
ICANN Transcription

New gTLD Subsequent Procedures PDP Working Group

Thursday, 10 September 2020 at 03:00 UTC

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ANDREA GLANDON: Good morning, good afternoon, and good evening. Welcome to the New gTLD Subsequent Procedures PDP meeting being held on Thursday, the 10th of September, at 03:00 UTC.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you are only on the audio bridge, could you please let yourselves be known now?

Thank you. Hearing no names, I would like to remind all participants to 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. As a reminder, those who take part in ICANN multi-

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stakeholder process are to comply with ICANN expected standards of behavior.

With this, I will turn it back over to Jeff Neuman. You may begin.

JEFF NEUMAN:

Thank you very much, Andrea. Welcome, everyone. I know it has been a couple weeks since we have spoken. I know that many of you are hard at work on comments and working with your stakeholder groups, advisory committees, constituencies, Board, or whoever else you also work with to produce comments. As you know, we're not meeting the usual twice a week [and] just having a couple meetings while the public comment period is going on.

I thought what we would do today would be to just get some feedback from you all—we can give you some feedback as well—about the public comment period and about any questions that you may have or any other items that you may have heard just others talking about within the community—things that are going well, things that may not be going so well or that are tougher. So we can start with that discussion. Then we can discuss a little bit deeper dive into the closed generics proposals, although one is not necessarily a proposal but more of a justification for the closed generics. We can go into a little more of a deep dive into those because, although we did discuss them at a high level, we didn't really necessarily have the deeper dive into it, understanding that this is all out for public comment. This is not in any way—this discussion—to try to supplant or supersede that discussion but really just, again, helping us so that, when we do get the comments back, we'll have a leg up and we'll be in a better

position to start working on this issue as well as a few other issues that we'll talk about in a couple minutes. [For] the next couple meetings, [it'll] give us a great head start. So this meeting may go for 90 minutes. It may go for 60 minutes. It may go for whatever. This is a much more relaxed format than our usual working group calls because of the public comment period that's going on now.

That being said, the other thing I want to ... Well, actually what I should do first—sorry—is ask to see if there is any updates to any statements of interest. So let me ask.

Okay. I'm not seeing any one the list.

Some administrative items before we get to the update, although these are related to the update, on the public comment forum. Just so everyone in the group knows, we have received two requests so far to extend the public comment period. We received a request from the ALAC for a two-week extension of the public comment period, and we received a request for an extension of the public comment period from the SSAC, though I do not believe that they had asked for a specific amount of time, rather just an extension. The leadership team got these requests both on, I want to say Tuesday (yesterday for some of us), and we've been discussed it on the leadership list. Two hours ago, we had a call of the leadership team.

Our response—I'll be the nice one, I guess; Cheryl could certainly jump in as well—is that, at this point, both of the requests referred to the extraordinarily long length of the draft final reports and that it was taking them time to go through it all, but at this point we're not inclined to grant these extensions. As we were discussing

this—you may remember this from a number of months ago—(having a public comment period) the first thought of most of the leadership team, and frankly a good part of our group, was to only put out those areas where there were real substantive changes, and we'd put those out for public comment. We initially were not intending to put the entire draft report out for public comment, but, due to a number of requests from some working group members but also from a number of constituencies, advisory committees, etc., we decided that we would put the entire thing out at the same time, but emphasizing the point that we're seeking comment on those areas for which there have been substantive areas and/or those areas where they may be new information that we may not have had access to in our years of discussions. So we knew when we made this decision that the decision to put out the full report would result in a much more lengthy document. We also anticipated that, because of the length, we would get requests for extensions. But the only way I think we're going to be able to meet our timeline to deliver a report to the council by the end of the year is not to grant a formal extension.

That said, if, for whatever reason, as we get closer to the deadline it looks like groups are really trying to get their reports in and they may need an extra day or two or whatever it is, we're not going to close the comment period immediately. So it's not going to be this hard close. But we think giving a formal extension will just encourage everyone to just file their comments at the end of the extended period as opposed to when the comments are in.

Just for an understanding of how tight the timing is, the comments are due on the last day of September. The ICANN meeting then

starts ... Well, the pre-week, I guess, is a week later, but then the official meeting kicks off in two weeks from that. If we were to give any sort of extension on the public comment period, that would get well into the time of the ICANN meeting. As it is, ICANN staff is now going to be analyzing and putting together the public comment report by the 21st of October, so they're already suffering through an ICANN meeting to try to get this to the group. So we're already pushing against some tight deadlines anyways.

The last point I would make is that many members of the working group are involved in the comments of the respective groups, so hopefully, as we get into substantive discussions on what the public comments were and those topics, we are fairly confident that members of the working group will be able to cover the comments that may not have yet come in from their constituency stakeholder groups/advisory committees. I know that's a long way of basically saying what Cheryl would just say as "no." We're pushing for comments to come in at the allotted time.

I see, Jim, you got your hand up. Let me just ask first, Jim, before you go, if Cheryl wants to add anything about the request that we've had. Then I'll go to you, Jim. So, Cheryl, do you want to? You don't have to, but if you want to offer anything.

Okay. I'm not sure if Cheryl has audio. While we figure that out—hopefully, everyone can still hear me—I'll go to Jim and then see what's going on with Cheryl's connection.

JIM PRENDERGAST: Thanks, Jeff. So to me?

JEFF NEUMAN: Yes, please, Jim. Go ahead.

JIM PRENDERGAST: Okay, great. Jeff, I appreciate that. I did not know that two groups had already asked for extensions on the timeline. There is one group, I think, that we are all attentive. When they do ask for an extension, it kind of does get different treatment, and that is the GAC. Assuming that comes, how to you and Cheryl plan to address that when the GAC asks for an extension? Because we all know that it's difficult for the GAC to deal with these issues intercessionally, and they've already signaled to us that what they thought was the timeline probably was not sufficient. Thanks.

JEFF NEUMAN: Thanks, Jim. It's a good question and one that we haven't had to come across yet. Let me first see if Cheryl wants to weigh in. Or I can weigh in as well. Do we have Cheryl?

