ICANN Transcription
GNSO New gTLD Subsequent Procedures Working Group
Monday, 06 April 2020 at 15:00 UTC

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MICHELLE DESMYTER: Welcome, everyone. Good morning, good afternoon, and good evening to call. Welcome to the New gTLD Subsequent Procedures PDP Working Group call on the 6th of April, 2020.

In the interest of time today, there will be no roll call. 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. Jeff, please begin.

JEFF NEUMAN: Thank you very much. Welcome, everyone. Just a quick reminder that today's call is actually extended a half-hour. So I just wanted to remind everyone from the outset.

What we're going to talk about today is we're going to finish up objections. We still have a good amount to cover with objections. Then we'll go into the base registry agreement.

Let me just first see if we have any updates to any statements of interest.

Okay. Not seeing anyone. All right. Kavouss has asked for a minute. Kavouss, go ahead.

KAVOUSS ARASTEH: Hello, Jeff. Do you hear me?

JEFF NEUMAN: Yeah, we hear you well.

KAVOUSS ARASTEH: Jeff, we are all human beings. We are all affected by what is going on in the world. More than one million people are infected. More than several thousands of people have died. This devastating and cruel and dangerous virus is extending and extending, and the life of our countrymen, everybody around the world, no matter which race, which country, which colleagues, and so and so forth, are now in full danger.

I suggest, at the beginning of this meeting, one minute of announced silence for respecting those who have lost their lives in a sort of solidarity with the families of those people.

Can you announce that one meeting and formally observe that?

JEFF NEUMAN: Yes. Thanks, Kavouss. I think that's very appropriate. So we're going to take the next minute to honor those that have been affected by this unfortunate virus and their families.

Okay. Thank you, everyone, for that. Thanks, Kavouss, for bringing that up. We can get started.

Let me just ask quickly, does anybody have anything else they want to add to the agenda?

Okay. Not seeing any. Let's go to objections, where we left off, which—thanks, Julie, for putting in the link—is interesting: ever since we've updated (or some of us had to update) Zoom, the links that we put into the Zoom chat do not appear as links. I don't know why that's the case. So everyone is just going to have to, I think, copy and paste it. I'm not sure why it doesn't link anymore.

With that said, we left off on the, if we scroll down, affirmation with modification. I'm on the bottom of Page—oh, it seems like we're on different documents here. I don't know why mine says 68 and yours says 70. But, okay, that's where we are. That's interesting: why the … Ah, Julie is saying it might be a security feature to help Zoom [bombing]. Okay. That might be case. So I guess [inaudible] like on an iPad. All right.

Well, anyway, we are on the affirmation with modification Rationale 1, which states that Recommendation 12 from 2007 states, "Dispute resolution and challenge processes must be established prior to the start of then process, consistent with implementation guidance below." It's going to refer to a specific

one below. “The working group affirms Recommendation 12 with the following modification.” In italicized text: “Dispute resolution and challenge processes must be established prior to the start of the process”—here’s what we [had]—“the details of which must be published in the Applicant Guidebook.”

What we’re basically saying there is that the 2007 policy could have been interpreted as just needing to have the processes established prior to people filing disputes, but we wanted to make it clear that “prior to the start of the process” meant actually “in the Applicant Guidebook.”

Hopefully that makes sense. I don’t think that that’s controversial, but let me just see if there was any comments.

Okay. Not seeing any comments on that. We’ll go the next one. “The working group affirms the overall approach to the public objection and dispute resolution process described in Section 3.2 of the 2012 Applicant Guidebook subject to the recommendations below. The working group further affirms that parties withstanding should be able to file formal objections with designated third-party dispute resolution providers on specific applications based on the following grounds.” Then we list the four grounds that were existing grounds of the 2012 process.

That, again, seems pretty noncontroversial. I don’t believe we missed any objections there, but let me just give a minute for people to just absorb.

Christopher, go ahead.

CHRISTOPHER WILKINSON: Good afternoon, everybody. It is 5:00 P.M. here. I would just recall that there was a request in the Montreal GAC communique that there should be an advance notice procedure regarding geographical names. I think, to the four cases that you've just referred to in this paragraph, you could solve a lot of problems by adding a fifth case, which is the geographical name. Thank you.

JEFF NEUMAN: Thanks, Christopher. There was no formal objection process for geographic names, and there was not one recommended by Work Track 5. But the advance notice is something we'll tackle a little bit later on … I'm trying to remember if it's in this one or in a separate section. Let me just … It might be in a separate section. Yeah. Sorry about that. Yeah.

CHRISTOPHER WILKINSON: Well, just a footnote. There are a lot of sensible things that will be required in due course that Work Track 5 failed to recommend. So I take that point with a grain of salt.

More generally, I bet you that, compared with the 2012, by the time we get to this round or the geographical names component of this round, there [will] be substantially increased international interest in geographical names. A word to the wise. [This] is usually sufficient. Thank you.

JEFF NEUMAN: Thanks, Christopher. I see Gg—oh, Gg dropped her hand. Gg, did you have a comment? Or are you still on? Yeah, there you are. Go ahead, Gg.

GG LEVIN: Can you hear me okay?

JEFF NEUMAN: Yes, we can hear you.

GG LEVINE: Okay, great. My question was in regard to something that was in the section farther down about other considerations, and that was regarding a category within [stirring] confusion [of] rejection and regarding limited or restricted TLDs. Would this be an appropriate time to discuss that, or do you want to wait until we get down to other considerations?

JEFF NEUMAN: Let's wait to get to the other considerations because that is a topic that we will be covering.

GG LEVINE: Okay. Thanks.

JEFF NEUMAN: Thanks, Gg. Just looking in the chat. Alexander put in, "But there is a way to object for city/community [rights]. The brand lobby over

and over again that cities will have to rely on post-application measures. If not, we'll have to start Work Track 5 all over again."

Alexander, I'm not sure what you're referring to at this point. There certainly is a community objection, but that has to be based on the grounds. We'll go over each type of objection separately when we get down further in this section. The first part of this section deals with overall recommendations for all of the different types of objections and then [will] get into specific recommendations with the individual objections themselves.

Christopher, I'm not sure: is that an old hand or a new one?

CHRISTOPHER WILKINSON: It's a new hand in relation to Alexander's chat. You must all be aware that some of us in Work Track 5 argued strongly that geographical names should be subject to prior authorization and not to [ex-post] dispute resolution. If we agreed in Work Track 5 to prior authorization for geographical names, most of the issues that are coming up now would have been evacuated and would not be taking our time today. Thank you.

JEFF NEUMAN: Thanks, Christopher. We're not going to be discussing the geographic names issue today, but we will again come across that later on. So this is dealing with the different types of objections that we currently have, which are the four. In the other considerations, there were some other ideas that we need to decide whether they become recommendations or not.

I'm going to jump to the next affirmation, which is at the top of Page 71. "The working group affirms that the independent objectives should exist in subsequent procedures as it did in the 2012 round"—and there's a link to it—"subject to the changes introduced from other recommendations and the implementation guidance below. The working group further affirms that the IO should continue to be in a position to file community and/or limited public interest objections when doing so serves the best interest of the public who use the global Internet, as was the case in the 2012 round."

Just sticking with this before, I open up, implementation guidance on this one says, "A mechanism should be established—for example, a standing panel of multiple IO panelists—that mitigates the possible conflict of interest issues that may arise from having a single panelist serve as the IO."

So a couple things in there. Let me go to Paul.

PAUL MCGRADY: Thanks. Can we talk about the dependent clause at the end: "as was the case in the 2012 round"? First of all, if we mean it to basically point to that nothing is changing from the 2012 round in relation to being in the position … I'm sorry. The screen keeps changing, so I'm losing the … I didn't memorize this before I raised my hand. I'm sorry.

JEFF NEUMAN: Paul, I'm disappointed.

PAUL MCGRADY: I know. Basically, I'll do my best without being able to see what it was I was commenting on. If we meant this to say basically that, other than these changes, there's a status quo in relation to the IO being able to object based upon, in those two categories, what's in the global public interest, or however we phrased it, I think that we could find some way to do that—okay. Here. Yeah, we're back. So my concern with "as was the case in the 2012 round" is that it makes it seem like this working group is affirmatively saying the IO got it right. Does that make sense?

