAN: Thanks, Anne. I think we'll certainly get into that latter point when we talk specifically about the recommendations and implementation guidance. And I know that was a comment, I

believe, from the IPC. So I think that's certainly worthy of discussion and to see if the working group wants to do that. Christopher, go ahead.

CHRISTOPHER WILKINSON: Thank you. Good afternoon. Just to say that I don't have any particular brief for the board's comment one way or the other, but I maintain my earlier point that the link between the SPIRT and the GNSO council should be broken. You can't have the SPIRT evaluating and commenting and trying to implement aspects of the proposed policy and have the GNSO council ruling on whether or not to accept its recommendations.

JEFF NEUMAN: Okay. Thanks, Christopher. I'm sure that'll come up in the comments as well. I want to add here, although today we're looking at the board comments, I do want to just do a kind of callout—I know the GAC made some comments on this predictability, and one of the things that they wanted us to do was to help them go into or discuss in these recommendations, implementation guidance, what the role would be or what we envision the role of the GAC and other areas or parts of ICANN would be in this group. So I think that's something we definitely need to spell out.

Go ahead, Paul.

PAUL MCGRADY: Thanks, Jeff. I guess I read this particular comment from the board as asking for something slightly different. I think that they were asking us to tell them that we really took a good look at all the other alternatives. Maybe other people feel like we did, but I don't know that we built out what a non-SPIRT strawman would look like to see if it would in fact work.

I'm not saying that we have to do that, because I read the board comments in the same way that I read a comment from an individual commenter, I don't think the board should have its thumb on the scale any more than anybody else, but I do wonder whether or not we can say we actually dug in and looked at everything and decided the SPIRT was the only way to go.

That having been said, if everybody else feels like we've done enough, then fine with me, but I'm just reacting to how I'm reading this. Thanks.

JEFF NEUMAN: Thanks, Paul. I think definitely early on, and I'm talking like several years ago, we certainly looked into—I think we came to agreement that there should be some sort of advisory-type group that could help ICANN, and early on, we did look at different kinds of mechanisms whether that could be something cross-community wise or something that fell under some kind of ICANN board or staff kind of group, and we did discuss different ways pretty extensively, and ultimately because the GNSO—Christopher's comment notwithstanding—was or is the entity that's responsible for policies over new gTLDs, or policy development, and because one of the potential outcomes of the SPIRT process is to make

sure that it's referred to the GNSO if it does involve policy, that it made sense to be a GNSO activity. Thanks. And I notice there's comments going on there.

The other thing which kind of jumped out at me was the comment E, in that same section, which was essentially, what is the role of precedent? So once the SPIRT team does make some sort of recommendation and let's say it's either accepted by the GNSO council or the GNSO council decides it's okay to forward on to the board through what we spelled out in the whole process, to what extend does that set a precedent for that same issue raised in the future? And I would think—although please weigh in with your thoughts—that we would want, in order to create predictability, which is one of the main goals of all the work that we've been doing, is that once there's an outcome from the SPIRT team—and again, it meets all the whole process, again, that the GNSO has either accepted it or they have decided to let it go, that that would—or should—establish some sort of precedent so that we're not relitigating the same issues over and over again and so that we can give participants in the process, whether an applicant, an objector or whatever, some predictability.

Paul, go ahead.

PAUL MCGRADY: Thanks. So, I guess for me, this was sort of a weird question in that there's sort of an automatic precedential effect in the sense that everybody involved in ICANN either should be, or is, very well aware of what's happening to other applications and other kinds of issues, and people take advice based upon what's happened in

the past and they do their own risk analysis and will either decide to do something or not do something.

The idea of formal precedent, to me, first of all, doesn't seem necessary based upon how the community actually functions, but secondly, all these situations are [inaudible], so the SPIRT may come to a decision one way on one registry that's doing one thing, and may want to go to a different way for a registry that's doing a slightly different thing even though they may fall within the same subject matter.

So again, precedent without any sort of idea about how that works and whether or not it's binding and what parts of it are binding, and how much effect the non-majority opinion on the SPIRT opinion document, how much weight that's given, we're just sort of now going downhill into a big morass that I don't think is going to add much of anything.

