ICANN
Transcription
New gTLD Subsequent Procedures Working Group
Monday, 8 January 2018 at 20:00 UTC

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at: http://audio.icann.org/gnso/gnso-new-gtld-subsequent-08jan18-en.mp3

AC Recording: https://participate.icann.org/p6ucvagekt5/

Attendance of the calls is also posted on the agenda wiki page: https://community.icann.org/x/Px1yB

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page http://gnso.icann.org/en/group-activities/calendar

Operator: The recordings have started. You may now begin.

Julie Bisland: Great, thank you. All right well good morning, good afternoon and good evening everyone. This is the New gTLD Subsequent Procedures Working Group call on the 8th of January, 2018. In the interest of time, there will be no roll call. Attendance will be taken via the Adobe Connect room. If you're only on the audio bridge would you please let yourself be known now?

Okay, hearing no names I would like to remind all participants to please state your name before speaking for transcription purposes and please keep your phones and microphones on mute when not speaking to avoid any background noise. And with this I'll turn it back over to Jeff Neuman. Thank you.

Jeff Neuman: Thank you and hello, everyone. Happy New Year. Welcome back. Hopefully you've had a – some good time off and some relaxation and are now fully ready to engage back into this process. I know the coleaders of each of the groups have been working since last week to try to prepare for the call

starting this week. So we have an agenda that, as always, is up on the top right hand part of the screen.

We'll start with any updates to statements of interest, go into some work track updates, if there are any, and then I'm actually going to play my prerogative to actually change around Items 3 and 4 to do predictability framework first, if we could do that, and then go into the differential – the application types, simply because I think on the last call we did not get much into the predictability framework and spent most of it on the application types so I want to make we get some good time in on the framework. And then we will go through any other business.

So I'll ask now, is there any other any other business that someone would like to propose? Okay, not seeing any, I'll first ask to see if there's any amendments or changes to statements of interest over the New Year or anyone that would like to declare a new interest?

Okay, not seeing any, if I could just remind everyone to mute their phones when they're not speaking, there's a little bit of background noise so that'll be great.

Okay, so everybody, welcome back. I'm – we have a number of work track calls this week and next week. So just looking through the list, is there anyone that would like to give an update or preview of Work Track 1? Is there anyone on from Work Track 1? Sara or Christa? Sara, please.

Sara Bockey: Hi there. Yes, this is Sara Bockey for the record. Work Track 1 will be meeting later today at 0300 UTC. On our agenda we will be discussing our draft recommendations for clarity of application fees and if time permitting we'll get into the variable fees as well. So I hope you all may join us and provide feedback and I think that's pretty much it, just getting back in the swing of the New Year.

Jeff Neuman: Okay, thanks, Sara. Work Track 2, I'm just looking, I know – I don't see Michael on Adobe. Is Sophie on? No? I don't – is anyone – okay well there is a Work Track 2 call coming up. If we could just post in the chat when the next Work Track 2 call will be? And I think it's actually not until next week but I may be mistaken.

Work Track 3, Karen and Robin, does anybody want to give a preview of the next call? Karen, please.

Karen Day: Hi, this is Karen Day for the record. Work Track 3 will be having its next call tomorrow, January 9, at 1500 UTC. And we will be doing our- continuing our third pass on the objections topic.

Tomorrow we will be looking specifically at legal rights objections and confusing similarity objections. Email was sent out over the weekend containing some materials to review so I hope you can all join us for that tomorrow, 1500. Thanks.

Jeff Neuman: Okay. Thanks, Karen. And then from – I just note that Emily has posted the Work Track 2 call is next week, January 18, at 0300 UTC. Rubens, Work Track 4, I see you have your hand raised so I'm – it's not a question on Work Track 3 but something on Work Track 4 so you have the floor.

Rubens Kuhl: Thank you, Jeff. It's definitely on Work Track 4. Work Track 4 will be meeting later this week, January 11 1500 UTC, that will be a Thursday for most people, what for others might be other days of the week. This week's agenda is financial evaluation so we will move that discussion that we started some time ago within Work Track 4 about four different models of financial evaluation or perhaps a new model if someone comes with a new idea, the floor will be open to any new ideas as well. So anyone interested in financial evaluation, please come along. Thank you.

Jeff Neuman: Thanks, Rubens. And I'm going to give a personal plug for Work Track 4 just because you know, they generally get the lowest amount of turnout but, you know, they are really talking about some very substantive issues especially for a number of applicants or future applicants, consultants, backend operators and pretty much most of the community.

They are really getting into some of the details on how the evaluations will occur and on the financial evaluation this was an area of a lot of debate and consternation amongst applicants so just a plug to see if we can get some more people in for Work Track 4. And as Cheryl says, it is a nice little fun crowd so don't miss out on that.

And then finally or I should say last but certainly not least, we have Work Track 5, and I know that Annebeth is on here and we had just gotten off a call. Martin, great, Martin's got his hand raised so maybe Martin will give a preview of the call next week. Thanks, Martin.

Martin Sutton: Thanks, Jeff. Martin here. So at our last meeting we spent quite a lot of time going through the terms of reference and a revised document has been issued to the work track members to run through before our next meeting which takes place on the 17th of January next week. So we're beginning to finalize the set of terms of reference.

Prior to then also we'll be circulating a request for input regarding the definition surrounding geographic terms at the top level so that will be distributed to members either later today or early tomorrow and we'll be looking for input and that will form again, part of the discussion at the meeting on the 17th of January so those are the two main items we'll have preparation for. Thanks, Jeff.

Jeff Neuman: Thanks, Martin. And, you know, one of the topics that we will be discussing later on in this call about applicant – excuse me, application types, certainly is a topic that bleeds over into Work Track 5 and to the extent that when we talk

about that a little bit later if geographic names gets brought up don't be surprised to hear us say look, that's a great discussion, let's save that and carry that over into Work Track 5 specifically on geographic names and there already has been some discussion on the full group mailing list that has bled over into that group.

