ICANN68 | Virtual Policy Forum – GNSO - New gTLD Subsequent Procedures PDP WG
Tuesday, June 23, 2020 – 08:30 to 10:00 MYT

JEFF NEUMAN: Let's do it.

JULIE HEDLUND: All right. Great. This is Julie Hedlund from staff. Good afternoon, good evening, good morning, everyone who's joining here for ICANN68. This is the New gTLD Subsequent Procedures PDP Working Group. This is a working session, and we welcome both the working group members and also anybody else who has joined us. I am going to be the remote participation manager for this session.

Just to give you all a little bit of brief information before we get started—we'll provide more reminders as we [do, again]—just to let everyone know, we are now in webinar mode for the Zoom room. There are certain parameters that we're working within. In particular, you'll notice that, at the bottom of the screen, you'll see that there's Q&A button. The Q&A button is where you will post your questions or comments. These will also be captured in a transcript. We do ask you to use that to post your questions, and the panelists in particular—Jeff Neuman and Cheryl Langdon-Orr, will be able to see those and will be able to respond to your questions and comments.

Also, if you do want to speak through your mic, we ask you to raise your hand. You'll be recognized and we'll have to take you off mute.

Everybody will be muted, but once you raise your hand and you want to make a comment, we can take you off mute and then you will be able to do so. You can, of course, use the chat room as well right now, as I see many people are doing. Thank you for that, but please, again, put your questions or comments in the Q&A pod at the bottom at the right of your screen. Please do follow the expected standards of behavior. We'll put a link in the cat—actually, it's right there right now. Thank you, Natalie. Everybody who attends—panelists and attendees—are expected to follow the expected standards of behavior, so we ask that you all please do so. Thank you very much.

I think that was—oh. Just one more thing. I know Cheryl Langdon-Orr would remind me of this. At the bottom of the righthand pod for you, if you want to make a comment in the chat, please do select all panelists and attendees. You can also chat just with panelists, but it's more efficient if you do all panelists and attendees. So make sure you select that when you're sending in a comment.

Cheryl and Jeff, let me know if there's anything I missed, but otherwise I think that's the housekeeping for now. Of course, we'll—Rubens is also echoing "all panelists and attendees" in the chat. So I'll turn it over to Jeff and Cheryl. Thank you very much. Let me know in the chat if you all have any questions.

Annebeth says she can't see the participants list. Yes, that is correct. Thank you for that reminder. In the webinar format that we're in, you will not be able to see the participants list, although the panelists will

CHERYL LANGDON-ORR: Great. Jeff and I flipped a coin and I'm starting off this morning, or my morning. For some of you it's extremely early in the morning, and for others it's evening. So good morning, good afternoon, and good evening from both Jeff and I.

If we can proceed the slides—thanks—to the next one. There's our agenda. We're going to welcome you, which hopefully we'll do by now. I'm going to give you some of the background and current status, and then Jeff is going to help take us through the two topics that we're covering today: private resolutions and the predictability framework. Then we're going to have a little ball on next steps and Any Other Business.

Next slide. Thanks. Next slide again. Terrific. For those of you who haven't been living with us for the almost five years we've been engaged in this thrill-packed and exciting activity, the GNSO recommendations from the 2007 resulted in, as some of you painfully well, the Applicant Guidebook for the 2012 round of the New gTLD Program. Our role in the Subsequent Procedures (or SubPro) PDP is focused on looking at what happened in that policy round. That means what went on as a result of the Applicant Guidebook as she was writ and some following modifications that occurred and determining

be able to see that list. And they'll be able to see if you raise your hand.

Thank you very much. Over to you, Jeff and Cheryl.

what changes might need to be made to the original GNSO recommendation from 2007 for any implementations.

We chartered our work into 2016 and began early in that year, and we have a heroic number of separate topics—over 40—that are identified in our charter that we were supposed to manage. Well, we've done pretty well so far, but to do that, we broke it up into five particular work tracks. Some of the topics that are of particular interest to the wider ICANN community—I know right now that 128 of you are in attendance today, so thank you for that; I think those numbers are still climbing, so that's terrific—are community applications, applicant support, and, of course, the geographic names at the top level.

If I can have the next slide, please. Thank you so much. Our current status is that our initial report was published back in July 2018 for public comment. We have taken into account every single public comment received. We have analyzed them, both in the individual work tracks and then as a plenary. We have duly considered all of them. We have discussed what influence, if any, these comments were going to make. And we have worked on any recommendations or implementation guidance modified by those public comments. That is the process that we are still continuing do for the next little while. We are intending to complete that and have our recommendations put together so that we can put our final report both out to public comment and then to the council, as you'll see in our timeline in a moment.

We also worked on five other topics which were published in, like, October 2018 and in the form of a supplemental initial report—Work Track—and also put out its own extensive work separately as a supplemental initial report in December 2018. So 2018 was a busy year, and there was a huge number of comments that we went through.

We almost, as I said, finished looking at our final recommendations, developing consensus on what recommendations we can make and what implementation guidance we might be giving. And we are planning to have our final report for public comment released shortly after this ICANN meeting.

Next slide, please. Just in case you are not listening to us and hearing us, we are finishing by the Q4—the end of this calendar year—2020. We intended to have our report in the hands of the GNSO Council no later than year's end. You'll see in this timeline, which has been modified over the recent year, that we will be looking at, we trust, the full work being knocked off by Q4 2020. Thank you.

Continue on. Next slide. With this, I've taken you on a whirlwind tour and we've increased our attendees to 136 and counting. I'm going to hand over to you, Jeff. I'm going to dive into private resolutions.

JEFF NEUMAN: Thank you very much, Cheryl. Welcome, everyone. The way we're conducting this meeting is very much like a regular working group meeting, but unlike a working group meeting, we encourage

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participation from everyone and not just the members of the working group. In fact, we've had a number of conversations on these very topics that we're going to do today with the working group. But there are still some outstanding issues that we have with respect to the two topics, the first being private resolution of contention sets and then the second one being the predictability model, which we'll go into more detail on what that is about halfway through. I'm going to ask for the help of our excellent policy staff to help keep us on time and to let us know when we have just under half the amount of time remaining so that we can have adequate time for the second subject.

