ICANN
Transcription
New gTLD Subsequent Procedures Working Group
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Julie Bisland: Okay great, thank you. Well good morning, good afternoon and good evening everyone. Welcome to the New gTLD Subsequent Procedures Working Group call on Monday, the 7th of May 2018. In the interest of time, there will be no roll call. Attendance will be taken via the WebEx room. If you're only on the audio bridge would you please let yourself be known now?

Karen Bernstein: Karen Bernstein. Good afternoon, evening and morning to everyone.

Julie Bisland: Thank you, Karen. I've noted that. Anyone else? All right well hearing no more names I would like to remind all to 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. Please begin.

Jeff Neuman: Great. Thank you, everyone. Welcome to the weekly call. Yes, so the agenda is up on the screen at the moment so we will go through our normal statements of interest, just a little bit of an update as to where we are now with the initial report and then dive right into review of a couple of the sections that are now out there. Just for those keeping score, we have now sent out to the list a number of sections including Sections 1.2, 1.4, 1.5, 1.6, 1.7 and

1.12 and hopefully in the next day or so we will get out 1.10. So there's a lot of stuff that's out there and only a couple sections left to go, although those sections are as all of them, filled with a lot of materials, so as Cheryl is saying on the chat, we are very close to releasing Section 1.10, so that will be short - reviewed shortly.

Another thing, we've started to draft the preamble, the letter, if you will, that Cheryl and I want to attach to the report describing the methodology and the application of the GNSO operating guidelines and how we've interpreted that and the methodology we're using for this report, so that should hopefully be released relatively shortly as well.

Sorry, I should have asked first, as I started to get into some detail, are there any updates to statements of interest that anyone would like to report? Okay, I'm not seeing any. I would also like to express my own frustration, as I know you all are still having to use WebEx. It appears that the Adobe Connect has not yet been released for working groups but hopefully, fingers crossed, they - certainly for the next call and maybe even for calls later on this week with other working groups if you happen to be lucky enough to be in those groups.

So I hear someone typing in the background so if everyone could just mute their lines? I know the default on this WebEx is that the microphone is on as opposed to the microphone being off, so that's one of the drawbacks of WebEx.

Okay. Okay, nothing else on statements of interest. Okay and - sorry, I'm looking between different chats here, and looking to see if any hands are raised. And for some reason, although I'm a panelist, I still have alphabetical order so I'm not sure that the hands go to the top of the list. So if, Cheryl, or anyone else can help me make sure that I'm calling on the person that - or that I know who has their hand raised and I'll do my best to go in the appropriate order but I can't promise you that that will be successful.

Okay, okay, so if everyone remembers the last time we finished going over Section 1.2 and now we're going to take kind of a first read through Section 1.5, which deals with the - what we call the application submission requirements and incorporated in there are the fees, you know, the application fees as well as a discussion of applicant support, how long the application submission period should be and any other requirements as well as 1.5.5, which is the terms and conditions. This was formerly in Module 6, I believe, of the Applicant Guidebook, which was the terms and conditions that an applicant needed to agree to in order to submit its application.

So I will wait if ICANN could - if someone could post the Section 1.5 on the WebEx and go to Page 4. For those of you following along, I actually have my own copy opened up because it's a lot easier to go through the PDF document than it is to view on WebEx simply because you're kind of kept at a particular page on WebEx whereas obviously your own copy you can go back and forth.

Jim, thanks. On your - you do talk about the call next week during the GDD Summit. We are still finalizing a potential rescheduling time for that so we'll talk about that towards the end of this call.

Okay, 1.5.1 on application fees, the only guidance we were given in 2007 from the - from the GNSO was an implementation guideline fee which just really said that the fee should be designed in such a manner to make sure that there's adequate resources to cover the total cost and it did say that application fees may differ for applicants. That was what the original guidance had said. And then how was that implemented? Well, the decision was made that the fee would be based on estimates that were - actually those estimates were made fairly early on, well before the 2012 round had started, but that the program would be self-funding and that there were essentially three elements to determine the costs.

One of those elements was to recover historical costs; the second was to - sorry, historical costs and development costs. The second element of the costs were to basically cover for the identifiable costs of evaluation and processing the applications and then there was a third element which was what we have all commonly referred to as the contingency fund, so the fund that is in place in case there were any disputes or in case there were any new elements that needed to undergo additional research and, you know, unanticipated parts of the program.