Instead, could we say something like, "The working further affirms that the IO should, as was the case in 2012, continue to be in a position to blah, blah, blah, blah, blah?" and then drop that last dependent clause? Because I think there are a lot of people who didn't think that a lot of the objections, especially the ones that failed, were necessarily in the public interest. Does that make sense? Sorry this is so wordy.

JEFF NEUMAN: Yeah, I got it, Paul. I'm not even sure we necessarily need that dependent clause. I think you're right, though. "as was the case in the 2012 round" meant that it was limited to those two types of objections as opposed to being expanded for all the four types of objections. So I'm not sure we actually even need that last clause, meaning we don't need the words "as was the case in the 2012 round." I'm not sure, but let me open it up and see if that changes the meaning that I may not have picked up on.

+1 from Anne. Okay. I think that's right. All right. No one else is objecting to that, so we'll cross that out. I don't know if there's a note being written in there or … Okay, another +1. So we'll cross out "as was the case in the 2012 round."

Any other comments on, instead of just having one, that we're advocating having multiple, or saying their should be multiple, IOs in the [sense] to avoid conflict of interest?

Okay. Kavouss, go ahead.

KAVOUSS ARASTEH: Jeff, when I read this text, the third line says, "The IO should continue to be in a position to the community and/or to limited public Internet objections." "If" means that the IO is invited to provide the community or so on so forth, whereas the objective of this text was that the IO should be given the opportunity or the chance or the possibility to provide this. We don't invite them to continue to be in the position to provide. They are always continuing to be in a position to provide. The objective of this paragraph is to provide them the opportunity or change or possibility and so on. So you need to slightly modify the language: not to take it as an invitation but to take it as a provision for the IO to provide objections. Thank you.

JEFF NEUMAN: Thanks, Kavouss. I think that's helpful. I think that that is right. If we have, "The working group further affirms that the IO should be given the opportunity," yeah, I think that makes sense. So, instead of the words "continue to be in a position," we just …yeah. "given

the opportunity." And I don't think we need the word "continue," too. Yeah, I think that's good.

Anyone have any issues with changing the wording there?

Paul agrees. Good. All right, others are agreeing. Okay.

Any other comments on that affirmation and implementation guidance before we jump to the next one? Sorry. I'm taking a drink here.

Okay. Let's go onto the next one that's highlighted. We'll go over why it's highlighted after I read it. It's, "ICANN must develop a transparent process to ensure that dispute resolution provider panelists, independent objectors, and third-party providers evaluating applications are free from conflicts of interest. This process will serve as a supplement to the existing code of conduct guidelines for panelists."

The first thing is we should probably put the footnotes to those to document, just to make sure that people know where to turn to find those.

Aside from that, the reason this was highlighted is that this recommendation is broader than just the objections topic because it covers evaluations.

We have a couple different options. We can leave this as is here and copy it into the evaluation section as well, or we can break this apart into two different recommendations. This recommendation in this section will be with respect to the dispute resolution provider panelists and the independent objectors. Then

we'll do basically the same exact wording, but just "third-party providers evaluating applications" we'll put in the evaluation section. So we have a couple different options. I think splitting into two recommendations makes sense, rather than keeping it all here just so that those that are reviewing the evaluation section can know that this recommendation applies to that section.

Also, CPE[,] community … So there's a couple different sections that might need to be added.

Let me go to look at the chat. Gg agrees that it should be separated into the relevant section. Emily, go ahead.

EMILY BARABAS: Hi, Jeff. Thanks. I just wanted to note that, if we do in fact look at this recommendation as something that we would divide into multiple sections, it might want to think of how many sections it might be applicable to and whether that makes sense logically. So it would be potentially this section, potentially the section on applicant reviews, potentially applicant support, if we think it applies there, and community priority evaluation. We have some very similar text currently under accountability mechanisms regarding post-delegation dispute resolution processes. So we're looking at potentially five or more sections that would be repeating this.

An alternative to that is that we have an overarching issues and have a recommendation that's specifically about conflicts of interest across the program and potentially cluster with other recommendations that are overarching in that respect.

So I just wanted to clarify those two points. Obviously it's up to the group to decide how to go forward. Thanks.

JEFF NEUMAN: Thanks, Emily. That's actually a good suggestion. Actually, I guess the two options now are that we split it up and figure out all the different sections it applies for, or we make it one of the overarching issues that's towards the beginning of the report and making note that it applies to every single situation where there is an evaluator or an evaluation or dispute.

Let me just see if anyone—Kavouss, your hand is raised, but that might be left over. I'm not 100% sure.

KAVOUSS ARASTEH: Yes, my hand is raised. I have a question. In the third line of that highlighted text, it is mentioned that this process will serve as a so and so forth. Is it a guarantee that it will serve or it should serve or shall serve? I'm just asking. I'm not suggesting, for the time being, any change. What is this verb "will" here? Do you think that, if this process is provided by ICANN, [it] will serve? Because you expect that it should or it shall serve as [inaudible]. These are questions [inaudible].

JEFF NEUMAN: Thanks, Kavouss. It should be "shall" because it's in the recommendation.

KAVOUSS ARASTEH: Yeah. Thank you.

JEFF NEUMAN: So “will” or “must” is fine, either way. Let me go to Anne and then Christopher. Anne, go ahead.

ANNE AIKMAN-SCALESE: Thanks, Jeff. I wanted to raise the question about the point in time at which conflict of interest procedures kick in because I remember talking about both the IO procedures, I think, and the objection procedures and that there should be a beginning stage where a conflict of interest could be raised and even appealed prior to a proceeding going further where a lot more money gets spent. Maybe that’s considered an implementation issue, but it seems to me more like a policy issue. I think that, if we’re looking at the different places where the conflict of interest principle applies, we need to analyze which proceeding should really not go pedal to the metal, full force, until conflict of interest issues are determined because I think the experience from the 2012 round showed that that probably should have been looked at.

JEFF NEUMAN: I know that discuss the timing when we get to appeals. I believe … yes. That’s where we discuss it in terms of having an appeal. So, in the dispute resolution process/the objection process, each organization has their own mechanism for determining conflicts, and then what we said in the appeals, which we’re not at year—we’ll get there soon; in the next week or two—is that we discussed almost the notion of what all a interlocutory appeal: Before you get

to the judgement on substance, you can actually look at the conflict of interest separate and apart because you wouldn't get to the rest of the procedure and don't have to spend that money. But, for everything else, I think it's the same as it was in 2012.

Let me just see. Anne says, "I think that, as to" – oh, sorry. Cheryl says, "[See if] the advantage to doing it is an overarching issue, as Emily as proposed." Anne says, "I think that, as to IOs, there should be an appeal on the conflict of interest prior to that objection proceeding."

Anne, just to ask, are you saying, prior to an independent objector filing any disputes, there should be some way to oppose the independent objector due to conflict of interest? I'm just trying to understand your thoughts on that.

ANNE AIKMAN-SCALESE: No. Obviously I think it would be that the IO files the … Let me just back up a little bit. We made the point that there should be more than one IO in order to avoid conflicts of interest. I think what was previously raised—a little bit, anyway—was that, once an IO does file an objection, the applicant should have the ability to have the conflict of interest issue established in advance of even having to answer that objection. If the procedure at the first level—the IO—says, "Well, no. I don't have a conflict of interest, " there should be an appeals process. It gets settled before the applicant has to answer.

Oh, I think that came up on one of the IRP proceedings or that there were—

JEFF NEUMAN: I know that there was questions about conflicts. I don't think there was—someone can correct me if I'm wrong—a finding that there was an actual conflict. I think it was a question about it. So—

ANNE AIKMAN-SCALESE: Yeah. [inaudible], but I think that there was a finding that there was no conflict and that that was a questionable filing. So I think it arose because there was no appeal on the conflict of interest issue. So I don't know. But others can comment on that. [inaudible] may have something to say on it.

JEFF NEUMAN: Thanks. It also brings up an interesting issue of who enforces the conflict. The IOs? That's something that ICANN should enforce? Or is that something that should be private as part of the dispute?

I see Kavouss and Christopher. Paul, do you want to get in the queue as well?

All right. I'm not seeing anything. Let me go to—okay, Paul's in the queue. Kavouss, go ahead.

Kavouss, is your hand up? I'm not sure if that was a new one, or …

Okay. We can't hear Kavouss. Let me go to Christopher. We'll see if Kavouss is having an issue or just doesn't have his hand up. Christopher, go ahead.

