
ICANN67 | Virtual Community Forum – GNSO - New gTLD Subsequent Procedures PDP WG (2 of 3)
Tuesday, March 10, 2020 – 12:00 to 13:30 CUN

MICHELLE DESMYTER: Hi, everyone. This is Michelle from staff. We'll be starting in approximately four minutes. Thank you so much.

Hi, everyone. This is Michelle from staff. We'll be starting in the next two to three minutes. Thank you so much.

Hello, everyone. This is Michelle from staff. We'll be starting in approximately two minutes. Thank you so much.

Hi. Welcome, everyone. This is Michelle from staff. We'll be starting in about one minute. Thank you so much. Just a friendly reminder to please utilize your mute button when not speaking tonight. We'll be starting shortly. Thanks so much.

Hi, Jeff. This is Michelle. We're one minute past. Would you like to start?

JEFF NEUMAN: Yes, please.

MICHELLE DESMYTER: Certainly. We'll get then recording going. One moment.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

Good morning, good afternoon, and good evening. Welcome to the New gTLD Subsequent Procedures PDP Working Group meeting on Tuesday, the 10th of March, 2020.

Today’s meeting is being recorded. Please remember to state your first and last name before speaking and please keep your phones and microphones on mute when not speaking to avoid any background noise.

With this, I will turn the meeting over to Jeff Neuman. Please begin, Jeff.

JEFF NEUMAN:

Thank you very much. Welcome, everyone, to our second session out of three for the Subsequent Procedures PDP Working Group. Yesterday we covered a fairly controversial issue, one that certainly sparks passion and emotion on all sides: closed generics.

Today we will try to get through two topics. There are some difficult issues in these topics as well but hopefully ones where I think we can get some agreement on from the community. And it’s not as binary as an issue as whether to allow closed generics or not. Today we will cover public interest commitments, which you’ll see on here. We’ll go over why. It could be also called registry commitment. That’s from Section 2.3.2 of our report. We’re going to also hopefully get to GAC early warnings and advice.

Like yesterday, we are going to work off of a PDF document just for purposes of this meeting, but, once this meeting is done—when I say

“this meeting,” I mean all of our sessions at ICANN67—then we’ll incorporate these sections back into the normal working document that we’ve been using with the working group.

Also, as another quick reminder, the way we’re running this is very much like a regular working group call. We do tend to get a little bit into the weeds of these subjects. It’s not intended to be an introductory session but one where we encourage not only members of the working group but also others to participate. If you get an answer from or a response from either or Cheryl or myself saying that’s covered in a different section or, yes, we discussed those issues, don’t be discouraged. Please do continue to provide input.

We’ll also reserve some time at the end to bring up other subjects that may or may not be related to the ones that we’re talking about today.

With that, let’s move over to the document. I should actually check—hold on—and see if there are any questions or anyone in the queue.

Okay. No one is in the queue. Great. Let’s then move on to public interest commitments. This section, as it’s coming up, is actually called The Global Public Interest. The title of this section is more of a legacy title, meaning that this is what it was referred to in the original discussions way back in 2007/2008 but also later on in 2012 and ’13 and beyond when the initial subject or topic of PICs [Public Interest Commitments) came up.

I don’t want to spend too much time on this call or within this group right now for this section talking about how we define the global

public interest because we'll just get back into a circular argument and a very difficult one at that. There are some concrete recommendations in here. If we can focus on those recommendations, I think we'll have a much more productive session.

While Julie, I think, is getting the—great. She has the link to the document there. Or Emily just posted it. Or you can download the PDF from the chat. I'll be working off of the one that's on Zoom right now. You could follow along if you download those.

I see, Kathy, you have an introductory comment, so please go ahead.

KATHY KLEIMAN:

Yes. Thanks, Jeff. I suggest we change the title because everyone is using this term. Nobody knows what it means, as we heard in the GAC meeting yesterday. So I don't think we need historic terms as we go to the public on this initial report. I think we need the clearest possible terms for what we're dealing with. Many, many people, as you know, do not think private commitment have anything to do with the public interest. So I think it's misleading here and people may think we're finally solving the question of the universe of ICANN. How can we narrow it down to what it really is? Thanks. Maybe it's just private PICs. Thanks, Jeff.

JEFF NEUMAN:

Thanks, Kathy. I do agree with you that this title is a little bit misleading, so let's put a note in the draft to consider changing the title, even if it means putting "Was formally this," just so people can

trace the chain of the discussions and where it led to. I think that makes a lot of sense.

Sounds like someone else is on the line. Does anyone else want to get in the queue?

Okay. Just a reminder, if you're not speaking, if you could please mute your line. Or, if we could find where that sound is coming from, that'd be great.

Oh, M[artin]. I think it—yeah. Thank you. Okay, great.

As with most of these sessions, unlike the closed generics session yesterday, we start all of our sessions out, where applicable, affirming something that happened either in the policy from the last round or implementation from the last round so that we can make sure that we memorialize what we agree with that occurred previously to make sure that it happens again within the next subsequent round.

The first affirmation is affirming Recommendation 6 from 2007, which is fairly long. It essentially that strings must not be contrary to generally accepted legal norms relating to morality and public order that are enforceable under generally accepted and internationally recognized principles of law. Then it goes on to state the examples. We have not updated this at all. This is just an affirmation of what was used for the policies back in 2007.

I know there's some debate going on in the chat about the title. I think we can do some of that online as opposed to here. We are capturing all of these so that we can work on that title issue at a different time.

The first recommendation in the section deals with the mandatory public interest commitments. What we're saying here is that mandatory PICs currently captured in—we should probably spell out PICs here because I think it's the first time we mention it—Specification 11-3A through D of the registry agreement must continue to be included in the registry agreement for gTLDs in subsequent procedures. No other mandatory PICs are needed at this time. Noting that mandatory PICs were not included in the 2007 recommendation, this recommendation codifies the existing practice [and] policy. One adjustment to the 2012 implementation is included in the following recommendation.

Before we get to the exception to the rule, let me just see if there are any questions.

Kathy, please?

KATHY KLEIMAN:

It might be useful just to, even though it's going to be highly small print, put the mandatory PICs into the footnote. That way, people don't have to cross-reference. They might really be interested in seeing what they are since there's been so much discussion about them. And just having easy reference would be great. Thanks.