So what are the preliminary recommendations? Hopefully we've worded these a little bit - since this came out a little bit later than the last couple sections that we reviewed, hopefully the wording on this section under the proposed - sorry, the preliminary recommendations, is a little bit more conditional to indicate that we have not - these are not formal recommendations that have any sort of consensus but rather it's - the working group is considering a proposal 2 and then - or things of that nature as opposed to this is our concrete recommendation.

So for those that recommended that we use that more conditional language, hopefully something like this is okay; if not please comment and let us know if there are better ways to phrase some of this.

So the first considered proposal, or the proposal that we are considering, is that it continue to be self-funding where exiting ICANN activities are not used to cross subsidize the new gTLD application evaluation pre delegation and delegation processes. Now the reason the term "self-funding" is being used there as opposed to another term that we've used, cost recovery, is because if you looked at - and it's actually referenced in this section, if you look at the first financial model that was put up by ICANN, I want to say in 2010 or so, this is the exact wording that they use so we wanted to just make sure we were using similar terminology to what was used back in the 2012 round. So that's the first recommendation or sorry, the first proposal the working group is considering.

In addition, the working group generally believes that the application fee amount should continue to be based on the revenue neutral principle, so the accuracy should be improved to the greatest extent possible, although the 2012 new gTLD Applicant Guidebook was silent on what should happen with any excess fees obtained through the application process, the working group is leaning towards recommending that absent the use of an application fee floor, which we describe later on, that excess fees should be refunded back to the applicants. If a deficit arises, ICANN should recover an equal amount of funds in future TLD application windows.

Okay, just stopping there to see if there's any questions on that, other than of course what the term "floor" means, which we describe in Number 3, which we're getting to. Okay, don't see anyone with their hands raised.

So Number 3 states that the working group is also considering proposing that if in the event…

((Crosstalk))

Jeff Neuman: Yes, sorry.

Cheryl Langdon-Orr: Christopher has his hand up. I just wasn't sure you saw that.

Jeff Neuman: I did not. Thank you. Christopher, please.

Christopher Wilkinson: Hi, Jeff. Good evening. Good evening everybody. This is Christopher Wilkinson for the record. Just two small comments on this passage. I'm not - I've never been into the details of the $185,000 but two comments. First of all, the work track somewhere grumbles that ICANN could not provide them with information and documents as to how the $185,000 figure had been reached. I think you will find that from people that - with an accountancy background who are looking into this from the outside, they will find that rather surprising.

Now I think it would be recommendable to make an extra effort between the staff and the work track to get rid of that rather odd grumble in the document because quite clearly it would be most important that ICANN should be - should continue to be able to be - to explain if not justify the basis on which the - that sum - that figure was reached.

Secondly, a rather more political point, maybe you haven't got to hear that yet but on the one hand I see that there seems to have been a surplus of $100 million, which has not yet been used. So be it. It's comfortable. But on the other hand, the document has seven pages discussing applicant support but reports that only $2 million was ever used to promote applicant support. I think also looking at it from the outside, those two figures will seem rather odd and if they can be assuaged, corrected or rephrased in a way which is less obviously damaging to the report of the 2012 process, it would be recommendable.

Sorry to take the time, Jeff, but I hope that that proves to be useful. I shall now try and mute again.

Jeff Neuman: Thank you, Christopher. And actually those are great, great points. And we should drop a note in here that exactly as you said, that we were not able to get an exact breakdown of the fees that were spent and how that mapped against the $185,000. On the question about the excess fees, and this will sort of tie into Anne's question in a minute, but the - you are correct that there is - I think it's now somewhere around $80 million left in the excess application fees, this is not the auction fees, this is separate and apart from the auction fees. But because the $185,000 in theory was mapped against a potential 500 applications as opposed to the 1900 plus applications that were received, there were a lot of fees that - approximately $80 million or so of which is still left.

But the problem with this group, and it's an issue that we tackled early on, was that we do not - this working group does not have the jurisdiction over making any recommendations on what to do with the excess fees left over from the last round. So whether it's a good idea to ask that some of that excess be used towards, let's say, applicant support or anything else, we were quite - we were instructed quite early on that it was beyond our mandate to make any kind of recommendations with respect to the 2012 excess funds. So that's why we are not able to make any recommendations.