CHRISTOPHER WILKINSON: Jeff, I support the general drift of this paragraph regarding conflict of interest. Obviously, conflicts of interest should be identified and protected against. But, in this context, I think there are other considerations that are broader than what is usually regarded as conflict of interest, which is primarily financial interest or nepotism or one or two other well-defined categories. I think, somehow or other, this principle has to be extended to competence and objectivity, particularly if the round goes deeper into IDN and into communities completely outside the existing ICANN frameworks. For instance, I believe that, in 2012, one of the evaluators was an organization, and the same organization was expected to be able to evaluate applications worldwide. I think that would raise some eyebrows without criticism. We must ensure that evaluators and independent objectors and the rest of them actually know what they're talking about in the languages that are relevant and in the economic, political, and Internet contexts within which these applications are taking place.

So I'm not proposing drafting, but I think that the general principle against conflict of interests as such needs to be extended. The first thing to do is to make quite sure that all these players in the dispute resolution and evaluation process are ad hominem—that we know exactly who they are as individuals. It doesn't work if it's a company or a third-party organizations which chooses who should do the work and who should write the report. So extend the concept of conflict of interest to additional categories of interest

and ensure that the people appointed to these activities are ad hominem and not organizations. Thank you.

JEFF NEUMAN: Thanks, Christopher. I'll go to Paul and then Greg. Paul?

PAUL MCGRADY: Thanks. I will first address what Christopher had to say and then respond the question about the appeals. If we were to onboard what Christopher was suggesting, we would change the language a bit. It would say, "and third-party providers evaluating applications"—and would say "are free from conflicts of interests, have the appropriate background, and can evidence the appropriate competency." Without the addressing the issue of whether or not these panelists or objectors could be an organization—I don't have enough understanding of what that issue is—if we were going to try to capture what Christopher was suggesting, we could do that in brackets after "conflicts of interest" at the end of the second-to-last sentence. I don't know if we want to do that or not. I'm just trying to distill down what he was suggesting. I think there's something to think about there, for sure.

With regard to what Anne was talking about with the appeal, yes, I think an appeals mechanisms after the conflict of interest complaint is initially lodged with the IO would make complete sense. It doesn't make any sense to have the independent objector go through the entire process only to have a conflict of interest objection then lodged with the ultimate deciders—I think that's the Board; the ICANN Board decides whether to implement

the IO's decision, one way or another—only to have it turned around. Everybody will have wasted time and money. Applications will be delayed. So I do think having a speedy appeals process at the initial point makes sense.

Jeff, you asked a very important question, which is, who then should hear the appeal? I don't have an easy answer for that, other than maybe whoever will be enforcing the decision. I'm not sure, but maybe the ICANN Board. Maybe somebody else. I do support Anne's idea of a timely and speedy appeals mechanism for conflict of interest questions that happens early on in the process. Thanks.

JEFF NEUMAN: Thanks, Paul. We just have to make a note because I know we talked about the "interlocutory"-type appeal. If we think that they panel deciding the case has a conflict, we have to make a note, when we talk about appeals, to talk about—not today, necessarily—what to do if it's not the panelist that has the conflict but it's then independent objector him or herself that has the conflict. So we'll make that note because that's a little bit different, I think, than what we've been talking about before but just as important.

Greg, go ahead.

GREG SHATAN: Thanks. I'm not sure if this document is the right place, but we'll need to be somewhat more clear about what we mean by conflicts of interest so the people understand what's meant by that. For

instance, the conflicts of interest that Christopher pointed to are in fact conflicts of interest that are generally applied to members of boards of directors—financial interest, and nepotism—whereas those applied to lawyers taking on cases are different. Here in fact we're talking about something different, which are akin to arbitrators and/or investigators. So I'm not sure. Certainly nepotism, in terms of hiring them, is one thing, but not in terms of their overall business.

So, at some point, we're going to actually have to define what conflicts of interest means because it's not quite being considered correctly at this point. I don't have a magic definition to put in here, but right now obviously it's squishy and at least partially incorrect in the minds of some.

Also, I mentioned this reference to third-party providers, so I'm assuming that Christopher's suggestion of individuals … Ultimately, things will come down to individual panelists, perhaps, but I'm not sure how each of the entities that dealt with this dealt with whether things were done by one or a team or, in that case, how this was done. Cleary, panelists are individuals, and the independent objector was one as well. But I'm not sure about evaluation of applications. Thanks.

JEFF NEUMAN: Thanks, Greg. There are two documents there. There's the code of conduct guidelines and then there's the conflict of interest guidelines. Those, especially the latter, do define conflict of interest. I have not heard any calls for changes to that, nor have any been discussed. So, if those would like to see and read those

documents and, later on in the list, if they have some concerns that it's not being defined the right way, you could bring those up. The documents are there, and they've been there, so I would encourage you all to read that as opposed to going over, as Greg said, what might be in our minds as conflicts of interest. So we may or may not need to discuss it if people are satisfied with what's in there.

I see Kavouss and Greg. Greg, is that the old hand. Just to check. Kavouss, have we gotten you back?

GREG SHATAN: It's a direct follow up, just noting that both of these referred to being four panelists. Therefore, I'm wondering if they apply at all to independent objector or third-party providers. Even if they apply in some fashion, clearly they need to be looked at since they say right now they're only four panelists.

JEFF NEUMAN: Thanks, Greg. There was a conflict interest of policy, I believe, for the IO as well, so we'll have to dig that up if it's in a different place. For evaluators, we'll have to find that as well.

Kavouss, go ahead.

KAVOUSS ARASTEH: Jeff, I think we have extended today's meeting to two hours. I don't want discuss something that does not require any discussion. I don't want to go the discussion of conflict of interest,

discussion of the guidelines, or code of conduct, and so on and so forth. Everything is there. [People could read that]. Our purpose of this document is not going to further detail or express or clarify or amend or paraphrase that. So I suggest that we do not change anything at all. Thank you.

JEFF NEUMAN: Thanks, Kavouss. We're not, at this point, proposing to change anything with the documents that define conflicts of interest. I do encourage everyone to read those to see and just make sure that they are fine with those definitions. But, as Kavouss said, we're not, at this point, today, going to be discussing the actual criteria because it has been set forth.

Let's go on to the next recommendation then. This applies again to all the different types of objections. "The parties to a proceeding must be given the opportunity to mutually agree upon a single panelist or a three-person panel, bearing the costs accordingly." There were some objections in the last round that it had to be just one panelist. There were others that said it maybe even had to be three or could be agreed upon as three. What we're doing here is standardizing that they're all going to be the same, that it's essentially going to be one unless you agree on three.

Any questions on that?

Okay. Not seeing any. Sorry, Kavouss' hand is up, but I'm not sure if that's left over.

KAVOUSS ARASTEH: Hi. It is an old hand. I'm sorry. I will take it out. Thank you.

JEFF NEUMAN: Okay, sure. All right. The next one is, "ICANN must provide transparency and clarity in then objection filing and processing procedures, including the resources and supplemental guidance used by dispute resolution provider panelists to arrive at a decision, expert panelist selection criteria, and filing deadlines. The following implementation guidance provides additional direction in this regard."

I'll go through the implementation guidance and then we'll com back and talk about the overall recommendation and guidance. The first one is, "All criteria to be used by panelists for the filing of, response to, and evaluation of each objection must be included in the Applicant Guidebook." The next one: Implementation Guidance Rationale 4. "Information about fees and refunds for the dispute resolution processes must be readily available prior to the end of the application submission period."

Note that there's a difference in timing. The criteria to be used by panelists for the filing of response to and evaluation of each objection must be in the guidebook, but the fees and refunds for the dispute resolution policies must be available prior to the end of the application submission period. So there's a little bit more time to get in the fees, the rationale being that the applicants themselves don't need information necessarily about fees and refunds before their applications are actually submitted.

Let's go to the next one. Now, this is where we need to talk about timing, but we put in parentheses: "Prior to the launch of the application submission period, to the extent the dispute resolution panelists provide other guidance, processes, and [an assortment] and information to assist them with processing and making decision, such information must be made publicly available and easily found, either on their respective websites or preferably in a central location."

