
ICANN Transcription
GNSO New gTLD Subsequent Procedures Working Group
Thursday, 09 July 2020 at 20:00 UTC

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ANDREA GLANDON: Good morning, good afternoon, and good evening. Welcome to the New gTLD Subsequent Procedures PDP Meeting being held on Thursday, the 9th of July at 20:00 UTC.

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

JEFFREY NEUMAN: Thank you very much, Andrea. Welcome. This is Jeff Neuman and this is our Thursday call. Before we get into the agenda, let me just ask to see if there are any updates to any Statements of

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Interest. Okay, I'm not seeing any hands raised or anything in the chat, so then let's go to the agenda.

The agenda for today is to review the updated Predictability Framework and also then get into discussions on the Private Resolutions/Auctions: Hybrid Proposal, etc. There has been a lot of traffic on the mailing list on that latter topic as well as on closed generics, which we are not going to talk about today but do continue the discussion on the closed generic issue on the list, please. Okay, any questions about the agenda or anything to add as Any Other Business?

Okay, I'm not seeing anything so why don't we get started. So if we can put the link to – there we go. And if we could put the link into the chat as well. Okay.

So what you're going to see in here are just an overview changes to the version that we've been discussing for a while now. And if you recall, there's the general recommendation and implementation guidance or plural of implementation guidance. I don't know what the plural is. And then there's an Annex that has the more detailed framework for discussion purposes and also that will go out in the Draft Final Report. So let's jump in.

Again, we're going to focus on the changes. So on the screen, it appears in green so we're going to focus on that. But if you have any questions or comments on other things in there, please do raise your hand and we'll try to get them answered. Okay. So the first thing we did is in response to some questions we got during the – really, a lot of it was during ICANN68 from a number of different groups and also from GAC members in particular, but

there were some members of the working group as well that wanted some additional clarity on the role of the Predictability Framework. And so what we added as a sentence to that paragraph in the bullet points – so the paragraph now states that “A framework for analyzing the type/scope/context of an issue and if already known, the proposed or required program change, to assist in determining the impact of the change and the process/mechanism that should be followed to address the issue.” Now we’ve added this next sentence, it says, “The framework is therefore a tool to help the community understand how an issue should be addressed as opposed to determining what the solution to the issue should be; the framework is not a mechanism to develop policy.” So that again is just adding more clarity to something that we’ve been discussing all along.

Any questions on the addition of that sentence? Okay, good. Thanks, Paul. Paul says he supports the change, so that’s good. Okay, so here what we did is we added some implementation guidance from the things that were in the Annex originally but the working group or members of the working group felt like some of these should be stated up front in implementation guidance as opposed to just being the words used by some members are buried. I wouldn’t say it was buried, but that’s fine to just move this more up front and center.

So this is the paragraph dealing with the SPIRT team, the Standing Predictability Implementation Review Team, which is – I’ll just read that paragraph: “To serve as the body responsible for reviewing potential issues related to the program, to conduct analysis utilizing the framework, and to recommend the

process/mechanism that should be followed to address the issue. The GNSO Council shall be responsible for oversight of the SPIRT and may review all recommendations of the SPIRT in accordance with the procedures outlined in the GNSO Operating Procedures and Annexes thereto.”

Okay. So this first implementation guidance, again, this originally came from the Annexes and from the subsequent discussion that we had when we created that chart that showed the concerned members of the community had and our responses to them. So this first one says, “The working group recognizes the challenges in determining the details of the framework and establishing the SPIRT and therefore emphasizes that implementation of both elements should focus on simplicity and clarity.”

Christopher, your hand is up, so please go ahead.

CHRISTOPHER WILKINSON: Good evening, everybody. Jeff, I just want to be on the record again on this point. I can understand how the SPIRT must be constituted. I hope that the community doesn't finish up calling it the “Holy SPIRT,” but what bothers me is that the SPIRT is a multistakeholder entity with representatives and participants from all the Supporting Organizations and Advisory Committees. But somehow the GNSO functions as basically one of the Supporting Organizations and Advisory Committees which oversees this group. And I have no intention of joining the SPIRT but if I was, I would be uncomfortable about the idea that the GNSO could overrule or question the results of the advice received from SPIRT. I think there's a flaw in that architecture, particularly as the

GNSO is increasingly perceived as a rather aggressive representative of interests of the contracting parties. I just want to put that concern on the record. Thank you.

JEFFREY NEUMAN:

Thanks, Christopher. I understand the concern. And again, we're going to focus on the representation in a little bit but I want to just go a little bit more into this.

There are a couple of reasons why this would be our recommendation is for this to be under the GNSO, the first being that the GNSO is the entity under the bylaws that's charged with policy development for gTLDs. I paraphrased a little bit. But essentially, that's the language.

Second of all, we are a PDP of the GNSO, and so our recommendations can only be "binding" on the GNSO itself. So we can't really have recommendations that require the ALAC or the ccNSO or the GAC to do anything. That's sort of outside our jurisdiction. So by definition, all we can recommend, because we are part of the GNSO, is that this be supervised by the GNSO. Now if there were ever a movement, a bottom-up movement to have this elevated a level, I think that would be a much broader discussion. But since we are just the PDP of the GNSO, our recommendations have to be limited to the GNSO. Just some more rationale for why that is. But I think putting aside the issue of who it reports to, I think we'll focus on the representative nature a little bit below.

CHRISTOPHER WILKINSON: If you allow me to take the floor again, very briefly.

JEFFREY NEUMAN: Sure. Yep.

CHRISTOPHER WILKINSON: First of all, as powerful institutions go, I would recommend to the institution a little more humility, a little more recognition of the extent of the interests that exist in ICANN that are not represented in GNSO. And also from what you have said and what is said elsewhere, we get the clear indication that the GNSO thinks that it could ignore the Board. The Board is the only entity which is actually elected. So I think GNSO – and from what you’ve just said, Jeff, I don’t like editing other people’s conversation. But from what you just said, Jeff, GNSO needs to look at its language because you’re looking increasingly as if you’re taking over from the Board. Thank you.

JEFFREY NEUMAN: Okay. Thanks, Christopher. Let’s move on to the second implementation guidance, which is that “ICANN Org should maintain and publish a change log or similar record to track changes to the New gTLD Program, especially those that arise and are addressed via the Predictability Framework and the SPIRT. The GNSO Council should be informed of updates to the change log on a regular and timely basis. Interested parties should be able to subscribe to the change log to be informed of changes.”

