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**ICANN Transcription**  
**GNSO New gTLD Subsequent Procedures Working Group**  
**Monday, 08 June 2020 at 15:00 UTC**

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**MICHELLE DESMYTER:** Well, welcome, everyone. Good morning, good afternoon, and good evening. Welcome to the next gTLD Subsequent Procedures PDP Working Group call on the 8<sup>th</sup> of June 2020. In the interest of time today, there will be no rollcall. Attendance will be taken via the Zoom room. So, if you happen to be only on the audio bridge today, would you please let yourself be known now?

Hearing no names, I would like to remind all participants, if you would please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise.

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 the meeting back over to Jeff Neuman. Please begin, Jeff.

**JEFFREY NEUMAN:** Yep. Thank you very much, Michelle. Welcome, everyone. Welcome to another week. We have, in fact, two weeks before the

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virtual ICANN meeting. The sessions, they posted the schedule last week. I think it was just before our actual last call. So, the schedule is out there.

You'll notice that we only have one official session for the ICANN meeting but we still have scheduled the Thursday of ICANN week as our normal meeting time. We'll take a look at that and see whether we need that or whether we're okay without it. But we'll figure that out in the next couple days.

Okay. So, the agenda for today is to discuss just a few topics, and really pointed questions on these topics. We're not reviewing the whole topics, because we've already done that review. There have just been a couple of outstanding questions for me to these, and so we're really going to try to keep the conversations targeted.

For example, we'll be talking about, let's say, application queueing. We're going to talk specifically about one proposal, but we don't want to get into broader discussions of assessing things in rounds, and stuff like that. We're going to try to keep it very narrowly focused.

So, these are the three topics that are up on the screen. Thank you. Emily has posted the ICANN schedule up on the chat. Let me just see if there are any updates to any statements of interest before we get started.

Okay. I'm not seeing any. I also want to draw everyone's attention to the package five that was sent out for most of you on Friday. So, we've given a few extra days for that one because package five is

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a little bit longer than the other packages, especially because it has got all of the geographic name stuff associated with it, as well.

You'll notice that we just released the final report of Work Track 5 the way it was. We didn't engage in any editing or anything like that. So, it is the same as what you've already seen a number of months back when this was sent to us. Any questions on that? Okay.

Thank you, everyone, for your comments on package four. We are assembling those now and definitely will be ready to discuss those comments on the day that's indicated on the work plan.

Okay. Why don't we get right to it, then? So, with respect to community applications, you will see that the narrow areas we're trying to focus on ... Actually, there are a couple of questions. One of them was a discussion we had on the ability of Community Priority Evaluation panels to do independent research when evaluating its application.

So, if you think about all of the evaluation criteria you'll see things about their scoring on the string itself, the scoring on the applicant, the scoring on the amount of support, etc. And so, we had had, in the original draft, some language allowing independent research without, really, any kinds of limitations.

This generated some lengthy discussion on the call that we had on communities, particularly between Paul McGrady and Anne Aikman-Scalese. And so, the two of them discussed this issue on the mailing list, and this is the language that you see in green on ... I forgot what page because I can't see the page number on the Zoom screen. I think it's like 128. Oh, 131. Sorry. I was close.

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So, on page 131 there is the recommendation language. So it states, “If the Community Priority ...” Oh, sorry. “If the Community Priority,” it should say “Evaluation panel,” sorry, “conducts independent research while evaluating an application, limitations on this research and additional requirements must apply.”

The working group recommends including the following text in the Applicant Guidebook. “The Community Priority Evaluation panel,” I should probably change it there, too, “may perform independent research deemed necessary to verify the community status of the applicant,” called limited research.

“Provided, however, that the evaluator shall disclose the results of such limited research to the applicant, and the applicant shall be provided 30 days to respond before the evaluation decision is rendered. When conducting any such limited research, panelists are cautioned to assume an advocacy role, either for or against such community status.”

So, I don't know if—I haven't checked, actually—Paul and Anne are on the call, but if you guys are and want to say a word about it, please raise your hands. Okay, Paul. Good, thanks. Go ahead, Paul.

PAUL MCGRADY:

Thanks, Jeff. I don't know if Anne is on this call or not. I don't see her. This text was meant to balance the competing concerns. One was that some folks thought the panelists should be able to go out, and look around, and not just have to believe everything that one party tells her or him.

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I was more on the other side where I don't want the panelists to become an advocate if they prefer one side or the other—and people are people—or if they feel like one side's lawyers aren't very good.

I've seen this kind of phenomenon happen, frankly, in UDRP decisions in the past. It's sort of uncomfortable. And so, Anne and I exchanged quite a few e-mails, went back and forth on this, and we came up with this text because we think that it threads the needle. So, I support this and I hope others on the call can, too. Thank you.

JEFFREY NEUMAN: Yeah. Thank you, Paul, and thanks, Anne, for working this out on the list. So, if anyone has got any comments? I see Christopher is in the queue, so go ahead, Christopher.

CHRISTOPHER WILKINSON: Good afternoon, everybody. I hope that all of you in New York are appreciating the final relaxation of restrictions. On this particular text ... First of all, I must make clear I'm speaking entirely personally because, as far as I can see, Justine Chew is not on this call yet.

I could live with this text but I think it will be extremely difficult for ICANN to regulate or police it, because how you distinguish between information and knowledge that evaluators have before they come in and knowledge that they acquire through research, I don't know.

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I just think that there's an element of ... I wouldn't say uncertainty, there's just a fact that information is information and it would be extremely difficult to regulate exactly which information has been acquired during the process of the evaluation.

But I rest this. I appreciate that this text is probably the best that we can get. But the point remains that I think you will hear from At-Large in a more formal and detailed manner in due course. Thank you.

JEFFREY NEUMAN:

Yeah. Thanks, Christopher. I hear you on the discussion of enforceability. I think, obviously, if someone does research and doesn't include that as a basis for the decision, you might never know.

But we do have other recommendations in here where an evaluator is supposed to indicate all of the sources they used to make the decision, as well as to document how they came to their decision. So, if the evaluators are doing their job and they do it correctly then they should indicate that was one of the bases for the decision.

And so, Kathy says, "I think it works," and Paul says, "Christopher is right. At the end of the day, we just have to rely on integrity of panelists, but this is as good as we're going to get." So, I think this is good. I see that Anne has just joined the call, I think, which is good. But it sounds like this language is okay. Jamie has got his ... Is that Jamie? Yes. Jamie, go ahead.