ANDREA GLANDON: Cheryl's line is connected. Let me try and unmute her just to make sure.

JEFF NEUMAN: I see Cheryl. Okay, maybe she's not available to talk. That's fine.

Just to get to the question, Jim, if we do get a request from the GAC, the good thing about the GAC is that they have ICANN

staff—I don't know if they're called "liaisons" or "policy staff" sorry, Steve and Julie; you might know more—but the good news is that I think we'll have an indication at least of where they stand on those issues. So, if they do need to, for some reason, wait to have formal sign-off at the ICANN meeting, we hopefully will be provided with advance notice of what they believe their comments will be and can hopefully start discussing those early. It's kind of the same point I was making with the ALAC. Maybe not as much as the SSAC, but the ALAC certainly has a number of participants here, so I'm hoping that, even if it takes an extra week or two to get the formal sign-offs from their processes, at least they can, with the appropriate disclaimers, be in a position to talk to what those issues are. I know that's not a complete answer, but I'm, again, hoping that will be the case.

Jim, you got your hand back up. Let me just check with Cheryl. Are you ... Benedetta says, "Great that the GAC has not requested an extension. That's even better."

So, Jim, go ahead. Actually, sorry. Cheryl, let me test and see if you have audio now.

CHERYL LANGDON-ORR: I do. I can hear you, and I can even peak.

JEFF NEUMAN: Awesome. I don't know how much of that you may have heard, but I didn't know if you wanted to add anything on the no-extension and on Jim's question on what we would do if we got a

request for an extension from the GAC. Then I'll go back to Jim because I think it's a new hand up.

CHERYL LANGDON-ORR: I'm of the "no means no" school of thought. I think what I heard you say covered my perspective perfectly well.

JEFF NEUMAN: Okay, great. Jim, you have a follow-up?

JIM PRENDERGAST: Yeah, just to react. Thanks, Jeff. I'm seeing in the chat, "Glad to hear that the GAC has not requested an extension." I think we all know the importance and the unique role that the GAC advice does claim as process. So, if they're not asking for it at this time, that's good to hear. If they do ask for it, then I guess we need to plan for it at a later date. So great.

JEFF NEUMAN: Yeah. Thanks, Jim. Obviously, we are paying a lot of attention to that—not just the GAC but other groups. If you are all aware of other situations where you're having issues with your own respective groups in getting things responded to as well, if you could just make those known to us as soon as possible. Then we can see if it's really an issue of the form itself or from getting what it is that they actually need the extension for and maybe a prioritization if they could get things in. So just a heads up from you all would be great if you hear anything.

The other things I wanted to cover [is] the public comment survey itself. I don't know if you've tried to fill out the survey yet or if you have clicked on the link that says you can view the comments. If you click on that link on the public comment announcement page—the link that says View Comments—what you will see—thanks; is that Steve that's got control?—is this. You'll see an Excel spreadsheet that's extremely difficult to really understand and follow. All of that is normal. At the end of the day, when staff is putting together comment summary, they will have to do some work to cut and paste things but essentially everything will be in ... This is now how the working group is going to get our readout of the public comments. We will be getting, through some hard work from staff, an actual document that groups these comments together by questions number, by theme, and things like that. So don't get discouraged by the way that you might see these things now. This is not the way it's going to be prepared for the working group.

Of the other things you'll notice, one is that we can't stop spam from—I wouldn't say "spam" ... But pretty much anyone could fill anything into these forms. We'll go through them the best we can to weed those out, but we're not going to catch everything. So things that are marked with something like "test" or ... I don't know if we already removed it, but there was some other things in there which look like junk that just goes with the form.

The final thing I wanted to point out, even though this is in the instructions and it's in the tutorial if you watch it, is, as you save your form, it will show up here. So there's no formal Submit button. Let's say you do Questions 1 through 5 and then you save

it. You're going to do the rest later. That's fine, but just understand that everyone will be able to see right away your responses to Questions 1 through 5, which is why we're really stressing that groups not use the Google survey form as a place to just start drafting where people can make changes and things like that and to really do that in Word and, only once you are ready to put your responses into the form, that's when you would do that and would save and all of that because, otherwise, if someone does start using the survey form for their draft answers, even if it's not intended to be their final response, people will be able to see that draft response. It does say that in the instructions. It's in the tutorial that Julie has done. I urge everyone to look at that or watch the tutorial. We'll again stress that during our webinar, which I'll come to a little bit later. But just know that's what the Google form does. It's not like there's a Submit button at the end of the process. Once you hit Save for the first group of questions, that's when anyone can see it. Now, I don't know how many people are going to view comments right now, but I just wanted to reiterate that point.

Jim says, "[Normal]. I looked at the comment period prior to this. To be honest, I could not make any sense of it. I wasn't sure what comments were tagged to which questions [inaudible]."

Yeah, no doubt. It is very confusing if you were to just look at the View Comments right now, which is why, once the policy staff does their magic on the backend and produces the report, it will all make sense. I suppose anyone that's got some skill in Excel and filtering and all that kind of stuff could replicate that as well, but the way that this form works, which does make it easier at the end of

the day for us to analyze, is not the traditional View Comments that we're used to where you see an e-mail with all their answers or their written paragraphs.

Yeah. The rest of Jim's comment—sorry—is that staff has done this before with the RPM group, so they're familiar with how this works and how to structure it for us at the stage where they produce their staff report.

Also, as you know, the RPM group had what they call the donut charts to give an idea of the quantity of certain responses as opposed to ... Well, that's it. It just indicated the quantity. We're not going to do that because I think those were ... I don't want to say "misleading," because that's a little bit harsh, but those donut charts could be not what they appear. So you could have ten responses to a question all being the same answer from individuals, but then you could have one advisory committee, for example, that only files their one response, and it would look like, if you looked at a donut chart, ten people felt one way, and one—I'm using air quotes here—felt the other way, when that's not really the best way to look at it because the ALAC had it as a group. It's different than individuals. So the donut charts were not the easiest in the RPM group, so we are specifically not going to ask for those for our analysis.

