
ICANN Transcription
GNSO New gTLD Subsequent Procedures Working Group
Tuesday, 22 October 2019 at 03:00 UTC

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JULIE BISLAND:

Good morning, good afternoon, good evening, all. Welcome to the new gTLD Subsequent Procedures Working Group call on Tuesday the 22nd of October 2019.

In the interest of time, there'll be no roll call. Attendance will be taken via the Zoom room. If you're only on the audio bridge, could you please let yourselves be know now?

Hearing no one, I would like to remind everyone to please state your name before speaking for transcription purposes and please keep your phones and microphones on mute when not speaking to avoid background noise.

With this, I'll turn it over to Jeff Neuman. Please begin.

JEFF NEUMAN:

Thank you, Julie. Welcome, everyone. I'm just looking through the attendance list and it seems like we have a bunch of representation from Neustar, Verisign, and then we have Robin and Jim. And ICANN. We've got Paul McGrady and Justine.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

Good. So we're getting some more people in, which is always good.

So the agenda is up on the screen at the moment. We're going to try to just continue a little bit on the discussion of auctions. Don't want to spend too much time on it because I think we could have some really good discussion on the e-mail list, and I don't think there's too many new things to go over that we haven't gone over before, but I thought the way we ended the last call, it seemed like a good idea to just spend a couple more minutes on the proposal that was made by Donna at the end of the last call or towards the end, and then some kind of alternatives to that as well. And then we'll get talking about the base registry agreement and maybe get into the registrar nondiscrimination, registry-registrar standardization if there is time.

Before we get into the substance, also, we'll spend the last couple minutes talking about ICANN, but before we do that, let me just see if there are any updates to any statements of interest.

Okay, I'm not seeing any. I will note that I believe Phil Buckingham – who's not on the call – did file an update to his statements of interest, or at least put it on e-mail. I'm not sure if he put it into the documents themselves, but I will note that for the list.

Great, okay. We spent a good part of the call last time talking about we finished up the mechanisms of last resort and then went on to the issue of private auctions. We had pretty good discussion on a number of aspects of those private auctions, including the materials that are in the Google document.

Not going back to the Google document right now because I think we covered what was in there, but I did want to touch on the proposal that Donna made towards the end of the call. My erroneous interpretation of that – or at least part of that – but I think that also has some benefits to go through. And then see if there could be some understanding or some other – maybe it's worth pursuing a little bit more is the point I'm trying to make.

But I think we also kind of need to go back and take a step back and think about what are we trying to solve. What is the problem or perceived problem that we're trying to solve? And so for that, I went back to our supplemental initial report which is where this topic was, but then I also went back to the ICANN board letter and some other comments that we had gotten in.

So if you go back to the supplemental initial report and maybe Steve, you can post that link, the same one that you sent me earlier, and you go down to page – well, it's on a number of different pages, the rationale, but I think a good place to start would be page 15 of 71. Let me just give everyone a couple of seconds to get there.

On page 15, the ICANN board had filed a comment and then actually responded even to this with another comment. But the whole reason this topic came up was the notion of the perception of gaming, how essentially private auctions were a mechanism to financially benefit but without actually ending up with the public resource that ICANN is responsible for administering, the IPC had also filed a comment. This is in the supplemental report. They filed a comment saying that they'd like further understanding of the

abuses. ALAC had filed a comment and registries that this issue should be looked at.

In the comments that we got back, the ICANN board had expressed its concern with the use of private auctions – and I want to quote them – it says the board has concerns about whether and in what ways – sorry, this is not in the supplemental initial report, this is in their letter back but it's also in our topic paper, where the board says it has concern about whether and in what ways the availability of private auctions incentivizes applications for purposes other than actually using the string, and we are interested in how those incentives for abuse might be minimized.

So there was also discussion in the supplemental initial report – there's known issues that the working group discussed on page 16, but then if you go down a little bit more to the deliberation section, there's a lengthy discussion about the gaming aspects, the perceptions and the ability for or the incentives it gave portfolio applicants to essentially go into private auctions with the intent of losing so that it could put more money on some of the strings or that it could have additional financial resources to put money on strings that it really wanted or that it ranked higher.

And while certainly, there's nothing wrong with capitalism, there's nothing wrong with financially benefiting or private solutions, I think what the community said in the comments back and in all these materials is it just doesn't feel right or send the right message to those outside of ICANN that we're essentially creating this secondary market for top-level domains.

So I think that is one of the big issues that we're trying to solve for. We're trying to address the board's concern and the GAC's concern, and the ALAC's concern, and some of the commercial stakeholder group that wanted to see some things in place that would provide disincentives or would minimize this kind of gaming, at least gaming in their minds.

So with that said, does anybody think there are other issues that we're trying to address, or maybe doesn't agree with the way I framed the issue? Paul, please.

PAUL MCGRADY:

Thanks. I don't want us to blow past the comments from the groups that didn't jump to your conclusion, Jeff. They said there were two or three that [you read it,] indicated they think it should be studied. I don't think that study has ever happened, so I just don't want it to be lost in jumping ahead to the conclusion you brought us to. Thanks.

JEFF NEUMAN:

Thanks. We tried to study the issue in the e sense of trying to get data, but because of confidentiality agreements and applicants not wanting to disclose for reasons we all can understand, it's not really an issue that we can study at this point.

So without that disclosure of data and – we have some tangential information on profit that was made from auctions, so for example, actually, let me post a few links here that I just was doing some research before this call, so I will post these links now. Hopefully this works.

There's actually four links there – looks like one really long link – which talks about these are public documents that talk about raising money for losing TLDs and how some of these organizations who are reporting very high earnings – albeit one-time events – from these auctions.