And remember, this is very different than the auction fees of which there's over, what, $200 million, I forget the exact amount, and there's a separate cross community working group working on that. At this point there's no group that I'm aware of that's working on the excess fees from the last round, although I will note that there was a proposal by the Registry Stakeholder Group on determining or on using some of those fees towards a fee - I forgot exactly how it was worded, maybe a forbearance of fees, for registry operators.

But at this point that - the status of that $80 million or so remains, one, beyond the jurisdiction of this group; and two, a topic of conversation that is I think currently taking place with the Registries and the GDD staff.

So, Anne, just to answer your question of how is the amount of excess determined by ICANN? ICANN does have a line item in their budget materials which we can send around but they are the ones that are tracking the quote, excess fees, and it went from $92 million in last year's budget, sorry, the last fiscal year budget, which we're currently in, to the next year's fiscal - proposed fiscal budget which starts July 1 which is in documentation that ICANN put out for comment a couple months ago. So that's where we're getting it from, Anne, we don't have an exact calculation, we just have one what ICANN has - what ICANN is representing in their budget.

So Kavouss has said, "Please repeat the amount of excess fee." So, Kavouss, there's two sets of fees that ICANN currently maintains. The first set of fees relates to the application fees it received from the $185,000 for each application. That amount is somewhere around $80 million. The exact amount is in the budget; I just don't have that handy.

The second set of fees, which is completely separate, is - are the fees that were derived from contention resolution where a public auction was used and that fund is somewhere around $200 million plus and that is currently the subject of the cross community working group on the auction fees, which I believe either is releasing a preliminary report shortly or may have already, I'm not 100% confident on where they are. But that is a separate amount. So hopefully -okay Anne asks, "Does it relate to the cost of processing an application versus cost of application at $185,000?"

So, Anne, the fees that were used - the methodology that was used to determine the $185,000 estimate was a guess at the amount it would take to recover historical costs and development costs is the first element, second element being how much it would cost to actually process and evaluate an application, and the third element being a contingency fee of how much would need to be set aside in the case of litigation or some other unforeseen event. So again, that was based on an estimate of only 500 applications back in 2010 and of course as we all know, we had nearly four times that amount so that's why we ended up with an excess fee.

Okay, thank you, Steve, we have Donna and then Kavouss.

Ken Stubbs: Ken Stubbs too, Jeff.

Jeff Neuman: Okay, Donna, Kavouss, then Ken.

Kavouss Arasteh: Do you hear me, please?

Donna Austin: Donna Austin from Neustar. Can you hear me okay?

Jeff Neuman: Yes, let's go with Donna, then Kavouss and then Ken. Thank you.

Donna Austin: Thanks, Jeff. So I forget the terminology that Christopher mentioned about grumbling that we couldn't identify now the $185,000 was arrived at. And I know that we did have some conversations in the work track about this, and I think we had differing opinions. And I am actually of the opinion that the work that was - the work that was done to come up with that $185,000 fee was, I mean, we can't say it was solid because of the excess amount of fees, but I think that was more associated with the lack of understanding of how many application fees - how many applications would be submitted.

I think the important thing is that there was a 30% of the application fee was for contingency. And I think that's largely the excess that was left over and that's what ICANN is saying that they won't - they're not prepared to release any of that excess fee until the program is complete. So in ICANN's mind the program still continues until such time as all contracts have been executed and there are no outstanding appeal mechanisms going on.

So I think we might have a - I can't see the language that Christopher is referring to but my memory of the discussions within the work track is that we might have differences of opinion in that regard because I actually tend to think that the work that was done in coming up with the $185,000 wasn't as off the mark as others might have thought it is. Thanks, Jeff.

Jeff Neuman: Yes, thanks Donna. Kavouss, please.

Kavouss Arasteh: Yes, Jeff, as far as I remember, for the auction, the amount of available is $335 million, not $200 million, $335 million from auction, CCWG Auction. Several times you have mentioned this value. About the other excess fees that you mentioned, someone said $100 million, someone says $80 million, someone says between $80 million and $100 million and so on so forth, so I

leave it to you. But the important issue is that never the breakdown of $185,000 was given, never it was mentioned that based on what because usually this should be a cost recovery issue but not revenue creating or revenue building.

So this is - this question is not clear. If it is - the revenue, no problem, people should agree or not agree, but I think it is cost recovery approach but I don't know whether and how and when this breakdown will give. No breakdown was given of how they arrived at this $185,000 even for the first 500 estimation that because the 1937 was. Thank you.