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JAMIE BAXTER: Yeah. Thanks, Jeff. As I watched Anne and Paul go back and forth on this, I certainly came to a point of agreement at the end of it. But now that we're looking at it through a different day, it makes me question, does the reveal of the research they depending on come prior to the final decision so that you have 30 days to question it before they render their final decision, or is this referencing the appeals mechanism that has been built into this process? Because I think that's a big question mark for me at this point, as to when all this happens. Are there any further insights/information on the thought behind that process? Thanks.

JEFFREY NEUMAN: So, the words used, as Paul has just put into the chat, are "before the evaluation decision is rendered." I mean, there's nothing to stop them, I guess, from doing a draft decision, but they can't release it to the public, or it doesn't even become final until they run it by the applicant, and then the applicant has 30 days to respond.

JAMIE BAXTER: I guess that's going to be regardless of whether it's for or against the application. They're still going to have to reveal any outside sources that they used to maybe confirm information or deny information. Is that the correct understanding of that language, then?

JEFFREY NEUMAN: Right. So, yes, whether it's a positive verification of community status or negative verification of community status. To the extent

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that they perform independent research, they are supposed to disclose the results of such research to the applicant.

So, it doesn't mean that they have to tell the applicant which way they're leaning. It only means that they're looking at this, let's say these documents or these transcripts, whatever they're looking at. They have to disclose those to the applicant, and then give the applicant time to respond.

So, yeah, it may be that the applicant's not going to know whether the evaluator is leaning for or against it, but the applicant is going to know what research they did. So, Paul, is that the correct assumption? Yes. Okay. Oh, Anne. Great. Anne, go ahead.

ANNE AIKMAN-SCALESE: Yeah. I just wanted to say—and I'm sorry I'm late—that it certainly was the intent, in terms of the question that Jamie is asking, that the applicant would have the information before the ruling so that the applicant could see what might need to be rebutted. And I don't know about whether ... It seems like a smart panelist is not necessarily going to say, "Here's my ruling. You've got 30 days to rebut it." That's not what was intended.

What was intended in the drafting was, "Here's some additional information, and I intend to rely on this. What is your response to it?" Now, Jamie's asking a question, "Can a third party comment on it, as well?" Maybe that should be clarified, but I don't see why not.

I mean, it would have to be transparent, I would think, that the information that's provided to the applicant would be publicly

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available. Not necessarily requiring public comment or anything like that, but wouldn't it have to be publicly available?

JEFFREY NEUMAN: So, this is a one-party proceeding, right? It's not an adversarial proceeding? Although, people may file letters of opposition? I mean, I would say we'd make it way too complicated if we opened it up to everybody in the world to comment on. Remember, there are appeals after this, or potential appeals, and that's what gives ...

So, if someone opposed the community status, they do have the standing that we talked about with appeals. But again, I think because this is one party involved, and because it's, essentially, just an evaluation, I don't—hold on, let me finish—see it's any different than a clarifying question from ICANN ... Or, sorry, let's say a technical evaluator, or a clarifying question from any other evaluation panel. That only goes out to the applicant, it doesn't go out to the world.

ANNE AIKMAN-SCALESE: Just a quick follow-up question, Jeff. What if the applicant wants somebody else to comment to, for example, rebut material that the panelists found that goes its status? I mean, the applicant might want to develop further support from other independent third parties and get them to file, as well.

JEFFREY NEUMAN: So, the applicant has 30 days to respond, and what it wants to include in the response, we're not dictating. So, if it wants to include

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an attachment of some other party, then there's nothing prohibiting that. But I don't think this should be a free-for-all. I think it should be handled just like every other evaluation.

This is not an objection proceeding. This is not anything like that. So, I just think we keep it simple. Keep it one party gets to ... The evaluator discloses and treats it sort of like a clarifying question: "This is the research we found that we may use in our decision." Kathy, go ahead.

KATHY KLEIMAN:

Sorry, coming off mute. In some ways, it may be appropriate to make this a larger discussion because we are talking about communities. The community objection process is not going to fully satisfy what's going on here because of the very, very high-standing requirement for a community objection. You basically have to show that you, personally, represent the world of that community, and that's a very high-standing requirement.

So here, I don't see any reason why, consistent with transparency and accountability, we don't have a larger conversation. I don't think too many groups will engage in it, but there's an assertion of community, there are some questions that are being raised by the evaluator. My guess is that there will be groups weighing in on both sides, in a small discussion, but I think it's very appropriate that that discussion takes place. Thanks.

JEFFREY NEUMAN:

I've got to get myself off mute. Thanks, Kathy. Jamie, go ahead.

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JAMIE BAXTER: Yeah. Thanks, Jeff. I think what concerns me the most about not having the language be more specific about who is involved in this process is the example of exactly what ICANN did around public comment in the 2012 round. If it doesn't specifically state it, I'm concerned that what you're referencing as a one-party process will turn into a multiple-party process.

That potentially wasn't part of the original proposal but that's how it gets interpreted. I just see a lot of holes the further I'm looking at this that I think need to be clarified. This process needs to be airtight so that it doesn't become yet another opportunity to game the system at some point in the process. Thanks.

JEFFREY NEUMAN: Yeah. Thanks, Jamie. So, I didn't want to broaden this discussion further out on the other elements, but if you do look—and again, I'm not trying to open a discussion—elsewhere in these recommendations, if you remember, there's a recommendation about the public comment period being closed, and all that kind of stuff, too.

So, I think you need to read it in its totality. I can't see, again, why, when it's one party being evaluated, opponents already have the opportunity to comment on the application itself, which is what's important.

We're talking, here, about any independent research which, I theory, could ... I know Kathy said it's a high standard to meet a

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community objection, but it's an incredibly high standard to get community status, too.

So, presumably, if the research leads to the denial of community status, an opponent's not going to care. If it leads to the applicant getting community status then the opponent has got a change to appeal, and it could appeal on the basis of the independent research.

So, I think we need to try to keep this simple. I agree with Jamie, we should be very clear on who gets the opportunity to respond, and all that, but I can't imagine opening it up to ... Again, it's an evaluation. It's not a two-party proceeding. It's not an objection, it's not anything like that. In my view, we should be consistent among evaluations, and this is just yet another form of evaluation, no different than the technical evaluation, no different than the background evaluation.