Any questions on that? I'm just noting in the chat. Donna says that reason why also the GNSO is because part of this is if there are policy implications and the GNSO Council needs to be able to step in, and that's correct. Paul agrees with Donna.

Okay, any questions on that last paragraph? Okay, I don't see any. Let's get down then to the next page. Okay. Oops, sorry. Scroll up a little.

So these are old comments. I'm not sure why they're still in the draft, some of the highlighted. Just looking at this now. I think when we included the term "appropriate refund," Kathy had raised the question. Wait, I'm sorry. Can you can you highlight which comment is related to this? Okay. This was a Staff. Emily had inserted this comment. I think our word came out on this was that the term "appropriate refund" was to refer to the schedule of refunds that are generally made available. So I'm not sure if we wanted to expand on that or not. Anyone have any thoughts? I think we could take this down a rabbit hole if we do anything else. Okay. All right, then let's go to the next one.

So the next one is just a note for all of us that we might need to add to Rationale 1 depending on some of the things, whatever, we need to include some more background of the source guidelines that are included in the Annex. So that's just a note to ourselves to make sure that we do that. Can you scroll down?

There's some changes that were made to the text just from I think the more grammatical clarity aspect. And then we get to last paragraph, which has a bunch of changes in it. But it says, "The working group spent considerable meeting time on the

Predictability Framework and the SPIRT. There were challenges in reaching agreement on the purpose, the remit, the guiding set of rules and understanding how concerns raised could be adequately addressed. The working group therefore recognizes that the Implementation Review Team, or similar, may also be challenged in implementing the framework and SPIRT. As the IRT considers implementation details, it should keep in mind that the solution should be as clear, simple, and precise as possible. The successful implementation of the framework and SPIRT is important in that it will build trust in the mechanism and of course, effectively support those that must utilize it. In the course of deploying the implementation materials, there may be a need to develop educational and/or explanatory text to better ensure a more complete understanding within the community.”

I’m going to stop there for a second. Again that paragraph really relates a lot to the chart that we had previously done of the concerns that members of the community had with the notion of a SPIRT team and this is our way of addressing it. And one of the key things that was in that chart to address it was the notion of developing educational materials.

Christopher, your hand’s up. I not sure if that’s an old hand or a new one. Okay, I’ll assume it was an old one. I’m seeing more people with their video so I might as well start mine, unless it ruins my connection.

Okay, so then if we go to the next paragraph. And for those of you – yes, I have a little ponytail in the back. Okay, Kathy. Oh, sorry. Kathy, go ahead.

KATHY KLEIMAN: Thanks, Jeff. I'm going to switch screens and go back to my earlier comment that we kind of went through. Can we do that? Can we go back a paragraph or two?

JEFFREY NEUMAN: Sure.

KATHY KLEIMAN: Sorry about that. But I think we missed something. It had to do the conflict of interest and the disclosure. Maybe it's been moved to another section. And the disclosure that if you're on the SPIRT team and an issue comes up involving your own company client or customer, you have to disclose it, that you're making a decision.

JEFFREY NEUMAN: Yeah. Sorry, Kathy.

KATHY KLEIMAN: So that wouldn't be a regular conflict of interest issue, an ongoing one. It has to do with the fact that you're working on something and bobbing an application you're directly involved with. Thanks.

JEFFREY NEUMAN: Yeah, sorry. Sorry, Kathy, yeah. That was moved in the Annex itself, so when we talk about it. So, hold on to that thought and we'll get there when we are in the Annex.

KATHY KLEIMAN: Can we accept to move my comment with that section? Because that's what it was referencing.

JEFFREY NEUMAN: I think you scrolled past it but we have it on our note, so just for the sake of time – yeah. Okay. Can we then go to the next paragraph? We'll keep note of it. We'll put a note. Yeah, I think Staff is putting a note there now.

KATHY KLEIMAN: Great. Thanks.

JEFFREY NEUMAN: Okay. All right, so then the next paragraph is “The Framework seeks to ensure that, where appropriate, ICANN Org works with the community in addressing issues and makes changes to the program with the necessary community input. At the same time, the Framework seeks to allow ICANN Org to make changes to its internal processes that do not have a material impact on applicants or other community members, change applications, or impact any of the processes and procedures set forth in the Applicant Guidebook. However, the working group believes that in support of transparency and accountability, changes to the program, including those non-impactful changes just described, should be tracked and shared with the community. In order to aid the Council in its consideration of changes, the working group believes the Council should be informed on a regular and timely

basis of any updates to the change log. Interested community members” – and this just repeats what was said above – “should have the ability to be kept up to date on the changes, potentially via some form of subscription service.”

Okay. Great. If we can then scroll down. All right, let’s go into the Annex itself now. Okay. All right, also there was an e-mail that was sent around in this. So when we get to part B, I think it is, we’ll go over the stuff that was in the e-mail. I had missed that call but listened to it afterwards and then drafted some notes on it.

So what we do here is we have a choice of what to put in this, and I think we decided on the latter, but I want to make sure. So it says, “Only the GNSO Council, ICANN Board or ICANN Org may...” and what I think we’ve come to a conclusion on is “initiate action on an issue.” That was more in line with what our discussions were. So I just want to double check. I’ll read the whole sentence. “Only the GNSO Council, ICANN Board or ICANN Org may initiate action on an issue or proposed program change that needs to be analyzed to determine in which category it belongs.” And of course, the categories are described below.

Does anyone disagree with that? Okay, so let’s take out the words “take action on.” I know this is a little tedious, but this is good because this is what happens when you get towards the end of the process, which we’re all looking forward to, I hope.

Okay. If we scroll down. Okay, so we defined the operational minor A cases. I don’t think there were any changes to this other than the bullet points. Okay. And the process. So what it says here is that “ICANN Org shall use the Framework to determine if

an issue falls in this category. All minor ICANN Org internal process changes may be implemented by ICANN Org without a need for consultation but shall nevertheless be reported on subsequent to their implementation in a change log, or similar.”