JEFF NEUMAN:

Thanks, Kathy. Good idea. So we'll make a note to do that as well. Any other questions or comments?

Okay. So the one exception that we have here for the mandatory PICs is in the next recommendation. It states, “Provide single-registrant TLDs with exemptions and/or waivers to mandatory PICs included in Specification 11-3A and Specification 11-3B.”

Now, what might help as we start this discussion—probably this is my fault for not asking ICANN ... Julie or Emily or Steve, how difficult would it be to pull up the registry agreement in this Specification 11-3A so we can see what this actually means? Sorry. It’s my fault for not asking you earlier.

Jorge is asking a good question, so, while we see if we can do that—thanks, Emily—a single-registry TLD means essentially a closed registry that uses the TLD solely for itself and/or its affiliates or trademark licensees. So brands, for example, that sign a Specification 13 are considered a single-registrant TLD. The reason we don’t use or say “brand only” is that there’s a way to get a limited exemption under Specification 9, the code of conduct, to have a single-registrant TLD. Now, this would exclude all of the generics because Specification 11 does state that you cannot use a generic term. So it actually outlaws, at this point, closed generics. That’s what we were discussing yesterday.

Jim, I see you in the queue. Let me just go over what 3A and B state because these are the ones that were talking about exemptions. The first one involves putting a provision in a registry/registrar agreement that prohibits all of the things that we consider DNS abuse. The

second one, B, is for a technical analysis to determine whether domains in the TLD are being used to perpetrate security threats.

So, when we're saying that single-registrant TLDs could get an exemption to this, what we're saying is that a brand TLD, who, by the way is—I'll just use "brand" as an example—is both the registry and the registrant, first of all, having a registry/registrar agreement is unusual for a brand or for an entity that's both the registry and the registrant. But, certainly, where the registry and the registrant is the same, asking the registry to pass through to a registrar who again passes it through back to the registry, a provision that doesn't allow DNS abuse for a TLD that they completely control just doesn't make the most amount of sense.

Also, requiring the same kind of technical analysis for a brand TLD as you do an open TLD with third-party registrants also doesn't necessarily make the most amount of sense because, in essence, most organizations that would use this as a single-registrant TLD just use their normal everyday firewall, anti-phishing, anti-malware software that they would use for their own organization. Requiring them to have some sort of specialized technical statistical reports on their own domain just didn't make sense to Work Track 4, I think, that considered this.

Let me go back—Jim's in the queue—and then I'll read some of the comments. Jim, please?

JIM PRENDERGAST:

Thanks, Jeff. I think we need to flag here a dependency that goes back to the closed generics section. If and how we are able to come up with a solution to that, I think that could in fact impact these exemptions. There's some tie-ins here that I'm not fully following because I'm trying to flip back and forth between screens, but I think we should just note in the document that we need to check to make sure that we're consistent in what we're waiving in the mandatory PICs and what potential solutions may be employed for closed generics. Thanks.

JEFF NEUMAN:

Thanks, Jim. It's a good point. So we'll put in there a note that, if, for any reason, the closed generic issue does result in a different recommendation, we'll have to go back to this exemption and see whether and how it applies. I think, if I'm looking at what they're doing in the doc, they're putting this in both the closed generics section – oh, no. At the bottom of this section. Okay. Just—there you go. We'll put that in there.

Some good comments now in the chat. There's some questions. Let me make sure I've gotten to these. There were some questions on, "What's Spec 9/Spec 13?" Then Alexander asked for an example and was given one and states, "Kathy, don't these mandatory PICs look like"—oh. That's back on the public interest discussion.

Kathy, I'm trying to follow this. Which ones are you talking about that are mandatory? Just so I can follow along here.

KATHY KLEIMAN: Hi, Jeff. Is it okay to come online?

JEFF NEUMAN: Yes, please.

KATHY KLEIMAN: Okay. There's some continuing questions about relabeling things, but I personally think that mandatory PICs is a term A) that's well-known and B) that we're using in an accurate and complete way.

I did want to ask about the recommendation we were just talking about: provide single registrant TLDs with exemptions and/or waivers to mandatory PICs. I know you put it at the end, can we put it here as well—what you just said, which is that we are not overruling the mandatory PIC on closed generics here, that that's not what this intended to do? Because, really, otherwise, we could just refer it to brands. But there is that ambiguity. Can we put it in here, right here, so that the public understands that we just have all the details you just said about what this doesn't mean? Thanks.

JEFF NEUMAN: Thanks, Kathy. What we're talking about here is Specification 11-3A and B. Let me go—sorry. Can you jump back to the previous document that you had up there—the registry agreement text? So 3A and B. So what you're talking about with closed generics is actually 3D. The recommendation specifically only cites A and B. We could state that it

doesn't apply to C and D. We can make that statement. And, hopefully, once we also put in the footnote this actual language, it'll be clearer. I'll just give a second for staff to put that in there.

Okay. There's some examples being sent around. Jorge says, "In the Google Doc, on the text on deliberation, there's mention of CCT recommendations."

Jorge, we'll get down to that section. Let's cover the recommendations first. But, please, if we forget about that, bring it up again so we can get to it.

The next recommendation, if we go in order here, is where Kathy, I think we took your comments and others into account, as well as discussions that we've had. It seems like, just to explain for everyone else, that to call all commitments public interest commitments seemed to make an assumption that every single commitment a registry makes is actually in the public interest. It may or may not be. Without actually having to define whether something or is not in the public interest, our recommendation here is to call all commitments that are voluntary or not the mandatory PICs "Registry Voluntary Commitments," or RVCs for short. I know that, initially, because the change in terminology may take some time to get used to ... Of course, we'll have to, as we put in [inaudible], I think, in the deliberations section, we'll have to make sure that—oh, no. We did put in the recommendation. We'll have to make sure what's currently called the PICDRP also applies, and any other associated processes

that currently apply to PICs we'd have to also make applicable to these RVCs.

I just wanted to explain that and then we can read this section. “The applicants must be able to submit RVCs at the time of application submission, as well as at any other time prior to the execution of a registry agreement. RVCs will be continued to be included in the applicant’s registry agreement. In addition for subsequent rounds, all provisions for the PICDRP and associated processes shall equally apply to RVCs.”

The reason why—we’ll get into this in a little bit—we say these RVCs can be done at any time is that we also envision these voluntary commitments to be made either to resolve objections or to address GAC early warnings or GAC advice—a whole host of ways that additional commitments that can arise. So that’s the reason for the statement that it could be made at any time.

