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ELISA BUSETTO: Hello and welcome to the seventh meeting of the Subsequent Procedures Implementation Review Team on 25th July 2023 at 20:00 UTC. My name is Elisa Busetto and I'm the remote participation manager for this session. Please note that this session is being recorded and is governed by the ICANN Expected Standards of Behavior. During this session, questions or comments submitted in chat will only be read out loud if put in the proper form as noted in the chat. We will read questions and comments aloud during the time set by the facilitator. If you would like to ask your question or make your comment verbally, please raise your hand. When called upon, kindly unmute your mic and take the floor. Please state your name for the record and speak clearly and at a reasonable pace. Mute your mic when you're done speaking. To ensure transparency of participation in ICANN's multi-stakeholder model, we ask that you sign in to Zoom sessions using your full name. You may be removed from the session if you do not sign in using your full name. With that, I will hand the floor over to Lars.

LARS HOFFMANN: Thank you, Elisa. I appreciate it. Hi, welcome everyone. Good morning, afternoon, good evening. Definitely the evening here in Belgium. There's the agenda for today's IRT call. Welcome. I think we've done that. SOI update, I'm going to go ask about that in a moment. Quick slide on the IRT information status, just housekeeping. And then we go into the predictability framework. We shared yesterday two flowcharts, so I'm going to walk the team through that. If that's okay, we're going to start with the initiation one and then go into the execution one. And if

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there's time remaining, then we'll go through the [inaudible] proposed policy language as well. That was also shared last night, central European time. So that's the agenda for today.

Before I go into the details, I want to quickly talk about the SOI. Elisa, I think, sent a reminder to the list that not everybody who signed up for the group has submitted an SOI, which is required under ICANN standard of behaviors. And so I implore you to please submit an SOI if you haven't done that. Most of you have, obviously. Please do so. We will remove people at some point from the list. We'll threaten a few times to actually do it, but eventually it will happen. Obviously, anybody is able to join again once they have submitted the SOI. But that's just as a heads up. If you have any questions, concerns about that, put something in the chat or else reach out to any staff. Me for a start, obviously, but anyone else who is on the call and we'll make sure we help you to get that done.

I don't think there's any question there. I'm going to ask the group whether anyone has any updates to their SOIs to the extent that they have been submitted. Doesn't seem to be the case. So then that gets me to this IRT status document. As I said, I think during our last call, this is really a kind of a shot from the dashboard that we're still working on and finalizing. A live, real-time reporting tool out there. It's just an overview here of the membership, the attendance rate for the IRT for now. Very good. I also see there are no questions on this. And with that, upcoming team meetings we get to at the end.

So we move on to the predictability framework, the initial initiation document. I hope you forgive me that I'm sharing the soft version here

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with you rather than the PDF that we shared yesterday. It's the same document. And I've moved away from the slides, so I don't know, Elisa or anybody from the team. I know we fiddled with them a little bit before the call. If they've been posted, would somebody just share them in the chat here from the Zoom, and that would be great. I can pull this up again here. And the stats will be in the deck.

So the predictability framework, I'm going to zoom out here for a second. This is the initiation of what happens, essentially, of how a decision can be reached, that a change is necessary. And who can initiate that sequence of events. So I'm going to zoom in a little bit. We started off, really in no particular order. We actually started off initially with something else. But for the purpose of this, I'm going to start off with this.

Org determines that a change is required. We didn't put any input here. This could be because of somebody from the outside that contacted us. It could be because we internally discovered something that doesn't go right or is not working properly. For any reasons that we believe a change is required to the program, since we're running the program, we then would initiate the predictability framework. And just to be clear to everybody who didn't have time to look this through. All this shows, this chart, is really what happens before the framework starts. So this just means that Org has determined that a change is required. It does not mean that a change is made and implemented. That happens on the next slide. We go through on the next flowchart. We'll go through that as well. It's really just a decision has been made by Org that a change is required. And so now we're going to invoke the predictability framework.

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The second avenue that we have on here is that the board determines that a change is required within the scope of the bylaws. Other than the process, I'm going to talk about it in a moment. So in other words, for fiduciary duties or for whatever other reasons of the scope that the board has within its powers, the board may direct or determine that the change to the program is required. The board would then direct ICANN Org to implement or conduct or make a change. And again, then the predictability framework is applied. Again, it doesn't mean that the change will be made without the framework. It just means that Org will act upon that because the board told us so.

