
ICANN79 | CF – GNSO SubPro Supplemental Recommendations Community Consultation
Wednesday, March 6, 2024 – 1:15 to 2:30 SJU

TERRI AGNEW:

Hello, and welcome to the GNSO Sub-Pro Supplemental Recommendations Community Consultation Session. Please note that this session is being recorded and is governed by the ICANN Expected Standards of Behavior. If you would like to speak during the session, please raise your hand and Zoom. When called upon, virtual participants will be given permission to unmute and Zoom. On-site participants will use a physical microphone to speak. Please state your name for the record and speak at a reasonable pace. With that, I'll turn it back over to Paul McGrady. Please begin.

PAUL MCGRADY:

Thank you. This is Paul McGrady. I have the joy of being the team lead for the Small Team+ team, looking at draft supplemental recommendations on the subsequent procedure, or as they're starting to call it finally, next round work. And we are going today to be presenting the drafts of our supplemental recommendations and then opening up for questions at the end. We did a prep week session on this, and we went into some great detail with Nigel and Justine helping that work. We're going to go through these recommendations as a result fairly quickly today under the theory that most everyone was able to either attend or listen to the recording of that prep week webinar, but we will lay the background before we open up for questions and comments.

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We wanted to make sure that we had plenty of time for questions and comments this morning. You saw these chairs were blocked off. It's not because we don't want other people at the table. It's that we didn't want the Small Team+ back to the community when we did a community consultation. This room is a great room, not necessarily the best room for community consultation, so I asked the team to sit in the parallels so that we could at least do this when we're talking to the community, and we'll be able to see the microphone and do all those things. So, just an update on where we are.

There was a community update during prep week. I've already mentioned that, so that is done. We are having a community consultation that is today going over the draft recommendations and getting comments back. The Small Team+ has a working session tomorrow in the afternoon to sort of talk about and perhaps integrate any comments or questions that come out of today's consultation, and then we are working to get the final draft amendments to the Council the week of April 1, so that they can be considered during the April 18 GNSO Council meeting.

One thing to remember about the Small Team+ is that it's not decisional. It's just a working team. It is the GNSO Council that will be looking at the draft recommendations and ultimately making a decision, yes or no, on whether or not to move those along to the Board. So, with that background, I'll just jump in, and like I said, we're going to save our questions for the end, but the end is coming.

I sound like an insane person. The end is coming soon. We are not going to spend the bulk of this time getting in redoing our webinar from the

prep week, but we are going to touch on them, and then we're going to ask folks for questions and comments. So, let's go ahead and move on to the next slide. What would you like? Okay. Jim's hands up. Jim, go ahead.

JAMES GALVIN: Yeah, thanks, Paul. Just clarify something you said. I think our working group meeting tomorrow is in the morning. It's afternoon UTC, right? What time?

PAUL MCGRADY: Local time. I apologize.

JAMES GALVIN: 9:00 a.m. Okay.

PAUL MCGRADY: Yeah, anyone who knows me well knows that one of my kryptonates are time zones. I can't do those very well.

JAMES GALVIN: So, 9:00 a.m. tomorrow.

PAUL MCGRADY: 9:00 a.m. tomorrow. Yeah. Steve will be bringing the pastries.

JAMES GALVIN: Thank you, Steve. That's great.

PAUL MCGRADY: All right. So, the first one is that, so basically, we divided these into the general topics, and then built the supplemental recommendations around them. The first topic was topic number nine off of the Board's list, and this dealt with the waiver to specification 11, sections 3a and 3b, which could lead to DNS abuse for second-level registrations and a single registrant TLD going undeterred, unobserved, and therefore unmitigated, and that was what the Board's concern was with the GNSO recommendation for that waiver, specification 11 for .brands, and the Small Team+ attempted to deal with this by making the waiver not automatic. Applicants have to apply for the waiver.

The waiver can be for either 3a or 3b of specification 11 or both. The requirement is that all the domain names in that particular TLD are registered to or controlled by the registry operator or its affiliates, and that the register operator will take effective steps to identify and mitigate domain names that are perpetrating DNS abuse, which may not constitute periodical technical analysis as envisioned by the RA.

