
ICANN Transcription
GNSO New gTLD Subsequent Procedures Working Group
Thursday, 16 July 2020 at 20:00 UTC

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JULIE BISLAND: Good morning, good afternoon, and good evening. Welcome to the New gTLD Subsequent Procedures Working Group call on Thursday, the 16th of July 2020.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. And I just want to remind everyone to please state your name before speaking for the transcription and please keep phones and microphones on mute when not speaking to avoid 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. You can begin, Jeff.

JEFFREY NEUMAN: Thanks a lot, Julie. Welcome, everyone. It is Thursday for most of us. I think it's Friday for some. On the agenda today, we're going to go through a discussion on Auctions – Mechanisms of Last Resort, and then we will go into the Predictability Framework. There is a hand up from Kathy. So, Kathy, you have something for AOB. Go ahead.

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KATHY KLEIMAN: Nope, that was just it. I'd like to reserve a minute or two to AOB. Thanks, Jeff.

JEFFREY NEUMAN: Okay. Is there anything that – what's the topic so we can put it down on here?

KATHY KLEIMAN: Yeah. The e-mails and the changes taking place in e-mail and other ways to handle it. Thanks.

JEFFREY NEUMAN: Okay. All right. So yeah, let's put that under AOB. I guess just put e-mails or whatever we want to frame that as. And then I do want to add one quick thing as well under Any Other Business for just the discussion on duplication of affirmations, just get some clarity on how we handle those duplications. I don't know. I know this is kind of a static wiki form but if someone can just jot that down because I don't want to forget either of those two things. Okay. Julie says, "Noted." Great.

Okay, let's go then to Auctions – Mechanisms of Last Resort. There's been a bunch of work in the background to try to kind of simulate the discussions that we've had over the last several weeks, which, of course, build on all the conversations we've had over the years on where we think we are or what we think we could agree to. And so during the last call we mentioned that we

would try to assimilate the discussions that we've had from Proposal 4. I think that was the one that – sorry to keep associated with you, Paul, but I think that's the Paul McGrady proposal with the Hybrid 2+ which dealt with the sealed bids to try to combine those together into one proposal.

So here's the thing. We'll go over this, but because you all haven't had time to review, I think today what we'll do is we'll just go over and answer any questions that you have as we go through it, but reserve kind of meat of the discussion until next time with the understanding that this is going to be new because you haven't seen it yet. So we'll walk through it. Just explain what it says, what it means, and then you can absorb that, read it over the next couple days. You're always free to use the mailing list or to just come prepared for the next call on Monday.

Okay. Again, this Model 5 is a conglomeration of Hybrid 2+ and 4 with some added transparency measures that we discussed the last time, and then a couple things that were added because Paul had submitted some guardrails by e-mail. I'm just looking to see if Paul is on here. Yes, he is. Okay, good. So, there's some things added. You'll see it just kind of takes a mix of a lot of different things. Okay, so this is some the guardrails. Yeah, those are the guardrails you submitted a couple weeks ago but you then again repeated it in an e-mail today, I think, or yesterday. I'm losing track of time.

In the overview, it started at the second bullet. "Ensure that the then-current Applicant Guidebook reflects that applicants will be permitted to creatively resolve contention sets in a multitude of manners, including but not limited to partnerships or other forms of

joint ventures and private resolutions including private auctions. All partnerships or other joint ventures created after the submission of applications must follow the Application Change processes” – and then the citation to that section – “and shall be considered material changes and may require re-evaluation of some or all of the new resulting application.”

Next bullet, “This also includes a new public comment period on the changes as well as a new period to file objections; provided however, objections during this new period must be of the type that arise due to the changing circumstances of the application and not merely the type of objection that could have been filed against one or all of the applications in the contention set during the initial application period.”

The next bullet, “All contention sets resolved through private resolution shall adhere to the transparency requirements set forth in the Transparency Section below.” So we’ll go over that separately.

Next main bullet, “Applications must be submitted with a bona fide (good faith) intention to operate the gTLD. Applicants must affirmatively attest to a bona fide use clause for any and all applications that they submit.” I added this sub-bullet point – sorry, actually, this comes from Paul’s initial proposal in #4 as well, “Evaluators would be able to ask clarifying questions to any applicant it believes may not be submitting a good faith application.”

Next bullet. “Once the application submission period closes...” All right. Now we start getting into the Hybrid 2+ model which is the

actual mechanism for the auction of last resort. I probably should have separated the beginning bullets from these but this is where the last resort stuff kind of comes in that we discussed. “Once the application submission period closes, the string similarity evaluation for all applied-for strings must be completed prior to any application being shared. Applicants in contention sets will be informed of the number of other applications in their contention set, but no other information regarding the other applications will be shared. Any applicants that wish to compete for their applied-for string must submit a sealed bid for each relevant application.”

One thing we still need to talk about, which we can come back to, there’s a couple of questions in here until one of them is about a form of deposit, whether that’s needed, but we’ll come back to that.

“Only after all sealed bids are received or the window to submit bids closes, publicly available information will be published.” So now all the other information that wasn’t originally made known, including who the applicant is and all the other details about the application, those will now be published, including the composition of the contention sets. “Applicants may participate in various forms of private resolution as permissible in the Applicant Guidebook, including joint ventures. All applications are evaluated and subjected to other application procedures.” This is just a listing of what they all are. “Some of these procedures may affect the composition of contention sets.” The most obvious one is if applications don’t pass any of the evaluations then obviously those applications wouldn’t stay in the contention set. Again, that’s all after the accountability mechanisms and all that.

Paul says, “What happened to my proposal?” It’s a little later on. Hold on, you’ll see it.