The first subject relates to private resolution of contention sets. It's a very narrow area of how contention sets are resolved. The working group has already basically recommended or is looking to recommend in our draft final report that the mechanism of last support, if there are multiple applications for the same string or for very confusingly similar strings, then ultimately, if the applicant can't work out for themselves how to resolve the contention set, ultimately that will go to an ICANN auction, like it did in the 2012 round. So we're not talking about that aspect today. We're not talking about what ultimately happens if, by the end of the process, we have multiple applicants for the same string. When I was going through that, I said "if the parties are not able to work things out." The "work things out" means that if the parties are not able to privately resolve their contention set. So, in 2012, applicants did a number of things to try to resolve their contention sets amongst themselves so that, by the end of the process, there was only one applicant that was left that has passed all

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the evaluation, all of the other steps, and therefore they would be the applicant that would go on to contracting.

In some of those cases—in fact, in many of those cases—the way that these contentions were resolved was through a private auction. So this was an auction not conducted by ICANN and not in the ICANN realm but a private auction provider that was agreed upon by the applicants. In almost all of those—in fact, I've not heard of any that didn't operate this way—in the private auctions that occurred, the applicants, when there was one winner of that private auction, that participated in the private auction would equally divide the fee that was paid by the winning bidder. Now, of course, there was perhaps a small administrative fee for the auction provider, but essentially it was a way for applicants to financially benefit from participating in that private auction even if it did not win the private auction.

There were a number of applicants often called portfolio applicants that applied for multiple strings. Some of these applicants were able to leverage those private auctions in order to take the funds from the auctions that they lost in order to use those in other contention sets so that they could in theory pay for the strings that they perhaps valued as greater than the strings that they had lost [in] these auctions.

There were many comments that we got from the community members that this puts applicants who apply for only a single TLD string in a disadvantage because they were not able to participate in other private auctions. Therefore, they were not able to raise money or leverage private auctions on other strings to compete for the string

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that that single gTLD applicant wanted. Saying it another way, applicants were able to gain financially by participating in the private auctions even if they had no intention to operate the gTLD.

So both of these outcomes have the distinct possibility of becoming incentives for frivolous applications in new gTLD application rounds. In other words, because there were many public cases, especially some portfolio players that raised a significant amount of money from losing private auctions, we believe now, if we were to do things the exact same way, there could be incentives for applicants to apply for new gTLDs without any intention of operating a new gTLD and solely for the purpose of trying to make money from losing these auctions.

If we can go on to the next slide, in our discussions with the members of the working group, there were certainly diverging interests and comments. In comments into the initial report, the ICANN Board noted that they were concerned about how gaming for the purposes of financing other applications or with no intent to operate the gTLD as stated in the application can be reconciled with ICANN's commitments and core values. Some working group members agreed with this sentiment, and we've been trying to consider ways to minimize this practice. So we'll be talking about what's been called the Hybrid Proposal 2+ later in these slides.

But there are other working group members that assert that there's not really a problem with having the market sort out who is ultimately the applicants that moves forward and that, if all applicants are voluntarily agreeing to resolve string contention in this manner, why

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should we be putting a stop to that practice, especially as, again, all applicants that participate do have to consent to participating in such a private auction.

Some also noted that eliminating some avenues of private resolution could increase the likelihood that more of these contention sets go to an ICANN auction, which means that this could be seen as a mechanism to provide ICANN with more proceeds and more money for itself.

If we can go on to the next slide, in summary, there's diverging interests. There are a number of working group members, as we said, that were trying to figure out ways to allow applicants to privately resolve these situations and coming up with creative ways to resolve these contention sets but were also looking for trying to remove the incentives or merely submitting an application with the intent of leveraging funds for other contention sets or even just with no intent to apply or operate the TLD.

So, if we assume that we think now, because of what happened in 2012—that we are correct that now there is an incentive for applicants to apply without an intent to actually use the string or to leverage— how can we creatively still allow parties to privately resolve their contention sets through things like joint ventures or some other combination of applications where applicants can, if they intend to operate the string, mutually benefit from some kind of joint arrangement but at the same time not incentivize those applicants

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from leveraging these private resolution mechanisms to really line their pockets?

So those are the questions. I think this is one of the—I'm sorry. Can we go to the next slide? Just to help this conversation move along, on this Hybrid Proposal 2 that we've recently been discussing, the goals of the proposal, as we said, is to reduce the incentivize for submitting frivolous applications but also integrating agreed-for improvements to auctions when it does go to ICANN as a mechanism of last resort to not have these everlasting auctions and to try to perhaps do a more efficient auction process through a [sealed] bid or something like that. We've been talking about adding terms and conditions when you apply for a new gTLD to prohibit submitting application purely for financial benefit or resolving contention sets where non-winning applicants receive financial benefits to lose. We're also talking about incorporating mandatory contractual representations in the registry agreement that the registry operator did not participate in any of those prohibited application activities.

I think there might be another slide on this one. So the emphasis is on the interest of reducing the incentives for submitting frivolous applications. So this Hybrid Proposal 2+ would allow and, in fact, encourage applicants to work out their contention sets not through financial auctions but through the creation of partnerships and joint ventures. And can we be creative in contention resolution without encouraging these financial incentives?

So that's what it is in a nutshell. I know it's a lot of information, but we're hoping to stimulate conversation on this issue in general and also on the Hybrid Proposal 2+.

I know there's been a lot of conversation in the chat. I don't think there's anything formally in the Q&A pod, so I think, if anyone has comments, we can absolutely take hands. I notice that Paul McGrady is in the queue, so let's, if we can, unmute his line. This may take a second in between speaks to unmute, but, Paul, I think you should be ready to go.