We should try to be consistent. Otherwise, it's already difficult for people to follow the rules, and if we're not going to be ... To follow what the rules are. Not to follow the rules themselves, but to follow what the rules are. And if we're not consistent, it's just going to be that much harder. Anne, go ahead.

ANNE AIKMAN-SCALESE: Yeah. Jeff, I'm fine with what you're saying, as long as the material is just on the public record. I'm fine with the way you want to handle it, procedurally, as long as the report that's supplied to the applicant is somehow on the public record. I mean that it's on file.

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JEFFREY NEUMAN: Yeah. Ultimately, absolutely. The decision, ultimately, is going to be public, like all the other decisions, and—

ANNE AIKMAN-SCALESE: No, not the decision. I meant the event of the material supplied to the applicant 30 days before.

JEFFREY NEUMAN: Right, right. Well, depending on whether the evaluator actually ends up using that material or not for its decision. So, let's say that, in decision, the evaluator has to include everything it relied on for the decision.

So, I'm thinking of a case where, 30 days before, the [inaudible] evaluator goes and says, "Hey, I saw this out there and I'm asking you questions on it. This is the source," and let's say the applicant responds that that source has been debunked by all these other things. So, if the evaluator never ends up actually using that because it was debunked, then it might not be documented in the final decision.

But at the end of the day, it's a little subtlety to what you said, Anne. It may never be disclosed unless that material is being used for the final decision. And if it is, and the opponent doesn't like it, or someone who opposes it doesn't like it, then they can file an appeal. Paul, go ahead.

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PAUL MCGRADY: I'm going to immediately regret saying this. So, wouldn't we solve the concern by simply tacking on a sentence to the appeals process that says, "In the event someone files an appeal, the entire record will be made available to the party that files the appeal"? Thanks.

JEFFREY NEUMAN: The only basis for the appeal is going to be the decision. So, again, I'm hoping we can really try to keep this simple and not make it so bureaucratic. I mean, what does it matter in the record if there were things ...? So, yeah, I think we really need to try to keep this simple, if we can. "Anything relied on by the evaluator to make its decision needs to be disclosed." I think any more than that is probably, I would say, overkill.

Kathy's saying, "When does it need to be disclosed?" Kathy, in the decision. We have other recommendations above it. Please read the whole section, and you will see that the evaluator must indicate the decision and everything it relied on to make its decision. So, that's when it will release the report. Rubens has a very extreme example there. So, interesting. Anne, go ahead.

ANNE AIKMAN-SCALESE: Yeah, Jeff. I guess I assume ... I never knew of an appeal where the record from below was not available. Are you suggesting that, in an appeal process, all the appeal panel gets is the decision? I mean, the record has to be available in appeal panel. Paul's right.

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JEFFREY NEUMAN: The appeal will get the ... I guess, for lack of a better term, will get the appeal, will get the response to the appeal, and will have the decision. Look, we're trying to make this a much more simple process.

Presumably ... Not presumably. The decision itself will also have ... Remember, if you think of all the decisions that they had previously, the decisions have the record in there in terms of, "On this day, this was submitted. On that day ..." I just don't think we need to go into that much detail on this.

ANNE AIKMAN-SCALESE: Does the appeal panel get to ask clarifying questions regarding the record?

JEFFREY NEUMAN: We haven't written the full procedures for the appeal, yet. So, I think that's a level of detail, maybe, that is in the IRT, for the IRT to decide exactly how those appeals work.

ANNE AIKMAN-SCALESE: Okay.

JEFFREY NEUMAN: Remember, we're setting forth the policy, here. I think, getting down to the nitty-gritty, we have to be able to get the policy, as much as we can on some implementation, get done with it so that others can work those kinds of details through.

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Okay. Any other questions? All right. So then, the next part of this, if we scroll down in communities ... Sorry, still in communities. Yes, there. Sorry. No, no, no. Go back above to the CCT stuff. So, it's up a little bit more. Sorry. There you go.

So, just want to highlight this language again. I believe it was highlighted the last time we went through it but I just want to make sure we've got this final. A thorough review of the ...

So, CCT Recommendation 34 states that a thorough review should be carried out. Revisions should be clearly reflected in an updated version of the 2012. So, one of the things, actually, might be that, later on, where it says that they would like to see a higher rate of success. That's where I'm trying to get to. Sorry. I'm trying to figure out where that language is.

Okay. I'm not sure where that language is, so I'm not sure why that's still highlighted. I'm trying to think of where ... It might have been in ... Sorry. Whilst we go through it, let me go back to one other quick question.

So, Paul and Anne, when you were drafting ... Sorry. Scroll back to the language we were just talking about. Sorry about this. One quick question came up that I forgot to raise, which is it says that you can do independent research to verify the community status of the applicant.

Just want some clarity on that there are four criterion that are used in the community evaluation. So, did you intend to really just say, for criteria one, which is the status of the applicant, that you can do the research, or could you do the research like on number two,

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which is [nexus], and other things? I just want to make sure we're interpreting this right because it could be interpreted either way.

So, did you mean on all four of the elements—of course, of all the sub-elements—or did you really only mean you could do research on the criterion one, which is the status of the applicant? Do you understand my question? Sorry. Paul, [I'm in]. Paul, go ahead.

PAUL MCGRADY:

I was typing into the chat. I kind of am happy to defer to Anne on this point because the thing I was worried about in the redrafting was, "The panelist should not act as an advocate." That was my big issue, not so much the independent research. I just didn't want the panelists to say, "Boy, this [file] really stinks. I need to go out and figure out why these people shouldn't get the TLD."

So, it's really about making sure the panelist was even-keeled. As far as which elements, I think it would be strange if we limited the elements to just one, and I personally didn't have any intent to do that when this was being drafted, but it also never occurred to me.

But if Anne thinks it should be narrow, great. If Anne thinks it should not be narrow, also great. So, maybe Anne could comment on it, or maybe we could get comments from other hands or other people in the chat on what they would like to see. But I see no problem with a ... From my point of view, it's the mindset of the panelists that matters, it's not what they go out and Google. Thanks.

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JEFFREY NEUMAN: Okay. Thanks, Paul. Anne has got her hand up, so Anne, please go ahead.

ANNE AIKMAN-SCALESE: Yeah, thanks. I actually did not intend to limit this, either, to one element of the inquiry, I think in part because I think our previous language that we're changing about conducting independent research may not have limited it. Maybe if we could check against that a little bit? But I'd still like to hear from Jamie on this one, if he's got an opinion about [cross talk] practical.

