ICANN Transcription

New gTLD Subsequent Procedures Working Group

Thursday, 02 April 2020 at 2000 UTC

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JULIE BISLAND: Good morning, good afternoon, good evening. Welcome to the New gTLD Subsequent Procedures Working Group call on Thursday, 2 April 2020.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you're only on the audio bridge, could you please let yourself be known now? All right, I would like to remind everyone to please state your name before speaking for the transcription, and please keep phones and microphones on mute when not speaking to avoid background noise. With this, I'll turn it over to Jeff Neuman. You can begin, Jeff.

JEFF NEUMAN: Thanks, Julie. Welcome, everyone. I'm just looking at the attendance. It seems like we have a lot of people here, which is always good. Hopefully everyone is staying safe and healthy.

Today we are going to have a quick discussion or just a review of the work plan and process, and then go into applicant freedom of expression, followed by starting to talk about objections. Before we do that, let me just see if there are any updates, any Statements of Interest.

Okay, I'm not seeing any. Then let me just quickly – if I can ask ICANN staff to pull up the form. While they're doing that, also I want to remind everyone so that Monday's call, April 6, which you'll see the time again when we come back to the schedule, will be for two hours. So it's an extra half hour. I just wanted to remind everyone of that simply because it might be something that you could easily forget, but it should be on your invite for Monday's meeting. So hopefully, if nothing else, that will remind you.

With that, what we're planning on doing starting –

KATHY KLEIMAN: This is Kathy. Sorry, I can't raise my hand right now. Can I ask why we're doing two hours?

JEFF NEUMAN: Sure. Because last month or a month and a half ago, we decided to have two longer meetings in April and two longer meetings in May. Originally, we were going to do three-hour meetings but instead of doing three-hour meetings, because we've been making such good progress, we are cutting them down to two hours, which is only a half hour extra. So this is something we had agreed upon well over a month/month and a half ago.

KATHY KLEIMAN: Can I ask a follow-up question?

JEFF NEUMAN: Sure.

KATHY KLEIMAN: Great. Well over a month ago was an entirely different world. Many of us are managing many more tasks we were managing a month ago under very difficult circumstances. I've raised this objection before and I'd like to raise it again. I think we should be doing less, not more. Yes, we are the ones who are the most skilled in working online and we could move. We could do this full time, yes. But we're also the ones in our communities, in our schools, in our universities who are helping other people, and who are working with seniors, and who are doing much more. I'd like to object to the two-hour meetings and request we not have them. A month ago was entirely different. We should be slowing this down, I'm afraid.

JEFF NEUMAN: Thanks, Kathy. Alan has got his hand raised. Go, Alan.

ALAN GREENBERG: Just a clarification. Looking at my calendar, I have a one-and-a-half-hour meeting at 3:00 AM UTC on Tuesday. Am I in the wrong week? Ah, sorry. I am in the wrong week. There is one there. Okay, my apologies. Never mind.

JEFF NEUMAN: Sure. Probably I can answer your question.

ALAN GREENBERG: Glad to give you an easy one occasionally.

JEFF NEUMAN: Thanks. Kathy, I understand the world has changed in the last month and a lot of us have taken on some extra tasks as I have as well, shifting in the home schooling of my kids. I know it's not easy for everyone. It's not easy for me. It's not easy for a lot of people. We do record the calls, we do have participation online. The call will be recorded, you can always respond afterwards. We don't make definitive decisions on calls so you're free to respond afterwards. I appreciate the feedback and definitely supervise, but we're going to keep on the schedule that we have made.

KATHY KLEIMAN: Thanks, Jeff. I'll be objecting further in other forums, just to let you know, because I think our whole community has to realize that there is something else going on out there that's more important than we are. Thanks, Jeff.

JEFF NEUMAN: Thanks, Kathy. I'll also note that I'm – yes, okay. There's lots going on, there's a lot of other activities going on at ICANN too. In fact, I'm working on comments to the RPM group which has a

pretty quick comment turnaround time period as well. So there is a lot going on in the community and that's why we –

KATHY KLEIMAN: Thanks, Jeff. That one should get slowed down too. All of our comment period should get slowed down. What's going to happen in the next month, we can't even begin to anticipate according to the projections. Thanks.

JEFF NEUMAN: Yup. Thanks, Kathy. Okay, putting aside the next meeting on Monday, we are also going to be submitting around the draft final sections of the report or the final recommendations, and so we've created much like the EPDP has done. And as we've discussed before, we have created a form to fill out if there are any issues with the next version as it comes out. You'll see on this form, if you could fill it out and submit it by e-mail with anything that you cannot live with, we'd ask that you copy the applicable text into the chart along with the section number and the reason why you can't live with that text, and then just as important, proposed changes as to what you could do to fix that wording so that not only you can live with those but you believe others, given all of the discussions and the context, can live with as well.

The first portion of those will come out I'm hoping tomorrow and that will contain the sections on systems, communications, and – oh my gosh, I'm forgetting one. I just again looked at. Anyway, someone will, I'm sure, remind me what else it will contain, plus the sections on fees.

Anne, please go ahead.

ANNE AIKMAN-SCALESE: Jeff, I just wanted to follow up on the previous question related to what those final forms are going to look like because I'm assuming … And I sent out some suggested language during the last meeting related to the community evaluation and whether panelists can do independent research or not. I don't recall any further discussion on the list about my proposed language, but I figure if you get to community evaluation, if there's no consensus on the new language, you're going to post the old language. Is that a correct assumption? In other words, leave it at 2012 implementation?

JEFF NEUMAN: So if you're proposing new language to the last version and that new language does not get a good amount of support, I'm avoiding the consensus because we're not –

ANNE AIKMAN-SCALESE: Oh, no. I'm sorry. Just very quickly. It wasn't made in a Google Doc. You designated a smaller group, Paul wanted a smaller group. But because of the timeframe for things, I just sent it out to the list generally and there hasn't been any response. I'm fine if the language stays the old language, but I think it's Paul and Kristine and some others that want the new language. What I'm trying to establish is given there's been no response and no communication on it, what version are you posting for this final

comment process? Is it then the old version, because there's been no change to the old version?