In other words, the idea is that these .brand TLDs will be sitting in the larger corporate ecosystems, and they will have their own abuse mitigation in place that may not track exactly with specification 11, and if the registry operator can successfully commit ICANN through a waiver request that everything will be okay, then everything will be okay, and specification 11 won't apply in those circumstances. So, let's go over to the actual language.

You'll see here the scratch throughs and the bold text. This is essentially the changes that were made to the initial recommendation, and there's quite a bit here in the implementation guidance on how all of this would work. All right, let's go on to the next item, Topic 17, applicant support. There was the Board concern with the Sub-Pro initial recommendation was that it had an open-ended nature of fees, which may be affirmative payments of cost beyond application fees, which could raise fiduciary concerns for the Board, and it's one of these things where the Small Team+.

Frankly, wanted to keep pushing on the Board for more for applicants for support, and so we addressed the Board's concern but took an opportunity to make it clear that we weren't just looking for fee waivers or reductions, and so we substituted the specific reference to that wasn't there for application writing fees and attorney's fees for a much broader reference to an array of resources useful for the capacity building, planning, application, evaluation, pre-delegation, and post-delegation phases of the life cycle of the application, and we include references to community suggestions for the implementation of the recommendations.

So, if your particular area of the community put forward ideas, we capture those, and so the next step, assuming the council votes to accept this one and the Board then votes to accept this one, then the next step will be for everybody to go over to the IRT and say, hey, my ideas are part of the implementation guidance and I want to talk about my ideas, okay, and so that's where the conversation will go, but we did our best to preserve everybody's ideas, not play favorites, and make sure that it all ended up on the record. So, this is one where this may

end up costing the Board a whole lot more than the initial recommendation would have, but I think that the general tenor is that they're okay with that.

They just wanted to be very, very careful about how they spent the money so they didn't get in trouble, which makes sense. So, we went from application writing fees and attorney's fees to a broad array, and that's where we landed. So, if we go to the actual text here, it's a little easier to read than the last one, but you'll see that how this worked out in practice, and then you'll see there the link to some of the suggestions from the community which council believes should be considered for possible implementation. You click on that link and that's where all everybody's ideas are there. Now that won't bind the IRT either to include everything or keep new ideas from coming in, but we wanted to make sure that we captured it all. All right, great.

Next up is string similarity. This is one where we just got out of the GAC session where we talked about this one in quite a bit of detail with the GAC. This is one where the community, GAC, ALAC, GNSO, pretty much full alignment within the community, that singulars and plurals should be considered to be confusingly similar to each other.

The Board had concerns about that, but there was a carve-out on that in relationship to the intended use for the TLD. The Board was concerned about that because they have some general concerns about references to intended use which could raise other issues, and they also had some concerns about extending string similarity beyond just a visual similarity check. So, what the Small Team+ is proposing to council to do is to remove the intended use elements and also remove

some extraneous explanatory text and rationale, which was I think, causing some heartburn on the Board.

We added a provision that allows both the singular and plural to proceed when at least one application is a .brand. So, that's some of the intended uses still there, but only specifically in the .brand context. And then we also added some reliance on not just the dictionary, but also to recognize other recognized linguistic sources in terms of confusing similarity. Before we look at the actual text and the strikethrough and the bold, this is the one that, and we've worn such a strong rig.

We gave the Board a heads up and we talked to the GAC about it today, which is the one that is the least aligned with ultimately where the Board wanted to come out because the Small Team+ is still kind of dug in on the singular and plural issue. I think there was a general consensus that that caused a lot of trouble in the last round. We want to avoid that trouble. We don't know what, first of all, we don't know whether or not the council will adopt this one or not. Assuming that the council does, we don't know what the Board will do with it. We didn't want the Board to be surprised and we didn't want the GAC to be surprised and we don't want anyone in this room to be surprised.