So and just a reminder that not everyone from Work Track 5 that participates in Work Track 5 participates in this full group so to the extent you do want to have a discussion about geographic names, please make sure that you address it to the Work Track 5 group specifically otherwise not everyone is getting your emails. Thanks.

So just looking at the chat, Christa Taylor says that the meeting a little bit later on is – well in a few hours I guess, we'll talk about, as Sara said, application fees and time permitting variable fees.

Okay, with that said, why don't we jump into the predictability framework and going back to the last call, there was an email that came out with some homework, although it was over the break, so there were some people that responded to the part of the homework that related to the application types and on business models.

There was not too much in the way of feedback on the predictability framework. So what I thought we would do is kind of go over that assignment and try to come up with examples or case studies that we could use over the next couple weeks to stress test the predictability framework that's been developed on these different types of situations if they were to arise.

Now obviously we cannot predict the issues that will arise between the time in which our work is finished and the time in which applications are accepted or until those are delegated. But hopefully we can come up with a predictable process at will carry us through any type of situation that does arise.

So some of the examples that occurred in the last round that I thought we could then use as case studies or stress tests for the next time around include five different examples that I wanted to talk about each with different implications.

Now, the other caveat I'll say is that these are issues that we did resolve during the last round, but I want everyone to pretend as if these were not resolved so that we could think about ways in which we would handle these same situations were they to occur for the first time in this next round so – or this next application window.

Again, this is not really to discuss whether we agree with the ultimate solution that came out of the last process but really to talk about the way in which the process was handled. So going from – and thank you, Emily. Emily has posted the Google Docs that has the predictability framework.

So the first situation that I think was – came up was something as simple as – or well, I shouldn't say simple because it certainly wasn't simple, but something like the change that ICANN did of using a customized software solution for the application portal and moving that over to Salesforce.co so to move it from one type of portal to another. That was a change in the application process from when it was initially planned out. That was done without any input from the community; that was done by the ICANN organization and was done with notice and for a period of time in which the portal was down and then they made the change and everything came back up.

So one type of change in the process could be as benign or as simple as the change of vendor or an application type. Again, the way that was handled by ICANN was solely by the organization, and what we need to look at going forward is would that type of change be one where going forward that would be done the same way by the organization, or if not, should there be any

other types of input to the process of making such a change? So that's Example 1.

Example Number 2 was the – sorry, I got to go back to my notes here as I get a glass of water as well. Example Number 2 was a change in the pre-delegation testing procedures.

So this was something that was decided by the vendor of the pre-delegation testing in accordance with ICANN and some of the consultants. Notice was provided to the – well I guess what were they called at the time? They were – yes, I guess they were contracted parties, they were registries that had not yet been delegated so the changes impacted the registries.

But this was done - again it was done with notice but it was not done with any comment from the community or the impacted parties but was a change by the ICANN organization.

The third type of change or third example that we've come up with is the change from Digital Archery to the randomization process. And I know there's probably the better term that ICANN staff wants me to use. But for now I'll just call it the random selection process. So that was a change that impacted applicants. That was a change that was introduced primarily because the initial way of moving forward, the Digital Archery, there was found to be some let's just say security flaws in the way in which it was going to be carried out.

And so I do believe there was a comment period on that but ultimately this was a decision made by ICANN staff to do this and as Phil Buckingham says, the priority draw, so that was another type of change that was made to the process that was done with some comment but again, the decision by the ICANN organization so that is another stress test or example.

The fourth one is – and you can see this is a sliding scale, I hope, as we move from 1 to 4 here. Number 4 was the name collision issues. So this was

– this was a substantial amount of changes that were made to the – to the – not to delegate – well, yes, there were changes to the delegation process as well as to the launch processes of registries made as a result of I think there were several – I know that there were several comment periods for this one. And certainly research done by consultants from ICANN as well as other members of the community as well as input from the SSAC and from a number of the different technical communities.

So this was the type of situation that did have certainly a lot of opportunity for input though again, the ultimate decision was proposed and made by I believe it was the New gTLD Program Committee as opposed to the full Board but it may have been a full Board decision, I'd have to go back and check. So that was a fourth type of example.

And a fifth example, a last example of changes that were made during the process in this last go-around were changes made to the ICANN registry – the base Registry Agreement. Some of those changes were small changes made to just conform some technical requirements to some of the – or sorry, some of the specifications to some of the protocols and other things that were implemented, but some of them were quite major and included things like the – how a Registry Agreement could be amended or, you know, things like introducing public interest commitments, those were pretty substantial changes made to the Registry Agreement.

Some of those elements were done with a good amount of community comment, community input, but all of those decisions ultimately were made by the ICANN Board; they were not policy recommendations that came up from the gNSO or nor were they decisions that included any kind of implementation review team or anything like that so these were ultimately decisions made by the ICANN Board.

Are there – now again, a number of these issues we'll hopefully, I'll knock on wood if I have wood around here, will not come up again because we've in

theory resolved them or have come up with ways in which these particular issues were resolved.

But going through the predictability framework that is on the link that was sent around with the agenda and Emily posted a little bit earlier is, you know, we would like to take these examples and go through that predictability framework step by step to make sure that we would have a process to deal with these types of changes.

But it would be great – I've done all the talking now – it would be great if others could think of either situations that have come up in the past or that could come up that we could use as stress tests or case studies to look at the predictability framework and a lot of this will be done through email, I'm hoping anyway, so that we can get some good work done before the next call.