I think that's what the community was reacting to in terms of this. Certainly, there were groups that favor private resolution, however the applicants want to resolve it. There's the argument that all the applicants need to consent in order to go to private auction, so if there was one applicant that it refused, then it had to go to some other form of resolution, whether that's a private negotiation or would have to go to a public or ICANN auction. So that's brought you in the defense of the private auctions, and then there's also just the notion of, should ICANN be in the business of regulating actions between private actors?

So there's certainly arguments on both sides, but I really think that we should take into consideration the warnings and the concerns of the ICANN board and the governments. It's not often that the board files comments on work that the GNSO is doing, and so rather than ignore those, I would love to see if we can address those in some other way. I will note that Donna raised a question about other mechanisms, and yes, they were raised in supplemental initial report, and like a random draw, but that garnered all negative comments or mostly negative comments, and so did the RFP beauty contest mechanism as well.

So auctions were determined as the most efficient mechanism of last resort, so at least the ICANN auction is likely to stay, unless –

but there are different types of auctions that we're talking about, including the Vickrey or the sealed bid as well.

Paul's saying keep in mind that the board is an interested party. Every dollar goes to not ICANN is a dollar not going to ICANN. Yeah, Paul, I think that's right, but the board was not speaking in favor of the ICANN auctions. In their mind, I think they went out of their way not to say that they were in favor of an ICANN auction. I think if it was a random draw or if it was some other non-auction mechanism, I don't think that they would be against that.

So I don't want to read into their comments that they were favoring the ICANN auction, but they were concerned more about the perception and how it looks to them as an organization when you're creating this secondary market for TLDs.

Steve.

STEVE CHAN:

Thanks, Jeff. I just wanted to briefly touch on the question of evidence of the problematic behavior. This is something that the working group wrestled with in the drafting of the supplemental initial report.

One of the connections that I think the working group made is based on the links that Jeff provided, there's evidence that applicant support in the previous round were able to gain financial benefit by participating in private auctions.

I think the logical connection there for the working group was to say that if there's evidence that there's profit to be made from

participating in private auctions, then natural conclusion is that in future rounds, it's likely to actually incent problematic behavior.

So while it might not have been known for the 2012 round, it is a known potential benefit and something that can be abused in the future. So the idea, I think, that was laid out in the supplemental initial report is that because it's now known, then it will likely increase in the future round without something to maybe prevent it. So I just wanted to try to provide that while there's not necessarily evidence, there's a logical conclusion that the working group talked about in the initial deliberations.

JEFF NEUMAN:

Thanks, Steve. A couple comments on that. I think it's fair to say that many in the community didn't know, but I would probably guess that some applicants probably knew the benefit they can get with the private auction and may have planned some strategy around that. But absolutely, now everyone knows. It's out there and it's something that there are concerns.

And I don't know if you said that it was evidence of wrongdoing. I don't think it's evidence of wrongdoing, it's just evidence of financial benefit. So it's not a judgment of right or wrong, but certainly – and Jim posts a comment on here, “We know a lot more than we did in 2012. Sense is the board is looking at this with a much wider lens than some future possible applicants or their service providers. This is a process to allocate a public good, not about making it convenient for large applicants to bid on dozens of TLDs, nor for people to game the system to profit from losing. It's not what some want to hear, but if you look at it through

the lens of how competition authorities are looking at it, it should be.”

Justine says, “In this instance, Paul, I would say the board as an interested party for ICANN is acceptable. In fact, I’d be alarmed if the board did not express a concern.”

So if we use this and then go into Donna’s proposal, Donna had proposed in the middle or the end of the last call that we do a hybrid model of what was proposed, and essentially do a sealed – let me start at the beginning.

The applicant support would go in, apply for their TLD, ICANN would receive all the applications and then ICANN would know, before it revealed anyone else, which applications would be in contention sets with each other. Of course, it wouldn’t know every string because there’s also a string similarity evaluation that’s done later on.

So then ICANN would take those known cases of contention, contact the applicants, let them know that there is contention, but would not reveal who the contention was against or with, and at that point, would ask the applicant to submit a sealed bid. So it would be for a sealed bid auction.

I misunderstood the next part so I’m going to say it the way that I think Donna intended, which is then you’d have reveal day – sorry, applicants could submit a bid before reveal day or they can withdraw their application. Let’s say they submitted a sealed bid, then you’d have reveal day and go through everything as if it was the 2012 process. You’d go through all the public comment and

objections and initial evaluation, etc., and at the very end if you were still left with a contention set, there'd be another period for private resolution, and then if that didn't work out, then you would just open the bids and the highest bid would win at the second highest amount.

I think that's right. Donna, did I explain it right as your proposal?

DONNA AUSTIN:

Hi, Jeff. I think that pretty much covers it.

JEFF NEUMAN:

Cool. Okay. The way I had interpreted it is actually a second option, albeit a little bit more complicated as you may have seen if you read all the way through my e-mail at the dozens of permutations that could happen where if you at that point, instead of – so the beginning would be the same, ICANN would contact the members of the contention set, applicant support could decide whether they wanted to withdraw or submit a sealed bid.

Then you have reveal day and you go through the string similarity evaluation because you need to see if there are others in the contention set. And of course, any string confusion objections, at the end of that, you would know if there's any contention, and then you would also go through a community priority evaluation if there's any community applicants.

When all is said and done, before you initially evaluate any of the applications from a technical or other kind of perspective, you would then open the bids and then once you have the number one

bidder, you would proceed only to evaluate that bid and move that through the process. If that number one bidder is successful at the end through all the evaluations, objections, etc., then they would end up paying the bid price to ICANN and then signing a contract for the TLD.