JEFFREY NEUMAN: Thanks, Anne. I notice Jamie's got his hand up, so go ahead, Jamie, and then Justine.

JAMIE BAXTER: Yeah, thanks. My assumption all along was that this applies to the entire evaluation. Otherwise, it doesn't really have any teeth, I guess, with the intention around why it was written and why it has been put in here. And certainly, that's my understanding of it.

Now, I don't know if it would necessarily apply too much to the third criteria, which is more about the policies and whatnot, because that seems like it's a little less about independent research, about the community itself, but I guess it may touch on ... I guess the more I think about it, it may touch on certain areas of the way policies were developed, the way they were. But I would think it definitely is something that is relevant in one, two, and four.

JEFFREY NEUMAN: Right. So, would any of you object to changing that language to “necessary to,” and I’ve put it in the chat, “evaluate the applicant”? Because that’s what it’s doing. Justine, go ahead.

JUSTINE CHEW: Thanks, Jeff. I would tend to agree with Jamie, and I had already put into the chat that I suspect independent research could apply to three of the four criteria. And just echoing Jamie, I don't think the criterion three, registration policies, would warrant a lot of independent research, if at all.

And just to the point of what you were suggesting in terms of amendment, I think it could be “verify the application,” as opposed to “applicant,” because it’s not just about the applicant but what the applicant says in the application, as well.

And also, independent research could also apply to establishing, say, for example, an entity that’s objecting to the applicant or the application. So, that’s potentially where independent research could also apply, and that would fall within the scope of this fourth criterion. Thanks.

JEFFREY NEUMAN: Okay. Good point, Justine. So, instead of ... Why does it keep coming typo, there? I, too, evaluate the “application” instead of the “applicant.” Yeah. I don't know why it kept coming up as a typo on the chat, so sorry about that.

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All right. Everyone seems good with that. Great. Okay. Now, let's go back to the rationale for this. Or, sorry, in the new issue, I think. Wherever that new text we added was. Not that. There we go.

So, Applicant Guidebook states, "The community party evaluation panel may also perform independent ..." This is what it currently states. "If deemed necessary to reach informed scoring decisions to reduce the risk of introducing inaccurate information and bias into the evaluation process, and to support transparency the working group must provide an alternate language to include in the Applicant Guidebook for Subsequent Procedures."

So, that's the rationale we drafted for the new language that Paul, and Anne, and we all just agreed upon above. So, it's pretty plain and vanilla there. Okay. I think that's it. Sorry. Okay.

Here's just a little blurb we added from the GAC comments. On May 4<sup>th</sup> 2020, the GAC provided consolidated input. I'm just paraphrasing, here. In the informal input, many of the respondents express support for the recommendations, although some still had standing concerns about the process.

Several respondents noted that additional details would need to be filled in to ensure that concerns about CPE are addressed, and a few comments made specific suggestions on possible changes. So, it's just a summary of what the GAC said in its comments on May 4<sup>th</sup>.

Okay, cool. Let's jump, then, to the next topic, which is the proposal that was made and discussed on the mailing list about the queueing. So, we're not going to talk about the rest of that section.

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But we initially had, in there, language that said that there was no agreement within the group on whether or not to prioritize IDNs in the process, but there was a lot of back and forth about, okay, well, the whole proposal to prioritize IDNs didn't come until after we knew that only a small percentage of the applications were IDN. And therefore, to prioritize those 115 applications wouldn't really mean any significant delay to the other applications, so all the other applicants were okay with it.

If, let's say, 60% of the applications were IDN, which is a great problem to have, prioritizing all of those could mean that there isn't just a few weeks of delay for all the other applications, but it could mean a year. It could mean two years if we prioritized all of that.

So, I drafted a proposal that I thought could combine the notion of giving priority to IDN applications while, at the same time, not saying all the other ASCII applications have to wait until all the IDNs are done.

So, this is the proposal that I came up with and it was revised by a few people on the list. So, there was some good discussion on it. Essentially, as the guidebook already has in it that ICANN places the applications in batches of 500, what I did is take the percentage of ... I basically said, if there are more than 125 applications for IDN strings, which is 25% of 500, then what will happen is the IDN applications will be randomized until you get 125 IDN applications, or 25% of the first batch.

The first 25% are guaranteed to be IDN applications. Then, the remaining 75% of that first batch are just randomization of every application. And so, that includes all of the other IDNs, as well as

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ASCII applications. So, presumably, you'll have IDNs selected in that bunch, as well.

Then, the second batch, same thing. Well, no. Sorry, not the same thing. The second batch, you take 10% of the remaining IDN applications, randomize it to come up with those 10%, and then the rest of it is randomized to choose the rest of the 90% for each of the subsequent batches.

So, it's fairly simple. To answer your question, the problem with the proposal is assuming batches and assuming a size of 500. So, Rubens, the reason I did that is because that's what the guidebook already has in it. So, we're not changing anything from the guidebook. We're just using, to try to keep it simple, what it already has so that we're not creating a new standard.

And understand, Rubens, that we'd like to change it. I think we're a little late in the discussions, now, for a completely new proposal, but that's what was in the guidebook, and I think we try to keep it ... But I guess I suppose it doesn't matter whether it's batches of 500, or whatever it is.

If you apply the same principle that if there are more ... That, basically, the first 25% in the first batch, or the first 25%, is constituted from IDN applications only, and then the remaining 75% of that batch is randomized from every application. It really doesn't matter on the batch size. Thank you, Jim. You said it better than I could: it's a formula that scales. Okay, Kathy. Go ahead.

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KATHY KLEIMAN: Yeah. Could you talk about that scaling? So, if we have 10,000 applications, what would be the batch for IDNs? Sorry not to be following this as closely. Yeah. How would ...?

JEFFREY NEUMAN: Yeah. That's okay. So, what Rubens is saying is he doesn't think each batch should be of 500 applications within those 10,000, or whatever it is. However many applications we get. But let's just assume for this one it is 500.

Basically, you get 10,000 applications. ICANN is going to create 20 batches of 500, and then, in the first batch of 500 applications, 125 of them, the first 125, will be comprised only of IDN applications, randomized of all the IDN applications.

The remaining 375 would be all applications, including the remaining IDN applications, would be randomized for that second part of the first batch. Then, you get to the second batch of 500.