All right, now we get to B, which is the one that caused a lot of discussion on the last call. And I don't know ICANN – Steve, Emily, Julie, if you have a copy of the e-mail I sent around with the notes to give some examples. But as you look for that, what we say here is that ICANN – let me go to the description here. “These are changes to ICANN Org’s internal processes that have or are likely to have a material effect on applicants or other community members.” And then we include a couple of examples which I go into more detail in the e-mail. So I'm going to say that for a second. “Then the process is ICANN Org shall use the framework to determine if an issue falls in this category. ICANN Org must inform the SPIRT of issues arising in this category and the SPIRT will have the option to collaborate with ICANN Org as a solution is developed. All non-minor changes to ICANN Org’s internal processes must be communicated to all impacted or reasonably foreseeable impacted parties, prior to deployment of the change, and shall be reported on subsequent to their implementation in a change log, or similar.”

So this generated a long conversation on the last call with some concerns. So I just want to go over this e-mail. Yeah, okay. Some examples just flushed out and why – I'm trying to remember exactly what the discussion was. I think it was that the Council should be presented with these as opposed to ICANN Org just being able to implement them. And of course, the Council always

has an option to inject itself into it if it's got any questions. But once we go through these examples, and I'll go through the text to the e-mail, you'll see why paragraph B is worded the way it is.

So, the first example, ICANN appoints a new provider pre-delegation testing. The new provider system requires the use of certain authentication mechanisms that are proprietary in nature and therefore could require backend operators to incur some development in configuring the systems to build this one-off solution. This type of change could cause both development time and money for backend service providers and therefore it is a non-minor change. One, ICANN Org presents this change to SPIRT to collaborate on a solution. Together the SPIRT and ICANN Org develop a solution that requires a new provider to develop an open source API that is easily accessible by backend providers and save significant time and money. Three, the SPIRT team recommends sending out notice to all applicants to inform them of a change and to see if there are objections from any of the applicants." A second example that could be in this category. "After all applications are submitted, ICANN changes this naming service portal to have the ability to add applicants and applications into its workflow. ICANN now wants to require that all of communications with applicants go through this new portal. Because of switch over to the new portal, it turns out that the portal requires manual re-entry of all application section by applicants. In addition, the cut over will require a hiatus of four weeks to the program."

Number one, ICANN Org presents this change to SPIRT to collaborate on a solution. Two, together, SPIRT and ICANN figure

out a mechanism that would enable the smooth migration of applications to the new system but perhaps without some of the normal NSP (that's the naming services portal) functionality to start with. This would save both time and money and only cause a week of stoppage to the program. Together the SPIRT and ICANN Org create a document to send out to all applicants describing the changes the impact and asking for additional feedback.

As you can see from these examples, they are not policy but are truly operational. In 2012, this would have been done by ICANN alone without any consultation of members of the community. Applicants are forced to accept the changes and absorb all of the costs and delays. A SPIRT team of operational experts could add significant value, but the GNSO Council itself would not. The GNSO Council would be informed through the change a lot of what was happening. It would receive information on all the decisions and perhaps we can create a right to object. But putting the recommendation for Category B the Council does not make sense. This is my own view, by the way. The Council has no expertise in these matters. It's akin to asking a lawyer to fix an issue with your toilet or sink. Sure, there may be a couple of lawyers that could do it, but I would venture that to say that most of them are not likely as skilled plumbers and requiring a set of lawyers to approve a plumber solution would not make sense. Scroll down a little.

Got an e-mail for Karen. So the GNSO Council will be informed through the change a lot of what was happening and will receive information on all the decision, and perhaps we can create that right to object. But again, putting the recommendations to

Category B to the Council does not make sense, the Council has no expertise.

So this is a response to the issues that were raised on the call that was saying that the GNSO Council should, even for those things within B be the ultimate decision maker. So let me scroll to the chat here. I'll scroll up a little bit because there's apparently a change.

Paul says, "But only if the Council knows about it." So that was in my example. "So could we say ICANN Org must inform the GNSO Council and the SPIRT and this is arising in this category, and the SPIRT will have the option to collaborate?"

Why don't we say instead of making the ICANN Org's obligation, it should really be the obligation of the SPIRT to inform the Council of what it's working on? I think giving another ICANN Org obligation, especially when there's a team that "reports" to the Council, I think, is a little much but there probably should be a reporting back function of the SPIRT team to the Council anyway.

Anne says, "Plus one to Paul's change. But we may need to modify some language on page 3 of the main Predictability Index text if we go this direction. This is because on page 3, we say the following, which conflicts with the language of B currently under discussion. 'The Framework seeks to allow ICANN Org to make changes to its internal processes that do not have a material impact on applicants or other community members, change applications, or impact any of the processes set in the Applicant Guidebook.'" We'll go to that section in a second. Let me just go and finish with the comments.

“The change log does not inform the Council of what is happening, it informs the Council of what has already happened.” Paul is saying, “Okay, it’s fine.” I think that’s in reference to the SPIRT team keeping Council in the loop. Anne says, “That’s okay,” as well. Good.

Okay, so can we go to the section that Anne has pointed out, which now is conflicting, which is page 3 of the main Predictability Index text? Anne, do you want to get in the queue and just point out where that conflicting text is? Okay, I see it. All right. So it says, “The Framework seeks to allow ICANN Org to make changes to its internal processes that do not have a material impact on applicants or other...” Right. So, that is for ICANN Org. That’s describing Category A. Category B, it has to work with the SPIRT team. Anne, do you want in the queue, please, just to explain what might be missing?

ANNE AIKMAN-SCALESE: Yeah, I think it’s my [error] job. I think that if that language only applies to Category A then I need to look at what the text says in relation to Category B before we get to the Annex. So you’re saying that the text that I picked out is only Category A?

JEFFREY NEUMAN: Yeah. We didn’t really create another sentence to describe Category B in the rationale.

ANNE AIKMAN-SCALESE: For some reason, I was thinking that that text was relative to the goals of the entire Predictability Framework.

JEFFREY NEUMAN: We can we can work on that to make it consistent.

ANNE AIKMAN-SCALESE: Yeah. I don't have a problem with how this has changed now pursuant to Paul's suggestion and your amendment to his suggestion about notifying Council. I don't have a problem with that. But I just think it needs to be checked as to whether the text is consistent because I think we described it as a method of dealing only with changes that have no material impact. So yeah, if you could just take a look at that language, it would be great.

