
ICANN Transcription

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New gTLD Subsequent Procedures Working Group

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MICHELLE DESMYTER: Well, welcome everyone. Good morning, good afternoon, and good evening. Welcome to the New gTLD Subsequent Procedures PDP Working Group Call on the 20th of February 2020. In the interest of time today, there will be no roll call so attendance will be taken via the Zoom room. As a friendly reminder, if you would please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise. With this, I'll hand the meeting back over to Jeff Neuman. Please begin, Jeff.

JEFF NEUMAN: Thank you, Michelle. Welcome, everyone. Good morning, afternoon, evening wherever you are in the world.

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So today's agenda is going to be talking about closed generics. I know that's not a surprise since that's where we had started or left off on the last call. Before we get into that though, let me just ask to see if there are any updates to any statements of interest. Okay, not seeing any.

Okay. So, before there's any questions on what we're going to do at the ICANN remote meeting, I will answer that by saying I don't know yet. I know about as much as you all, so I'm sure we'll all learn over the next couple days how that meeting is going to run. I just wanted to preempt that with saying I have no inside information about anything, so we'll figure that out once we get all of the details. Any questions or any other business before we get started? Or topics to put under "any other business" I should say.

STEPHANIE PERRIN: Yeah, Jeff. Sorry, I can't raise my hand. I have a quick question. Is this a one-hour meeting today?

JEFF NEUMAN: Yes, this is a one-hour meeting because I believe there is something pre-scheduled at the next hour.

STEPHANIE PERRIN: Okay, thanks.

JEFF NEUMAN: Sure. Okay. So let's start where we left off the last time. So again, I know there is a lot of e-mails on the list, and I certainly

appreciate that, and there were some e-mails on there that were trying to float proposals and I think those were really productive and I'd like to still keep trying or try to keep talking about proposals. I know there's a lot of questions and thoughts and beliefs of what happens if we can't agree but I want us to put that aside for the moment so we can talk about trying to agree on something. I think that is a much more productive [inaudible] conversation.

I did notice that there was a proposal out there from Alan and there may—I don't know if there's others out there but I want to, again, remind us of the advice that was given by the GAC which was to ... Again, it says for strings representing generic terms, exclusive registry access should serve a public interest. So that was not advice by the Board that said that all closed generics could not be allowed. It was not a ban. It was not a judgment on any other particular applications. The GAC did list certain strings that it, at least upon a cursory review, considered to be exclusive, would fall into the category of exclusive generics, or closed generics, but it did not offer any kind of judgment whether any of those applications were or were not in the public interest.

The Board subsequently asked the applicants for those strings to put, to respond to the GAC advice, namely to describe and I'm not going to get the exact wording of the question right but it was basically to the extent of describe how your application is, serves a public interest goal. And so ICANN received responses from a number of those applications. I do not believe that those responses were made public. All we know is that the Board then discussed the issue and ultimately came out with the resolution

that we have been discussing over the last meeting and on e-mail which, effectively, did a couple things. One, it offered the opportunity for current applicants for those strings to change their strings over to no longer be exclusive or closed. The second option was that it could defer its application until the next round and what it said at that point was that it's subject to the GNSO policy rules for that particular round. And a third option, obviously, was to withdraw their application.

So essentially, the Board, rather than make any kind of substantive determinations on any of the applications as to whether they serve the public interest goal, for the reasons that many of us could speculate but we don't actually necessarily know, the Board chose to just implement a ban and in the Board's communication to us, our group, in one of their comments, they did express an interest in understanding where we were with our discussions on this topic.

So with all of that said, the crux of this conversation is to figure out whether, especially for those that have been firm on the side of supporting the ban on closed generics, the question, really, is are there any circumstances where you could see yourself supporting a closed generic if that application somehow served a public interest goal? So I notice there's a lot of chat, so let me go to that. And, of course, if anyone wants to put their hand up—I see Kathy. So yeah, let me go to Kathy and then I'll take a look at the chat comments.

KATHY KLEIMAN:

Jeff, I'm going to go back to history. I know you've got an important question. But let's just make sure because I went through it late last night which is when I got home, and I'm sorry we won't be having our face-to-face in Cancun. I would certainly understand the reasons. I just wanted to remind us of the history here.