PAUL MCGRADY: Great. Can we go back a couple of slides? Instead of jumping forward to a proposal, I think it's important to address the questions—oops. Now we've gone too far. Here we are. We're at the questions, right? First of all, as a basic bedrock principle of ICANN, it's supposed to be a private sector fix, which means that the private sector is supposed to be allowed to work. This notion that somehow, because the value for each registry is reflected in how it turns out in terms of people's bids in private auctions … I think discounts that. We have to think about that within the backdrop of what's being proposed, which is that ICANN gets all the money. ICANN got hundreds of millions of dollars in the last round, has been sitting on the money and, at one point, even took money out to pay for overspending. So if the concern here I that ICANN looks bad, the auction of last resort doesn't really make ICANN look great either.

Turning now to the questions—again, assuming incentivizing frivolous applications for the program—how can we [inaudible] creativity still be allowed and encouraged? There's a lot of assumptions there. First is the assumption that we're being asked to make, and secondly is the assumption that frivolous applications that—in other words, any application that had to be let go in a private auction is somehow now, after the fact, a frivolous application … So those are two big assumptions that we're being asked to make. Essentially it's a clever rhetoric tool, but it doesn't really get down to the basic issue here, which is, how do we solve the problem even if some of us don't see the problem?

So, setting aside the rhetoric tool, we get down to the second question, which is, are there program benefits to private auctions and other forms of private resolution that are consistent with ICANN's core commitments and values? Sure. I mean, ICANN is supposed to be a private sector entity. So, taking this particular slice of the New gTLD Program out of the private sector and somehow capturing it by ICANN to make sure they get the money is, I think, inconsistent with its core commitments and core values.

So let's try to answer the question without the rhetoric, which is, what needs to be done here? The comments that were made by the Board had to do with their concern over applications that were filed essentially without the intent to run the registry and with the sole intention of using them to participate in private auctions. So what we're really talking about is not private auctions and whether or not to band them. We most certainly should not band them as a private

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sector solution to the names and numbering issue. But instead we should be addressing what the Board actually wrote to us about, which is, why not just say that you can't file an application without the intent to run the registry and you can't file an application for the sole purpose of participating in a private auction? That should solve the problem. We don't have to make assumptions and call things frivolous and that sort of thing. It's just not necessary. Thank you.

JEFF NEUMAN: Thank you, Paul. Thank you for that. I agree that we should spend the bulk of our time talking about these questions. There's a similar question in the Q&A—I can't remember if it's from Heather's; I think it's from Heather but Rubens, I think, submitted it, or it might be the other way around; I apologize—that says, "Are we all on the same page and agree as to what constitutes a frivolous application?" That's very much related to the question that Paul was trying to answer. Paul does not believe that a lot of these applications are frivolous but does seem to agree that finding that they do have an intent to operate the registry is okay but not that private auctions in general should be banned.

I'm looking to see if there's anyone in the queue that wants to speak to this as well. I see Sebastien, so I'm going to go to Sebastien and then, if we could unmute Tim, and then we could go to the question that was just submitted by Jorge.

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SEBASTIEN BACHOLLET: Thank you. I hope that you can hear me. It's early in the morning. Thank you. I am not following as much as a lot of participants here, but I took this opportunity at the ICANN meeting to come to this session. I wanted to give a few of my inputs here in this discussion.

First of all, I am not sure that ICANN must be just compared to a private company. We have to remember that we are a multi-stakeholder organization. This is a big difference. We are not just here to make money for shareholders. But, if there is money, it will be used for the good of the different stakeholders participating.

I am not sure that, when people put their application in in 2012 or before, they were considering that it would be frivolous. I think that a lot of people who built the program at that time were not [kind] enough to see all that happening. It's why I would like to question you. Whatever the decision taken here for the next round, you will see people with good mind who will find a way to go around what we will suggest. The [private protection] was not written in the guidebook, and I am not sure that, until very late in the application [process], [that] was something people wanted to consider. Then it was an innovative way of using of guidebook. And why not?

But one of the situations is that it put aside very good applications with just not enough money to run in that period and that we lose as a full picture good applications for good purposes. It's where I think we need to [concentrate on]: how we can find the best candidate and not the larger-pocket candidates. That's, for me, a big, big difference. Yeah, we need to help some of them. We need to push others. But,

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when we have a choice—I know that we don't want to go to a beauty contest—at the end, for the end user, it's important to have a good candidate and a good application and a good realization of this applications. How can we do that? I know it's not trivial but it's something we need to keep that in mind because, if not, the innovation will be decreasing or not coming. It's what we need to have. Thank you.

JEFF NEUMAN: Thank you, Sebastien. I think what I'm seeing from the chat and from the comments from Sebastien and from Paul are two things. Number one is that perhaps the term "frivolous" was not the right one and, in fact, we should probably find a different term to use. But, on the other hand, it has stimulated some good conversation, so I don't think we regret using the term "frivolous" because of the comments we're getting.

The second thing is just to also reiterate that we're not saying that anyone applied for the sole purpose of making money in the 2012 round. We don't believe that that was the case. But, that said, we're looking forward. Many applicants and members of the community did see public companies that divulged information about the, in some cases, millions of dollars that were made from these private auction where they lost and, in some cases, made much more money in losing than they would have had they gotten the registry in the first place. That's not a judgment on those, but we know that, because we saw that, there's a strong belief from the community that we're likely to

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see applications in the future trying to take advantage of that opportunity. So I apologize if it came across that we were saying people in the last round applied for that purpose, but I think that it's fair to say that there could very well be applications in the future that do try to do that.

I do want to read a question from the Q&A pod. This is from Jorge Cancio. It says, "An instrument that is used to decide on two equally valid applications and/or candidates is sortition; i.e., flipping a coin if there are two. This might also help avoid strategies and gaming." There's also a reference to, I guess, an article. I haven't clicked on that link.

Just to talk a little bit about that, we did have a number of conversations dealing with mechanisms of last resort and whether either a randomized draw or some other form and … From the comments we got to the initial report as well as the working group members, it did not seem like there was support for doing a randomization of applications as a mechanism of last resort. There was a lot of materials back in the working group discussions that go into this.