Let me stop here and go back. Okay, Kathy, and then I’ll also review the chat.

KATHY KLEIMAN:

Okay, great. Thanks, and thanks for the clarity language. That makes a really big difference, I think. But still, here, I think—tell me how this properly noted—there is a lot of concern and, as you know, a lot of disagreement—I think we talked about this for weeks—about these voluntary private commitments, some of which bypass due process, many of which do not require legal decisions as to legal content.

Are we still saying anyone can put in anything into any registry agreement? If so, I think we have to note that there is vehement disagreement on that. How do we do that, Jeff? Thanks.

JEFF NEUMAN:

What we say—I believe it’s in the deliberation section here—is that—I’m trying to remember—we do talk about these being subject to comment and all of the other provisions that we were talking about with respect to the changes to applications.

Scroll down a little bit more, because I’m trying to remember if it’s also in this section or just in the changes. Let’s see. If you could go down a little bit more. Okay. Go down to the rationale for 6. Sorry. We haven’t gotten to that recommendation yet. It states that, to an extent that an applicant is making an RVC that is of limited time, duration, and scope, the applicant should provide the details. This provides transparency.

So what we should do here, because I’m not seeing it necessarily in this section, is ... let’s see. Yeah, we probably should reference the changes to applications and the public comments and going through all those because, essentially, there’ll be a change to an application.

Then we do talk about, Kathy, in the change-of-application section, all the processes and procedures that any change, whether it’s this or other types of changes, has to go through, namely: be available for comment, objections, and things like that. So I think this is just a matter of cross-referencing and making sure that it’s clear that

commitments that are made will all be subject to public comment. I thought it was also in this section, but I read so many different sections that they're starting to merge to me.

Kathy, please?

KATHY KLEIMAN:

Oops. Coming off mute. So Rationale 6 I see. Are we still in Rationale 4, that ICANN must continue ... Do we want to add anything here? It says, "ICANN must continue to provide applicants with the opportunity to submit registry voluntary commitments in subsequent rounds." Again, I think there's been disagreement on this. Are you saying that that should be part of the public portion of the application so that people can see it ... Obviously, if we have 20,000 applications, people aren't going to have the time—the community is not going to have the time—to come back again and again. So are we making it, for those who agree on this, an obligation that you put in these voluntary commitments up front so that everyone can see them and review them when the application goes in? Thanks.

JEFF NEUMAN:

Thanks, Kathy. We haven't said anything about whether it's public or not, but I think that's a great point. It's not that we just didn't think of anything. So I think that's a good add: to make sure that any PICs that are agreed to are part of a public-facing question. Sorry. I used the term "PICs." I meant RVCs. See? Even I have to get used to using that term. But we're also allowing, remember, voluntary registry

commitments to be made at the time to resolve a dispute or things like that. Those would be considered an application change, and then we can reference that section on application changes. You'll recall several weeks ago that we talked about all the processes that changes to applications have to go through, which includes public comment disputes and all that kind of stuff.

So I think the best way to do it here, whether it's in this rationale or not ... Where we put it, I guess, isn't ... We'll figure that out. We certainly should reference that these are considered changes to applications and should go through those processes.

KATHY KLEIMAN: This is a new hand.

JEFF NEUMAN: Okay, Kathy. Then I'll go back to the chat. Please.

KATHY KLEIMAN: Thank you. This is really, really useful. So we've just put "public" into Rationale 4. "These we'll be publicly available." So now Rationale 4: publicly available.

On Recommendation/Rationale 5, what changes can we make to that? "Applicants must be allowed to commit to additional RVCs or proposed modified RVCs in response to public comments, objections, GAC early warnings and/or GAC advice." Let's put the GAC advice to one side and say that half of the public comments say X and half the

public comments say Y and the RVC is responding to X but not Y. How does Y get to say, “Hey, that’s not fair”? What’s the public comment after the RVCs are added or become changed in response to public comment? And you referenced other things, but maybe we should put it in here as well. Thanks so much.

JEFF NEUMAN:

Thanks. Before we get into that, because we didn’t actually discussion Recommendation 5, let me just read that one. That one essentially allows commitments to be made to respond to public comments, objections, GAC early warnings and, as you said, GAC advice. So what we’re saying here is that these will be considered application changes and be governed through that process.

Without detailing all of that here, because we don’t necessarily want to provide conflicting information in this section, we’re going to just ... I’m trying to think of the best way to do this. We’ll just reference this section but, in the application, change requests. That’s got everything, Kathy, that we’ve discussed for the past few weeks. So I think, for now, let’s put in the reference to it without any additional language, simply because we don’t want language on changes to applications to be in two different places, if that makes sense, because they may conflict with each other. But I think the concept that you’re asking for is there.

Let me just go through some of the comments. Griffin has some comments here about the enforcement of the mandatory PICs.

In this section, Griffin, other than saying that there should be enforcement through the PICDRP, we're not really getting into the enforcement proceeding. That's actually in a separate area. So we'll note the comment and then make sure we include that in the sections that cover the PICDRP.

Anne supports the distinction between PICs and RVCs, and Griffin just points out that there was no explicit enforcement language in the PICDRP.

So I think ... let's see. There's some agreement or disagreement with that statement. Okay, lots of discussions here. I'm trying to get through everything. If anyone wants to join the queue, just raise your hand. Lots of discussion back and forth.

Anne states, "Griffin, can we recommend as a working group that RVCs become part of the registry agreement when adopted and accepted?"

That is the intention, yes: they're included. They're just not called public interest commitments. They're called registry voluntary commitments. But the intention is, yes, that they will be in the contract.

Justine is pointing me to Rationale 7. Okay, let's go back to the document. If there's something I'm missing, if someone can just raise their hand. I don't intend to exclude any comments. It's just very hard to do this and to read through all the comments. So, if I miss anything and you really want it stated, please put it in the comment language

or the question language that we normally use so that someone from staff can make sure I'm covering it.

Can we go to the recommendation with Rationale 6?