Heh. "Bagel charts." No bagel charts. Nothing that looks like a circle with a space in the middle. And I'm staring at what I just got—a ring light—so that I can look pretty during video webinars. But nothing in that shape.

So that's what I wanted to cover so far on the feedback from the form. I just wanted to throw it out there to see if you all had any comments from others—just anything to report back; initial perceptions or thoughts from groups, not on the substance of your comments but just if there's trouble that anyone is having or anything we can do better to help or maybe even (I'll get into the next part of just discussing our webinar on the 14th) anything you think we should cover in terms of the form and the public comment period during that webinar.

I'll just wait a second. You don't have to have any comments. I just thought I would ask.

All right. Judging from the lack of hands raised and comments, hopefully things are going well and fairly straightforward.

To just continue on what I mentioned, as most of you are aware, we have a webinar scheduled for the 14th of September—I can't recall the UTC time, so I'm sure someone can post that in—where we have allotted 90 minutes to cover the draft final report and hopefully encourage interaction from the community—thanks, Steve; it's 20:00 UTC—to ask any questions. Now, we certainly have a bunch of material we can use to cover at least 60 minutes if not more, but I really would love it to be more of an interactive session back and forth where people can ask questions about why the group did what it did on certain things or just ask for clarifications—things like that—not for getting feedback on the substance. So we're not trying to get comments of, "Well, I don't like what you did on this section." That's not really the intention of the webinar. That's great for the public comments that they can file. It's more to asking clarifying questions.

So what we'll do is spend a couple minutes—Cheryl and I—at the beginning of the call, talking about the working group, the processes that we've been through to get this point, and then ultimately the draft final report and what we're seeking out of the public comment period, stressing some of the same things that we've been talking about all along, which is that we've been doing this for a number of years. Our goal is to get not just necessarily a reiteration of your previous positions but comments on the new substantive materials or any new information that we may not have had access to while doing our deliberations. So we'll go over that. We'll go over the form itself—not read through the form but go over the structure of the form—refer people to the tutorial, and then just talk about a couple of the same things that I mentioned at the beginning of this call on saving the form and things like that.

Then we'll spend the bulk of our time on—I think it's something like seven or eight—subjects that we picked out as being the new substantive areas or areas that we're really seeking comment on. I'm sure it would come as no surprise to you that that closed generics, mechanisms of last resort, filing changes to applications, and the predictability model are just some of the highlights that we've picked out to cover, but one thing we'll do early on in the call is ask if there is any specific topics that attendees want to cover which we may not have on our list. That's great, too. Then we have an idea of maybe spending a little bit less time on one of our preselected topics in order to have more time on the topic that someone or a group was interested in discussing.

So that's the plan for the webinar. It's going to be a little bit fluid in the sense that we have things that we will definitely. We have

things that we may cover if there's time, but it'll depend a lot on the interaction we get.

What we'll do, because I think we're getting close to having the slides ready, is we can send an advanced copy of the slides to the working group, if not at the end of this week then certainly by Monday next week, before the call. I think we should have it by Friday. Sorry, Steve, if I'm committing to something, but it would be great if we could send out the slides at least to the working group on Friday.

Steve has confirmed that we should be in a good place to do it. Just so everyone knows, when Steve says that, it usually means because I've actually done the review. So Steve is usually dependent on the leadership team to actually review the slides, and we're not always as punctual as we'd like to be, but this we've been pretty good on.

Big thanks to staff who's been doing a lot of the work behind the scenes. And advanced thank you to staff who's going to have to take all these comments and organize it in a way that will be very useful for us when we do have those comments.

Let me see if there's any questions or comments on that.

What I want to do now for the remaining time—and maybe spend five minutes as AOB talking about the ICANN69 sessions, if we can just put a placeholder for that for maybe five minutes—is go to George and Greg and anyone else from that group to take any questions and start talking about maybe doing a little bit deeper

dive. If anyone has got any questions or thoughts, I think this is a good time to do that.

GEORGE SADOWSKY: Okay. Thank you. Steve, sorry. Do you want to go first, Greg, or not?

GREG SHATAN: I would love you to go first, George.

GEORGE SADOWSKY: Okay, I will do that. Let me give you at most two minutes' introduction. I joined the working group quite late. I'm sorry that, since I left the Board, my personal and professional life somehow got very, very full and complex and I wasn't able to come on earlier. But, when I did in the beginning of August—I think now it was the beginning of July—one of my pet topics was closed generics, as you may know. What I saw as, after three-plus years, was there really hadn't been not only agreement but there hadn't been a presentation of alternative views of what was possible and what people thought.

So four of us who felt pretty much the same way about this and, in a week, we produced this proposal—a proposal for public interest closed generic gTLDs—with a regular ugly acronym, but we only had a week. But we put it together and presented it to the group. The details of the proposal are not particularly interesting. They're there to give you a sense that this can be done. It was essentially a show of feasibility. The important thing was the underlying

assumptions and principles from which we started. We figured, if we didn't know what we thought and how we were going to view this and what our goal was, there was no point in starting because we had to know where we were heading. So Section 3 of our proposal, which has four major elements in it—trust, commitment to the public interest, fiscal restraint, and encouraging development of TLDs consistent with their purposes—we felt was sufficient guidance to allow us to create something—create an outline—of what such a proposal would look like and have it hold together—have it be coherent—in the sense that it really satisfied what we wanted and we felt was a good addition to the report.

So that's what we did. We tried to fill in as much as Section 4 as we could, showing that we could use these four objectives and fashion something that we thought would work. But the important thing here is not the detail, except to show feasibility. The important thing are the objectives—the underlying assumptions, principles, and goals of the program. Thank you.

I'm done. Greg, do you want to add anything to that or give your own interpretation?

GREG SHATAN:

I'd just like to add a few words, more in terms of how this can be reviewed—this proposal—as a whole. I think a lot of time—maybe almost all the time—spend reviewing this proposal really focused on Section 4.2 and whether the applicant, as we proposed, made this not a closed generic.