Okay. “To the extent any contention sets are expanded, by having other applications added” – and there’s ways that other applications could be added to a contention set in the parenthetical – “all applicants, including both the existing members of the contention set as well as the new members, will be allowed, but are not required, to submit a new sealed bid. To the extent any contention sets are shrunk, by having other applications removed from the process, applicants will not be allowed to adjust their sealed bids.” One exception here could be if a subset of applicants in the contention set formed a joint venture. We’ll talk about that as an outstanding question in a little bit.

“Auctions of last resort will take place after all other evaluation procedures, objections, etc. similar to the 2012. In addition, the auction of last resort cannot occur if one or more of the applications in the contention set are involved in an active appeal or ICANN Accountability mechanism. Applicants in the contention set will be informed of the date of the auction. On the auction date, the applicant that submitted the highest sealed bid amount pays the second-highest bid amount. Once payment is received, the applicant may proceed to the Transition to Delegation.”

Okay, that’s where the combination takes place, but now we added some transparency requirements. I admit I borrowed some of this from other types of auction where auctions occur. So, these transparency requirements would apply both in private auction or

bidding process or in the ICANN mechanism of last resort. So this part of it is not unique for just private auctions.

“In the case of a private auction or an ICANN auction of last resort, all parties in interest to any agreements relating to participation of the applicant in the private auction or ICANN auction of last resort.” Sorry, that’s not a full sentence. It should be disclosed, essentially. I saw missing those words somewhere in there. So, “All parties in interest to any agreements relating to participation of the applicant in the private auction or ICANN auction of last resort must be disclosed.” Yeah.

This includes and then there’s just a bunch of different types of – “A list of the real party or parties in interest in each applicant or application, including a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling or both the applicant. List the names and contact information of any party holding 10% or more direct or indirect ownership of each applicant or application, whether voting or nonvoting, including the specific amount of the interest or percentage held.” Then you have the names and contact information of all officers, directors, etc. And then ultimately the amount paid or payable by the winner of the private auction and the beneficiary or beneficiaries of the proceeds of the bidding process and respective distribution amounts.

I see Ken. I’ll get to it out. Let me just finish this transparency section then I’ll come back.

So for other forms of private resolution – and this differs a little bit, Paul, from what you have in your proposal because I think in your

initial proposal, you had said that if it was resolved in any other form other than a private auction, there wouldn't be disclosure requirements, but I don't think that's in line with what we discussed. So what this says is "All material terms of any arrangement between applicants to privately resolve a contention set, financial or otherwise, must be disclosed to ICANN." We probably should highlight "and the community" because I put that in brackets because that's still an outstanding item. "In the event that the arrangement results in any material changes to the surviving application, such changes must be submitted through the application change process." And then we'll include the citation.

I see Ken and Christopher. Let me just finish this section and then we'll come back.

Protections for Disclosing Applicants. "Except as otherwise set forth in the transparency requirements above, no participant in any private resolution process shall be required to disclose any proprietary information such as trade secrets, business plans, financial records, or personal information of officers and directors unless such information is otherwise required as part of a standard TLD application. The information obtained from the contention resolution process may not be used by ICANN for any purpose other than as necessary to evaluate the application in accordance with the requirements set forth in the Applicant Guidebook."

Paul, I modified this slightly. I think you had in there ICANN couldn't use it as a negotiation point, but I tried to raise that up a level, just saying that it could only be used for this one purpose so

I hope that addresses the way you worded it. I hope this addresses that. And this one is a little bit – I highlighted this one because this is what you had in your e-mail but I don't think it's in line with the rest of what we've discussed. So you had in your e-mail, "There will be no disclosure requirements for non-auction private resolutions, for example, joint ventures." Again, I don't think that that's in line with the discussion we had the last time.

And then Paul had in his suggestion, the question came up with how do we police. This is completely just an illustration. I think Paul had in his something like if an applicant loses every auction, there's a rebuttal presumption, but I kind of reworked that a little bit just try to create some sort of standard. "If an applicant applies for five or more strings that are within contention sets and participates in private auctions for more than 50% of those strings for which the losing bidders receive the proceeds from the successful bidder, and the applicant loses each of the private auctions, this may create a rebuttable presumption of non-good faith intent for each of those applications."

And then I think these next two were from Paul's e-mail. "If an applicant's string is not delegated into the root..." Oh no. Sorry. Paul had the word launched then I'll get into it in a second why I didn't put launched. "If an applicant's string is not delegated into the root within two years, this may create a rebuttable presumption of non-good faith intent for that applicant. If an applicant is awarded a top-level domain and sells the TLD, separate and apart from a sale of all or substantially all of its non-TLD related assets, this may create a rebuttable presumption of non-good faith intent."

I'll lock there. And of course, you're just seeing this now as we go over it. Ken, your hand was up. I don't want to miss you. I don't know if your hand accidentally came down or we answered it, but did you have a question, Ken?

CHRISTOPHER WILKINSON: This is Christopher. I defer to my old friend, Ken. Ken, off you go.

JEFFREY NEUMAN: I don't hear Ken. Okay. All right, I'll go to Christopher. Let's start with you and then we'll see if Ken weighs in after.

CHRISTOPHER WILKINSON: Okay. Thank you, Jeff. Very briefly, first of all, may I recall my opposition to auctions of any kind because of the extreme bias they introduce against the interests of the initial applications and the underfunded applicants, which will have geographical and political consequences. So I don't accept the whole concept of this model. Insofar as I can apply my normal experience of administration and finance, I suggest that somebody, perhaps the ICANN Staff, work out a budget for the Staff requirements to implement anything like the degree of detailed management and regulations that these texts imply. I appreciate that many of you are aware of the shortcomings of an open auctioning process, especially the private auctions, but the solution seems to be more and more regulated evaluation. I'm not philosophically against that but economically reading what you've just dictated to us, Jeff, the mind boggles as to how many people and how much money

would have to be spent on implementing what you've just described, bearing in mind that many people feel that 2012 is not a precedent and that whatever happens in the next round, it might be in a much larger scale. So we're not talking about 10s or 20s of cases, maybe we're talking about hundreds of cases that might emerge under this system. So I really think before we go any further, you should ask the ICANN Staff for a staff in the financial budget as to what would be required to implement any such thing. Thank you.