There's a whole bunch of other steps in the middle there, and if you read through the scenarios, it gets complicated with public comment periods, objections filings and all of that. But that would be kind of the second way or the way I initially interpreted Donna's proposal, which was wrong.

So lots of stuff here. Justine says she's got a question on the way I described Donna's proposal. Let me go to Justine.

JUSTINE CHEW:

Thanks, Jeff. Based on your earlier description of Donna's proposal and also possibly your second description of hearing officer Wolf-Ullrich interpreted Donna's proposal earlier, I just had a clarification which was the point where you said ICANN contacts the applicant to notify them that the string that they applied for is in contention. Can I just clarify that in that process itself, the identities of the other applicants are not revealed to the one that's being contacted?

Of course, each of them would be contacted separately, I assume. Thanks.

JEFF NEUMAN: Yeah. Justine – Donna, you’ve got your hand raised, so I’ll let you answer.

DONNA AUSTIN: Thanks, Jeff. Thanks, Justine. This is an idea, and I’d hate to think that we’d get lost in the detail now rather than just talking through the concept. I think it might be more helpful if we do that than getting into the detail about when you reveal or when you don’t. And I’m worried that we’re going to get tied up in the detail without having a conversation about the idea first.

JEFF NEUMAN: Thanks, Donna. I think in this case – and Justine says it too – because the details of the proposal that you made and the one that I thought, I think the details are important when you get to looking at it at the benefits or what you’re solving for. But I think to answer Justine, in both of the scenarios, it was that the applicant was just notified it was in contention, but not with whom or how many others or anything like that. It was just notified that there was contention.

The reason I think it’s important is if you look at Donna’s proposal, as Donna said in the follow-up e-mail, it doesn’t solve for a lot of the issues. It certainly solves for the long, drawn-out auction process at the very end of the day if the parties can’t resolve it between themselves or it doesn’t work its way out. It solves that problem, or that issue.

What it doesn’t solve for is the notion of still having potentially private auctions, still having a perception of financial benefit, still

evaluating all the applications so you're not having efficiencies by saving costs by not evaluating all the applications, etc.

So it's all in writing and in the e-mails, so I note the question. I think we can write it up maybe better form after this, but – Steve says, “Paul, I can pull up the e-mail thread at least.” Yeah, so it's in the e-mail thread.

The way that I kind of interpreted it initially, which was not Donna's proposal, it would solve for a number of those issues. It would make things a lot more complicated, no doubt, but it would not allow the private resolution of the contention set, therefore there would be no private auctions. You'd only evaluate one application as opposed to evaluating all of them, and the application you evaluated was dependent on, one, whether there was community priority, and two, if there was not a community priority, then it would be by the highest sealed bid. So it would solve for those issues. But on the drawback, I want to emphasize it's a lot more complicated. That complication may be worth it.

So thank you for displaying the e-mail, and it is a chain so we might have to kind of put them as standalone proposals. But let me go back to the chat. Jim says, “Once you reveal who has applied for what, you open the door for collusion and that's a major issue we can't ignore.”

Kurt Pritz says, “My knowledge is somewhat dated, but I've never known the ICANN board or staff to plan on or anticipate auction revenues, nor discuss the issue in any way other than what is best for the overall stability, security and resiliency of the DNS or other

than in ways that would promote competition and choice for Internet users.”

Donna states, at Jim, “Maybe, maybe not, but you [rule out] collusion at the auction of last resort.” Jim says, “The proposal on Thursday was only parties who were in the contention set were notified were in contention, not whom or what strings. If that notification and the resulting period for putting in a bid is short – a week at most – to limit collusions – that is something that might work.”

“It would be good to have a matrix that indicates which options address the stated concerns.” This is from Elaine. “I. e. immediate bids versus post contention reveal bid.” So we should compare it to the benefits and the drawbacks. I think that’s exactly right.

I know we’ve spent a bunch of time on this, we’re already a half hour in. I just wanted to go over the options on this call, not to pick an answer, but just to make sure that we understood the different proposals out there and continue the discussion on the list.

I have a feeling that whatever we come up with, unless it’s just the status quo and the way that it’s been done, I have a feeling this will have to go out for public comment, especially if we suggest something new. But I do think it’s important for us to follow the thread and do the benefit analysis on this. Donna.

DONNA AUSTIN:

Thanks, Jeff. I just wanted to make the point that while we’re thinking about this – and obviously, it’s not the only possibility, but we have ruled out other things that could have taken care of the

concerns about collusion or people profiting from the program. So we could have raised the application fee so that it was significant so you'd dismiss the possibility of this happening, and we did discount a couple of other things.

We discussed whether portfolio applicants should be allowed, and we resounding said yes, of course they should. Part of the issue here seems to potentially be with portfolio applicants, so we've discounted that.

So I think we need to remember that the problem we're trying to solve here, we've already ruled out a few things that could have addressed the problem. So what we're left with here is it's tricky and it's something we're trying to address, but we may be able to – I don't think we'll be able to get rid of it completely, but perhaps there's a way that we can try to mitigate against it. Thanks.

JEFF NEUMAN:

Thanks, Donna. Just to clarify, the reason we have discounted it is if you go back to the document, the summary, you will see that just overwhelmingly negative comments on each of those proposals. So we'd have to go back to the community and basically override all of their concerns and just say, look, we discussed this and we're going to go with this, and can you get onboard?