Since I'm sharing the screen, I apologize if there's questions. I would ask you almost to wait until I've gone through the slide. I understand that may not be possible for everybody. But if you have any other questions, obviously, raise your hand. If I don't see them immediately, I apologize in advance. But obviously, I'll pause for questions at the very end.

The third avenue, essentially, that can lead to a change occurring is existing bylaw processes. So I think we talked about the GGP during past calls. Other avenues that was in the prose as well is advice that is made. And I go through that, why we included the advice here as well together with the GGP. And why also we didn't include the PDP here bylaw annex A and annex A1.

So a supporting organization or advisory committee, really just the GNSO in this case, actually, would approve guidance or advice according to the initial processes. So the GNSO would go through a GGP. And the advisory committees produce advice the way they would do it according to the bylaws. They submit that advice or that guidance to the board,

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again, according to the bylaws. The board considers this. And if they adopt it, then as per the bylaws as well, they would instruct ICANN Org, or direct, really, is the word I think that's been used, to implement a change that, if we zoom out a little bit, that originated through either a GGP or an AC advice from this. And the board here, by implementing this, I think there's a recommendation on this, on GAC advice, for example. We would get through that when we talk about GAC advice and maybe advice from other ACs as well. The board actually, when adopting this, needs to take into consideration the impact that any changes would have on the program. But again, that's something that would be up to the board to determine whether or not they want to accept that advice and the changes of program that would stem from that.

The fourth avenue, the council decides that a change is required, not through a GGP, but through another process. Again, we didn't want to presume for what reason the council might make a decision on a change that is needed. It could be because, again, someone from the outside contacted the council, a stakeholder group or one of the houses believes that something needs to change, and the council takes that on board and believes that as well. The council makes its decision according to its own processes, for whatever reason. In fact, the SPIRT, obviously, is the one that also can bring something to the council here. It's probably the most obvious avenue into this blue starter oval. Then the council would inform the SPIRT that the change is required, that it's decided that change needs to be made. If the SPIRT brings this need to the council in the first place, probably this step can be skipped. The SPIRT then gets in touch with Org, that a change to the program may be

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required, including a rationale, if applicable. And since this doesn't come directly from the board, the Org would then determine, as the operator of the program, is that change needed indeed, yes or no? We discussed this internally, obviously. One assumes that if the council thinks that a change is required, then a change is required, and we would usually probably move to the initiation of the framework here. However, in the rare circumstance that, for whatever reason, Org doesn't believe that a change is required, we would provide a rationale to the SPIRT why we don't agree with the SPIRT and the council. And then the council, obviously here, either says, oh, well, we didn't think about that, Org is right, no change is needed. And the more likely event, I think, would be that the council says, oh, no, we do think a change is needed. So then, obviously, they would engage with the board, and then the board would determine, based on the conversation or whatever formal or informal process takes place, the board would come in here as the arbiter to decide whether the change is required or not.

Again, all of this happens essentially before the predictability framework is applied. But we thought it's important to kind of think this through, not least because of the GGP discussion, but obviously advice as well comes into this. And the board itself and the council are spoken about as those bodies that can bring something to the framework for changes to the program.

So I zoomed out here again. I know that probably makes it unreadable. But kind of just a quick overview of the four different avenues here, and then the escalation path by the Board if it comes directly from the council or the SPIRT. It was probably a longer monologue than I had thought. And fear not, the next part is even longer, so probably talk

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even more. But I'm going to pause here for some reprieve of some questions or comments or thoughts, and then to zoom back in however required. Thank you. And I'm just getting a notice from my computer that my internet connection is unstable. I hope you've been able to hear me. If that's not the case, let me know. No questions or comments? We're good with this? I don't see any hands. I don't hear anything. I'm hoping that people can hear me. I'm going to say that one more time. I'm just getting a message that I might be breaking up a little bit.

Yeah, I think, Anne, we talked about that as well with the SPIRT Charter. We actually think that for this diagram here, the SPIRT Charter may not yet come into place. Let's say that with all the caveats attached. But we talked about the SPIRT Charter very much internally on the next flowchart. So, yeah, it seems quite straightforward. The SPIRT really comes really just into this interplay here with the council. So, I think, which is obviously an internal issue. So, yeah, the question really, I think, the buy-in really is whether this looks logical about the bylaws processes, which I don't think we can ignore. And then the escalation path here with the Board, I think we thought this through as best as we can. We hope that makes sense.

