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## ICANN Transcription

### GNSO New gTLD Subsequent Procedures PDP Working Group

**Thursday, 30 July 2020 at 20:00 UTC**

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ANDREA GLANDON: Good morning, good afternoon, and good evening. Welcome to the New gTLD Subsequent Procedures PDP call being held on Thursday, the 30<sup>th</sup> of July at 20:00 UTC.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you are only on the audio bridge, could you please let yourselves be known now? Thank you. Hearing no names, I would like to remind all participants to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise. As a reminder, those who take part in ICANN multistakeholder process are to comply with the Expected Standards of Behavior. With this, I will turn it over to Jeff Neuman. Please begin.

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JEFFREY NEUMAN: Thank you very much, Andrea, and welcome, everyone. So it looks like we're giving a couple minutes. We had a good number of people join, which is good.

The agenda is up on the screen right now. We're going to spend some time going through mainly package 7 but there were still some leftover items on package 6 that we still need to touch a little bit on, but I don't think those will take very long. But then we'll go into package 7, the comments to that one. And then we'll get back to review private resolutions, which I'm hoping to finish up today.

Again, our goal here is not the perfect solution. We just need to get to one that we think we can live with certainly for purposes of putting it out for comment. What's become clear is that there are going to be a couple of subjects that I'm sure we will have to expand upon in the weeks during the public comment period. So, while others are preparing their comments, we still have a couple of topics that we already know, either because we can anticipate comments that are coming in because during our discussions in the "can't live with," we've told a couple of groups, "Hey, thank you for the substantial comments. These are all new things. Let's push them into the public comment period." Or because there are some work items that we have, we're just going to have some high-level things on some topics like closed generics, I think, is where we're going to end up, and then we can flesh out the more specifics during the few weeks of the public comment period.

Let me ask first, actually, I forgot. Let me ask to see if there's any updates to any Statements of Interest? Okay. I'm not hearing any.

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Okay. So before we actually get started, while package 6 is coming up, I just want to give a little bit of a preview of what we're going to do for the next couple of calls because when I talk about this at the end, I think some people get annoyed and they want to talk more about it at the beginning. So obviously we're having this call today. And there's a couple of people, by the way, that have private messaged me that my camera is on, so I'm aware of that. I just have it on in case. So thank you for private messaging me.

Okay. So hopefully you've got now invites for all of the meetings that are coming up in the next few weeks. So you should have that now in your e-mail box. And so our next call is going to be on – well, technically, it's Tuesday below, but for some people, it will be late Monday night. That'll be our next call. So it's 03:00 on Tuesday UTC. And then the next call after that will be on Thursday. On the call on Tuesday, we're going to do a little bit of a preview of our thoughts on the public comment period, the form that we want to use, and basically just a preview of that, which we'll go into more detail on Thursday. So on Tuesday, again, it'll just be like a brief overview of the structure of the public comment period discussion of the preamble, which we're going to send out some language on as well as finishing up any loose ends from today.

And of course, because the call is after the deadline for closed generics, we've asked for all proposals, if you have any, that you want to be in the draft final report, the due date for that is Monday at 23:59 UTC. So our call is actually a number of hours after that. So if there are some items that we need to discuss from the closed generics, we'll do that as well on the 03:00 call on

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Monday/Tuesday, depending where you are in the world. And then on Thursday, we'll do kind of a mock – not a mock – we'll go through the actual form with some of the materials in the form so you can see what we're thinking in some more detail.

So sorry about that, it's a little bit long, but I just want to give everyone a preview of next week. We are getting towards the end of this process and our goal is to have the draft final report out in its total entirety, the week of August 17 through the 21<sup>st</sup>, I think, is that week. So it's going to go out that week, it has to go out that week. Otherwise, we'll be missing a lot of deadlines. So we'll go into some more detail about that on Tuesday or Monday, depending on where you are. But I just want to say that we've got a tight deadline here.

Okay. Let me now move on to the document which Steve has posted a link to. This is the Production document and I think this is already on our first comment. This is leftover from package 6, so we're not quite on package 7 yet. Anne had sent in a comment on package 6 which talks about – and this is subject to a bunch of e-mails so you may recognize it. What it says here is that these are the non-exhaustive list of changes that require public comment. One of the bullet points, the first one says, "The addition of Registry Voluntary Commitments in response to public comments, objections, GAC Consensus Advice, or GAC Early Warnings."

As kind of a preface to this, we were asked to put in the term "formal" before the word "objection." That actually came from Kathy. The reason we were asked to do that is because in the Applicant Guidebook from 2012, ICANN uses the term "formal objection." It doesn't just say objections. However, when we were

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writing this sentence, we were not limiting it to just the formal objections, meaning that Registry Voluntary Commitments could come in and basically in response to any comments or objections kind of a lower case version of the word. So if the registry feels like it needed to file a Registry Voluntary Commitment for any reason, it has the right to do that. Of course, it's subject as you see here to public comment, etc. So when Kathy had introduced the change to formal objections, then in an e-mail, I had recommended then or for whatever reason. So the main point of this was that Registry Voluntary Commitments were intended to have a public comment period that followed them.

I know that there's some people asking about the full section. This recommendation deals with the requirement to post things for public comment. And this is the public comment section, if I'm not mistaken. So, Kathy, go ahead.

KATHY KLEIMAN:

Yeah, Jeff, hi. So where's the line about kind of throwing the kitchen sink in and letting everyone make any change that they want to everything? It might be below what we're looking at here. I'll address the objections issue in a second, but is there any part of this that's below what we're looking at here? And I'm having trouble pulling up the Google Doc on my screen. So really, I'm looking for the top of page 95. Can we just take a fast look at that?

JEFFREY NEUMAN:

Actually, I think for whatever reason, on this version, it doesn't necessarily match the version and it could be because of different

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page layout. I think it's because – is this Emily's version? Or whoever's displaying it might be using different margin settings because if it's in Europe, it's different paper size. So that's why page references could be a page off.

KATHY KLEIMAN: Okay. As long as we're looking at the full text that we're debating, that we're discussing, that's fine.

JEFFREY NEUMAN: Right. So your recommendation, Kathy, was to add the word "formal" and then in response to that is when we drafted the catch-all language.

KATHY KLEIMAN: Right.