The first 50 of those, because that's 10% of 500, would be IDN applications only, and then the remaining 450 would be randomized of all the rest of the applications, whether they're IDN or ASCII, and so on.

So, Paul, this language actually has been with the group for a couple of months, now. So yes, it was my hope that we would approve it because it has been discussed on the mailing list and this is the exact same language. There are no changes.

Emily, there were a few e-mails on it, but ultimately there was a final one that had this stuff in it. So hopefully, that's the final one. So,

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again, it balances the IDN priority. It certainly gives priority to IDN applications, but it also is more balanced in case you get a huge number of IDN applications compared to the last time. Anne, and then Kathy. Anne, go ahead.

ANNE AIKMAN-SCALESE: Yeah. I have just two quick questions. The first one was, can you remind me why we dropped the percentage from 25% to 10%? First batch 25%, remaining batch is 10%? I'm sure you have a logic for that, I just can't remember what it was.

JEFFREY NEUMAN: Yeah. I think as you move down into additional batches the need to prioritize ... You've already established your priority in the first batch of 125 of them. It just didn't seem like every single batch you needed to have the first 25% always be IDN. It's just a normal kind of sliding scale.

ANNE AIKMAN-SCALESE: Okay. Second question, is there a point theoretically where the 10% could be limiting on the batch size? This is a little ... Okay.

JEFFREY NEUMAN: No, because the batches will always be the same. The only thing that's limiting are by the amount of IDN applications. So, if there are only 200 ... In this example, if in batch two there are 700 IDN applications, 800 non-IDN, at some point in there, I think it's batch four, where there are less than 10% IDNs. In that case, you've now

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worked your way all the way through the IDNs. And so, it's really only 5% of that last batch is IDNs, but that's because there are no more.

Because remember, IDN applications can also be selected during the remaining 75% of batch one, the remaining percentage of batch two, and so on. So, it's not like the remaining 75% of the first batch has to be ASCII. It's the remaining 75% is a randomization of all applicants.

So, you're not only getting IDNs up-front but you're getting IDNs mixed in in the second part of a first batch, of each batch. Does that make sense? So, Paul, it's new to the draft document. It's not new to the e-mail and to the list. So, sorry, Paul.

Just to clarify. So, that's why we had it as green, because it was not in the last version, because the last version we went over was in early April. And I think I had issued e-mail saying, "Last call. Any more comments and questions?" So, there are a bunch of e-mails on this. Kathy Kleiman, new hand. Go ahead.

KATHY KLEIMAN:

Thanks, Jeff. So, scenario: 10,000 applications, 500 are IDNs. Could you walk me through how those IDNs don't wind up shifted across 20 different batches but do wind up toward the front of the queue? Jeff, if you're responding, I can't hear you. Or maybe everyone can.

CHERYL LANGDON-ORR: Are you muted, Jeff?

JEFFREY NEUMAN: No, I was on mute. Sorry. Yeah. Okay. It was brilliant, too. So, here's how I don't think it could ever be spread out amongst that many batches, because 125 of them, IDNs will be in the first batch. Now, assume, also, that all 500 have elected to want priority. They all may not, but let's say they do.

So, you get 125 at least in the first batch but you also have to assume that some of them are going to be selected out of the remaining 375 applications in batch one, but let's assume they're not.

Then in batch two, you'd have another 50 because that's 10% of 500. So now, you've got a minimum of 175, and every subsequent batch will be, at a very minimum, 50 of them. And so, even if an IDN was never selected in the remaining 75% of the first batch and 90% of every subsequent batch, let's see, that would be ...

So, you'd have 175 after two batches, 225 after three batches, 275 after four, 325 after five. Just do the math. I think the most you could have is probably eight batches, I think, as the most. The first eight batches.

KATHY KLEIMAN: Can I follow up?

JEFFREY NEUMAN: Sure.

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KATHY KLEIMAN: Okay. So, even if the IDNs are only 5% of the applications, we're still going to spread them out over all of these batches. Is this keeping it simple? I think this is a very difficult formula and not in keeping with what we did in 2012, because we're looking not just at the Applicant Guidebook but about implementation. I think we should be looking at percentages.

So, if you're talking about 5% total applications, I'm not sure we should be spreading IDNs across. This is very complicated for that. We could just put them up-front. Thanks.

JEFFREY NEUMAN: Yeah, but even 500 ... So, Kathy, again, the reason we're doing this is because, even if there are 10,000 applications, and even if there are 500, we're now, basically, telling the world that you can't even look at an ASCII application for several months, at the earliest.

Now, alternatively, if there are ... I mean, you're assuming on the very low end, but I'm assuming there will be more IDN applications. So, let's say there are 1,000 IDNs out of 10,000 applications.

If you put them all up-front, you're basically telling all the ASCII applications, "Sorry, you may send in the application but we can't even come close to considering you for a year." I don't think that's fair.

I mean, I'm trying to ... Look. This is an effort to try to put the sides together. It's not the perfect solution, it's not the easiest solution, but it tries to balance giving priority to IDN applications and also taking into account the context in which that decision to prioritize IDNs in the last round was made.

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So, again, I think that we need to try to make some sort of ... I mean, let me ask: can anyone not live with this? Recognizing it's not ideal, it's not perfect, can anyone not live with it? Okay. Rubens is saying he can't. So, why is that? Rubens, please go ahead.

Okay, so Rubens, your issue is with the idea of batches? Okay. Well, that's a whole other issue. But Rubens, is it just making batches at all, or is the number in each batch? Because if it's the number in each batch, the formula could still apply. All right. Well, Rubens is ... I know, Paul, your hand is up, but now it's down. Paul, go ahead.

PAUL MCGRADY:

Thanks. I know this has been on the list. I'll be the first to admit that it's hard to follow absolutely everything on the list. When you see it here in the document like this, it's quite a resplendent piece of work, Jeff. I mean, well done. Interims with the amount of work. And as Kathy noted, the complexity.

But I kind of feel like if we are at a "can't live with ..." I don't like that formulation, but if we're at a "can't live with," I feel a little bit like I want to say "no," just to preserve a spot, so I can read the thing, right?

Can we not do a "can't live with" but instead give people more time on the list, a couple more days, to read it and raise any concerns that really give them a problem? Because I think if I focus on this and read through it, I might say, "Yeah, that's fine," but I feel like ... I know everybody else has spent a lot more time with this document,

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and I apologize. It just wasn't on the priority list for me, but yet, here it is. So, is there any breathing room, here, Jeff? Thanks.

