
ICANN Transcription
GNSO New gTLD Subsequent Procedures Working Group
Thursday, 30 January 2020 at 20:00 UTC

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JULIE BISLAND: Good morning, good afternoon and good evening. Welcome to the New gTLD Subsequent Procedures Working Group Call on Thursday, the 30th of January, 2020. In the interest of time, there will be no rollcall. Attendance will be taken by the Zoom Room. If you're only on the audio bridge at this time, could you please let yourself be known now?

Hearing no names, I would like to remind everyone to please state your name before speaking for transcription purposes, and please keep phones and microphones on mute when not speaking to avoid background noise. With this, I will turn it back over Jeff Newman; you can begin, Jeff.

JEFF NEUMAN: Thank you very much. Welcome everyone, hopefully everyone's having a good week so far. This is the first time this week we are all speaking. We ended up, as you know, cancelling the call earlier in the week because of the New

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Year celebrations in the Asia Region and because there were also other activities going on and so we knew we would have very light attendance. As Cheryl said, the Lunar New Year, thank you, that's a better term that I guess the way I put it. Thank you very much.

Today, we are going to pick up on the agenda that was initially scheduled for Monday and that would be essentially reviewing the working document on the Draft Final Recommendations, specifically on Application Fees and the Notion of Variable Fees as well. As this link is being copied into chat for you to click, if you don't want to follow along with -- I almost said Adobe Connect, sorry, still on that one, although it's been I think over a year, follow along in the Zoom Room and please go ahead and click on that link to the Google Doc. Before we however start that, let me just ask if there are any updates of any Statements of Interest?

I'm not seeing any in the chat and I'm not seeing any hands raised. Okay, so we will -- as everyone is opening up that document if they haven't done so already and as Julie or whoever has got control is putting that up, just remember that the point of this exercise is to look at the recommendations that we have here, these are going to be the recommendations and pretty much the format of how these recommendations will go into the Draft Final Report, for which we will be soliciting comments.

Each of these sections are organized in a very similar way, starting out with Affirmations and those are the things that we are affirming from either the policy, from the way it was in 2007/8 and ultimately enforced in the Guide Book in 2012. Basically, if we affirm something, it means that we're affirming the past policy and/or practice in 2012. Some affirmations will have an affirmation with a slight modification and that's essentially if we're affirming the concepts but make a slight change.

Other than that, you'll see Affirmation, then you may see Recommendations if there are new recommendations and then you'll see Implementation Guidance. This first one, Application Fees, I don't believe there are any recommendations, so this section is a little bit different, where you just have Affirmations and Implementation Guidance.

The difference between Recommendations and Implementation Guidance, Recommendations are what we believe as a Working Group, ICANN must have or must do in the next round and future rounds. Implementation Guidance is a should, although it's should, it doesn't mean optional, it means that we are strongly recommending it but there may be reasons for which ICANN would have to implement things in a different way, while still trying to achieve the spirit of what we are proposing.

So, hopefully that makes sense. Affirmations and Recommendations have the same weight however. The only difference between an Affirmation and a Recommendation, is that the Affirmation is basically doing what we did before. Hopefully that makes sense.

With all of that said, the last thing I want to say is that, we're not aiming for perfection here. I want everyone to sort of enter these discussions as what they could live with, as opposed to what they would like in the ideal world. The purpose here is to see if we can find a collaborative, comprises and solutions, as opposed to what would be the ideal situation.

Paul has asked a question. Paul, do you want to speak to that question, your hand is up?

PAUL MCGRADY:

Jeff, just a question, you talked about the difference between Implementation Guidance and Working Group Recommendations and sometimes I feel that even in our conversations, it hasn't been clear when we are far, far in the weeds we'll say, "Gosh, this sounds like implementation, not policy." And the response is always, "Yeah, but we're supposed to be dealing in implementation."

And then there are other times when we're at 35,000 feet and people get frustrated because we're not putting any

meat on the bones and then we'll say, "Yeah, but we also [inaudible] must be the only policy." Will our final product indicate to the reader which is which? Because I think that's important. Thanks.

JEFF NEUMAN:

Thanks, Paul. The short answer is, yes, we will make sure that they final document will have in its preamble or whatever's up front that we decide to put up front, will certainly have a discussion of what each of the categories means and why they are in those categories. You made me recognize with your question that it's unfortunate that we have the common term implementation, this is not implementation versus policy, this is more our -- it's basically the must versus the should.

One debate doesn't necessarily have anything to do with another debated. I hope that makes and unfortunately we have a common term, implementation but what we're talking about here is not implementation versus policy, it's "What are we going to recommend as you must do and what are we going to offer as a you really should do this unless there is some real good reason not to."

Paul is saying the must versus should. As we go through these, if you find a should or must in the wrong place, we need to make sure that those terms are used correctly. The other thing is, this is how we as the Leadership and Policy

Staff have classified all these, if you think that what we have here as an Implementation Guidance is so important that needs to be a recommendation or the other way around, that's also something that is valuable feedback that we want to know because again, this is just our readout and we may not have that correct. Let us know your comments on that.

With all of that said, let's go to the very first one, which is an Affirmation and then I'll read the comment afterwards. The good affirms that as was the case in the 2012 Round, all applications in Subsequent Procedures should pay the same base Application Fee regardless of the type of application or the number of applications that the same application submits.