So while I wait for some to join the queue if they want, going back to some comments on the chat, let's see, Jim has said that, "Outside the negotiation windows allowed for the current," sorry, "Outside the negotiation windows allowed for in the current RA, the Registry Agreement, we cannot have the Registry Agreement changing after ICANN has taken money from applicants. There needs to be some sort of free-in place so," oh I think he said "freeze," "some sort of freeze in place so that applicants have predictability when it comes to the nature of the relationship they will have with ICANN."

Okay, so then Maxim says, "There was a situation where (Has) passwords were changed randomly without a request from applicants." Maxim, just to – if we put that down as a case study, was that done as – with notice from ICANN staff? Did they provide rationale for that, like some sort of security incident or is that what you're referring to or is there something else?

And Anne has said, "Can you please post the current draft?" which is now on the screen. Rubens says, "Most of the time ICANN said that not letting them

have discretion to change would delay the process because they would need to more carefully consider everything." And Anne has asked that we release the scrolling so hopefully people can scroll through the document. And Heather says that, "From a legal perspective there could potentially be a question as to enforceability, other contract or parts thereof lacking sufficient clarity for the parties."

Maxim says, "Add a task for me to supply additional info." So, Maxim, you have a task now to send in and additional information about that so we can kind of genericize it and see if we can stress test that type of situation.

So on the – I'm not seeing anyone raise their hand so let me ask a question, so on the legal agreement, there have been – so Jim and Heather agrees, they talk about a freeze on the Registry Agreement. I'm assuming, Jim, you're – you mean from the point in which applications are accepted until what time? If you could get in the queue? Great, Jim, thanks please.

Jim Prendergast: Yes, thanks Jeff. Jim Prendergast. You know, I'm not – I think once people start – I think the cutoff maybe is when people start signing the – whatever the Registry Agreement looks like at that point, but I mean, the episode that we had last go-around just cannot be repeated. I mean, you know, several months after people had filed applications in good faith and ICANN had cashed the checks for them, you know, some pretty important rules of the game were changed when it comes to the Registry Agreement which is the contractual relationship between the applicant and ICANN. And I just – we need to do whatever we possibly can to avoid that in the future.

So I don't know how long the freeze should be in place, maybe some other folks who have – who are lawyers have experience with contracts may have some ideas, but it, you know, it certainly can't be something that changes as soon as somebody as applied and they can't get their money back.

Jeff Neuman: Okay, thanks, Jim. Anne, please.

Anne Aikman-Scalese: Yes, thanks, Jeff. It's Anne for the transcript. I certainly agree with that general principle about not renegotiating contracts during the – after the application fees have been paid.

The only thing that concerns me is I believe that when there was, for example, GAC advice received with respect to safeguards that the tool of the PIC that was developed that you mentioned in this highest level stress test it was developed in order to, you know, permit those applications to go forward.

So, you know, I'd be a little bit concerned about making a rule that might put, you know, some applications in paralysis because that would also, you know, result in an unfair, you know, process related to the investment that was made by the applicant.

So, you know, to the extent that the bylaws cover, for example, you know, GAC advice and when it can be overruled by the Board, there may have to be some, you know, compromise way out in some cases to move forward with an application. Thank you.

Jeff Neuman: Thanks, Anne. I think that's a really good point. You brought up one good example and the other example was in fact name collision where additional contractual requirements came out of that.

So Jim, not to put you on the spot or others, anyone, you know, please join the queue, but how can we construct a freeze but also allow for situations as Anne says, about, you know, if the GAC wants to condition or if acceptance of the application, put aside the GAC for a minute, but if acceptance of an application is conditioned on agreeing to something additional contractually, is that one type of exception?

And I guess if something like name collision – let's just say any technical requirement were to come up because of the security risk or whatever that

would need to be added to a contract, how would we handle those? Jim, great, thanks.

Jim Prendergast: Yes, thanks, Jeff. Jim Prendergast. So yes, I guess my biggest beef, and I think everybody – a lot of people share it is the whole ICANN's insistence on unilateral right to amend the contract. I mean, that's the one I still think rubs a lot of people the wrong way in the way it was handled by ICANN at the time. I don't know how you would accommodate the technical change that you raised, I think that's a good question and I don't have an answer for that.

But, you know, I'm on record saying that we should urge the GAC to, you know, issue their advice – the broad advice that pertains to all applications or large groups of applications before the next window opens.

And the reason is simple, we've been through, you know, 1600 applications, we've seen a lot of different types of models come through. The GAC has weighed in in the last round, there may be one off applications here or there that do raise concerns with the GAC specifically but that wouldn't impact a large amount of applicants.

We've seen this, we've been through the process. I'm not sure what else is going to jump up and surprise the GAC but, I think we should be doing everything that we can to urge the GAC to get the advice settled before the window opens as part of the predictability framework. Thanks.

Jeff Neuman: Thanks, Jim. And while we wait for others to join the queue just going back into the chat, let's see, Heather made a comment, "Sorry for being – sorry, boring law professor. In terms of timing, I'm thinking performance of the contract should start before changes occur."

And so Heather, we were asked that, right, each contract was signed at a different time so it would be interesting, right, in order to have kind of a – to treat everyone equally how does that work if I think in the case of the first

contract was signed in 2000 – or was delegated in 2013, and the last one was – still hasn't been delegated, so how do we deal with situations where we have this rolling process of contracts being signed and being performed.

And Maxim says, "Heather, formally ICANN has no responsibility for the failure to perform." And then Heather goes to clarify that we're talking about contract validity.

Sorry, I'm just trying to paraphrase. And there's some discussion in here. Susan says that another stress test scenario was Mail, Corp and Home even though those are name collision related, those strings are still in limbo. And Rubens says, "Jim, GNSO policy cannot dictate requirements for the GAC." And sorry this is scrolling faster in here.

There's some discussion on the letter of credit. And let's see, some plus ones. And treatment for closed generics is also listed. We know that this is a Work Track 2 topic but that was one of the areas where the rules were changed mid process and it's relevant to predictability.