GAC advice, category two, had to do with exclusive access. There were 186 GAC early warnings on this issue. The responses are public and they went out to all the applicants who were deemed to be involved with GAC advice category two exclusive access which had to do with the generics. And they were asked three questions, which I kind of badly cut and paste and put into chat. One, will the TLD be operated as an exclusive access registry? An exclusive access registry is defined as a registry restricted to a single person or entity and/or that person or entity's affiliates. Two, does your current application state that the TLD will be operated as an exclusive registry? And three, do you have a pending change request regarding exclusive access? 185 of the 186 groups that got this returned it and said they would not be operating as exclusive registries so that their applications could go forward. And all of that is public. And so we should know that's what happened. They changed their applications.

And it's much wider. I was surprised at the number we're looking at, 185. Salon, blog, insurance, apps, CPA, flowers, hotel, cloud, baby, news, book, cars, mobile, search, movie, and that's just a few of them. So this was a huge issue and I did want to share. It's all in the public and that they virtually all changed their applications and assured the GAC and the Board that they were

changing in response to also, this was the Board Governance Committee that worked with putting this together. So big changes took place in 2014 and they're all public. Thanks.

JEFF NEUMAN:

Yeah. Thanks, Kathy. So right. After... Right. So yeah. So that occurred after the first set of questions where applicants did answer the question of how it served the public interest and then there were continued GAC discussions and others, and then ultimately, ICANN then came up with this choice of what they wanted to do. And then those are the responses that you're talking about to eventually, after the Board made this resolution.

So let me go to some of the comments and then I'll get to Martin in a second. Let me just... So Alexander states, "In regards to 2.7.3, let's stop trying to handle this as a review item based on the 2007 policy advice. Instead it seems the Board asked us to create new policy advice so in my mind--this is Alexander talking--it's a different animal than all other items we handled so far." I do agree with Alexander that this is, this presents a unique situation that is not necessarily like a lot of the other issues that we're tackling in terms of the Board specifically asking for advice on this particular issue.

I think Kathy copied the questions in there, which she went over. Alexander then states, "How is the public interest served when launch phases laid out in the application are never executed? It renders the string closed by definition." Okay, that's more of an enforcement type issue. Susan, I think, commenting in response to Kathy, states that, "Of course, they changed their applications."

Those who didn't get bogged down [inaudible]." So I guess Susan's saying that there may be motivations for changing the applications than they agreed with the decision of the Board.

Greg stated that many of those mentioned by Kathy were never closed. Susan says, "Quite," and then there's a link that Kathy puts on to the category two. Maxim said hello to all of us. Hello, Maxim. Then there's some other comments in there about the number of closed gTLDs. Let me go to Martin and then to Paul. Martin, please.

MARTIN SUTTON:

Thanks, Jeff. So a couple of things. I agree with Alex's specific comment that this is an opportunity to treat this as quite uniquely as a policy setting process, so I back that up. Secondly, to really respond to Kathy's point, I know she's sort of commented on the numbers, but it's all the effect that it had because it wasn't actually put down there in the original application process that forced those particular parties to have to reconsider and change. Well, it was a forced change, essentially, due to the lack of clarity, or not the lack of clarity. It was because it was available for those applicants to go for.

The one thing I would add is just looking at that high level is probably not particularly effective in understanding the individual applications and what they were intending to do or to prevent as well. So there might have been lots of preventions to consumer harm that were included as a motivation for those applications. So I don't think we should lose sight of those types of things and just sort of pushing out numbers and cause and effect of what was

inadequate treatment of those applicants is not worthwhile. I'd rather go down the avenue that we were looking at with Alex's comment that we explore what could be done going forward. Thanks, Jeff.

JEFF NEUMAN: Thanks, Martin. I'm going to go to Paul.

PAUL MCGRADY: Thanks. So I think what's interesting, I just want to highlight it, which is, yes, on the last call, Jeff called for anybody who could absolutely not envision any scenario in which a closed generic would be appropriate. Nobody spoke up. So far, nobody has spoken up saying that they're essentially a 100% abolitionist. Alan's proposal puts forward something to talk about. There may be other proposals that were put forward in the list [inaudible] be great if staff could tease those and we could see what they are. Even if we had a late entrant who says they're a complete abolitionist, at this point, it doesn't sound like [inaudible] groundswell. I'm sorry, someone's got their microphone undone so there's some background there.

In any event, what it sounds like is that we're prepared to talk, which I think is great and we should note that, right? So we're talking again about this and so now it's time to kind of look at it and see what might work on a go forward basis. Thank you.

JEFF NEUMAN: Yeah. Thanks, Paul. And if that is the case, then that would be good to then get down to some of the substance. Greg and then Kathy.