JEFFREY NEUMAN: Yup. Sounds good. All right, I'll wait for – I don't know if Steve/Emily, whoever's got control the screen wants to make – okay, good. All right, so then part C then, which I don't think we got to on the last call, was for a new process or significant change. This is not internal processes anymore. We made that clarification. It could be internal but it's not limited to just the internal. So there are two possible types of changes that could be in this category. The first is new processes that are likely have a material impact on applicants or community members. And the second type are changes to ICANN Org's internal processes that have a significant impact on applicants or other community members and is expected to... And then it's one of those listed items. So if there's a change to ICANN Org's internal processes

that is likely to have a result in suspension of a round, the delay of a future round, delay in processing applications by more than 30 days, target specific application types. I'm not sure if there's more in the next page. No. Okay, so if it's one of those types of changes, so if it's one of those two categories of changes and that second category includes four sub categories then it would go through this process that we're going into now, which says, "ICANN Org must inform the SPIRT of issues arising in this category. And the SPIRT will have the option to collaborate with ICANN Org as a solution is developed. The GNSO Council or ICANN Board may also initiate action on an issue they believe to be in this category and request assistance from the SPIRT. Once changes are agreed, changes to be communicated to all impacted or reasonably foreseeable impacted parties prior to the deployment of the change and shall be reported subsequent to their implementation in a change log."

Does anybody have any questions on this? Again, these are not policy changes. Okay, these are new processes that are added or internal processes that are changed to have one of these four impacts.

Okay. And then the final category of changes are those that potentially have a policy implication. So we don't know from the outset that there is a policy change. If we knew from the outset that it involves policy and of course the GNSO Council can pull up any issue that it believes does definitively have policy ramifications then – so if we don't know, if we need to examine an issue more closely to see if there are policy level changes then the following options that are listed in these bullets could be followed.

So again, that the purpose of SPIRT team here, if the GNSO Council, ICANN Board or ICANN Org want the SPIRT's input is to determine whether there are policy impacts of the change on its entirety or on parts of the proposed change. And then, of course, if there are policy aspects that would need to refer those to the GNSO Council.

I want to stop there before we go through the options. I want to specifically just see because I know that there was discussion that says, well, if it's possible policy then it shouldn't go to the SPIRT in the first place. But the reason it's going to the SPIRT is because it's not known at the outset that there is a policy impact.

Okay, then the options could include – and this is just an illustrative list – recommending that the change is not significant, meaning that it's not likely to have a material impact on an effective party and that the proposed changes consistent with the existing recommendations and ensuing policy implementation. That's one outcome. The second outcome could be that recommending that additional consideration that a community is needed, in such a case, the issue would be referred to the GNSO Council, and then the Council would decide, summarize basically what it wants to do. And then it says, "Under extraordinary circumstances, there could be a recommendation at the New gTLD Program be halted for communicated amount of time. In such a case, the triggering mechanism and rationale for recommending this extraordinary action must be provided." And again, the recommendation would be provided to the GNSO Council and the GNSO Council could then step in.

Okay, let's scroll down. Okay, can we scroll up for a second to distinguish between the top category and this one? Because I think we might now have ... Can we just scroll up to the ... Yeah, this should say, "Possible policy level changes to existing." It should be "to existing processes," because the next one is for new proposals.

Okay, so this is new proposals that may have policy implications. The other ones were changes to existing. This is new and these are new mechanisms that may be considered to be – oh, I'm sorry. Kathy, go ahead.

KATHY KLEIMAN:

Okay, great. Can we go back up to the last paragraph of possible policy level new proposals, #3? All recommendations are subject to the review and oversight of the GNSO Council who maintains the discretion on whether or not to adopt the recommendations made to the Council. What if a recommendation is made to somebody else and the Council decides it's actually policy? And so the Council should be able to act on all recommendations here and pull something back. I think we intend it but I think we should put it in the language and pull something back if it thinks the SPIRT has decided that something is not policy that maybe it is.

JEFFREY NEUMAN:

Yeah. If you recall from the chart that we had, all recommendations do go to the GNSO Council on this category and it's up to the Council. Go ahead, sorry.

KATHY KLEIMAN: So all recommendations are subject to the review, you said, of the GNSO Council who maintains the discretion on whether or not to adopt the recommendations. Period. Because you're saying all recommendations go to them. So it's not a matter of kind of sorting where the recommendations go to. So maybe made to the Council is redundant then.

JEFFREY NEUMAN: Yeah. In this in this category, that's right. I don't think we need to put the words "made to the Council" in there. I think it was – yes, right. Above it was appropriate in the bullet point but here, yeah, I think it is redundant.

KATHY KLEIMAN: Okay, because as you saying, they're all going to the GNSO Council. Good. Thanks.

JEFFREY NEUMAN: Right. But in some cases, if it was initiated by Org or the Board, the Council does not have to affirmatively say yes. They could pull it in but the Council is always made aware and has the opportunity to step in and change something or do all that.

KATHY KLEIMAN: Okay.

JEFFREY NEUMAN: So let's scroll then to #3. These should be pretty similar to the one above, but these are just new proposals. They're not changes to existing implementation. So something here might be development of a new rights protection mechanism, development of a new contract specification, creation of exemptions to the Code of Conduct. I mean, anything imaginable could be in this category.

"If the GNSO Council, ICANN Board, or ICANN Org initiate action on an issue that they believe to be in this category, the framework will be used to conduct an assessment and recommend the mechanism by which the solution will be developed. Option could include..." Okay, so here there's a wording – sorry. Can you just go up a little? We need to choose between the framework will be used to conduct an assessment and the framework will be used to screen if there's a policy implication. I think that alternate text is more appropriate. But I want to get some input on that. I think that was suggested by members of the group anyway, so anyone opposed substituting that language? Okay, I'm not hearing any. Let's go with that alternate language.

Sorry, someone's mic is open. Does someone want to get in the queue?

CHRISTOPHER WILKINSON: I'm in the queue. Jeff, but my mic is not open.

JEFFREY NEUMAN: Oh, okay. Go ahead, Christopher.

CHRISTOPHER WILKINSON: I don't want to be a party pooper but look, first of all, vis-à-vis, the Staff. These screens are almost illegible. The font is far too small to be able to follow the discussion in any reasonable detail.