Jeff Neuman: Thanks, Kavouss. And, yes, I admit to not having paid as much attention to the amount of auction funds simply because I knew that was beyond the remit of this group so thank you on that. And Ken, please.

Ken Stubbs: Yes, I apologize, I hope I can be heard through clearly. First of all I'm somewhat disappointed because it sounds to me like much of the tone of this group represents some sort of a criticism of issues that are still being contended that relate to the past rounds. Number 2, the $335 million number that Kavouss referred to is not necessarily correct; there's well over $100 million of that that is very actively contested and is by no means a fait accompli.

Number 3, I think this group needs to concentrate on developing methodologies to deal with the computation of the fees in the future and developing a specific set of accounting guidelines that the group - future that will allow them to pull numbers out that are truly meaningful. But we're wasting a lot of time talking about something that went on in the past and is still being currently contested. It has nothing to do with the operation of this group other than to create an awareness of the group that there are issues that could arise in the future that need to be considered as we move forward. Thank you, Jeff, and trying to keep us focused on moving forward.

Jeff Neuman: Thanks, Ken. Okay, is there anyone else with their hand raised? I just want to make sure I've gotten everybody. Jamie, please.

Jamie Baxter: Yes, Jamie Baxter. Can you hear me?

Jeff Neuman: Yes, thank you.

Jamie Baxter: Great. I had a quick question for the group, the working group on this. As I read through this I don't see anything specifically that calls out the use of these application fees for ICANN's own legal defense. It seems a little bit odd that applicants are paying - just in case - if in fact that's the case - that applicants are paying ICANN in order to defend itself against any issue that may rise. Was that part of the discussion? Is that something that's being considered to have been removed for the next rounds or - I'm interested in that.

Jeff Neuman: Thanks, Jamie. I don't know if - not put people on the spot - I don't know if Christa is on the call if she wants to respond to that?

Christa Taylor: Hi, Jeff. Can you hear me?

Jeff Neuman: Yes, thank you, Christa.

Christa Taylor: It's Christa for the record. So we didn't have a specific conversation on whether or not a legal defense or the related amounts should be removed from the application fees going forward. And also if I can circle back, there wasn't a bit - there was no gripe on the information, it was exactly what I think Ken was bringing up, it was the methodology in that we couldn't dig down into the methodology without having the breakdown into the different activities that kind of made up to the cost and by not having that document we couldn't really gather maybe any additional insight related to it.

So it's really - there was really no gripes, and I would certainly hope that the document doesn't reflect that, but it's just more of a we didn't have that discussion because we didn't have the document. But we'll review again to make sure that that's reflected. Thanks.

Jeff Neuman: Sorry. I had muted and unmuted or unmuted and muted so thank you, Christa. Okay, is there anyone else that's in the queue, just do a quick scan down. Okay, let me to go the next recommendation - oh, Donna, did you just raise your hand again? Sorry.

Donna Austin: I did, Jeff. Donna Austin from Neustar. Jamie, just in response to your question, and this is just my opinion that I don't recall that we've - we discussed this in the work track explicitly.

But if you think about the principle that the - that any future program should be cost neutral to ICANN, then I think it's fair that there should be some component of the application fee is a risk or a contingency component because I, you know, it's hard to understand where, you know, certain risks might come from to ICANN as a result of the program. I think there's - with new IRPs and things like that, I mean, I haven't thought it through but if you just think about the principle that this program should be cost neutral to ICANN, then I think it makes sense to have a contingency so that ICANN can respond to any potential threat.

Now threat is the wrong word but hopefully you'll understand what I mean is that, you know, we shouldn't be setting ICANN up to have to dig into the reserve fund, for example, to fund some legal effort that arises as a result of an application or something like that. So from my perspective I think it is actually reasonable that that be included in the considerations and application fee. Thanks.

Ken Stubbs: Jeff, it's Ken.

Jeff Neuman: Yes, Ken, let me just - just if you could make it relatively quick because I'd like to get on because a lot of this discussion is not necessarily on what' sin the report, so if you could just make it real quick and then I could move on.