So my reaction to this is, gee whiz, everybody should be aware of everything that's happened. For example, if we don't reach a conclusion on closed generics, there won't be one. That doesn't mean that what happened in the last round isn't interesting and important for closed generic applicants. Whether or not there's capital P precedent doesn't matter, there's history.

So I don't know that I would want us to get down the path of having anything more than opinions that could be easily found and read. Thanks.

JEFF NEUMAN: Thanks, Paul. I take your points on the facts and circumstances. I do want to, however, just reiterate the important point that the SPIRT team is not—and it does say this in the text—meant to look at one registry in particular but is meant to be looking at overall issues. But your point still applies that facts and circumstances with one group of applicants may be very different than facts and circumstances around another group of applicants.

So let me go to Anne and then Greg.

ANNE AIKMAN-SCALESE: I'm trying to agree with Paul about the fact-specific stuff, but I think there's a more important point here in replying to the board, which is SPIRT does not make decisions, and there's a reference to precedent and a body of decisions. SPIRT can advise GNSO council, but SPIRT can't set precedent. That's just not within its power to do. I think if we're going to be consistent about this, [we're going to have to] respond to the board that precedent cannot be set by the SPIRT.

The other thing I had wanted to comment earlier on when Christopher intervened is that the GAC comment mentioned very specifically, it sounded to me like it was phrased like a desire to have a GAC liaison to the SPIRT, and I think we have to keep that front and center in our consideration here as we go forward with analyzing public comments.

JEFF NEUMAN: Thanks, Anne. I think what you raise on the advisory point is actually right, and it is the way we should probably word

something back to the board, which is precedent's not set by the SPIRT team, it's set by the GNSO that accepts it, or ultimately the board that accepts it, not by the advice that's given by the SPIRT team. I think that's a really good distinction that needs to be made, and I think that makes a lot of sense. Greg, go ahead.

GREG SHATAN: Thanks. A couple of things. First, apologies, but maybe I'm confused. Since this is an implementation review team in addition to bringing issues back to the GNSO council, would it not be deciding implementation-level matters? Policy obviously goes back to the GNSO council, as with other Implementation Review Teams, the implementation comes from the Implementation Review Team, it doesn't go back to the council. So that's kind of one point.

Regardless, I think on the issue of precedent, maybe it's precedent with a small P, or maybe reliability, but I think actually the word "predictability," which is in the title of the SPIRT, indicates that I would hope that the SPIRT is intended to maintain or increase predictability, which doesn't have to rise to the level of formal precedent in the sense that it could be cited or used to bind the group on further discussion, as Paul notes, it's heavily fact intensive, but it seems to me that if there's absolutely no value to prior discussions, everything starts from the beginning, that would actually be kind of an absurd circumstance. So I think that while there's maybe the answer to this in a sense is at least on those things that aren't going back to the council, that the essence of the group is to increase predictability and therefore there should be an ability to build on prior decisions, but not in the sense of creating a

body of precedent that can be used the way lawyers use—and abuse—precedent.

JEFF NEUMAN: Thanks, Greg. I think it sounds like we're all on the same page, and I think we're all kind of agreeing with each other about the importance of predictability, but there's going to be facts and circumstances, and at the end of the day, it's not the SPIRT team that necessarily—the SPIRT team is providing its input which ultimately needs to be accepted either by the GNSO council or by ICANN staff or by board, depending on going through that whole flow. That decision to accept the input is really what would, if anything, set the precedent. But at the end of the day, we're all striving for predictability.

I think Cheryl, just to call out what Cheryl has responded to Paul, just for the call, is that we're not responding individually to commenters, but two things. One is that we are going to record our thoughts in the public comment analysis tool for the record, and we may choose to address some of these in a rationale section or add these to the rationale section of these topics. Not for everyone, but for ones that we think really should be added in that section because it was so important that we thought we would address it. Does that make sense?