Okay. At the time that a registry voluntary commitment is made, the applicant—I think we might have read this one already—must set forth whether such commitment is limited in time, duration, and/or scope such that the commitment can be adequately reviewed by ICANN. Then we have a note there that we'll have to talk about in a second. So it can adequately be reviewed by ICANN, a party providing the relevant public comment, a resisting objector, and/or the GAC if the RVC was in response to a GAC early warning or GAC advice. So there's a number of different rationales for a registry wanting to make a registry voluntary commitment. What we're saying here is that, if it's in response to a public comment or a response to an objection or a response to the GAC, that's clearly delineated.

But there's a question here from staff that says that the commitment needs to be adequately ... So it can adequately be reviewed by ICANN. If we can just start a discussion on that. I think the intention was, if it was ... I don't think it was ICANN, necessarily (Org) but whoever is responsible for that portion of the application that has generated the public comment or the objection or the early warning GAC advice. So I think "reviewed by ICANN" is necessarily the right terminology there. It's really intended to be reviewed by whatever panel or entity or person is reviewing the underlying concern to which this RVC is being addressed. There's probably a better way to say that than what I just

did, but hopefully that explains it a little bit better and that makes sense.

Any questions or comments on that?

Kathy, please?

KATHY KLEIMAN:

Thanks, Jeff. Same question. Shouldn't the public be allowed to review? So an existing objector is reviewing, but there may be objectors who have contrary views, or would if they heard what was being proposed. So [does] [inaudible] the process?

JEFF NEUMAN:

I think we should put that in a comment. There may be situations where ... I don't know. I'm sorry. I'm thinking this through as we're going through. It seems to make sense, but I'm just trying to think in my head if there'd ever be a commitment made that resolves an objection that they may not want to make the public aware that it's resolving an objection because that might be confidential. I don't know. I'm just speaking off the cuff. But let's put in that note because it seems to make sense that that would be public, too. But let's make sure, before we definitely put that in, that there's not an alternative where that may not be appropriate to be public.

Let me go through the chat here. Thomas from the European Commission (Thomas DeHolland) states, "Who checks whether the RVC is not in breach with other commitments or obligations?"

It's a good question. Ultimately, at the end of the day, whoever ICANN has that's reviewing the applicable portion that generated the concern would also have guidelines on how to review commitments [in] other parts of an application so that it wouldn't conflict with other obligations.

For example, let's say there's an objection made based on trademark rights. So a trademark owner objects to a particular application because they believe that, if used in a certain way, the TLD could violate their existing trademark rights. Let's say the applicant says, "Look, I'm not going to use it in that way. I promise that's not my intent." Perhaps the objector says, "Well, if you document that as a commitment, then I withdraw my objection." So that then gets designated as a voluntary commitment. So that would be an example of one of the types of commitments.

So whoever was reviewing that objection—well, if it's withdrawn, nobody reviews that. But, if the objection still continues, then the evaluator of that legal rights objection would then review whether that commitment would solve any of the intellectual property issues. Hopefully that makes sense.

Anne, please?

ANNE-AIKMAN SCALESE: Thanks, Jeff. I think this relates to a different section in terms of resolving objections, but I'm going to go ahead and comment, anyway—I think I did in relation to that section before—that I don't

think it's appropriate for objections to be resolved through private registry voluntary commitments on which there's no public comment. I think there's a lack of transparency there, and the objection process is meant to be transparent. This is not, obviously, an official IPC position. It's my personal opinion. I don't know that Greg has any IPC position, either, but I don't think it's appropriate for objection to be resolved in that manner. Thank you.

JEFF NEUMAN:

Thanks, Anne. It's a good comment. By declaring all of these RVCs that are made after the application is submitted by declaring all of those changes to the application, that guarantees that it goes through the public comment process. So that's how it's addressed. I think you, among others, raised that important issue about making sure that, even for situation where there's an objection that's worked out privately, there's some ability for the public to review during a comment period. So we think that addresses it, Anne.

Then Anne states, "Okay. Thank you. Misunderstood your reference to confidentiality." Okay, good. So I hope that addresses it.

Anne, your hand is still up. Does that mean another comment, or are you good?

Okay. Then we get onto the seventh recommendation or what corresponds to Rationale 7. Eventually we will number these recommendations. We just haven't numbered them yet because we

don't have the full draft prepared. But we will have recommendations, each numbered, when we produce that final draft.

What this states here—oh, here we have anyway, right?—“Any proposed changes to RVCs, including additions or changes, must be subject to public comment.” So that's also in here, and I think that's what Justine tried to point me to very early on. Sorry, Justine. I know got your reference to Rationale 7.

The next recommendation is, “The working group acknowledges ongoing work in the community on the topic of DNS abuse and recommends that the community continues to take steps to address the CCT Review Team Recommendations 14, 15, and 16”—which are spelled out in the footnotes—“through a community-wide discussion that addresses DNS abuse in all TLDs as opposed to dealing with these recommendations with respect to only the introduction of subsequent new gTLDs.”

I think this merits a little bit of discussion. The working group has received the CCT Review Team recommendations. These recommendations on DNS abuse did not just go to the Subsequent Procedures Group but also went to ICANN and a bunch of other groups. What the Subsequent Procedures PDP is saying is—we're not saying that these recommendations aren't important—to only make recommendation on DNS abuse with respect to new TLDs that we're not going to see until 2022/'23 or beyond is not the best way to deal with DNS abuse, that it really needs to be dealt with in a holistic approach, since all of the current DNS abuse is, at least in theory, in

the current TLDs as opposed to future ones which haven't been introduced yet. So, while we certainly understand the CCT Review Team recommendation, while we understand that some groups have commented that there should not be additional new gTLDs until this issue is solved, while we respect those views, at the end of the day, to address it in this PDP when it applies to gTLDs and ccTLDs worldwide just didn't seem like the right approach to our group to this important issue.

Let me go to the chat here because—if anyone wants to get in the queue, please do—I know this is an important subject and I don't want to give it short coverage. Let's see. [Sheri] talks about a current process on amending voluntary ... I'll call them ... Well, because it's existing PICs, but, for future, that'll be called the RVCs.

Jorge states—oops. I think I passed it. There we go. “Perhaps you'll need not just xxx recommendation[s].”

Yeah, Jorge. The way we're going, we might need four X's. I don't know.

Let's see. Kristine states, “I don't think it's necessary to say, “Address the CCT recommendations.” The Board is doing that. It feels obvious.”

Okay. Let me go back to the wording we state. “The working group acknowledges the ongoing work in the community and that the community continues to address the recommendations.”