All right, I'm going to move on to the next. I'm going to not belabor this. I'm going to take the support in the chat and move on, which gets us to the real fun flowchart here. I am going to go through this, obviously, as well. As you see here, there's three paths. And just to be clear, essentially, we are now at this green spot here. A change is needed to the program. We're going to invoke the predictability framework. I know we're going to start here. Imagine this error, which just says, coming in from the previous flowchart, we have the green dot here,

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essentially. And there's three different starting scenarios. And they're kind of three different paths, although path two and three are interconnected.

So, I'm going to start with the quick win. The change is required. We established that on the previous slide, so there's no more discussion about that. Then Org determines whether the change is required. I'm going to get to that in a moment, Evelyn. On the previous chart here, on this, there's no timing requirements. So, obviously, if something is really urgent from the board, the board may say this has to be done immediately or within a certain timeframe. They may direct us with a timeframe around that. Here, the council, if they decide a change is needed, I think that the urgency around the issue will determine the timeframe here. But we didn't want to put timelines on this. We think that existing processes kind of cover that. And to kind of add timing to this in a hypothetical did not seem right to us. I'm not saying that's the last word on this, but I'm providing that additional information. Feedback on that is welcome.

Back to the process of the framework itself. Org determines the change that is required. There's two different determinations that are being made by Org at that moment. The first is the implementation. Can that be done of the change? Can they be done in alignment or non-violation, however you want to put that, with existing policy recommendations? So, it's the first question. So, we have the recommendations that are board approved at the moment. That's what the program is based on. Does the change still align with those policies? Yes. Great. And will it have a material impact on applicants or other community members?

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Will not have here, therefore it's green. Will it have, and it would be red for this flowchart, will it not have a material impact?

You may recall, just a reminder, we discussed this when we went through the prose version. That needs to be updated after this call. That material impact is something we'll discuss when we come to topic 18, terms and conditions, where there's also an issue around that. So, for now, let's just assume that we do or will have a definition of that once the applicant guidebook is finalized.

So, if those are both met, no material impact, policy, it's a minor operation, change occurring in the framework, Org formulates and implements a solution and adds it to the change log of the program. And Bob's your uncle.

The next part here, you see this, is slightly different, obviously, and will be a little bit longer. We determine that the change that is needed can be implemented in alignment with the existing policy recommendations. So, again, no policy change and no concerns around that. But it will have a material impact on the applicants or other community members. Therefore, we will inform the SPIRT of that, both of the change and of our assessment with this regard to these two items.

Then SPIRT may want to confer with the council because they think, well, Org has said this is in alignment with the policies, but we don't really think so. Maybe another reason why SPIRT may want to confer with the council. So for the purpose of this first walkthrough, they don't. They agree with our assessment here. There's no need to confer with

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the council for the SPIRT. It becomes a non-minor operational change, which then means that Org develops a solution. The SPIRT has the opportunity to collaborate with Org in doing so as per the recommendations. SPIRT and Org agree on a solution. You recall we discussed this during the last round. I'll get to this bit here in just a moment. This was all in the prose as well that we shared before. This shouldn't really be new. SPIRT and Org agree, Org communicates the changes to all impacted parties, implement, and log the change.

Now, this obviously, we do not want this to become a bottleneck, or at the very least, cause undue delays to the program. So as the operator of the program for ICANN Org, we said here, again, this is text taken from the prose we shared before. If no agreement is reached between SPIRT and Org within 30 calendar days or as otherwise required to maintain the operation of the program, Org and SPIRT will continue to collaborate until the permanent solution is agreed upon. However, until then, Org develops a temporary solution, communicates that to the parties, implements it, and logs it. However, once the agreement is reached here, and we didn't add more errors to that, it will obviously become clear in the prose when we update the document. If a temporary solution is logged, and Org and SPIRT then agree on something different, then essentially a second change will take place. In this case, a permanent change that is agreed by SPIRT and Org, communicated, and implemented.