This would not preclude the possibility of additional fees in certain circumstances, as was the case in 2012 Round on the program. Examples given are Community Priority Evaluation, Registry Services, Evaluation, etc. We're recognizing that although we're saying the same base fee, to the extent additional evaluations or objections or whatever are needed, we're not saying those can't be added on.

The Working Group notes that as was the case in 2012 Round, successful candidate to the Application Program will be eligible for a reduced Application Fee. This is all an Affirmation of the 2012 Program and really gets the heart of whether there should be variable fees or not. Let me go to

the main overriding comment on this. If you look to the right and then I'll go to the chat.

If you look to right, Emily has put a comment in which was from ICANN Org. "There was a request from ICANN Org to clarify if the suggestion that all applications should incur the same base fee amounts, extends to scenarios beyond type of application or number of applications? For example, would an applicant proposing to use a preapproved RSP pay the same Application Fee as one who proposes to operate its own backend registry functions and thus requiring technical evaluation? The Working Group may want to improve the language to make this clear."

I think that's a really good point. Think about that and also, I'm going to go to the comments here. Avri says, "With the should class, will there also be an example or type of case that shows why it isn't a must?" Avri, thanks for the comment, are you saying for each one that we label should or just an example up front to say, just pick any Implementation Guidance from the draft and just put an example as to why we didn't put a must or are you saying that for each Implementation Guidance we should put something as to why it's not a must?

AVRI DORIA:

No, it's a difficult sentence to part and such. I'm certainly not trying to indicate what you should do. I'm just basically

asking the question. Very often if something and perhaps I'm borrowing too much on IETF tradition in the differentiation between must and should but if it's a must except for certain types of case or certain examples, then it's often useful to people in trying to understand it, to have either an explanation, a reason, I type of case in which you guys all thought, "Yup, this is almost a must but in this case one could see reasons for not doing it."

That's what I was asking about and certainly not saying it should be done but it's certainly the kind of question that gets asked whenever somebody sees a should instead of a must, they want to understand why it's one and not the other. Thanks.

JEFF NEUMAN:

Thanks, Avri, that's a great question and I think as we were going through this, being the Leadership Team and ICANN Policy Org, we certainly had ideas as to why we thought it amounted to a must versus a should and it could be different in each section.

Some sections like the Fee Section, some of them are Implementation Guidance because we don't necessarily have all of the information and we're making our best proposals based on the information that we do have or in other cases, the recommendations may be so far in the weeds that they may not be, for other sections, not for this

one, they may not be implementable or feasible, commercially reasonable let's say, in the ways in which we are making those suggestions.

I think it may be different in each section and what you're pointing out is that we probably should think about making it clear in each section why certain things are must versus should. I think it's a great question.

Going back to ICANN Org's comment. It's a great comment in terms of we haven't really thought about, I mean we thought about but we haven't put it in here, a difference between those that go through the RSP Program versus those that want to get their own technical approval.

My reading of who we've been discussing the RSP Preapproval Program was that there would be and what we said actually for the RSP Approval Program is that there's a charge to go through that program and the charge is supposed to be a cost recovery process for carrying out the evaluations in that program.

It would stand to reason that if someone chooses a Preapproved RSP, they would not have to incur that cost in the regular application process but one that does need to be evaluated because it did not go through the Preapproval Program should be charged that fee. If I'm reading the group correctly, I would say that we should put the technical

evaluation as separate fee if they haven't gone through the Preapproval Process. Donna, please.

DONNA AUSTIN:

Thanks, Jeff. Taking those two things together, it raises an interesting question about the Cost Recovery Model because I would and I don't know this for sure but if there is a Preapproval Process and you only have six entities that are looking for preapproval, that could be cost prohibitive for them if the intent is to have those six people, whatever the cost of the Preapproval Process is.

If you amortize that cost within the Application Fee itself, then you take that away and probably don't have this problem that we're talking about. I think from a cost recovery perspective, if we think we want to do it for the preapproval, then I think it's kind of an interesting conversation because I don't know, I think without knowing what the cost of that process would be but it's going to be pretty cost prohibitive for those that are seeking the preapproval. We may want to just, I don't know, park that as another [inaudible] that we need to work out.

JEFF NEUMAN:

Thanks, Donna. I would think that this particular evaluation would probably be one of the easier one for ICANN to figure out how much it would cost because they have done it many

times and they certainly have done that type of evaluation with outside vendors. I think we would probably know pretty early on what it would cost and then I think it would be a decision for each backend provider whether the cost would be worth it.

I'm not sure how much we're going to be able to work out more than the information we have at this point because we're not getting additional data on how much this would cost overall but I do think it is a good concern, I'm just not sure what more we can do about that particular issue than what we already have. If that makes sense, Donna. I'm trying to close out issues, as opposed to create some more but we can put a note here to address when we get to the Preapproval Process because we haven't hit that topic again in a while.

Other than that, which is a really good comment, does any disagree with the notion that a base Application Fee for this Affirmation would separate out the technical Evaluation Fee as a separate fee, it would be the same fee regardless of whether they did that technical evaluation in the Preapproval Process or during this process but when we're talking about a base fee we'll break those two out as separate components? Hopefully that makes sense, I didn't say that very well. Martin, please.