JEFFREY NEUMAN:

Okay, thanks, Christopher. That'll, I'm sure, be done once it's in the implementation phase, and I'm sure at that point we'll all be well versed in what it's going to take to implement. But this is, again, just trying to get some sort of compromise solution between the different sides on this issue, and so I ask everyone to focus on that. I don't think this actually imposes a huge amount of costs above and beyond what would otherwise be spent. So, Paul, go ahead.

PAUL MCGRADY:

Thanks. Jeff, thank you to you and Staff for all the hard work on this, especially under short timeframes. I'm glad to see that some of the stuff I put to list yesterday, especially with regard to disclosure requirements showing up. Help me find out where my proposal is in this because the way that I'm reading it, it says if you want to compete for your string, you have to do a sealed bit. It doesn't say much else like, "But if you resolve these privately, the sealed bid becomes moot," or something like that. That tells me

that we've not done away with private resolutions, right? That's sort of point number one.

And then question number two is, I apologize, in terms of disclosure, if there is a private auction, when would that occur? Would that occur up front? I proposed up front not because I particularly have an opinion one way or the other but there were several voices, I believe, including Kathy's, that private auction disclosures should be done early and should be made generally public to everybody, the way that ultimately auctions of last resort, you know, that information is made public to everybody. So I'm just having trouble finding where those points are in the last in the last several pages of mostly red ink. And I think that that's where they're supposed to be – bottom five, I think. Thanks, Jeff.

JEFFREY NEUMAN:

Yeah. Thanks, Paul. So the first point. You're right, we didn't explicitly state that if something's privately resolved, obviously you wouldn't then go to ICANN auction of last resort and the sealed bid just wouldn't matter. We could put that explicitly in there. I guess I kind of implicitly or thought that was obvious but if we need to put that in there, sure, because then it doesn't ultimately get to the part of opening the bids. So yeah, so we'll put a note that we'll make sure that – can you scroll up, Julie? You keep going up towards in the process part. Up a little more. Okay, sorry. I think it's down a little bit. The bullet at the bottom says, "All applications are evaluated and subject to other application procedures. Some of these procedures may affect the composition of contention sets." It talks about expansion. It talks about shrinking. And then yeah, before the bullet point of auctions

of last resort. So I would add another bullet right after where you have the cursor now, which just says, "Contention resolution sets that are resolved by private resolution will move forward to Transition to Delegation." That's what you put in there, right, Paul? Because then it talks about auctions of last resort for those that haven't been resolved.

PAUL MCGRADY: Right. I think we should go ahead and say explicitly the sealed bids would become moot. Because we don't –

JEFFREY NEUMAN: It will remain sealed.

PAUL MCGRADY: Yeah, they may remain sealed but they won't be effective anymore if the contention sets resolved. I don't want to overthink it but I'm coming at it from the angle of somebody who doesn't have – if somebody else gets involved in this and doesn't have the eight years of history here, we need for them to say, "Okay, I put in a sealed bid but then I can also resolve it with joint ventures, I can resolve it with private auctions, I have to disclose a bunch of stuff, but I can do it that way. And if my client is interested in disclosing stuff then we'll go down that path. If they're not, then maybe the sealed bid is the way to go. But ultimately, if I go down that path and we do resolve it then my client is not also going to have to pay a sealed bid amount later." I just think that'll end up in a frequently asked question pulled down if we don't answer it now. Thanks.

JEFFREY NEUMAN: Okay, yeah. Thanks, Paul. Sorry, just to remind me, the second one real quick, because I wrote something down that I don't understand what I wrote. What was the second question you had?

PAUL MCGRADY: Yeah. Oh my goodness. Oh, it was timing. Timing of disclosure for –

JEFFREY NEUMAN: Oh, right.

PAUL MCGRADY: I haven't bought in conceptually yet to how joint ventures and other things like that, like settlement agreements and that kind of stuff can fit anywhere within what the Board wrote about, but let's set aside that for a minute and say for whatever it is, whether it just ends up being private auctions or if we also wrote in this other stuff that the Board didn't complain about, when is that to be revealed? I'm sorry. I didn't see it when in the read-through. It's probably in here.

JEFFREY NEUMAN: No, no, it wasn't. It should be one of those questions to be discussed because we didn't put a timing in there. Sorry, yeah, you can put it there as far as what is the timing of disclosure. Or maybe even put it in the transparency section so we know it relates to that because that's really where the – yeah. So we just

need to put in that section contention resolution transparency requirements. We just need to figure out timing.

PAUL MCGRADY: In my e-mail from last night, I have a proposal on that. And that was early disclosure and public because that's from the last call. That's where I heard the voice is saying that they wanted early disclosure in public on private auctions.

JEFFREY NEUMAN: Yeah. I think it was 72 hours and I meant but ran out of time to research how long ICANN has to publish the auction results from the ICANN auction and I was going to mirror that, I just didn't get around to it.

PAUL MCGRADY: Thanks, Jeff.

JEFFREY NEUMAN: Sure. So let me go to Jim – or Christopher, is that a new hand? Sorry.

CHRISTOPHER WILKINSON: That is a new hand.

JEFFREY NEUMAN: Okay, go ahead.

CHRISTOPHER WILKINSON: Paul, I don't want to be impolite but let us say that – Jeff, if you continue to write into this text exactly what Paul wants, he will finish up with great successes and majority of one. I hope you're losing any chance of a consensus over this if we go increasingly in that direction. Furthermore, Paul, as you have repeatedly referred to your clients, I think that if you have clients in this affair, you should have disqualified yourself from this discussion, and I hope that is part of the [day] ontology of the GNSO. Thank you.