But if this group wants to do that, I'm certainly still willing to do that. It just seems like there were so many negative comments about it, and very diverse negative comments that it just seems a

little – to go back to those other solutions which were presented in the supplemental initial report would be difficult to do. Donna.

DONNA AUSTIN:

Yeah, Jeff, and to be clear, that's not what I was suggesting. I was just making the point that we've got a problem here that we're trying to solve. There were other things that we considered that could have gone some way to solving that. We ruled them out [so they're not in planning.]

We're potentially running out of options as to how to deal with this where in in order to come up with a compromise, this is kind of what we're left with, because we've ruled out other options.

JEFF NEUMAN:

Got it. That makes sense. And you're right, this is what we're left with at this point in time. So I think what we'll do then is the takeback item for us is to basically put each of these solutions in one document side by side so people can look at them and then to the best that at least leadership and policy staff can think of, the benefits and drawbacks will put that in the chart, and then present that on e-mail so that we can have discussions later on.

Some good comments in the chat, but I think at this point, I'd like to move on to the registry agreement if we can. This is hopefully a little bit easier of a topic. Jim, please.

JIM PREDNERGAST: Jim, I understand you're wanting to discuss this on e-mail, but I'm taken back to your comments to the GNSO council during the briefing that talked about how the e-mail thing really wasn't working so well with this group, so I'm hopeful that it'll work, but I'm also cognizant of what you and Cheryl briefed the GNSO council that e-mail is sometimes not the best venue for the group, especially with something as intricate and complicated as this particular topic.

JEFF NEUMAN: Yeah, thanks, Jim. I'm cognizant that we'll most likely need another discussion on this, but maybe we can get at least the benefits and other written materials hashed out on e-mail and then that will inform our next discussion on this, whenever that is, because hopefully people will be thinking about more and have that in front of them. So I'm hopeful as well.

If we go on to the base registry agreement, the good news here is that there's not a whole lot that is in this section, although we spent a lot of time in Work Track 2 talking about this issue. The background is initially in community comment #2, there's a section in the initial report, and then subgroup C analyzed the public comments, and the policy goals from 2007 still remain applicable, so you'll see those recommendations each of which have some kind of bearing on the agreement, including having one base agreement that's known from the very beginning that doesn't change, at least this time around.

And then recommendation 14 would be commercially reasonable length of a term, renewal expectancy is recommendation 15.

Obviously, you have to apply existing consensus policies and new consensus policies as they're approved. It should probably say new consensus policies and temporary policies.

Implementation guideline K was ICANN should take a consistent approach to the establishment of registry fees and then guideline J was the base contract should balance market certainty and flexibility for ICANN to accommodate a rapidly changing marketplace.

The only real high-level agreement from this section, although we have a lot of comments or diverse comments on different things, and in a future meeting, hopefully on Thursday, we'll talk about DNS abuse which is a whole other topic that relates to the base agreement, but put that aside for now.

The only high-level agreement here is that a clear, structured and efficient method for obtaining exemptions to certain requirements of the registry agreement which allows ICANN to consider unique aspects of registry operators, TLD strings as well as the ability to accommodate a rapidly changing marketplace is needed.

That leaves a bunch of details to be worked out in an Implementation Review Team, but it seemed like the group, while we couldn't forecast ahead to the types of application, there are applicants that might need certain exemptions from certain requirements or more leniency, or just different rules here and there. There certainly was agreement that there should be a process whereby applicants could and registry operators could seek these modifications to the agreement in line however with all of the other recommendations above.

It seems like there's still discussion on the auctions, which is great, so we'll capture that, but if we can turn our focus a little bit to the base agreement. Hopefully, that high-level agreement makes sense. Now let's go to some of the divergence or new ideas or concerns that were expressed.

As you can imagine, ICANN Org had some concerns because there's really no guidance in here, but they note that applicants in the 2012 round were able to request changes to the base registry agreement by specifying such request in the CIR, the contracting information request form, which is provided to applicants to complete when they're eligible to begin the contracting process.

A template was provided. Given that the development of the base registry agreement goes through a very extensive development process with the community included, including multiple public comment processes, consideration should be given to defining clearly the criteria for which changes would be allowed.

So just to note that I believe there were very few changes. In fact, I'm not really aware of too many changes that ICANN Org actually made to anybody's agreements, other than the predefined allowances, let's say, for exemptions for code of conduct or if you're an IGO, you got certain provisions. And then ultimately, if you were a brand, you got Specification 13.

But it was, as Paul notes, that getting Spec 13 through was not an easy process. And certainly, yes, there was a template and yes there was a clear way or process to do it, but ICANN was certainly, for good reason, very resistant to accept any changes.

So there's that. the BRG said that if new models emerge in the future that require different exemptions that impact consensus policies, consider using an EPDP.

.xyz had filed a comment saying the base registry agreement must be in place at the beginning of the application process. So that's not really a divergence, that's agreement with the high-level agreement. The registries' new idea is there's some ambiguity under the registry agreement for the code of conduct exemption, since the registry operator is still bound by section 2.9, since under the current model, all exemptions must be for single registrant models wherein the registry, as the registrar, may still choose its registrar. We do not believe this language should apply to Specification 9, exempt TLDs, regardless of whether they additionally qualify for Specification 13.

Alright, let's put that aside for the moment. Is there any other guidance that we think we can provide to address ICANN Org's concerns? Or is this something we should just leave for an implementation team? Paul, I know you have your hand up, so why don't I go with you?

PAUL MCGRADY:

Thanks, Jeff. I kind of feel like we're getting into implementation in a way. Isn't the policy that in the next round, ICANN Org and board should simply be open to new business models and should attempt to accommodate them so long as it doesn't do any harm to the rest of the industry? Because there was a presupposition and I make reference to the Spec 13 [slog,] it was a slog, and senior staff were definitely not on board and it really took Cherine

sticking his nose into it for us to get any movement out of staff at all.