JEFFREY NEUMAN: So you objected to the catch-all. Go ahead. Okay.

KATHY KLEIMAN: Formal objection – I just wanted to codify something that seemed informal in the last round, which is that there were settlements made during the objection process, and at least one case and probably many more. Here we're talking about like community objections and it led to modifications of the application. That's why I want to codify the formal objections so that we know that that's a resolution that can come out. Initially, we thought that the formal

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objections, the string resolution legal rights community objection had kind of two answers, you win or you lose. They go forward with the application that they withdraw but it turns out that compromise was the key to some of the decisions of the Formal Objections (capital F, capital O). So I just wanted to make sure we codify that. I'll come back in the queue to talk about catch-all language and why. What we have here is much clearer, cleaner, and better than adding the catch-all language, but I'll wait for that, Jeff. Thanks.

JEFFREY NEUMAN:

Thanks, Kathy. Sorry. I have to remember, I need to take it off mute. I guess what I was saying was that the only reason that – if you want to change this to formal objections, which is the term that the Guidebook uses, that would be fine but only if we use the additional language. I think you started to say something in your comment then went down a different path than where I thought you were going.

So there were some parties that entered into discussions when there was no formal objection that necessarily was filed but they found out that there may have been some unease or some issues that people may have had during the process of the public comment period or perhaps it was later on. I guess the point that I'm trying to make is that if a registry wants to file a Registry Voluntary Commitment to end an informal discussion or an informal complaint or whatever it is, the registry should be allowed to do that, again, so long as it goes out for public comment and meets the other requirements. I had interpreted your changes to mean no, a registry can only file voluntary commitment if it's one

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of these limited events, and that was not the intent. So if we put formal objections in here, we would then need a catch-all phrase at the end if we left it as is. Because the lowercase objections, we thought –

KATHY KLEIMAN: Do you want me to respond to that?

JEFFREY NEUMAN: Yes, please.

KATHY KLEIMAN: Okay. So we're looking at language – I wish we could make it a little bigger. But about response to public comments, formal objections, GAC advice, GAC Early Warnings – actually, I reversed that because you're going to get the GAC Early Warnings first, and then the GAC Advice. We're trying to get the community involved in this, right? You don't want the catch-all because you want a linear process here, and you don't want to cross out objections either. That's being crossed out. You want something linear. The applicant put out the public portion of their application, the public reads it and responds to it. So what you want is the comments to be a response to what you're reading in the public portion of the application, and you don't want that changing arbitrarily. You want it changing through some linear sequence. The public is going to be dealing with maybe 10,000, maybe 20,000 applications. They need some help. We don't want to change radically what's going on here. You want to be able to follow a process of early warnings, responses, changes. But to



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allow the whole thing to be changed outside of kind of this linear process – I'll take your invitation to engage on this – is just inviting a whack-a-mole process and you're just going to create a crazed public on this. It should be a linear process of responding to the public portion of the application, not radically changing it. Thanks.

JEFFREY NEUMAN: Thanks, Kathy. Okay. We have some others in the queue. So let me go to them and then I'll jump in. Jamie, go ahead.

JAMIE BAXTER: Thanks, Jeff. I think what I would pick up on from what Kathy is speaking about is the predictability for the applicant. I'm not opposing this suggestion, these changes, this wording. But what I would like to highlight is the untethered level of scrutiny and need to make changes that a community applicant may be subjected to if you do not restrict the public comments to the real public comment period, because as I've mentioned many times in the 2012 round, there was opposition allowed to be entered onto the record just as CPE was beginning. So keep in mind that it's after public comment close that is after objections are sorted out, and then additional opposition was allowed to be entered into the record. And what you're suggesting with this language is that the applicant still has the opportunity to make a change to their application to eliminate that opposition, but what it's doing is it forces them to once again have a long delay because they have to go through a public comment period. I would suggest that all those public comment periods happen earlier in the process to not

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extend the time that it takes a community applicant to get to an end result.

So I think what you're suggesting makes sense but it even further builds the case that ICANN can no longer accept those late opposition letters that come in the minute before CPE starts. Because it could potentially become a third time that an applicant has to make an adjustment to their application and go out to public comment, given that there already is a public comment period and an objection period. So I hope that makes sense and I hope it builds a further case for not allowing any additional opposition to come into the fray after formal objections are closed. Thanks.

CHERYL LANGDON-ORR: Jeff, are you muted?

JEFFREY NEUMAN: Thanks. Sorry. Yeah. So this language is not saying that it's extending the time for people to file public comments or public comment period or anything like that. And in fact, what we probably should go to because it's related is – can we go to the other section that deals with the Registry Voluntary Commitments since it is related to that topic?

CHERYL LANGDON-ORR: Do you want to see what Anne wanted to say first, Jeff, or not?

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JEFFREY NEUMAN: Yeah, I think it's connected, right, Anne? So yeah, so go ahead, Anne, while we're going to the other section.

ANNE AIKMAN-SCALES: Okay. I'm not commenting substantively on the question of whether RVCs can be privately negotiated at later stages. I think, Jeff, you are saying yes, they absolutely can. I think Kathy's recollection of the deliberations was that there was not working group agreement on that. Now, my only point that I raised with respect to RVCs is that where we know that they will be privately negotiated, that there would need to be public comment on them in the interest of transparency. So we have a non-exhaustive list of public comment here but the addition of the language "formal" before "objection" in a different section raised a question as to whether there would be public comment on RVC adopted outside the formal objection context, and I definitely think there should be public comment on that. And so it has to be clarified if private negotiation of RVCs is permissible, that public comment is appropriate. There's another section that needs to be added here and that is a result coming out of string contention that results in a new JV is another item that needs to be on this list of non-exhaustive but definitely requiring public comment. Thank you.

JEFFREY NEUMAN: Yeah. Thanks, Anne. Okay. The intention is that all RVCs – in the previous section, it's all RVC submitted whenever it's submitted are subject to public comment. Here is where this section that's up on the screen now, which was, I guess in package 7 is where it talks about applicants being able to submit RVCs at any time prior

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to – no, scroll up, there you go – prior to the execution of the Registry Agreement. And this is where Kathy had wanted the term “formal” inserted.