JEFFREY NEUMAN: Okay, thanks, Christopher. Just to be fair, as people are speaking and have comments, I'm putting all of it in. I don't think I'm indiscriminately choosing which comments to put in. I'm trying to come up with a solution that everyone can live with. Jim, go ahead.

JIM PRENDERGAST: Thanks, Jeff. Thanks for walking us through this. First blush, I think it does look pretty good, but some questions I have is for those potential gaps. Would sealed bids be required for what is being referred to in this document as private auctions? And what is the timing aspect of what is referred to as private auctions? Are those happening on a set schedule at the same time, or does the proposal allow for the practice that we saw in 2012 of losers rolling funds from one auction to another to another, and then potentially squashing a single applicant? Thanks.

JEFFREY NEUMAN: Yeah, thanks. Jim, anything not specified in here is assumed to be the same as it was in 2012 because that's the way Hybrid 2+ was worded. So we just mixed the 2+ model and 4, and then added transparency requirements, but that does not mean that we have to stick with that. So if there are ideas to change that then I think they should be brought up. So your model, for example, if I remember correctly, gave a period of time, like a short window to privately resolve these things. So we can discuss that.

I think the other part of your question is, I don't think we're specifying anything here about how private resolution is conducted. I think we're just specifying the disclosure of the outcomes. So there's nothing at least in this particular draft that has anything about terms and conditions of a private auction. Jim, did you want to follow up?

JIM PRENDERGAST: Yeah. I mean, if that's the case, then I don't think this goes far enough to address a lot of concerns across the community about what happened in 2012 and I think it does need some more work to address those concerns. So I don't have solutions right now on the fly, but I'm happy to put pen to paper and circulate [inaudible].

JEFFREY NEUMAN: Yeah, thanks, Jim. Please. And then also the transparency requirements were an effort to kind of help a little bit with that, but yeah, other mechanisms, absolutely. We're trying to kind of create a compromise solution here. Alexander, go ahead.

ALEXANDER SCHUBERT: Oh my God, there's a frog in my throat. Jeff, I have a question. Why do we want under the transparency requirements that any party that holds more than 10%, the information of them would have to be revealed as well? Why do we have those in there?

JEFFREY NEUMAN: I think that is kind of a standard used by other organizations and others that do the bidding processes. I've looked actually at a couple different countries and 10% seems to be – I don't know if they're all kind of modeled after each other – but 10% seems to be a percentage that's often used.

ALEXANDER SCHUBERT: Sorry to interrupt you. The question was not so much about the exact percentage but why in general do we want to publish the information about the ownership regardless of how many percent one owner has?

JEFFREY NEUMAN: Because these are ultimately going to be the applicants that are going to be running the registries and part of the transparency requirement is to understand everyone that's involved and that has some sort of significant interest in that applicant.

ALEXANDER SCHUBERT: And that's good. We should, of course, do this. So it was just a rhetorical question. So if this is important – and I agree it's important that we know that – and if we have any percentage

there, 10%, even with only 5%, it's very easy to keep ownership of each single owner under the statute, whatever percentage before then, even if it's only 5% or 3%. So I suggested in the chat that if – I mean, most companies are built in a way that you don't have a ton of owners, just a couple of them. But if someone is structuring their company in a way that is so broadly diversified that none of them has to provide information then we will have to probably ask all of them to provide it. Otherwise, it can easily be gamed by making sure that every single ownership is below whatever statute we said.

JEFFREY NEUMAN: Yeah. But, Alexander, if ownership is de minimis for every party that owns part of it, you still have to disclose the board, the officers. If there's any exertion of control then they start still needs to be disclosed. I know you're thinking of, let's say, a new venture that has 11 owners each under 10% but if you think on the other scale –

ALEXANDER SCHUBERT: I'm thinking especially about someone who wants to game the system and simply has 11 shared companies, owning collectively the applicant entity and suddenly none of the owners has more than 10% and they don't have to disclose anything. I'm thinking about –

JEFFREY NEUMAN: No, Alexander, absolutely. Keep thinking about that. That's generally covered in what's called a real party of interest or person

in interest. So I think it's good. I mean, it's all only shorthand here. But obviously that would need to be expanded, but I completely understand your concern.

ALEXANDER SCHUBERT: Okay, thank you.

JEFFREY NEUMAN: Susan, go ahead.

SUSAN PAYNE: Thanks. This is just a reaction to Jim's comment earlier. This is not a detailed comment on this. I suspect I would have a number of areas of concern when I have had an opportunity to look. But I recognize what Jim is saying about his desire to have all auctions happen at the same time. Could I just urge you, Jim, if you're going to go through and make some proposals in relation to that, could you please give some serious thought to how you can address the fact that the things like challenges or appeals or objection processes are going to mean that some applications or sometimes many applications are just not done at the same time. And so are you seriously suggesting that every single auction can't happen until every objection and every accountability process that's an outcome of an objection has finished because that means we never actually have any of these contention sets resolved, any of these applicants who are in contention getting to delegation because they're all waiting on your .music or your .kids or whatever is the last one through the process?

JEFFREY NEUMAN: Okay, thanks. Yeah. And I would just add to what Susan is saying. I think when people are submitting comments, I think we should try to submit comments that we think have a reasonable likelihood to move us forward and not something that will just take us backwards. Hopefully we're trying to meet somewhere in the middle. Elaine, go ahead.

ELAINE PRUIS: Thank you. Can you hear me okay?

JEFFREY NEUMAN: Yep. Go ahead.