So I think the policy really should be that ICANN shouldn't insist on the same old business model but instead should be open to new ideas as they come in in the application documents and should find ways to accommodate that. That's sort of a high-level thing. Is that too high-level? But I think that's what we're trying to say. Thanks.

JEFF NEUMAN:

Thanks, Paul. That's what we have, which is the very high-level. I think though, if I put myself in ICANN's shoes – and I know I think Karen might be on here – we're putting ICANN in a difficult situation, because on the one hand, we have a policy that talks about equitable treatment of registries and there's always the concern that if it gives a certain type of exemption to one registry, then others will come in and want that, or will complain that they didn't get it.

So if we just have that high-level policy, which is fine, we're asking ICANN in its sole discretion to make that judgment call as to what scenario would justify accepting that relief or that exemption, or whatever difference it is.

And that might be okay, but let's just then recognize ICANN's in that position and then maybe have a process around it where it goes out for public comment, but ultimately, at the end of the day, unless ICANN violates its bylaws or an accountability mechanism,

it's pretty much within the sole discretion of ICANN to choose whether to accept. Does that make sense, Paul?

PAUL MCGRADY:

Thanks, Jeff. It does make sense. I guess maybe we'll have better outcomes in round two and we may just have to wait and see, but if the organization is asked by us to lean towards innovation rather than lean away from innovation, maybe that will solve the problem because they were definitely strong [leadings] away from innovative business models in the last round.

So maybe this will do it. if it doesn't do it, then we'll all be here again seven years from now. Thanks.

JEFF NEUMAN:

Thanks, Paul. Hopefully you and I will be retired by then. Is that not what we talked about? Anyway, that was a joke, for everyone. There's no collusion going on with Paul and I.

Anyway, we can put some notes in here about the purposes to allow ICANN to be more lenient or more open to additional types of business models to make a balanced determination for modifications where either it's in the public interest to do so or there's no public interest in preventing that modification or something like that.

But either way, we certainly can go in with that high-level recommendation. ICANN will likely come back to the community to try to get some criteria, and maybe implementation team might

take this up, but it's totally fine to go in with that high-level recommendation as the policy.

Okay, now the second part of the Registries Stakeholder Group comment goes to the notion of treating Spec 9 code of conduct exemptees the same or having the same benefits as those that are under a Spec 13, so that would include for example – this is just off the top of my mind – you don't have to do a sunrise. That would also include the notion of – if there is a termination of the registry, there are additional provisions in there about when and how that registry would be transitioned. I think those are kind of the main ones. And only having to use up to three registrars. So those, I think, are the main benefits.

It's a new idea. It seems to be in line, it doesn't seem like it would impose any – it doesn't seem like there'd be drawbacks to that proposal, but certainly, maybe one [inaudible] one question might be what's the difference between Spec 9 exemption and the Spec 13. And what I'll say to that is to qualify for Spec 13, you needed to have a trademark registration that was before a date certain, and in some cases, people got Spec 9 protections because it was not a registration at that point in time but maybe became a registration at a later point in time, or you may have gotten Spec 9 because you satisfied the other criteria for the exemption which included the fact that it wasn't a generic term, you were going to use it solely within your organization and there was no public interest against you having that type of registry.

So I know that's kind of in the weeds, but important to analyze that proposal. Okay, I'm not hearing any comments yay or nay, or questions, so we'll move on. This is the process for obtaining

objections, how can ICANN balance the need to consider unique aspects on applications while also treating each registry operator equitably.

Yeah, the registrars filed a separate thing and their primary concerns are so long as the service levels metrics are equal, they're fine. I think that's not very controversial. Paul, I know I'm singling you out, but do you think that that is a reasonable proposal, to say, yes, we'll encourage other business models but the service levels are nonnegotiable?

PAUL MCGRADY:

Jeff, yeah, my initial reaction to that is that's a reasonable thing to request, because it has to do with the reputation of the industry generally. So that doesn't bother me.

JEFF NEUMAN:

Great. I think that's a reasonable ask. Great, then we have the next paragraph, which is when you are asking for an exemption or an exception, the proposer could provide a specific problematic provisions, the underlying policy justifications for those provisions, and the reasons why the relief is not contrary to those justifications.

That was what we had in our supplemental initial report. The registrar said as long as an actual review of the request is done, that the approach sounds reasonable, but Neustar had some concerns. It would require the proposer to know what the underlying policy justifications for any given part of the registry agreement are. Unless ICANN is providing this in a clear and

concise way as part of the mechanisms for considering exemptions. It isn't realistic to expect any given applicant to know that.

I think that's a good comment. I think what this is asking for – maybe it's just badly worded – is the policy justification for requesting or needing a – no, you're right, that is the way, Neustar did interpret it right. But perhaps we can change it to the proposer providing its own justification as to why it needs those exceptions and exemptions, and my guess is that others would say that it should go out for public comment.

The only concern would be if something were so confidential that [it] would need to be protected against disclosure to the public, but I would think that there should be a way for the registry and ICANN to provide a nonconfidential description of what's needed and why without disclosing those confidential parts. But I think that might be a solution.

Okay, going to the next one, and I think this is a no brainer, but out of one of the – PIC DRP, there was one case where the panelist found that the registry operator more than likely acted in a fraudulent manner but noted that there were no provisions in the registry agreement that prohibited the engaging in fraudulent and deceptive practices, so the recommendation here which had agreement from pretty much everyone that commented on it was that we should put some sort of covenant or provision in the agreement that prohibits the engaging in fraudulent or deceptive practices so that ICANN does have a remedy if fraud is found to exist.