Let me see if there's anyone else in the queue. There's some conversation about enriching ICANN or some perceptions that ICANN may have been enriched during this process. Let's see if there's any other comments. Please, if you do want to speak, do raise your hand. This is meant to be interactive.

Christopher Wilkinson has his hand raised, and then Jim Prendergast. So let me go to Christopher. I apologize I didn't say this the last time, but let's try to keep the comments below two minutes because we do want to get as many people in as we can. Hopefully, Christopher, you've been unmuted, so go ahead.

CHRISTOPHER WILKINSON: Good morning. Just to say that I do not see that an ICANN auction is inconsistent with ICANN's private sector multi-stakeholder model. I really do disagree with Paul McGrady on that sort of philosophical point.

I would also recall—I think it has already been mentioned in the chat—that an ICANN auction, although frankly undesirable, does mean that the proceeds of the auction would be available for agreed uses within the ICANN budget and policies.

Finally, we should be looking for diversity and new entrants. I believe that the private auction option distinctly favors incumbents and the most wealthy and best-financed applicants. I don't think what's we want. Thank you.

JEFF NEUMAN: Thank you, Christopher. Certainly there have been a number of comments like that as well. If we can unmute Jim.

JIM PRENDERGAST: Hey, Jeff. Can you hear me?

JEFF NEUMAN: Yes. Thank you. Go ahead.

JIM PRENDERGAST: Great. As somebody who has been involved in these discussions for, as you said in the first couple slides, years, we've had this discussion. This is not the first time we've talked about it. As you alluded to, there are several—in fact, a large portion—of the community who is not looking forward to repeating what happened in 2012. We can learn from what happened the last go-around. We didn't have the foresight to prevent it. I think everybody who was involved in this, except for those who profited, were scratching their heads and saying, "This is not really how this should have played out."

So we have the opportunity as the SubPro Working group to change how this is going forward. I firmly believe that, if we allow the process to repeat itself, like it did in 2012, we did as a community are going to have much larger problems. We can get into semantics about whether the money goes to ICANN or goes to private parties, but the regulatory scrutiny that's out there right now, both on ICANN and on the parties who participated in those auctions, is significant. I think we need to take heed to that, and I think we've got the opportunity to put in place some guidelines, or as Paul would say, guardrails that help us from going down that path once again. Thanks.

JEFF NEUMAN:	Thanks, Jim. As we are unmuting Greg, I'd love to ask the group. On our question, we've assumed that there's an incentive for applicants to apply for strings without the intent to operate the TLD and for the purpose of trying to make some kind of financial benefit, but I would love to hear from as many people as possible as to whether you think that is a good assumption or whether you disagree with that assumption because, if the group disagrees that we're likely to see it—obviously, Jim agrees with the assumption in his last comment—then perhaps we're trying to solve a problem that doesn't exist. But, based on the conversations we've had previously in the working group, we do see a number of members specifically that do agree without assumptions.
	Let me go to Greg and then Alan. Greg, hopefully, you're unmuted now.
GREG SHATAN:	Hi. Can you hear me? Looks like you can.
JEFF NEUMAN:	Yes.
GREG SHATAN:	I think we're in danger of throwing the baby out with the bathwater in the sense that we are doing far more than is necessary to solve the problem. I think we're overstating the problem or at least the likelihood of the problem. I wouldn't say it's impossible that we would

see this type of gaming. I think we should disincentivize the gaming rather than shut down the entire game. Well, it's not really a game. It's serious business. I think that resolving contention sets … Ideally I would like to see them resolved qualitatively rather than quantitatively, but that, I think, opens up a whole new Pandora's box and I'm not sure how we would establish a beauty contest or a qualification process for every contention set without bogging things down. Assuming we don't go in that direction, I think that looking for guardrails to disincentivize bad actors while leaving the quantitative competition—in other words, the bidding—in place, even with private auctions available … We've had enough—maybe not enough but we've had quite a number—of last-chance auctions and therefore we could have a balance of both. I think that allowing for choice as to how to conduct this with appropriate guardrails and specific disincentives for the specific problem is the way to go. I think just shutting down the private auctions overall really only benefits those who don't like the auction idea at all, hiding behind the idea that it's going to be overly gamed. Thank you.

JEFF NEUMAN: Thanks, Greg. While Alan is being unmuted, I guess the question then is, what would those guardrails be? How can we protect against the—sorry, I'll use the term "frivolous," although I know that's not the term that people like—applications where there is no intent to run the TLD in the first place?

Alan, hopefully you are unmuted. Go ahead.

ALAN GREENBERG: It says I'm unmuted, so hopefully you can hear me.

Can you hear me?

JEFF NEUMAN: Yes. Sorry. Yes, go ahead.

ALAN GREENBERG: Okay. Sorry. It's the first time I've done it on the current version of Zoom. Look, we work in a field where speculation and making investments on the hope that some fraction of them will pay off is routine business. We have domain speculators, and there's no reason to believe we don't have the comparable people who would be delighted to be TLD speculators. Based on the amounts that auctions went for in the last round, you can finance an awful lot of bids at whatever the price would be based on one win. So I don't think there's any question that, if proceed as we did last time, either without guardrails or with guardrails that are not effective, we will have an awful lot of people picking what they hope will be popular names just to try to get in on a few auctions and lose as many as they can, probably.

The problem with guardrails is I have a hard time understanding how they can work. On the kind of things that you listed earlier, Jeff, of, "Well, you have to promise that you're doing this because you really want to run the TLD and you're not doing it just to make money," well,

how do you prove that? How do you come even close to having a level of assurance that people are being straightforward with you? I just don't see how you can do it. So, as much as I'd like to go with Greg and say, "Yeah, we shouldn't throw everything out. We should only allow auctions when they're real, honest-to-goodness, "all people vying to run the TLD,"" I just don't see how you can do that.

So an in between answer is fine if we can really make sure that we know how it's going to go forward. Right now, I don't think we have any level of confidence that we can put those rules in place that are enforceable and that we can believe people are using properly. Thank you.