JEFF NEUMAN: Thanks, Anne. Without knowing the complete context or seeing it, it would be the older version.

ANNE AIKMAN-SCALESE: Okay.

JEFF NEUMAN: Yup. But we won't get to that particular topic for a little while. We are still on some other sections that we have for final. Let me go to Alan and then Christopher. Please go ahead, Alan.

ALAN GREENBERG: Thank you. I hate to shock everyone, but there's enough going on in the world right now that I'm not reading every e-mail message. If the subject catches my eye, I may read it. Let's not presume that because something is sent out in e-mail, everyone has read it and either agreed with it or something. That's just not going to happen that way. Thank you.

JEFF NEUMAN: Thanks, Alan. I think the point was that we have language in the draft now that many people agree with. There have been some discussions where some people wanted to suggest changes and they sent those around through e-mail. It's the burden of the

person that's submitting those changes to convince others that that is better than what the existing language is. I don't think anyone is saying that it's your burden to read every single e-mail, it's the burden of those that want those changes to get acceptance for those changes.

ALAN GREENBERG: Jeff, I'm not contesting that. Anne said, "I sent it out and no one commented." I'm just pointing out that that might mean because many people didn't read it. Thank you.

JEFF NEUMAN: Okay. Thanks. Christopher?

CHRISTOPHER WILKINSON: Good evening, everybody. Thank you, Alan. You've said half of what I needed to say anyway. I support that concern.

First of all, I'm glad to be on this call because when I logged on, I could not tell whether I'm on this call or on a recording of last week's call. Secondly, could I advise the staff again that when you send a reminder or an agenda document, please send the Zoom link in that document? I've just spent 15 minutes searching my e-mail to find a Zoom link for this call. This is really upsetting at this time of night. It would be so easy to resolve the problem by posting the Zoom link with every reminder and agenda document that you send out. Excuse me, Jeff, for that diversion. Returning to your call, I have no idea what Anne was talking about. Thank you.

JEFF NEUMAN: Okay. Thanks, Christopher. Julie's got her hand raised. Julie, please go ahead.

JULIE BISLAND: Thank you very much. Thank you, Christopher, for raising that point. Actually, I also got an e-mail earlier, an inquiry from Kavouss asking the same question. Just a reminder for working group members, staff do not send the conference details with the agenda. Those are sent by the GNSO Secretariat and those are sent to a specific notify list. The reason those are sent separately is because the working group list has both working group members and observers. Observers cannot attend the meetings but they can receive the e-mails on the list. So the special notify list is sent just to those working group members who can attend the meetings. If we send it with the agenda then it will go out to the observers and others who are not supposed to attend the meetings. That's why we send them separately. We've done this for quite some time but I hope this reminder is helpful.

JEFF NEUMAN: Thanks, Julie. That is helpful. Christopher, is that an old hand or a new one? All right, I'm going to assume that's an old one.

Okay. Because not everybody read e-mails – I don't mean that in any kind of negative way – and nobody has time to read every single e-mail, I totally understand that, that's why we're asking that this chart be filled out with any changes or proposed changes to when we start sending around the draft final sections. This way,

we can keep a tally of all those changes. We can put the text and everything into a spreadsheet. Because it's difficult to follow every single e-mail, if we have all of the sections where people have things that they cannot live with in one spreadsheet, that makes it a lot easier. And people can check as they have time as opposed to going through all the e-mails. We do appreciate that fact.

Okay, let me go back to the work plan which is behind this document. Taking into consideration Jim's comments from last week, I want to make sure that to the extent we have anything to discuss in the work plan, we do it at the beginning of the call. Again, on the 6th we'll have a longer two-hour meeting. If we get through all the materials, if we get through objections – and actually Base Registry Agreement should be in there as well – if we get through that, those two subjects, then we can end that call as soon as we get through those. Let's see how much of objection we can get done today and the beginning of next time. And then April 9 we'll be finishing up Base Registry Agreement if for whatever reason we didn't finish, and then Security and Stability section, which we'll start that which deals with a bunch of things including name collision. It's one of those topics within the Security and Stability section.

This is just the kind of a read out of where we are. We have some TBDs in there starting in May, and that's if we haven't closed out the topic or if we like the issues at hand brought up earlier, if we need some more discussion on some of the topics that we went over already because they have a hole in it or something like that. We will fill those in, the TBDs as needed. Okay, any questions on

that? Christopher, your hand is still up, so I'm not sure again if that's new or old. Okay, Anne, go ahead.

ANNE AIKMAN-SCALESE: Yeah, Jeff, on the topic of name collision, I remember in the last in-person meeting that we had – and this is in-person meeting Montreal and you and I and a few others were in the Name Collision Analysis project meeting as well – we talked about trying to coordinate efforts in terms of the timing of their producing information and being able to exchange information with each other and cooperate, because the Board comment was with it offered an opportunity to cooperate. Previously in the schedule, I thought you had name collision scheduled for much later in the discussion schedule with the notion that we could potentially consider some of the material that the NCAP had produced. I think in fact, it used to be way later than April 20. So I'm wondering why we're putting that one up sooner in the schedule. Thanks.

JEFF NEUMAN: Thanks, Anne. You made me realize two things. Number one is that we're going to be talking on the 9th about security and stability excluding the name collision issue because we separated that out. That will be, as you just read, on the 20th.

Yeah, things have moved up because we've made more progress. When we had done the original work plan earlier in the year, we've made certain assumptions that topics would take us longer than we thought. Yeah, it was further down but the reason why it's April 20 now is because we've been making some good progress.