Ken Stubbs: Yes, I'm just trying to make sure that we understand the background behind what's in the report. I'm just going to give a couple of examples. The entire process creates significant additional cost centers, one of them being, Jeff, because you've been involved in it for years, the Red Cross issue. And that was created principally because of concerns as result of the first round. Now we have the same situation going on Work Track 5 with Christopher, and God forbid that we think that whatever we come out with is going to be universally accepted by the GAC. Thank you.

Jeff Neuman: Okay, thanks, Ken. Let me just move onto the next recommendation or sorry, proposed considered proposal, which I think might - I want to make sure that everyone understands what we're saying and that it's clear. So for those of you especially that were not in the work track, to make sure that this makes sense.

                 So Number 3 says, "The Working Group is also considering a proposal that if in the event that the estimated application fee based on the revenue neutral principle, falls below some threshold amount, that the actual application fee will be set at a higher floor amount instead," which we call the application fee floor, "the purpose of that floor would be to deter speculation, warehousing of TLDs and mitigating against the use of TLDs for abusive or malicious purposes."

                 So this ties a little bit back to a comment that I saw I think it was Alexander made in the chat which was if you drop the floor too low you could end up with double, triple, quadruple the amount of applications, some of those may be for speculative purposes although we're speculating on that, and so it was the view of some members of the work track especially that if it turns out that

the cost of evaluating an application turns out to be really low, we would want to set a higher price floor to make sure that there's no speculation.

So for example, if we determined that the price to evaluate - or the fees - sorry, that the cost to evaluate applications, including a contingency fund and also including any other elements, was $10,000, then some members of the work track thought that that was way too low and that the fee would need to be set higher just to make sure that we deterred speculation and abuse. There's more discussion of that topic below these recommendations in the deliberations. So the discussion was to possibly set an application fee floor.

Moving to the next recommendation, and I will get to comments, but I think these tie together. Number 4 says, "The application fee floor is a predetermined value that is the minimum application fee, by definition, an application fee floor will not meet the revenue principle," sorry, "the revenue neutral principle as the floor amount will be greater than the application fees creating an excess. In the event that an application fee floor is used to determine what the fee is, then the excess fees received by ICANN should be used to benefit the following categories," and so there's a discussion of where those excess could or should be used for, at least out - will be out for comment so of course there may be more than that.

And then Number 5 says, "To help alleviate the burden of a shortfall, a separate segregated fund should be set up that could be used to absorb any shortfalls and (tops) up in a later round. The amount of the contingency should be a predetermined value that is reviewed periodically to ensure its adequacy." So I know I went through three of those that are very substantive, but I thought all three - we should go all three before we take any comments. So with that let me look and see if there are - anyone with their hand raised.

So, Kavouss, please. Kavouss, I don't know if you're on mute?

Kavouss Arasteh: Hello? Do you hear me?

Jeff Neuman: Yes, I hear you now.

Kavouss Arasteh: Yes, sorry. I do not properly understand the scope of the speculation fee. If one applicant asks for one application only, why that should behave in addition to the normal to take care of the future speculation if that applicant would not have any other application in a certain period of time. On the other hand, if someone continuously try to make an application, I don't know what will be the maximum or floor or limit, then this speculation should apply to that. So that should be relevant or corresponding to number of applications for a specific period. So I don't understand why everybody should be treated equally in terms of payment of that speculation even if it does not make any speculation at all and others making several speculation. So I don't understand that.

Elsewhere the people if they use this it depends of number of the applications or scope and difficulty of the application to be processed but not all of the application are similar - take similar time for the process and evaluation. It depends on the case, some case will be more difficult than others. So I don't understand this additional that you want to apply to everybody even for those who have one single application or very, very limited versus those who have many application unless you put a limit and after that the price increase exponentially. Thank you.

Jeff Neuman: Thanks, Kavouss. I think so your question assumes that there's been a decision to only allow one application per applicant or some other mechanism to deter multiple applications, which, again, all of these principles are out for - are going to be out for comment. The work track and of course the working group as a whole is just seeking information on these proposals, sorry, seeking comments on these proposals so no decisions have been made on any of these aspects.

But if it turns out that there are no limits on the number of applications, or that as was discussed in the separate section previously, that there - we were not able to come up with a way to feasibly limit the applications to one per party, then we - the group is seeking feedback on this type of proposal.

So I see Christa…

((Crosstalk))

Jeff Neuman: Let me go over to Christa because she's one of the drafters of this and…

Kavouss Arasteh: Yes, I want to come back.