MARTIN SUTTON: I'm just trying to work out how this works in practice. Could we be saying then that there is a base Application Fee and that there could be potential deductions as you go through the process, depending on what options you've chosen, for instance the provider for your backend?

JEFF NEUMAN: I think there's deductions and increases. If you are proposing Community Priority Evaluation, then that would be, and it gets to that stage, then that would obviously be an increase. But yes, the concept that you put forth, there would be this base fee, it's one of two ways, either there's a base fee and you add the technical fee to it or there's a base fee and you subtract it if they've checked off the option that they are using a Preapproved RSP. I think it's two sides of the same coin.

MARTIN SUTTON: Thanks, Jeff. That to me sounds fine, in terms of policy and process for implementation suggestions as one we start with the fact that there is a base application fee that is the starting point for everybody and then, as you go through, where there might be some fluctuations, depending on the route that you follow, there are reductions or additions that go along the way but here's the starting point.

I think that, in my mind, could work quite effectively and it doesn't require us to specify the individual amounts at this stage, that's some work going through the Implementation Process that would tease those items out. I'm kind of comfortable with that. Thanks, Jeff.

JEFF NEUMAN: Thanks, Martin. Is there anyone else? Donna, you're in the queue, please Donna.

DONNA AUSTIN: Just a clarify question I suppose. If there is an applicant that applies for 20 streams and they don't go through the preapproval backend process but they intent to operate themselves, would they go through the technical evaluation once or would they have to go through it 20 times? Understanding that one of the reasons we can up with a Preapproval Process was to try to negate the repetition. I think it would be good to understand whether that entity would have to go through the technical evaluation 20 times or just once.

JEFF NEUMAN: Another great question. I would think that going through the same policy as you rightly brought up, I do think we should build that in and yes, you would need to go through the

technical evaluation only once, assuming you are not proposing anything different from a technical RSP perspective, you would only need to pay that once.

I do think that would be consistent with the RSP Preapproval Program and also not giving those an advantage participates in the Preapproval Program versus just submitting it through the normal process, so I think that makes sense. Hopefully Paul and Martin, you're going to weigh as well. Please, Paul.

PAUL MCGRADY:

This is the question that will make everybody hate me. Isn't that same efficiency the same for financial evaluation and background screening costs too? If you have a party that's applied for more than one TLD and will those costs be backed out, backed down to one or that's just not -- or are we just going to ignore that? Because it seems the same to me in essence, ICANN's not really going to do the same background check 20 times, at least I hope not, that doesn't seem rational. Thanks.

JEFF NEUMAN:

Thanks, Paul. I see your issue. Let's go to Martin. I don't know if Martin has a response to that as well but Martin and then we'll come back to your question.

MARTIN SUTTON: That's Jeff. First to Donna's point, I think that's a really good one to raise. I think that will be more clear as we go through the process and the judgment on the applicants and the backend providers as to what they do in that approach, so if they 20 applications, it might be more feasible for them to go in and have precheck done and fit into that queue, rather than proceed otherwise. That might be an option as it goes forward and becomes more clearer.

To Paul's point, there are some differences. I think in the financial side of things, if you're adding one on top of the other, that's going to an impact, that could be very different on the technical review of the applicant versus financial.

However, I do agree that if there is the same entity with same people involved, then those checks are duplicative, so there might be some minor cost efficiencies that could be clawed back on that but I'm not sure they'd be that significant. I think the financial ones is different. I would say that they do need to be considered across the aggregate applications. Thanks.

JEFF NEUMAN: Thanks, Martin. I'm noting also in the chat, Donna is just making the point that and one I think I agree with as well, which is that some technical operators may be a little bit late

to the game and may not have time for preapproval or they may just assume that preapproval is for backend providers that want to service multiple applicants as opposed to the same applicant applying for a number of strings. I think that makes sense to me.

With respect to Paul's point, Paul says we may want to consider a third category which is might or throwing out an idea, price breaks for multiple applicants. This is where it kind of interesting because in our discussions, we wanted to the same price Application Fee, we had talked about price breaks in a number of different conversations and we never really got consensus on that because there were some in the group that thought that it encouraged multiple applications and although it was not something we wanted to prohibit and it's certainly allowable, it's not something we wanted to incentivize either.

The more things you put into a preapproval or approve once, the more the base fee in theory could go down if there's multiple applications and I think we're starting to run into policy issues with that. Although, totally understand that a background check for the same entity is going to be the same regardless, financials as Martin pointed out may be different, depending on the number of TLDs and also maybe different with each TLD based on the type of TLD. That's where we get a little bit thorny but I really want to hear from others.

I see Justine states, “The timing of various evaluations are conducted also matter, as a side point a suggestion that evaluation background screening be conducted twice, once during the application and second prior to contracting.” Thanks, Justine. I’m not sure whether that one will ultimately end up being adopted, you’re right, that was a proposal, we haven’t gotten to that yet, so we need to park that one. I don’t want to park too many issues.

I think at this point, it totally makes sense because we have a Preapproval Process for the RSP’s, it certainly makes sense to break that out and also only charge that once, so we’re not discriminating against those who only utilize the application process to do this.