I will be sending out a note to the NCAP team, just letting them know that we were scheduled to talk about this on the 20th. If they want to participate, they can. They certainly have incorporated our input – well, not our input but the work that we've done, meaning the SubPro group in their Study 1 report, and so they make reference to it. I'm not sure, to be honest, how much the NCAP group wants to liaise with us as much as we want to liaise with them, but we'll certainly offer them the opportunity to participate and we would love them to participate. I just didn't get the warm and fuzzy the last time we had a conversation back in Montreal and after that they necessarily cared about the work that we were doing. But hopefully they do. We'll send them an invite and hopefully they'll show up.

Okay. Anne, is that a new hand?

ANNE AIKMAN-SCALESE: Yeah, Jeff. I just think that it would be wiser for us to essentially dovetail with the work there rather than just producing a result that says, "Okay, we're going to ignore what they're doing and they're going to ignore what we're doing." Because the Board asked us to cooperate, so I would actually strongly recommend that you move the name collisions topic to the end – as late as possible in order for dovetailing purposes. I don't know why it's not more toward the end. Thank you.

JEFF NEUMAN: Thanks, Anne. We'll talk about that. I am not sure what we would dovetail on. They've got Study 1, they've got comments due,

they're preparing a report or they will prepare a report to the Board to ask for additional funding, but I'm not sure the NCAP will be anywhere at any point this year to have any meaningful recommendations on the topics that we have addressed. That's going to have to be one of those where we will report on the status of the work that we're doing. We've taken in their input so far, meaning the SSAC's input and anyone else that's filed inputs. If they'd like to file comments on our final draft final, they can certainly do that. But I think we're not doing the same thing at this point.

ANNE AIKMAN-SCALESE: Okay. Are you willing to circulate Study 1 before this discussion? I mean, Study 1 is in, so are you willing to circulate it to the group?

JEFF NEUMAN: Yeah. I think we circulated it when it first came out, but we can do it again if that's … Yeah, absolutely. We can. Sure.

ANNE AIKMAN-SCALESE: Okay. Thanks.

JEFF NEUMAN: Okay. All right, let's now move on to the first topic which is freedom of expression. I'll just give a minute to … Good job. Okay, this was admittedly a very difficult topic, even originally when we started talking about it in Work Track – I'm trying to remember which one it was, whether it was Work Track 1. Kavouss, Work

Track 1 – then when we came out with our initial report because … well, you could see the affirmation. I'll start with the affirmation. The affirmation wasn't very difficult. That was just affirming what was already in the 2007 policy. Principle G was "The string evaluation process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law." Then the working group further affirms Recommendation 3 which includes – I don't have to read it all but it's general statement in there about not infringing legal rights of others and all the treaties and other documents that are referenced in there.

So I am hoping that that's not a very controversial thing to affirm what's already been in there. But when thinking about how that's applied and all of the work that's already going on, the work that happened in Work Stream 2 of the CCWG on Accountability and all of that, the only thing that we were able to glean from that is this implementation guidance here. So the implementation guidance that we're proposing is that "The working group suggests that as work continues to incorporate human rights into ICANN's processes in line with the recommendations of Work Stream 2, it may want to consider elements of the New gTLD Program as they relate to applicant freedom of expression rights in all stages of the process, while also taking into account the need to balance applicant freedom of expression with other rights recognized in the 2012 Applicant Guidebook, legitimate interests, the principle of fairness, and 'generally accepted legal norms of morality and public order that are recognized under principles of international law.' For example, it may be beneficial to include concrete case studies or examples in guidance to evaluators and

dispute resolution service providers to ensure that criteria are correctly and consistently applied in service of the applicable principles and rights."

It's a kind of a long statement but it's drawn from the initial report that we had, plus the comments that we got in, as well as recognizing that Work Stream 2 right now, I believe, is the report in front of the Board and the Board may have approved it, actually. Someone remind me if they've approved it or not, but the plan for the Board was that they would consider that they would look at ICANN's processes and procedures, and consider how those processes and procedures related to human rights.

Alan, you could probably explain it better, right? Because I think you are more closely involved than I was. Alan, go ahead.

ALAN GREENBERG: No. I wasn't going to try to get you out of this because I don't want to talk about it. I was just going to point out that in the middle of that paragraph where it says, "Recognized in the 2012 Applicant Guidebook," it's probably in the 2012 Applicant Guidebook as modified by this present PDP.

JEFF NEUMAN: Yes. Okay. That's right. I think we've added some things in here. So I think that's a good add.

ALAN GREENBERG: Sorry. I can't really add any light to the overall subject, and I don't really want to even try. Thank you. This is not one of my favorite areas of either new gTLDs or the Work Stream 2.

JEFF NEUMAN: Yeah, thanks, Alan. It is one of the harder areas – and I'll get to Anne in a second – because so much of this has been superseded – it's really not the right word. Well, maybe not. We started our work in 2016, started discussing this issue. But since 2016 is when Work Stream 2 had done its work, so we've been following that work and didn't want to do anything that would conflict with it, but it's in this awkward stage right now. And Avri has got her hand raised. If it's okay, because I know Avri Doria was heavily involved in this, if Anne and Christopher allow me to, I'd like to go to Avri to help rescue me a little bit.

ANNE AIKMAN-SCALESE: Absolutely.

CHRISTOPHER WILKINSON: [Inaudible], Avri.

AVRI DORIA: Okay, thanks. I just wanted to fill in a couple of spaces. One, yes, the Board did approve the WS2, two, are indeed working on the implementation and some of it is actually already in progress. Some of it is still "How do we do this?" and "What will the budget be for?" Some of them are still in the position of having the

budget. In terms of the human rights framework, that one is being worked on. That one has elements in all kinds of places, as elements possibly in bylaws elements, elements in how various work is done in SOs and ACs, etc. So they are all being worked on. The schedule at the moment was for some kind of report on the implementation and costs and such, at least an update to come out at the end of April, but it is being worked on. And I'm the liaison from the Board to the WS2 Implementation team also, so therefore, I'm always ready to be put on the spot. Thanks.