Yes, and so the process Org can adopt an interim solution if one is not agreed within 30 days. I think that is right. That's what the last document said. That's essentially what is here too. Although, we kind of added here, it's not just 30 days. We thought that's a little bit too

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arbitrary, if that makes sense. But we kind of added as otherwise required to maintain the operation of the program. In other words, we could imagine scenarios where a solution is needed much more quickly. And so then it could be less than 30 days. I think this would always happen. I don't think it would always happen. And obviously, an explanation to the SPIRT.

Similarly, it could be that the change, we have more time than 30 days. Because the program is not upheld by that, or not unduly upheld by that, or would affect somebody who's in a hold-up circle anyway. For a variety of reasons, this could theoretically obviously take longer. And again, then, I don't think Org will be in the business to want to implement a temporary solution that then potentially will be changed as well. So again, this is kind of an idea to kind of give the applicants an understanding of what can happen. I think what we want to do here in practical terms on the ground is work effectively with the SPIRT to make sure that it's understood why a temporary change is implemented. And also provide the applicant then with an understanding of what the timeline for a permanent solution will look like

I'm going to go back to this item here on the flowchart. So, you recall, Org informs SPIRT. SPIRT may want to confer with the Council. We said no earlier. We say yes. We think this assessment isn't quite right. Most likely because SPIRT thinks that actually the solution or the change does not align with the policies that exist. SPIRT will confer this, therefore, to the GNSO Council. Then the Council determines whether the change can be made or if such a change would be in alignment with the existing recommendations. If they think that it can be... I'm not sure actually the no here is correct. I think this is probably a yes and this is a no. I'm so

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sorry, guys. I'm just going to read this because we fiddled around with the negative. The GNSO Council determined that the change cannot be implemented in alignment with existing policies. So, if the Council says it cannot be implemented in alignment with existing policies, it would be different to what Org has said. If they say no, it actually can be implemented with existing policies, then it becomes a minor operational change. The change will not affect or be contrary to the existing policies. We talked through this, what happens after that. If the Council says yes, this would actually be inconsistent with the policies that are in existence. And then the Council could, presumably in cooperation with SPIRT, formulate an alternative solution that is consistent with the policy recommendations. Again, then it goes up to a non-minor operational change. And if the Council says no, there's no alternative. If this change is required, it can only be made in a way that would be inconsistent with existing policies, then it would become a policy change. And I'm going to talk about that in just a moment because I'm going to restart the left.

But that is all to say that just because ICANN Org here determined that the change is in alignment with the recommendations, the determination that ICANN has made, that doesn't mean that it will, by definition, become a non-minor operational change. This is the [decision path for the SPIRT, Council to make the determination that,] in fact, this is a policy change.

That brings me to the bottom, which is essentially that ICANN determined that this policy change is required. So the change cannot be made or implemented in alignment with the existing policies. Org informs SPIRT. The SPIRT here is no decision point. I think by definition,

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the SPIRT confers with the Council in that case. The Council here makes the same determination as before. Do they agree that the change actually is inconsistent with existing policy and cannot be implemented in alignment with current ones? Then no, it would become a non-minor operational change. It would essentially move up here. The Council says, no, no, this is fine. This aligns with the policy.

Much more likely, obviously, it would come to this. Again, the Council feasibly could come up with, in cooperation with the SPIRT, potentially. Again, we didn't want to get involved in the SPIRT-Council relationship here. Can an alternative be found in terms of change that would be aligned with the policy? Great. It also moves up there. Probably also most likely be a no here. That gets us to a policy change.

For the policy change, bottom here is very quick. You see this is the end point. The rest goes all up from the top. The Council decides if they want to develop new policy, which would only apply to future rounds. The Council is free to decide that according to their mechanisms. They can use their own internal procedures. Again, not something we want to mess with in the predictability framework. It's up to the Council to decide and to run as they see fit.

However, we said a change is needed and the change would be inconsistent with existing policy. I think here we now get into something that was not really a part of the prose yet. It really came up as we walked through this diagram internally. First of all, in collaboration with the SPIRT, Org develops a solution which is in variance or [inaudible] or an exception to the policy for the existing round. The definition of a policy change.

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We kind of use that language because I think we don't want to confuse this with the idea that SPIRT and Org are actually developing policies. That's not something that would be happening here. Technically, we would implement a change to the program that is inconsistent with the existing policy. Therefore, if you want new policy for this round, but it's not creating policy in the same way that the GNSO can create policy.