We had a similar discussion on that last one with respect to the community priority evaluation in the sense that, to the extent that they used any other sources, they had to be known in advance in helping them make their decisions. Similarly, if there's anything else that panelists are going to use as guidance to making their decisions or any other kind of information that aids them in their process, all of that needs to be publicly available and easily found. Then we put in "prior to the launch of the application submission period" in parentheses because that wasn't initially specified in the draft we were discussing.

Let's go back—

UNIDENTIFIED MALE: [inaudible]

JEFF NEUMAN: [inaudible] got his hand up. I'm going to go to Paul, then Kavouss, and then Alexander. Paul, go ahead.

PAUL MCGRADY: Thanks. Jeff, did you want to go back up and then work your way back down? Because, if that's what you want to do, I'm happy to put off my comments on Rationale 4 until then.

JEFF NEUMAN: No, we're talking about all of them, so you can go over whichever one you want.

PAUL MCGRADY: Okay, thanks. Is this implementation guidance—the last one—meaningful? When we say, "To the extent a dispute resolution panelist provide other guidance, processes, or sources of information to assistant them," why wouldn't a panelist just say, "The Google," right? I like the idea. I definitely like the idea of trying to make sure panelists are not reading fake news stories or are being unduly influenced by whatever, but I don't know that this really gets it. I wish I had a solution instead of just complaining, but it doesn't look like this does anything. Thanks. Or much of anything.

JEFF NEUMAN: Thanks, Paul. This, I think, was intended to be a catch-all that wasn't in the others. In case the other implementation guidance missed anything—again, it's all under the transparency … If you go above, if we can scroll up a little, we talk about the processes for filing, responding, and evaluating the objections. We talk about the fees and the refunds. This last one was anything else basically meant to be a catch-all. Maybe it doesn't do a great job at that, but it's basically supposed to, all under the heading of transparency,

say, “Look, anything else that may be used in any way to make a decision to determine a process or whatever it is needs to be known and available and transparent.” So maybe there’s a better way of doing a catch-all, but hopefully, Paul, that makes a little bit of sense.

Did you want to respond to that?

PAUL MCGRADY: Yeah. I guess what I’m worried about is that I can see Google in here and Facebook in here. [Is there a way], when we say “provide other guidance, sources of information,” they would have to list those before the application period[?] So those two make sense to me. And no panelists could see into the future and know specifically which applications are going to be filed and which will land there.

“Processes,” I guess, is the thing that bothers me. Other than the process of searching Google or the process of reading stories off of Facebook, which both frighten me, why is the word “processes” in here? What processes are we talking about? Maybe, if we can figure out what we mean by that, that work can be changed or limited or something. Thanks.

JEFF NEUMAN: Thanks, Paul. If we scroll up—it’s a good question—the one that I can think of …Let me just make sure it’s not covered. No, I guess we do have that: the expert panelist selection. Let’s go through this. It’s possible we don’t need the catch-all.

Let me go to Alexander, then Kavouss.

ALEXANDER SCHUBERT: Hi. Can you hear me?

JEFF NEUMAN: Yeah.

ALEXANDER SCHUBERT: Okay. You said a moment ago that it's not important for an applicant to know what objection fees would be like. I would like to object because, if you are working with a community—for example, a city community or whatever community—and you are raising funds within that community, they will want to know the total costs that could arise. If it appears that there's someone applying for your string as well and you want to be transparent, you would have be able to showcase those costs.

So what is the rationale that we want to [raise] to establish those fees? Why can't we establish them at the same time as we establish all the other stuff?

JEFF NEUMAN: Alexander was it just gives them a little bit more time as opposed to … The Applicant Guidebook is going to come out at least four months before the application submission window even opens. If you are requiring everything to be at the time of the Applicant Guidebook, you're basically saying that the Applicant Guidebook can't be released until you have every single thing figured out. It

just seems to me to basically be a huge delay. So we're talking about the fees to file a dispute [inaudible]

ALEXANDER SCHUBERT: Sorry. Put yourself into the shoes of a community, for example, though it doesn't have a community—anybody who's raising funds within their stakeholder group to [commonly fire] an application. The biggest question is, of course, how much? "How much" include every single dollar you have to spend until you have the string. If you have to say, "Well, they're thinking about this later. Those fees are not even set," you look incredibly stupid. If we can have those fees as soon as possible, at least application fees ceiling numbers that we say are, "Okay, it won't be more than (whatever) $50,000 per [inaudible]," that's something you can work from. That's all. Thank you.

JEFF NEUMAN: Thanks, Alexander. It's a good point. I guess, again, what you're talking about basically is that every single detail needs to be worked out prior to the Applicant Guidebook. That just seems like a lot to do. I agree it's helpful to know what it costs, but whether you know it at the time of the Applicant Guidebook or you know it prior to completing filing your application, is that … I don't know. I'd love to hear from other people.

ALEXANDER SCHUBERT: Actually, it would be nice to know at the point when the application window is announced. So, at some point, we are saying, "Okay, guys. The review [inaudible]. The application window were opened

on that day. The application is [less than this].” It would important to know all other related fees, at least the maximum we’re expecting so people have an idea of what financial arrangements they’re going to be.

JEFF NEUMAN: Thanks, Alexander. Again, let me just read some of the comments here. Paul is saying, “No reason why the other fees can’t be known sooner.” Then there’s Alex and Paul [from Jamie]. “This is not the first time dispute providers are being enlisted. We have not started from scratch, so why the added delays?”

I think this part of a bigger discussion as to everything that’s needed in the guidebook. Remember, if you need to determine fees … Part of it is also going to be dependent on … Let me just … There’s a bunch of people saying that you should know those fees. I guess what you’re really doing though is saying every detail needs to be finalized prior to even … Alexander, you went earlier. You said when you come out with an announcement that says the date you’re going to launch the process. You’re basically then resulting in years’ worth of additional—or least months’ worth—delay. That’s okay if that’s what the community wants, but I think we need to just think a little bit more about that, maybe putting it in brackets. I think everyone needs to take a step back and think about all the things we’re requiring to be at the time you launch it. I know Phil is saying he totally agrees. But, remember, when you’re doing an application, you’re doing an application. You’re not thinking about … Or at least it’s not as inevitable that you’re going to get a dispute, the kind of objection you’re going to get, and how much an objector needs to pay or how much you might need to

pay before applications are even submitted. That's what we're talking about.

ALEXANDER SCHUBERT: Yeah. I have a [tendency] to pick strings that gain the interest of others. I would do [it] in the next round as well. Those are community applications, and they're funded by the community. They're asking me already now, "What positions might arrive? What do we have to think about?"

But I totally understand you. We want to not drag out the application window. We now already say, "This [has] time. You know how ICANN/we works." If we have established a certain task and we say, "Oh, this [has] time," then you just stop to look at it, and we are looking at it at the last moment. If we have to engage with those entities that conduct the objections and we have to try to find the fees through them, then we should start with that as early as possible and not try to say, "Oh, this [has] time to the application window." So we should prioritize that if it can be done in parallel.

JEFF NEUMAN: Thanks, Alexander. Let's go … Where is that? Let's see. The fees is … We say "prior to the end of the application submission period," but let's put that in brackets. The other options are obviously "prior to the opening of the application submission window." Another one is "the publishing of the guidebook." So we'll have to pick one of these. We can do so as we move forward or on the e-mail list. But, remember, the more things you put in

that have to be finalized prior to the Applicant Guidebook, the more chances of delay that you have.

I'm taking in Jamie's point: "Given the cost of variability that many suffered, I think it's prudent to make best efforts to be as transparent as possible, if nothing than to rein in the cost [of] completion that was allowed to happen in the 2012 round."

Right. In 2012, remember, the fees for some of the objections weren't determined until after all the objections we're filed. We're talking about way before that here. We're talking about before the end of the application submission window. So we are solving it a little bit, but given the point that it may not be as early as others want.

Kavouss, go ahead.

KAVOUSS ARASTEH: I think now the issue is further developed. I think, in the paragraph as amended now, on "prior to the opening of the application submission period," I suggest that we place "opening" by "commencement": "prior to the commencement of the application submission period."

The second bracket is not a replacement is not a replacement of the first one. They're two different things. So I don't understand why we say "at the time of the publication of the Applicant Guidebook." They're two different things because the Applicant Guidebook covers everything. Are there alternatives to each, or what?

JEFF NEUMAN: There's three different alternatives there. We have to choose one. The first alternative is "prior to the end of the application submission period." The second alternative is "prior to the commencement of the application submission period." The third alternative is "at the time of publication of the Applicant Guidebook."