Sorry, Kristine. I might be missing it. Can you either join the queue or just ... Are you saying it should just be, “The working group

acknowledges ongoing work (or the community) on the topic of DNS abuse and”—let’s see—“recommends the community continue to address it”? Or you’re not saying that? Sorry.

Let me go to Jorge and then Kristine. Then it appears I might have missed a question. So if someone can help me find what I missed as well. Jorge, please?

JORGE CANCIO: Hello. Can you hear me okay?

JEFF NEUMAN: Absolutely. Go ahead.

JORGE CANCIO: Hello, Jeff. My question. While I don’t necessarily disagree with the recommendation linked to Rationale 8, at the same time I ask myself—and I would like to ask you—“What does this exactly mean?” Where would that policy work need to happen? Would we need to have another PDP that would perhaps take another bunch of years to happen? Or how do you imagine that? Because, in the past, at least in the early talks, let’s say that new expansions of the TLD space, especially with the 2012 extension, have brought with the new approaches on contractual obligations and contractual regimes, which then have been extended through processes to the legacy TLDs. This is also a lengthy process, but at least it allows introducing novelties with the expansions of the TLD space. In this case, it appears

that we would defer this to future work. Maybe the TLDs, let's say, our approved under the Applicant Guidebook, and then, at some point in the future, there would this new policy work with, for instance, the new obligations in DNS abuse topics, which would then be applied to this new round—to the round of 2012—and to the legacy TLDs. Is that the way that you are imagining it, or did I miss something? Thank you.

JEFF NEUMAN:

Thanks, Jorge. There are a number of efforts underway right now that are addressing DNS abuse, whether it's through the EPDP and all of that work to address WHOIS or the discussions taking place with contracted parties and ICANN Org on best practices. There's a whole bunch of efforts ongoing. Hopefully, whenever these issues do get resolved, whatever that community-wide solution is, there should be a way to incorporate them into the activities of the existing and future top-level domains, whether [those are] best practices or contractual requirements or however the issue turns out.

The intention is—I think this was a question from the representative from the European Commission—yeah, if the community does work out this issue (DNS abuse) before there are new gTLDs, absolutely that would be included in the agreements or in the commitments for the new registries, and hopefully a mechanism to incorporate them into the existing registries through one of those processes. So the intent here is not to say that this issue isn't important, again. It's just to say that we need to take a holistic approach to DNS abuse. I think the community is already starting to do that. We didn't want to produce

some recommendations here that would only apply to new gTLDs and not to the 1,300 now-existing ones.

That’s a long way to answer that. We’re hoping that, through the existing efforts and maybe any new ones that come up, whatever the community does to resolve the DNS abuse recommendations, it’s incorporated both into the new agreements as well to the old ones—the existing ones.

Let me to Kristine, and then there’s some questions on confidentiality I want to make sure I don’t forget about. Kristine?

KRISTINE DORRAIN:

Hi. Thanks. To be fair, this is not a hill I’m going to die on. It’s just the point, when you see a recommendation—whatever this is with Rationale 8 ... Basically, to me, the wording is, “Hey, this SubPro Working Group thinks that the community should just keep on keeping on with X thing.” To me, that feels like a slippery slope. Are we going to say, “Hey, EPDP, you should keep going”? We don’t need to say, “Keep going,” because it keeping going. It’s a thing that’s happening in the Board and the community. So I’m wondering of the necessity of making this statement when it’s underway. With or without a “Yes keep going,” from us, it will keep going. But, if people really feel like Rationale 8 needs to stay there, I’m not going to die on that hill. It just feels a little weird and awkward to me, like somehow we’re ratifying something, like we have some sort of control over it. That’s all. I will completely withdraw my concern if nobody else agrees with me.

JEFF NEUMAN: Thanks, Kristine. Maybe there's some other wording we can use there. I think what we wanted, because the CCT Review Team specifically targeted this recommendation at least partly to us, is a recommendation that says, "Yes, we've looked at that. Here's what our recommendation is on your targeting [of] us." If there's a better way to state it, then please help us do that. We do want somewhere in here documented that we've actually taken a good look at what they've done and "This is our recommendation based on that." So, yeah, Kristine, we'll take note of your changes.

Before I get—

UNIDENTIFIED FEMALE: Jeff? [inaudible]. Sorry. Go ahead.

JEFF NEUMAN: Yeah. Before I get to you, I promised to address the confidentiality question. This [was] brought by Justine. Let me find it in here. Let's see. Sorry, Justine. I'm looking for it. "It's back up in the chat." Okay. "So am I correct I understanding that some original RVCs may not be open to public comment on account of confidentiality?"

Justine, I didn't want to give a quick answer. You're probably right that they wouldn't be, but I just didn't want to definitively state the answer that is yes, that nothing would be subject to confidentiality. That's why we just wanted it bracketed: we could just think about it. I think

you're right that all of the commitments would be public, but I wanted to, without thinking through everything, just preserve that right to go back and just think about all the ramifications. But I think you are right that none of it would be confidential. Hopefully that helps.

And you're in the queue. Great. So, Justine, do you want to address that issue and I could put you up to the front? Or is it something else?

JUSTINE CHEW:

Thanks, Jeff. Thanks for picking up the question. This is [something] I, in the chat, am following. I'm getting conflicting replies. One is that Kristine agrees with me, but Rubens seems to not agree with me. So I'm just a bit puzzled still, so I just wanted clarification. If you want to come back to it at a subsequent meeting, that's fine, too. But I would appreciate clarification one way or the other. Thank you.

JEFF NEUMAN:

Thanks, Justine. If it's okay, I'm going to put that on the action items so we can actually, offline, think about the different ways because there are some non-public portions of the application. We just haven't thought through whether you could make commitments that would be commitments added to a non-public portion of the contract. So I think it's just a matter of thinking it through.

Anne, sorry. Thank you for being patient.

ANNE AIKMAN-SCALESE: Thanks, Jeff. I just wanted to address Kristine’s comment. Perhaps staff could clarify as well. I think some of these recommendations come from the fact that, in dealing with CCT-RT recommendations, the Board actually passed a resolution. The Board resolution states very specifically certain CCT-RT recommendations that it is “sending” to SubPro to deal with those. So we do need to make sure that we’re cross-checking that Board resolution. I don’t know whether 14, 15, and 16 were specifically sent to SubPro, but I just want comment, regarding Kristine’s comment, that I don’t think this is just something that we decided to add to the kitchen sink. I think [they are] are specific Board resolution provisions which require us to address CCT-RT recommendations that have been specifically sent to SubPro. Maybe DNS abuse isn’t. I don’t know. But we do need to crosscheck that.