JEFF NEUMAN: Thank you, Avri. Definitely, thank you and I appreciate it. That's very helpful. I think our recommendation then would just be one or our implementation guidance is really saying to the extent that it's going to have case studies or to the extent that you're going to do stress test or whatever anyone ends up calling it that that's what that work should be done to look at scenarios with the New gTLD Program. So I think that's what our implementation guidance boils down to. Thank you.

Anne dropped her hand. Anne, did you want back in the queue? I didn't mean to –

ANNE AIKMAN-SCALESE: No, I'm sorry. Something has gone wrong with my Zoom here. But all I was going to say is that I think that what Avri is confirming means that that text that Alan suggested modification to we should also add and implementation of Work Stream 2 accountability work because it's not just as modified by this PDP. It's going to be

subject to the work that Avri is describing. So you want to say, "As modified by this PDP and the results of implementation of Work Stream 2"? We have to refer somehow … I don't know if we have to actually name specifically the human rights framework, but that stuff is going to govern.

JEFF NEUMAN: Thanks, Anne. We do say as like the predicate in the sentence, it says, "In line with recommendations of Work Stream 2, it may want to consider elements." If that's not enough then we can add some additional language where you said. But do you still recommend adding that? Because we do make the reference at the beginning.

ANNE AIKMAN-SCALESE: I'm not sure why we would say only that it's as modified by the PDP because that's potentially conflicting with the Work Stream 2 work. So either we mention both or leave that one out. I'm not sure.

JEFF NEUMAN: Okay. It's certainly –

ALAN GREENBERG: Jeff, can I get in?

JEFF NEUMAN: Yeah, Alan, go ahead.

ALAN GREENBERG: The reason I put that modifier in for the Applicant Guidebook is we cannot say the 2022 Applicant Guidebook, and to try to put a phrase in saying, "The Applicant Guidebook which will result from this," was awkward so that just seem to be a way of saying it's not exactly the 2012 Applicant Guidebook, it's the one that will evolve out of this. I believe that the phrase at the beginning in line with the recommendations of Work Stream 2 already covers it. And let's face it, nothing that comes out of this process that ICANN is going to bless is going to not be in line with the Work Stream 2 modifications. It's just not going to happen. So I think we're covered.

JEFF NEUMAN: Thanks, Alan. Christopher, go ahead. I didn't mean to skip you, so go ahead.

CHRISTOPHER WILKINSON: Thank you, Jeff. First of all, if we can't have cross references to work streams of here and there in the final text, I can see several more coming up. I think we'll have references to Work Stream 5, we'll have references to this work stream and that work stream. So I'm not totally sure that that's Pandora's Box that we want to open. But you may if you like. I'll play that game if you really want to.

The freedom of speech, of course, we're all in favor of it and we're under legal obligations to respect it, and we do. But my main point in this context is that freedom of speech applies equally not to the

third parties affected, opponents, critics. Geographical name interest applies equally to the third parties as it does to the applicant. It would bias my interpretation of the freedom of speech if our text were only applicable to the rights of the applicant. I think that has to be very clear. Otherwise, we will have problems down the line. Particularly in my more detailed experience with Work Track 5, I believe, unfortunately, that some of our participants think that freedom of speech will trump – sorry for the expression – will override – we can't use that word anymore – the interests of the users and members of regions and places that rely on their geographical name. If freedom of speech by third parties can override their freedom of speech then I think there's something wrong going on. Thank you.

JEFF NEUMAN: Thanks, Christopher. We do mention in there the need to balance freedom of expression with other rights recognized in the 2012 Guidebook, etc. So you're right, it is a balancing act. It does not necessarily overrule other interests. And if you look, Steve just added, just to make things more clear, CCWG Accountability Work Stream 2 as opposed to just Work Stream 2. I think that's a good add and makes things a little bit more clear.

Paul, go ahead, and then Kathy.

PAUL MCGRADY: Thanks. Not surprising, Christopher and I had a bit of disagreement which is I don't think we want to expand the Applicant Freedom of Expression section to be anything other

than applicants. That's why it's called the Applicant Freedom of Expression section, and it's always been the focus. But I have a specific question about what a phrase means in the implementation guidance we say – it looks like one, two, three, four rows down – "gTLD Program as they relate to applicant freedom of expression in all stages of the process." I'm not sure what that means. I understand applicant freedom of expression as primarily what the top-level domain they're proposing is. And we've built some safeguards around that, for example, we've got the Trademark Rights Objection, we've got Community Objections, other things like that that limit an absolute right to freedom of speech in the top level. Those kind of all makes sense in those in the Applicant Guidebook, and we have referenced that. What are the other things that are in all stages of the process? What are the other things that we're talking about? That is undefined and vague. Thank you.

JEFF NEUMAN: You've got a big question, Paul. I think Julie has the screen. No, Steve, sorry. Steve, can you scroll up just a little bit? Policy G stated that the string evaluation process must not infringe the freedom of expression rights. So that refers to one stage of the TLD program string evaluation process. What we're saying here, though, in the implementation guidance is that it shouldn't just apply to string evaluation process but in all stages of the … yeah, it was too hard to put in evaluation and objection, and so it's intended to refer to … yes, only it's in the TLD but it's intended to refer to the entire process from applicants from prior application, application all the way to delegation. That's what it's trying to

[say]. If there's a better way to say it, go ahead. Please help us with the language. But, Paul, does that make sense? That's what we're trying to get at.