But this is one where it was a little harder to fully align with what all of the Board's concerns were. And so, I am going to first go to the actual text and then I see. I have a hand from my trusty friend Jeff Neuman. So, we're going to go to him before we move on to the next topic. But here's what the revised supplemental recommendation looks like. And essentially, like I said, it takes out the intended use. It takes out some

of the extraneous example language but generally sticks with the idea that singulars and plurals of each other are still a problem absent a .brand context. So, I have two hands. I must have really botched this one. All right. So, we have Jeff first and then Susan. Jeff, go ahead.

JEFF NEUMAN:

Yeah, thanks, Jeff Neuman, for the record. And no, you didn't botch it up at all. I was just going to add, this is one that's pretty interesting because, there's very few topics or issues that get unanimous support within the community. So as Paul said, we had all of the constituencies and stakeholder groups agree with the prohibition on having both singulars and plurals. We had the GAC agree with that notion and the ALAC.

But the Board came back and produced a couple of real, real edge cases that were so not likely to occur and then said because of those edge cases that they, the Board, did not find it in the public interest to accept the recommendation. So, I guess kind of the overall question is, well, if the entire community, including governments and the ALAC, find that it is in the public interest but the Board does not, I mean, it's kind of curious to me how the Board can find something not in the public interest when everyone else does.

PAUL MCGRADY:

Thanks, Jeff. Susan.

SUSAN PAYNE:

Thanks, Paul. Also, no, you didn't mess this one up. It was just to add something, which was one of the other concerns that the Board expressed was about the fact that this was a recommendation relating to string similarity. Because this is the part of the subsequent procedures report that dealt with string similarity issues. And as we originally had created this recommendation, it was to the effect that singulars and plurals are an instance of string similarity. And one of the Board's concerns that they expressed to us was that string similarity evaluation, the first evaluation of whether two strings fall within the string similarity rules, is a visual test.

And that some singulars and plurals might be visually similar, but some might not be visually similar, depending on the language and how the singular and plural are created under a particular language. And so, they had real concerns about the that we were basically making a recommendation that said they're visually similar when in some situations they might not be. And so, we did also try to address that by just removing those references.

So, it's, we're not saying that they are a string similarity issue under this visual similarity assessment. We're simply saying that as a community, we've decided that we think the singular and plural of the same word is not an acceptable thing to coexist. So, it's still, in terms of the recommendations, it's still within that heading of string similarity because that's where it came from. But we did try to address that concern by removing those references to this visual, what is a visual similarity test.

PAUL MCGRADY:

Thank you, Susan. Okay, let's move on to the next item. Topic 18. This has to do with the Terms and Conditions Recommendation 18.1. The Board was concerned that it would unduly restrict ICANN's discretion to reject an application in circumstances that fall outside of the specific grounds that we set forth in the recommendation from SubPro. The Small Team+ dealt with that by shifting the emphasis away from certain grounds that require ICANN to reject an application, to providing the allowable grounds under which ICANN Org may reject an application. So, let's take a look at the text.

So, the text now, now reads with, ICANN may only reject an application in accordance with the applicant guidebook, and so on and so on and we don't have an obligation to reject on this, but we did our best to preserve the underlying principle of this recommendation, which is that applicants deserve a higher level of certainty as possible, because these are businesses that are out there raising funds to become registries, all those things, and we don't want the sand to be shifting under their feet. So, that's where 18.1 came out.

Let's move to the next one. For 18.3, again, terms and condition, the Board was concerned that dissatisfied applicants or objectors might argue based on the policy recommendation that the covenant not to sue is not valid, because they did not like the way the appeals challenges was built or operated, and that they were concerned that anything that could weaken the covenant not to sue might preclude the ability to offer the program due to an unreasonable risk of lawsuits.

The supplemental recommendation highlights the Small Team+ removed the dependent language between the covenant not to sue and

the specific references to challenges and appeals mechanism, which we will talk about under Topic 32, and we made clear that there simply must be a challenge and appeals mechanism, and so with that, we hope we have dealt with the Board's concern that resulted from tying them together. So, the text now looks like this, and by the way, if these slides are not in the chat, and I think they probably are, but if they're not, we'll get them in the chat. Oh, yep. It's already in there. Thank you, Terry. Not a surprise. And did I miss the text?