Okay. Thanks, Paul. Thanks, Greg, Anne, and everyone else that's weighted in on this. I know the list is on the agenda and I need to pull it up. I think the next one is on RVCs, if I'm correct, and I think this actual comment comes up in different forms throughout the board's comments. So it appears here, and it

appears, I believe, in the string similarity section or something similar.

So the concept here is that the board is asking us whether the board can actually do some of these things under its own bylaws. Specifically, the board is worried about the notion of content regulation. And while ethe existing PICs in the existing registry agreement were specifically grandfathered into the bylaws, there's still an outstanding question as to whether there can be additional either PICs or even enforcement by ICANN of voluntary commitments, whether that would amount to content regulation that goes above and beyond ICANN's—what they're supposed to do under their bylaws.

I found that this is an interesting one, because I found it odd, at least personally, that the board would ask us whether we think it's okay within their bylaws, because ultimately, that is not a determination that a working group or even a council or even the ICANN community necessarily makes. That's a determination that's made by ICANN as an organization, the staff and the board of course, that would make a determination as to whether something fits within the existing bylaws.

All that's a long way of saying that I'm not sure that that question's even relevant for us to attack. What we could say is whether or not it is within the scope of the ICANN bylaws at this very point in time, this is something we the community want you, ICANN, to do, and if you don't think it's within your bylaws now, then perhaps we need to take a look at the bylaws to make sure that you can do it.

I think it's basically saying, look, board, this is what we want you to do. It's not our job to tell you whether it's legitimate under the bylaws. It's your job to figure it out and to figure out how best you can do what we're asking you to do. And if that means revising the bylaws, then that's your decision.

That's kind of the way I see it, but I did want to reach out to Becky and Avri as kind of the board liaisons to this group to get some thoughts form them, because I don't know, A, why they're asking us to make a legal determination as to whether it's okay under their bylaws, or B, whether they've actually done that analysis and they're coming back and trying to tell us it's not within, or C, does any of that even matter? Can we just not tell ICANN—again, assuming there's consensus behind these recommendations— that this is something the community wants you to do and if you need to do things differently within your bylaws, then that is your responsibility and your issue, not our issue. And I agree with Paul that we need more information on the board on what's behind their concern. Anne, go ahead.

ANNE AIKMAN-SCALESE: Thanks, Jeff. I'm a little bit confused by this comment and a couple of others related to content concerns, because just quoting from their own language, this exclusion was brought about in large part by concerns from some in the community that some of the PICs within registry agreements were outside of ICANN's technical mission. And then it says community did not wish to invalidate those contracts through the revised mission statement. But actually, I think this isn't so much a gray area because not wishing to invalidate contracts doesn't define whether you're inside or

outside of the bylaws. To me, if they continued under those contracts after the revision of the mission statement, they are that far into the PIC arena and had accepted that responsibility since the transition, I hope the board's not saying we've been in violation of our bylaws ever since the transition. I hope that's not what they're saying.

So I think the point is a little bit less the issue of, "Hey, we don't care what your bylaws say, here's what we want you to do." I don't think that's the point. I think the point is you've already interpreted your bylaws to include PICs and the horse is out of the barn on the PICs is my point. Since the transition, they didn't invalidate any of the contracts, and they are as far in as they are with respect to PICs. Am I wrong?

JEFF NEUMAN: Yeah, thanks, Anne. I don't think you're wrong, I just don't know if that's an argument we as the SubPro working group can or should make, because we're not really chartered to interpret the bylaws, but I understand what you're saying and I don't disagree. I just think that the bylaw analysis is not ours to do.

ANNE AIKMAN-SCALESE: Just a quick follow-up is that it's also not our role to say "Here's what we want you to do, change your bylaws accordingly." That's not our role either.

JEFF NEUMAN: Yeah. So thanks, Anne. I think you're right, and I shouldn't have probably said that second part. All we're saying is, look, this is what we want you to do. You guys need to figure out how to do what we want you to do. Right? Whatever that means for them, we're just telling you what we as the policy group and as the community—again, assuming we get consensus behind this, we're saying this is what we want to happen, period.

Susan, go ahead.