The SPIRT and Org agree on a solution that's in variance or exception to the existing policy. These are essentially the same steps that we have here for the SPIRT as well. They develop a solution and agree. We just put a little more flesh on that because of this policy aspect to it.

Then we built in this step as a necessary step when we discussed this internally quite a bit. We would like to hear from the group on this as well. SPIRT and Org agree on a solution. SPIRT here in this step interacts with the council however they see fit. I don't think that's for the framework to determine in any way how the SPIRT interacts with the council. That's for the SPIRT charter to determine. However, since we're going to be implementing a change to the program that is not aligned, potentially contrary to policy that the board has adopted, we believe that a change, even if it's just an implementation change for the current round, that is going against existing policy, is something that we couldn't do. In this IRT, we couldn't just make up something and implement something into the AGB that is different or contrary to what the board adopted and what the PDP decided the council adopted as well. We can't do that.

Similarly, when the program goes on, it didn't feel right that then we can do it. That doesn't seem right. The board would adopt this proposed

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change. The question here is, what role does the council play in this? The current recommendations that we have, the policy that we have, are obviously approved by the council and are or will be approved by the board. Here, the board will adopt the change that's contrary to existing policy that the board had previously adopted. Do we need a council resolution on this? I'm just going to put this out there. Question mark. We can return to that in a moment. In any case, once the board has adopted this, they will instruct ICANN to implement and the usual steps ensue.

This path down here is the escalation path that mirrors the one that we talked about, about fear in the non-minor operational change. Potentially, there's a risk to the program. The same caveated language here, 30 days or as otherwise required. Temporary solution by Org developed. Again, it would be a solution that's not in alignment with existing policy that the board adopted. Board resolution comes in here. Again, a question of the council arises here, obviously. Then, board directors communicate and implement the change.

Then, we really have this here as kind of a caveat. I think we want to mention that in the program itself as well. This is also mentioned in the final report. This is really something for applicants that are in extraordinary circumstances. There could be a recommendation that the program be halted for a period of time, in such a case, [triggering] rationale for this action must be provided to the GNSO council for its consideration. I think this is language that actually originates from the final report as well.

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After almost half an hour of a monologue, I'm going to pause here. I know that's potentially a lot to take in, certainly visually. I think what we depict here, however, mirrors quite closely what we discussed in the previous two sessions. I think the biggest difference, as I pointed out earlier, is really the insertion of the board here and then the question around the council. I'm going to stop, pause, and see whether we have any questions, comments, thoughts, or the like. Anne, I knew you wouldn't leave me hanging. Please go ahead.

ANNE AIKMAN-SCALESE: Great. Thank you so much, Lars, and the rest of staff. This is extremely helpful. Obviously, you guys have thought through so much here. I think my one immediate reaction, although I haven't had a lot of time to read this, but it is a really simple comment about the point at which council determines whether policy is needed or not. Just before that blue policy change thing, the orange diamond before it, when it says yes, it seems that the line there should run underneath the second diamond and then come back up with an arrow to policy change. In other words, the diamond on the right says alternative solution.

LARS HOFFMANN: This is for the council, right? This is a council decision. The hypothetical that we had is, let's say we bring something to SPIRT and say, we need to change this and we don't think it's consistent with policy. The SPIRT goes to the council and says, hey, Org wants to change this. They don't think it's consistent with policy. If the council says it's true, their solution is not consistent with policy, it would be a policy change. However,

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we're smart people, and here's a solution that potentially could work and that would work with existing policy. Therefore, we build in the second step to give the council the opportunity to, and the SPIRT for that matter, obviously, that would work together, to educate us, in other words, or come up with a better solution that would be consistent with the policy.

ANNE AIKMAN-SCALESE: Yes, if I may, I'm totally agreeing.

LARS HOFFMANN: [inaudible]

ANNE AIKMAN-SCALESE: Yes, indeed. I'm just talking about the path, that the path in number one, the first, the left, the diamond on the left, that path about council saying it cannot be implemented in alignment with existing policy, that diamond actually leads to policy change. So, it's really just a visual thing where if that determination is made, it seems to me that the line runs from under there to the right and up to policy change. But maybe I'm misunderstanding.

LARS HOFFMANN: Let me give you an example. No, I think you're both right. I don't think you're misunderstanding. Let me just give you an example. I think that might be helpful. [inaudible] but I'm going to use my silly car analogy

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again. The policy says you have to, whatever. I'm not going to use it, actually.