JEFF NEUMAN: Thanks, Alan. I see Donna is queue, and then I'm going to ask, after Donna, if Paul can put himself back into the queue to discuss the guardrails and maybe address, Alan, the comment that you had about how something like that could even be enforced. So let's go to Donna first and then we'll go to Paul.

Donna, I think you just need to unmute yourself and you should be ready to go.

Donna, I think you have to unmute yourself.

All right, let's put Donna after—

DONNA AUSTIN: Jeff?

JEFF NEUMAN: Oh, wait, no. I think—yeah. There you go. Good. Go ahead.

DONNA AUSTIN: Okay. Sorry. Took a little bit of time. Thanks, Jeff. Just a couple of things about the 2012 round and some of the things that we … I understand that this is a concern for people, but we did, in this working group, make a decision that portfolio applications are okay in future rounds. We're not going to put a limit on it. So we need to accept that maybe this kind of behavior is going to happen and that' part of their business plan based on what happened in 2012. But we don't know 100%.

With regard to that there needs to be intent there to operate a TLD, I would say that, in 2012, that was the case: there was a genuine intent that people would run a TLD. What we've seen, though, down the track, because of some of the additional hoops that people had to go through after the application period had closed and that it took a long time to get to market, is that some of those operation were no longer viable because the capital just wasn't there to support the TLD. So there was a number of TLDs that changed hands but not necessarily because the applicant at the time didn't have the intent to operate the TLD but just because the circumstance of what happened at the close of 2012.

I also want to point out that there is an investment in the program that the applicant has to make, so there must be some kind of intent there.

We haven't agreed here about what the application fee would be, but we could certainly make a policy that maybe the next round should be half a million. That's going to solve this problem that we're trying to get our heads around here. So there's a number of ways that we could have in the discussion around other elements of this process that we could have addressed this problem, but we have chosen not to.

So I'm very much, I'd have to say, in Paul's camp here that this is really a business decision. Let the industry decide, particularly if we're not prepared to address any of those other issues that we could have addressed along the way. So let the market take care of it. That's what this program is, in some regards, supposed to be about: competition. So why can't we let that premise run its course and see where it ends up?

I personally don't think we're going to see what we saw in 2012, and I think it was [Staten] that put in there that it wasn't the intent going into 2012 about what happened. It's just the way that it panned out.

So, to Jim, I understand that you think we've had agreement on this moving forward and we're now relitigating. I don't agree. We've been firmly split on this issue for quite a period of time now, even going back to the fundamental concepts of what we're trying to do here. So we're in two camps here. So I disagree with the notion that we're relitigating here. We've never reached agreement on anything, so we're still talking it through. Thanks, Jeff.

JEFF NEUMAN: Thanks, Donna. I'm going to go Paul. I'm going to close the queue, but I do want to get to the questions also that are in the Q&A pod and then get onto the next issue. So, Paul, go ahead.

PAUL MCGRADY: Thanks. I'm in the queue, Jeff, because you asked me to rejoin the queue. I agree with everything that Donna has said. I agree with what Greg has said. I don't believe for a minute that this was somehow resolved and, now that we're relitigating it … This has been an open question and it remains an open question. No matter if we cast it as frivolous or whatever, whatever rhetoric we use doesn't really change the fact that many applications had to be let go because somebody else in the marketplace wanted them more and that's what the private marketplace does.

To Donna's point, there are all kinds of other ways to deal with this issue. I've been two into the chat that have to do affirmative representations of bona fide intention to actually run the registry and also a representation that the application is not being put in for the sole purpose of participating in a private auction.

Now, Alan asked the question of, "Well, how do we know that we can rely on that?" Well, if we don't trust the applicants and we're about the hand them a registry, all kinds of mischief can be done and frankly has been done. So there are all kinds of other mischief including abuse in second levels of the TLDs, all kinds of other things. This private auction thing, compared to the potential for abuse out there by a rogue registry applicant, is a small issue compared to that stuff. So,

with respect, to Alan's question, if we can't trust the applicant, then we've got bigger problems than this.

Lastly, Jeff, I did like your solution that an examiner should be able to issue office actions or so to make sure that applicants really, truly have a bona fide intention to operate the registry, including digging in on what those plans really are. Thanks.

JEFF NEUMAN: Thanks, Paul. Paul is referring to something I put in the chat. Paul and Heather were comparing bona fide intent to use, at least in the U.S. system, what you have to represent when you apply for a trademark and, if the U.S. Patent and Trademark Office has any questions about that, they issue what's called an office action and try to get additional information from the applicant for the trademark. So they were making an analogy there.

There's a couple things in the Q&A pod I want to get to before going on to the predictability model. JC asks, "Do we have evidence that applicants had no intention of running a TLD? It seems quite specious to me. I would also question how this was actually determined in the past. The investment and losing money and time to actually apply was already high enough to discourage plenty to apply in the first place without having to try and divine their actual intentions."

JC, it's a good question. We don't have evidence from the last round that applicants initially went into this—applying for a TLD—with the intent to benefit. We only have evidence of applicants actually

financially benefitting and, in some cases, public company filings where they certainly—I don't want to say boast about the fact that they've made more money in a private auction than getting the TLD— used that information to boost the health of their public companies. So we've provided those to the working group, so those are available without naming those companies.

Elaine asks which ICANN Board members are attending this webinar. I don't want to single any ICANN Board members out. So there a few but I will leave that to those Board members if they want to identify themselves.

Anne Aikman-Scalese states that, "If this topic is still very open and subject to additional proposal, we should be talking more about how to select from among the applicants for reasons other than who has the biggest checkbook. Is this up for consideration via public comment?"