Okay, so that was an area, Susan, if I can genericize that, no pun intended there, that was a situation where a significant portion of the community, or a portion of the community filed comments on a particular type of application and the additional were – rules were added to those types of applications so not necessarily talking about how we should treat closed generics going forward, but more as an example, as you said, of where there were rules that were added after the fact.

Jim, your hand is still up; I don't know if that's new or – okay. I guess it's old one. Heather, please.

Heather Forrest: Thanks, Jeff. Happy New Year to you and happy New Year to everyone. I thought I'd jump this on verbally rather than try and type it in because I am thinking a little bit out of the box here and very much off the top of my head.

But Jeff, the question that you raised about what do we do with rolling agreements and the rolling applications process, if you like or rolling contracting process, I would suggest, and again just purely off the top of my head, I would suggest that individual applicants ought to be aware that a, you know, a wholesale change to the agreement across a cohort, a group with members of that group in different stages, if you like, of the contracting lifecycle.

For those that haven't even begun performance, I'm thinking you'd have a right to challenge. Now that's not – I'm not trying to upset the system here and introduce pandemonium, but I would certainly encourage in, you know, just put it on the record to say that a future applicant that in the position that Jim describes, and I fully agree with Jim that it's a dangerous situation from a certainty point of view, to the, you know, to the extent that you felt like you were entering into agreement – into an agreement that you didn't feel that you knew with sufficient clarity what it was that you were agreeing to, there's certainly an issue there.

So Jeff, I'm not sure that we have a mechanism within the launch speaking very generally of course, and not jurisdiction specific, but I'm not sure that we have a mechanism in law for dealing with this sort of wholesale contract change.

I mean, of course there are other examples that we can look to things like consumer agreements where you have many, many signatories on the one side and a single party on the other. But you raise some really interesting questions and I think there ones that we want to probably spend some more time on. So thanks, Jeff, very much.

Jeff Neuman: Yes, thanks Heather. And I think the rolling process was one of the reasons why a lot of the contracts were delayed because I think ICANN wanted to be I guess putting myself in – myself in their shoes – right, they wouldn't want to be in a situation where they're treating applicants that theoretically would be

similar in a different way. And so I think that resulted in a good amount of delay.

But, you know, one thing you could say, and again, you know, thinking out of the box, there is a process in the Registry Agreement for changing Registry Agreements and so you could in theory set a rule that says once the first Registry Agreement is signed in this next round any changes to any agreements for any one in that round gets the benefit of having that process even though they haven't signed the Registry Agreement, meaning that any contractual changes need to go through the same process as if they had already signed an agreement.

So, I mean, that in theory you could set a bright line rule. Of course that would make it much more difficult for ICANN to change agreements and maybe that's a good thing, maybe not.

But certainly agreements are one of those really difficult areas but important for the predictability framework. Are there other areas that didn't involve changes to the agreement but were changes to the process that we could discuss in terms of stress tests?

And Heather says, "We're not dealing with a typical consumer contract type scenario where a consumer lacks any bargaining power. We definitely don't want that applicant to registries to have that perception. I suppose what I'm saying is that each applicant registry needs to treat its agreement as unique so to speak and not just one of many identical agreements." Okay.

And Maxim posts something, looks like a Canadian government document, I think, changing a wholesale agreement, a bait and switch. So that's – I'm sorry, it's not Canadian, that's Californian, bait and switch. So it's a CA.gov, which I should know is California.

Okay, are there any other examples that we can think of that we want to use to stress test over the next couple weeks the predictability framework that we have in draft form? Now I'm stressing that this predictability framework is in draft form because as a result of doing some of these scenarios and going through these tests this framework could change but I wanted to take – oh. Hopefully I'm still on? And we can – there we go. I'm still on I'm assuming.

But hopefully what we can do is then take this draft framework and make any changes as a result of these more specific tests. Anyone else have any other comments? Okay, I'm just – I'll wait a minute, see if there's any other discussions. Okay, not seeing any, why don't – oh, I'm sorry, Anne please.

Anne Aikman-Scalese: Yes, thanks, Jeff. I think that we probably need to consider a sort of a catch all type situation given that, you know, to the extent that we change any policies in this process and then those are adopted by the GNSO and then by the Board presumably, you may get more issues requiring resolution there.

We can't really afford to assume that we won't have any more issues because we're probably going to create some by the – whatever new policies we make and recommend in this process. So I don't know if we need to consider a catch all stress test category for any policy that has changed. Thank you.

Jeff Neuman: Thanks, Anne. So can I phrase that or can I try to phrase that in – let me know if this captures what you're saying. So we are developing new policies and procedures as a result of this process. To the extent there are issues that arise we are – we do have in this framework the ability to – and probably will – have an implementation review team. So you're talking about issues that may arise after we launch the process, after an implementation review team but still because we've proposed some new things there may be unforeseen issues that arise out of the newer stuff that we are implementing? Is that kind of what you're saying?

Anne Aikman-Scalese: Yes, that's exactly, yes.

Jeff Neuman: Okay. Cool. All right so we will capture that as well. As Maxim says, "During the application window," oh sorry I should go on and say Maxim says, "We cannot entirely block ability of ICANN to change polices. It's about applicability at the application process or during the application window. Applicability of such changes to the application process." Got it. Okay, Alan, please.

Alan Greenberg: Yes, thank you. As a follow on to Anne's comment, there's a whole class of changes of potential changes or problems that we can just say sorry, sit on it, we're not making changes. But as shown in the last round, if the potential issue that has been raised has to do with stability, security of the Internet, and a whole other range of things that we couldn't say, tough, we're going forward anyway, we do have to contemplate, you know, what will we do in the – when the program is already launched and an issue comes up. And I think we – I think the onus is on us to provide some guidance to the staff and Board for how will they treat that should it come up.