As far as the other ones, let me take that up with Leadership to see if there is this other category for things, we could through out there but they’re really not Recommendations or Implementation Guidance, they’re just throwing things out for ICANN to consider. Justine states that, “Also, on timing of the evaluations, financials change over time, perhaps technical may not.” Katrin says, “Plus one.”

Let’s for now, move on to the next, Affirmation #2. I think there’s a couple different things we have to talk about here. Here we have Affirming Implementation Guideline B, which was from the GNSO Policy, which is Application Fees will be

designed to ensure that adequate resources exist to cover the total cost to administer the gTLD Process.

Application Fees may differ for applicants. Going backwards, the second sentence, Application Fees may differ for applicants, I'm not sure if we're affirming that part because frankly, I cannot remember what Implementation Guideline B meant by that unless it just means what we're talking about, which is that the fees can differ based on the these deductions or additions for things that they need. I definitely want to do some research as to whether we're really affirming that second sentence.

Then the first sentence, the comment that Steve has in the chat in which I responded to, is that what we don't say in here as of yet, is what the cost recovery should include. In other words, in the last round cost recovery essentially was interpreted to mean historical costs plus essentially evaluation costs and ongoing costs and this last component was called Contingency Fee.

Steve has suggested, do we want to affirm that kind of structure but I weighed in as a response saying, "I thought that we as a group were coming towards a conclusion that there's no need for historical costs because ICANN has been already building it in their budget to do everything that they've been doing, up until time that they actually start

budgeting a new budget for new systems and other things like that.”

To me, the notion of historical costs doesn't seem to come into play here and I thought we were recommending that that was not going to be a component. I believe that's what we said in the initial report but I wanted to do a sanity check on others, sorry with others, sanity check on that concept with you all. Cheryl's got a thumbs up, so I think that was her recollection as well. Anybody disagree with that?

It seems like we do not have disagreement with, which is good but I do think that Steve's point about us clarifying it, I think is very important. We should put that in as a Recommendation or an affirmation with a slight modification. It's going to be one of those two, it would not be a should and an Implementation Guidance but a must.

Emily put in as a note in the document, that we're going to research what that last part, application fees may differ for applicant. My inclination would be to not affirm that part, unless we find it means something different then what the obvious is, simply because we have address that in the previous Affirmation, which was essentially that everyone should pay pretty much the same base fee.

Not seeing any hands up, let's go on to the next one, which is, the Working Group generally affirms the principle of cost recovery reflected in the 2012 Applicant Guide Book. “The

gTLD evaluation fee assessed and recover cost associated with the new gTLD Program, the fee set to ensure that the program is fully funded and revenue neutral and is not subsidized by the existing contributions from ICANN funding sources, including generic TLD registries and registrars, CCTLD contributions and RIR contributions.”

That’s an exact quote from the Guide Book and also maybe even the policy itself. As noted in the Implementation Guidance below however, if a cost recovery calculation based on the revenue neutral principle results in a projected fee that is too low, the fee should be set to a cost floor instead. Before we get on to the Implementation Guidance on this, let me just see, Donna’s got a hand and Justine agrees on the last point about the application fee may differ is kind of confusing, so we’ll research that. Donna, please.

DONNA AUSTIN:

Thanks, Jeff. Just a clarification, what’s the difference here between the Working Group affirms and the Working Group generally affirms? What does the generally related? I’d like to understand what the distinction is here.

JEFF NEUMAN:

Thanks, Donna. I am not sure that was intended to be a difference but hand up from Emily, so Emily, please.

EMILY BARABAS: Thanks, Jeff and thanks, Donna. I think the intention there was because the principle of cost recovery is being affirmed as a principle, underlying the program, however it is the case that cost recovery will not always be the principle guiding the fee because of the existence of the fee floor.

We could just take out the word 'generally' but I guess the fee floor is not actually cost recovery, I think that's the distinction we were trying to make there, that's there is two principles co-existing that have some interplay. But if it's confusing and more clear to just remove the work generally, that's fine of course. Thanks.

JEFF NEUMAN: Thanks, Emily. We wrote this at a time...just to explain, we wrote this at a time before we had that category of Affirmation with Slight Modification, maybe it would fit more into that kind of category and then we would take out the word 'generally' because it's slightly modified based on that the floor has -- as Emily was talking about but please, Donna, go ahead.

DONNA AUSTIN: Thanks, Jeff and thanks, Emily for the explanation because when I read that, the generally affirmed, it's different from

what's above with the affirm. I thought it meant that most of had agreed with the principle but not everybody. When I first read it, it did -- I had the wrong idea about what we were trying to do. I think it's helpful to just take the 'generally' out and then add the last piece.

JEFF NEUMAN:

Great, thanks Donna, and I agree as well that adding the word 'generally' in there was a -- it could be read in a couple different ways and it's better I think without that in there. You're getting some plus ones, so great. Were there any other comments on that before we get to the Implementation Guidance?

In the Implementation Guidance it states that, "In the event that the estimated application fee based on a revenue neutral principle falls below a predetermined threshold amount, i.e. the Application Fee Floor, the actual Application Fee should be set at that higher Application Fee Floor instead."

Any questions or comments on that one? Does anyone feel this should be a Recommendation or Implementation Guidance? We put it as Implementation Guidance, again because we don't have, although we're strongly recommending this, we don't necessarily have all the information on costs and exactly what a floor would be and

so that's why we put it as a Implementation Guidance. Play McGrady, please.