SUSAN PAYNE: Thanks, Jeff. Just to react really quickly to what Anne said, first of all, Anne, I don't think—or certainly, I didn't read this as them saying the existing PICs in the 2012 round of contracts are a problem as much as new, different provisions that might get adopted into a next round.

So to the extent, for example, that we've got the safeguard PICs that came from GAC advice and to the extent that they carry on into future round registry agreements, I think the board feels like they're fine with those, they're grandfathered, but the question is more about if new restrictions are being agreed by registry operators.

And I do think it's incredibly important both to get the input from the board members on this, but it may be that we actually also need to formally request some legal advice on this because much as I would love to say this is not really our role and responsibility, it seems to me that we've crafted a really careful sort of process to try to minimize and reduce conflict and have ways for registry

applicants to deal with conflict by voluntarily adopting restrictions, and if what the board is telling us in their slightly less than blunt language—it would be nice if they were absolutely upfront and clear on what they're saying, but what they seem to be saying is if you make these recommendations, we're not going to be able to do this. So a whole host of what they're planning to recommend falls apart. I don't want that to happen and I don't think any of us want that to happen. But we can't just make recommendations which are then going to be put in the bin because the board says they can't do it.

JEFF NEUMAN: Yeah. Thanks, Susan. Those are all good points. I guess at the end of the day though, if we went and asked for legal advice—and I think it's a good thing that we should be discussing—the legal advice would only be interpreting it in terms of the existing bylaws, and so I would assume that at the end of the day, legal advice would say they can change the bylaws, there's nothing that would prevent the changing of the bylaws to allow this. So they could say, yeah, I guess it wouldn't be allowed under the current bylaws, but they can change that and they have a process for changing it. So it's really up to the board as to whether it wants to take it on or not. But I certainly agree with what you said, a lot of the way that we've proposed resolving conflicts does have an element of enforcement that's necessary, and that enforcement needs to be done by ICANN, and we need to know if they're willing and able to take it on. Greg.

GREG SHATAN:	Thanks. There's an awful lot of interpretation that's kind of lying behind the board's statement here. It's very couched language, and I don't necessarily agree with every little thing that they've said about how this works. This is their interpretation and it's not saying that the PICs were in fact outside of ICANN's mission, and ICANN's mission with a capital M is not necessarily the same thing as saying that they're a technical mission. So there's really a ...
	And the whole issue of content regulation, regulation is defined in the bylaws as imposing rules and restrictions on entities. So something that's in a contract is not a regulation. Whether ICANN can address content issues is a separate or related issue to that, but it's not the same issue. So I think that one short answer we could give to this is that while we haven't considered it in detail, we believe that ICANN can enforce PICs in their agreement.
	So I agree that we're not really mandated to do this, we should have an understanding of it, we could put together a group that could consider it, or we could simply say that as we see it, ICANN should be able to do this under the current bylaws, and perhaps if not, then the bylaws should be changed. But they seem to be trying to run away from PICs, which is kind of how I read this in-between the lines. And I don't think that was the intention or the effect of the changes in the bylaws, which I was heavily involved. Thanks.
JEFF NEUMAN:	Thanks, Greg. So I think this is something that needs further discussion I think as an action item. We'll reach out to the board

liaisons to get some more context for this, and I'll put some of my thoughts in and the leadership's thoughts in an e-mail. I'm a little reluctant to get into an analysis of whether something is or is not in compliance with their bylaws, because that's more of a legal determination at this point, but I am comfortable with saying this is a community-developed, bottom-up group that's making this recommendation, and because we're making this recommendation and a consensus the community agreed, we think you should do it and basically sending the message that you need to do whatever you need to do to make this happen. Because again, at the end of the day, ICANN is a private entity, they're not a government, and they're governed by contracts, so in theory, if the community wants ICANN to do something, they can find a way. Of course, it's all predicated on the community wanting it done. Anne, last comment on this, and then I want to move on.

ANNE AIKMAN-SCALESE: Yeah, Jeff, I think that it's probably not unreasonable to look at all of the board's comments as a risk averse set of comments and trying to control risk. Later, they say if you don't modify the ability to sue them, they may not be able to go forward with the new gTLD program. So from the standpoint of the board, controlling risk is an important thing to do, and this, for them, I think is another exercise in limiting risk.