So, ICANN Org says we're going to have to change, we have to make a change, and that change is that all applicants now have to do something. Well, terrible hypothetical. I'm really sorry. You caught me on the spot. ICANN Org propose a change. Change X that says X. And we say that change X is a policy change. That goes to the council to confirm that our assessment is right here by the SPIRT.

The council said that that change X to a specific problem indeed would be a policy change. If you implemented X, that would be inconsistent with the policy and it would lead it directly to policy change. And I think that's what you're saying, right? Yes, X is a policy change. It becomes a policy change.

However, why we built in this as a step and no direct line is to say, well, the council say, yes, proposal X is a policy change. However, we thought of a better alternative to use a different change to the program, which is change Y. And that change Y addresses the original problem, but it's also consistent with existing policy. And therefore, we didn't want to go from here straight to there because we wanted to give the council and the SPIRT the chance to come up with something that is different than our proposed change, Org's proposed change that is in fact consistent with existing policy and would kind of steer us away from this kind of change, which I think we all want to avoid as much as possible. Sorry, is that helpful? Is that why we kind of didn't go around it?

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ANNE AIKMAN-SCALESE: Yes, I do absolutely see that and it's very constructive. I just wonder if there's a way to indicate that there are two different paths for council. One is the alternative path and the other is the no, it requires a policy change. But as you explained it, I think it's quite clear. But I'm not sure the visual is as clear as your explanation, but thank you. This is just, this is excellent work. Thank you so much.

LARS HOFFMANN: We'll take another look. I'm just looking at the chat. So Anne, that's fine. I think that's dealt with, Anne. That's right. Phil Buckingham is asking if there's a policy change, it will not affect the current round of applicants, right? So then be changed in time for the subsequent round of applicants. Thank you for that. This is a good question. So let me get my thoughts straight. So this is why this language is so convoluted.

So this policy change here is something, as I said earlier, and I think I'm hearing everybody's sentiment, that we want to avoid. So this is something that I think will only occur, should only occur in the rarest of circumstances where it's absolutely necessary. But if there is a scenario where something needs to change and that change would be inconsistent with the existing policy, in other words, let's say for some reason we no longer want the predictability framework, right? It was a terrible idea. Nobody wanted it. Doesn't work. We don't have any volunteer for the SPIRT, whatever hypothetical you can think of. So if everybody agrees, we need to get rid of the predictability framework to make the round run properly. Obviously, this is a crazy hypothetical, but anyway.

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So then what would happen is we cannot change the recommendation on the final report. That's not possible. That says we have to have a predictability framework. So what we need to do is we then need to implement a change. In this case, the predictability framework is in the applicant guidebook, something in the applicant guidebook that refers to the predictability framework. And so that change in the applicant guidebook needs to happen to make sure the round continues. I think that's probably the hurdle for a policy change.

And so that change to get rid of the predictability framework, this is really a bad example, but I talked myself into it now. That change would be only for this ongoing round. And the policy itself would not be changed. We just do something in that round that is inconsistent with the policy that the board has adopted because we really, really have to.

So there is a scenario where there is a change to the applicant guidebook that is inconsistent with the policies that the board has adopted. And so I think by putting it that way, it becomes clear that really this is something we want to avoid at all costs. But the final report talks about this, and obviously it's certainly a hypothetical, and so we are solutioning for that.

And so we are not developing new policy, we are simply changing something that is inconsistent. And at the same time, the council gets the option to consider whether, well, for the next round, do we want to develop actual policy that either reflects the change that was made or develops something completely different, or maybe reaffirms this, that actually we got something wrong, we actually should do what we changed in the first place in that round. In other words, the policy, the

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underlying policy itself that the board has adopted, that can only be changed by the council, that would only be applicable to the next round. And yeah, I'm going to stop there. I hope that makes sense.

Yes, exactly. If a new policy is developed, the council essentially would initiate a policy development process, whether it's a PDP or an EPDP, to kind of make new policies for subsequent rounds. Yes, I think that's very true, it is very complicated. I'm glad, Phil, that it makes sense. I'm not sure it was entirely clear, but I take the win. Good. Any other questions, comments, concerns, feedback? That does not seem to be the case.