Secondly, without calling rank but I do have a long experience of public administration and I can assure you that it is extremely difficult in the edge cases to distinguish between policy and procedure. And from what I've seen from this elaborate text, you won't succeed. There will be issues which fall between the cracks and some of which, which are big issues that will not have been foreseen. I'm quite reluctant to waste time on the degree of detail that somebody has drafted in these texts.

And finally, I come back to my main point in an earlier statement. The system is biased. If the GNSO participants in the SPIRT don't like what SPIRT wants to do, then all they have to do is to block and to refer it to GNSO where they are reasonably confident that GNSO will support the contracting partners' interests. That is a bias in this whole architecture which I think has to be corrected. And my strong advice to all the Advisory Committees and other Supporting Organizations is not to accept that A) they participate in the very delicate and difficult decisions about changes and they have to accept that the GNSO Council can rule or overrule the results of their work. This is a serious problem, Jeff. You cannot build into the decision-making process of the PDP that kind of bias. Sorry.

JEFFREY NEUMAN: Okay. Thanks, Christopher. I think the relevant question here – and we spent a lot of time talking about the issues from the last round and changes that were made and the lack of guidance from the community and the lack of participation – the relevant question is, does this make things better? And if the answer is yes then it's worth pursuing. Is this perfect? Absolutely not. Could this be improved? Absolutely. But at the end of the day, if we're in a better off position then I think this is worth pursuing.

CHRISTOPHER WILKINSON: Jeff, yes and no. On the one hand, you're right. That is worth pursuing. But on the other hand, the extent of the bias in the PDP process is such that many, many outside participants are discouraged and are actually quite convinced that it's a waste of time. And if I scroll down the participants, the number of ccTLD or GAC or even SSAC participants, as far as I can see, is on the fingers of one hand. You have created the system where most people feel that they would be wasting their time because of this bias that I have described. Thank you.

JEFFREY NEUMAN: Thank you. Thank you, Christopher. Cheryl, do you want to address?

CHERYL LANGDON-ORR: Yeah, I do. I just wanted to show Christopher that his concerns that he has articulated, not only in today's call but that in a number of previous calls and interventions and written work, are clearly heard. They are not, however, as widely held in the PDP Working

Group membership as he would like. I would suggest that he needs to rest assure that we have heard his harbingers of doom and despair, but that we are working within a framework to improve predictability and to minimize risks over sides, and to be honest, most of us think great errors that occurred in the last round. Can we be totally future-proof? No, but we will be making a best effort. And those of us who wish to continue to contribute to making that best effort will do our best to do so. And the same has gone along for any of the activities in any of the silos, be they AC or SO, ICANN-wide. I'd really look forward to seeing Christopher's views and influence in future holistic review of ICANN because that's what it will take to ameliorate any of the risks. Thanks for indulging me, Jeff.

CHRISTOPHER WILKINSON: Cheryl, I think that the ALAC, not the At-Large, but the ALAC representatives need to work a lot harder to achieve works that Cheryl has just described. Thank you.

JEFFREY NEUMAN: Okay, thanks, Christopher. Let's focus on the language here. The options here are very similar to the options that were in the previous process, which again is, the first option is that the SPIRT team may find that – it believes the proposal doesn't rise to the level of policy and that the new proposal is consistent with the existing recommendations, or it may find that additional consideration is in fact needed and should be referred to the GNSO Council. Or the third is that under extraordinary circumstances, there could be a recommendation to the GNSO

Council but the New gTLD Program could be halted for a communicated amount of time. In such a case to triggering mechanism and rationale for recommending this extraordinary action must be provided to the GNSO Council for its consideration. That same as above, the same sentence. All recommendations are subject to review and oversight of GNSO Council who maintains the discretion on whether or not to adopt the recommendations. And then we removed, pursuant to Kathy's recommendation on the last one, the word "made to the Council." Actually, I think Kathy made that change. Good, thanks.

Okay, let's then scroll to the next. Are we on the Annex? Yes. This is the Annex. No, sorry. This is the language, more explanatory language. We did a chart. I know there was a note for us to make changes in the chart. And we did for B. We noted that the SPIRT is in fact involved for B. And then we also put in the notion of recording everything in the change log, and then we will have to reflect the new titles of C and D. Sorry, D and 2. Can you scroll down a little bit? Sorry. Yeah, let's make sure. Just put a note to ourselves in those titles. Just be D because of its changes to existing as opposed to new.

Okay. Can you scroll down? Okay, so there have been no changes thus far to the recruitment section of here. And again, if you scroll down, the composition is the same as we've been discussing all along. Keep scrolling. Okay, this might be taken care of now from what we've already discussed but let's make sure. What it says here, "The SPIRT shall serve as the body responsible for reviewing potential issues related to the New gTLD Program, to conduct analysis." Okay, then we have who can raise

an issue? I think, Kathy, by doing the work that we've just done defining the A, B, C, D, and E, I think we have addressed your comment hopefully.

KATHY KLEIMAN: Does anyone disagree? But I think we've done a lot of work since I raised this issue. So thanks, Jeff.

JEFFREY NEUMAN: Yeah, sorry. And ICANN – Steve and Emily are reminding me that we may have moved this from the Annex into the actual text, so now it doesn't say an Annex. So this is or was the Annex, but now because of I think some discussions we've had, we put it into the main body because we want people to focus on it as opposed to having to go to a different section or an Annex to look at it. So I apologize. That's my mistake. So there is no Annex now. This is all described in the actual section. Okay.

KATHY KLEIMAN: Let me ask –

JEFFREY NEUMAN: Yeah, you go and then after, you, Steve. Okay, go, Kathy.

KATHY KLEIMAN: Is the place to raise the conflict of interest issue from earlier?

JEFFREY NEUMAN: We'll get into the makeup. I think that's a little bit below.

KATHY KLEIMAN: Okay, thanks.

JEFFREY NEUMAN: Yeah. We'll get there. Steve, go ahead.

STEVE CHAN: Thanks, Jeff. This is Steve Chan from Org. Maybe muddy the waters further or hopefully provide clarity. So as it stands now, the section that describes the breakdown and types of the buckets, A, B through E, and then also the composition of the SPIRT are all, at this point, part of the Annex. The way that the section that describes the recommendations and the rationale, those refer to the Annex, which is what we're staring at now. So for the moment, at least, it still is contained in an Annex. If the working group wants to integrate all into a single section, we can do that. So, for that part, that's just perhaps a bit of clarity.