But in the history of the PIC DRP, PIC dispute resolution process, it was originally conceived as an independent panel. And in terms of just solutions as opposed to battling legal opinions, I think that the group should consider addressing placing the PIC DRP outside of ICANN into an independent panel. There were drafts

early on that that's exactly how it was supposed to be, rather than having ICANN staff enforce PIC DRP. Thanks.

JEFF NEUMAN: Thanks, Anne. Okay, the second issue that comes up under the voluntary commitments is the first time we see sort of—they want our guidance on how to frame public interest. They want the PDP working group to give more clarity on how to frame public interest in the context of a PIC and the PIC dispute resolution procedure.

So we did spend a lot of time talking about this, and I think we also concluded as a working group that, no, we weren't going to get drawn into defining what's in the public interest and what's not. In fact, that was the whole purpose of establishing what we now call registry voluntary commitments, is because we viewed it more as resolving conflicts that may arise and that ICANN should be enforcing how those conflicts are resolved. And whether it "meets the term public interest or not," it's still something by contract we as a group wanted ICANN to do.

So I sort of see this as trying to take us down a rabbit hole, which I don't think we need to address here. Now, we may need to address it in closed generics, but I don't think we need to address it here. But that's, again, just kind of my view. And looking to hear from others on that as well. Doesn't have to be today.

The next issue I kind of wanted to get at, skipping around a little bit because a lot of the board comments can just go into the particular sections and they're not high-level comments, but this one here with applicant support, topic 17, ICANN is concerned as

an organization because they're not a grantmaking or grant-seeking organization, and that could have an impact on their tax status. And by making them coordinate this program, we may be putting them into a situation that requires some changing of the organization.

That said, ICANN states that—and this comes out of the auction proceeds recommendations, is basically what they're saying here is, can we put all of this under the category of pro bono assistance program where they are facilitating the introduction of players or potential funding partners to the prospective [entrants?]

So this is not ICANN giving funding directly but rather ICANN just kind of playing a passive role. I thought that's kind of an interesting thought. I don't know. One question I want to ask the board is, well, you did give out "grants" in the first round. Was that not a concern, or did you just do it and now you're kind of going back going, "Oh, we probably shouldn't have done that?"

But at the end of the day, applicant support is a huge topic or huge issue for the community, and that will involve not just facilitating the coordination of applicants and providers, that is part of it, but will also need to grant monetary assistance where appropriate. So I'd like to know a little bit more of what's behind this. Paul, and then Cheryl.

PAUL MCGRADY: Thanks. I didn't read this as saying they couldn't be a grant-giving organization. In fact, I think that was the outcome of the cross-community working group on what should we do with what's left of

the auction proceeds of the last round after the ICANN board took their chunk.

So ICANN is setting itself up, I think, to be a grant-giving organization. I think their concern is being a grant-getting organization, an organization that goes out and asks third parties for money for things that ICANN wants to do, which is something they've never done. They've always lived on end-user taxes and registry taxes, right?

So I think it's not so much that they are worried about giving money away, they're worried about having to change how they're set up so they can go out and ask for money. Thanks.

JEFF NEUMAN: Yeah. Thanks, Paul. I didn't think of it that way, but I think that that's important, and I think this is another good area to ask the liaisons to give us a little bit more—whether it's the way that you interpreted it or I did, or potentially both. We should get some more context for this.

Go ahead, Cheryl.

CHERYL LANGDON-ORR: By the way, I read it exactly the way Paul has read it, that it is saying, rather than funding partners to help financially support the applicant support program, they were concerned that that would mean seeking grants. So I read it the same way as Paul does.

The pro bono assistance program, again, the initial—works for me of course, but the initial intent when the first applicant support program was put together was indeed for ICANN to act as a point of facilitation, to not do beyond that. So I think we need to look at what the intent was of the original applicant support in these aspects, as well as recognize that it doesn't mean it can't change, but that this may very well fit into exactly what they said here.