What I would encourage is to review this proposal as if this Section 4.2 by and large didn't exist. We can spend some time talking about 4.2 and ways in which a single applicant can still meet the public interest test, but, by and large, this is intended to work for a single applicant or some form of supporting applicant.

The point is there's a lot in this proposal that has nothing to do with the controversial or at least consuming topic of the nature of the applicant as one versus many. For instance, there are the overall characteristics in 4.1 that George alluded to, and I think those are frankly considerably more important. In many ways, this is a modular approach. And there are modules in here such as review of the public interest application and the Board review and a [inaudible] that could apply even if we said absolutely nothing about the nature of the applicant as anything more than your, if you I will, garden variety single non-profit or even [I]GO or even—maybe not ideally but pragmatically—a for-profit organization still operating in the public interest.

So there are a lot of aspects to this proposal, and I just don't want the one bright shiny object to be the sole focus of this because there's a lot of other ideas in here. They may all not be great ideas. I think some of them are. I would just hope we can move past the one thing, although obviously I can't tell you what to ask about. Thanks.

JEFF NEUMAN:

Thanks, Greg. George, do you want to add anything else? Or I don't know if Kathy or anyone else is here.

GEORGE SADOWSKY: Kathy and [inaudible] are not on the call. I don't want to add anything. That's right. Let's close it up.

JEFF NEUMAN: Okay. Thanks, George, and thanks, Greg. Greg, I think that was helpful to just point about Section 4.2 and thinking about the proposal in a way where that's not the key focal point, where it's everything around that. In a way, that brings it closer to some of the things that I have in my high-level draft of public interest, and I think that there can be synergies there.

Does anyone have specific questions in here? Things that they would want clarified?

Avri, go ahead.

AVRI DORIA: Thanks. I've got two questions. I'm not sure if they're appropriate for the moment. If they're not, please tell me so.

One of them is, as I was listening to the 4.2 discussion, I started to be confused and wondered whether this does include other types of socially driven mission organizations and those [from] places that may not have a not-for-profit or even a for-profit but which is dedicated to the public interest. Whether they would be included was one question.

The other question was one that I think is actually coming up in the Board a bunch, which is: "Public interest. How do we do that?"

How do we make that determination? And how will you make it?
How can that happen?”

So those are questions that I have at the moment. If they're not appropriate now, I can ask them another time.

JEFF NEUMAN: Thanks, Avri. I do think that those questions are appropriate for now and for moving forward. I think those are the right questions to ask. And I see Greg's got his hand raise. So, Greg, go ahead.

GREG SHATAN: I'll provide my thoughts, which are not necessarily George's or Kathy's or anybody else's.

I think, on the first point, to some extent I view this proposal as malleable. In other words, changes can be made that would allow for greater flexibility within the concept of the closed generic or the closed concept so that, for instance, if there are jurisdictions where there functionally isn't really a non-profit concept or even many or any relevant IGOs or INGOs, something else could work. Or even in places that it does. I tend to think that, in the scorekeeping, a for-profit venture would get a lot more questions. I think that there are certain types of for-profit ventures, sometimes called zebra companies, that are not about maximizing profit for their shareholders but that are essentially for-profit public benefit corporations with various guises.

The point is that this is not intended to be a preclusive and graven-in-stone proposal. So you could move some of the

levers—maybe even all of the levers—up and down and keep the others where they are. It's not intended to be a set piece.

The second question has just come right out of my head. Avri, can you remind me of what it was? Oh, about the public interest, yes.

AVRI DORIA: Yes. At the end of the day, how do we determine, yay, it is public interest or, no, it's not?

GREG SHATAN: That I think is the role of the panel, but of course the concept of defining the public interest has felled—I wouldn't necessarily say better people than you or I, Avri—certainly other people than you or I. And you and I probably have spent a fair amount of time thinking about it separately and together, and probably everyone else has. We probably end up somewhere closer to Potter Stewart, unfortunately, in the "I know it when I see it" area. But given the, in a sense, difficulty of defining public interest, I think there will be probably be, rather than trying to define it universally, a series of aspects and characteristics and the like that would tend to make it affirmatively in the public interest and certainly more in the public interest than before any other type of interest. But what I hope we can avoid is getting bogged down in trying to define "public interest." That I think is a dead end, in a sense, because it's too subtle to be defined as such. But I will be looking to the panel. I'm looking to set criteria that all in all would indicate the existence or lack of existence of public interest motive, goals, and usage of this.

I know that's not a complete answer—in fact, maybe a complete non-answer—but I think the point is that it'll be something that [I'll] try to deal with a series of concrete or relatively concrete attributes as opposed to looking for a unified field theory of the public interest.

AVRI DORIA: Thanks.

GEORGE SADOWSKY: Yes—

AVRI DORIA: Oh, George, okay. I'll wait. Then, if I could, I'd like to ask a follow-up.

GEORGE SADOWSKY: Okay. Yeah, that's fine. Greg and I don't disagree on any of this. The problem with the for-profits, Avri, you mentioned—I'm sure there are for-profits that have not-for-profit or [inaudible] goals that are defined in such a way that they approach those goals ... But what we do want to make sure of is that this does not become a financial aspect as opposed to a public interest asset because, if you can change one of these gTLDs into what is an asset and can be sold for a lot of money if it's successful, then we want to prevent that. You'll notice we've spend a fair amount of time and effort preventing that and saying that the gTLD has to stay faithful to its purpose. In other words, whatever it gave in the last round,

say, as the answer to Question 18A, it has to stick with that and it cannot be resold in a way for its financial gain in any way. That's the concern about the for-profits, at least from my point of view.

Other than that, Greg is right. Move the levers up. Move them down. We keep the objective satisfied. That's all we really require.

On the GPI, I'm with Potter Stewart, I think. But we did it for community gTLDs in the last round. Well, maybe it didn't work quite as well as it should have. Maybe we learned something. Maybe this is a step up from community gTLDs. But just because it's difficult to measure doesn't mean it shouldn't be measured. Thank you.