Anne's question is a much more difficult one to answer. What is not open at this point—obviously, there'll be a draft final report and we're going to solicit comment, so I don't want to say that anything is out of bounds for public comment once it gets there … For our draft final report, we are going to continue with the recommendation that the ultimate mechanism for last resort is an auction. So we're not reopening that at this point. The only thing we're discussing at this point is whether the community wants to ban private auctions, limit them, provide guardrails, or do nothing at all. So that's really the narrow issue that we're addressing at this point. As you can see—

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thank you, Board members who are indicating that they're here and listening—this is a really difficult issue. There are very legitimate concerns, but there's also very strong views that do not share those concerns. So this is one of the very difficult issues of really just a few. A lot of them are difficult, but this is one of the areas where the draft final report may not have a concrete recommendation but certainly would seek input from the community to see if there's any chance of getting some kind of compromise on this solution.

With that, I'm going to go to the next topic, if we can. It's on the next slide, or actually a bunch of slides because … Yeah. The predictability model was developed in response to concerns that, when changes or issues came up in 2012 or, I should say, after the guidebook came out, there wasn't a documented process on how to handle these issues, how to make changes to the program, in a way that was predictable so that applicants could at least understand how those issues would be resolved and feel confident that these issues were being resolved in a manner that met their expectation.

Stated another way, in 2012, issues came up and there was a very ad hoc process on how to resolve those issues. Some of those issues were actually brought up by ICANN itself. If you can recall that time, there was a new CEO that had come in, and that new CEO had decided he wanted to see specific changes to the program to try to address the government advice and other changes that he thought would be good for the program. Again, there was no predictable process to deal with those types of changes.

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So what the working group has been working hard on is coming up with what we have called a predictability framework to handle these types of issues when they arise. So, although hopefully we're going to resolve all of the issues that arose in 2012, we're realistic that other issues will in fact come up during the next round and subsequent rounds because, remember, we're setting up a process to be used not just for the next round of new gTLDs but on an ongoing basis for subsequent rounds when they occur and also do this in a way that does not require stopping the program, a comprehensive review, and then waiting another decade before that next round.

So this solution that we've been discussing is called the predictability framework, where essentially we're not trying to pre-solve these issues and we're not trying to set up a mechanism whereby this new group that I'll talk about in a second resolves those but we're talking about standing about what we're calling the SPIRIT team, which will we see once we get to that next slide, to really act as a mechanism to triage the issues, to help advise the community in a non-binding manner, of how it thinks those issues should be resolved. In other words, if they involve policy issues, it's to ensure that those issues get to, for example, the GNSO for policy development. So we'll talk a little bit more about this as we go forward.

So, essentially, when an unanticipated issue is identified, there's a framework established to analyze the type, scope, and context of the issue and, if already known, the proposed or required program change to assist in determining the impact of that issue or change and the process mechanism that should be followed to address the issue.

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If we can go to the next slide, this body, which we're calling the SPIRIT team, which stands for Standing Predictability IRT, to serve to this room … So the framework recognizes that there are issues that have varying levels of impact. We've placed them in three buckets. There are minor or non-minor changes to ICANN's internal process, there are new or significantly altered internal ICANN processes, and there are policy changes or new policy.

For the first type of change, this bucket exists to allow ICANN Org to have some flexibility in operating the New gTLD Program effectively but requiring that these changes still, no matter how minor, be filtered through the SPIRIT team, which we want to ensure does not paralyze the program.

The new or significantly altered internal processes' bucket exists to ensure that, where parties are highly likely to be materially impacted from these changes, a solution is developed in a collaboration between ICANN Org and the community. So the SPIRIT team is there to help triage those issues.

If there are policy changes, as discussed earlier, it's to ensure that, where those issue arise, they are handled under of the existing GNSO processes that have been developed over the last several years to deal with these types of issues, whether that's through an EPDP, GNSO guidance … I think there's another one that I'm just forgetting at the moment, but there are those types of mechanisms that the GNSO has been talking about.

If we go to the next slide, as currently envisioned by the working group, the SPIRIT team's role is really limited to triaging the issues that come up and to providing recommendations to the GNSO, and, if applicable, to whoever originates that issue. That could be originated by the ICANN Board or ICANN staff. So we're envisioning also this SPIRIT team to not only have members to not only have members of the community serve on this group but also appropriate experts in different areas to make sure that, when complicated issues or issues that very technical in nature, let's say, to registries or operational issues, they can be effectively triaged by this group. Again, the group is not there to develop the solutions themselves, except where they fall into Bucket 2 with ICANN Org. Again, it's not intended to develop, every, possible or circumvent the policy process. The SPIRIT team is subordinate to the GNSO Council so that the council can ensure that the SPIRIT team remains faithful to its remit.

A lot of information there. A lot of work has already gone into this framework. I think we're getting to a point where we're getting close, but I do think there are some issues that still remain.

So I think—here we go—the concerns that are raised—thank you for moving the slide … We want to make sure that the SPIRIT team does not undermine the GNSO Council's remit. We want to make sure that the SPIRIT team is not a body that could be lobbied by the community to advance some special interest. We also don't want the SPIRIT team to also [be] there to make sure that ICANN Org is not deploying some kind of ad hoc process to make decisions on its own but also recognizing that there are certain decisions that involve internal

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processes where they need to flexibility. Determining what is policy versus implementation has always been a difficult subject, not one that I think will ever find a concrete line drawn one. Certainly, people will always disagree. So there's been the question of, well, why do we think the SPIRIT team can do it better? Of course, determining which bucket these issues fall into is something that could get dicey, to say the least.

Finally, this framework is not the simplest of all of the solutions, but we think, at the end of the day, it's there to make sure that there is predictability as to how these issues are handled. Most of us believe that, if the process is predicable and people can agree on then process, the outcomes, at least in theory, should be more acceptable to the community and to applicants, frankly, if we can follow that process.

So the questions we have, of course, are what issues do we still have with this framework, and are there measures that we can add to the framework to make sure that we address the concerns that have been raised but not to also raise the edge case but to really try to deal with those issues that we think are most likely to occur.

Lots of good conversation in the chat. I'm looking at the Q&A pod at this point to see if there's any questions that have come in. Okay, yes. The first question in the Q&A is from Jorge. Please do start raising your hand if you want to address while I go through some of these questions. The first one is from Jorge Cancio. "SPIRIT. Who decides in what bucket the category change falls?"