But ICANN isn't seeking funding partners to actually financially support ... I think that was poorly written by us, right? Because what the money part ICANN is doing is giving a discount. It provides up to, insert a number, $1 million, of what it won't be charging to properly vetted and successful applicant support groups. It's not giving any money as a grant-giving organization at all.

So I don't think we even need to think about that. What it is, I think, concerned about, is trying to find partnership to in some way financially support any part of the applicant support program, and I think that is in fact an issue. It may not have been well written enough by us and we could explore the pro bono assistance program quite successfully. Thanks.

JEFF NEUMAN: Thank you, Cheryl. I agree that we could have certainly written that or should have written that better, and I agree that we need to take a look at the pro bono assistance program. So maybe I made it into a bigger issue than it actually is. So I take that and I think that's good. Others are agreeing. Cool.

The next issue is, I believe, on the terms and conditions. No, sorry, it's on the closed generics. The important part I want to just point out here is essentially, what ICANN is doing is at the end of the day, punting it back to us. What I took out of this was that they were basically saying that the board will ultimately make a decision of what's in their best interest based on all of the comments and everything that comes in, but they were not looking for us to be hamstrung to have to put a proposal together that states that it has to be in the public interest and here's how. Of course, we can do that, and that may be where we end up. But what they're saying is that their resolution was not meant to dictate any boundaries around any advice that we may choose to provide them.

So I thought that was interesting, because in essence it's almost an admission that they did not accept the GAC advice. But I think it's important for us to just say we're sort of free to recommend whatever we want to recommend and then at the end of the day, the board will take in all the input and decide what it thinks is in its best interest. So I found it a little helpful but it didn't answer ... It sort of answered our question.

Okay, the next one that we had on here I believe was on the strong similarity, and I believe it's also related to the content, so I'm not sure we need to necessarily go over it other than to say that this is related to the discussion of reliance on PICs or voluntary commitments, or whatever we want to call it. I think we put it in the category of PICs to emphasize that it's mandatory and needs to be enforced. Not that the voluntary PICs don't need to be enforced, but there could be some greater flexibility with voluntary

	PICs as opposed to the—sorry, with the registry voluntary commitments. So I think we sort of put it in that category, but I see this as the same issue as the other section on PICs. Paul, go ahead.
PAUL MCGRADY:	Thanks, Jeff. Certainly, this is one of the places where the PIC issue is peppered through the document, so hopefully, as you intend to ask for more information on that, that will also inform this. But I did think there was a nugget in here that maybe we should start letting percolate, which was I do believe, if I remember from reading it, they were asking for examples about how use cases affect the confusion analysis. Am I misremembering that? And if they are asking for that, how do we respond to that? Do we need to sit around and think about five or six examples of how a similar use case would prohibit but a dissimilar use case would not prohibit and then put those in implementation guidance? How do we deal with that? Thanks.
JEFF NEUMAN:	Yeah. I'm not 100% sure. I'm going back to section A. I don't know if this section was the one that had use cases. I remember the predictability model certainly had—they were asking for use cases, which we did give in our rationale section. Just reading over section A again.
PAUL MCGRADY:	Yeah, it talks about different intended uses, criteria determine them, at the very bottom of A.

JEFF NEUMAN: Got you. Okay. So this, if we give them some criteria to look at as to different intended uses, my guess is that it would go into the rationale section as examples. Potentially, if we come up with good objective criteria, I could see that going into the implementation guidance section, so that is something we definitely should look into doing going forward. We'll note that.

The next part, moving on a little bit, I'm not sure where the next one is. Do we have the list, or is that where we kind of stopped? Okay, IDNs. So on IDNs, there are some comments here that I think they wanted us to look broader as to all of the other processes that are going on right now and to make sure that we've either incorporated those into our recommendations, implementation guidance, or if not incorporated, whether we kind of make a statement that we will yield to those, I think, is one of the points of this section. And then they want to clarify, for example, what we mean by IDN tables that are pre-vetted by the community, and so this is actually part of a much bigger discussion that's going on within the IDN community, and in fact is part of a comment period that's going on now. So, not sure there's overall issues in this one, but certainly, we should be looking at that in the context of everything else that's going on on this particular topic.