Jeff Neuman: Okay, I see Christa, then Christopher and Kavouss.

Christa Taylor: Hi, it's Christa for the record. Just to add to what you were saying there, there was the discussions in the work track were related to perhaps the correlation between the price and the demand of applications. So therefore by putting in a floor price chances are it was assumed or yet to be proven that the number or the volume of applications would increase, so that's where the speculation term comes from. Thank you.

Jeff Neuman: Thanks, Christa. And Christopher, please.

Christopher Wilkinson: Thank you, Jeff. Christopher Wilkinson for the record. This discussion gives rise to a few very short comments. First of all, fact that the document discusses speculation and warehousing is rather revealing to the non-initiated. The implication is that in the 2012 round there was speculation and warehousing. I didn't know that until I logged onto, for example, Donuts' Website. I think that was an extremely bad policy and directly in conflict with ICANN's obligations to encourage competition, fairness and user access on a fair and nondiscriminatory basis. That's another subject but, you know, the

documents raise it and they don't explain it. If that happened it has to be admitted.

Secondly, the only way to stop speculation and warehousing in the future is to limit the number of applications per entity. I personally don't agree with limiting it to one for the - there will certainly be categories, notably in the area of IDNs where it would be perfectly reasonable to allow for two, three, four, five perhaps. But the idea that a company can register 100 TLDs is frankly politically scandalous and will do great damage to ICANN. And I think that has to be stopped. For the rest, we can work on it and try and find better solutions.

But I'm speaking also as an active member but not a cochair of the coleader of the Work Track 5. What I've said about multiple of applications for geographic names with (nobs on), excuse the West Yorkshire expression, the idea that a company could register, apply for and have delegated multiple geographical names around the world is really politically quite shocking and if that happens it will do ICANN great damage and disservice. Thank you.

Jeff Neuman: Okay, thanks, Christopher. Again, those are some substantive comments that I think should be submitted during the comment period. I do look at some of the comments asking for a definition of "speculation" or "warehousing" so I will take that down as a comment and see if there was one that was commonly discussed within the work track to see if we can add some language there.

Christa, your hand is raised, do you want to address another point? Hello?

((Crosstalk))

Jeff Neuman: Okay, Kavouss. Yes, Kavouss.

Kavouss Arasteh: Sorry, Kavouss Arasteh speaking. I never suggested to limit the number to one. What I said that establish a limit, X by which no speculation fee will be charged. Above that you apply a speculation fee either linearly or exponentially. So define a number, five, 10, I don't know, without any additional fee or floor fee, whatever. Above that, apply that either linearly or exponentially. In that case you could limit the number of - or control the number of speculation. So I agree with what Christopher mentioned, but with understanding that I never proposed limit to one. I says that establish a limit and above that apply some additional fee in one way or other. Thank you.

Jeff Neuman: Thanks, Kavouss. Okay, is there anyone else in the queue? Okay, not seeing any, Cheryl made a comment in the chat which I'm trying to find here.

Cheryl Langdon-Orr: Jeff, Cheryl here, I'll do it for you if you like. I was just reminding everybody that my chat was actually back when Kavouss was making his earlier intervention, that what we're doing, remember, is looking at the accuracy and effectiveness of this document as it reflects the discussion of the work tracks. We're hearing an awful lot of excellent interventions, I admit, which really should be comments that come in. So just try and remember, we're not re-litigating the work track material at this stage, we are reviewing the work track material to make sure it is clear, unambiguous and accurately reflects the deliberations. Thanks.

Jeff Neuman: Yes, thanks, Cheryl. That's - thank you for making that point. And I see Martin has also made a similar one in the chat. So if we move onto the next section, which talks about the specific questions that we're seeking feedback on, this is - I'm sorry, I skipped a section. Section D is what are the options under consideration along with the associated benefits and drawbacks? Since we describe most of the options up in Section C, we did not include additional ones here.

But in the next section, E, on the questions, what we asked are a number of different questions, some of which people on this call have brought up. One is

are there any other mechanisms restrictions, methodologies beyond pricing, that we could use to prevent warehousing or squatting? And I'll come back to you, Kavouss, in a second. Let me just go through these questions.

There are questions on you know, what to do with excess funds, considering the methodology that we're proposing to use, if we have continuous rounds as opposed to just a round and then stopping for a period of time, and then, you know, so if we have continuous predictable rounds, you know, what are some other considerations or implications we should be thinking about especially to make sure it's run in a revenue neutral manner.