ELAINE PRUIS: All right. I have just a couple of questions. It was really late Monday night when we started talking about Jim's proposal and we started out with, let's just hit the general points, a high-level look, but we only made it through the transparency discussion. And so I'm wondering what happened to the rest of the items in that proposal? And looking at what we have in front of us now, the Hybrid proposal 2+ or Model 5 or whatever we're looking at right now, I think we're getting somewhere and I'm pleased with that. But I'm wondering who's deciding which parts to include and how come we have dropped the discussion on the other items?

JEFFREY NEUMAN: Yeah, thanks. I think on Monday or Tuesday? Sorry. Yeah, I think it was actually very early or very late on Monday. I think we did go over both sets of proposals. But at the end of the day, I think what we're trying to get to is a compromise where we think everyone can live with and one that wouldn't alter a lot of the other sections and things that the timing and the other aspects of the program. And I think there were a lot of things that were in Jim's proposal that we had previously talked about but wasn't supported by a number of members of the group because it ended up changing a number of other aspects. So I think that's why as far as who's deciding what – again, at the end of the day, the Leadership team are going back after these calls and trying to evaluate what we think the group may be willing to live with out of each of them. And we can absolutely be wrong so that's why we have these calls. So if there are elements that we could put in here, we're all ears. We're just doing our best to try to read out the group.

ELAINE PRUIS: Okay, thank you. I'm certainly not trying to criticize. I'm just trying to understand the process. So I hear you saying that you took a look at previous conversations and what seemed to have some support and what didn't have any support and you tried to include what you thought I had some support here. I don't remember any discussions about the competition authority suggestion and I think that would go a long way to protecting ICANN as well as any deals that might come out of that. So I'd like to see that added back to the discussion, please, that a competition authority would have some oversight and private contention resolution as well as ICANN auctions even. Thank you.

JEFFREY NEUMAN: Yeah, thanks, Elaine. Actually, because I don't remember that component, Jim, was that in yours? Yeah, Jim says it was in his. I totally missed that part. It's in this document. So, Jim and Elaine, if you could help figure out where and how, like what is from that part that we could move into here. Yeah, because we didn't intentionally eliminate that. I just sort of missed that detail.

ELAINE PRUIS: Okay, thank you so much, Jeff. I'm trying to lower my hand but I'm having a problem. So if one of the hosts could do that, I'd appreciate it. Thank you.

JEFFREY NEUMAN: Sure. It seems like it will work now. Paul, go ahead.

PAUL MCGRADY: Thanks, Jeff. So two things, one has to do with the protections for disclosing parties. And except for things that are above, they don't have to disclose trade secrets and things like that, but it's not clear what those things that are above are and I think it's going to get really hairy if we go out to the world and tell them basically, yeah, you're stuck with the ICANN auction of last resort where ICANN gets all the dough because if you form a joint venture, you've got to hand over trade secrets and other stuff. So I'm hoping that whoever put that in, whoever made that change to what I had proposed to sort of clarify that a little bit, what are the exceptions to that rule because it doesn't jump out at me.

Then secondly, with regard to the competition authority issue that Elaine raised, it says something like the relevant competition authority. And of course, new gTLDs can be accessed from any jurisdiction in the world, and so you're trying to get past 220 competition authorities for an affirmative blessing – I don't know how that whatever work. There's simply won't be any new gTLDs, and so the only people that that helps is people who don't want more competition in the gTLD space because that will grind this program to a halt. So when Elaine or Jim come back with that, if they could tell us what relevant means, tell us one or two. Is it a situation where you submit them if we hear nothing in 15 days, we're good, 30 days? Do we have to wait for the governments to come back before Patrick's can be signed, which governments? How long do we wait? Obviously, the more burdensome and heavy all that is, the less hard it's going to be able to get behind. But if there's some sort of lightweight thing like, since ICANN is in California, we'll send these to somebody in Washington, whoever that would be, whoever's in charge of gTLDs in Washington. I'm not sure what government agency is in terms of competition authority. And if we don't hear back then in 15 days, everybody can sign their agreements. Well, that's probably not so bad, it's not my favorite thing because the whole purpose of the IANA transition was to get the government out of our lives, not back in. But if that element is a needed element here and people like it, that'd be great. But whatever we can do to narrow it down because the way that it was written before was a big giant question mark. Thanks.

JEFFREY NEUMAN: Yeah, okay. Thanks, Paul. So we'll look for Jim and Elaine to just pull out and to think about that question. I want to apologize because I'm not keeping up with the chat as well as I should be. So if there's anything I should be covering in there, someone could let me know.

On the question that Paul asked, the "except this" set forth above – I think I wrote that language and what I was trying to do there was to eliminate arguments that the material terms of an arrangement between applicants to privately resolve a contention set or the list of real parties in interest to the auction stuff that there would be somehow a claim that they're not going to disclose it because they view it as a trade secret or they view it as proprietary. So that's what the "except this" refer to above is trying to get at, it's to say, "Look, this is required to be disclosed no matter what and you can't really claim that this is a trade secret or proprietary and then use that clause down there to say that you're not going to disclose it." So that was the intention. And again, this is an outline so these are drafted fairly quickly, but hopefully that makes sense. Yeah. So Paul is saying, "When this is numbered, that might help." So that's what it's meant to get at.

Okay. Can we scroll back up to some of the highlighted parts again, just to cover the questions? Not necessarily to get answers today but more as just to go over the questions again. So if we were to do this kind of sealed bid model and those sealed bids are submitted up front in this manner, again with the limited knowledge of just the number of applicants in the contention set, the question there is, are we going to require a deposit, and if so, how much would that be?

So if you recall, in the ICANN auction of last resort, obviously the bids and bid amounts weren't thought about until the actual auction occurred. And at that point, you'd have to put 10% of your maximum in but now you're a few years or certainly months down the road. Here we're asking someone to submit a sealed bid up front. I think it was Kurt that may have made this point pretty well in his e-mail where he said that we're asking people to pay a hundred and whatever thousand dollars up front and then asking them, especially newbies, to estimate the value of their TLD up front but to also then make them pay another 10% of that maximum auction price could be a little bit – to discourage smaller and new players. So there's certainly pros and cons. Yeah, and for clarification, this is only sealed bids for auctions of last resort.