When I went back and I sent my e-mail on the list, it was not the intent of the working group to limit the filing of RVCs to only formal objections. It was basically an applicant can file a commitment at any point in time prior to the execution of the agreement, provided that anything submitted after the application submission date be considered application changes and be subject to the recommendation set forth, and that was the one that we were just looking at in 2.4, the Applicant Changes.

KATHY KLEIMAN: Jeff, this is Kathy. Can I respond?

JEFFREY NEUMAN: Yeah. Just let me quickly say Steve is looking for a page number because we just skipped sections. Yeah, go ahead, Kathy.

KATHY KLEIMAN: Okay. But that’s not what the language we’re looking at says. What you’re saying is, “You can submit an RVC whenever you want for whatever you want,” and that’s not what this recommendation says. We spent months trying to get to this, right? ICANN must allow applicants to submit Registry Voluntary Commitments in subsequent rounds in their applications and/or to respond to public comments, objections, GAC Early Warnings, GAC Consensus Advice. If you allow RVCs to be anything, you

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can put X in your public portion of the application. And why in your RVC that's completely contrary completely ignore – I mean not responsive at all, it can be a game – and hope that the public doesn't notice because they're so busy.

So yeah, I do think that RVCs should be limited to some type of response, and that's what I thought we had agreed to and that's what I think you're changing is that there's something logical and linear about the recommendation as I read it without creating a catch-all that says Registry Voluntary Commitments respond to objections and concerns being raised from some part of the community. It doesn't allow you to kind of do whatever you want, whenever you want. That you had the opportunity to do in your application. Now this is about responses and responses that are consistent and coherent and logical that then it goes out for public comment and can view it together and see if the change being offered addresses the concern being raised. It's all pretty linear unless you put a catch-all in and allow anyone to do anything they want, whenever they want, which just doesn't seem to make sense and doesn't seem to be where we went and will create chaos. Thanks.

JEFFREY NEUMAN:

Yeah. Thanks, Kathy. I guess the only difference I have with what you're saying is, again, I think the language, the way it is now without that bracketed, without the word "formal" is fine. Because when we drafted it, it wasn't only "formal objections" like the specific one set forth in the Guidebook that an applicant could be responding to. There are many things that an applicant could receive comments about whether it's during the public comment

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period or subsequent or whatever it is that maybe objections that they want to fix in their application. And I don't think we should be restricting the ability of applicants to work out differences that they may have with members of the community simply because it doesn't fall within the linear timeline that you'd like to set, right?

I mean, look, the point is that if there's a public comment period, right, and let's say organization X opposes application for whatever TLD, an organization X files as public comment thing, "Hey, I'm not sure about this. I have some concerns. I think we should discuss it," and they discuss it. And the applicant says, "You know what, I agree. That was not what was intended in my application. Let me make a Registry Voluntary Commitment to clarify it. We all should be good." Now the fact that organization X didn't file a formal objection and they came out with this should not be held to say, "Well, Registry, I'm sorry. I know you wanted to solve the situation but because organization X didn't follow formal objection, you're now not allowed to file a commitment." I don't think that is in line with the public interest of trying to get mutually acceptable application. I understand the fact that it may pop up at any time, but remember we do recommend that notifications of changes to application should be sent out with some sort of – and I'm paraphrasing here – but some sort of notice that gets sent out to anybody that subscribes to those notices. So I think we need to think of the bigger picture other than the linear fashion of allowing applicants to work out disputes, whether formal or not for filing a RVC. So I think that's what the working group discussed.

And when I went back to the initial report and the Work Track 3 I think it was, that's what the messaging was in there. And so let me

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go cut to the chase. If we leave the language as lowercase objections or without the bracketed language or without changing to formal objection, we're fine. But if, Kathy, you're insisting that we only use the term "formal," that's when the catch-all language we need to go in to be in line with what we discussed. We don't want to dissuade applicants from working out their differences simply because of a linear requirement. That was what the working group had discussed. All right, go ahead, Jamie, Kathy, and then Anne.

JAMIE BAXTER:

Thanks, Jeff. I think the point that I'm trying to highlight here is that right now there are very specific timelines for certain things to happen, and this isn't between applicants. I'm talking about things that happen against an applicant. There could be GAC advice that comes in. There's the public comment period. There are the formal objections. And those are things that the applicant will be required to respond to, if necessary, and it could initiate them having to create an RVC or make an application change in order to respond to those. They have very clear deadlines and I think that is important. What I object to in this reformulating of this language is the insinuation from the language that we're going to continue to allow somebody to file a letter of opposition, which is what the word became in the last round, the minute before CPE starts, when no prior time before that did they ever raise any issues with an application, which could force the applicant, the community applicant, to once again go through this process of either creating an RVC or making an application change in order to avoid losing points in CPE. I don't think it's correct or fair to

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force the community applicant to have yet another period thrust on to them that has no predictability around it, whereas if the opposition was required to come in either during the formal public comment period or during the formal objections themselves, that gives predictability to the process.

Again, I'm not referring to disputes between applicants. I'm talking about comments that come in from the public that the applicant may have to respond to. And I feel like this is being ignored and it's actually quite important because in the last round, ICANN gave a free for all, for anybody that wanted to target a community applicant and had no rules around when they had to stop submitting opposition that could affect points in CPE. So hopefully that becomes clear and I would appreciate a discussion on this. Thanks.

JEFFREY NEUMAN:

Yeah. Jamie, I don't know why there's a different message being sent, and so it's probably my fault. We're not saying, of course, that there'll be unpredictable comment periods or complaints or anything like that. We're not advocating any of that. That's not what this section deals with. What we're saying here is strictly from the registry standpoint, the registry can file a voluntary commitment whenever it would like prior to the execution of the agreement. That is what the next sentence says. That was always the intent. So we're not discussing additional periods that people can file complaints or letters of opposition or anything like that. What I'm trying to say here is that, as you know, Jamie, over a period of time, especially with the community applicant, you're going to have your discussions prior to submitting the application.