Reading Paul McGrady, he says, "Lawyers will definitely be asked, what are the chances of drawing and objection and what would it cost? It'd be very awkward to say, "I don't know what it'll cost," from an applicant's point of view. ICANN has had eight years to nail down this detail. Publication of the guidebook gives the most predictability."

True, Paul, but they haven't selected the dispute providers yet. They don't know—

KAVOUSS ARASTEH: Could you scroll up? I can't see the whole paragraph. Please.

JEFF NEUMAN: Yeah. Scroll up, please.

KAVOUSS ARASTEH: A little bit, yeah—no, down. Down. I'm sorry. Down. Up is—okay. Here. Okay. Give me a half a minute. I'll read that. Thank you.

JEFF NEUMAN: Okay. Let me, in the meantime, go to Jamie.

JAMIE BAXTER: Thanks, Jeff. I think what is also potentially something for discussion here is what steps will be taken and by who to ensure that the costs are reined in and that they don't get overinflated. Without any predictability here on what the costs could be, if it was hired as an evaluator and that could take me a lot longer and cost a lot more hourly rate, what's … Without any predictability or structure to this, who's to say that the evaluator didn't go above and beyond of spend more time than they really needed to spend in order to get to a solution? So, if there isn't going to be the strong predictability that it seems like many are asking for here, then who is responsible and how will it be reined in when it does get out of control and start to overinflate way beyond what it was predicted to be? I get that the 2012 round hadn't been done before, so it was a prediction, but we now have the experience of the 2012 round. So there should not be as little predictability available going into this subsequent procedures.

So I'm asking a different question here, like, what happens when the price and the cost does get overinflated? Who steps in and says, "No, you can't do that"? Because [inaudible] predictability [inaudible]. Thanks.

JEFF NEUMAN: Thanks, Jamie. Sorry, we've got some background noise in there. We're not saying that they should … All right. I think we've spent a good amount of time on this. First of all, it's implementation

guidance, so it should say “should be readily available” anyway, instead of “must.” I think we can continue this discussion on the list, but note we’re already improving the [inaudible] from what happened in 2012 because we’re saying that it needs to be—the very latest of what we’re saying here—is “prior to the end of the application submission period.” So that would be the latest, but we’ll have to decide if it needs to be earlier. Again, the more things you put in place here that are required earlier than later just means that it’s going to take them longer to get to the stage where they’re ready. That might a fine tradeoff. It’s just something everyone needs to consider.

Kavouss, go ahead.

KAVOUSS ARASTEH: I understand the three options, and I see that the option of “at the time of publication of the Applicant Guidebook” is not relevant here because we are not talking of that. We are talking of submissions, and submission is when the Applicant Guidebook is already published. So this alternative does not stand valid. So we remain with two: “prior to the commencement (or prior to the opening, and so on)” and the other is “prior to the launch of the application submission period.” I don’t think that launch period has any launch. I don’t understand that you mean by “prior to the launch of the application submission period.” “Period” does not have any launch. Are we talking about the launch of the submission? Why do we say “launch.” We are not launching a satellite or a spacecraft and so on and so forth. So I think then alternative that you have –“prior to the commencement (or opening)”—is something that should be retained. Thank you.

JEFF NEUMAN: Thanks, Kavouss. Yeah, “launch” is very informal. You’re correct that we probably should avoid using terms like “launch.” “Commencement” is much better.

I think we can move on to the next one—oh, sorry. Anne, last word on this, and then I’d like to move on.

ANNE AIKMAN-SCALESE: Just very quickly, I totally agree about the use of the word “launch.” We probably should be doing a universal search on the word “launch” and checking that language.

I’m a little confused, Jeff, about why you think that there’s delay involved in going out with RFPs for objection evaluation processes. It is because you think the AGB has to be in final form before ICANN could issue RFPs for that? I’m just trying to understand what it is that’s causing you to remark that it would cause a delay. Would ICANN not be able to issue RFPs on these procedures while the AGB is being drafted?

JEFF NEUMAN: It’s a good question. I don’t think I said that it couldn’t be “prior to.” They could certainly do the RFP, but I’m not sure that they will fully … Again, it’s just the ramifications of that requiring every single detail to be in the Applicant Guidebook means that it’ll take longer to get the Applicant Guidebook done. Ultimately, what that means is that, since you can’t start … There’s a mandatory [formal] period, at least, before you can open the application

submission window after the Applicant Guidebook is published. You basically push everything down the line. If that's what the community wants, that's totally fine, but it is something that needs to be considered. There's a lot of nice-to-have's and then there's a lot of "musts." We just need to, as a community, decide what are we okay with moving forward with the guidebook at least versus what is the ideal perfect version of the guidebook. For whether the fees for dispute resolution processes must be decided prior to the guidebook being published or prior to the commencement of the application submission window or prior to the end, I think, you need the pros and cons—for all of these, actually. It's not even just this one. We'll get to other areas, too, where we're going to have this same discussion.

Let's move on into the next recommendation.

KAVOUSS ARASTEH: I'm sorry, Jeff. I have a comment. You changed a "should"—"shall" with "should." Why? Please kindly stop. You request some information to be available, and you say that should be available. If it should be available, that is optional. If this information availability is optional, therefore the [plenaries] could not doing anything. So I don't understand why it should be changed from "must" or "shall" into "should." Please kindly clarify.

JEFF NEUMAN: A couple reasons. Thanks. Good question. The first one is that this is implementation guidance. All implementation guidance are worded in terms of "should." The other thing we need to again

state is that “should” doesn’t mean optional. What it means is that there’s a strong recommendation that it be done this way, unless it’s not feasible or unless the implementation review team figures out a way to implement the same thing in a little bit different way that is either more efficient or makes more sense, is more feasible, or any of the other reasons. So the “shoulds” are not optional. It is a strong recommendation absent a different way to do it.

KAVOUSS ARASTEH: Sorry, Jeff. [inaudible] interpretations. I understand “should” is optional unless you [inaudible] and “must” and “shall” and “should” and “that needs to be provided.” So I think we should give some practical thing. If you say “should,” it depends who interpreted that. You interpreted it in this way. Some other people interpret it the other way. These eight years of work in ICANN gave me a lot of lessons. It’s dependent on the culture of the people. It’s dependent on the background of the people. It is depending on the knowledge of the people. Everyone interprets it in the way that they want. Even some people say that “may” is mandatory, which is not the case. So I have difficulty with “should,” and I suggest for you to kindly reconsider changing it to “need to be made available.” Thank you.

STEVE SHENG: Hey, Jeff. This is Steve. We’re not hearing you. You might be muted.

JEFF NEUMAN: Yeah. And it was so brilliant, by the way (what I said). Thank you. Sorry. My fault. I was on mute. We will, in the intro, as we talked about several times before, do definitions of "must," "shall," "should, "and may." We'll define all of those terms so everyone is working off the same guidance. So I think we'll definitely have that up in the front so everyone will understand. It won't be left to the interpretation of the person that reads it. Hopefully that makes sense.

All right. Going on to the next recommendation, if you scroll down, Recommendation Rationale 5 is "The quick-look mechanism which applied only to limited public interest objection in the 2012 round must be developed by the implementation review team for all objection types. The quick-look is designed to identify and eliminate frivolous and/or abusive objections."

This was something that not only did the working group discuss several times but, universally, the comments all agreed that this was essential.

Looking at the next one, this one we've also discussed when we were taking about PICs and registry voluntary commitments. "Applicants must have the opportunity to amend an application or add registry voluntary commitments in response to concerns raised in an objection. All amendments and RVCs (Registry Voluntary Commitments) submitted after the application submission dates shall be considered application changes and be subject to the recommendation set forth in" … And we have application change request.

So we, I believe, moved this recommendation as well into the registry voluntary commitments. It's here now because you're specifically talking about doing this in order to resolve an objection.

What we have below in the implementation guidance: "To the extent that RVCs are used to resolve an objection either A) as a settlement between the objectors and applicants or B) as a remedy ordered by an applicable dispute panelists, those RVCs must be included in the applicable applicant registry agreement as binding contractual commitments enforceable by ICANN through by the PICDRP."

So that basically talks about that it's going to be in their contract. It's enforceable through the PIC, no matter how it comes about: whether it's a settlement from the objector and the applicant or it's something that's ordered by a panelist to remedy a potential objection.