So, one second. I think there was a question from Evelyn earlier in the chat, but I think Evelyn got me wrong. I think I answered that. Is that right? Oh, no. Lavish asked for what the material change, what the material impact constitutes. I briefly spoke about that. That is something we'll discuss later on topic 18. And then Evelyn, yeah, I think I answered your question. This was about the timeline, and so there's no timeline that we added to this flowchart. [inaudible] noted. Very good. Excellent. And Lavish, also, I don't know if you were on the call during the last couple of calls. We discussed that with the group before as well. So, the fact that we're going to talk about material changes later on was not raised for the first time today.

Good. With that, I am now wondering, we have 10 minutes left, whether we should go into a new topic. My sentiment, I'm looking a little bit at our liaisons as well that are on the call. I would almost suggest that we shift that, but I'm also keenly aware that my colleague Peter is on the call, and it's as late for him as it is for some other people

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on the call. Any thoughts on going on to the next topic? Appreciate that. Thank you.

Well, I'm going to pull it up. So, we have nine minutes left. Peter, just as a heads up, I'd like to quickly talk about the upcoming meetings. So, if you'd just leave me a minute or two. It's a short section on the freedom of expression. So, I'm going to have Peter kind of speak to that very briefly. We also provided some context around the brevity of that in the email that I sent. So, hopefully that will be helpful as well. And I'm just trying to potentially pull up, there we are, there we have the text. Peter, can I pass it over to you as you are muted already?

PETER EAKIN:

Of course you can, Lars, thank you. Hi everyone, I'm Peter. I'm the subject lead on this topic. We really have very little time. So, I'm going to cut out a lot of the context, except just to remind everyone who doesn't know, freedom of expression is a fundamental human right, and in essence, it states that everyone has the freedom to hold opinions without interference, and the freedom to speak, receive, and impart information through any media.

So, the final report included one affirmation and one piece of implementation guidance on the subject, essentially reaffirming that the principles guiding the treatment of freedom of expression in the last round, that the evaluation process must not infringe applicants' freedom of expression rights, and that strings must not infringe existing legal rights of others.

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[inaudible] and that the working group recommended that these rights had to be taken into account in the development of program rules, processes, and materials during the implementation phase of the program, and that to the extent that additional work was undertaken within ICANN to reflect human rights and our processes, this work should also be incorporated in the new GTLD program.

So, turning to the text itself, we use the final report recommendations or guidance as a baseline. We effectively start by saying that ICANN does respect the freedom of expression rights of applicants. This is actually a core value in our bylaws, enacted from 2016 and then adopted by a framework of interpretation in 2019.

We then go on to say that applicants can apply for any available gTLD, other than it was restricted on technical standards, reserved name lists, and other restrictions detailed in the AGB. This really confirms that freedom of expression is available to all applicants, so long as it abides by the rules of the program.

We then say that applicants should be mindful of the limitations to free expression, and what I mean by the hyperlink there is that in the previous guidebook we had a section that outlined some limitations, such as the legal obligations and some sort of morality and bad behaviors that strings have to avoid.

We then go on to say that all applications are subject to evaluation and objection, and that if strings are found to be violating applicable laws or other rights or any of the requirements of the program application process, they probably will be unsuccessful.

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We then say that the evaluation of applications, including decisions and objections, will be performed by independent third-party vendors, who will take into account freedom of expression considerations alongside all the other relevant factors to an application's success.

So just to explain our thinking around this very quickly. It's a proposed text which is a compact statement of principles and facts. We're not proposing a whole new process or a wholesale reformation of what went before, and this is consistent with the final report's affirmation that the principles that underlined the previous round's treatment of freedom of expression were sound.

We also noted that, to our knowledge, we did not have any evidence that there was an infringement of an applicant's freedom of expression in the last round. We noted that this was noted again in public comment, and that in most cases, especially in regards to LRO cases, the panel found for the applicant.

However, ICANN continues to consider how to reflect human rights considerations within its processes and align with its bylaws mandate. This, however, doesn't always mean that we call out specific human rights considerations in these processes, but that they're addressed operationally in the conduct of normal business. And this is in line with the bylaws which enshrine human rights and the extension of freedom of expression as an ongoing incentive.

However, we do note the PDP working group's desire expressed in the guidance in 10.2 for greater consideration of freedom of expression rights in the next round, with regards to perhaps enhancing the

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valuation guidance for these third-party examiners. And [inaudible] intend to consider updating guidance as needed during the implementation work on these processes, particularly in relation to the objection process and wherever else it becomes apparent that it might be necessary. So apologies for that lightning quick summary. Does anyone have any questions?