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That's an excellent question. We're hoping that this would be done in collaboration between ICANN Org and the SPIRIT team, but of course the GNSO Council, which has a supervisory role over the SPIRIT team, can always jump in to the process if it disagrees with the SPIRIT team on its categorization of the issue or the, of course, advice that the SPIRIT team gives on how to handle that issue.

Jorge is saying, "I wonder if that mechanism provides more predictability or just adds more complexity."

Great questions, Jorge. It certainly adds a little more complexity, but we believe that having members of the community and experts serve on this SPIRIT team could help guide ICANN Org and provide some advice so that ICANN Org is not dealing with all of these issues on an ad hoc basis, escalating all of those issues to the ICANN Board, when they could be more efficiently vetted through the SPIRIT team. Remember, the ICANN Board in 2012 was forced to handle all of the issues that came up and it oftentimes took years for the Board to get to it. This is not a judgement on whether the Board reached the right call or not but rather an effort to try and streamline and help the Board, if it needs to get involved, understand the impacts on these proposed solutions.

I still don't have any hands up. I apologize. I have not been able to monitor the chat, but I think a lot of it was on auctions in the chat. Oh, great—I see Anne has raised her hand, so let's unmute hand. Okay, Anne, you should be ready to go. I think you need to unmute—and looks like you're ready. Go ahead.

ANNE AIKMAN-SCALESE: Thanks, Jeff. On the predictability framework, I think that I was one who came around on this idea because I had mentioned previously in the history that, when issues arose in the 2012 round, it was really the Policy and Implementation Working Group that was developed in order to address that problem: "Hey, we recognize that issues are going to arise later in the process. They're going to arise during the implementation process, and one person's policy is another person's implementation."

But, when you proposed a predictability framework originally, I was against it because I felt that too much power was being given to that team of folks. But, during the public comment process, we got comments saying, "Yeah, we need a standing IRT, people, because issues arise and we know it." Then everybody agreed that the SPIRIT team can't decide things if it recommends things and council has the final say on those things.

I personally believe that every issue that arises that is in … I had a recollection that the buckets were A, B, C, D, E; that there were, like, five buckets. You're now saying there. My view is that SPIRIT has to take a first pass at which bucket a later-arriving issue falls into and that determination cannot be left to staff and that it's SPIRIT's job to get that issue and its recommendation as to which bucket it falls in directly to council as quickly as possible because I do believe that some of this is about expeditious resolution of issues arising during implementation. But I don't think—

JEFF NEUMAN: Thanks. Oh, sorry. Go ahead. I didn't mean—

ANNE AIKMAN-SCAELESE: I don't think that staff should be determining the bucket. I think the SPIRIT should be determining the bucket. Thanks.

JEFF NEUMAN: Thanks, Anne. Sorry for cutting you off initially. Didn't mean that. Thanks, Anne. You certainly helped us and worked very hard on this model, as have other members of the working group. I definitely appreciate that. It is something that will take some getting used to if this indeed goes ahead. I think, just on the last part, the SPIRIT team will certainly be collaborating with ICANN Org to help figure out which of the buckets, whether it's three or five, these fall into.

                        I do want to cover—I apologize I missed this in the Q&A tab … This is a question from Daniel K. Nanghaka. I apologize if I mispronounced your last name. Daniel asks, "What if he predictions are invalid? Are there any factors that are pre-considered in the predictability framework?"

                        I think, if I understand the question, we're hoping that, through the SubPro process over the last five years or so, we have pre-considered a number of issues that have come up. But, as you state, there's certainly going to be—or, as I think you implied—area where we may have predicted that certain things would happen and they turn out differently and issues arise. So where that happens? That is precisely

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the reason for this standing committee that can help guide a process for moving forward with those issues. So that's certainly one of the important factors for coming up with this in the first place.

I'm just trying to see if there's … I know there's some questions in the pod still on auction stuff, so we'll make sure that we get to those after the session. We will answer those.

I want to hear from others. Anybody else with thoughts on this predictability model? On how we can, on the SPIRIT team, ensure that it doesn't become a group for lobbying, how we can ensure that it doesn't engage in policy development, or any other concerns that you might have, like how we can simplify the model so it doesn't seem so complicated? Any thoughts on that?

Okay. Let me then ask if anyone has thoughts on the composition of the SPIRIT team. We've certainly had a number of conversations within the working group. The working group feels that it should be representative of the community but also have the power to bring on experts as they see fit to handle some of the issues. Let's say, for example, an issue comes up with the testing of registry service providers, and let's say a vendor chosen to do the testing wants that testing to be done in a different way than originally contemplated. So they want to change that mechanism for testing. It may very well be that the standing panel may not have the expertise in registry service testing, so it would have an ability to bring on an expert, perhaps one that is familiar with the testing or registries or how this would work out to bring those experts onboard.

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Concerns? Questions? Anybody concerns that have been brought up that—I see Phil says, "Maybe each member of the SPIRIT team should be appointed via the NomCom."

I'm not sure that the Nominating Committee would love that proposal. I think they've got their hands full, but perhaps maybe an alternate of that is—there are Nominating Committee members on the GNSO Council—perhaps giving them a role on this. It might be something to think about, Phil. That would be something like that to ensure some independence.

Rubens is saying—there is a question in the Q&A pod, but let me just read Rubens' first—that there's a council committee called the CC[D]C, which I'm going to mess up what it stands for. It's a standing committee that helps select people for things like—in fact, probably the standing selection committee now that I think about it—the bylaws review teams and things like that. So there's a whole bunch of things that the GNSO is asked to appoint members to. So this is a body that the GNSO established to do that.

Jorge Cancio is asking the question, "What is the community? Are ALAC and GAC included?"

Although it's envisioned that this SPIRIT team would fall under the GNSO remit (because the GNSO is tasked with developing policies for generic top-level domains), at least the discussions that we've had to date have certainly envisioned including members from advisory committees and other supporting organizations that may be impacted and want to participate in these types of endeavors.