We have Anne and then Jamie.

ANNE AIKMAN-SCALESE: I remember inserting some text. I don't know whether it was here or in a later provision regarding RVCs. After the words "application changes request," I said, ", including but not limited to public comment," because I thought it's really important for people to know, without having to necessarily cross-reference everything, that we as a working group know that public comment is important. I know everybody said, "Well, yeah. That's taken care of—an application change request," but I think it's a really

important point to make: these are going to be subject to public comment. And all the other application change request procedures.

JEFF NEUMAN: Right. Yeah, you did bring that up in a different section. The part that we were concerned about was that there's a lot of other things applicable, as you said, to application changes. We didn't want to list everything yet—

ANNE AIKMAN-SCALESE: Yeah. "including but not limited to public comment." It's just a very important point to make when you bring this up to the community.

JEFF NEUMAN: Yeah. Maybe we can drop it in as a footnote or something that explains what the application change is. I think we just didn't want to necessarily miss something. But I take your point. I think that was in the global public interest section that we were talking about.

The other question is—we've kept it in here—whether we need this in both sections (the objections section and the RVC global public interest). Personally, the reason I left it in here as well was because this specifically talks about resolving objections. If someone is only looking at the objections section, I thought it was important to have this, even though it's repeated, in here. But we don't necessarily have to do that.

Let me go to Jamie and Kavouss.

JAMIE BAXTER: Thanks, Jeff. Going back to Rationale 5 very quickly—I apologize for going backwards—I'm curious if this is actually enough of a recommendation here and if it's actually clear enough. I will admit I'm not as familiar with most of the objections, other than the community objection, but I know, when I supported this, it was about weeding out those who don't even have standing before an objection would go forward. But, in the reading of this, it's unclear to me exactly how this is done because somebody could take a quick look at an objection and say, "Oh, that sounds like a reasonable objection," but what is clear is that, through the community objection process, if you don't have standing, nothing else really matters. So I just question if this is enough of a recommendation or if it needs to say something further. Just my thoughts. I'm curious to hear feedback on that. Thanks.

JEFF NEUMAN: What we've done in here is we've left it for the implementation review team to finalize. Not all of the objections require standing, or some objections can be filed by anybody. So we didn't say "standing" in here because that's not necessarily applicable to all types of objections, but that's what's in the current quick-look for the … ugh. I'm trying to remember which one it was now. It was either community or limited public interest. I think it was in community. So I think we just left it a little bit vague here because we didn't want to delve into all the issues but rather have an implementation review team really dive into the details on this.

JAMIE BAXTER: Sorry. As a follow-up, are we confident that what I just pointed out won't slip through the cracks when an implementation team goes through this? Is it noted anywhere in the notes here that that is one thing to definitely look at with respect to community applications?

JEFF NEUMAN: Earlier on, we do talk about standing. We could drop a footnote or something to say "including things like standing," in general categories. I think we can do that. Hopefully it's make it more clear.

Let's … Sorry. I'm trying to figure where we are now. Kavouss, is that a new hand?

KAVOUSS ARASTEH: Yes, Jeff. There is some difficulty in this highlighted paragraph. In the first two-and-a-half lines, or two lines plus one word, it's quite clear that, in response to the concerns, the applicant could amend the submission. That is quite clear. But the second part talks of [not all amendments mentioned above or these amendments but] only amendments as a result of the concerns expressed but not any other amendments. The people should not use this opportunity to add anything which was not subject to any concerns.

So we should either say "these amendments" or "the above-mentioned amendments, and then we don't need to say "after the

application submission [inaudible]" and so on and so forth. So these amendments shall be considered an integral part of the initial submission. So I think you need to amend the paragraph, [inaudible] all by having "these amendments" or the "above-mentioned amendments," and then, "and RVCs submitted after the application submission then shall be considered as an integral part of the initial amendment," because this is an amendment as a result of the concern. So we have to coherence between the two parts of this paragraph. They are not coherent to each other at this stage. So please kindly look at that one again and amend it in order to be consistent. Thank you.

JEFF NEUMAN: Thanks. While it's true that all amendments are considered application changes, I agree that we should, in this case, have a reference—just "all applicable" or "all these" or something like that. We can do that in this section. It makes sense.

Anne, last word before we go on to the next one.

ANNE AIKMAN-SCALESE: This is just a question on definitions. They way we've just defined application change request I assume differs from how those words might be used in relation to RCEP, for example, because … What I'm trying to get is that I think that, when RCEP … It's somewhat discretionary with ICANN in relation to the public comment aspect. Do we have a definition of application change request that makes it clear that it's different from RCEP? Or am I just wrong about RCEP?

JEFF NEUMAN: I would never say you're wrong, Anne, but what I will say is that "application change request" is a specific section of the report. So that's what it's referring to. So you'll see, at the very end, "Section XX: Application Change Request." So that's what we're referring to. It's a whole section of material.

ANNE AIKMAN-SCALESE: Okay. And it's not the same as RCEP, which makes public comment discretionary with ICANN.

JEFF NEUMAN: Correct. It's different than the RCEP.

ANNE AIKMAN-SCALESE: Okay. Thanks.

JEFF NEUMAN: Sure. Now we're on Rationale 7: "ICANN must reduce the risk of inconsistent outcomes in the string confusion objection process, especially where an objector seeks to object to multiple applications for the same string. The following implementation guidance provides additional direction in this regard." So here we go. "ICANN should allow a single-string confusion objection to be filed against all applicants for a particular string rather than requiring a unique objection to be filed against each application. Specifically"—the first bullet point—"an objector may file a single objection that extends to all applications for an identical string.

Given that an objection that encompasses several applications would require more to process and review, the string confusion dispute resolution service provider," which we should probably spell out, "could introduce a tiered pricing structure for the [inaudible]. Each applicant for that identical string would still prepare a response to the objection. The same panel would review all documentation associated with the objection. Each response would be reviewed on its own merits to determine whether the relevant applied-for gTLD was confusingly similar. The panel would issue a single determination that identified which applications would be in contention. Any outcome that resulted in indirect contention would be explained as part of the DRSP's (Dispute Resolution Service Provider's) determination."

So the terms "direct contention" and "indirect contention" have the meaning that's in the guidebook. I'm not going to go over that right now. If you're not familiar with that …You know what? Let's drop a footnote to a place that defines those types of things—direct and indirect—so that someone who reads this could find where to get information on that.

Any questions? I think these are fairly logical. They didn't happen in the last round. We think this is a big improvement.

Okay. There were some additional topics, recommendations, and guidance that we had talked about several times but we had not come to any kind of conclusion on or recommendations or even implementation guidance. It was certainly the view of many people that costs should be reduced for basically all objections but especially in connection with community objections. But, that said,

we didn't really come up with any concrete proposals on how to reduce costs.

Now, in theory, I guess the quick-look process could reduce the cost of an objection if there was never standing or it basically didn't even meet a simple … well, they say, in the law, prima facie case. I don't know of a better way to say it, but there probably is a much better way. It has to meet some basic elements. So that could reduce costs for those complaints that can't meet even those elements, but really didn't talk about any other concrete ways on how to reduce costs.

Anne states, "Was the ICC the only community objection provider?" Yes. "Could we have more than one provider for competition purposes as to price?"

There is an RFP. I don't know if we mandate that there is an RFP, but I suppose we can put something like that in, where costs to filers or responders are taken into consideration.

We have two people: Christopher and then Jamie.

CHRISTOPHER WILKINSON: Thank you, Jeff. I'm just going to weigh I briefly now because I'm going to leave the call in a few minutes. First of all, fees and other costs should be capped. ICANN should issue a clear guidance as to the caps. Evaluators and others could be asked to work pro bono and to except basic expenses but not a fee. There's nothing wrong with asking people to work pro bono. Actually, I think most of the people on this call are actually working pro bono. So there are many ways of

reducing these costs. I think it's important … I can't say I've read all the documents that were generated by these procedures in 2012 but, with several of them that I did read, I was absolutely shocked by the bills and fees that were being claimed. Totally inappropriate for the works that have been done.

Thank you. I'll just leave the call and pick up with you on your next call. Thank you.

JEFF NEUMAN: Thanks, Christopher. Jamie, go ahead.