JEFF NEUMAN: Yeah. Good point. If I could ask Steve, Emily, or Julie if you call can just check to see whether 14, 15, and 16 were in the current implementation. Maybe you know off the top of your head. In either case, I think the Board is just saying that we address it. I think we are addressing it. That doesn’t mean we need to solve it. But it’s a good question. So let’s check to see whether the Board had specifically referred these to the GNSO, who then, in turn, gave it to us.

Paul, please? Sorry. Paul McGrady.

PAUL MCGRADY: Thanks. I have a bad audio connection, so I apologize. I guess my question is, is this recommendation really a recommendation? Or is this really better communication back to whoever sent us these, saying that we did look them over and the conclusion is that the community should keep working. Rather than rising to a recommendation that will then be voted on by the council, it will then go to the Board? I don't know. This just seems too small to me. It's important, and it's great that we looked at it. It's important to communicate that we looked at it, but it doesn't feel like a recommendation the way the other things do. Thanks.

JEFF NEUMAN: Thanks, Paul. That's a good point. Let's put that in brackets and see if there's another way that we want to communicate that as opposed to a recommendation. So I think that's good. We certainly need to send that back and address it, as you said, but whether it's a recommendation like all the others or something else I think is something we can look at.

Paul Blaker with the U.K., please go ahead.

PAUL BLAKER: Hi. Can you hear me okay?

JEFF NEUMAN: Yeah. Can hear you well. Thanks.

PAUL BLAKER:

Thank you. I just wanted to follow up on this question of the CCT review and just be absolutely clear about the rationale that you're using here. Obviously the GAC has an interest because we advised the Board not to proceed with a new round of gTLDs until after the complete implementation of these recommendations.

So, if I understand it correctly, what you are saying is that it is outside the mandate of this group to implement these recommendations or make proposals which would implement these recommendations. If that's the case, then surely it isn't also for the group to make recommendations to the community about it. Surely what you should say simply is that it's outside of our mandate and we hand this back to the Board.

So I'm a little bit confused about the rationale. I do think it's important that you're very, very clear about the rationale because of the existing GAC advice. Thank you.

JEFF NEUMAN:

Thank you. That's a great comment. We're not exactly saying it's out of scope because, in theory, we could address it, but it would only apply to new gTLDs that are introduced after this policy is approved. So, actually, it would only be to subsequent rounds, which, when the working group discussed that, they said it didn't really make sense to have one standard for newer TLDs than for the 1,300 existing ones that are causing all of the issues today. So, in theory, Subsequent Procedures could address DNS abuse, but it would only apply to the new gTLDs from the next round on. That's where the working group

hung up a little bit and basically decided, “Look, we don’t want to just solve this issue with new TLDs going forward. We want this issue, to the extent it needs to be solved, to be a community-wide effort that solves the issues for all TLDs.”

I hope that answers your question. We’ll probably need to do something separate. Now I’m thinking about Paul McGrady’s comment about whether we should be doing a letter or something to that effect to accompany this to explain a little bit more about why this is how we came out because I think it’s going to be important for the community.

Anne, please?

ANNE AIKMAN-SCALESE:

Jeff, sorry. Just coming off double-mute. I just wanted to note, as Emily noted in chat, that the Board specifically apparently did direct us, SubPro, as a target in relation to CCT-RT Recommendations 14, 15, and 16. Steve Chan notes that those are in fact just pending recommendations.

So it sounds like there’s a bit of a conflict about jurisdiction here because the Board is saying, “Well, we’re not going to adopt CCT-RT recommendations directly without PDP work on them,” and it sounds like the GAC advice is saying, “No, that’s your responsibility.” So is that what I’m understanding from the comments just made in relation to GAC advice, that the GAC views this as the Board’s responsibility with

respect to CCT-RT recommendations but that the Board has specifically targeted us as PDP? Thank you.

JEFF NEUMAN:

Thanks, Anne. I think—Maxim states in the comments that they directed it to a PDP but not necessarily this one—certainly ... Actually, nothing is certain. Nothing. I shouldn't say it's so clear because it's definitely a gray area. Let's go back and think about that. We'll take the notes on it. Again, I think the rationale of the working group, when it met on this issue several times, was that it didn't make sense to do such a narrowly focused job on TLDs that don't even exist at this point when there are community-wide efforts ongoing on this issue. Hopefully, by the time we have new gTLDs, there'll be some process underway that's addressing these for all TLDs as opposed to just the new ones coming down the road.

Anne, your hand is still up. I don't know if that's new or old.

Okay. There's a bunch of different—

ANNE AIKMAN-SCALESE:

Yeah. Jeff, sorry. Just a follow-up comment that I think, however we address this—obviously it may not be a recommendation, as Paul is mentioning—it has to track the Board resolution because what I'm trying to avoid is the Board saying our PDP recommendations are non-responsive to their directions. I think this, again, is just a procedural issue. We have to make sure that, whatever the Board resolution says we're supposed to do, we respond specifically to that. So I don't want

the Board coming back and telling us, “You haven’t done your job.” Unless we want to tell them, “Hey, that’s not our job.” Thanks.

JEFF NEUMAN:

Thanks, Anne. Yeah, we’ll make sure we do address that. I think it’s a great point. We don’t want to be dismissive of the Board asking us to do certain things, but it could be very well be that it says we can go back to the Board and say, “Yeah, we agree this should be a PDP, but, since our PDP only has the scope to look at future TLDs and we strongly believe this should be dealt with on a holistic basis for both existing TLDs and future TLDs, this particular PDP is not the right place to address those recommendations.”

I just want to make sure ... let’s see. Jim Prendergast states, “It seems to me that the advice is to the Board and Org and it’s up to them to ensure the community fulfills what it thinks needs to be done to fulfill GAC advice, and the GAC needs to determine if, in fact, that advice has been addressed by what we do.”

Paul Blaker states, “Jeff, so you’re saying that this group is responsible for policy to implement CCT recommendations for new gTLDs? You might think that such policy should be applied to all gTLDs and the report could say that, but it is not a reason to avoid your responsibility for policy on new ones.”