GREG SHATAN: Thanks. I was just doubling back to what Kathy was talking about before and the number that had to change their applications. Of the 180 or so that were identified or alleged by the GAC to be “generic”, how many of those actually had to change their applications? I don’t know. I looked randomly at several of the questionnaire responses that were at the very helpful link that Kathy provided and of the ones I chose to look at, none of them said that their application indicated that they were going to be an exclusive registry, so in essence, they didn’t change anything. Obviously, some did. There clearly were some that intended to be exclusive use but that 180 number isn’t relevant to the question of closed generics. Maybe it’s relevant to the question of what does the GAC consider to be generic, but that’s a different question. Thanks.

JEFF NEUMAN: Yeah. Thanks, Greg. And I guess for the purposes of the definition of consensus, I’m sorry, definition of closed generic, I think the definition that we’re using of the term generic, at least unless and until someone provides another proposal, would be the definition that’s contained within the agreement itself and I believe that is in Appendix, sorry not appendix, Specification 11, which are the section that now or the specification that now deals with what’s called public interest commitments. So let me go to Kathy.

KATHY KLEIMAN:

Coming off mute. Thanks, Jeff. So one [principle] has been floated with an amendment, and obviously, only since Tuesday and we were asked to comment on this call. So let me comment.

In all these years, only one example. First, I wish I could give it to you. I just, in all these years, this is the example so let's deal with it. One strong example has come forward, .disaster, run by the Red Cross. So I did my research and the Red Cross is by no means the only place that deals with disasters, as you know, and it's not uncontroversial in how it deals with disasters. I have an article from *Slate* magazine, and let me quote, "Part of the problem is the American Red Cross's track record when it comes to disasters. It isn't great. I learned this best in Haiti where I survived the January 12, 2010 earthquake," where he ran the Associated Press Bureau and talks about the Red Cross fundraising and then not using the money, not using a lot of the money for the disaster. Red Cross was slammed, in his words, Hurricane Katrina and other disasters like Houston, the tropical storm Harvey. The Red Cross kept Israel out for 50 years and Israel could not operate under the Red Cross's protection in many of its wars.

There's no question that even if the Red Cross came forward, the Board would hear likely from the world, from Doctors Without Borders, from... If there's anything more competitive than business [inaudible], it's the dollars going into charity and so the Red Cross can do anything it wants under .redcross and creates second levels for every disaster that opens up around the world, but they don't own the word disaster and every organization that

raises money and does good work in rescuing disasters would contest it. If that's our strongest example, then...

JEFF NEUMAN: Kathy, let me [inaudible] because we have....

KATHY KLEIMAN: And also, and one more thing Jeff, I'm citing the numbers because the Board's going to get overwhelmed as these come up to it. If we're looking at 185 in the first round, somebody would lose [inaudible] in some of the e-mail exchange, then we're going to have many more in this round.

JEFF NEUMAN: So Kathy, let me just ask the bottom line question because the example was thrown out. It was completely made up. It was whatever it was. It was a topic of conversation. But I think the real question is are there any, is there any situation, Kathy, where you would support a closed generic? Any at all that you can think of? Not a specific entity or anything, but can you imagine or foresee any case where, in your mind, you would think it might be allowed?

KATHY KLEIMAN: So thank you for the question, Jeff. In all these years that I've been working so, so closely on this issue, I have been looking. I have been looking for a great example. I have been looking for a great standard. I have been looking for a way not to overwhelm

the community with having to evaluate it and if that disaster is the strongest one we've got, I've been looking. Does anybody have any examples that would pass? I don't see standards. I don't see examples. I don't see principles. I don't see anything for us to evaluate this with. I think the original arguments of 2013 and 2014 from the GAC, from the world, from the Board Governance Committee still stand. No one's contradicted those except with a lot of vague arguments, but not with specifics of something. So thanks, Jeff. I've been looking really hard.

JEFF NEUMAN:

Okay. So I think there is other people in the queue and on chat, but I think the question to consider then is more if there would be any criteria or what criteria by which it would be measured. So let me go to Martin first and then I'll go to the chat because I think there are some helpful suggestions as well. So Martin, please.