You know, what the chances are at this point of yet a new unknown problem coming up because of it, I don't know. But I don't think we can ignore the possibility and I think we have to provide some guidance for whether the program is, you know, you know, halted temporarily while we address, you know, we go back to the GNSO and say here's a policy issue, you have to resolve or, you know, that's not a particularly satisfactory answer but I don't know what other ones are satisfactory either. And I think we do have to think about how this will be handled and provide advice. Thank you.

Jeff Neuman: Thanks Alan. And Ruben says possibly the same criteria that allows ICANN to implement temporary policies could justify changing things on the fly. And (Maxine) provides an example. Let's say there's some horrible security flaw that's discovered in ETT, and there's a need of a correction of some policy.

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And (Mary) – welcome (Mary) – says that – note that implementation principles adopted by the gNSO Council in late 2015, there's a process within the IRT framework that provides guidance for escalation, as well as a referral back to the gNSO Council for new policy issues. Thanks (Mary).

And just to add to that though, or just to, you know, we're not only talking about policy issues here. We're talking about – or implementation of policy issues. We're talking about process issues as well, which may not fall under the gNSO Council guidelines.

So these are things – and that's why I kind of went through the whole – we've been focusing a lot during this call on the changes to registry agreements. But what about changes, you know, the other four types of changes that were mentioned? Some of them may not fall into a policy category, but may still have a significant impact on contracted parties or applicants or members of the community, but that may not fall into a policy or what was conceived of being an implementation of a policy by the gNSO back in 2015.

And so if you go through this framework, that's what we're trying to address. So that's where it ties back to this document that's up on the screen now. So hopefully it does consider, Alan and also (Mary), the situations that you're referring to where in the emergency situation where it needs to be halted or where input is needed from the gNSO or an IRT. And as Alan says, note emergency policies according to the current processes expire after one – after a year.

Okay. Anyone else want to get in the queue on this issue? Okay. So no one – that being the case, let's move on to the second topic of the call which is on application types. And this has generated some discussion on the lists already in terms of at least one particular area which is on business models or types of business models, and whether there should be any – I guess for

lack of a better word, regulation on the types of business models for certain categories.

I want to take it up a level though and refer back to some of the, you know, what was I guess assigned as homework for this call, which was to talk about, you know, what are – essentially what are the pros and cons? Like what are we really trying to achieve when we talk about establishing types of applications or categories?

So we certainly hear all the time from whether it's the GAC or whether it's others, that we should have paid more attention to categories and to try to categorize different types of applications. Now in the 2012 round we did have a category for geographic names. We had a category for community applications. We later added a category for brands.

But what we haven't identified with, although people have said we need to add more – or some people have said we need to add more categories. We need to – we need to really establish the rationale, the, you know, why is it that we should, if we should, have specific types of applications. Is it because we believe that they should have different contractual requirements?

Is it because we believe they should have priority if there's a contention? Is it because we believe that they should not have all of the contractual requirements that others may have? You know we really need to solidify this because what's come out from most of the comments, those that have supported the creation of categories have just said that – we support the creation of categories.

But we really haven't delved into why there is this need. So Alan, I'll let you start the queue on this one.

Alan Greenberg: Thank you very much. Just a note, we had categories as you noted in the last round, although we didn't call them categories. We dogmatically said we

would not have categories. But then we had different classes perhaps of TLDs.

The only rationale for having categories or classes is that we treat them differently in some aspect, whether it's treating differently contractually, treating differently in the process under which they have to apply and get approved, or financially different either during the application process or on an ongoing basis.

So the only rationale for categories is because we are going to treat them differently. And it's easier to describe how we're going to treat them differently by putting them in a nice little box with a label on it. So I think that, you know, that's what it comes down to.

If someone says we need categories, they are implicitly saying that we need to treat some applications differently or some applications or TLDs differently than others. And I think the onus is on them not to simply say we need a category, but to explain and describe how they're going to be treated differently. Thank you.

Jeff Neuman: Thanks Alan. And to not only the how, but the why, right? Why should we treat certain types of applications differently than others? And so look, we have a pretty diverse group on the call here. We have 44 people. I recognize alums from very different communities here.

So, you know, why should we create – and it's called exception here. I was telling some ICANN – I was telling some of the policy staff, you know, that a lot of people aren't fond of the term exception, so I'm trying to use other terms. I think Alan, you said why we should treat certain ones differently.

But, you know, we're really again trying to establish this rationale. Because to date we've gotten certain people asking for certain types of applications to be treated differently, but not so strong on getting the rationale. So there

must be reasons here that people think that applications should be treated differently.

Okay, let me throw out – this starts discussion. There are a number of members of the GAC that have argued that those from developing countries should have a category of applications that are treated differently than those that are from developed nations because we want to encourage diversity. So that is one of the rationale that's been said.

Good, I see Alan and Christopher. So Alan, please.

Alan Greenberg: Thank you. First of all, I do object to the word exceptions because that implies that there is a standard rule, and we are coming up with a reason why you should wriggle out of it. Whereas I like to think of it – when we talk about them as categories, we are simply saying the ground rules are going to be different and not treated as, you know, we are giving you a special favor. So I think the word exception has a connotation which I don't think we should be looking at.

I think a lot of the possible exceptions we're looking at have to do with either real costs that might be different in the different scenarios, and therefore should be reflected in the – in either the ongoing costs or the application fees. Or situations such as a brand registry not needing to take – to use registrars because they simply don't have, you know, many domains that are going to be registered and none that are registered by other groups.

Or the big one that's hard to define, the public interest, where we believe the world would be a better place if we could arrange for something or other to happen. And to do that we want to change the rules on new gTLDs to encourage or facilitate that. That one of course is always going to be controversial because we all have different definitions of public interest, and some of us violently so. Thank you.