AVRI DORIA: Okay, thanks.

JEFF NEUMAN: Thanks, George.

AVRI DORIA: Jeff, can I follow up a sec or not?

JEFF NEUMAN: Yeah, go ahead. Then Marc in the queue after you, Avri.

AVRI DORIA: Okay, sorry. Thanks. I appreciate the answers. As you probably know from things you've heard me saying, I am not particularly

driven towards the once and final definitions of public interest. I'm just basically concerned about the nature of what happens in terms of compliance. Have we thought that through? And also what happens in terms of the accountability mechanisms that would take, as happened with the community, anything. So basically the concern is for a set of criteria, as you say, that are fairly constraining if this is what goes through that allows those processes to not be death traps. But thanks for the explanation.

JEFF NEUMAN: Thanks, Avri. Marc, go ahead.

MARC TRACHTENBERG: Can you hear me, Jeff?

JEFF NEUMAN: I can, sure. Go.

MARC TRACHTENBERG: I guess the first thing I'd say is that Greg made my point better than I ever could, which is that there's no way to define and create standards for what's in the public interest. It's just completely unworkable. Having the public interest standard is only going to guarantee that applicants will be arguing about this and battling with ICANN for years and suing ICANN. That's what it's going to do. So it's not implementable, and we're doing ourselves and the community disservice by recommending anything that can be implemented because, even now, people can't think of what the

standards would be. So we can't punt it to some panel and give them some guideposts. That's just not going to work. We have to be realistic here.

Two, there's no basis at all whatsoever for any sort of requirement that the applicant be a not-for-profit. Frankly, being a not-for-profit doesn't mean you can't generate substantial profits. I have a number of not-for-profit clients. Additionally, being a not-for-profit does not guarantee in any way that the company would be acting for good. I have encountered numerous technically not-for-profits or the equivalent in other countries that really are not acting in the public benefit. Many not-for-profits, like 501c6, which are membership organizations, do not have to act in the public interest. That's a very small set of not-for-profits, which would be public charities in this country, and it could be an even smaller segment in other countries. So that requirement just has no basis in anything and doesn't get us anywhere.

Finally, I guess I would just like to say that—this is a point I've made multiple times before—there is no evidence whatsoever anywhere that allowing applicants or registries to operate closed generics will result in any harm whatsoever. This is 100% speculative, and there is no basis for this except for people being worried about it. I don't think that in itself is a reasonable basis to put a limit on something that could result in substantial innovation [in] new gTLDs, which is something that has been sorely lacking.

GEORGE SADOWSKY: Those are good points, Marc. Greg, do you want to start, or should I?

GREG SHATAN:

I'll take the first crack. I don't think I made your point. While I said defining the public interest was something that many have faltered at, I think that defining standards by which to define whether something is acting in the public interest is possible, maybe even not that difficult, and I don't think we left it entirely for some panel down the line. We defined a number of criteria in here and, as George said, we only had a week to get this whole thing out. With more time, we could come up with much more detail—again, high-level detail, not nitpicky stuff. So I think that a set of standards for organizations that act in the public interest is done all the time in various other aspects, including in certain types of not-for-profits and also in grant-making organizations that give grants in the public interest. So I just wanted to distinguish between what you were saying and what I was saying.

On the second point, I'll take that as a suggestion rather than a criticism. While I think that it is easy to say that non-profits act in the public interest, it's true that there are types that don't and that there may be some that only act in a very narrow definition of the public interest, like the Organization for the Cultivation of Lice or something like that. Their definition of public interest is probably pretty niche, which is why again I say we should be somewhat more malleable, more accepting, with regard to the type of entity. And I think that the criteria that we'd set would not give blind approval to a non-profit any more than it would give a blind denial to a for-profit. The proof of the pudding is in the eating, not in the label, in this case. So that I think is something that can be tuned up.

On the last point, I think here we're responding to the desire of the Board to hear about a proposal to release these in the public interest with the idea that the controversy around whether just regular registries should be able to operate closed generics for whatever purpose. It just didn't seem to have wings. If there's a consensus to go behind that, that's interesting. So we could look at that. But we were responding to a particular ask that was made of this entire working group and which we somehow managed to go some five years without really fully confronting, although we certainly picked at it like peas on a plate for a while. Thanks.

JEFF NEUMAN: Thanks, Greg. George, if you want to add anything to that. Then I'll give Marc a chance to respond.

GEORGE SADOWSKY: I do. Marc, give me a couple of words on Point 1. I forgot. Remind me.

MARC TRACHTENBERG: My point is that there's no meaningful way to define what's in the [inaudible] realistic standards that aren't going to result in anything but people arguing with ICANN and litigating with ICANN for five years after the next round opens, like we saw with some communities.

GEORGE SADOWSKY: Well, I suppose that's possible, but we think the probability is very low. I think Greg has addressed this well, but I want to deal with respect to your second point, which is about non-for-profits making a lot of money. There's not any financial incentive in getting one of these gTLDs. There's not. Nobody is going to argue that they want this so badly because they're going to make a lot of money doing it because, if the objectives that we've set on fiscal restraint are followed, you're not going to make money. It has to be a real public interest goal that is to be served. You may want visibility, but money you're not going to get.

The second thing is that, in terms of the way in which the gTLD is going to be covered, it's generally not one applicant. It's one applicant plus enough active support and participation by other organizations that support that same public interest goal, whoever it's defined.

To jump to your fourth point, I think we are much more likely to see some substantial innovation from that kind of redefinition of what the internals of a gTLD are, how it's governed, and particularly how it's governed cooperatively among, say, the Red Cross and Doctors Without Borders—people like that—who have the same public interest goals. They may have their own special goals that they'll work to maximize at the same time.

And the fact that you say there's no harm for closed generics? I would disagree with that. I go back to the posting I did on CircleID. If you give a generic to somebody to run, and they can structure it any way they want in terms of who gets to list [and] what second-level gTLDs get made, you're giving them the power over the information space of an industry. Not only that, but you're probably

selling it at auction. I think there's something fundamentally wrong with that and [it's] anti-public interest, no matter how it's defined. Thank you.