JAMIE BAXTER: Thanks, Jeff. I wonder, in being able to answer this question, if we have any information that was shared by the ICC on their process because, in any operations role, if you're looking to minimize effort to achieve the same result, it's good to understand what is actually currently happening. I don't know that we have any of that information, but it certainly is one way of tackling this question: to understand what their process was to see if there's ways of shortening that process or reducing cost to that process. But I guess that would have to be a question we ask of the ICC to get more information. It seems like it's a little unclear at this point. Thanks.

JEFF NEUMAN: Thanks. Anne puts in the chat that ICANN may have written a letter to the ICC asking them about the nature of their charges. I'd

have to go back to see if there was a response. I will take that as an action item.

So there's a couple things I heard: requiring competition (an RFP) and "subject to caps for disputes." That could be two ways.

Anything else that we can think of? Again, these are probably going to have to be implementation guidance because we don't really have too much information to go on on these.

All right. Another question to think about that we had, before we get to another area of substance, is there were some comments that were filed that said they wanted barriers reduced to filing objections: the time and expertise required and awareness of the opportunity to file. So there were some comments that there were a lot of complexities and that it required expertise in order to file these, although they were some comments that stated that, in general, there were no concrete proposals on how to do that. It's not even something that this group wants. I mean, is reducing barriers to filing objections an ideal outcome? Do we really think that that was an issue? And do we think that we should be reducing barriers? That's another question, I suppose, before we even get to specifics.

Kavouss, go ahead.

Kavouss, are you on mute?

KAVOUSS ARASTEH: Yes. I have a question about this first bullet. It mentions that the same panel would review all documentation associated with the

objections. Each response would be reviewed on its own merits—very good—to determine whether the relevant applied-for gTLD was confusingly similar. What do you mean by "relevant applied-for"? Are you talking of relevant applications? [Again,] confusingly similar. What are we going to say here to determine, [after the determination]? So everything will be based on its merits, but what do you mean by "whether the relevant applied-for was confusingly similar"? What are we addressing here? Thank you.

JEFF NEUMAN: "Confusingly similar" was a string confusion objection. The standard was, is the applied-for string confusingly similar to either an existing TLD, a reserved name, or another applied-for application? So we're not seeking to define that any further in this section. What we're saying is, unlike in 2012, where different panels … Like, if there were five objections against .cars for being confusing to .car, those occasionally were handled by different panelists as opposed to one panelist hearing all the cases with respect to that one name.

So I think the "relevant applied-for gTLD" probably doesn't even need the word "relevant." I think we could just say "determine whether the applied-for gTLD was confusingly similar." I think that's fine.

KAVOUSS ARASTEH: It may be, but do we need to say what will be the result of this review [inaudible] the merit. It's merit. Why do we have to say "to determine whether"? This is the duty of the panel. Why do we

have to tell them what they have to do? They have to study based on the merit, and the result of that is that it determines the determination. So why do we have to pick whether it's confusingly similar or not confusing similar? But at least the amendment you made makes it a little more clear: taking out the "relevant." But still I have some difficulty with this: whether the applications for gTLDs are confusingly similar. I don't understand "confusingly similar." Thank you.

JEFF NEUMAN: Thanks, Kavouss. I agree. I think we could end the sentence at "on its own merits." And that's it. I agree we don't need—

KAVOUSS ARASTEH: That could be good. Put it up there and leave it to the panel to decide. Thank you.

JEFF NEUMAN: Thanks, Kavouss. Good suggestion.

I do want to, because we have 20 minutes left, get to the topic that Gg had brought up because I think this was another important one. We don't have a recommendation or implementation guidance on it, but I do think it's important because we did discuss it … Let's see. Okay, yeah. So this first one, this new issue, was discussed several times and it seemed to make sense, but we weren't sure whether it rose to the level of a recommendation. So there was a proposal that should be grounds for string confusion objection if an applied-for string is an exact translation of an

existing string that is in a highly-regulated sector, and the applied-for string would not employ the same safeguards as the existing string. This came up from Gg, who's on the call. Gg, if I'm not explaining it correctly, please do correct me.

In the pharmacy case – Gg works for National Association of Boards of Pharmacy—if someone were to apply for the Russian translation of "pharmacy," what this is not saying is that no one else could have it. What it's saying is that there could be an objection filed if that Russian pharmacy TLD does not have applicable safeguards like the ones that .pharmacy has today. And the result of that objection wouldn't be the loss of that string. It would be rather that safeguards would have to put into the TLD.

This was supported, I believe, by the ALAC, as well as—I'm trying to remember who else—possibly the BC. I'm trying to remember who else had supported it. There were several groups that did support this recommendation.

We have a bunch of people. Let me go to Paul, Susan, Kavouss, and Anne. Paul, go ahead.

PAUL MCGRADY: Thanks. I'm extremely sympathetic to this. The only thing that jumps out at me is, what happens if—you brought up .pharmacy as an example, so I'll use it—the regulations that .pharmacy adopted or tied to their jurisdiction where they operate, rather than what if the Russian regulars are different, in your example? Is it that the Russian application would have to track U.S. obligations for .pharmacy, even if it would take it out of compliance with the

Russian regulations where it would be operated? Is that what we're trying to get to? Or are we trying to get to something else? Because I think we might need to reword this just a bit to get where we would like to go, keeping in mind that there is more than one jurisdiction in the world. Thanks.

JEFF NEUMAN: Great point, Paul. I think we should add something in there to make sure that the same safeguards as the existing string subject to the applicant's … We can figure out better words. Basically, "subject to the applicant's governing law." Something like that. But that's the point, right, Paul? To make sure that you're not … We're not trying to impose or create universal law here. We're just trying to make sure that users aren't confused in the sense that one is regulated and the other one is not. I think, if we work on that language, it's a good thing.

Let me give Paul another chance. Paul, do you want to get back in?

PAUL MCGRADY: Thanks, Jeff. Yeah, that's exactly right: we want to fashion this in the spirit rather than get down into the weeds. Thanks.

JEFF NEUMAN: Thanks, Paul. Susan?

SUSAN PAYNE: Thanks, Jeff. I've also got sympathy for this one, but what I'm wondering is—forgive me for not having, at the top of my mind, exactly what we've determined in relation to the strings that, in the first round, were considered highly regulated or sensitive strings—isn't this scenario really a concern about something in the subsequent round not being considered a Category 1 sensitive string requiring specific safeguards whereas, in the previous round, the string had? So, in the pharmacy example, [.]pharmacy may well have been intending—and I believe they probably were intending—to adopt all sorts of restrictions but possibly would have been or probably would have been required to do so anyway as a result of the GAC advice. So is this not really more a concern about ensuring that, if a particular term had GAC advice in the first round, they shouldn't be different treatments—GAV advice relating to highly sensitive terms and regulated industries and the like—in the second round? So that's where I think we need to be focusing our attention. That seems most appropriate to me.

And I just had a comment. I don't think this, strictly speaking, is a string confusion objection. It's a slightly different issue because, as you say, we're not looking at putting things into contention sets here. So it seems like it's a new head of objection to me. Not that I'm objecting to having a new head objection. I'm just making the point that I don't think this is, strictly speaking, a string confusion objection.

JEFF NEUMAN: Thanks, Susan. I think both points are excellent. You're right – I'll start with the latter—that it doesn't have the same remedies as

what you would think of for string confusion. So, if we did adopt it, it would need to be separated out into a different type of objection.

The first point is also really good because we haven't yet formally adopted whether the GAC advice for Category 1 is going to be included into the next round. Some of this may be not really necessary if we do adopt that. So there is a dependency there, certainly, to the extent that, if we don't adopt that Category 1 advice somehow into the guidebook into the next round, then this becomes much more relevant. But, if we do, it might not be. So those are two really good points.

Kavouss, Anne, and Jim.

KAVOUSS ARASTEH: I have some doubt about the accuracy of this first bullet. I understand from the middle of the second line that an existing string in a highly regulated sector … Is there is another extreme that is a direct translation of that—a linguistic translation of that? If that is the case, why only limit it to then highly regulated sector? If there is an exact translation in the normal sector, not the highly secured one, do we admit that? Why do we limit to this? And what do we mean by "exact translation"? Linguistic translation? What are we addressing here? Can you give an example of the situation here? Thank you.