What I wanted to actually raise my hand for and explain here is that despite the fact that this text is all showing at the screen, it's actually because it was a complete mess before to be able to try to do everything in red line. What we've done here is to reorder the elements in this section and match the wording of that comparison table that, I believe, it was actually Jeff that developed. Whereas the IRT guidelines versus what we envisioned or what the working group envisioned for the SPIRT, how it operated, how it was composed, its decision-making, all

those elements were captured in that table that Jeff prepared and shared and went over with the working group. And so it's reflected in that order and with that wording that was contained in that table. And so it's more of I guess an extension of that table and then captured here for a greater clarity, I suppose. So hopefully that context helps about the changes and the ordering. This section actually does have some updates. It's just not clearly reflected in red line because of the substantial moving around the things rather than substantive changes.

JEFFREY NEUMAN:

Okay, so then we should probably go into this in a little more detail than just to make sure we've covered everything. So can we scroll up then just to review? Okay, so as Steve said, what we did and when I drafted it, this is essentially in the format now of the same way the IRT rules are. So if you went to the IRT language, it'll be in this format. It's an outline form, but essentially the same as the IRT and where there were differences between a regular Implementation Review Team, those were pointed out in that chart that we did. So let's go through it then.

So this is basically, "The SPIRT volunteer recruitment process should take into account what areas of expertise are expected to be needed." This is the exact same, similar language as an IRT. I don't think any of this actually in this section differs from an IRT except part D which is, "To the extent feasible and applicable, composition of the IRT should be balanced among stakeholder groups." That part is actually the same. But this here, "In addition to the usual ICANN stakeholders, the IRT should also contain prospective applicants for new gTLDs and others knowledgeable

and experienced in the various new gTLD processes and procedures.” So that’s the only added part to regular IRT recruitment section. Donna, go ahead.

DONNA AUSTIN:

Thanks, Jeff. I’m just conscious that we’re creating quite a process here. And I’m wondering whether it’s possible to map that in some way and maybe put potential timings on how long it would take to get through the respective hoops that we’re creating? Because I guess one of the concerns I have is that my understanding is that this was intended for predictability but also some efficiencies in making changes to procedures and not cause delay. So I think it will be helpful if we could see this captured in a single screen with some kind of process mapping and an understanding of how much time each part of the process is intended to take. Thanks.

JEFFREY NEUMAN:

Thanks, Donna. Sorry I had my mute on. I think we can. I think the recruitment and the composition would actually not be part of that timeline because in theory that would take place when the guidebook is developed. So I think where the timeline would come into play is at the point that an issue is raised. So I think we have some of that already in a chart that’s been developed, but I think trying to map it out in terms of a timeline from that issue being raised is a good idea. Anne, go ahead.

ANNE AIKMAN-SCALESE: Thanks, Jeff. Can you point me to the text that repeats in terms of the composition of the SPIRT and the representativeness to the

text that repeats the IRT guidelines, stating that invitations will be sent to the working group?

JEFFREY NEUMAN: I think if we have that chart accessible. No, the chart, the one I did in the Excel spreadsheet I think it was in. Do you guys have that? Sorry, Steve, Julie, Emily. I know we're springing this on you. They can pull it up. But that shows exactly word for word. Steve is saying his access has been denied. What? Sorry, Steve just texted me offline. Okay, so, Anne, there may be – because I might have done it in Google Doc under an old account name because I recently switched, so I'll send that around after the call if that's okay.

ANNE AIKMAN-SCALESE: So is it something that's linked in to this document?

JEFFREY NEUMAN: Yeah, we just did that.

ANNE AIKMAN-SCALESE: Where's that link?

JEFFREY NEUMAN: It's not linked to this document because we copied all of the text and put it in here. So the document itself was just the comparison of the wording in this versus the wording of the normal IRT

language. But there may be an issue because I've switched e-mail addresses, and so I need to work that out, apparently.

ANNE AIKMAN-SCALESE: Oh, I'm just looking for within where we pasted that text that talked about – if in fact you took all that language.

JEFFREY NEUMAN: Yeah, 1C says, "The call for SPIRT volunteers should at a minimum be sent to all members of the PDP Working Group and IRT..." and then it goes on from there. Is that the language you're looking for?

ANNE AIKMAN-SCALESE: Okay, it's up above then, yeah. I think it's a little odd that we have this language and composition of the SPIRT that says that the SPIRT team should include at least one participant from the original PDP WG.

JEFFREY NEUMAN: Yeah. That's in the IRT language itself.

ANNE AIKMAN-SCALESE: It is a little strange.

JEFFREY NEUMAN: Understood. But again, that's a copy, word for word of what's in the IRT.

ANNE AIKMAN-SCALESE: Okay. All right, thanks.

JEFFREY NEUMAN: To work forward, we added the PDP. We said one participant, not only from the original PDP Working Group, but we also say one person from the PDP Implementation Review Team because those could be different. And this is after an actual Implementation Review Team. So other than that, it's word for word.

ANNE AIKMAN-SCALESE: Okay. All right. Thank you.

JEFFREY NEUMAN: Okay. Can you scroll down? I think what we should point out are the differences to the IRT. So I think here's one other difference. The next difference there, 2C which says, "The SPIRT should be open to all interested parties" – that actually is normal, but what it says here is that "Membership criteria should identify knowledge, experience, responsibilities to their respective organization, rules of engagement," and here we say a Statement of Participation. That will come up again later because that's not just your normal Statement of Interest. This was and this should encompass the point that Kathy brought up and when we talk about Statement of Participation. Let's say if you are part of an application or multiple applications, etc., that's going to be encompassed in the Statement Participation. And then D is also new because IRTs generally don't have a fixed term. It's from the start of the IRT until

the end. But this is a Standing Panel, so by definition, you need to have terms.

Okay, I see Paul and then Kathy in the queue. Paul, go ahead.

PAUL MCGRADY:

Thanks, Jeff. Here's a super dumb question. Is there a limit to the number of people that can be on the SPIRT because it says it's open to all parties? I'm sure that must have already been asked and answered somewhere in this document. For the life of me, I can't find it. Thanks.