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But you know once you submit the application, you're going to have a number of additional discussions with the community, and whether the community files formal public comments or formal objections or not, your application or your idea for the TLD could evolve over time. And if you find out during that period of time while the application is up for evaluation that you'd like to make some changes to your application to be responsive to the community that you're serving, you should have the ability to do that at your discretion, at your choice. Not because someone has filed an objection or new comment or anything like that but because you as an applicant want to make changes to your application because of the passage of time or whatever evolution. So we're only talking about the registries' discretion to file RVCs. That's it. For whatever reason – and it could be a business reason for the applicant, it could be because the government of let's say Canada comes up to the applicant at some point, "You know what, I'm a little uneasy about this and I interpret it this way. Is this the way you meant it?" And the applicant says, "Oh gosh, no, no. I didn't mean it that way. Let me clarify that and change the application." That's what we're talking about here, not giving people extra time to file complaints or anything like that. I hope that's clear.

Maxim wants me to read this comment. So I'm going to go to Kathy and Anne, and then I'm going to read Maxim's comment. So Kathy and then Anne.

KATHY KLEIMAN:

I also want to note Justine has posted some very interesting comments and questions in the chat that we should address as

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well. First, if I had known that the clarification that objection and adding formal or informal, I'm in agreement with formal and informal, I just didn't know if people knew that formal objections had resulted in application changes, which, by the way, did go through a second public comment process. So, Jeff, I think you're misinterpreting where I was trying to go with my clarification. Where I think we need to go on this, because I think we may all be an agreement, is to take up the word and/or. It doesn't make sense here. So ICANN must allow applicants to submit Registry Voluntary Commitments in subsequent rounds in their applications to respond to public comment. You can delete the "and/or". That's what we're talking about, right, responding to public comments, objections that sounds like of all types, including formal objections, GAC Early Warnings, GAC Advice. And then per Anne's suggestion and it's absolutely right, we could put in here, we know it somewhere else but we put in here too that those changes, those RVCs will then go out to public comment again. Kind of, did you capture what you thought you were capturing? It could be negotiated. So the RVCs as they're adjusted in response to the concerns then go up for public comment again for one last round. I don't think this has anything to do, Jamie, with CPE what we're talking about here.

So, Jeff, if that makes sense, we delete and/or, we keep formal and informal objections, and we add more public comment, which we already agree on and I think we're done. Thanks.

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JEFFREY NEUMAN: Sorry. I keep forgetting to unmute. That does sound like we're in agreement, but let me listen to Anne, and then let me read Maxim's comment.

ANNE AIKMAN-SCALESE: I appreciate Jamie's concern about late opposition letters in community proceedings, but I was under the impression that those had come in during the process. It seems to me that it would limit the flexibility in the community evaluation process if the applicant were unable to resolve matters through RVCs. So, I don't think there's anything about this that changes the time period during which those things can be filed in a community evaluation, but I do think that we need to clarify if we all agree that these RVCs can be made outside the context of a formal objection. And I don't think it works, Jeff, to do it just by using a little O objection, because most people think an objection is a form of process anyway. I'm talking about situations where applications are published, maybe a party decides rather than filing public comment, I'm going to call the applicant and see if I can get what I want by way of an RVC and settle this matter without involving the public. And so my point again is that that type of settlement – maybe I even say to the applicant, "If you don't give me this RVC, I'm going to file an objection." And that is the type of thing where an RVC is adopted, it should be out for public comment. In the same sense, if an objection is actually filed, we've already said that if that's settled by way of RVC, that goes out for public comment.

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JEFFREY NEUMAN: Yeah. I'm a little confused though as to why you think that RVCs wouldn't go out for comment? What is it here that says it won't go out for comment? Because remember, we mentioned it in the application change section where it says RVCs will go out for public comment. And then here it says that –

ANNE AIKMAN-SCALESE: I know what it says. It's formal objection. RVCs will go out. The application change request, once we adopted the term formal objection then the actual meaning of the word objection becomes unclear because –

JEFFREY NEUMAN: Yeah. What I think –

ANNE AIKMAN-SCALESE: In some ways, [inaudible] in other places you have just objections, and that's not really clear. That's what we spent a bunch of time talking about.

JEFFREY NEUMAN: So I think we can – towards this, it's formal or informal, right? So that's what Kathy had said. Let me just make sure I understand Kathy's recommended change. But actually, first, let me go and read Maxim's comment because I said I would do that. Sorry. It just scrolled up on me here. Maxim stated that, "With simple text, this application..." Sorry. Am I not reading far back enough? Oh, no, no. Okay, yeah, that was the first. Sorry. If I'm not reading this

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correctly, Maxim, just let me know in the chat. But I think it says that “Before the execution of Registry Agreement, there is no registry, only an applicant.” Right. So we need to make sure we use the right terms. Okay. So we’ll go through this paragraph two, or maybe that was just in the example I was saying. Okay.

So, Kathy, if I understand your recommendation, it’s basically change of the and/or with just or?

KATHY KLEIMAN: No, remove it completely. I don’t think it makes sense. Just remove and/or.

JEFFREY NEUMAN: Well, so the reason it was and –

KATHY KLEIMAN: [Inaudible]

JEFFREY NEUMAN: Yeah. But if they do it in their application, there was no comments or objections to respond to, right? So let’s say I am applying for .crypto and I want to put a voluntary commitment in that says, “I’m going to follow the standards put out by this organization,” whatever this is. They’re not doing that to respond to public comments. They’re doing that in anticipation of the way that they want to run their TLD.

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KATHY KLEIMAN: Okay. So you're saying they have the RVC and it goes into the public portion of the application as well as responding.

JEFFREY NEUMAN: Yes.

KATHY KLEIMAN: But if they have no RVC, they can create one in response to public comments, objections.

JEFFREY NEUMAN: Correct.

KATHY KLEIMAN: Okay.

JEFFREY NEUMAN: Correct. We don't have to say and/or, we could just say or.

KATHY KLEIMAN: That's clear. Thanks.

JEFFREY NEUMAN: Okay. So let's change that to "or" and then, Anne, we're going to have the "whether formal or informal" in this sentence because this is not just intending to limit an RVC to just formal objections. And we will make sure in accordance to Anne's concern that other places where we mentioned objections, we need to be clear as to

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whether we mean the lowercase objections, which is the formal or informal, or whether we mean the formal objections, meaning the legal rights objection, the community-based objection, the string confusion objection, and the limited public interest injection. So we just need to be clear in the draft. Anne, go ahead.

ANNE AIKMAN-SCALESE: Jeff, we especially need to be clear in the application change request section that the non-exhaustive list of items requiring public comment includes whether formal or informal after the word objection to be consistent.