MARTIN SUTTON:

Hi, Jeff. So I'm still trying to think through this in terms of practical terms for an applicant as to if there were criteria applied to this type of application, then that would already narrowly reduce potential applications. So I've seen in the chat somewhere, I think, above 5,000 mentioned in terms of applications for closed generics. But I'm struggling to see how that would actually work. If an applicant is trying to apply for a closed generic, he's probably not doing it on the basis of generating income for that TLD. It's going to be for a different purpose which it will put into the application for scrutinization and evaluation. So I seem to get a bit lost with some people's ideas as to what could happen if the door

was wide open and even if there were some restrictions applied, it seems to be highly speculative as to how many would suddenly jump at the chance to do this. I think, again, we don't have the evidence because we've never allowed in the first place to show that there is a severe problem that we're trying to resolve. So that's where I'm still struggling on this.

I certainly welcome the idea of us discussing this through to see if there are ways that we can practically apply a useful policy that sort of puts a gait on this somehow and applies some requirements, and that, therefore, would then relate easily for an applicant to decide whether it's worth their while pursuing. So I just wanted to sort of raise that again because it does seem that some people think that this is just an open door for crazy hoards of applications to come in, and I don't think we have any evidence to suggest that at all. Thanks.

JEFF NEUMAN: Thanks, Martin. I see Greg in the queue. Yeah. Greg, please.

GREG SHATAN: Thanks. I went back to the chart, especially since Kathy once again brought up the 180 number and intimated that might indicate there was some, something would be overwhelming in the next round. If you scroll down to the bottom of the list, there's actually a list of those where the owners of the string indicated their application was going to be for a closed generic. There's 10 strings, 12 applicants. There were two applicants for theater, two applicants for tire. But we're only talking about ten strings, not

180. If we are trying to be data-driven, we should be driven by correct data. So given that there are only ten strings here, I feel...

KATHY KLEIMAN: I strongly disagree, Greg.

GREG SHATAN: You disagree with the number?

KATHY KLEIMAN: I disagree that 180 strings are going to [inaudible] exclusive generic.

GREG SHATAN: No, that's wrong. That's just dead wrong.

JEFF NEUMAN: Greg, Greg, Greg, Greg.

KATHY KLEIMAN: [Inaudible]

JEFF NEUMAN: [Inaudible], please.

GREG SHATAN: No. Most of them said no.

KATHY KLEIMAN: They said they were going to change.

GREG SHATAN: No, they didn't say that. Only ten said they were going to change. The others said that their application would not be [crosstalk].

JEFF NEUMAN: Greg and Kathy, guys. Hello. Stop. Stop. Thank you both. Okay. They are important points but let's not use this to argue with each other. I think the data is important, but again, regardless of how many there are, I think we should, or how many there were or will be in the future, I don't think that that factor should drive our decision making on this subject. I think if we can come up with criteria that we all agree on where it would be allowed, then I'd want to talk about that criteria. I don't think it is helpful to talk about, to speculate about how many we believe might happen in the next round. So I want to get to some comments on the chat but then go to some criteria, especially in Alan's e-mail. And then also, do want to hear from others because it sounds like, at least from the people that spoke up, that others are, or that Kathy hasn't found a situation where she believes a TLD would meet that criteria but others on the call are at least open to have discussion.

So let me go to start with some of the comments on here from the...

KRISTINE DORRAIN: Jeff, can I get in the queue when you have a moment?

JEFF NEUMAN: Yeah because there's a whole bunch of messages that came in. So let me go to you and let me find my place.

KRISTINE DORRAIN: [Inaudible] be fine.

JEFF NEUMAN: Go ahead.

KRISTINE DORRAIN: Oh, thank you. I'm sorry I'm on audio only today driving in. So one of the things, I have kind of a question and then a follow-up comment. So my question is I saw that we had Alan's proposal and his own amendment. I heard you calling for proposals and criteria. I have some thoughts that I want to submit. Have we decided on a deadline by which we're going to be submitting proposals? I apologize. I was a little late for the call so I want to make sure that I know the timeline for submitting for proposals.

The second thing I want to say and I'm throwing this out there in the spirit of collaboration, it's no secret that Amazon applied for some TLDs on closed generics and that was [inaudible], whatever we're calling them. But I want to talk not so much about the label of closed generics, but I would love to inject into the conversation some team [inaudible] that as a registry operator, we face that

perhaps this group can overcome regardless of what we want to call it.

So maybe there's, maybe at the end of the day, we say kind of in a blanket rule, you can't just have closed generics. I don't know. I don't support that but let's say that's the outcome. I would love for an outcome to then also say, but we agree that some registry operators or some applicants experience some [inaudible] with their ideas and innovation and trying to be creative in their use of a domain space and maybe there are some ways that we can adjust or make recommendations to the process so that applicants can do more with their TLDs and be creative and be innovative and be interesting. We don't always have to sell domain names to end users for whatever purpose they want. There can be some kind of healthy medium. I would love to talk about that.