JEFF NEUMAN: Thanks, Kavouss. What we're talking about here is, in the .pharmacy case, that that would be farmacia, right? I think. Maybe even Italian. So it's an exact translation. So that's what we're

meaning to get at, whether it's Spanish, Russian, or any kind of other. It's a language/linguistic perspective.

Why it doesn't apply to all strings is that not all strings have any kind of restrictions, or it is possible that, if there's an existing string that's open, someone may not want to have it open in the future, so they may propose a more restricted one, which is allowed and should be encouraged. So it doesn't necessarily apply to all strings.

Anne and then Jim.

ANNE AIKMAN-SCALESE: Thanks, Jeff. Just one point and one question. I realize that we don't want laws in the U.S. to be applied in an extraterritorial manner, but have you had some concern that there could be a jurisdiction where there just really are no applicable, for example, pharmacy laws that really protect consumers? I'm just wondering if that provides a loophole. Or do we just rely on GAC advice with respect to that? So that's the comment.

The question is in relation to IDNs because I think, in a different part of our policy work, we … When you're speaking of exact translation—you have an example of Russian, which I think is Cyrillic alphabet or whatever—didn't we have some policy work with respect to new applications where we were granting some rights to the applicant in relation to IDNs for the same term? I have a vague recollection of that in Work Track 4, and I'm just trying to remember what it was and what the interplay would be with this.

JEFF NEUMAN: Anne, that was variants. That's very different than translations. If there was a variant of an IDN which talks about scripts and characters that are in multiple scripts, we're talking about that being with the same registry operator because they're normally bundled together. But that's a very different issue than translations.

ANNE AIKMAN-SCALESE: So pharmacy in Russian is not going to be translation. That's going to be Cyrillic, right? Could you just explain a little bit further on that? Are you saying that woul[n't] be …

JEFF NEUMAN: Whatever the word in Russian is for pharmacy, that's what it would apply for. Whatever it looks like.

ANNE AIKMAN-SCALESE: So, if it's in the Cyrillic alphabet … okay.

JEFF NEUMAN: Then it means pharmacy. It's a meaning test. It's not a visual test.

ANNE AIKMAN-SCALESE: Okay.

JEFF NEUMAN: Think about that a little bit more. I'll go to Jim. If you want to come back in, let me know. Jim?

JIM PRENDERGAST: Thanks, Jeff. I agree with many of the points that Susan had raised earlier. I guess I would just a couple things. One, I think, from a predictability standpoint, we'd need to know exactly which strings this is applying to so that applicants in future rounds know exactly which strings they would then have to mimic if they decided to move forward.

I guess one of the things that I'm struggling with here—I get the intention and in support of the intent—is I'm wondering if this is the place to try to be doing this (through string confusion objection) as opposed to someplace else, either in the guidebook or in our deliberations. So I'm not sure. Somebody raised a question or a concern that we're suddenly creating a new objection standard and process here. What are the implications of that?

I guess the other, more existential question I have that I'm struggling with answer—I need to think through it some more, and I think others could probably add to it—is that essentially what this does is takes what are voluntary measures by a registry operator and imposes them on future operators regardless of, as we talked about, applicable laws, business model, etc., etc. I think that's a big leap from having ICANN require something that is base-level for everybody operating a TLD as opposed to operations of individual TLDs. So I think we need to think about that. So just some thoughts. Thanks.

JEFF NEUMAN: Great thoughts, Jim. It does point out that we really need to figure out what we're doing with respect to the Category 1 advice and whether we're formally adopting it. Like I said, if we formally adopt it, then we'd still have some as to defining it and having to make sure that it's predictable (how it's applied) and what "highly-regulated" means. But, if we did that on the front end, that may obviate the need for an objection and would be a little bit more predictable. So I think this was almost the belt-and-suspenders approach, where we're not sure if we're adopting the belt. So this would be the suspenders. That's probably a bad analogy. Essentially, we're going to keep this one bracketed, point out the connection to Category 1, and see if we can work this out.

The other one that's in here as the new issue is that, in the CCT review team, they pointed out that they wanted us to look at whether we should extend the string confusion objections to synonyms and homonyms. We previously decided that we weren't going to do that for the string evaluation on the front end. So we [inaudible] decided that, but what about the backend (in otherwise, the objections)? Should we have objections for synonyms, homonyms—those types of things? If it's the same rationale we had for the evaluations, then I would say probably not, but we thought we would bring it up anyway because it is in the CCT review team report and we should say something about this.

Thoughts?

Paul, go ahead.

PAUL MCGRADY: Thanks, Jeff. Was it recommended by the CCT-RT that we adopt this or recommended that we talk about it?

JEFF NEUMAN: Good question. I believe it was that we should consider whether to extend the string confusion, but we'll have to double-check. I think, when I read it the last time, it was something like "consider."

Steve, Julie, or Emily, could someone help with that? I think it was just consider.

We're waiting for it, but it's a good question, Paul. But let's, for argument's sake, it says it's to consider.

PAUL MCGRADY: Okay. For the sake of argument, if it says that we should just consider it and it's not specifically recommending it, then I think we should politely reject the idea for a lot of the reasons we already talked about at the string confusion similarity point. Thanks.

JEFF NEUMAN: Okay. Part of it was put up. Emily, you put up part of the recommendation, but I don't think that includes this part because we've already done the plural/singular. We will be talking about a post-dispute resolution panel in appeals. Is there more to it, Emily?

While Emily is looking, I will call on Gg.

GG LEVINE: Hi. It does make sense to me to include synonyms and potentially homonyms as standing for a confusingly similar objection. It's really hard to define what is confusingly similar when you're talking about synonyms and even, to some extent, perhaps [inaudible] translations, which is why we got away from the idea of having those restrictions at the front end during the evaluation process. As standing for objection with the reasoning that it would be confusing to end users, it would really have to be looked at on a case-by-case basis, which, in my mind, makes perfect sense: to have it as a confusingly similar objection standing. Thanks.

JEFF NEUMAN: Thanks, Gg. It would certainly make more sense if we were to go with this. It would certainly make more sense as an objection as opposed to a weeding-out criteria in the string evaluation.

Paul McGrady says that pharmacy and dot- … I can't even pronounce that, Paul. I don't even know why. Paul is asking where the potential harm is.

See, Paul, if you were me, you would have said pharmacy and .drugstore because that's much easier for me to pronounce.

Gg is saying, "@Paul, that would put patients at risk."

I guess the point is—we'll connect this to the Category 1—Gg, if both were required to have the Category 1 restrictions, would that be less of an issue than if both were not, or if the second one--

.drugstore—was not required? Would that make a difference then as to the need for an objection?

GG LEVINE: So you're saying that, if it was a Category 1 string and there was GAC-based restrictions on how it could be used, then there would be no need for this objection standing?

JEFF NEUMAN: Well, I'm asking a question: is there still a need? I'm not saying that there's not. I'm asking, in your mind, if what's currently required for GAC Category 1 strings are required for similar strings in the future, would you still need the objection?

I'm not putting you on the spot. If you don't have an answer, that's fine. Just something to think about because we are—

GG LEVINE: That's a good question. It depends partially on if it's written into the RAA and if it's somehow enforceable, I guess. So, if that is part of the upfront requirements for certain strings, then, yes, I agree that it may be duplicative to have it as an explicit objection as well. But, right now, we don't have that assurance.

JEFF NEUMAN: Right. Fair enough.

GG LEVINE: So this is, as you said, the suspenders when there's no belt.

JEFF NEUMAN: Yeah. Thanks, Gg. This is definitely interconnected that, so we need to consider both of these … Let's start on this specific question the next time because we are over time and it's been a long call. I completely appreciate everyone.

Greg is saying that synonyms are a dangerous place. Greg, Alexander, is it okay if I just end it and you guys can speak? We will start with this for a few minutes on the next call, if that's fine.

[ALEXANDER SCHUBERT]: Okay.

JEFF NEUMAN: Good. Thanks, everyone. I know it's really—

[GREG SHATAN]: Yeah, that's okay.

JEFF NEUMAN: Great. Thank you. I know it was a long call. I really appreciate everyone sitting through this. I think we got a lot done. We'll start here with this last question the next time for a few minutes and then go into the registry agreement and the topic after that, if time allows it. The call is Thursday at—If someone could post the

time—20:00 UTC. Thanks, everyone, for participating. I'll talk to everyone on Thursday. Thank you.

[END OF TRANSCRIPTION]