Yes, hi, I'm noticing Sam's question about third-party vendors. These would be the external experts that we would engage to undertake the evaluations and to adjudicate on dispute resolutions. Anyone else? I appreciate there's not been a lot of time to really engage with the text.

LARS HOFFMANN:

Peter, I think I'm going to put it back. This is obviously not the last time. Thank you so much for presenting this and providing some context around that. I'm going to move us on with two minutes to go. Just very quickly. Nigel, please go ahead.

NIGEL HICKSON:

Yes, thank you very much. Just on this text, I mean, no problems with the text at all, but I just wondered whether in light of the work that's going on in the ICANN community on human rights, whether it needs to just cross-reference the work that is going on. You know, there's a GAC group, there's a community group on human rights. So, I mean, I haven't got the references to hand, but does it need to say something about that if it's going to be in the applicant guidebook?

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LARS HOFFMANN:

Yeah, Nigel. It's a good question. In terms of time, we did think about that internally. Our thinking was that the answer here is no, because it's in the applicant guidebook. So, obviously, if something did materialize from those ongoing discussions that would be relevant to this round, I think then it behooves us to update this text that goes into the applicant guidebook with what is pertinent to the applicants here. But at the moment, we don't think there is anything that has been finalized that would be pertinent to the applicants. And therefore, we thought for somebody who doesn't know ICANN, to reference ongoing processes would maybe be not productive. But I'm not blocking off what you said. I'm just giving a rationale of why it's not included yet. And we can obviously discuss that during the next meeting.

So, Juan is asking the chat very quickly, I know we are top of the hour, whether applicants for new gTLDs should be allowed to use any words they want for any reason they want, regardless of our rights, especially some users. No, that's not what we're saying. But what we're saying is that the starting point is that the string is a string. And one word may mean something in one language and something in another language. And therefore, the ability to apply for any string is there. That doesn't mean that any string can be delegated. And so I think that's what's referenced here. There's objection processes. There's a public interest that the board is responsible for, etc. So this doesn't say that any string can be delegated. Just that the starting point is that in principle, you can apply for any string because putting restrictions around that from a starting point, as a principle, didn't seem right to us. Rather than we refer to the different sections that kind of put restrictions around the different strings or the meanings of strings.

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Good. We are a minute past the hour. So just to be very quick, I'm really sorry for keeping you on and I understand that people will have to drop off. I'm going to post what I'm going to say now into the list as well, although I will do it tomorrow because it's rather late here. And I want to look at the upcoming meetings. We have a meeting here scheduled for the 1st of August, which is next Tuesday. And I'm going to make the announcement here that I'm suggesting, I'm not suggesting, we're going to have to cancel this. A lot of us are on holiday. And so I think what we will do instead, however, is we will have a meeting on the 22nd of August to pick up the predictability framework, the prose that goes with the flowchart, the updated prose, the updated language. And we return to the freedom of expression as well. The document will be open for comments in the Google Drive until then and beyond for that matter. And obviously the framework we shared as well and the feedback you have is welcome on that on the flowchart.

What I will say very quickly, I'll give you one other minute. The reason also why we are cancelling next week and some of us on holiday next week is because the week after that, I alluded to this in DC, some of us are meeting in Los Angeles. Most of us, in fact, are in Los Angeles to kind of have a workshop around some of the bigger topics that we expect. Our supervisors allowed us to clear our agendas, so we will do nothing else but the AGB work during that week with several of our colleagues there. We have some big-ticket items on there, string similarity, reserved names, applicant comment. So we expect that we're going to come out of that week not necessarily with ready-made text for the IRT, but with enough clarity that ready-made text for the IRT will be available throughout September. And so I think the ticking over of topics

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that has been a little bit slow until now, I'm the first one to admit that, will pick up pace after that hiatus in August. I hope that is helpful. As I said, I'm going to put that onto the list as well. And then Elisa, my colleague, later this week will cancel the 1st of August and put in the call for the 22nd. And with that, I apologize. We are four minutes over, and I think this is all we have. Lots to think about, as Nigel said. Thank you all, and please end the recording. Thank you.

**[END OF TRANSCRIPTION]**