The INTA and IPC noted that this should be addressed by means of an additional PIC. In doing that as a PIC, I guess that would allow for a third party to challenge or at least file a complaint so that ICANN could take that up in a PIC DRP. What are the thoughts on that?

Justine says, “In which jurisdiction?” So that’s an interesting point as to whether to make this a PIC or just make this a provision in the agreement. Like I said, if it’s a provision in the agreement, then ICANN becomes the only enforcer of that provision. If it is a PIC as opposed to just a provision in the agreement, then a complaint can be filed by a third party and then ICANN has the discretion of whether to initiate a PIC DRP using that third-party complaint.

Justine’s saying we should make it both. It’s usually problematic, Justine, to make it both. If it’s a mandatory PIC, let’s say, then ICANN can choose to enforce it on its own. It doesn’t need a third-party complaint. So doing both would make it a PIC.

Any additional thoughts on that? Paul’s saying he obviously likes the IPC-INTA comment. I think it makes sense, although there are a number of – where we have to reconcile this with the groups that oppose having PICs in general. So that would be someone like the Noncommercial Stakeholder Group, but I think the Noncommercial Stakeholder Group opposition to PICs was mostly in labeling things as in the public interest and not so much on the enforcement, and I think we can propose that and let’s just see if the Noncommercial Stakeholder Group has any issues with it.

Justine says, “If a complainant takes issue with ICANN not enforcing a complaint, can they take it to a PIC DRP?” No. It’s only ICANN that can exercise the PIC DRP because it’s ultimately ICANN’s role to enforce the agreement. But I’m not sure if there’s any other – I suppose the complainant could use an accountability mechanism if it thinks ICANN doesn’t have it right.

Okay, so I think it makes sense to go with the PIC, but let’s make sure that we – Robin, not to put you on the spot, but I think you might be the only one from the Noncommercial Stakeholder Group on here at the moment. If you can take that issue back, that’d be great.

Jim says that if we’re calling for the group to object, that needs to be called out explicitly in the notes. It will be. Yes, absolutely, Jim. Okay, so now there’s a whole bunch of other items that there were comments filed on.

So the first one is Google. Google wanted to provide registries with discretion to set registration terms and billing cycles in increments other than one year, presumptive renewals may not be appropriate for all use cases.

Sorry, so if we go to the billing cycle, I think the way I would look at that is that would probably fall into the asking for an exemption and providing a rationale. So if we have that process and it leans towards, as Paul says, innovative models, I think that that’s where it would make sense to make that request, or otherwise, there are other mechanisms to deal with that through the security, stability committee, IETF. You can address that through the EPDP protocol and other mechanisms, but I don’t think that’s something

that we as the SubPro groups should, or have the expertise to, opine on.

Then there's a whole bunch of comments on premium pricing. So you have Christopher Wilkinson says to consider a policy whereby the economic rent for a premium name should accrue to the registrant and not to the registry, otherwise it would appear that the registry would be taking advantage of its monopoly over the TLDs in question.

Maxim states that premium pricing is out of scope for policy development and that it's only for a market regulator.

Michele and Vanda state that the key issue related to pricing is transparency, which is already baked into the contracts.

Marc Trachtenberg says transparency is not being enforced by ICANN. That's always something we can make a recommendation, is to actually enforce those provisions.

Rubens states that the only valid pricing concern is that while registries are obliged to inform registrars in advance of the raising of renewal prices, the same doesn't apply with registrars and registrants but it's out of scope for GNSO policies, and maybe this is something more for the registrar accreditation agreement.

Kris Seeburn also agrees that it's a registrar accreditation agreement concern.

Rob Hall says registrars would resist this. Volker states that it's difficult for registrars because there's so many models out there, and it is difficult for them with their customers.

Christopher Wilkinson talks about discriminatory pricing for premium domains may be an issue for geo names, although I'll note that they did not take that up.

And then Michele states that provides relevant text from the expired registration recover policy. That's what Michele was talking about, that's where there are requirements for transparency of pricing and other registrant rights.

Okay, so there's a lot here. I know that there was also a concern that we had initially referred to the rights protection mechanisms group, and that is the issue of whether premium pricing or the use of or the reservation of names which later go on for premium pricing is some sort of way around the intellectual property or the rights protection mechanisms, and that is an issue I believe they should be looking at. So just a reminder that that's something that we had put out to them.

Steve is saying "If I recall, the section was source from an e-mail conversation which is why it seems like a back and forth rather than a series of public comments." Right.

There were public comments on this, and there were certainly questions, but yes, there were certainly a lot of back and forth with e-mails and some of these notes were also from discussions that we had. Right, on the call.

So the question is right now there is certainly a fine balance between whether this is in scope for ICANN or not. I think if we are clear, perhaps one thing we could say is that transparency is the key, that provisions in the agreement, we think, are in there to

require this transparency, and that we take note that ICANN should be enforcing the provisions that are in both the registry agreement and the registrar accreditation agreement. I think that would address some of the concerns here. Make sense?

I think that makes sense for now. Let's jump to the next section, which is good because I would like to spend a lot of time on Thursday talking about DNS abuse, so getting through these sections, I think, will pave the way for that.

So this was another interesting topic. Registrar nondiscrimination, registry/registrar standardization. Also goes by other names like registry/registrar separation, which it's kind of interesting, because the discussion in 2010/2011 was so passionate, lengthy, complicated, and the way it's sort of worked out, either people have given up or they're just resolved, and since the door has been opened up for registry/registrar integration, there's not much we can do to close that door.