JEFFREY NEUMAN: Yes, I agree. We need to make sure for consistency. Yeah. That was clear in your comments and I think we'll need to do that.

ANNE AIKMAN-SCALESE: And we also need to add to that section a change in the applicant that results from a resolution of string contention.

JEFFREY NEUMAN: Yeah. Okay. We've taken that note down. I think it makes sense. And just to respond to Jamie while Steve or Emily, whoever's got control, I think it's Steve, can you go back to the beginning of package 7 unless there's anything else from 6.

Jamie states that informal objection – what Jamie's worried about and I completely understand is that someone has an informal objection, they didn't go through the formal objection process and

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then they're causing registry hardship or whatever it is. What we're saying here, Jamie, is that if something is not filed during the formal opposition period or during the public comment period or for communities during that community public comment period, which we also make another recommendation that they should be synchronized, someone can send any letter that they want at any point in time. It can't stop that but it's up to you as the registry – and I use you as an example here – it's up to you as a registry if you want to respond to it or not. And if you think that it's important enough to respond to simply because it makes business sense for your application then you can do so in the form of an RVC if that's what you think will make whatever informal objection go away. But we're not giving another tool – that's solely at your discretion as the registry. You can ignore it and say, "The heck with you," and of course that informal objection can't be considered by ICANN because it wasn't formally submitted. So that's what we're trying to say. But Jamie, go ahead.

JAMIE BAXTER:

Thanks, Jeff. I think what you're missing, though, is the fact that informal opposition can affect CPE scoring. So if a community applicant is trying to protect their points in CPE and is forced to respond to informal objection that arrives in their inbox a week before CPE starts, it forces them to put everything on delay, deal with the informal objection through an RVC or an application change in order to protect their points. What I'm saying is, why isn't that informal objection required to come in during the public comment period? There is a deadline and a timeframe for public comment. I don't know why it's allowed to come in a minute before



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CPE starts. I think that's a flaw in the way it was implemented. But I would be happy if we could simply say any informal objection, opposition that is not formal objection needs to be submitted during the very clearly stated public comment period. So that the applicant has ample time to address it to deal with it and not let it be a last-minute gaming opportunity just before they enter CPE, meaning they've cleared objections, they've cleared all the prior public comment. Why should they be given one more throw against the wall before they start CPE? So I'm fine with this language. But what I'm saying is that we have to go back and force informal opposition to be filed during the public comment period, not a week before CPE starts, which is two years after the public comment period closed, and ICANN cannot allow that next time. Thanks.

JEFFREY NEUMAN:

Yeah. Thanks, Jamie. We just say that in the community section. We do point out that everything needs to get into that period. In order to be considered by the evaluators, it needs to be submitted during that period. When I'm using the term "informal objection," it's literally that. It's literally you can get the e-mail a week before CPE but the evaluators can't consider that. We're not saying that that should have any kind of status.

JAMIE BAXTER:

They absolutely did consider in the 2012 round, Jeff.

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JEFFREY NEUMAN: Yeah. I totally agree. I totally agree and in the community section, we talked about that and we say that that can't happen again, and we say that opposition must be received during the public comment period in order to be considered by the evaluators.

JAMIE BAXTER: Okay. If that is the case, I'm totally cool. I have never seen that language so I would love somebody to point me to it because I would be happy with that. Thanks.

JEFFREY NEUMAN: Yeah, okay. I don't know if the communities in package 7 perhaps or maybe we've already done it but we'll find that for you, Jamie. But, Justine, go ahead. Sorry.

JUSTINE CHEW: Thanks. I totally sympathize/empathize with Jamie's frustrations. I see absolutely where he's coming from. I too am not terribly certain that we have addressed it properly in community application section. I will go back and have a look. I think part of the problem that I think mostly would have recognized is that CPE was an exceptional process that came leaked into the picture. So nobody knew what was going on until it actually happened. And also the problem was exacerbated by the secondary call for letters of support and opposition by the CPE, by the way, which kind of ran out of control of the ICANN Org. So that led into problems as well. So if we're going to synchronize everything and just say clearly somewhere – and I promise you I will look for it – that everything that is going to be considered by an evaluator has to

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come in through the public comment period. Otherwise, it wouldn't be considered. Thank you very much.

JEFFREY NEUMAN: I need to turn it off mute. Thank you, Justine. And yes, so I think we're all agreeing on that. I've been waiting for Mr. McGrady to raise his hand so that I could say happy birthday. Go ahead, Mr. Birthday Boy.

PAUL MCGRADY: Thank you. What a better way to spend a birthday than on the Subsequent Procedures call.

CHERYL LANGDON-ORR: All your very fast friends. Thank you for joining us.

PAUL MCGRADY: And the sad part is, it's completely true that you guys are my very best friends. No, I appreciate the happy birthday wish. And joking aside, it is nice to hear friendly voices on your birthday.

I guess my question about this is that maybe – it seems like Jamie is talking to one issue and Kathy is talking to another. I just want to make sure that I'm understanding this because I don't think that it's an issue. I guess Jamie is concerned that this would trigger a new round of public comments which could intercede or affect CPE. And Kathy wants to make sure that if you put out a new voluntary commitment that it does trigger a public comment period. But I guess ultimately, an applicant doesn't need to. If it

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gets an informal objection or a formal objection, it doesn't have to do a voluntary commitment to try to get rid of it. It could just roll the dice on the formal objections. Or if it's an informal objection, they could just roll the dice that the party that's complaining doesn't have standing of rounds or won't prevail on a formal objection if they do file something or otherwise won't be able to politic the system to get the outcome they want. So it's not like these things are mandatory, they're voluntary. And because they're voluntary, there's therefore no mandatory public comment period. Am I understanding that right? Okay. Thanks, Jeff.

JEFFREY NEUMAN:

Yes. Right. Yes, Paul, you are correct. And Jamie's point is he's worried that by having this language in there where somehow saying that informal objections, if they were sent to ICANN for whatever reason outside the official period, I think Jamie's worried that that alone would trigger a delay, and that's not the case. So you are correct. Only if the registry decides to file a commitment in order to make that informal complaint go away will that trigger a comment period.