I'm working with my kids on a collaborative problem solving model and so I'm seeing some of those opportunities here to stop talking about is it closed generics, is it not closed generics, and literally list out the issues that people face and then see if we can overcome those specific issues without lumping them into the label of, is it closed or is it open. So one question is the training. The second question is for the proposal, are we willing to talk about and go through some of the actual specific problems and try to overcome those problems regardless of what label they fall under? Thank you.

JEFF NEUMAN:

Thank you, Kristine. I think, at this point, we have not set any deadline on proposals. What leadership is trying to assess is

whether there is enough interest in the group to pursue other potential alternatives prior to actually nailing down a very specific proposal. It sounds like, and I'm not going to... If I'm putting words into your mouth, Kathy, Kathy is at least of the view that she has not found any example or even criteria in which she would support a closed generic but I'm hearing from others that there may be depending on whatever factors we set up.

I'd really like to know, and it sounds like, obviously, Kristine, you would like to try to discuss a potential collaborative solution. Of course, Alan has put his out there already and that's really what we're trying to assess at this point. Once, if we come to the conclusion that, yeah, it looks like the group is open to certain circumstances where it may be allowed, then we can set a deadline on proposals.

But let me start going through this chat here. So there's a couple of discussions of [inaudible] on defining exclusive access single user versus group of users, some more about the numbers that are alleged. Alexander states, "The problem with closed generics was identified by the GAC and seen as severe enough by the Board to stop contracting out [inaudible] to create new policy."

Susan says, "But Kathy, it has been pointed out that the GAC did not actually check what applicants had said about their intentions. They flagged ones they wanted to get clarification on." Okay. Then we scroll down a little bit more.

As a note to Martin, in the context of closed generics, Justine states, "Because the element of public interest is particularly

pertinent, it could be argued that anticipating a problem and addressing that is a prudent step.”

Martin states, “Justine, perhaps, and I think that’s why conversation is needed rather than closed off in broad swept speculation.”

Alexander states, “A simple solution could be to advise applicants this way.” Oh, and then Paul got a comment in there. Let me continue on with Alexander’s and then I’ll come back to Paul’s. If you restrict access to your gTLD, there will be an expectation that you might be forced to revert to an open registry unless you can prove the restrictions are serving the public interest. And then he goes on to say, “And that proof would likely be subject to a judgment call,” and then by whom, and so there’s questions about that.

I skipped Paul. I’ll go back to it, which says, “A plus one to Kristine. We need to approach this orderly. We need a deadline to submit proposals and then the working group can walk through them and see what elements from which might work.” To that, Paul, I would just say, yes, if it seems like the group is open to it, that makes sense. But if there’s a substantial amount of people that are going to say no, essentially, to anything because of the view that there is no acceptable closed generic, I am not sure how much longer we should spend on that. So Elaine states, of course...

KRISTINE DORRAIN: Jeff, can I react to that?

JEFF NEUMAN: Yes, please, Kristine.

KRISTINE DORRAIN: Thank you. I just want to react to that. So to further clarify my comment, I understand that if people are unwilling to concede any issue on “this issue of closed generics”, that maybe means that that’s closed. I get your point there. But my proposal is really a little bit different. It is listening to the concerns raised by various registry operators who attempted to use this option of closed generics which was not forbidden at the time of application [inaudible]. But there was a conversation about there was a conversation. People knew there would be people applying for single user or single registrant TLDs. So it was not a shock. I think the big shock was how many applied, and so many people did apply anticipating that they would have ideas and [inaudible] and stuff going on.

And so the change threw a monkey wrench in people’s plans. That doesn’t mean that closed generics is necessarily the answer. It was just a mechanism that was going to be used for those applicants. What I want to do is propose and I’m sure some of the concerns and problems so that we can make sure that we address those concerns and problems even if the group decides, “Well, we’re going to still refuse the single registrant TLDs.” There’s still a way to come out of there with SubPro saying we’re addressing some further problems that applicants tried to resolve using closed generics but that avenue was closed off to them midstream.

So I just want to clarify that because I don't want to shut down the whole conversation just because a couple of people refuse to come to the table. Thank you.

JEFF NEUMAN: Okay, thanks Kristine. Let me just finish with the chat and then I'll come back to Jim and then come back to Kristine's, the discussion that Kristine was just starting.