All right, I think 29 on name collisions—I'm not sure this is on the list, but I do want to just sort of mention that they'd like us to provide some details on how future NCAP study results should be dealt with for future rounds, so they want to know whether this needs to initiate new policy processes and how would such

processes affect ongoing rounds. I think we sort of, maybe not in this section in name collision, but in other areas where we've addressed changes that need to take place, if there are policy changes, they need to go through PDPs, but we did make a statement in there that to the extent that it materially affects an applicant or the way things go forward, it needs to be actually saved for the following round as opposed to implemented midstream.

I found that on topic 30, GAC consensus advice and GAC early warnings. It says, the Board is committed to working closely with the GAC to encourage the issuing of advice prior to the finalization of the Applicant Guidebook. So I think that's a positive sign. Of course, we'll come back to this in detail when we get through the GAC comments and comments from others in the community on this particular section.

Okay, on community applications, this was interesting too, again, sort of related to the content regulation—not sort of, it is, but it's basically saying that they want to make sure that they're able to enforce the contracts with communities but also not get into content regulation, and so at the end of that paragraph, they say the PDP may want to review the impact this provision might have on ICANN's ability to enforce the content of community TLDs post-delegation.

Again, this is all about how they're framing the issue. I'm not sure we're asking ICANN to enforce any content restrictions, I think we're asking ICANN to enforce what a registry has voluntarily agreed to. And I know that's kind of a subtle distinction, but it may

be the way that the community—that we want to respond. Paul, go ahead.

PAUL MCGRADY: Thanks, Jeff. This was a really interesting one, especially because if the ICANN board is hinting that they can't restrict TLDs to community applications, I have no idea how they could ever restrict a closed generic TLD. So this was really interesting because I think it just sort of splashes over into lots of other topics.

But there was one thing that I really wanted to point out and get maybe some reaction. It is in the last sentence of 34(A), the board believes clarifications are required in order for the board to assess whether it is in the best interests of ICANN and the ICANN community to proceed with CPEs in the next round. Does that mean that they're considering not having community applications at all, or does it mean that they're considering that maybe CPEs are a dumb way to figure out whether or not something is a community? Or something else?

Did anybody else understand what this sentence was meant to be about? Thanks.

JEFF NEUMAN: Yeah, Paul, when I first read it, I thought the same as you, that they were sort of wanting us to do away with communities, and because they got so much grief for evaluating or the evaluators that have evaluated the communities, and so it does sound like they want to be relieved of that burden. But I don't see the working group as heading in that direction, especially if the ultimate end of

day contention set is resolved ultimately with an auction, I think there's certainly a desire from ICANN constituencies and stakeholder groups that there should be some deference given to those that qualify to be communities. Justine, go ahead.

JUSTINE CHEW: Hi. I think [in answer to] Paul's question, I read as the board not disagreeing or not wanting to possibly remove community applications but they're questioning whether CPE is a good way to resolve contentions or community-based applications because of all the complaints that arose out of CPE determinations in the 2012 round.

I think it's also symptomatic of the fact that our recommendations are too high-level and not detailed enough or doesn't have sufficient detail that give people reading it some comfort that things are going to change with CPE. That's what it needs.

JEFF NEUMAN: Yeah. I guess, thanks, Justine, and certainly, it's come up on the list here in the chat that we need to get some clarification from Avri and/or Becky on this. And yes, to the extent that they can be available for a future call, we certainly should try to get them at least to walk through these particular issues.

I do note that we have about five minutes to go, so I think this is a good area to stop. I don't think there's many more topics we would need to go through from the board, so I think it's a good area to just end the call. Is there any last questions or comments?

Good, Julie says this is the last topic. All right, so just to remind everyone, the next meetings will be during the ICANN meeting. It'll be on Wednesday, October 14th, and you can find the two sessions, the times, on the ICANN schedule. They're essentially back to back. There'll be a short break in-between, but they are back to back. I look forward to talking to everyone then. Thanks, everyone, and enjoy the policy call from ICANN.

[END OF TRANSCRIPTION]