PAUL MCGRADY: Yeah. I think it does make sense. It would be great if we could anchor it somehow to the top-level domain where we say something like, "The applicant freedom of expression in the TLD proposed…" and then make reference to the stages of the evaluation and rejection and delegation processes or something like that? Essentially, what we're saying is absent a handful of objection rights which are baked into the agreement, ICANN the org won't use any of the other processes to wash out an application just because they don't like it, right? And the history of all this of course is the dot triple x (.xxx). If all that hadn't happened a long time ago, we wouldn't be sensitive to this issue but it did. I guess I'm not being very helpful other than just spot the issue. I wonder if staff could tinker with this after the call and we can try to pin it down. Thanks.

JEFF NEUMAN: Thanks, Paul. Yeah, it sounds like a couple of words to tinker with. I think the intention is as you have stated it, so we'll work on that.

As Steve puts in a note to work on that, let me go to Kathy.

KATHY KLEIMAN: Thanks. It's not the comment I was going to make, but I do actually find myself agreeing with Paul. I think you did have the

right wording. Instead of “in all stages of the process,” “from application through delegation” might be right. Otherwise, you’re going to wind up invoking these rights in a PDDRP and other things, a proposed delegation dispute process and other things related to new gTLDs. So I think it’s a really good idea to bound it, define what all stages of the process means.

What I was going to say was that I think we need to more clearly define the balancing act. In the latter part of that, in all stages of the process, we’re also taking into account the need to balance applicant freedom of expression with other rights. Christopher Wilkinson raised some legitimate points. We should define a little bit or at least clarify or suggest whose other rights we’re talking about, other user rights, other registrant rights, other GAC and government rights. Here it’s not clear whether we’re talking about other applicant rights. But what you said – and I agree with – is it’s other non-applicant rights. Maybe we can go into – maybe other people can help with the wording – but some kind of discussion of whose other rights we’re taking into account. But at a minimum I think we have to say with other non-applicant rights recognized in the 2012 Applicant Guidebook. Thanks.

JEFF NEUMAN: Thanks. I think that’s the intent, so let me check because we have a hand raised from Paul. Paul, go ahead.

PAUL MCGRADY: Thanks. I think Anne’s hand was up before mine, wasn’t it?

JEFF NEUMAN: Yeah. I guess. I don't know. I just noticed the comment there.

PAUL MCGRADY: Go for Anne.

JEFF NEUMAN: All right, Anne. You go ahead. Thanks. Anne, you might still be on mute.

ANNE AIKMAN-SCALESE: Sorry. Can you hear me now?

JEFF NEUMAN: Yes. Thank you.

ANNE AIKMAN-SCALESE: There's something wrong with my Zoom hand. I'm going to have to cure that in between meetings.

I think it's pretty dangerous for us to start specifying a list of other rights as Kathy's suggesting and mainly because of the human rights framework, which not only as Avri talked about it from the Board standpoint, and I know Greg's on this call and also worked on that as did I, but again the reference here if we want to talk about how the balancing occurs probably needs to be to the Work Stream 2 work on human rights framework. Alan was also involved in that. We can't start, to my mind, enumerating rights that were actually developed through a Work Stream 2 consensus

process. So I think if we can refer again to that then I'd go along with Kathy's idea, but I don't think we'd start making a list of them. Thanks.

JEFF NEUMAN: Thanks, Anne. Paul, go ahead.

PAUL MCGRADY: Thanks. I agree with Anne. We can't start enumerating things here in a paragraph about applicants' rights. The rest of the Guidebook contains all the other enumerated rights, for example, the right of trademark owners to object, there's a GAC early warning process, there's a GAC consensus advice process, there's a community-based objection. There are all kinds of other rights that are in the Applicant Guidebook. And there's also all kinds of other rights, for example, Kathy mentioned second-level registration rights. Those also have been defined by the community and documents that are outside of this PDP. So I don't think that in order to clean up the language here in a very narrow paragraph, we need to go out and recreate all the work of the community addressing these various things that are out there. So I would like for us to resist the urge. Thanks.

JEFF NEUMAN: Thanks, Paul. I think the only proposal from Kathy is to insert the word "non-applicants" in between "other" and "rights." So I don't think that anyone is proposing to list out other rights, but it's just to say the need to balance applicant freedom of expression with

other non-applicant rights or other third party rights or something like that, recognized in the 2012 AGB. Paul, would that be –

PAUL MCGRADY: Non-applicant doesn't really get it because, for example, for community-based applications, it's most likely going to be another applicant that's going to complain about you if they don't think you're community enough, because they're going to want their application to proceed. So I would sure to hate to accidentally exclude balancing out those rights. I mean, we could put – is third party the other proposal?

JEFF NEUMAN: Yeah. That's the term that came into my head would be third party. But –

PAUL MCGRADY: I think that's fine because there's applicants, there's an applicant, and then there's everybody else. And everybody else, whoever that is another applicant, whether that is a competitor who sure wishes you hadn't applied for what you applied for, whether it's the GAC, whomever it is, those are all third parties and all those third parties either have rights or they don't as recognized under the 2012 Applicant Guidebook as modified by this PDP. So I would strike out the green non-applicant and put in third party rights. I think that's fine. What we don't want to do is get in the business of listing out what all those are. Thanks.

ANNE AIKMAN-SCALESE: Can I get in the queue there?

JEFF NEUMAN: Yeah. And then, Kathy, I'd like your view as well. So, Anne and then Kathy.

ANNE AIKMAN-SCALESE: Just real quickly, I don't really object to third party, but I do want to remind people that there's this objection process that doesn't really involve a third party per se and that's the independent objector. I don't know … I assume that that's a process where a balancing of rights will also occur and that objection process on – what is it, immoral grounds or something like that – and there's not a third party there per se. So if we could just be inclusive enough to add that. Thanks.

JEFF NEUMAN: Thanks, Anne. I think the IO is considered a third party because it's acting on behalf of – well, not the big C community or the fine community, but it's acting on behalf of the global small C community so I think that would be considered a third party. We can certainly put third party in there and then do a footnote or something to say this also includes the independent objector, whoever the independent objector is acting on behalf of. Oh, Susan actually just said something similar, "The IO process still relates to perceived third party rights." Okay, footnote I guess is where we can put that in. I think that works.