PAUL MCGRADY:

What does this mean? Does this mean that ICANN can change the price halfway through the program and everybody gets a special assessment? Help me understand. When will the price change happen? Thanks.

JEFF NEUMAN:

Good question, Paul. We probably should be clearer. I think the intention was that when ICANN creates or figures out what the costs will be and general for the program, that's when it will determine what the Revenue Neutral Principle would be for the application, the base application fee, which again, we're recommending that they are the same.

They will also have done their research as to figuring out a predetermined threshold. All this is to say that they would do this before the applications are submitted. It's not something they're going to change on the fly but rather it's a per round type of assessment. We should be clear on that, that it's not intended to change things midway through. Maxim and Martin. So Maxim, please.

MAXIM ALZOBA: Maxim Alzoba for the record. I wonder if the situation where the last time each applicant was handled an invoice for \$5,000 for the end stage service falls into this or not? Thanks.

JEFF NEUMAN: Thanks, Maxim. Are you talking about the \$5,000 for the trademark clearing house or are you talking about initial deposit one had to make when it wanted to get access to the Application System? [AUDIO BREAK]

The later, okay. In the last round, in order to get access to the Application System, you had to pay an upfront fee of \$5,000 but that was credited towards the \$185,000 Application Fee. I don't think we are specifying here how the costs are divided, we haven't really talked about that. We're just basically saying that whatever the fee is, it should be determined in a cost recovery way and the same for each applicant.

I don't think we're pining on any of those other fees. I'm reading Maxim's comment, Maxim is talking about the excess fees that were given back to the registries. I think the next Recommendation and Implementation Guidance addresses that point. This was from the excess fees that were collected and so I think we'll get to that in a little bit. Sorry, it's my misunderstanding. Let me go to Martin and Donna.

MARTIN SUTTON: Just going back to the floor limits and cost recovery elements that we talked about and specific question about when does that occur. I think it might be sensible if we include reference to the fact that this needs to be established a certain prior to -- as part of the Applicant Guide Book that's delivered prior to each application round.

I say that on the basis that we're kind of looking for this to keep rolling over but as situations change, either there's more efficiencies introduced or there's different cost elements that are introduced along the way, that will have an impact on where ICANN assesses that cost recovery line to be. I think perhaps to help us, we just need to clearly state that this need to be established at a certain point and included within the final Applicant Guide Book before each round, something like that. Thanks.

JEFF NEUMAN: Thanks, Martin. As I'm thinking about that, it's essentially two Recommendations. One that I would put in the Applicant Guide Book section, which is we state in that section that everything must be final, I'm not using the right language we could put in there, including all fees. I know we say, including all the legal agreements but we probably should also add, including all fees, if we added that in to be included as must be published at that time.

The second Recommendation, which is I think a little bit different concept but also something we need to put in, probably in this section, is that a fee will be determined prior to each or they'll do this reassessment of cost recovery prior to each round. We may have something that deals with that and I'm trying to remember if we do, Implementation Guidance or Recommendations, a little bit down below, but we if we don't then we certainly should include that in there. Donna, please.

DONNA AUSTIN:

Thanks, Jeff. I'm wondering, what's the difference between this Implementation Guidance and the last sentence that is in the Affirmation Rational 3? Because it seems that the modification is almost the same as the Implementation Guidance but I'm not a 100 percent sure.

The other thing is, maybe most folks have wrapped their head around this, the fee floor and the cost floor and that type of thing but I think it might be helpful when we publish this document that we have an example of what that looks like. We just do something with some numbers on it to explain how that might model out because I must admit, that I get pretty lost when we start talking about fee floors and cost floors and I'm not really 100 percent sure what it all means. Thanks, Jeff.

JEFF NEUMAN:

Thanks, Donna. I do think that would be helpful, maybe if we put that in the Deliberation Section, I think you're right, I think that would be helpful to give it some context. We'll put a note of that.

On the first comment you made, as I look at it, I think you are right, there's certainly a lot of similarities between the Affirmation and that Implementation Guidance. What if we basically delete the last sentence to the Affirmation and just say, somewhere in that we have to say, "As modified by the below Implementation Guidance."

So that there's a point there from that Affirmation to the Implementation Guidance because that's where the modification is. We'll figure out the right language but I do agree that there is overlap and not necessarily -- it seems better to just do it that as you suggested. Martin, your hand is up, I'm not sure if that's new or if that was leftover?

Then if we move on to Recommendation that's got the Rational 4 next to it. The Recommendation says, "In managing funds from the new gTLD Program, ICANN should have a plan in place for managing any excess fees collected or a budget shortfall is experienced. The plan for the management and disbursement of excess fees if applicable, should be communicated in advance of accepting applications and collecting fees for Subsequent Procedures."

Maybe this where we put the notion of determining the fees for each subsequent round, that comment from before? Let me just throw that out there. Does everyone understand what that Implementation Guidance means? Donna.

DONNA AUSTIN: Thanks, Jeff. I did have a note in here, that I can't see anymore because Emily is talking above it. I wasn't sure what this meant, whether it's an administrative arrangement or whether it's something more? Obviously, I did have some confusion around what this was intended to be.