JEFFREY NEUMAN:

Well, technically there is breathing room because this document is not part of a package yet, which is really the "can't live with." So, this is just in the last set of documents. So, this will be in package six, I would think. And at that point, it would be truly the "can't live with." So yes, you can still, absolutely, discuss it.

If you scroll up a little bit, please? Just scroll up. Most of this language is the example. So, if we go ... Where's the recommendation itself? There. There you go. It's that short. Sorry, go up. The recommendation is that. It's those three bullets points and the sub-bullet points. Maybe there's another one afterward. I can't remember.

So, where it gets to the example, sorry? Yeah, those three bullets and then the many sub-bullets. When it gets to the example that we were showing before, that's where it gets to be a lot more language, because we go through some actual examples to make it clear.

So, hopefully, basically, the proposal is that the guidebook already has, for 2012, "You're going to create batches of 500." And so, if there is more than 25% of the first batch of 500 that are IDN ... If there are less than 25%, so if there are less than 125 IDN applications, then all of them go in batch one and there's no need to even do anything else.

But if there are more than 125 IDN applications then you apply this formula: 25% of the first batch is only comprised of IDNs, the

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remaining 75% is randomized of all applications, including the remaining IDNs, and, each subsequent batch, the first 10% is IDNs, and then the remaining 90 is everything else. That's it. Hopefully, it isn't that complicated. Christopher, go ahead.

CHRISTOPHER WILKINSON: Thank you, Jeff. Good afternoon. Jeff, for the time being, I intend to stay alive, so let's just take this as a comment. As far as I can see, the batches of 500 are enormous, and the main constraint, which the staff has never really commented on, is the ability of ICANN to recruit evaluators with the necessary expertise per each of the specialized areas that these applications will fall into in order to produce a qualified and credible decision.

Off the cuff, and since I have been involved in the past in the organizational evaluations of applications, the idea of having 500 applications at a time in a batch boggles the mind. So, I reserve my point of view. It's a comment. I plan to stay alive. Thank you.

JEFFREY NEUMAN: Thanks, Christopher, again. So, this is a new issue, the batch size.

CHRISTOPHER WILKINSON: In the chat – I have support in the chat. Thank you, Phil.

JEFFREY NEUMAN: There we go. So, again, I see this as not really a policy item, how large each batch is. I think the formula still holds up, regardless of how many items are in a batch. In the last round, ICANN, after

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looking at their own resources and looking at what they had, said in the Applicant Guidebook that they would put it in batches of 500.

We can question it as outsiders all we want, but there is nothing indicating ... There is no evidence that anyone is coming forward with other than personal opinions, which I have nothing against personal opinions, but at some point we've got to stop creating new issues based on personal opinions.

If in the guidebook ICANN had determined that batches of 500 would be okay, even though they didn't implement it in that way because of a whole host of factors, and nothing to do with the batch sizes, came into play, I don't think it's fair for us to put our personal opinion and substitute that in for what the experts at ICANN said they could do at that time.

If they come back to the Implementation Review Team and say, "You know what? We no longer can do 500. We can only do 100," or if they come back and say, "You know what? We can actually do batches of 1,000," then the IRT can still take this policy and percentages and apply it to that new batch size.

As one of the co-chairs, I think we need to kind of put a stake in the ground and say, "No new issues." You can complain ... Not complain. You can comment—sorry—on this formula because that's new, but to comment on the batch size, I think, at this point, it's a little late. I would love to, as Cheryl said, draw the line. Anne, go ahead.

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ANNE AIKMAN-SCALESE: Yeah, Jeff. I tend to agree with you on this. I thought that you were saying that a batch size of 500 had been somewhere in the ICANN record, but then I see people in the chat saying, “Well, they didn’t use any batches the last time around.”

So then, the only question that’s left open for me is, if ICANN decides, or IRT recommends and then ICANN decides, that there’s really no such thing as a “batch” in the next round, then have we not provided them with a formula? Do we want to say, if there are no batches, it’s 25% IDNs?

JEFFREY NEUMAN: Well, one could say that if there’s no batching then there actually is only one batch, and therefore it would all be batch one, and therefore it’ll be 25%. I mean, that’s what it is. Again, I think that—

ANNE AIKMAN-SCALESE: Okay.

JEFFREY NEUMAN: Right?

ANNE AIKMAN-SCALESE: Yeah, sure. Yeah.

JEFFREY NEUMAN: I mean, that’s ... Okay. Great. All right. So, I want to go, then, to ... So, Paul, if you have any comments on the list, please make them.

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But absent hearing anything, we will put this in the “can’t live with” package as part of the queueing section. So, there is still a “can’t live with” time.

Okay. Thanks, Paul. All right. Let’s go, now, to the third issue. I wanted to move this to last because I knew this could open up a can of worms and get into other areas. One of the remaining items from applicant support is ... And again, I know that we’ll decide ... We have the topics of auctions or of last resort, again, later on. But this is in the applicant support section.

The discussion of whether an applicant that qualified for applicant support should be given some sort of multiplier or some sort of consideration if it ultimately goes to auction.

The group has already said it’s not in favor of granting automatic priority to an applicant that gets applicant support. And that being the case, since it may go to some sort of auction, whether it’s up-front or at the end, whatever type of auction it is—and we’ll talk about that later—the question is, do you give a multiplier to applications that have applicant support? And if so, how would you determine that multiplier, and how is that carried out in practice?

So, that’s the limited question. Here’s the language that’s in the new issues raised. And so, there is an illustration of the example there. That’s just an example, that’s not necessarily the factor. In fact, we can just say, if we’re comfortable with applying a factor but we don’t have any economic analysis as to what that factor should be, we could always say, as a policy, there should be a fixed multiplier, and what that multiplier is should be determined by an economic

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analysis, so should be determined by an Implementation Review Team, or a whole host of things we could say.

But I want to first hear if there is any support for the notion of giving an applicant who qualifies for applicant support some sort of multiplier. So, Justine, emphatically, in one word, “support.” So, that’s good. Kathy supports, so there are some emphatic statements. Jim, go ahead. Jim, you might be on mute.