Okay. Let's move on then to the next one. Can we move to the next issue here? And I don't think these next ones will take as much time, although I could be wrong here. Okay. While that's moving, it takes a little while, sorry. This is such a long document that it takes a while to move between –

Okay. So this is in the application queuing section and this is where we've changed the language now. And I'm sorry for all these red lines because we've already reviewed these red lines

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and we already said we were okay, but Anne basically went through it again and said that the language that we used to resolve the “can’t live with” comment is just kind of a complete change. So it’s not a substantive change. So Anne had proposed which are the exact words that Anne had proposed. Well, no, it wasn’t all of those words but it’s in that section. So we had, while the 2012 AGB prescribed batches of 500, ICANN Org noticed during that round that moving through the priority list without splitting the applications into batches was more efficient. And I think what Anne wants in there is just the next part sentence which says the working group affirms that approach by not recommending back batches. Or no. Actually, I think Anne was recommending, if I remember reading a comment, it was to not that it just noticed it, but that it then didn’t do it, right? Wasn’t that, Anne, your point? Go ahead, Anne. Sorry, Anne, still on mute.

ANNE AIKMAN-SCALESE: No, Jeff, I think my only point here, it doesn’t have to do with batches. It had to do with the number because the numbers said that if there were more than 125, one thing would happen. And if there were fewer than 125, something else would happen. And it didn’t deal with the exact number of 125, so it’s really just again a consistency thing. So if it’s more than 125 is one set of language, and then if the second set of language was supposed to be – if it’s 125 or less. My comment was not about batches. It was about at least the 100 [inaudible]. You see under the first bullet point “first 500 applications”? If we focus on that bullet point, it says first 500 applications. And the first bullet point, if there are more than 125 applications. The second bullet point says if there are less than

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125 applications. Well, one of those has to say – it has to include the 125. So it's either if there are more than that 100 –

JEFFREY NEUMAN: Oh okay. All right. I got it. I got it. I understand. So if there are greater than or equal, essentially is what you're saying. So I think that I'm fine. So in that first bullet point, the intention is, if there are 125 or more applications. In that first sub-bullet point, Steve. If we say if there are 125 or more applications for IDN strings and then that's it. We have to do the greater than or equal to.

ANNE AIKMAN-SCALESE: Yeah, that's right.

JEFFREY NEUMAN: Not in that sentence. Well, it actually would be involved, sorry. It would be in both of those places, right. Sorry. You were right. So it's basically if there's 125 applications or more for RDN strings, and then the sentence above that you were at, it needs to say, "However, if the volume of it and applications is 125 or more," something like that.

There you go. Cool. All right, let's move on to the next one. Awesome. Sorry, I'm just singing as we go through. It's so quiet. I think we're on package 7 at this point. Yes? No? Okay, so then a question was raised, I think by Justine, if I'm correct, yeah. So this is in the section where we have talked about in the new issues. We had talked about the potential of providing a formal objection for if someone applies for an exact translation of category 1 string

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that there should be an objection for that. But that proposal did not get at least as we, the Leadership of the PDP, did not seem to have enough support to put into a recommendation.

So Justine asks a question, what happens if there is an application for a string which is an exact translation of an existing TLD? There is no restriction on someone applying for that. So long as they know that it is going to be in that category 1, and so they're going to have to have those restrictions, because that was in the global public interest section, then there's no additional right for the existing TLD to file an objection unless they believe it falls into one of the other four categories of formal objections that exist. What we're saying is that as long as they commit to being category 1, there's no added rights for the existing TLD. Go ahead, Justine.

JUSTINE CHEW: Can you clarify for me again, if a string is already a category 1 restricted string, does that mean the exact translation of that string is also subject to the category 1 restrictions?

JEFFREY NEUMAN: Yes. That's what we talked about in the global public interest section.

JUSTINE CHEW: Okay. So that's clearly set out somewhere because I couldn't find it and I was confused about it.

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JEFFREY NEUMAN: It's not in that. It's not in those words. It just says if someone applies for a string that is in those that meets the definition of what's in category 1 in any language then they're going to get the category 1 designation. So it doesn't say in there, for example, someone applies for an exact translation that automatically has to be a category 1, I don't think we use that as an example. We only set forth the general principle. But if you use high level, remember, we haven't developed ... Go ahead. Sorry.

JUSTINE CHEW: No. Carry on.

JEFFREY NEUMAN: So what I was going to say is if you remember in the global public interest section, in that section we talked about that there is going to be a panel that makes this evaluation, but we only provide the high-level details of how it's going to work and we push it out to the IRT. And I guess what I was saying is it's a pretty safe assumption that if you're going to apply for an exact translation of an existing category 1 TLD that that should be also placed in category 1. But if you're asking the question, do we state that exactly in those words, we do not because we really only do the global public interest section in the higher level.

JUSTINE CHEW: Okay. Well, okay, fine. But my response is, I don't think that's a safe assumption to make and I think we should clarify that



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probably somewhere. But if I'm going to have to react to it in writing somehow then I will do that. Thank you.

JEFFREY NEUMAN: Yeah, okay. Emily, you had your hand raised. Did you want to jump in, Emily? Or maybe not. Okay. I thought I saw your hand up. Maybe I'm just seeing Anne's hand twice. Anne, you have your hand raised. Go ahead.

ANNE AIKMAN-SCALESE: Yeah. I just raised one hand, not two, Jeff. But I guess what Justine is saying is [inaudible] exact translation should bear the same restrictions in the safeguard one category. You're saying that the working group did not agree on that, that that would discourage innovative business models and that each applicant for an exact translation on the safeguard one string would be perhaps a different set of restrictions, depending on what the IRT says or the GAC advice says. I'm trying to clarify what you think the working group agreed.

JEFFREY NEUMAN: Okay. Sure. Yeah, I'm off mute. Good. Sorry, Anne. I don't know what ... So what I was saying was that in the global public interest section, we have recommendations that state that essentially there should be – I'm not stating the exact word so please don't shoot me for that – but essentially that if a panel believes that something that an applied for string falls into a category 1 then that application is going to have to live by the PICs or in other things that category 1 TLDs have to live with. Again, very high

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level. That's what it says. I was saying it's a safe assumption if someone applies for an exact translation of a TLD that's already a category 1 that that new applicant is likely going to get hit with the same category 1 restrictions, but we don't want state that word for word in that way in the global public interest section. That's all I'm saying. Okay. Does that make sense?