Are there any other suggestions as to how this floor, if we do adopt an application fee floor, how we might determine that floor, not what the amount should be necessarily but what is the methodology that we should use to establish that floor? And ultimately you know, how do we address the timely disbursement of excess funds, so as was noted previously it's been six years since the application windows closed, or just about six years, and there have been - although there is acknowledgement that there's $80 million or so in excess fees, there's been no disbursement of those fees, ICANN staff is saying that they don't know the definition of when a round closes and so can we, through this comment period, provide any guidance in order to define when a round starts and when a round ends for the purposes of distributing excess funds?

So I see - I know Kavouss wants to respond and then in the queue I don't know if there's - I have - okay, Anne, so first Kavouss then Anne.

Kavouss Arasteh: Yes, Jeff, I think it would be good that once (forever) it should be clarified whether we have any right to make any comment or we don't have right to make any comment because we don't want to litigate or we don't want to intervene to whatever the work track has done. We are just listening to the explanation, so we have no right to make any comment. Can I ask why tell why we are spending our time to give a rubber stamp to what the group has

done or to make comments whether we have any views we will be given the statement that yes, it's a good but make it during the public comment, why we are spending our time now here?

We have full freedom to do public comment but why spending the time one meeting after the other? We had one meeting before you, and we have one half hour and so on so forth, so why we are wasting our time? So somebody never try to kindly consider that we have also right to give our comments and these comments should be reflected and should not be said that this is not the time to do that, do it in the public comment, this is the third time I hear the same statement from the same person. Thank you.

Jeff Neuman: Okay, Kavouss, just to reiterate, hopefully for the last time, the purpose of a full group review of this document is for the entire working group to make sure, Number 1, that the document is clear and it's understandable as to what's in this document so that anyone reading could understand it, so the comments made on defining terms and clarity, those are great comments. Number 2 is to make sure that we're asking all of the right questions from the public to help the working group when we receive the comments back to analyze the proposals we're considering or to make new proposals. And so we want to make sure we're asking all of the right questions.

And three is to make sure that we've captured accurately all of the conversations that took place. So of course you have the right as always to provide substantive based comments on whether you agree to disagree with what the work track has done but the appropriate place and time to do that is during the comment period and of course afterwards during the deliberations. The reason we're doing this, again, is because the work tracks have been meeting for nearly a year and a half on these issues and they have been posting on email, discussing these issues thoroughly, work track leads have been holding multiple meetings and so we're not trying to bring up old substantive arguments that may have already been brought up before, but rather to clarify what transpired in the work tracks.

So I know that, Kavouss, you've expressed your disagreement with that but that's the philosophy that Cheryl and I have - and the full leadership team have embarked on for now. And so we're going to continue down this path until we get this report out for public comment. Anne, please.

Anne Aikman-Scalese: Great, thank you, Jeff. With respect to the comments you made about the second thing of are we asking the right questions, I went ahead and raised my hand because I was looking for the question, "Should different application fees apply to different categories of applications?" And, you know, if it's in there I'm not really seeing it but I think it's one of the basic questions that we need to ask the public.

Jeff Neuman: Yes, thanks Anne. That's exactly the topic of Section 1.5.2, the next section, so that's what we mean by variable fees. So we will get there very shortly.

Anne Aikman-Scalese: Okay, and then I'm sorry, second comment I would have is I understand exactly the methodology that we are using at this point and the fact that I'm quite sympathetic to how difficult it is to lead us as a group. I think there is a point however, to where there's still this lingering concern well really what you're seeing is we're going to put the preliminary recommendations of the work track out as the preliminary recommendations of the working group. So, you know, when we do the final consensus call that's working group wide, right? So if we're actually trying to make this tool, you know, essentially what we're saying is you're wanting to codify and put out for this preliminary report the preliminary recommendations of the work track, not of the - right? Is that what we're having to more or less explain if we follow the protocol that you guys have set out?

Jeff Neuman: Thanks, Anne. Yes, I muted and unmuted or unmuted and muted. Yes, Anne, for a lot of these topics it is the recommendations of the work track. There are some overall subjects which are from the working group, which we discussed,

but these are - this section in particular is one where it's work track so we should clarify that terminology in the report. And we will do so.

Anne Aikman-Scalese: Okay thanks, Jeff.