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So the short answer is yes, again, although it would be under the remit of the GNSO, hopefully, like we did with Work Track 5 and we do with other PDPs since, to make sure that there is a good level of involvement from other ACs and SOs and actually, for that matter, not just the ACs and SOs but also to get an applicant's perspective as well to make sure that we are taking care of their needs because they may not be represented in one of the existing supporting organizations or advisory committees. So we certainly want all interests to be represented.

Kathy is pointing out that she believes it's going to be a large and ongoing commitment. I'm hoping it's not going to be as large as Kathy is saying because I'm hoping that our group has done a good job in solving most of the issues that we think will come up, but it very well could be larger than we envision. Certainly, it'll be an ongoing commitment, but hopefully, again, if the role is understood to be a very limited role, it is not one that takes up a huge amount of time and really fulfills its role in a triage way.

So lots of good chat going on. I don't see any volunteers that want to step up in the queue.

Let me ask with our remaining ten minutes if anyone has any questions, like an open mic, on the work of the Subsequent Procedures, on any issues that may have already arisen during this ICANN meeting, other things that they'd hope to see in our draft final report, which, again, will come out in the next couple weeks.

There is a question—okay, good. Russ has got a question. Russ Pangborn says, "There was discussion last night about our letter to the GNSO Council, noting that we're not intending to address DNS abuse as requested by the GAC and Board/the CCT Review Team recommendations. How can it make sense to move forward with the next round? Procedure is not addressing DNS abuse at all. It seems counterintuitive in the present atmosphere."

It's a great question, Russ, and I'm sure this will not be the last time this question is asked. The letter to the GNSO Council hopefully spelled out their reasoning. DNS abuse is a topic that is being worked on right now by the entire community in many different ways. There have been contracted parties that have put together their framework. There's excellent discussions going on within the ALAC about things that they'd like to see/registries do. The working group discussed this issue and certainly felt that, look, any solution or any new mechanisms to deal with DNS abuse should be done in a holistic manner. It doesn't make sense to only apply new procedures to incoming registries when that is going to be at least three or four years away.

The second reason is all of the abuse you see right now is, by definition, in the existing TLDs—in the legacy TLDs—not the TLDs that will be launched in three or four years.

We strongly believe that DNS abuse can be worked on in the community in the next two or three years in parallel with implementing the New gTLD Program. So we believe that, by the time

a new TLD is delegated into the root in two or three years, there is a solution out there or mechanisms out there to deal with not only the new gTLDs but all existing TLDs.

The other thing is that the mission of the New gTLD Program, or one of the missions, is to ensure competition. Usually when you have new entrants into the market, you don't make it more difficult for the new entrants to compete than you do with the legacy or incumbent providers. That is actually the opposite of what should be done to encourage competition.

So, from a personal perspective, I would strongly encourage the community to work as a whole to solve these issues with the entire gTLD landscape as opposed to trying to pigeonhole it in the New gTLD Program and then apply it to legacy TLDs in ten years when their contracts renew. So we're hoping that these things could be done at the same time.

Another question from Anne Aikman-Scalese in the pod—oh, I'm sorry. Wait. There's one from Paul McGrady first. "Re: the SPIRIT. What is our take on where we are? Most everybody on board and working out details or still up in the air on the idea itself?"

Paul, I believe, unless we're reading things wrong, that everyone, or least a good … We haven't done consensus calls, as you know, but it seems to us that the group is leaning towards this model. And, yes, I would think we're working out details at this time.

Cheryl, do you want to add anything to do that, or—no. Okay, good.

And then a question from Anne Aikman-Scalese regarding DNS abuse. "I hear there's an idea afoot to form a CCWG as opposed to a PDP in order to address this issue communitywide. Wouldn't this holistic approach require a subsequent PDP in order to incorporate any obligations into the Contracted Parties House contracts? And so would that not cause delays?"

Anne, I think that, certainly to incorporate new obligations and contracted parties, you are correct: that would require a PDP. I think that's a good question for the GNSO Council as they're trying to figure out what the next steps are. I'd be happy to give my thoughts to the GNSO Council, but I think they are the ones that [inaudible] [questions].

Okay. Hopefully, you guys can still hear me. There is a question from Russ Pangborn—a follow-up on the original question. "Of course, we shouldn't stop efforts elsewhere in the community, but isn't the large size and scope of the DNS abuse issue exactly why SubPro should be working on this and not launch the next round without coming out with policies to address these issues [,] even if they only apply to the next round in later policies … will need to be built for the earlier TLDs. In other words, isn't some degree of the solution better than continuing to provide no solutions at all?"

Russ, I think providing solutions is important, but this working group was designed to deal with problems and issues in the 2012 program and to resolve those issues. I think to really have a holistic approach, especially as we near the end of our work, would be better to

commission a group that had more experience and expertise in dealing with these issues instead of trying to pigeonhole it in an existing Subsequent Procedures group. So I'm not commenting on whether it's wise or on the new TLD round, but I do think that there are other groups that could have a much more narrow focus on this important issue as opposed to asking the existing members of the Subsequent Procedures PDP to solve this very complicated issue in a holistic manner.

Let me see if there are other questions in the pod. We are getting close to the top. Thanks, Russ and everyone, for your comments—Jorge, JC, and others.

We are going to have our regular working group session on Thursday. If someone can post that time into the chat. Because this is happening during ICANN week, we'd love to invite everyone if they would like to attend. It is going to be on June 25th at 20:00 UTC. It's going to be a regular working group meeting, but we'd love to have anyone join as an observer to give u anyone of their thoughts. We're going to do a deeper dive into the auctions issue after we review some issues in what we call Package 5 of our draft final report.

I want to thank everyone. I wish we had more time. This has been a good session. I really appreciate everyone attending. It looks like we've had over 170 participants. I think that's great. We'd love to see you all on Thursday as well. Thanks, everyone.

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CHERYL LANGDON-ORR: Thank you. Thanks, Jeff. Thanks, everyone. Bye for now.

[END OF TRANSCRIPTION]