Now, we as a group may want to put that in as an example of something we think should fall in there, but I'm going to put that off for a few minutes because I don't know if that's more appropriate to file during the public comments because we've already finished that subject and we probably would need full agreement from the working group to put that in. So, Anne, go ahead. Oh okay.

The next issue is – can we go on to the next one? Okay. So we deleted the reference to – this is in the CPE guidelines section or CPE. Anne is asking that we specify this point in the text that we are seeking comment specifically on the CPE guidelines but not the scoring. I'm not sure. Well, certainly we're seeking comments on the CPE guidelines but we were not really stopping people from commenting on the scoring.

So we will talk on Tuesday. Anne, I'm going to ask you to hold this because we're going to talk on Tuesday the format of the questions, so we'll keep this note because this is not a change in this section. You just want to make it clear, if I understand your comment, that we're asking for comments on the guidelines, right? Okay. So hold that to Tuesday and we'll talk about the format of how we're going to ask these things.

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Okay. Let's go on to the next one. All right, this one's related to the one we talked about at the beginning so we can go to the next one after that if there is another one.

STEVE CHAN:

Hey, Jeff. This is Steve. I think that's it.

JEFFREY NEUMAN:

Nice. Okay. Great. Thank you. So we're finished with the package 7 stuff. Let's move on to the – I almost call it auction stuff, no. Mechanisms of last resort, Proposal 5 or Model 5. Okay. So on the last call, I just want to go over some things because I don't know if changes have been made to the text. We discussed the first two sub-bullets, and I think where we left off, if we could scroll down. Wait, hold on. I know we talked about those. I think it's further down. It was in the confidentiality – sorry, it was in the transparency stuff. I want to make sure we're all on the same page. Yeah. Scroll down. Okay. So where we left off on this was – and I'm not sure if it is this paragraph or not but it was on the part talking about if there are settlements of private resolution of a contention set that's not the auction or bidding. So actually go down a little bit more.

There we go. We were talking about that first sub-bullet where we say all material terms of any arrangement between applicants. I think where we came out was that I think we all agree that the fact that there has been a settlement needs to be disclosed. I think the second part that there's agreement is that certainly if there's a material term of the rearrangement that requires a change of the

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application, either in a change of the entity or a change of the officers, the things that are submitted in an application, if there are any changes to those, then those have to be disclosed in the form of an application change.

Please, someone stop me if you think I am going too broad. But I think the third part is what else should be disclosed. So A, is the fact that there's been a settlement. B is certainly if any of the terms of the arrangement result in the change to something that needs to be in an application – I'm not sure if I'm saying that perfectly – then that needs to be disclosed through the ordinary application change process. I think those are the two things that we definitely agree on. But Paul has got his hand up. So, Paul, go ahead.

PAUL MCGRADY:

Thanks. Jeff, I just want to make sure that we're precise about the second one. I think that your second run at it was more precise. Just that if due to the private resolution of the contention set, there is some change that needs to be made to the application to reflect that change, ownership interests, that kind of thing, that that would all be done in the ordinary course of an application change. In other words, simply by resolving it, if your private resolution doesn't require any more information than would be required in an application change than would otherwise be required an application change, does this require that you follow the regular process?

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JEFFREY NEUMAN: I think that mostly captures it. We can probably work on wording offline. But I think it's more we don't want applicants to use this as an end around. We wouldn't want in a private settlement, something that says, "Because we don't want to file an application change request, we're going to put in the term of the agreement that on day two or on the day after you sign your agreement, you agree to all these different changes." Again, I think the concept is, you're right, I just want to make sure that we're not giving lawyers easy ways around the requirement to disclose something that really should have been disclosed during the application process. Does that make sense, Paul? Paul says it makes sense. Good. Kathy, go ahead.

KATHY KLEIMAN: I have a question to what Paul said. Does that change the timing issue? It seems to me that if you're engaged in a private resolution, you have to let ICANN community know as quickly as possible. So I just want to check that agreeing to what Paul asked doesn't change that rapidity of timing. Get this out to the community, people watching, other contenders have the right to know. I mean, others in the contention set, I assume they're involved. What's the timing here? And is there anything else that's being changed by agreeing to what Paul just said? Thanks.

JEFFREY NEUMAN: Well, the second part, I think, is the easier of those questions, which is no, nothing's changing with what Paul said. But that also means because nothing's changing, that we're not putting in time restrictions or anything like that because the only requirement now

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is that if there's a private resolution to the contention set, you need to let ICANN know before the scheduled auction. There is a drop dead date that's in there before which things need to be disclosed in order to stop the ICANN auction. Okay. Go ahead, Kathy, and then Jamie.

KATHY KLEIMAN:

I'll just put a flag in here but I look forward to reading more of the language. We would pull back from a lot of the disclosure requirements, I think, and that might be concerning to us. I think timing is something we should think about when these disclosures should be made. This is not kind of a routine change to an application that might take place. This is kind of an extraordinary one so we should think about timing as well. Thanks.

JEFFREY NEUMAN:

Okay. Thanks, Kathy. Jamie, go ahead.

JAMIE BAXTER:

Thanks, Jeff. As we talk about contention resolution, it seems like the focus has been on resolving to get to the end of the contention. But within that approach to contention resolution, there may still be some – when there's a an string that has multiple applicants, and we've gotten through objections and we're getting ready to go to the final resolution, what are the stop guards to prevent some applicants from sort of delaying it because the two of them out of the five decided they want to get together and do something and have to go through all this process to formalize it, what are the stop guards to prevent that from delaying it for other

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applicants who are urgent to get to an end and they've waited and they went through all the other processes? Have we put any guardrails around any of that or could this just become another form of gaming that delays the contention resolution, which is I believe what we're talking about there? Thanks.

JEFFREY NEUMAN:

The answer to that one is I believe somewhere we talked about not being able to cause delays and certain protections that are in there. I can't exactly remember where but this section doesn't touch on that. So let's take that one offline.