I'm sorry. I jumped ahead. So, 18.3 now reads this way, and you can see we've struck the if and only if the appeals challenge mechanism set forth under Topic 32 are introduced into the program. So that is where that one lies in terms of the text, and then we're moving on, which I think is Topic 32, and if I'm correct, that's the last one. The Board had some concerns with the limited challenge and appeal mechanism that SubPro came up with. The concerns were that it was not clear that a challenge appeals mechanism applicable to initial and extended evaluation decisions made by ICANN or third-party providers or challenges concerning conflicts of interest of panelists, could be designed in a way that does not cause excessive, unnecessary cost or delays in the application process.

In other words, the Board was concerned about an endless loop of challenges, not that we ever have experienced endless loops of challenges in this community, so I think the concern was legitimate. The Small Team+ tried to deal with this by removing references to specific evaluation and objection elements and instead made the specific areas dependent on being feasible and implementable. In

other words, we don't want to challenge an appeals mechanism that's not feasible or implementable.

That makes sense. We emphasize that the challenge or appeal is limited and a one-time only thing. You can't keep challenging and keep challenging and keep challenging. We specifically removed evaluation elements from being challengeable where extended evaluation is available. That seemed redundant. If you have a bad outcome and you have the ability to ask for an extended evaluation, which is itself a kind of appeal, it didn't make any sense to have an appeal to the appeal, and we softened the linkage between the recommendation and the underlying implementation guidance, saying things along the lines of, here's some implementation guidance, and we would like for the challenge and appeal mechanism to be implemented generally aligned with these principles, making it less prescriptive and allowing an environment where the Board is able to keep some discretion on those kinds of things.

So, the text looks like this. You will see that the evaluation challenges and appeals, big chunks of this text were taken out, but a lot of it survived in an annex, and the bottom line here is that we continue to press for a challenge and appeals mechanism that is not going to be an endless loop and is going to be efficient, and hopefully we can, by doing this, deal with the Board concerns about, costly challenges forever. So that is lightning speed, but I want to make sure we had time.

Oh, and then 32.2, you can see that generally aligned with principles, disappear in both 32.2 and 32.10, and so that's where the generally aligned with principles language ended up. And I think that now takes

us to the end of the update on the draft language, and so I, unless the Small Team+ has anything to add to the presentation part of this, I'm going to go ahead and open the floor and see if there are any questions. I saw at least one question in the chat, and I will, actually, let's just go ahead and read that. It's from Michael Fleming, who I think is in the room, so Michael, turn your microphone? Go ahead.

MICHAEL FLENING: Yeah, sure. Sorry about that. I was just curious what an example of a recognized linguistic source would be, and please don't say a dictionary.

PAUL MCGRADY: So, was there anyone from the small drafting team that looked into that? Did we compile a list of things that we would consider to be, or did we just throw that out there and leave it to implementation to figure out? Karen?

KAREN DAY: Yeah, I seem to recall we just left it out there.

PAUL MCGRADY: Yes, it used to say just dictionary, and we thought, well, there's dictionaries, and there's the thoraces, and there's all kinds of other things out there, and we shouldn't necessarily be so narrow or prescriptive. So, to the extent that anybody would like to have a particular linguistic source included, especially those, like our friend

Michael, who speaks, you know, gobs of languages, the IRT will be looking at that, assuming that the council passes this one along to the Board, and the Board accepts it.

MICHAEL FLENING: So, sorry, just to clarify, it's actually a term to be not limiting to just dictionaries, but be more encompassing of other linguistic.

PAUL MCGRADY: Correct.

MICHAEL FLENING: That's a wonderful change.

PAUL MCGRADY: Correct, yes. Expanding our world view. Okay, anyone else with questions? We have a microphone here, or you can come to the table, whichever you're comfortable with. You could put questions in chat, trying to accommodate our extroverts and our introverts. All right, I don't want to cut us short. I also don't want to belabor it for its own sake. If there's anything in here that looks, and I'm trying to normalize this word, and I can't, if anything in here looks squirrely, now's the time. Okay. Well, we will adjourn. Terri, anything that you need to say anything, any benediction to get us out of the room that staff needs to say?

TERRI AGNEW: I do. Please stop the recording and thank you for joining.

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