Jeff Neuman: Thanks Alan. And before I go to Christopher, Susan wanted – asked a
question, you know, we're talking now about the issue of categories in
general, meaning existing ones or are we just talking about creating new
ones? I responded on the list saying well let's (unintelligible) for now
because we can use the rationale for why we created a couple of different
categories already to see whether that would apply to the creation or not of
new categories.

And Alan has talked about one or two types. One, you know, the first type
was brand. And maybe if I can genericize that, it was because there's a
recognition that not all registries have the same – and I'll put this in quotes –
business model. And by business I don't necessarily mean commercial.

But there was a recognition as Alan said that there are – not every TLD
distributes second level names or third level names to third parties, that some
TLDs use their names completely for themselves or their affiliates. And that
was one reason for establishing a brand TLD.

Christopher, please.

Christopher: Thank you. Good evening everybody. Very briefly first of all Alan has
already mentioned the category that I was going to refer to because we had a
clear preference in the last round for some preference and privilege for
developing country applicants' applications. And I believe there was some
funding, but very little materialized.

So there is a category there which needs to – needs attention. And I think if
it's – if we fail again to attend to that, ICANN's credibility will be questioned in
the international context. Turning to something about the more hypothetical
of the geographical names will be a category. And they will have in certain
circumstances specific requirements.

I could very well imagine, given the politics, that geographical names should be incorporated in the geographical jurisdiction to which they refer. Another characteristic which would certainly not be generally applicable but would be certainly relevant for geographical names, registrants should be resident in the geographical area to which the TLD refers.

I'm putting this forward purely on a hypothetical basis to illustrate that there will definitely be a demand for categories with distinct purposes. I would also say Jeff that, you know, we have so many open gTLDs that I don't think that's a standard anymore. I think the open gTLD of – any more of them will just be competing with the vast array of open gTLDs that resulted from the previous round, and I can't see any public interest in having even more of them.

So I don't think that's a standard. I think that is perhaps the exception for the next round. Thank you.

Jeff Neuman: Thanks Christopher, and try to – because a lot of that discussion will be within work track five on the geographic names, to try to see if I can raise that up a level. The discussion is that we believe there may be – need to be categories because, similar to what we said with brands, there needs to be a recognition that not everyone will use a top-level domain in a standardized way. And we should be able to – even if we don't – I'm sorry, I'm paraphrasing.

But I think the point is that there should be some way to deal with uses of top-level domains in a way that was not conceived of prior to the round beginning, or that may be used differently than the so called standard way. I think that that's kind of how to raise it up a level.

Jamie, please.

Jamie Baxter: Yes, Jamie Baxter for the transcript. I think what we're circling around here is really just the notion of what is the goal of the TLD and what is the purpose

for having (unintelligible). So, you know, if you're always using it as a marketing tool, (unintelligible) going to include a very specific approach to it.

If you're intending the TLD to be a trusted space, or whether that's for a community or a population or whatever, then again that's a different goal. And it certainly comes with a different set of methods to operate it. So that may trickle down to variations that have to exist in the contract I guess. So, you know, maybe that's one way of looking at it is what is the goal of the TLDs?

Jeff Neuman: So Jamie, I think that's important. I'm trying to think of a way to extrapolate that into kind of a principle. If we – so the goal – so you're saying it's going to depend on the goal top level domain ultimately, but to what end? What is our – what is our – what are we trying to achieve I guess is the question.

As a community, do we want to make it potentially easier to encourage different types of uses? Jamie, please.

Jamie Baxter: Yes, Jamie Baxter again for the transcript. I think if we look at what happened in the last round, there were registration restrictions put on community application which I think community applicants were happy to have because their goal was to create some level of trust within the usership of the domain names.

And so maybe we just thought of it backwards, instead of thinking about why would a TLD be operated differently than those that existed prior to this first round. And what we saw emerge were the brands which – I'm not going to speak on their behalf, but I would assume that there's some sort of a marketing notion behind it where they're protecting their name or marketing their name in a way that they can control better.

Or in the case of community applicants, which were thought about, but not necessarily understood what their goal is. Even though the goal had to be

written into the application. And in the case of (dogay), it was around building trust in a TLD that community members could use knowing that they're speaking with the community, and not somebody posing to be part of the community which is a huge concern and an issue in our community.

So again, maybe it's thinking about focusing on what is the goal of the TLD. And everybody may describe that a little bit differently. But I think they're probably going to come down to only a few notions, whether there is no restriction and it's anybody, or whether there is a purpose of operating the TLD to create or build brand, or whether there's a notion to create trust, or whatever else there might be. So maybe this is just another way of thinking about it.

Jeff Neuman: Okay, thanks Jamie. And also just going back to some of the comments that I missed here. I see that Martin said Jeff, we already have top brands and the rationale behind it. Are you requesting for attendees to repeat these and for other categories established during (unintelligible) round?

So what I'm trying to do Martin is – I'm not trying to have brands justify or geographic justify or communities justify why they should be continued to be recognized as separate categories. I am trying to go back in time and extrapolate the reasons for which we created those, to see if those reasons or similar reasons exist for the creation of other ones.

So I hope not to be coming across as trying to get brands to justify why they should have their own category. I'm just trying to see if that same rationale, you can extrapolate out of that whether additional ones need to be created. So I hope that's okay.

I have – Jamie, your hand is up. I think that might be the old – okay. I have Anne and then I have Gigi. So Anne, please.

Anne Aikman-Scalese: Thanks Jeff. It's Anne Aikman-Scalese for the transcript. Just a cautionary note regarding I think some of the discussion about hey, what's the purpose of the TLD and are there going to be too many open ones? And does the purpose of the TLD, you know, have to do with, you know, a public interest and that sort of thing?