But there's materials here from community comment two, the initial report. Subgroup C analyzed it. The policy goal here is the working group should ensure that policy and implementation are consistent with one another. So in this case, was the policy of allowing integration plus requiring nondiscrimination, is that being enforced and is it consistent?

Okay, so Karen had a question on the last section. Karen, why don't you go over it? Since we do have a little bit of time, why don't you go over that?

KAREN LENTZ:

Okay. Thank you, Jeff. My comment, I was thinking about the discussion toward the beginning of the registry agreement section on exemptions, and the desire to make it easier to request and have exemption requests considered, and I'm kind of harkening back to one of Paul McGrady's comments in that a policy principle or a set of policy goals relating to the exemption process, I think, would be helpful towards meeting that goal. It's hard to consider an exemption request in a vacuum.

So whether we want to encourage innovation or reduce harm or prevent potential for harm, to have that set of principles included somewhere in that thinking, I think, would be helpful both in implementation in considering, okay, how do we build something that is efficient and considering a request in light of what the goals were behind it, as well as for the applicants if those objectives are clearly set out, these are the kind of criteria and guides thinking about whether this exemption is the right avenue to pursue something that they may be interested in. So I just wanted to add that. Thanks.

JEFF NEUMAN:

Thanks, Karen. I do think that makes a lot of sense. And I don't know why this kind of came in my head, but maybe we can look at the RSEP request form and some of the goals there, because I think the goals there are similar to if you're making a request, it's to encourage innovation or competition, reduce harm and so having those goals may be very similar.

It might not be, but it just jumped to my head. But that might be a good document to look at to maybe bring out those goals.

KAREN LENTZ: Yeah, agreed. It's a little different context, but it's the same type of consideration.

JEFF NEUMAN: Right. Maybe we do need a security and stability review if there are certain requests, but yes, we can do that. We'll take that on as an action item to see if there are any parallels we can draw on the goals.

Okay, so then the only high-level agreement with respect to the registrar nondiscrimination, registry-registrar standardization is that recommendation 19, which was initially the one that related to registrars and nondiscrimination, should be revised to be made current with the current environment.

Registries must only use ICANN-accredited registrars in registering domain names and may not discriminate among such accredited registrars. That was from the GNSO report in 2007. This next part, unless an exemption to the registry code of conduct is granted. That's the new part. I don't think that's controversial. That's sort of the way it's been put into play anyway, so I don't think that that is controversial.

The outstanding items or new ideas, concerns, the first one is from the Registries Stakeholder Group, says registries should have the flexibility to register their own domains under certain circumstances, including where no registrar agrees to sell a registry's TLDs.

Then general topics or comments, the Registries Stakeholder Group, some Registries Stakeholder Group members favor vertical integration with support for removal of restrictions on operation of those vertically integrated businesses. Other Registries Stakeholder Group members favor the retention of the restrictions, essentially the code of conduct. We are not aware of any specific disadvantages or issues arising out of the operation of vertically integrated registries and registrars. That's from some registries.

BRG – that really isn't a comment related to this one, so I'm going to skip the BRG. Christopher Wilkinson has a general reservation about the neutrality of registrars among registries under current conditions. It would appear that the degree of concentration that has taken place in the DNS market was facilitated by the flawed decision in 2010, etc.

If there's no questions on that, the next one goes to the question of whether registry – Paul McGrady states regarding the Registries Stakeholder comment, “I think that's why there isn't much chatter here. the parade of horrors never occurred, at least to our knowledge.”

Should registry operators that are granted an exemption from the code of conduct also be exempt from Section 2.9 of the registry agreement? BGR, FairWinds, Registries Stakeholder Group, Google do agree with that. The registrars say no, only where the brand is the registrant.

So brand TLDs, the registrars are not against having Section 2.9 applied. 2.9 is essentially what's been referred to as the price

discrimination clause, treating all registrars equitably, making sure that they have the same terms and conditions and access to registry services, and so it doesn't seem like there's disagreement from any of those commenters that for Spec 13, registries, they should have an exemption from 2.9. But the registrars do not favor an exemption if it is just an exemption from Specification 9 for the code of conduct. I know that's very detailed and esoteric, but I think it makes sense.

Questions, comments, thoughts? Okay, then it's, "If complete exemptions are granted, are there any obligations that should be imposed on .brand registries?" In other words, can a .brand registry basically sign one agreement with ICANN being both the registry and the registrar and not have to have this separation?

Mark Monitor states in .brand registries where the registry operator is the sole registrant, potentially along with affiliates and licensees, the registrant protection function is less important. The current 100-domain limit sufficiently provides a registry operator with flexibility to utilize the TLD independently for its own purposes, increase domain registration volume above this threshold, evidence affiliate and license registrations which would require the registrant protection value.

So MarkMonitor says that – actually, I'm confused by what MarkMonitor is saying. I thought it was saying that it doesn't need the registrant protections, but then it's saying it's got the registrant protections if it's over 100 registrations.

The registrars are okay with this, but assuming the brand for all domains is – okay, so assuming it's a brand registry, they're okay

with it. Registry operators of exempt TLDs must not allow third parties to manage DNS at any level or otherwise control resolution for the second-level domains, and ICANN needs to be aggressive in managing this.

BRG, FairWinds Partners, Registries Stakeholder Group don't think any additional obligations are needed above what's already in there. Questions, comments, thoughts?