So that's one of the questions that we'll need to think about and getting input on the pros and cons. The other thing we could do is because this is the auction for last resort, anyone could put anything down as their bid, but then when it comes time for that auction of last resort, they need to put forward before the bids are revealed, they need to put forward 10% at that point in time. Otherwise, their bid is invalidated. That could be another way that it's done, which I think is similar as what Alexander is saying, the deposit would only come once the auction of last resort commences.

Okay. Then the next question, again, we're not finally deciding any of these. We're just trying to make sure we've covered what the questions are. I think what we said in here is – this is the part where if any contention sets are shrunk by either through the evaluation process, objections, whatever it is, CPE, whatever it is,

if they're shrunk then we said that no one would be allowed to change or submit a changed bid. But if there was a creation of a joint venture, which resulted in the smaller contention set, there's a question of whether new bids should be allowed. Of course, JV would be technically a new applicant and therefore they would be submitting a new bid because they hadn't existed before.

The next question is – okay, I think the next one relates to the deposit that we just talked about, and then we have a timing issue for the transparency requirements. We now then have to talk about, okay, let's go to the outstanding discussion items.

DONNA AUSTIN: Jeff it's Donna. I'm sorry.

JEFFREY NEUMAN: Sorry, go ahead. Yes.

DONNA AUSTIN: I had a question back up on the JV applicant thing. Doesn't this give the joint venture some kind of leg up, if you like? I mean, if there's been a joint venture, they would know what at least each other submitted is a seal bead. It seems to me that it's giving them some kind of preferential treatment. I don't know how you overcome that but I'm hesitant to accept that they'd be given some kind of exception. So I think it just needs more thought.

JEFFREY NEUMAN: I think what we said in that situation was that all bidders could submit a new sealed bid.

DONNA AUSTIN: Okay, so only where a joint venture is formed would there be an opportunity for the pool of applicants in the contention set to submit new bids?

JEFFREY NEUMAN: Right.

DONNA AUSTIN: Okay.

JEFFREY NEUMAN: Yeah, I mean, there's a leg up only in that the joint venture knows only what the other ones bid, but it still doesn't know what the other members in the contention set bid. I can't really solve that one.

DONNA AUSTIN: Well, yeah, I think there's a number of ways you can think about this, too, because the joint venture itself might have to be placed in it as well. So, how you define a leg up or how you define fairness is really difficult in this situation, I think.

JEFFREY NEUMAN: Yeah. Thanks, Donna. And Paul says, “A fresh sealed bid for everyone or an inherited sealed bid.” I think the inherited one I don’t think is necessarily fair either because remember we’re trying to encourage creative solution. So if a joint venture could be created and that joint venture is actually something ... We don’t want to incentivize them or give them a leg up, but we also don’t want to give them a leg down.

Justine raises the question of how a bid multiplier works in those. At the end of the day, the bid multiplier would just be applied to a – if it goes to the ICANN auction of last resort, the multiplier applies to that applicant that submitted that initial sealed bid. Justine, is there a bigger question there?

JUSTINE CHEW: What happens if a party that qualifies for the multiplier goes in, does a JV with someone else, do they still get the benefit of the multiplier?

JEFFREY NEUMAN: That would all depend on whether the JV as a whole could also qualify for support, right?

JUSTINE CHEW: Yeah, okay. That’s one possibility. Then we need to be able to specify these things down somewhere, I think.

JEFFREY NEUMAN: Yeah. Absolutely, you're right. I mean, I think that would be important. And that may not even be allowed in this process. Or I don't know from a timing perspective whether that could actually be done. I mean, there's only three potential solutions that the entire JV gets the benefit of the multiplier, which wouldn't seem right if the other party and the JV would never have qualified for that multiplier to begin with. On the other hand, you could also say that as the applicant would then forfeit the multiplier if it enters into a joint venture with another entity that didn't have a multiplier. I don't know if that's the fairest of all either. And then the third one, obviously, is that the new entity could then also be tested to see whether it still meets the requirements of the Applicant Support Program. I think those are the three options.

Paul asked the question, "Sealed bids raised are a lot of problems, what are they meant to solve?" Paul, I think a long time ago now, it's well over a year or so, the group seemed to coalesce towards a solution that sealed bid process was preferential to the rising – sorry, I'm forgetting it was the Dutch auction or English auction. I'm trying to remember which one they were. I think that those were a long time ago thought of as more efficient and better for the community. I was hoping we wouldn't have to go and revisit that discussion as well. Thanks, Steve. Ascending clock, there you go.

Okay. "Sorry, Jeff, to revisit these issues." Yeah, I mean, at some point we need to move forward. We can't just keep revisiting old conversations. I believe we talked about – no, Donna, absolutely. Private resolution using private auctions is always on the table.

That's correct. Sealed bids for auctions of last resort, we had gone through many times.

Now Martin is saying, "Hopefully there's overwhelming support." There was at that time. Obviously, it doesn't ultimately matter until the very end when we do the consensus call but I'm not sure what the issues are with doing sealed bids other than they add a level of complication. Again, we'll go back and find the information that was on sealed bid versus the ascending clock auction. But again, I don't think we should use up time now to discuss that.

ALEXANDER SCHUBERT: Jeff?

JEFFREY NEUMAN: Yes? Sorry, who's in the queue? Is that Christopher?

ALEXANDER SCHUBERT: It's Alexander.

JEFFREY NEUMAN: Alexander? Both of you. So Christopher first and then Alexander.