Kathy, does third party works for you?

KATHY KLEIMAN: I think so. I like non-applicant because it makes it very clear. There's a little more of a question who the third parties are. But I'd love to know what Christopher and Kavouss think. But it definitely moves the ball forward. Thank you.

JEFF NEUMAN: Okay. Thanks. Christopher then Kavouss.

CHRISTOPHER WILKINSON: Thank you, Jeff. Kathy, I wasn't actually planning to come in to the drafting of this paragraph. I think there are others including yourself who are best at that. What I wanted to do – and Paul will forgive me because it's not personal. Paul, you're in good company – the 2012 document was prepared prior to the transition and prior to the creation of the ICANN multistakeholder community as codified today in the bylaws. There has been a fundamental change in the composition of the community that you wish to seek consensus from in this context. I think some of you have not taken that on board and these constant references to going back to 2012 because you don't like what is being advised to you today is ultra vires. We're dealing with a different community with different priorities and different participation across the board. So please recognize that if not in the GNSO then almost certainly somewhere else, these things will change because you will have to take account of the interests of users, the interests of other supporting organizations and other advisory committees. You cannot pursue this argument that in the absence

of a consensus, we will revert to 2012. That is reverting to a past which has been changed as a result of the transition and the creation of the multistakeholder community. Thank you.

JEFF NEUMAN: Okay. Thanks, Christopher. Kavouss, please.

KAVOUSS ARASTEH: Do you hear me?

JEFF NEUMAN: Yes, I can hear you well. Thank you.

KAVOUSS ARASTEH: Jeff, I'm very sorry. You have 12 lines with so many phrases separated by commas and the qualified by while doing this, while doing that. Believe me, this is very confusing. Totally confusing. It is not guidance for implementation. It's confusing the implementation. You don't need all of these things, you need a simple sentence. The simple sentence that ... between [inaudible] and now, there has been the accountability, Work Stream 2 and it was worked and there was one and a half line about the human rights and freedom of expression in the boiler, what we did, and I was two and a half years working on that, we have a framework of interpretation on that and that is already agreed, and so on and so forth. You should simply cross reference that. Two and a half lines or three lines maximum, but not all of these. I'm very sorry, it is not guidance. It's confusing sentence because you're talking

implementation. That needs to be totally reviewed, shortened, and clear cut with cross reference to sentence or chapter or recommendation of work that [we do]. Thank you.

JEFF NEUMAN: Thanks, Kavouss. It's a very fair comment. It is a very long sentence. We will see what we can do to make them shorter and more easily understood. I definitely take your point that that is a very long first sentence. That's good input because we have to make this understandable, not just by us but also by those that implement the program need to understand what it says. So thank you for that.

Just looking at Susan's comment. I think Susan just exploded the independent objector process. I don't need to read it all but it does seem to say that it's acting on behalf of a third party. Okay. Thank you for that. It's a great discussion.

Let's also just scroll down to make sure we've covered – we're not going to read the rationale out loud, but please do read it. It does make reference to the framework for interpretation and some of the other work from Work Stream 2. As far as new issues, what we basically stated is that one of the things we discussed is that a lot of this is very high level and what's going to be important is to the extent that there are concrete recommendations from this or implementation that it needs to be clear to evaluators and dispute resolution providers so that they are not left guessing as to how to implement all of this.

I think that's it for this section. Let me just see if there's any last comments. Annebeth says this is unnecessary.

The sections in here, because it was given to us as part of the charter and from the issues, so we do need to address it. But I agree that this is unnecessarily … oh okay. Unnecessarily complicated, right. We'll see what we can do to work on the wording to make it more clear, especially for those where English is not their primary language.

Okay. Jumping from this topic, if we can scroll down. The next topic, we're going to switch gears and start the topic of objections. Now, we spent some time already talking about GAC early warnings and GAC advice. And while those aren't necessarily objections as we would normally think of in terms of the 2012 Applicant Guidebook, they were put into this section under objection. Right now, we're going to start the discussion on the other types of objections other than the GAC early warning and GAC advice.

Okay. The first affirmation is fairly long and I'm not going to read the whole thing. But essentially we're just affirming from the 2007 recommendations and implementation guidance. We're affirming Recommendations 2, 3, 6, 20 and Implementation Guideline P. These are all recommendations that we've discussed before the implementation and fairly non-controversial.

What Steve is scrolling through now is the quote from those sections. Can you scroll up a little bit more, Steve? Recommendation 20. Sorry, Implementation Guideline P, which is implementing recommendation number 20 from 2007 says all of

this, that's below it. It specifically referred to the community objection and we are affirming all of those subject to whatever else we have below in terms of recommendation and implementation guidance. So we're not going to read all this, this should be familiar material. We quoted exact language so we did not change any of those words. If you just scroll down – please do review it even though we're not reading it word for word. They all come from the existing policy, which was one of the guides for the Applicant Guidebook.

Implementation Guideline R. One of the things we do need to discuss this too. Implementation Guideline R we are affirming but there is one aspect that we need to discuss. Implementation Guideline R states, "Once formal objections or disputes are accepted for review there will be a cooling off period to allow parties to resolve the dispute or objection before review by the panel is initiated."

So the implementation guidance line did not provide for an exact time period. It really was inconsistent as to when ICANN started these ... or it seemed inconsistent as to when ICANN started or how long they gave parties to this cooling off period and when they were going to start. We can either offer some guidance on how long we think that cooling off period should be, or we can point out the issue as one for the Implementation Review Team to define. But I think it should be one or the other. I don't think we should leave it this vague without either coming up with a time period ourselves or requiring the IRT to come up with a definitive time period. Any thoughts on that? Because essentially, I couldn't even tell you because it was so inconsistent as to how long the

panels gave for parties to resolve disputes or how long this cooling off period was. Kathy, go ahead.