JEFF NEUMAN: Thanks, George. Marc, do you want to give a short response to that? Also, Marc, if you could, since you are sort of introducing and [set] a lot of points of the paper that was written, I don't know if you want to cover that. I'm looking to see if Kurt is on the call. I don't think so.

MARC TRACHTENBERG: He's not.

JEFF NEUMAN: But I think you're covering a lot of the points, anyway.

MARC TRACHTENBERG: My points are what our paper is. I guess, to respond to that, Greg, you may have had a week to draft this paper, but people have had far longer to think of public interest standards, and no one has been able to come up with anything meaningful. And you haven't either [inaudible]. So you're just trusting that somehow people would come up with these magical standards that would make sense, and you have no basis to think of that whatsoever.

As far as using the example of grant-providing organizations that have made public interest standards, well, they're free to as it's their grants. They can define what's in the public interest any way

they want to. They're not in the same position as ICANN in any way, and they're not controlling a resource like who can have a new gTLD and what they can do with it.

For George, I would say you can't say without any surety that there's no financial incentive for a non-profit to operate a closed generic or any TLD. They could think of numerous ways to generate revenue from that TLD that was within their not-for-profit purpose. Again, I have a number of not-for-profit clients that generate substantial revenue and act basically like for-profit businesses. And I've also been on the other side of disputes with not-for-profits that act in many ways like for-profits. The not-for-profit really is a tax status.

I also disagree with what's likely to result in innovation. Frankly, I don't think that you have any basis for saying that the Red Cross or Doctors Without Borders would be more innovative than a private company. You'd like to think that, but you have no basis for making that assumption. That's just a nice-to-think thing that will happen. But, again, just like the harm with new gTLDs, there is no basis for thinking that. It's pure supposition. We have second-levels of generic terms, and there's never been harm for that whatsoever. If you give someone a generic to run, you don't give them control over that business sector at all. You give them control over one extension, one word. They don't even have control over it because you know what? There's an infinite number of other TLDs that could use synonyms, and there's an infinite number of second-level domains in the infinite number of top-level domains that could also use that word or similar words. So the permutations are endless. That person who operates that one

TLD does not have any control of any industry or even that word or phrase.

JEFF NEUMAN: Thanks, Marc. Everyone—George, Greg, Marc—you're all making excellent points. I think this is what makes the issue so difficult.

I see Greg's hand is up. I didn't know if you wanted to do a last quick response. What I wanted to do is just show, to dovetail onto Avri's comment ... Greg, is that an old hand or is that something new?

GREG SHATAN: Just briefly, Marc certainly is entitled to his opinion, as we all are. I don't think I have no basis and no ability, no matter how hard I try, to come up with some form of standards that could at least be fruitful for discussion. The fact is we had a week to do the whole thing. We haven't really returned to this since then, so saying I still haven't? I would take that as a challenge, expect I got 100 hours of work a week already. I'm not going to take that challenge on this. I haven't even sorted my sock drawer, and I'm sitting with my sock drawer 24 hours a day pretty much.

In any case, I don't think that it is unclimbable peak. And I think, while organizations may do this in a more private way and they're not beholden to the larger community, the idea that they're somehow complete free agents and making all sorts of bizarre definitions is just not likely to be the case for most organizations. So I think the idea that there's no basis and no way forward to ever come up with a reasonable way to define standard for

something that is operating in the public interest is, again, an opinion. But it's certainly not a fact. I can't disprove it right now, but neither can it be proven.

MARC TRACHTENBERG: That's the difference between our position and your position. Ours is based on logic and evidence or lack thereof, and your position is based solely on your opinion and what you think. You are worried about there being some harmful effect, but there's no evidence of it. You believe that creating these standards are not unworkable, but there's no basis for thinking that and no one has come up with any sort of basis to do this. People worry about controlling an industry, or they're thinking about what the possible incentives could be for operating these closed generics, but there's no evidence for any of that. It's all [inaudible]

GREG SHATAN: I'm not assuming there's a problem with the other proposal. I'm just making this proposal.

JEFF NEUMAN: Thanks, guys. I think those are all excellent points. I remember, in a former life, I certainly made a similar argument as Marc in the sense that we never let a closed generic go through, so we don't know would or could have happened because it was just essentially not allowed. So it's hard on either side to prove or disprove what would have happened because we didn't let it happen.

One thing I want to point out quickly is—I'm not sure if I covered this before—that I want to thank Avri and Becky and the ICANN Board because they are actively working on responding to not the Google survey form but on certain issues on the report.

We sent a letter—I don't know, Steve, if you can post it—and we can send it around to the group. It's on the correspondence page. One of the things I'll draw attention to is the middle of it, where we point to these bullet points where ... Okay, where is it exactly? Okay, here it is. So what Cheryl and I said in the letter is that, with respect to closed generics, the working group has been unable to reach agreement on whether closed generics should be allowed, not allowed or, if allowed, under what conditions. Then we quote the letter that was sent to us. Then the working group spend considerable time discussing whether this meant that the ICANN resolved that all future closed generics must serve a public interest goal if they were to be allowed or whether it was just attempting to understand the GNSO's thoughts on closed generics in general. We would like to understand the Board's view on the topic of closed generics, as it would help guide out future discussions. Then we cite to the three recent proposals.

So the basic point there—I'm glad to note that we understand that the Board's working on this—is to get an understanding of what the Board was really trying to do in that resolution. Was it, for example, approving the GAC advice, saying, yes, it has to serve a public interest goal and they're looking to the GNSO to define those conditions or whether it was just in general sending the issue to the GNSO? I know that Avri, Becky, and the Board are working on trying to understand now just, I guess, what the Board

did in 2015 but also the current views of the Board and how to help guide us in our future discussions. So I just wanted to make sure I pointed that out for everyone. The link Steve put in the chat.

Let me just check the—oh, okay. Anne, go ahead.