So, oh and Kathy says there's a hand up. So Kathy, who's in the queue and I'll put them behind Jim?

KATHY KLEIMAN: Coming up, yeah, it's Jim has their hand up.

JEFF NEUMAN: Sorry. All right, I thought there was another one instead. Okay, Jim, please go ahead.

JAMES GALVIN: Thanks, Jeff. So I guess this discussion about having people come off their decisions and move to the middle, I know you wanted to avoid this topic on the previous call but I think it's really important for us to just establish a foundation here of what is the result of inaction because I think that will actually motivate people to try and find solutions. So what if we do nothing? What is the status quo? I don't think we've ever established that, even on the back and forth on the e-mails. There's different views on that including within our document, it's not clear what is the default

position. Is it the applicant guidebook, which we've been operating under for nearly every other topic that we've discussed outside of closed generics? Or is it implementation as the draft language in the recommendation now says? So I'm confused on that and I think we need clarity on that.

Another thing I think that people need to understand and have a grasp on is what is, in fact, the impact on those previous applicants? As Kristine mentioned, Amazon applied for a lot as did Google and others. Well they didn't, if we do take some action that "allows" it for the future round will those applicants from the previous round have the ability to amend their operations and suddenly close that were opened as a result of the guidance in the last round? So I think we need to have some of that settled so that we can have a better and more informed discussion on what proposed solutions might be and the outcomes or the impacts of action or inaction around those. Thanks.

JEFF NEUMAN:

Okay, thanks Jim. Both of those, really difficult questions. I'll start with the latter, meaning what would happen to the existing applications. And the only proposed answer I would have is that's not really in our jurisdiction. So we need to decide what the best rules are for the next round even if it means that the differences between what happened in the last round and this round, and I'm not just talking about closed generics. That could mean anything. And then it would be up to the GNSO Council and ICANN, and frankly, potentially an implementation team to look at whether it would or would not have an effect. But that's really, sorry, on previous applicants but that's beyond our jurisdiction. So we're not

in a position to make any recommendations of this issue or in most issues, if not all, on the treatment of these new ones versus the existing ones.

And on the first question, on what the default would be if we can't agree, I think what we certainly saw happen in the discussion on registry/registrars separation or vertical integration, there are people or positions and entities that benefit from knowing exactly what the default would be because if they believe that by not engaging in cooperative, collaborative discussions, that they'll end up with the solution that they wanted anyway, and certainly, those, if you remember, Jim, prior to Nairobi or in Nairobi when the Board said on the vertical integration issue which was extremely controversial and strong positions on every side, the Board said if you don't decide this issue, then we'll go with the strict vertical integration applies no matter what. And so those that found that to be an acceptable solution, sort of had no incentive to come to a collaborative solution while those who were opposed to the complete vertical integration ban had every incentive and tried like hell to work out something. At the end of the day, the Board went the opposite way and said, "Yeah, we know we said in the absence of agreement, we'd go with complete vertical, or sorry, a complete ban on vertical integration." It decided, no, we changed our mind. We're actually going to go the other way and so the people that were fighting for the default or getting in the way actually end up losing at the end.

So I hear what you're saying. It's a long way of saying I understand what you're saying, Jim. But I do think it's more productive if we try to all be under the mindset that at the end of

the day, we have no clue what the default is going to be on this issue and so let's try to work something out. Of course, if we can't work something out, then there will have to be a default and we'll go back to all those arguments. But at this point, I think it's more productive to see if there is a solution. Alan, welcome back. Thanks. Go ahead.

ALAN GREENBERG:

Thank you very much. Unusual EPDP that actually ended early. I hear what both of you are saying and in the classic response, I agree with both of you. But I think we have to come out and say, "We believe that interpreting the 2015 Board motion that the default is the applicant guidebook, i.e. generics are allowed, closed generics are allowed, or then the effective implementation was they were not allowed and that is the default that we revert to if we don't have consensus. Or we can explicitly say it is out of our domain to try to interpret the Board resolution further and it is up to the current Board to interpret what they meant, and therefore, what the default is.

I think we have to come out and say one of those things because we can't just leave it up in the air and the Board is then up in the air as to whether they have to take some action, can take some action. Remember the Board at this point using our current PDP rules, which were not the ones we were using, interpretation, were not the ones we were using prior to the policy implementation discussion, is the Board is not supposed to make policy decisions. Clearly, in my mind, closed generics are a policy decision. So either we explicitly say, "Because it's a matter of interpretation, it is back to the Board to interpret what they said before and that's

the default,” or we have to say what the default is and the Board can reject it but they can’t change it. So I think we have one of three answers we have to give and I’m happy to say the Board has jurisdiction to interpret what they meant last time and that is the default, which is sort of like the vertical integration one. But I don’t think we can just be silent. Thank you.