JIM PRENDERGAST:

Yes, double-mute. Darn it. So, I did some homework on this but I didn’t have a lot of free time between our last call and this call this morning. But the whole concept of bid credits is actually fairly extensively used in things like spectrum auctions.

Now, I don’t pretend to be, nor I don’t think anybody else on this call is, an expert in auctions, but I would say that, if this group did support—and I support it, as well—the concept of some sort of bid credit, or multiplier, or whatever we want to call it, I think it’s well within the purview of ICANN working with their auction provider to come up with the details on how that would be, since I’d be the first to ...

Reading some white papers from some business school certainly doesn't make me an expert on this, but I do know ... Rubens mentioned on the last call, as well, there are plenty of cases where something like this has been deployed. So, thanks.

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JEFFREY NEUMAN:            yeah. Thanks, Jim, and thanks for the research you have been doing. Yeah. Again, it has been used. I haven't done the research like you have, but I appreciate it. I see a bunch of support, clearly Christopher. You're in the queue, Christopher, so go ahead. Christopher, you might be double-muted, as well.

CHRISTOPHER WILKINSON:        Yes. Beg your pardon. Mute buttons all over the place, here. It's just a comment to amplify my support. Look, let's be realistic. If an applicant justifies applicant support, then that entity is most unlikely to be able to, in addition, finance large bids in an auction. It's really a contradiction. If they've got additional capital—and they will need it—they should be encouraged, and indeed obliged, to apply the additional capital that they have to all the other startup costs of a new registry.

The idea of expecting, even with a multiplier, the beneficiary of applicant support, the idea of expecting the beneficiary of applicant support to be able to finance a large bid in an auction, I think, is totally unrealistic. You finish up by killing the applicant support system in general. Thanks.

JEFFREY NEUMAN:            Yep. Thank you, Christopher. You're right. I mean, .kids was the only one that got applicant support, as had been posted up on the chat. And then, that was [slated] to auction, and of course, as Christopher said, this application that needed applicant support, and was qualified in all of the ways, technically qualified because it was support they were getting there.

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So, it faced a very difficult situation where it was going to be forced to go to auction but it knew it couldn't match the other people it was up against. Now, something happened where, I guess, there was some private negotiation. I don't know exactly how it was resolved in that one case, and that applicant actually, I believe, did get .kids, but that's only because of whatever private negotiation took place. But it put that applicant in a very difficult position.

So, Paul, since we have the rules for applicant support in this section and we've gone over it a number of times, using the last round is not a very good measurement because there really wasn't enough outreach done and it was done so quickly that very few applicants had a chance to get their applications in.

So, we certainly have the numbers from last time, as posted. We're hoping to get many more applications in for applicant support than we did the last time, and that's what a lot of our recommendations are geared toward.

So, I wouldn't assume that you're only going to have one applicant that qualifies for applicant support. But on the other hand, there is only a limited amount of funds available for applicant support, I'm sure, so it's not like a huge number can get it, either.

Paul, I don't know if we can even think of a number as to what it would be. Presumably, if it were as high as 1,000 applicants getting applicant support, you'd probably have to assume that there were 100,000 other applications. I can't imagine more than 10% of applications getting applicant support. That would be a very, to me, personally speaking ... But there's no way we can really know. Jim, is that a new hand or an old hand? Okay, thanks.

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And so, as Justin said, the 2012 round had only two million dollars allocated to it. So, even though it wasn't all used because it was only one applicant, you could assume that, in the future, they will also be limited, as well.

All right. So, it sounds like where we're landing—which I think is a good place—is, from a policy perspective, we may support the idea of having a fixed multiplier but we would leave it to the IRT to work with ICANN and others as appropriate to come up with what that factor should be.

And then, my next question is, do we make it a "must" as a recommendation, for the multiplier aspect, or do we want to make it implementation guidance? I take it that this probably should be a recommendation, as a "must," but I don't want to assume. Justine's saying, "Yes, recommendation." Kathy's saying "recommendation." So, I think that's where we'll put it.

Let's have some additional discussion on the list, if you want to have it. Otherwise, we'll put it in as a recommendation in ... I think this one's for package six, as well. So, Rubens is saying, "Okay, it's 'must' for ICANN, so they must give a multiplier, and I guess the 'should' is leaving it to the IRT to decide." That's fair enough.

The IRT may decide that it's not qualified to make that. It may make a recommendation that it go to [economists], for example. So, I think that makes sense. So, what we're saying is that there must be a multiplier but that multiplier should be decided on by the IRT.

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Jim is clarifying, “With the bid credit, the supported applicant pays some percentage of the winning bid, just not as much.” Right, because it’s a multiplier. Right. Absolutely, Jim.

So, Paul’s asking, “Should we have a ceiling on the multiplier?” Again, do we want to leave that as an IRT decision or ...? Because I don’t know what basis we would have for coming up with that multiplier. I think there would need to be some research done in other industries and, as Anne said, we don’t really have the expertise for that and we don’t have the data for that. Jim, go ahead.

JIM PRENDERGAST: Thanks, Jeff. Yeah, I’m actually even hesitant to specifically say “a multiplier,” only because that is one way of doing this, whereas the bid credit may be another, and there probably are more ...

JEFFREY NEUMAN: Okay. Can everyone still hear me?

[MICHELLE DESMYTER:] Yes.

JEFFREY NEUMAN: Oh, okay. I didn’t know if it was my line that was dialing out. So, Jim. Yeah, we lost Jim. All right. So, I think Jim’s point ... When he comes back, hopefully, we can let him explain it, but I think his point, which is a good one, is I think what we’re really deciding on is giving bid credits that could be in the form of a multiplier or it could be in other forms, as done in other industries.

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Are we happy with saying “bid credit,” and as an illustrative example saying “multiplier,” but it could be some other mechanism. Actually, Anne has got the words right there in the chat. Would that be acceptable? Right. It could be a hard amount or it could be a multiplier. Right. It could be a number of different things. Right.

So Jim’s saying, “Multiplier is only one type of bid, but bid credits another. Let’s not be specific as to the exact type of support and have the auction provider make a recommendation.” So, that’s to the IRT. Right.

Well, I don’t know if they’re going to have an auction provider at the time they select an IRT, but hopefully, they would consult with auction providers in the industry or in different industries to find out. But yeah. I agree that we should leave this kind of thing to experts. Paul, go ahead.