KATHY KLEIMAN: Question, Jeff. I don't remember this discussion as well as you do. Are we also talking about the third party dispute providers here? The International Chamber of Commerce, Community Objections, Legal Rights Objections? We talked about a cooling off period there as well. Or is this for internal ICANN objections?

JEFF NEUMAN: No, this is the former. This is the cooling off period given to parties when any of those objections are filed legal rights. This applies to all of them. This is what was in the Guidebook. Well, this was in the policy and what was in the Guidebook and it's what was implemented in 2012, but it was not implemented consistently. Kathy, does that answer your question as far as everything?

KATHY KLEIMAN: Interesting. Okay.

JEFF NEUMAN: I suppose also, what's not in here but we did allow is if the parties mutually agree to extend the cooling off period, they should be able to do that. But if let's say that one or both of the parties decide, "You know what, we just want to go to the dispute proceeding," we should have a definitive time period. Again, that

could be offsetting the definitive time period or us telling the IRT to set definitive time period. Christopher, go ahead.

CHRISTOPHER WILKINSON: Thank you, Jeff. In this general area, I must say that if I put myself in the position of an objector, I would find the system very heavy and, above all, very expensive. I think the whole structure does actually give the applicant and his attorneys an advantage, if not an unfair advantage. But the main point that I would make politically is that you cannot possibly put geographical names into this mechanism. I have argued in Work Track 5 extensively – and Greg and others will confirm – that the geographical names should be subject to prior authorization. Politically and practically, you cannot possibly put ICANN in the position of managing disputes between governments and local authorities and third parties and of applicants applying for geographical names on the basis of freedom of speech. That won't work and I severely advise that we avoid it at all costs. If this worked in 2012 for dot [salt] or something like that. I hope somebody spend their money wisely. But politically, this is impossible in geographical names. Thank you.

JEFF NEUMAN: Thanks, Christopher. There is no objection for geographic names but that's not handled through an objection process. This would only be applicable to Legal Rights Objections, Limited Public Interest Objection, Community Objection and String Confusion Objection. This would not be applicable to GAC advice or GAC early warnings, because they're not formal objections under the

Guidebook and it doesn't apply to the freedom of expression necessarily. I'm sorry, it could because that could be part of a Limited Public Interest Objection but it would not apply whether something's geographic or not.

CHRISTOPHER WILKINSON: Right. It would be helpful if that was clarified. But coming from Work Track 5, I believe that there are participants who would not agree with you, and think that this does offer the opportunity to register geographical names if the work track action can be sustained in a review panel. The review panel reports that I've read were both very expensive and very strongly biased towards the applicant.

JEFF NEUMAN: Okay. Thanks, Christopher. Let me go to Kathy and then Paul.

KATHY KLEIMAN: Thanks, Jeff. This doesn't apply to early warnings or GAC advice. I would consider them some type of formal objection. Let me say that this is probably not feasible unless agreed by both parties. Let me tell you why. I'm really glad you pointed this out to us. Let me read it again. "Once formal objections or disputes are accepted for review there will be a cooling off period to allow parties to resolve the dispute or objection before review by the panel is initiated."

So what does this delay? The whole idea of the Community Objections, the Legal Rights Objections, the String Objections is to move quickly. They have very, very tight timeframes. So what

are we delaying? Are we going to delay the response? There were Community Objections that were delayed on the mutual requests to the parties to work them out. But if both parties don't agree, are we giving one side more time? Are we delaying the process? What's the guidance to the international Chamber of Commerce? I think we may be mucking things up here because this isn't clear in terms of objections that are very clear in their timeframes and their requirements. Help me out here.

JEFF NEUMAN: This was implemented but it was implemented inconsistently. So when an objection was filed, there was a time period where they wouldn't even constitute a panel, they would give this cooling off period, whether it's 30, 45. 90. I don't even know what the difference was. By the end of going through this, I'm scratching my head when I was on the other side, not knowing what this meant, which is why I was bringing it up that we probably should talk about a time period. So it's not that it's not feasible because it was done, it just wasn't done consistently. So it's something we can define and modify or we should modify or clearly define it so that it is not less as ambiguous as it was. Or we could say, "No, we don't like this," and we could throw it all out. I haven't heard that recommendation to not allow a cooling off period but that is a potential outcome as well. But I haven't heard anyone call for that.

Let me read Jamie's comments and then I'll go to the queue. Jamie says, "As an applicant that received an objection against our application, I was completely unaware this policy existed. In fact, we were required to respond to the objection within a limited period of time." Jamie, some may have implemented it after a

response was filed. Again, there was no consistency. So we can either drop this or affirm it, or affirm it and modify with some concrete time periods. I think this was meant to be more of a forced … or not forced but providing for a voluntary ... How can I say mediation arbitration? It's not anything near as formal as that. It's basically to try to see if disputes can be worked out with changes to applications or whatever it is without going through the full extent of a panel decision, as Christopher said, was expensive than a lot of cases. So you're trying to come up with some mutually acceptable solution.

Sorry, I think that's an old hand with Kathy. Paul and then Kavouss and Jamie. Paul?

PAUL MCGRADY: Thanks. If I'm understanding Kathy right, I think I agree with her. As I'm reading this, this is just an implementation detail. I didn't focus on much 10 years ago or however long it was. Maybe we should save this by making it possible for there to be a cooling off period if both parties agree. But having an open ended cooling off period could be 10 days for one ISP provider, it can be 120 for the next one. It could be imposed by one, it could be optional by another. That doesn't make any sense to me. So maybe we keep the cooling off period but only if it's by agreement of the parties. That way, if the parties can't even agree on that, then go ahead and get your stuff into the panelists. Thanks.