Yeah. Thanks, Paul. It’s not the intent to avoid it, but there’s also recognition that there’s so many efforts ongoing now that we don’t want to substitute for those other efforts, especially when those other

efforts would hopefully apply not just to new gTLDs but also to the existing ones. So we need to do a better job in communicating that.

Jorge is saying, “Please note our reservations and serious concerns on this in light of GAC Montreal advice.” Anne is stating that we just need to check the Board [now.]

So we do understand the concerns and we’re not trying to be dismissive of those at all. We just realized that anything we do for new gTLDs is not going to solve any of the issues in the 1,300 existing ones.

Avri has a comment in here that states, “For anything that involved new policy, we sent it to the GNSO. They sent it to us. We took the position that reviews do not create GNSO policy—the GNSO does.”

Then there’s some opinions here. Rubens doesn’t think this PDP is the vehicle, and Jorge disagrees, I guess.

I think we’ve spent a bunch of time on this. I’m sure we’ll spend a lot more. I know the GAC has got follow-up. I’m sure we’ll be asked this question again. I just want to make sure that we’ve covered, if we can scroll down, all the outstanding issues—oops. Scroll up a little bit. Let me just see. Are these the changes—okay. These are the changes we just put in. Okay, thanks. Just wanted to make sure we weren’t missing anything.

So we’re considering additional recommendations with respect to registry voluntary commitments. One recommendations is that applicants must provide a rationale for any RVCs proposed. I think that makes sense as part of the recommendation. We say it with

respect to certainly anything RVC that's proposed to address an objection or public comment or any concerns, but we don't say it with respect to other RVCs. So, when we were putting this together, we think this makes sense to put this as a general recommendation that not just RVCs addressing objections and concerns need to state the rationale, but all RVCs should state the rationale as to why they're making that commitment.

There's still some discussion going on. Does anyone disagree with that notion that recommendations should apply to all RVCs?

Okay. I don't hear any, so we'll put that in. "In support of the principle of transparency, RVCs must be readily accessible and presented in a manner that's usable as further described in implementation guidance below." Guidance based on discussions that we've recently had: "The working group notes the CCT-RT's Recommendation 25 has recommended developing an organized, searchable online database for RVCs. ICANN should evaluate this recommendation in the implementation phase and determine the best method for ensuring that RVCs are widely acceptable." So we're basically stating here that we agree with the CCT Review Team's recommendation and that we're asking ICANN to evaluate and implement this.

Still some discussion on DNS abuse. I'm just going to pass that for now. Paul, please?

PAUL MCGRADY:

Thanks. Can I go back up just a dot or two? Sorry. When it says applicants must provide rationale for the RVCs proposed, what's then the point of those rationales? It's simply to explain that the time and the PICs—I'm sorry. The RVCs. I'll get it. I promise. The RVCs then are enforced under plain language? Or is there something more here that might cause some heartburn that the rationale somehow follows along and becomes sort of legislative history? That sort of thing? That bothers me a little bit because that leaves more up to interpretation than just the plain language of the PICs.

Is there a way to make that statement a bit more narrow and explain what the rationale will do? Thanks.

JEFF NEUMAN:

That's a good question, Paul. When this came out of discussions, it was with respect to RVCs that were made to public comments or RVCs that were made to respond to objections but also to the extent that public commenters can understand why this commitment is being made and so that people could file public comments. Like any other part of the application, you'll not just have to state what it is you're going to do but how and why. So I'm not sure it's as strong as legislative history but it is there to try to give potential commenters and community members an understanding of why the commitment is being made. So, if there's better language, we could try to work on that.

PAUL MCGRADY: Jeff, I’m sorry. My connection is really poor. Can you hear me?

JEFF NEUMAN: Yes.

PAUL MCGRADY: I’m sorry. I’m not sure he can hear me or not, Jeff.

JEFF NEUMAN: Yes, we can hear you.

PAUL MCGRADY: So the rationale would be somewhat narrow, like, “The RVC is being submitted for the purposes of responding to GAC early warning.” Full stop. That would be sufficient?

JEFF NEUMAN: Well, it’s not just GAC early warning. It would be to any public comments, objections, or disputes. There could be a whole host or reasons why these commitments are made.

Rubens says, “Even lawsuits.”

Still some more comments going on the CCT Review Team report and the Montreal advice. I’m going to just skip that for now. I think we’ll probably have that discussion again. Again, I think, as Jonathan states, we’re not ignoring that advice. We’re not trying to not address it. We are just saying that this is not the group or the right way to

tackle that issue, that our specific PDP is not the right vehicle to address and solve that issue.

Can we—let’s see. What time do we have this until? I think we might be ... I’m trying to remember here. 15 minutes. All right. Let’s start the next subject and then we will obviously go into it. It will be good to just set a basis for the discussion on not tomorrow but on Thursday, if I got my days right—yes.

Oh, actually, I’m sorry. There’s more left in this section. I don’t want to skip that. Steve, is that what you’re trying to do? I missed the new issues.

Go ahead, Steve.

STEVE CHAN:

Hi, Jeff. I wish that was my contribution because that would have been more substantive. This is just an administrative point to note that the RPMs session is starting immediately after our session and it’s in the same Zoom room. So we have to, at a minimum, complete and end this meeting on time, if not maybe a minute or two early, to allow for the switchover. That was actually the reason I raised by hand.

JEFF NEUMAN:

Thanks, Steve. So please help me when the time gets close. There was another issue or two that I think are important to cover here. Thank you, staff, for scrolling down. I forget about this one. So this is important as well. We reviewed the Category 1 safeguard advice as

part of this session and to try to figure out what we could do or how we could encapsulate that.

So we're still discussing whether to affirm the framework adopted for Category 1 in the 2012 round and/or provide guidance on rules for sensitive strings in future rounds. The working group considered that it could potentially develop a framework and/or set of criteria for determining what is sensitive or highly regulated. For example, an applicant could be asked to self-identify that they are applying for such a string. Sorry. Let me read the words that are actually there: "for applying for a string that is sensitive or in a highly regulated sector. An expert panel can then review that self-designation, as was the case with geographic names in the 2012 round." So we're not saying that this issue has anything in common with geographic names. We're just saying that that's an example of an expert panel that was formed in 2012.