JEFF NEUMAN:

Okay, thanks Alan. I do want to go back because I missed one of, or missed a couple of the chat comments so I do want to go back. Elaine had put into the chat that a proposal saying, “A closed generic could be considered for approval by the ICANN Board if there is a compelling reason presented in the application that indicates it would not be in the public interest to have the gTLD open.” So that’s another suggestion.

There’s some more discussion about which applications were included. I think in response to when I said that wondering if there are others that do not see public, sorry, do not see closed generics acceptable in any situation, Paul says that those people get to speak up. And then Paul says, “How long does this silence [appearance] nonexistence of the anti-closed generics under any circumstances need to go on before we can declare that the working group is allowed to make proposals and really talk about this?”

Donna says, “To follow on Kristine’s point, it would be good if folks can articulate [inaudible].” Okay.

So following up with ... And I know there's other comments but because this also follows up on Kristine's point. So, we did ... Just to bring you all back to the initial report—and in fact all of the work that went on prior to the initial report—we have some tables of the pros and cons for allowing and not allowing closed generics. And we went through these extensively at that point in time.

So, I think, Kristine, the closest thing you would look at is you would look at the cons of allowing closed generics and that would give you a pretty good indication of what the points were raised that opposed closed generics and those are the things that we would need to essentially solve for in any proposal that came forward. So, you have everything from ... Again, I'm looking at the cons column instead of the pros column because those would be the concerns. So, you have the concern that generic words form a public space and some people stated it's not in the public interest to have these strings under the control of single entity. There's discussion there about harming competition. A single player in a market can have exclusive access to an industry related generic TLD string and so on.

Now we scan scroll down a little. I don't want to read every single one of them because I'll have no voice at the end but there is a whole bunch of things in there. Kristine, I think that would be the list of harms and what we would need to work around in terms of why we would not allow them.

But, by the same token, it would be great for those that are in favor of the [ban] to also read the pros to understand why it actually may be beneficial in certain circumstances to allow closed generics.

Going back to the chat, Alexander states that ... Okay, this is again on numbers and what's a significant number. Greg states, "I'm not making a judgment about significance, Alexander. Just getting the facts straight."

Let's see. Anne states, "IRT would now have jurisdiction over a topic this PDP doesn't have jurisdiction over." Yeah. Thanks, Anne. You're correct. I think it would be an issue that would have to be brought up as a new one by I guess the GNSO. If we did let's say come up with a policy that would allow closed generics, the GNSO would then probably have to initiate some sort of policy process as to whether those rules should or can apply retroactively to previous applicants. But that's not within our jurisdiction.

Let me see here. Alexander has got, "The main issue in regard to closed generics seems to be that the Board specifically asked the GNSO to create new policy advice. There is no fall back." I do think it's an important point that ... And I know there's been a lot of emails saying, "Jeff, why don't you just go to follow your own rule?" which was if we can't get to agreement, we just go with the way it was.

I think, for almost every other subject, that is the default. I think this one is sort of unique because the Board specifically asks us to develop policy. There is a little bit of a different situation here.

Jim disagrees with the approach. "Lack of action has consequences." That's absolutely true. I don't disagree with any of that. Lack of action absolutely does have consequences, but also does stating what a default would be at the outset, because then

those who like that as a solution have no incentive to come in and compromise.

The other part about it is that, in this case, even if we write a report that says for every situation where we can't agree or we don't even address, just go back to the way it was in 2012, the Board would still then have to make a decision as to what to do, regardless of what we say.

Then Alan, "There's a note from Annebeth saying I think what you said makes sense but we should be aware that we should be consistent in which solution we choose." People seem to support that.

Paul states that, "@staff, could you send around the pros and cons chart as a link?" I think Emily has done that. Great. Thanks, Emily. And the [Neuman] [inaudible]. Thanks, Kathy. That would be my name is spelled with a U.

So, let me go to Alexander's chat comment which says, "What about putting it into the guidebook in 2012 round? The Board denied to contact closed generic registries. On the basis of GAC advice, there's an explanation on the absence of compelling proof, public interest, and closed generic might be denied again. All these are possible solutions, but even your proposal there, Alexander, assumes that there is a situation that can be envisioned where someone could have a closed generic. And I think that's where most people are on this call. Other than I think some comments from Kathy, I don't think I've heard others come forward with as strong as "I won't accept any closed generic under any circumstance."