JEFF NEUMAN: Thanks, Paul. That is another option. We have a few options on the table. Let me just recap. We can affirm these as is and we can tell the Implementation Review Team to define the time period, we can reject this completely or, as Paul said, we can say only if mutually agreed by the parties. But I think it's clear that this is way too vague to just leave alone.

Kavouss and then Jamie.

KAVOUSS ARASTEH: Firstly, the question that I will follow the discussion – are you discussing the last bullet before affirmation xx with modification? Yes. I think two things. First of all, we are talking about a cooling off period. What would be that a cooling off period? I think you discuss that, I don't know you want to associate that at some length of days and months or weeks, so on and so forth. That is number one.

Number two, if you define that or say that a cooling period yet to be determined, you don't decide it now, but the rest of the sentence apart from what Christopher says is right. So you say that gives some time to people to talk with each other before going to the complex process of the review that this review initiated. So the only thing in this paragraph, once again apart from Christopher question, which is valid question, the only thing you should talk about what you mean by a cooling period. What is "a" is? Do you want to have a time now or you want to have cooling period yet to be provided? This is one.

Second, just one minute more. I think the question raised by Christopher was a valid question and your answer was also convincing, but this does not appear here. If you want to talk about the scope, you could exclude what the scope does not cover. So what you said is just verbal at this meeting but is not in the text so you have to clarify that. Thank you.

JULIE BISLAND: Jeff, we can't hear you.

JEFF NEUMAN: Oops. Thank you. I was on mute. Kavouss, you're absolutely right. One of the options we have is to affirm this implementation guideline. And if we do, we need to define what a cooling off period means. Another option is to both define what the cooling off period means and also to make it optional or only if both parties mutually agree. Then the third option is to just get rid of this whole thing and just once the dispute is filed, just follow the normal time period set in the dispute procedures. But I think those are three of the options.

Jamie, go ahead.

JAMIE BAXTER: Thanks, Jeff. I do agree that this is very, very vague at this point and it's unclear to me exactly what you're trying to get to. What I will share is that our experience was that a formal objection being filed requires a $5000 payment just to register the objection. Then immediately upon receiving that objection, the applicant has to

respond with a $5000 payment in order to be able to respond to the objection.

The idea of a cooling off period is something that, despite me being as I noted, aware that this policy existed, as an applicant, we attempted to have a dialogue with the party that was objecting, which was rejected on their part or at least not responded to in starting a dialogue. What I don't like about all of this is that if there is a cooling off period and this can be resolved party to party, that the dispute resolution provider is walking away with $10,000 for doing absolutely nothing. Is there a way that this can be sorted out before people start writing checks for no reason? That's the part that still bothers me a little bit.

So under the original understanding from my perspective was that you paid to file it, you paid to respond to it and there was no other way around it. It makes sense that there is a payment process in place but this makes me so uneasy thinking that if people can work this out, that they're still writing a big fat check to somebody who's going to do absolutely nothing in the end. Thanks.

JEFF NEUMAN: Thanks, Jamie. A lot of that is true. It's all about inconsistent implementation of this cooling off period and others as well. One of our recommendations [inaudible].

Let me just go to Kathy then.

KATHY KLEIMAN: Interesting. I'm not sure about the inconsistent – maybe across objections but community objections were pretty consistent, I think, with the ICC. I just wanted to read you the section on the response from the first Applicant Guidebook. It's just a few sentences, guys. "Once the objection period is over, ICANN publish a notice of all objections filed. The objection period will close on March 13, 2013. Subsequently, each party against whose application and objection was filed with the ICC will be notified by the center and invited to file a response. The response must be filed within 30 days following the center's notification and information to file a response. This time period cannot be extended."

We've asked the arbitration providers to provide rules. I think we should be cautious about interfering with that. So yes, there are costs but of course it's the opportunity to try to work it out before the deadline comes. But once the objection is filed, there should be a response so that both parties know what the issues are and what the concerns are and what the responses are after that. After that, I don't know if we have to mandate a cooling off period. But again, circling back to Paul McGrady's comment, how about we say there may be a cooling off period for negotiation or compromise by agreement of both parties if formally submitted to the arbitration forum? So that doesn't require it and it doesn't intervene with these very fixed timeframes. The ICC and others have been told they have to work very quickly. The panelists knew they were under tight timeframes. So here, I think we've got some very vague language that we can make much more specific. Thanks.

JEFF NEUMAN: Thanks, Kathy. I agree with you that it is very vague. That's why I brought this to everyone's attention so that we can either hopefully, make it less vague and [better]. We're going to put a pin in this one, gather all the feedback we have now. I think what people are saying is that cooling off period should be at the agreement of both parties. In which case, it may be a simple fix. But let me just pause there. I don't want to say may be a cooling off period. Sorry. Did you say upon agreement of both parties? Yes. Something like that. It sounds like that would have acceptance from this group. So we are going to add this to the affirmation with modification as opposed to just affirming it with as is.

Okay. I'm seeing people drop off. I think this is probably a good place to leave it without going into the next affirmation. So why don't we just mark this off as we will start on a longer call on Monday at 15:00 UTC. It's a two-hour call. I totally understand if you can't make the whole thing, we are recording it. We will start on page 68 at this first affirmation with modification. We'll start there on Monday.

With that, let me say, hopefully, have a good weekend. Please do stay safe and stay indoors. If you can't, that's the only way we're going to have this thing hopefully go away.

KAVOUSS ARASTEH: Excuse me. Next meeting is what time?

JEFF NEUMAN: 15:00 UTC on Monday, April 6.

KAVOUSS ARASTEH: Okay. 15:00 UTC, Monday. Thank you.

JEFF NEUMAN: You're welcome. Thanks, everyone. Stay safe.

UNIDENTIFIED FEMALE: Thanks, Jeff.

UNIDENTIFIED FEMALE: Thank you.

[END OF TRANSCRIPTION]