Then I think it's important for us to point out that, in further discussion on this topic, we continue to take into account Recommendation 23 from the CCT final report. That recommendation was to gather data on new gTLDs operating in highly regulated sectors. Most of that is actually targeted towards ICANN to get that data, but, at the end of the day, the question that we're considering is really the notion of incentives to provide for registries that offer verification or other restrictions in their top-level domains.

To that end, we've been discussing the concept of verified TLDs and whether there should be specific rules that apply to these types of

TLDs. There's a definition of a verified TLD that's on an organization that calls themselves vTLD.domains. We haven't yet addressed whether we would adopt that definition or whether there's an alternate definition. So we're still talking about this verification in light of the CCT Review Team recommendation to see if there are incentives that can be provided.

Also, on those incentives, the working group is discussing the merits and drawbacks of giving the incentives and also what it means to give incentives. You can talk about fee reductions. Does that result in priority in application processing? Are there incentives for ... It should say "registrars." We missed that one. It's incentives for registrars to carry verified TLDs. So if we can just make that change.

So this topic obviously requires more discussion. We're just getting it really underway. If anyone's got any comments in the next ten minutes on that subject, that would be very helpful. We've put in this paper the pros and cons of verified top-level domains or special rules in this chart. That's about as far as we've gotten in terms of the discussions on verified TLDs. So there's still more discussion on the GAC role.

Jorge, please?

JORGE CANCIO:

Thank you, Jeff. Do you hear me okay?

JEFF NEUMAN: Yeah. Sorry, Jorge. I mute myself every time someone else is talking.

JORGE CANCIO: Thank you so much. As an intermittent participant of this working group due to time constraints, as you may understand, I would like to really secure clarification from Co-Chairs on what is the status of the document we are seeing and we are discussing because I get very insistent indications or instructions even that this is not up to discussion anymore and that many of these recommendations, which I thought were just drafts which we have seen for the first time only a few days ago, are already set in stone. So I would very much appreciate clarification on this because, otherwise, it is a bit strange and it is a bit difficult to understand what is the object of these discussions if many of the issues are already decided. Thank you.

JEFF NEUMAN: Thanks, Jorge. These are draft final recommendations. They are based on a lot of work that the working group has done. So these discussions are important to finalizing these recommendations.

That said, I think it would be different if someone were to come in and recommend something that's completely the opposite of the way that the working group has been heading all of this time and [with] all of the public comments and everything else.

But, no, these are not final recommendations at this point. Of course, everything is going out for comment. So, yes, we've been working on these for three years. The direction is definitely something that's much

further along the line, but there’s certainly room for discussions and for tweaking and clarifying. At the end of the day, we’re going to have to do a consensus call on these recommendations anyway, but that’s not going to happen until after we release the draft final recommendations, get public comment, and then revise it. So we’re still discussing everything, but there are certain directions in a lot of these areas that are fairly well-settled.

As Jorge says, the GAC has been involved in this process for a number of years. Yes. We’ve been in front of the GAC. We’ve been getting comments. They have filed comments. So all of that has gone into the development of all of these recommendations. Hopefully a lot of them are being reflected.

Paul Blaker, please go ahead.

PAUL BLAKER:

Thank you. I’m sorry to raise the CCT review one more time, but I’m genuinely worried that we are heading for some serious difficulties here. If the GAC has given some advice to the Board about the CCT review recommendations, if the Board says this is for the PDP to deal with, if the PDP says, “This is not for us to deal with,” then there’s going to be serious problems in the not-too-distant future.

So my question is really, what can we do—all of us—to avoid that problem from happening? What do we need to do? Thank you.

JEFF NEUMAN:

Thanks, Paul. It's a great question. I think it's important to understand that, I think, the Board is saying it's up to the policy development process to resolve the issue—or the GNSO. This is only one PDP within the policy process. So, to the extent that this issue needs to be resolved through a PDP, then there should be a PDP that fully focuses on this holistically as opposed to just what's going to be good for new gTLDs in 2022/2023 when they're launched.

So there are certainly ways that we can work with this. It's not quite that the Board is saying to our group, our Subsequent Procedures Group, "You have to solve this," and we're saying, "No, it's not our problem." What we're saying is that this was given to us but we only tackle a very narrow portion. So this really needs to be tackled by a group that looks at this issue with respect to all the existing TLDs and [initially] also ccTLDs, for that matter, as well as the new gTLDs.

So I don't think we're at odds. I think we just need to get the language right and to make sure that this topic is being addressed by a group that's appropriately chartered to do that.

We're doing a time check. I know we have to stop. Paul, did you have a response to that? Because your hand is still up. We can continue this. I know you're having a session right after this. We can continue that if that's your group wants to do. I'd be happy to continue this discussion, but I think we have to drop now because of the group that's starting.

Steve, is that what you were in the queue to say?

STEVE CHAN: Thanks, Jeff. Actually, no. This time I did have a substantive comment, if that's okay.

JEFF NEUMAN: Go ahead.

STEVE CHAN: I can make it really quickly. It's just to try to draw some distinctions and provide some clarity and precision around what was forwarded to the group and what was not. In that respect, Recommendation 16 from the CCT-RT was in fact—a portion, at least—directed to a number of groups, this PDP being one of them. I think that's an important thing to note: it was a portion of Recommendation 16 and it was also directed amongst this group and also the ICANN Board, the Registry Stakeholder Group, the Registrar Stakeholder Group, the GNSO more broadly, and the SSR-2 Review Team. That's also in the context of 14 and 15 being placed in a Pending status.

So I think some of that clarity needs to be taken into account, I suppose: where and what the Board did with it, who it recommended it be considered by, and the status of the way in which it got distributed. So I just wanted to drop that point at the end. Thanks.

JEFF NEUMAN: Thanks, Steve. That's really important. We need to do a better job—I'm directing this at myself—to put that in the report and to do a better

job of explaining it because I think that's important because this issue is so important to a lot of different groups and is the subject of GAC advice.

We have to end this here because the next group is coming in with rights protection mechanisms. Thank you all very much. Our next meeting is not tomorrow but it is the next day. Look at the ICANN schedule. We will start with the early warnings and GAC advice and then jump into applicant support because those are very important issues as well. Thank you, everyone. Talk to you on Thursday.

Kathy, I turn it over to you. But first I think we need to end this recording.

UNIDENTIFIED FEMALE: Thank you, Jeff. Thank you, everyone.

[END OF TRANSCRIPTION]