As we start talking about creating categories for, you know, having different practical contractual arrangements that are suited to a category, I think that's one thing. If we start making value judgements about new gTLD applications, I'm very concerned that we enter into content regulation, which is outside of ICANN's mission. And I think we have to be very, very careful about that. Thank you.

Jeff Neuman: Thanks Anne. Gg?

Gertrude Levine: Excuse me. Thank you. This is Gg Levine for the record. I wanted to piggyback off of what Jamie and Jeff have said about the purpose for certain types of applications such as the community application, which is by nature restrictive, in that it is intended to create trust for a limited audience.

And I think that that's something that applies to a few of the categories that have been proposed, such as the verified TLDs. So perhaps where there's some restriction or some validation or some way of appealing to a particular subset of the population of registrants, that that may be appropriate to look at as separate from the traditional open gTLD because it does operate differently with a different purpose and a different means of operating. So I would come out in favor of that kind of recognition. Thank you.

Jeff Neuman: Yes, thanks Gg. So what you're saying then is that there may be a need based on the nature of the string being requested for different treatment. And therefore maybe from a public interest perspective – I'm trying to raise it up a level. And so the GAC for example came out with its list of – what was it,

category one I think they called it – TLDs that were applied for, the so called sensitive strings.

There may be a need because of the string's nature to have certain rules apply to it that may not apply to others.

Gertrude Levine: Correct.

((Crosstalk))

Jeff Neuman: Going back to – oh, sorry. Gg, do you want to respond?

Gertrude Levine: Yes. That makes sense. And maybe what those types of applicants have in common is some type of restriction. I mean that's kind of a negative spin on it to call them restricted. But they do have some element of verification that is involved that would set them apart from typical open gTLDs. If that helps, but thanks.

Jeff Neuman: Okay, thanks Gg. Going back through the Chat, I know some people had to drop, so sorry to see them go. There – oops, trying to scroll here, not working. I saw there was some comments from Kristina. There's the additional issue that speed or lack thereof more accurately is not conducive to being prescriptive.

What is an innovative use at application time could be completely obsolete three years later or six plus years as the case with some of the still pending (unintelligible). Huthaifa – I hope I'm pronouncing that right – says I believe that as a community we want to give an opportunity to all categories and communities while ensuring a fair process.

Rubens – I'm going backwards here – says I wonder if our charter gives us authority to look into merging Spec 12s which are community TLDs and PICs

because I believe Spec 12 is just a special case of a PIC, and PICs could be the overall umbrella for enforceable commitments.

Let's see, going back to the Chat, (Maxine) says I wanted to underline that it will be a no pass for some applications for the reason of cultural conflicts. Oh, I think I might have missed the beginning of that. Sorry about that. Anyway, there's some good comments from the Chat that we will capture in the notes.

So again I think is an area we really need to kind of dive into and try to work out our rationale, either for A, just keeping the existing categories or adding new ones, or whatever we end up doing because this is one of those things that you really – as you go around an ICANN meeting and you ask for thoughts on the TLD process, you know, whether it's from the GAC, the ALAC or even, you know, within the gNSO, sometimes you hear people talking about the need to create categories.

And, you know, there really – at least within our full working group, there really hasn't been that push for it. But I don't want to read that as that the group's not interested in it. Maybe think of it more as, you know, if this is something you really believe, then please come forward, talk about the rationale, the pros and the cons, and what types of things you believe.

Here it says the exception, but not wanting to use the term exceptions, you know, what are the things that would need to be treated differently and why? And also give some thought to the notion that was mentioned, I think it was by Anne, which was, you know, we also don't want to get, you know, I say this and I may not be speaking for everybody.

So at least from the impression of this call is that there are a number of people that do not want to get into or think that that could be getting into content regulation. But, you know, I certainly – like I said, there's almost 50 people on this call – well, plus ICANN staff, so over 50 people on this call.

And if you have a view, strong views about creation of categories, you know, now is your time really to kind of speak up, get into, you know, the pros and the cons, and in what ways are – do you believe that they should be treated differently and in what ways do you think they should not be treated differently?

Martin is in the queue. Thanks.

Martin: Hi Jeff. Thanks. Martin for the record. Just trying to think back because this has kind of been a déjà vu I suppose over the last couple of years. But we've had the CC1 and CC2 responses. Was there any conclusive outcome from the CC1, CC2 responses that would help support or challenge some of these questions that you posted up for the working group?

Jeff Neuman: Thanks Martin. So yes, in CC1 there were certain groups like the GAC and some others that certainly did talk about the need to create categories. Some of them may have in general said to promote the public interest and diversity, but they were very high level. And I guess what we're trying to do is to try to come down from 50,000 feet to, you know, document exactly why they and others are making those types of statements, to see if we can document in the preliminary report, you know, these – if we could obviously.

These are the categories – these are some of the categories that we think should be kept in or should be created. And here's why this is extremely important, and here's how we should treat them differently. Now that may not be how this group feels, but that's essentially what we're trying to get to a little bit from the high level to down a couple steps, and then see – also to see whether the community, this group plus others, feel that there are reasons to – whether it's high priority for certain groups or treat certain groups differently.

I see (Steve) raised his hand, and then (Trang). Martin, you have your hand up. I'm not sure if it's – okay. Let me go to Steve and then (Trang).

(Steve Chant):   Thanks Jeff. (Trang) actually had her hand up first, so I'll defer to her.
                   Thanks.

(Trang):   Thanks (Steve). Thanks Jeff. This is (Trang). You know from an ICANN
                   audit perspective, obviously we will implement whatever the community
                   decides. But something to consider as it relates to categories is that if there
                   are going to be categories, you know, we'll want to know whether or not the
                   group decide that the applicant will self-designate the categories or if there
                   will be some kind of an evaluation performed to determine whether or not
                   they can qualify for that category. So that's a consideration if there are going
                   to be categories.