ANNE AIKMAN-SCALESE: Jeff, thanks, It is a super interesting discussion. I just note that, with respect to years and years of efforts in defining the global public interest, that might be in fact be a broader topic than looking at creating a closed generic that serves the public interest goal. It's potentially a narrower topic in terms of standards that panelists would need to rate with respect to various factors that we've talked about before without necessarily saying the overall character of this TLD must be in the global public interest because, of course, when the ICANN Board looks at what's in the global public interest as dictated by their bylaws, that is very much a balancing act with a whole lot of different considerations, and very global in nature. However, for example, when we look at community applications, we have a list of factors. They qualify or they don't. I think it's very possible that you could, if you're realistic about GAC advice and the pressures the Board is under, very realistically come up with some standards and questions to be answered and ratings and points that address a question of whether a closed generic serves a public interest goal. That's all. I don't think [we] should inflate the two.

JEFF NEUMAN:

Thanks, Anne. I know, Marc, you're in the queue, but Anne has just given a great transition to the proposal I put out there. So, Marc, just hold your question because I think you'll have probably the same comments on the proposal I put out as what you're probably going to raise now. So let me just introduce it and then get your comment.

Steve, if we can turn to the—yeah. So here's the proposal I put together, which is a little bit like the proposal from George and Greg and takes elements of that. But it really takes a lot of elements also from the years of discussions that we've had on this. It doesn't solve Marc's problem by any means. So your issue that you brought up still applies here of having these subjective standards, but there are a couple parts of this proposal that I thought were important. Like Greg and George, the details are malleable, but the point here I wanted to make was, if we scroll down a little bit, really to point that, when looking at the public interest goal, really consideration needs to be given to the "end users." End users traditionally in the ICANN world have been thought of mostly as domain name registrants. So that's why it's easy to say, "Well, domain name registrants don't have access to register these closed generics, and therefore how could it be in their interest? And it blocks a category of second-level names that they will not be able to register."

But my point here is that I don't think that's the way to look at these. The way to look at it is, who are the ultimate beneficiaries of the utilization of the TLD, whether that's the content that you can get access through the TLD or the services or whatever it is? That is actually a more important component. So you don't look to

the fact that—let’s say the Red Cross were to get .redcross—yes, domain name registrants are not going to be able to register in that TLD, and you don’t look to the fact that registrars aren’t going to be able to offer second-level registrations in that TLD. But you really need to look at it from the end users’ standpoint. Are they getting some benefit that can be described as serving a legitimate public interest goal. So that’s one of the important considerations to take the emphasis of second-level registrations. Then really this just takes a bunch of the factors that I think Anne initially came up with way back when on subjective criteria that you would look to or the Board would look to or the evaluators would look to in order to say, “Yes, we think this would meet the subjective standards.”

Now, to address Marc’s concerns—then I’ll turn it over to Marc—it would have to be acknowledged that this is a subjective determination. This is not going to be purely objective, and there would need to be disclaimers or waivers of acknowledgements that this a subjective determination and [that] the applicants [understanding] that it’s based on certain opinions and views of the evaluators, and it would have to sign off on that in whatever way we can do that from a legal and other perspective. I don’t think there’s any way, when you’re looking at this issue, not to just admit that this is going to be a subjective test. If we as a group accepted that, then applicants would at least know going in that, “Look, we’re not promising completely objective standards. We’re not promising that it’s going to be 100% consistent.” And you’re going to acknowledge that as the applicants: that this is people doing their best job to try and come up with an answer to this. It’s not going to solve all the disputes, and people still fight about it. But at least, if an applicant acknowledges going in that it’s

subjective and not masquerading as an objective test, that may help.

So what this proposal then does is to say that these are some of the factors that should be looked at by a panel in determining whether it serves a public interest goal. On the details, certainly, if anyone has got any questions, I can answer. But the main points I think I've illustrated, which is to consider who the real end users are intended to be, and an acknowledgement that this is a subjective determination.

Marc, go ahead. I know you've had your hand raised. Thank you for your patience.

MARC TRACHTENBERG: I think that making people acknowledge that the decision is objective is not reasonable. It could result in all sorts of inconsistent and frankly crazy decisions. I just don't think it's fair to tell people, "Hey, there's not really some good standards. We know it's totally subjective, but you just have to accept what these people decide." I don't think that's fair or reasonable.

To your point about it being about the benefits of the end user, since when is it about that? I don't understand why closed generics should be held to a different standard than other gTLDs. If we're saying that this public interest is so important, then why doesn't it apply to ever new gTLD? If it's important, it should. That would make sense. It doesn't make sense to say that it only has to apply to closed generics. I don't think that all the TLDs that are out there and how they're operated really is in the benefit of the end

user. It permitting premium names to be sold at much higher prices that make them not available to the average user [inaudible]?

JEFF NEUMAN:

The way I looked at it was that, when companies ... Sorry. Maybe this is an awful analogy, but at least in my mind, when someone is responding to a request for proposals, there's always standard language in there that says, "This is the criteria we're going to look at, but at the end of the day, it's in our sole discretion who we pick and why we picked them, and you agree that you're not going to hold them liable for the selection that they make." So that's sort of the analogy I was looking towards in saying that this was an acknowledgement of a subjective determination that attempts to use these criteria. Again, not perfect by any means. It was just the analogy I had come up with.

Anne, is that a new hand?

ANNE AIKMAN-SCALESE: Yeah, Jeff. Just with respect to the factors to be considered, I really don't think it's even accurate to say that it's subjective. I think, if you can establish a rating system and you can answer questions, and the applicant can provide support logical arguments, then I'm really not sure why you would want to characterize the evaluation as subjective in that case. I don't quite get where you're coming from there.

JEFF NEUMAN: I guess it was the point that ... If you look at those factors, if we can scroll down, ultimately, let's say you had a scoring system of, I don't know, 1 through 5 or whatever it is. At the end day, the exact score you get is going to be based on some guidance or guidelines. But at the end of the day, it's subjective from the panelists'. It's not something where you can easily test in an objective manner that it meets those criteria, unless, I guess, the technical evaluations. You can objectively measure penetration tests and things like that. This is an acknowledgement that really the ranking or whatever you want to call it is going to be done by individuals. It's going to be done by people making their best attempt using the guidelines that they're given from the community. I guess that's the point I was making in saying there's subjectivity in it.