PAUL MCGRADY:

Thanks. Bid credits bother me, though, because what happens if ICANN gives everybody a 200 million dollar bid credit? I mean, that’s not an auction, that’s ICANN deciding. So, bid credits are different than multipliers. Multipliers, the parties still have skin in the game. Bid credits could completely undo this process. So, I don’t know. That, to me, is a bridge too far.

JEFFREY NEUMAN:

So, I think what you’re saying, Paul, is there just needs to be a cap, right? I think that cap needs to be known well in advance. And so, I think—Jim can correct me if I’m wrong—that even where bid credits are used in other industries, there is a cap. So, Anne, I’m not

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suggesting we set the cap, okay? I'm just suggesting that there usually is a cap on this kind of thing. Yes, we understand that there are still some people that don't like auctions at all. Jim, do you want to try again?

JIM PRENDERGAST: Is that any better?

JEFFREY NEUMAN: It's better than calling out to someone else, but yes.

JIM PRENDERGAST: Okay. Yes. And again, I'm not an auctions expert, but, at least from the reading that I did, essentially it is a percentage discount applied to the final winning bid. So, it's not like they're giving an applicant two million dollars to play with. They are simply saying that if your winning bid is one million dollars and we give you a 25% bid credit, then you only wind up paying \$750,000.

But that is only but one type of effort that could help a disadvantaged auction participant. There are others. So, that's why I suggest that this group doesn't have the expertise, but the auction provider that ICANN has worked with in the past probably does. Thanks.

JEFFREY NEUMAN: Yeah. Thanks, Jim. Sorry, Justine. I know I skipped you, but it was just to let Jim finish his comment when he got cut off, so now I'll go back to you, Justine, and then to Paul.

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JUSTINE CHEW: Thanks. No worries, Jeff. I actually had a question. Could you remind me as to, if we punt this off to IRT and they come up with a recommendation, obviously, it's going to be part of the recommendation that IRT comes up with, is there are chance to influence that outcome, per se, in the future?

JEFFREY NEUMAN: So, the answer is yes. First of all, the IRT, if it's set up as a normal GNSO IRT, usually has a number of participants from the community, not to mention their work generally goes out for comment. And in this case, my guess is the result of the IRT would be a guidebook, or a new guidebook, and I would stake my career on the fact that that guidebook [wouldn't] go out for public comment. So, yes.

Rubens just puts in the chat that there are some examples in the public sector, "Leaving discretion with IRT is fine." Anne says, "Percentage," and then I'll get to Paul and Susan, "bid credit, or multiplier is developed by the IRT ..." I don't think we need to say "with public comment." It's developed by the IRT, and I think that that's ... Yes. Go ahead, Paul, and then Susan.

PAUL MCGRADY: Thanks. So, I think percentage bid credit makes sense because you can't get more back than you bid, as opposed to a block [bill] credit that I was raising concerns about before. You know, the 200 million dollar bid credit destroys the process. A 25% bid credit probably doesn't. So, how do we make that distinction so that we

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don't end up with the messed up system of the 200 million dollar bid credit? Can we do that in this text somehow? Thanks.

JEFFREY NEUMAN: I'll go to Susan, and then let's see if there's something we can do. Susan, go ahead.

SUSAN PAYNE: Yeah. Thanks, Jeff. So, I'm just wondering: do we have any kind of safeguard in here to ensure that, if an applicant is given this tremendous advantage during an auction against other applicants because they're given a bid credit, or a multiplier, or whatever, that they don't win the auction and then immediately turn around and sell it at vast profit to a third party, or even to one of the auction participants who was unsuccessful? I'm not wanting to penalize anyone but I do feel like there needs to be something in here to prevent this getting seriously gamed.

JEFFREY NEUMAN: Good question. We'd have to look at the conditions for applicant support in general. I don't know if there is just a general prohibition but it's a good thing to look at. Yeah, ICANN does have to always approve a transfer. In theory, one of those criteria could be returning ... Basically, it's like a loan forgiveness. You get the money and it's forgiven as long as you are the applicant. If the applicant changes, then the loan is no longer forgiven.

Susan said, "I don't think paying back is adequate if they beat other applicants as a result of it." Fair enough, but for how long do you

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put that as a ...? What if it's like the .org case and it's 20 years later? Is there some sort of limitation on that, or was it forever? Susan, go ahead.

SUSAN PAYNE:

Yeah. I'm not sure I have the answers but I think we know from the previous round that there were some situations where things changed hands almost immediately. In fact, with deals done behind the scenes in advance. So, I think that's something we need to think of, some kind of a time period whereby ... Jim is suggesting five years. I mean, that's one possibility, but I think there needs to be something. Otherwise, this will get gamed.

CHERYL LANGDON-ORR: You might be muted, Jeff.

JEFFREY NEUMAN:

Sorry. Sorry about that. Why don't we put this issue out to the list? I don't want to keep going on this on the next call, unless there is a proposal we can put out there, maybe spend five minutes on it.

But I think we have a lot of other issues to cover and this is something that's new. I think we have the concept, we have Susan's question, we can all do some thinking about it, and maybe just touch on that one small issue. But then, we've got to move onto some other topics.

I also want to just draw attention to some other language that was added by the ... We added a paragraph, basically, on what the GAC

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submitted, which is mostly that they supported all of our recommendations on applicant support. So, it's not really a ... There it is. So, it's one paragraph. It's nothing complicated. There you go. Okay.

So, yeah, the next call we have is on Thursday. Are we ... Okay? Thursday, June 11<sup>th</sup>, at 20:00 UTC. We have a couple of things that we'll put on the list for discussion. So, if you have any comments on the application, or the queueing priority proposal that's in there, or thoughts on the multiplier issue, especially Susan's question of how we prevent gaming ... But also, remember, we don't want to block legitimate transfers, as well.

So, it just sometimes happens that, in the natural course of things over ten years, lots of things can happen. People could pass away. There are lots of reasons why ownership could be transferred that are not intended to be as gaming. So, let's see if we can come up with some language that balances a legitimate need to find an agreement versus a gaming scenario.

All right. Thanks, everyone. I agree with Cheryl, great progress. Yeah. Let's really start using the list to get these final couple of issues all worked through. Thanks, everyone. Talk to you on Thursday.

CHERYL LANGDON-ORR: Thanks, Jeff. Thanks, everyone. Bye.

MICHELLE DESMYTER: Thank you, everyone. Meeting has been adjourned.

**[END OF TRANSCRIPTION]**