                   The other consideration would be whether or not there would be specific
                   requirements in the contract, in the registry agreement if you would, for the
                   different types of categories. So as I said, you know, we'll implement
                   whatever the community decides. But those are a couple of considerations if
                   the decision is to have categories. Thank you.

Jeff Neuman: Thanks (Trang). And I think that's a question not just for if we decide to have
                   new categories, but to really specify if we continue with the existing
                   categories to really document if it's not already documented for (unintelligible)
                   to document all of those steps in the process.

                   I have Paul, or sorry (Steve). You deferred to (Trang), so I'll go back to Steve
                   and then to Paul.

(Steve Chant):   Thanks Jeff. This is (Steve Chant) from staff. And so this point has been
                   made a few times. But I'm wondering if, you know, so there's been a number
                   of categories identified. And so rather than assign any value or any sort of
                   value to these categories that have been identified, it seems more about the
                   circumstances where there are procedural or contractual differences needed.

I know this point has been raised a couple of times, but I think it's maybe worth pointing out again that it's not about I believe, you know, assigning value to the categories, but rather where there is difference needed that this group would try to have to identify and then build out the either procedural or contractual differences.

And then just one additional point is that it might not be about distinct categories. I think it was Rubens that actually raised this point in the Chat. They're not necessarily distinct, so you could actually be for the 2000 round could have been a community as well as a GL, as well as a government all at once.

So it might not necessarily be about the categories, but more about the attributes by which these specific differentiations in the process or contract are needed. I hope that made sense. Thanks.

Jeff Neuman: Yes, well to me it did. But I'll let others – sorry this is Jeff – I'll let others weight in. Paul, please.

Paul McGrady: Thanks. This is Paul McGrady for the record. I agree that the top level cannot be the driving part of what category a domain name ends up in. It has to – if we're going to have categories, it's going to have to be taking a look at the business model as well. I think that's an important distinction and one that we should capture.

If we are going to have categories and we are going to build out this or that for them, then I think it's important to keep in mind that our group here will not imagine all the various business use cases that a TLD could have. And so whatever we build needs to be considered to be non-exhaustive because hopefully if we have another round, maybe somebody with a lot more creativity than all of us will come up with a new idea, and it won't fit neatly into a category.

We got caught in a weird situation last time when, although it was completely foreseeable that brands would apply, we had to fight a persistent unwillingness of ICANN org to recognize top brands as a category even though that was the reality and the facts on the ground were. And so what we don't want to do is to build out 4 or 5, 10, 15 foreseeable categories now, but engage in persistent disbelief in additional categories that clever business people came up with in the process.

So that's my thinking there. Whatever we do we have to make sure we have room for creativity at the end of the day. Thanks.

Jeff Neuman: Thanks Paul. And I think – I know Kurt has made that point as well a number of times. And so the question is, can we come up with a way – and it may not even be that you have to call yourself a category - (unintelligible) category. But it's a way to ask for differential treatment to allow you as a TLD to innovate or to do a different type of – again in quotes business model that may be unique but not one in which adheres to the standard. And so are there ways to even if not a quote category, are there ways to seek that differential treatment?

Steve, please.

(Steve Chant): Thanks Jeff. This is (Steve Chant) again from staff. And so I – I just wanted to raise what might be an interesting example. So I believe the community application, you could apply as a standard application, but you could still serve a community.

The treatment of a community application or I guess if you're applying as a community application, it was for the purpose of potentially utilizing community priority evaluation. So I'm not sure if that's an example of where, you know, the process isn't intended to judge your business so much.

But there are exceptions in the process and then actually for the contract as well when you apply as a community application. Those are circumstances of differentiated treatment. So I just thought that might be an interesting example for the working group to consider. Thanks.

Jeff Neuman: Yes, thanks (Steve). I think that's a good example. Jamie, please.

Jamie Baxter: Yes, Jamie Baxter for the record. I'm not sure I completely agree with (Steve)'s assumption there regarding community applicants only applying as community in order to use the community priority. I think it's a goal of the TLD was to create trust amongst the community.

The best way to do it is to have registration open. So, you know, there's – there would really be no reason why they wouldn't follow the community route. So and of course if that gave them advantage, then that gave them an advantage. But I don't know that the assumption is 100% correct that you do it only to get the CPE opportunity. Thanks.

Jeff Neuman: Thanks Jamie. And one – I know we're getting sort of late on time. One thing I will bring up too, even for the existing categories, I would love as additional homework for those that belong to the existing categories or work with TLDs in the existing categories, if you could look through those requirements.

If we were to document some (unintelligible) for those types of categories, if we keep them, you know, what changes would be needed in the next round? So one example off the top of my head is I believe – and I know there are a lot of people that can correct me if I'm wrong. But I believe to be a brand TLD you needed to have a trademark prior to a certain date that's in the contract.

Obviously if we moved forward with brand TLDs or as a category, that date would no longer be allowed to be in there. So we'd have to come up with a

revision to that in order to allow for future applications, so if people could give those types of things some thought.

We have – hopefully that made sense. Is there anything anyone else wants to cover before we call it a day? Karen says it wasn't listed as an actual date. It relates to – (Steve) says it relates to the date of applying, so we don't need to change the trademark date. Okay, cool. Then I'm wrong. But if there are things that need to change even for the existing ones, please go through it. Let us know because we'll be documenting those as well.

All right. Anything else that anyone else has to have or wants to have – not has to – wants to have? Okay. Just another plug, there is a call in a few hours for work track one, tomorrow for work track three, a call later this week for work track four, and next week the other work tracks – two and I forgot, oh five.

So please continue to participate. We've got a busy couple of months. Thank you everyone.

END