JEFFREY NEUMAN:

Yeah. It has been discussed. I'm not sure it's inserted in an explicit way other than what the normal IRT language says, which is it's silent on whether there's a limit. It just says it's open to – if you can scroll up a little bit more. Yeah, there you go. It just says, "At a minimum who it should include," it doesn't say a maximum. Now, if the Council wants to have a maximum, I suppose it could do that because it could do that with any kind of IRT if it wanted, but we don't specify it here. So it's silent. Does that make sense?

PAUL MCGRADY:
play.

So it could be 5 or it could be 500? It just depends on who is out

JEFFREY NEUMAN:

Eventually, the GNSO Council will likely write up what they look for in members of the SPIRT, and perhaps the IRT may further

refine it. But in theory, there would be some expected experience or knowledge or something like that that would be included, but that is not for us to determine at this point.

Right. Cheryl says it would be in the charter. Yeah, right. This is not the Charter itself. This is just the general definition of what's normally in a IRT and some specifics of things that we recommend for the SPIRT, but ultimately a charter would need to be drafted.

So we have on here for length of term, there is a two-year term that can be renewed for an additional two two-year terms. So that's a maximum of six consecutive years. And then there are some additional language on staggering, etc. And so it says to facilitate this, at least half of the SPIRT appointee will be appointed for an initial term of three years, and then subsequent terms will be for two years.

Okay. Then we go into the Statement of Participation. Kathy, since you're in the queue anyway, this is the part that should cover your disclosing of information. So it's kind of apropos that you are in the queue anyway, so go ahead.

KATHY KLEIMAN:

Great. Thanks, Jeff. I don't think it does. So the Statement of Participation sounds like our Statement of Interest. So up front, you kind of say in general who you represent. So I'm with a law firm or I'm with so and so. But what I had proposed was an actual kind of conflict of interest flag for the purpose of transparency. So the SPIRT is going to be going on presumably for many years and

the same people may be on it for many years. So their Statements of Interest will be to the side. But if something comes up and it's an application that you're being asked to make a decision on that you want to be yours – it's your law firm, it's your company, it's your client, it's yours – I think you should have to flag it because some of these decisions may be narrowly tailored to specific applications. And the public, the GNSO Council and the other SPIRT members should absolutely know if you have a stake in this. We may even want to consider recusal. But I think it has to be much more active than a Statement of Participation you may have written five years ago. Thanks.

JEFFREY NEUMAN:

Okay. Thanks, Kathy. There is a little bit more information in the conflict section that's below. Can we scroll to that? We may not have all the detail you were just talking about. We could add to this. There's one thing that came to mind, Kathy. So if you've already disclosed that you work for or you're employed by or connected to a particular application, you've already disclosed that, you're required to keep that up to date. If something involves, let's say, only your application, that would certainly be a conflict, as you stated. But in general, if something involves all applications, would you envision that as a conflict?

KATHY KLEIMAN:

It involves all applications. I thought that we talked about many of these examples. No, I think that would be covered by the Statement of Participation. But when we talk about many of these examples, they involved classes of applications. And yes, I think

you should disclose again because people do forget after a number of years and it should be known if you're making recommendations on your application. Thanks.

JEFFREY NEUMAN: Thanks. Sorry, just checking to make sure if I was off mute. Thanks, Kathy. I've noticed that ICANN sent out just a little bit ago asking for people to update their Statements of Interest. I think that's a good practice, it probably should be done annually sent out but I think absolutely, there should be a requirement to continue to keep your use case Statement of Participation up to date.

KATHY KLEIMAN: Jeff, if I might, I am saying something different. That when an issue comes up, that does not involve the entire world of applicants or the entire world of community, if it involves 10 or 20 or 100, if there were 20,000, you'd have to flag it again. You can't rely on the public to go to your Statement of Participation, you should tell the other member. It's a much more active thing than you're rephrasing, I'm afraid. Just like every case comes up, then you have to handle that recusal or conflict of interest issue separately. But I look forward to hearing what other people say. Thanks.

JEFFREY NEUMAN: Okay, thanks. Let's go to Justine and then Paul.

JUSTINE CHEW: Thanks, Jeff. I had a different question on the composition of SPIRT so if you want to let the other speakers get through this particular item first, that's fine with me. Thank you.

JEFFREY NEUMAN: Okay. Thanks, Justine. Keep your hand raised so we remember to come back to you. Paul, is it on this subject here?

PAUL MCGRADY: Yes. Thanks, Jeff. All right. So on the issue of conflicts of interest. Would the disclosure be for purposes of discussion of the topic like, "Hey, here's a topic, it could affect a client. Just say no," then that person would continue on in the conversation. That makes sense to me because that person may know the most about the topic, if the issue is going to affect something that they're working on. But then would recusal kick in when it comes time for a consensus call? Is that when recusal will kick in? That makes sense to me. We don't want to silence people's voices if they have information to share. We never say vote. So when it comes to reaching the ultimate conclusion then self-recusal makes sense. I'm sorry, this is so choppy of a comment. Thanks.

JEFFREY NEUMAN: Thanks, Paul. I understand what you're saying. So we do say in here that the term conflict of interest will not pertain to the actions in the SPIRT members, but that does not imply that there may not be circumstances whereby a member might feel the need to abstain from the SPIRT decision. So what we're saying here is and I think what Kathy was saying is that it's really important for

consistent disclosure. When an issue comes up, it may impact [applications] are tied to as opposed to one that applies to all. Again, because the recommendations of the SPIRT team are not binding, you have that disclosure requirement but not for recusal unless it feels like they need to. So that's [inaudible] there. Hopefully that addresses your question.

Okay. Let me go to – Kathy, you have a new subject or something new?

KATHY KLEIMAN:

Yeah. I still think the language is focused on the Statement of Interest and not the flagging. I'm sorry to keep us on this but not the flagging that it's issue number 100 before the SPIRT over three and a half years and letting the other SPIRT members know, letting the people following the group know that you have an actual interest. I'm not saying conflict, I'm saying interest in the outcome of that decision. So everyone knows up front. I think it's kind of that ongoing disclosure requirement that Cheryl put in the chat. I don't think we've got it here yet. I don't think we've embodied that yet. Thanks.

JEFFREY NEUMAN:

Okay. Well, we'll look at the language Cheryl had updated but I understand the point, though.