JEFF NEUMAN: Thanks, Donna. I'm reading your comment from the Google Doc, it says, "I thought that in the event that a fee floor is used, any excess fees collected above the floor..."

DONNA AUSTIN: Wrong comment, Jeff.

JEFF NEUMAN: Oh, sorry. "Is this plan intended to be the administrative arrangement for where ICANN keeps the money?" Is that the comment?

DONNA AUSTIN: Yes.

JEFF NEUMAN: Okay. Sorry, can you just explain that?

DONNA AUSTIN: So, it says that ICANN has to have a plan in place for managing any of the excess fees it's collected or budget short falls but I don't know what you mean by that plan? I honestly don't know. Is the plan intended to be about ICANN has to have a separate bank account to hold those funds in until such time as they understand what's excess and what's not? I'm just not sure that the intent of this is supposed to me.

JEFF NEUMAN: Sure, Emily has her hand up, so I think Emily's got a response.

EMILY BARABAS: Thanks, Jeff. In cases where there were a few specific pieces of Implementation Guidance that seemed tied to one another but weren't explicitly put in a container or a bucket, we tried to sort of create a Recommendation that was kind of the what to go with the how, if that makes sense? And this might not be the right way to word it.

There are a few pieces of Implementation Guidance that are specifically about what ICANN should with excess fees and there needs to be a plan for dealing with short falls, those are all sort of connected. It's about planning ahead and communicating to the community what's going to happen if there's too much or too little money around.

We tried to -- it's less about administration or anything else, but just sort of essentially saying, "There needs to be some sort of communicated in advance plan for what's going to happen and where the money is going to be. Whether it's being reimbursed, if there's excess fees and they're being reimbursed to the applicants, if it's going to special programs, etc. that the idea is that the container recommendation is that there needs to be advance planning around this and it needs to be communicated."

If the language there is not capturing that, we certainly welcome recommendations for making that more clear and making it obvious what's being done there. Apologies for any confusion, hopefully that's helpful. Thanks.

JEFF NEUMAN:

Thanks, Emily. That is helpful. Can I suggest then a couple things we can do maybe to clarify? First of all, the first sentence it should be, 'ICANN must have a plan in place.' Instead of 'should' because we're trying to be consistent in recommendations. Then, we say -- also the must as far as

communicated it advance. Then somewhere in there we should say, “Should be in accordance with the below Implementation Guidance or the Implementation Guidance below describes how this should be done.” That’s bad words but in other words, we’re making the connection. Does that help with that?

Then when we get to the next part, Donna, I accidentally read the comment, which was for the next paragraph, which was, “If excess fees are collected in Subsequent Procedures, either due to the use of a fee floor or because collected fees exceed program costs, at least some portion of these excess fees should be returned to applicants. The disbursement mechanism should be communicated before applicants submit applicants and fees to ICANN.”

Your comment on this was, “I thought that in the event that a fee floor is used, any excess fees collected above the floor would be returned to the applicants and if there were any excess fees that remained from the fee floor, this excess would go to programs that we list below?”

I think that’s right. That would affect that part that at least some portion of these excess fees should be returned to applicants, that’s the part of the sentence that I think conflicts with what your comment is. But we also said though, if there are excess fees because the floor is not used, that those excess fees would go into the other

programs, right? No, sorry, if there's a floor, it would go to those programs. If it's a cost recovery, then the excess fees go back. We should be clear on that and we're not.

DONNA AUSTIN: If there's an either or, we need to be clear if it's cost recovery we do this, if the floor is used then we do this. We need to be really clear here.

JEFF NEUMAN: Yes, I agree with that, Donna. We will make some changes to that to make it clear that if it's a cost recovery, in other words, the cost recovery ends up being above that threshold amount, so we've not using the floor, we're using just plain cost recovery, then any excess goes back to the applicants because that's the cost recovery notion, the whole notion of cost recovery.

If we're using a floor, that's because the cost recovery ended up being really low and so we ended up using that threshold amount as the floor and therefore we came up with, let's then use the excess for funding these programs.

Justine has a comment on describing what Universal Awareness means and I think that's a good note for us to just be more specific on that. Maybe we'll have a link to

where Universal Awareness is discussed on the ICANN site.
Martin, please.

MARTIN SUTTON:

I'm just getting a bit tied up in knots on this one, in terms of when we look at the last round and I know that it was protracted and we hope in future, these are not but imagine the process given the years gone past during this particular phase where cost recovery is not actually determined as in what was the true cost of the whole process and therefore what is paid back to the applicants, could go across a number of years.

In that time, some of the applicants that started the process have dropped out, TLDs have changed hands, so not to put a spatter in this, there are a number of other eventualities that could have an impact on this that we may need to at least highlight and think of a way of saying there is a cutoff point. If the entity does not exist anymore, that was the original applicant, then that goes off the funds that can be applied elsewhere in the ICANN Community.

Just to be aware that we could tie ourselves in a bit of a knot here if we just think and assume that things will be processed in a very short timeframe and that the legal entities that applied for, they may not be around once those return of funds are made available. Thanks.

JEFF NEUMAN: Thanks, Martin. Let me just be a little cynical and say, so what. We're going to determine when a round ends, that's for another discussion, so what is, well we can leave that detail to ICANN to figure out, in other words, we're going to define when we think around close is and this cost recovery should be paid out and then let ICANN figure out what to do if that legal entity doesn't exist. I'm not sure that this is one of those we have to have a perfect answer for. That's the cynical side of me. Go ahead Martin, pleas.