MARC TRACHTENBERG: Hey, Jeff. I dropped off—

ANNE AIKMAN-SCALESE: Just a quick follow-up. [inaudible] also true of a community application? Why is this one different than the level of subjectivity? I don't quite see that.

JEFF NEUMAN: I think that's a great point. I think that it would behoove ICANN to acknowledge or the panelists to acknowledge that some of it is subjective based on those criteria.

Sorry. I think, Marc, you were trying to jump in. So I apologize. So Marc, go ahead, and then Jim.

MARC TRACHTENBERG: Yeah, I apologize. I'm not sure where I dropped off, but it was just trying to make the point that, if the public interest is so important, then it should apply to every TLD, not just closed generics. It should be either all TLDs or no TLDs that have to meet this standard. Why should a non-closed-generic TLD be able to operate in a way that's not in the public interest if its public interest is so important. Frankly, I don't know that it is because so many TLDs operate in a way that's not in the public interest. Maybe they're havens for squatters, or, again, they sell premium names at a higher price that no average person can afford. So why doesn't the public interest standard apply to those other TLDs?

JEFF NEUMAN: These are all great, great points. This is what makes it so complex. Jim, go ahead.

JIM PRENDERGAST: Thanks, Jeff. [Paul]—I put it in the chat. As I'm listening to this and hearing both sides of the arguments, one of the concerns that folks had in the 2012 round was with the sheer number of terms that could have been operated as closed generics. I think, going forward, the number of those could be fewer, but that can only be answered by the question I posed in the chat, and that is, in fact this group decides that closed generics should be allowed with

whatever public interest tests there is or what the criteria are going forward, is that retroactive to the 2012 round for TLDs that have been delegated? Because I know this group has always been operating under the premise that we are forward-looking and we're not backwards-looking. So I think this is a big question that folks need to hear an answer to and may in fact put them at ease if in fact it's satisfying to them. Thanks.

JEFF NEUMAN:

Thanks, Jim. I think all we can say as our group is that it's continuing to be forward-looking and it would need a separate process to look at if or how it would apply or could apply retroactively. I think that's beyond this group for now.

I know we're running up against time. Let me just let Greg get the last word, and then I'll just cover a couple seconds about ICANN69.

GREG SHATAN:

Sure. I'll be brief because we could talk about this for a long time. But of course there were no closed generics that actually went anywhere in the 2012 round. There are still some that are in suspended animation. But I agree. We're forward-looking. I don't think of this so much as a question of retroactive but a question of a delegated currently-running gTLD could essentially seek to become closed. I think there are currently processes for some changes to be made. But I think that would obviously be a registry code of conduct violation. It'd have to go all sorts of other things that I think we're completely unconnected to. It's possible that

things that we discuss here could have later application in another process, but I think we're here concentrating only on the delegation or on the application for not-yet-existing TLDs. Thanks.

JEFF NEUMAN:

Thanks, Greg. I think this has been an excellent discussion, and I really believe that a lot of this is going to be as well reflected in the comments. I'm sure a lot of it will be reflected in the comments we get back during the comment period. So this is something for all of us to keep thinking about. At the end of the day, I'm not sure we will get to full consensus on any particular solution, but I think having this discussion, getting some input from the public comment period, and also getting some thoughts from the ICANN Board could help us.

With all that said, I just wanted to spend two minutes on ICANN69. This is not completely set in stone, I don't believe, but currently we are scheduled—we the SubPro Working Group—to have two sessions, I believe, on the Wednesday of the official ICANN week. I think that's, what, the 14th or somewhere around there. I don't know why the 14th is in my head. I know there's the September 14th webinar. I think it's also October 14th for the ICANN sessions.

So we're in the very preliminary stages of planning at this point. I think where we'll be at that point in time is we'll have—I'm knocking on wood here—received all of the public comment. ICANN staff will be in the process of producing their report in a format that we can use. But what we talked about on the leadership call today was that hopefully there are certain subjects that we know—closed generics being one of them—that will be of

great interest. So I've asked policy staff to see if they can, I guess, prioritize those sections for the ICANN meetings for us to look at as a group. So we may not at that point in time or likely not have the full public comment summary on all of the questions, but hopefully it's be possible to have it on some specific areas so we can have a good productive or two productive sessions at ICANN.

So that's our current thinking. A lot can change between now and October 14th, but that's where we're leaning.

I'm looking at the chat. It's Hamburg time, and it's the official ICANN meeting week. So there's a pre-week, then there's the ICANN week, and then there's a week of other stuff. So I guess it would be the middle one. Is that right, Steve? Yeah. So it's the middle main ICANN week

All right, great. Well, this has been very productive. We do have the webinar on the 14th. Our next call is ... If someone can post the time of the next call. We're going to dive into the discussion on, completely switching gears, CPE guidelines and just making sure that we have that up to date and to figure out if there's anything we need to discuss. We have a recommendation in general to incorporate the CPE guideline document, but I think it will behoove us to do a deeper dive to make sure that those guidelines are up to date and in proper form. So we'll tackle that subject on the next call.

And if there's time, the next subject we wanted to cover would be a topic that Christa Taylor had brought up, which is, now that we've recommended the concept of a bid credit for applicant support, just to make sure that we understand how that plays in

with all of the rest of the evaluation and new gTLD processes. So it's making sure from both the big-picture level as well as the detailed level how the bid credit comes into play.

Thank you, everyone. We are working on getting the October calendar out, but I will say that, certainly, after the ICANN meeting, we will continue on the two-call-per-week schedule, even though now we're mostly doing the one call per week for the next few weeks, I think. So the next call is Thursday, the 17th of September at 15:00 UTC for 90 minutes. Thank you, everyone. Have a great weekend. I hope to see you all on the webinar.

[END OF TRANSCRIPTION]