CHRISTOPHER WILKINSON: Okay. Very briefly, I had assumed and I think it's most important that if an applicant benefits from a multiplier or any other form of priority, that should go forward first. The idea of only applying the multiplier if the contention set reaches the ICANN

auction is incorrect. The multiplier applies from day one and should determine the outcome. Thank you.

JEFFREY NEUMAN: Okay. Thanks, Christopher. Alexander, go ahead.

ALEXANDER SCHUBERT: You said you don't remember why we wanted a sealed bid. Well, I think the idea of was if there are portfolio applicants – and it's likely that there are some portfolio applicants – if they have to determine the value of each of their strings up front, then they are bound to this. And their contention set members can simply wait and let it come to the ICANN auction of last resort, whereas if portfolio applicants would see who else and what contention sets they are and what applications they are and whom they are up against, then they can strategically move around their bids. So I think the idea of sealed bids was to deter benefits for portfolio applicants. I think that's how –

JEFFREY NEUMAN: Thanks, Alexander. Yeah, I think you're right. I think it was initially proposed by Sarah Langston, if I remember correctly, then the part that we were debating whether it was the timing of the sealed bids, that had become the conversation over time. Sorry. I didn't mean to use over time twice there. But we had come to a point where we said sealed bids was the way to go and then all we were talking about is when would those sealed bids have to be submitted, and we spent a number of months on that particular subject. And then Sarah had proposed doing it, the [inaudible],

which was at the beginning, but we've sort of evolved now from that. It has not been on the table to move to any other type of auction.

Okay. At this point, are there any other questions on what's in now model 5 so that we can pick up this on the e-mail list on Monday for the next discussion? Jamie, go ahead.

JAMIE BAXTER:

Thanks, Jeff. I had a quick question about the sealed bid if it ultimately goes to the auction of last resort, and in that process there becomes a JV created. Did I hear correct that the bids get to be resubmitted going into the auction of last resort, or does the JV have to pick one of the bids of the two that joined the JV?

JEFFREY NEUMAN:

I think where we landed was that all the parties would get to resubmit. But it's a good question that I think should be thought about between now and Monday and Tuesday.

JAMIE BAXTER:

Okay. I think that for private resolution, I don't see any red flags coming up right away. But when it comes to the auction of last resort, it seems a little skewed for those who get to now put their funds together, because I sort of reject the notion that a JV means it's a better application or a more innovative application. I see JV as just two people putting their money bags together when it comes to the auction of last resort so I flagged that. Thanks.

JEFFREY NEUMAN: Thanks. Again, there's pros and cons each way. If they have to pick a bid, it sort of gives the JV an advantage because it could decide based on the information it knows at that later date which one to take, and it doesn't allow the other bidders to take into consideration now that there is a JV that's formed and that may impact their thinking in terms of the competition. I think it would be unfair to allow one organization to pick and the other organization sort of stuck with what they had now that this new JV has more information. So it seems like the more fair solution to just re-do it for all of the applicants so now they all have the same information. That was kind of the thinking. But this is also not something that's settled at this moment. It was just where we were sort of leaning when we talked about that. Anne, go ahead.

ANNE AIKMAN-SCALESE: Thanks, Jeff. I just wanted to also express a little bit of skepticism about whether joint venture actually results in an innovative solution. I guess in addition to Jamie's comments, I'm kind of wondering whether if a joint venture results in a situation where parties that are withdrawing their applications somehow get compensation for doing so. Let's say you've got three of the applicants that send in sealed bids, and in the joint venture, that's formed two out of the three somehow get compensation. Is that a material term that's going to have to be disclosed to show that really is sort of just another way of paying people for withdrawing their applications? Do you see what I'm getting at? I don't know –

JEFFREY NEUMAN: I do. So if you scroll up – sorry, Julie or Emily, I think. Emily’s got control. If you go up a little more on the transparency stuff, it starts out with – in case of a private auction or – sorry, in a JV. So we’re talking about JV situation. No, I think it was down further. Sorry, the transparency. There we go. All material terms of any arrangement between applicants to privately resolve a contention set, financial or otherwise, must be disclosed to ICANN. And then we need to talk about the community. Sorry, that’s another outstanding issue. Just to highlight that.

So Anne, if all they’re doing is paying off people, then that would be a material term of the arrangement between the applicants to privately resolve the convention set. So, obviously, that needs to be disclosed.

ANNE AIKMAN-SCALESE: And so at that point where it’s disclosed – sorry, just a follow up question – it doesn’t actually prevent them from just forming a JV for the purpose of paying off two applicants, right? I mean, there’s a lot you can do in a JV. So what we’re saying is, this is just a different way that you could potentially pay off a couple other applicants because disclosing it doesn’t qualify –

JEFFREY NEUMAN: Right. One of the things we’re saying is private resolution is allowed, financial, auction or otherwise, it’s just it needs to be disclosed. We’re not outlawing any form of private resolution. Obviously, nothing illegal, I would assume, but we are not

outlawing any form of private resolution. We're just mandating disclosure.

ANNE AIKMAN-SCALESE: Okay. So at the point where a joint venture is formed, we end up ... The new bids that come in, are those also sealed, the brand new bids?

JEFFREY NEUMAN: Yes, everything. Assuming we stick with the sealed bid, everything would be sealed.

ANNE AIKMAN-SCALESE: Okay, thanks.

JEFFREY NEUMAN: Christa is asking a question, "Can an applicant withdraw their sealed bid for another reason other than being removed from the regular process, i.e., they spent their auction funds?" Christa, I think that anyone can withdraw their application at any point in time. So when it gets to the mechanism of last resort, they could always withdraw their application and say that they don't wish to be considered. We're just not letting them change the amounts. Does that answer the question?

Christa says, "Can they just withdraw it and then submit a new...? I think what you're implying, Christa, is that they could get to submit another bid. No, I think what we said to basically avoid – and I think it was Alexander that just talked about the portfolio and

the gaming that goes on that the Board expressed some concerns about, I think the only way to withdraw a bid other than these limited situations or JV being formed, etc. is to withdraw your application.