MARTIN SUTTON: I'm fine with that, Jeff. It will come up in the Implementation Review Process. We'll put it perhaps on the radar that there needs to be some thought as to how that can be processed, given the different occurrence will happen during a span of two to three, perhaps even five years. Thanks.

JEFF NEUMAN: Yup. Thanks, Martin. Paul.

PAUL MCGRADY: Jeff, I'm with you, not so much on the so what, but just pointing out that there are already legislated mechanisms to turn over money that you're holding or outfits that may be defunct; in most US States anyways, it goes to Secretary of

State and you can search for, whether they come looking for you or whatever.

I don't think we need to solve every problem the Government in various jurisdictions have already solved in order to do a greater amount of good, which is, if ICANN overcharges, they should just give it back to the people who have paid. Thanks.

JEFF NEUMAN:

Thanks, Paul. Justine is saying we could just put in some words, like where possible, which is fine, we can certainly do that. The one element that we do need to determine, not today and not necessarily in conjunction with only this discussion but it will come up as a general issue, is to define at what point is the round considered closed for purposes of doing things like this? Because that is a question that was asked of us by ICANN Org and the Board but that's not in this section, so we're not going to spend time on it now, it's just something that we will address in the future.

The next Implementation Guidance is dealing with the, where is this money going to go if there is a floor used? If you're thinking about this, we're using a floor because the application fee for cost recovery was determined to be too low and therefore, by definition, we are going to have excess funds because we've now set the price higher than what it cost to run.

Because we have these excess fees now, what we are saying here is that with these funds, because it doesn't relate to cost recovery notion, is that these excess funds would go to different programs like this, like these. We're just giving examples like outreach awareness. As Justine said, we'll be a little bit more specific or link to it or define so that it's known what we mean. Long term program needs, such as system upgrades, fixed assets, etc.

The application support program or top up any shortfall in the funds as described below. We haven't talked about the shortfall, that's in the next Guidance. That fee relates to the Implementation Guidance, the next one. Donna has recommended changing and I think it's Universal Awareness Language, to 'global communication and awareness campaign about the introduction and availability of new gTLDs.'

I think Donna's right, if there's no definition on ICANN's site of awareness versus acceptance, then I do think we need to something like that, like what Donna has suggested because it should be differentiated from the Universal Acceptance.

The last Implementation Guidance says, 'help elevate the potential burden of an overall budget shortfall, a separate segregated fund should be established that could be used to absorb any shortfalls and topped off in a later round. The amount of the contingency should be a predetermined value

that reviewed periodically to ensure its adequacy.' Does everyone understand that?

Number one, is having a separate fund, which ICANN does anyway. Number two, the implication of this is for ICANN to make this part of the contingency fee component of the application fee. If it has not reserved the correct amount to absorb a shortfall, then it can review that and top that off with excess funds or it can reflect that in the fee for the next subsequent round. Make sense? Everybody onboard?

Martin likes Donna's suggest on global communication. I do too. If there's a definition that ICANN has that it's been using and it's one that we like, we can link to it but otherwise, I agree that something like this language is good to have in there.

Now, we get on to the Deliberation Section. We've already said that one thing we're going to add is an example or maybe multiple examples of the whole concept of the floor. We don't want to make this section too long but certainly putting examples of the calculation is very helpful, so I don't think that will -- even if that takes up a little bit of room, I think it's a helpful addition.

We're not going to go over this section word for word, but please do review this, make sure you agree with the rationale that's being used here. I know that people tend to just read the Recommendations and Implementation

Guidance but this section is important to explain in a short way, why we've recommended or proposed what we have. Please do give this a look over, not for necessarily writing style but more from an accuracy perspective.

These are the four different rationales and that's why each of the Implementation Guidance and Recommendations cite to these. There was a comment that was put in -- sorry, just go up a little bit, there we go. Actually, not that one, that's fine to just change it, I think that's just a wording change, I think is good. If we go down to the next one, I think that was a question.

Donna put in a question, 'would this be for the round in progress of for future rounds?' The sentence is, "The Working Group notes that the fund could later be replenished through." Yeah, for subsequent future rounds. Let's make that clear, as opposed to additional application, yup.

Justine has a comment in there about, 'I would like to think that the segregated fund is off limits to loans to ICANN.' If we go back up that Implementation Guidance. Go up to the one above that, which lists the different uses. In here, we say it's Implementation Guidance so it should, we only list four. Do people think we need to be more specific or are people just okay leaving it like this and then if ICANN has an issue -- I mean do people want to be specific?

Although, I will note, that even though we were specific in the last round, ICANN Board could still and did, overrule that specificity to top off its reserves. Donna, please.

DONNA AUSTIN: Thanks, Jeff. I'd prefer to go with being specific rather than leaving this open to interpretation. Personal preference but for the same reasons that you've noted.

JEFF NEUMAN: Yeah, thanks, Donna. Why don't we put something in there that says -- I'm just looking, 'the fee floor is used to determine if excess fees received by ICANN should be used to benefit...' I would say all of these are the new gTLD Program. We'd say, "Fees received by ICANN should be used to benefit the new gTLD Program in one or more of the following categories."