Okay, Justine. Steve has his hands raised too. Go ahead and then I'll come back to Justine.

STEVE CHAN:

Thanks, Jeff. Your audio's a bit choppy, just an FYI. I'll just make a quick comment. So I highlighted the text that's copied now and it speaks to some degree to what Kathy was just mentioning in regards to disclosing interest as it relates to the issues. I guess, why I raise this is that this can be thought of as in context of the start of every call within the ICANN environment where we ask for participants to raise issues or updates to their SOIs. So keeping your SOIs updated in the context or in combination with that constant refrain in just about every single working group, I was wondering if that might cover. And you're saying it doesn't, but I just want to raise that part of it. That does not why I actually I raise my hand though. I'm just scrolling up real quick.

So there's an element in here that might end up having been a holdover from a different composition of the SPIRT. So this length of term element I think was probably more relevant when the SPIRT was envisioned to be a representative and assigned membership. What it seems like it has trended towards is now an open model, which in that case, I'm not entirely sure our length of term is appropriate, where seemingly anyone can participate as long as they complete a Statement of Interest or Statement of Participation I think it's now called. So I just want to flag the working group's attention to the length of term and whether or not that's still sensible with an open membership model. Thanks.

JEFFREY NEUMAN:

Thanks, Steve. Justine says that that her comment was going to be as well. I think we should probably put a [inaudible] would apply if the GNSO does limit membership. We're not offering or we're not saying any of the membership should be limited. We're

sort of silent on that. I don't think we should lose this completely and take it out. I think we should have it as you have there, but sort of maybe in a footnote or something, that this will have the count to limit the membership of the group.

STEVE CHAN: Jeff, I'm not sure if it's just me, but your audio is getting progressively more choppy.

JEFFREY NEUMAN: Sorry about that. I'm now because my EarPods ... Hold on. It works now. All right, is this any better?

STEVE CHAN: So far so good.

CHERYL LANGDON-ORR: It is. Thank you, Jeff.

JEFFREY NEUMAN: Sorry. I had to charge my EarPods for a minute. Okay. So I think you've got the note in there. Justine, did you want to add to that as well?

JUSTINE CHEW: Yes, please. I was just trying to go back to that a little bit further up to see if – no, not down but up – there was inconsistency between – well, what I was trying to get at is since the membership of

SPIRT is now open, then I wonder if references to appointee is still relevant. My question also goes to the point that Steve has raised with this, which is the length of term because that's also where the word appointee was spotted earlier. Thanks.

JEFFREY NEUMAN: Thanks. Definitely you are correct that if this does go in group then it does [inaudible] either length of term or appointees but it may be that the Council or even the normal IRT after us may decide that a limited group is better. So I think we should make the note that this applies if, I should say, if not open. So, Steve, it would say same issue here if not open.

JUSTINE CHEW: If we could just check ... Sorry. Just to add. If we could just check through the document to see if the word appointee appears anywhere else. Thanks.

JEFFREY NEUMAN: Thanks, Justine. And it's not just if the word appointee, it's anywhere that any rule in here that looks like it's only applicable if there's a limited group. So I think that's absolutely the right thing to do. Cheryl, sorry, go ahead.

CHERYL LANGDON-ORR: It's okay. Trust me, I will jump in if needs be. I'm going to make, first of all, a not actually tongue in cheek suggestion that I very much hope. And this is a genuine hope, that Justine and Paul and

others can help us all go through a final document with the fine tooth comb and look for such inconsistencies. But if you note any inconsistency like that and you can put it in a comment, it will help us as we go through these things.

Why I put my hand up, however, was to now just start thinking about the trust we will have in the normal IRT to follow and indeed the Council even when it decides to charter a SPIRT. This is not going to be, at least, the Council's first rodeo. So I'm not sure beyond the very good general implementation guidelines that I've seen so far that we need to get into the minutiae of the "if, then, but this" type thing needs to happen. So on things like length of term, I would probably stay silent but I would certainly say things like – depending on the choice of model, the following things need to be considered and keep it at that slightly higher level for this documentation. That also takes care then of rounds and wins and [hows] and other things. Thanks, Jeff.

JEFFREY NEUMAN:

We can certainly simplify things a little bit in the section if we did things like that. I do think that makes a lot of sense, except for areas that we want to make sure get covered. So Justine says that works for her. Paul, and others. First, everyone should go through this because we're running up at the end of time anyway. Everyone should go through this detailed document. We may make some recommendations that certain sections might not be needed. The reason why all this text was here was because of concerns that we were doing something very different than a normal IRT, but as the chart had shown a few weeks or even months back, there's not much difference here than what is in a

normal IRT document. So that's why it goes in this length but there may be areas certainly that we can simplify, as Cheryl has stated. Cheryl's right, because then we're going to be doing a lot of if, thens and have lots of nots.

Okay, we are up against time. I'd really like to have a good discussion on these elements, this really specifics on the e-mail list prior to the meeting so that at the meeting, we can shore up any final issues with this. I mean, you've seen all of this already in terms of the substance. Some of the wording might be a little different because we put it in the standard IRT type language but you've seen all this as a substance. So I'm hoping we can get a lot done through the e-mail list and that we can start on Monday. Today's Thursday. We could start on Monday on the auction stuff that we have not gotten to today.

In addition, you are going to see ... Because these two topics have been taking a little bit longer and we're holding off the release of package 7 until these were done, we're going to release a short package 7 that only really contains two sections shortly, which contains what is the Registry Voluntary Commitments and PICs section, because that's completed, as well as the updates to the Applicant Support with the language that I actually sent around separately a little bit earlier on the bid multiplier. So we're going to release that kind of mini package just so that everything doesn't wait until that last one. So please be on the lookout for that.

Also be on the lookout for the cleaned-up version of package 6. Remember, we went over those "can't live with" comments already. So this is kind of the last non-objection. So please do pay

attention to that. Any last questions or comments before we finish?

Okay, the next meeting is Tuesday at 03:00. I know it's normally Monday, will be Monday for some of us, but because having a Monday 03:00 UTC call would be Sunday for lots of people. As you know, we generally move that then to Tuesday. So you should already have invites, and I hope to see you all, at least virtually, at that meeting. Thanks, everyone.

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

[END OF TRANSCRIPTION]