Okay. So, Mark, I know you just joined late and you put a question there. What I was doing was summarizing where I think – it's not necessarily the language that's in there but getting off the language and assessing where I think we are in terms of what we think is okay to disclose. Those two things are one that there's been a settlement, so the fact that there's been a settlement. And the second thing is that any result of that settlement – sorry, if that settlement results in – Paul, you said it better than I did so forgive me the way I'm going to say it – but if that settlement results in having to make changes to the application – shoot, I'm not saying it right. Paul, you want to take it? Put your hands up.

PAUL MCGRADY:

Sure. The idea is that in the event the private resolution triggers a change to the application that would otherwise be necessary to make, for example, the change in the applicant name or a change in the Board members or the officers or things like that, it may

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even actually trigger a change in the pro forma financials too for a new venture. All those things that ordinarily would have to be disclosed to ICANN via the regular application process will have to be disclosed. Kathy's question, which is why I raised my hand, has to do with the timing on that. I'm for a very aggressive timing on any disclosures. I'm for narrow disclosures but aggressive timing on them. Because I do take Kathy's point that if there is going to be a change, it doesn't do the community any good for that to be disclosed months and months later. I'm for that.

Then Jamie's question – I know, Jeff, you said let's take it offline but I'm a rebel. I think Jamie asked a really good question, as did Kathy. But Jamie's question also was on timing. I do think it makes sense to have some circuit breaker saying that all private resolutions have to be completed with X number of days before the ICANN auction. That way, we're not getting two out of the three privately resolving the day before the ICANN auction and now you have a new joint venture, there's been no application update and the new joint venture is going against the poor SAP that remain in the contention set. So I do think that a timing circuit breaker, 30 days, I don't know, 45 – I'm throwing out random numbers, but something that we'll address Jamie's concern when coupled with a speedy disclosure process that Kathy wants I think will go a long way. Thanks.

JEFFREY NEUMAN:

Thanks, Paul. The reason I hesitated a little bit was because I think there may be some things in this bigger section. We're only looking at a very narrow part of this mechanism of last resort section. I seem to recall other places that may address it so that's



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why I'm hesitating a little bit because I want time to go back to the other things that are in this bigger section to see – I think we talk about things like not causing delays and all that kind of stuff. I think that all makes sense. We just need to look at what's already in the larger section.

Okay. So those are the things we agree on. Now we sort of get into the highlighted language, which obviously we know we have to change now. But are there any other material terms of an arrangement that we, as a working group, believe should be disclosed, that doesn't touch on the two areas that we were just talking about? Justine, go ahead.

JUSTINE CHEW:

Thanks. I had a question that I posted in the chat. Please correct me if I misunderstood. So what we've been discussing pertains to JV or any form of corporate arrangements where the applicant's name could change on the application. For example, if JV happen, I'm asking the question, "What happens if there isn't a JV and there's a contention between Party A and Party B?" Party A drops out due to a settlement with B, but B remains the surviving applicant so there is no name change on the application. Have we covered that situation? Because we would still want to know that the settlement happened between A and B. I'm just trying to clarify some things. Thanks.

JEFFREY NEUMAN:

Thank you. Good question. That fits in to the first part, that a settlement has been reached between Party A and B, and that

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resulting in A withdrew. So essentially what would be disclosed is settlement between A and B, resulting in A withdrawing and B remaining the applicant. That's it.

Now, Elaine puts in their dollar amounts and here's where I know we have disagreements. This is the kind of thing we'll have to elicit during public comment just from the discussions. Anne puts in there, "Any option to buy out a party subsequent to contracting. Any option to ...". Well, certainly change ownership. That would need to be disclosed in the application. But the question is, and this is sort of what I was trying to get out with Paul. I know we're sort of running out of time here, but it's what if there's a contractual commitment that on day one, the entity is going to change or that ownership will change? That's what I was trying to get out with Paul saying we don't want to create a mechanism that incentivizes that. So, Paul, we're going to have to work on some language to make sure that there's no gaming of the sort that ends talking about just to get around the requirement of having to disclose it during the application process.

Paul, go ahead. Paul is saying we already have that language.

PAUL MCGRADY:

Thanks. So you just make the bona fide intention to run the registry something that's not just on day one. So long as you have an application in, you have a bona fide intention around the registry. If you sign a document saying on day two, you're going to buy it for me, that's no longer a bona fide intention to run a registry. So we've already covered that. Thanks.

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JEFFREY NEUMAN:

Good. Thanks, Paul. We do need to go over the rebuttable presumptions. We don't need to go over it. Sorry. We need to change the terminology that we talked about curating it to factors. We already talked about that the last time so we will make those changes when we send around this section for "can't live with" comments.

All right. Anne is saying day one, day two. So here's the thing, we're going to send around a revised – it's not revised, sorry, I mean our package. We're going to send some revised Model 5 language of where we think we are as far as what we've agreed to. We'll send that around to the group definitely before the next call and hopefully within the next 24 hours. So you'll have that to look out.

I think we're as far as we can go on this section to get agreement. We've already talked about the general notice; we've spent a lot of time on it. I believe this is as far as we can go to get agreement. We'll send that around to everyone to look at. Maybe spend a couple minutes on the next call to just go over that, to assess or just confirm where Leadership thinks we actually are.

As I said at the beginning of the call, on the next call, we're going to spend a little bit of time at the beginning talking about the format of the public comment period, the talk about the concepts of how we're going to ask these questions. Then we'll get into the closed generics discussion, I think Thursday and Tuesday. I don't even know what day it is today. On August 3<sup>rd</sup>. Then we'll get into the discussion of closed generics because, remember, there's a

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deadline of 23:59 on August 3 if you want a proposal to be put out there with close generics. We'll discuss that and put the final discussions on that. So that's Thursday, the 7<sup>th</sup>, whatever date that is. 6<sup>th</sup>? We can then talk about a little more detail of the survey question.

We are getting there. We're getting very close so thank you for the progress. Sorry for going a little bit over time. The next call – sorry, Justine, your hand's up but I don't know if that's an old one.

Okay. Thank you, everyone. We're getting to the end. I appreciate your time and your work on this. Next call is Tuesday, 03:00 UTC. Thanks, everyone. Have a great weekend. Happy birthday, Paul. Sophie's on the call, Happy birthday to you as well. Thanks, everyone.

ANDREA GLANDON: Thank you. This concludes today's conference. Please remember to disconnect all lines and have a wonderful rest of your day.

**[END OF TRANSCRIPTION]**