So, let me, with these last few minutes, then issue a formal call for proposals. We already have Alan's. And thank you, Alan, yours is already considered submitted unless you want to revise it anymore Why don't we ... Because the intention was to discuss this or at least the status of this issue in the face-to-face, but obviously, that's not happening so we'll have to see the sessions and figure out how we're going to do that. But I do think that that would be a subject to discuss in the remote session—at least one of the remote sessions that I think we are still going to have. But again I don't know that for a fact.

So, why don't I then say that it's March 7th would be the first day of ICANN. Let's say a week before that. So, why don't we ask for any proposals by the last day of February which would be—it's a leap year, so the 29th. And of course by then we'll know what the format is hopefully for the remote ICANN meeting and then we can plan how to conduct that session. Hopefully, still, with the understanding that the GAC won't have anything that conflicts with our proposed session because this is absolutely a topic of interest for them? Any questions on that?

So, if we set that deadline for proposals for the 29th, the last day of February, why don't we do that?

Okay. Also, just note that—

ALAN GREENBERG: Jeff, my hand has been up.

JEFF NEUMAN: Oh, I apologize, Alan. Sorry. I only see a few names and I didn't get far enough on the list. Alan, please go ahead.

ALAN GREENBERG: Yeah. Thank you. I guess the real problem is you asked me why did I restrict it to non-profits. My answer was we cannot send thousands of applications to the Board. That's an impractical proposal on our part. And I have a hard time coming up with a TLD which would be in the public interest—widely in the public interest and we're talking about worldwide, not just what country—from a for-profit company that, by definition, has a responsibility to its shareholders to make a profit, to turn money. That, in general, is what it does. There may be some rare exceptions but I can't think of them. And I'm having a hard time even restricting the applicability to not-for-profits or IGOs, having a hard time coming up with a real example where it would be useful.

So, the problem with coming up with a rule is if we had some examples that we could all agree on, yeah that sounds like it might be in the public interest, it would be a lot easier to try to figure out what the parameters are around it. But I can't even figure out one.

I use disaster because you suggested it and other people have, but it's a very Anglophobic word. It has a meaning in English. It's not spelled properly in some languages. And it's completely meaningless in other languages. It's not a particularly good example of something that would have worldwide public interest.

If we had real examples, that would be more useful. Thank you.

JEFF NEUMAN:

Remember, a word is only generic in that particular language. So, it doesn't necessarily ... Just as a counterpoint and what I've heard others argue is that you're only concerned with that word being used in its generic sense and that's what made it a closed generic in the first place. So, the word disaster is not generic in other languages and therefore I'm not sure why it necessarily would be a concern.

Again, we need to develop criteria and I think that's what we work on in these proposals. I was just asking about the non-profit just so you could get it out there as to why you went and put that into your proposal, not because I disagreed or anything like that. Just more just as clarity.

I don't have personally, or in my role as chair, any position on this either for or against. I'm just trying to see if there's any potential. And it looks like some people at least want to discuss it, so that's why I think we should allow proposals through the end of February. So, February 29th. Paul, let me go to you and then I'll throw in a couple of words to wrap it up.

PAUL MCGRADY:

Thanks. I just wanted to say that I think this call is a great example of how ICANN should function instead of everybody trying to find ways to shut down conversation. It sounded to me like everybody on the call was trying to find ways to have this conversation. So, it's refreshing and it reminds me of the good old days. Thanks.

JEFF NEUMAN: Yeah. Thanks, Paul. Appreciate it. I do have faith in this process, so I'm glad you found it productive. I think it was productive. Look out for emails. Our next call will be the regularly scheduled time, February 25th at 03:00 hours.

The other thing I do want to say is, because there's no traveling to and from an ICANN meeting, we may throw some extra meetings into the schedule, meaning the week after ICANN we normally take off because people are traveling. But since they may not be traveling, we may put meetings back in for that week. So, I just wanted to raise that for planning purposes if you see some invites.

Thanks, everyone. I know there are other calls. Great discussion and look forward to talking to you guys all next week.

UNIDENTIFIED FEMALE: Thanks so much, Jeff. Thank you, everyone. Meeting has been adjourned. Have a great remainder of your day.

[END OF TRANSCRIPTION]