Okay, scroll down. Then this last section, is there anything else that's needed or that should be added as an exemption to the code of conduct or where exemptions could be granted? Registrars say no, and they say that the registrars would disfavor any other categories of TLDs that should be granted exemption to the code of conduct.

But if there is a process, then the requests need to be published, evaluated, and run through the community so that you have complete transparency.

Okay, that is it on the standardization, registry, registrar issues. As I said, it's not that many issues compared to certainly the discussion that took place. If I were to glean out of it, it's just for more transparency and enforcement of the existing provisions, but not too much else that seems controversial here.

Jim in the chat says on the DNS topic, could we discuss that under AOB? I think we're on AOB at this point, so why don't I first talk about that, the DNS abuse? And then we'll go to just restating what's going on at ICANN.

So with DNS abuse, staff and leadership are going through trying to write a paper for this topic that we'll get out tomorrow, but essentially, it is in response to the CCT review team recommendations. I think it's like 13 through 17 and then 20-something. Although many of those have not yet been approved by the board, we anticipate some of those will likely – all those issues should be discussed by our group. So that's really what we're going to look at. I don't want to pre-judge the outcome, but certainly, some of the issues that we'll have to consider, this is really going through Spec 11(3)(b), discussion of the GAC letter, the CCT review team recommendations, the registry operator audit report will be background documents, and really, it's just to talk with this working group about whether we think we should make any recommendations, or alternatively, what we could say is that there's a lot going on in the community at this point and maybe we should just let the community resolve this through a separate process, and in that way, it could be applicable to all TLDs. That's certainly a way that we can handle it.

Or if the group wants, we can make a recommendation for new TLDs going forward, with the recognition, obviously, that if we did that, there would be disparity between the new registries and the legacy TLDs.

So Jim, that's really what the topic will be about. We're not necessarily going to go into very much detail about what is DNS abuse and all the other really complicated subjects, unless the group thinks that we really should be making recommendations for the new TLD.

We also note there are a bunch of comments that were submitted in the public comment periods that the ALAC for example said that they didn't want new gTLDs to go forward until this DNS abuse issue was addressed. So we'll go over those comments as well, so the comments that have previously been made. Jim, please.

JIM PREDNERGAST: Thanks, Jeff. Less about the actual topic of DNS abuse, but something you just said frankly threw me for a loop there. Maybe it's the hour. You just said maybe we'll apply it to all existing TLDs, but I think we've heard on multiple occasions that this is a forward-looking group and not a backwards-looking group. So I'm trying to square what you said with what we heard over the last several months about the nature of this group, looking forward from 2012 as opposed to the current state of affairs. Thanks.

JEFF NEUMAN: Yeah, thanks, Jim. Maybe I'm the one that's tired if I said that. I did not mean that. I meant to say if we apply it to new gTLDs going forward, it would not apply to the existing TLDs and therefore we would have differential treatment for new TLDs going forward than for existing TLDs.

But one option that we have could be to say, look, there is a process going on now that the community is engaged in, and because that addresses both existing TLDs and presumably TLDs going forward, it may make more sense just to defer to those conversations as opposed to us developing things just for the new

TLDs going forward. I hope that makes sense. So I apologize, it might be the late hour for me.

There you go. Okay, any other questions on the DNS? Look for something tomorrow, probably late my time or California time tomorrow for Thursday's call. And while I'm talking about ICANN, maybe someone can post the call time for Thursday.

But the sessions, again, just to remind everyone, there are four sessions at ICANN in Montréal for the SubPro full working group. The first two sessions on Saturday are to receive the recommendations and the report from Work Track 5, so they'll spend the time talking about the group's activities and the final recommendations. The full working group will ask any questions that it wants to ask, clarifications, ask whether the Work Track 5 has considered issues that you may think of.

So I think that is likely to go for the two sessions. The other things that we'll cover, if there is time left over in the second session, or certainly the third and fourth sessions, we will talk about the areas in which we believe we'll likely have to go out for public comment – and by we believe, that would be the leadership team, and certainly look for your input on that – and then we will also try to get into some of the topics that were supposed to be discussed within the smaller groups, which I recognize full well has not really gotten too far off the ground. So those are some of the topics that we'll talk about probably in the fourth session.

Any questions about ICANN? And those last two sessions, the third and fourth, are on Monday. The full schedule is up. I think it

says that it's a full working group meeting for all four sessions, so I think it should be pretty clear.

Alright, Jim says, "If there are slides, can we get those ahead of time? Reacting on the fly is tough." For the first two sessions, you'll definitely have the full report, so we may do slides – or Work Track 5 co-leads may do slides, but they're based on what's in the report that you will have. And then for the third and fourth sessions, yes, I think that's a good idea. We'll have slides that you can review prior to the meeting on that Monday.

Jim, please.

JIM PREDNERGAST:

Yes. Sorry, Jeff, just to add a little more color to that. As you mentioned the sort of sidetracked little groups, the small groups, really haven't done much. So just getting a better sense going into the meeting of what you're expecting from the broader group on those specific topics I think may yield some more fruitful discussions. Thanks.

JEFF NEUMAN:

Thanks, Jim. That's a good suggestion, and I will do that. I haven't spent a lot of time thinking about that particular session. I've been thinking about the other ones. But you're absolutely right. So thank you. Yes, we'll do that.

Okay, any other questions, comments? Great. I know we got through a lot of materials. I know that there's not a huge amount of people on this call, but I do appreciate you all coming on here and

participating, and look forward to talking to you all Thursday at 20:00 UTC for 90 minutes. Thanks, everyone.

JULIE BISLAND: Thanks, Jeff. Thank you, everyone. Have a good rest of your day or night.

[END OF TRANSCRIPTION]