Perhaps in the rationale we will be specific and state that -- make it much more clear that this is not -- that this is only to be used for purposes that benefit the new gTLD Program and not for any other ICANN programs or purposes, I guess.

If we needed to put in additional sentence as to why that's the case, we could say something to the effect of -- just like we're saying that, "The gTLD Program shouldn't be using funds from other programs." We say that at the beginning.

“That feed derived from this program shouldn’t be applied for other programs.” I think that’s two sides of the same coin.

Paul wants a must here. Go back up again to that. Paul, I’m assuming you meant on this one, this guidance that we were just talking about, just to clarify? Okay. What does everyone think about that? Instead of being Implementation Guidance, we would put this as a must, as a Recommendation?

Donna, agrees. Be good to hear from others as well. I’m seeing that it’s generally agreed. Let’s do that. We’ll bracket it just in case because we’re not making decisions only on the call. Let’s move it in brackets to a Recommendation and put in the notes when we send it out from this meeting that we’ve moved that.

Emily, it’s the Implementation Guidance that has all of the changes we just made, that one, right there, that’s the one. We would change it to a Recommendation and then instead of ‘should’, we’d put ‘must’ in there. Great, thanks Paul.

If we could then just go to next item, which is the New Issues. This section again is just to highlight some of the new things came up since the initial report. What we say here, is that we asked about guidance on -- we considered ICANN Org’s request for guidance on what the floor should be, while we did not come to an agreement on a specific amount or set of criteria, we noted that some of the public

comments received on initial report suggested further study in the Implementation Phase of what level of fee floor would effectively deter the behaviors a fee floor seeks to prevent.

This one, Emily asks if there's anything else we want to put in there? Donna states, 'Is it possible to nominate a percentage of the overall application fee that intended to be the floor? Absent tangible guidance implementation will be extremely difficult, further study will not be helpful if variables remain unknown.' Donna is now saying, 'Forget the percentage but maybe...'

So, what I would encourage as an action item, is for us to think about whether we want to put some of the variables in here, if we can think of any because I think that might be helpful to guide implementation, again, this will just be suggestions not Implementation Guidance it would just be some suggestions for the Implementation Review Team.

Rubens suggests in the chat that perhaps we put a value like \$50,000. The issue we had with that Rubens, is that I don't think we have enough background or data to determine that that would be what the floor would be, nor do we have the experience. I'm a little hesitate to put a specific number in here, simply because I think there's others that maybe able to come up with something better than just a guess. Donna is saying the one variable that will always, it's always going

to be unknown, is the number of applications. Yep, that's true.

Any other thoughts, questions, comments? Okay. Donna, please.

DONNA AUSTIN:

Thanks, Jeff. In response to this question. One of the things that we did discuss and maybe Rubens was thinking about this, maybe he wasn't. One of the things we did discuss quite a bit was the recognition that you are running a piece of internet infrastructure and there is a value or benefit of doing that. Putting aside the application fee and whatever else, what do we think is -- can we come up with any idea of what we think the value of that is?

Now, we've got some interesting reference points at the moment, given some of the stuff that's going on in the industry, but is that something that -- I think it's nearly impossible to but, is that something that we could perhaps reach some sensible agreement on?

JEFF NEUMAN:

I think that's good to put in as one of the variables, that an Implementation Team or an Economist, that whoever is going to figure out this floor, should take into consideration. Just like the behaviors that we're seeking to prevent. I

certainly think it's one of the variables but we've discussed this issue so many times, just being honest, I don't see us and others can weigh in but I don't see any ability for us to agree on -- it's really just a guess anyway because we don't have other information.

As a co-chair, I would say, unless someone else tells me otherwise, just from observing originally Work Track 1 and the comments we got in and the various discussions we've had, I think that would be really difficult. Donna, please.

DONNA AUSTIN:

Thanks, Jeff. What's the purpose of this paragraph that's highlighted in text? Because we say it's not in public comment. Initial report suggested further study on Implementation Phase of work, level of floor would be? I'm not 100 percent confident that I support that because based on the conversation we've just had, it's unlikely that we'll reach anything that's sensible anyways. I don't know, why are we including this paragraph, if there's no recommendation coming out of it?

JEFF NEUMAN:

This paragraph is just intended to acknowledge discussions that we had or new issues that were raise since published. We're putting this paragraph in because we want the Community to know that we considered this, it's just we

couldn't come to a kind of agreement. I think there are Economists out there that can use better information and criteria than we can, to determine what this would be. That's the reason this paragraph is in there.

We certainly may want to reword it or put in some of the variables as you suggested but I think this is needed for two reasons. One is to highlight we've discussed and that it's not something we've ignored. Two, maybe to give some guidance in the Implementation Phase, that this is something that should be worked out.

I think we're done anyway for the call. If you have any more thoughts on the variable, then please do think about that, give us some comments. We're going to start on Monday with the Application Submission Period and Terms of Conditions. I think those two subjects will be the ones for Monday at 1500 for 90 minutes. I think we did really well. Thanks Robin. Thank you, everyone. Talk to everyone next week.

JULIE BISLAND: Thank you, Jeff and thanks everyone for joining. This meeting is adjourned.

[END OF TRANSCRIPTION]