Any other questions or comments on that one? Paul is saying, "Right." Okay. Jamie says, "Or privately resolved which avoids revealing bid."

I know we spent a lot of time on this. I hope we're getting closer to something that we could at least put into the draft final report as a draft final compromise. So if we can work on this on Monday – I'm not kidding that we resolved anything today, what I'm saying it's hopefully this model brings us a step forward. So let's plan on starting this. I know that there is a Council call coming up.

On the predictability stuff, we're getting there on those questions. I think now it's a matter of the details, so I'd like to start some conversation on the list. Recognizing that there's not time now, please do look at – in addition to the revised section that was sent around, there's also the revised flowchart and the revised – what was that chart that we called it? Basically, the list of concerns and responses to those concerns, please do review that as well. I also want to get to Kathy's point and to mine as well for Any Other Business.

So the first thing is, we had a discussion on this before and raised it again in the e-mails and this is on the notion of repeating affirmations. So if you recall, we use certain affirmations more than once for different sections. Rather than completely restating the affirmation and risking being inconsistent between sections,

the first time we cite an affirmation, we put the whole thing in. And every other time that that same affirmation comes up, we basically put in a note that says, "We affirm affirmation number..." whatever it was, and cite to it as being applicable here, basically, something like that. So we have some notation in the subsequent section that that affirmation applies without restating it completely. Again, that's to make sure that we stay consistent and not risk changing the affirmation in one place and not the others. I don't think that happens with recommendations. I don't think there's a repeat of an exact recommendation, but if there is, I think the same philosophy would apply. Anne, go ahead.

ANNE AIKMAN-SCALESE: Just very quickly, Jeff. I don't know whether I just didn't really consider the implications before or missed the call or whatever, but sometimes I think there are people reading the draft report, focusing on just certain sections. It may be okay for us because we say, "I know what that section is. I'll click back to that or whatever and look at that affirmation." But for people who are just reviewing one section and they don't know where those are, you haven't really given them all the information they need to provide public comment. I know you're not going to make the report too long and everything or having consistencies, but could they at least have a link to the affirmation that's not being repeated but is highly relevant to the section?

JEFFREY NEUMAN: I can't answer that for ICANN Staff because they're the ones that are ultimately going to be putting together the report. I'd like to see

that too. I think that's a good suggestion. We'll have to explore the feasibility of that if we can.

ANNE AIKMAN-SCALESE: Okay. I just think that the public's reading it and they may be only caring about one certain section that they really need to know what those affirmations are. Thanks.

JEFFREY NEUMAN: No, I agree. Then let's go to – I know Kathy has an item for Any Other Business. So Kathy, you got the floor.

KATHY KLEIMAN: Great. Thanks, Jeff. I'm hoping you can hear me. The question about the way we're editing the "can't live with" recommendations and packets, we seem to have changed the way we're doing it. And I just wanted to point out that this is making life difficult and I'm not sure it's particularly fair. So I think we should go back to the way we were doing it, which is where people presented their "can't live with," as I remember it, and we reviewed them together in a meeting and we edited them together so we made sure we didn't change something that had a lot of work done with it. We seem to be doing it much more, Jeff, on the fly and in e-mail. I'm feeling like I'm involved in a World Wrestling Entertainment match and that if I do any other work that I'm going to lose the argument because I haven't gotten back in 10 minutes. I don't think that's a good way for us to get to review edits that are really significant. I think we should queue them up for a meeting as we've done with the other edits and I just want to make sure you agreed. Thanks.

JEFFREY NEUMAN: Kathy, we have reviewed all the “can’t live with” from packages 1 through 6. And for the ones that we could edit on a call, we absolutely tried to do that but then there were some takeaways, right? So the ultimate goal of the “can’t live with” is to find a compromise so that everyone can live with it. We’re on 7 now. I mean, I understand what you’re saying. And ultimately, everyone is going to see all of these again to do one final review to make sure that it reflects what has been agreed upon, but I don’t think we can stop doing work over e-mail. I’m not sure what ... It’s not really fair to those that can’t join calls to say that they have to make every change on an actual call. Now, when we go over the draft final version, we will be going through each section and so at that point, it’ll be the last call, “Did we get something wrong?” Sorry, is that Kathy or –

KATHY KLEIMAN: It is.

JEFFREY NEUMAN: Kathy, go ahead.

KATHY KLEIMAN: In the prior packets, we did have meetings where we talked about the edits. The others raised their concerns and we talked it out. Now we seem to be shooting it out on e-mail, especially for some of the stuff we’re talking about. A, it likely won’t take much time if we do it together. And B, you’re flipping it but we’re changing the

way we're working. If the shootout has to come by e-mail, you're causing an enormous amount of time for volunteers. Let's just use the old procedure. Let's talk about package 7 with the original wording and then talk about proposed changes. It's going to be a fair way to do it and likely result. As with the other packets that we worked with, it will likely result in the best outcome for everyone. Thanks.

JEFFREY NEUMAN:

Okay, Kathy. If you can help us cite to the examples that you think we need to discuss on a call, I think we could certainly do that. I know that a bunch of people have to leave now for the GNSO Council call. Let me just do a last call if there's any questions. Christopher says something about batches. I'll have to go back and read the chat.

Okay, everyone, councilors, enjoy the call. I think Paul is putting a message in there kind of laughing that he can now end his day, I think. So you councilors have fun and enjoy Project Management 101. Thanks, everyone.

Oh, sorry. Next call, Monday, July 20th, 15:00 UTC. Sorry. Thanks. Julie, you can go ahead. Sorry.

JULIE BISLAND:

That's okay. Thanks, Jeff. Thanks, everyone. Have a good rest of your day or night.

[END OF TRANSCRIPTION]