Jeff Neuman: Okay. Checking the list for other comments. Sorry, this is slower with WebEx and for some reason I cannot move down on the list. Okay, I see Kavouss, your hand is raised, is that an old or a new one?

Kavouss Arasteh: Just excuse me, my chat is blocked and my hand is blocked. Please do block them.

Jeff Neuman: Okay…

((Crosstalk))

Kavouss Arasteh: …chat.

Jeff Neuman: Okay, Kavouss, I will ask what's going on and while we move onto the next part we'll see if those that are running WebEx can figure out the issue. Okay, moving on, so the deliberation section, I'm not going to go through in any kind of detail. I think most of it speaks for itself. Again, if there are any deliberations that you were involved in in the work track that you feel were not captured or if you believe - anyone in the working group believes that something is not clear, please make a comment on the email list so that we make sure that the next version that comes out is made more clear and asks all of the appropriate questions.

Anne, your hand is raised. I don't know if that's an old one? Okay, I'm going to assume since I don't hear anything that's an old hand. We then go onto the last section of 1.5.1, are there any other activities in the community that may serve as a dependency or future input into this topic? And we - in this section we refer to the other PDPs that are ongoing as well as the - any

recommendations from the CCT Review Team that may have an impact on the fees. So we cite those specifically as dependencies that we are looking at in order to make final recommendations later on this year.

Which bring us to the question that Anne has asked and that relates to the variable fees, meaning that is there a difference or did we discuss whether different groups of applicants would pay - or different applications would be priced differently? And for these, the only recommendations we could find from the previous round was as we talked about in 1.5.1, a reference to say that application fees may differ for applicants and then in implementation guideline N, it talks about ICANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed.

Again, this was from 2007, so terminology may have changed since then, but we wanted to provide an actual quote of what was in that initial policy. And so how are these implemented? Essentially there was with the exception of those that applied in 2000 - in the year 2000 for TLDs, for which the same applicant wanted to reapply for the same string in 2012, they were offered a fee which was only a percentage of what the full fee was for everybody else, and so but essentially everyone else had the same application fee unless you qualified for the applicant support program, and if you - beyond this base fee, there was also fees additional fees if you wanted to - if there was string contention and you were applying as a community and wanted to receive priority as a community. So that's how we implemented this principle.

And so what - to answer Anne's questions, yes, there were discussions that took place on whether there should be different charges for different types of applications, but at the end of the day the - what we have here is so the working group discussed a number of different possible alternative approaches, there was no agreement on any alternatives to the 2012 - it should say round - namely that all applications should incur the same base application fee amount regardless of the type of application or the number of applications that the same applicant submits.

This would not preclude the possibility of additional fees in certain circumstances, for example, objections, registry service evaluation fees, community fees, etcetera. So Anne, there was no more discussions but there was certainly no agreements within the work track. Then for what were the options under consideration, of course there was - there were some that suggested the different application fees for different types of applications is only warranted if the cost incurred for processing those different types of applications are significant.

So in other words, if the costs of evaluating a geographic top level domain is the same or within a certain percentage of the costs of evaluating any other application, then the work track discussed that there really wasn't a justification for having them pay a lesser application fee. That said, if there was a significant deviation between the costs of reviewing an application for, let's say, a brand TLD versus a standard application, and that deviation was greater than something like 20%, then perhaps it is worth considering a variable pricing mechanism.

So any questions on these sections, B - A, B, C and D of 1.5.2, things that are not clear? Any other questions? Just scrolling through the list. Not seeing any hands. There are some questions in chat. Cheryl, anything we need to go over from chat?

Cheryl Langdon-Orr: I'm going to copy and paste the repeated comment that Kavouss was unfortunately sending just to panelists and respond to it in all participants, so he can perhaps relax on that.

Jeff Neuman: Okay, thanks, Cheryl. So Section E talks about questions that we can ask to solicit feedback to help the working group overall to make recommendations. So these questions include, should there be any exceptions to the rule of everyone paying the same application fee? And if there are an exception, why or why not? Or why or why not should or shouldn't there be exceptions?

If there are types of applications that result in different costs, what is the value, the amount, that we had used 20% for discussion purposes, or what is the amount that would justify having different fees?

And some other questions in there include if the number of applications exceed the capacity limits, and projected processing costs, should there be an option to increase costs to meet the service expectations? So there are certain areas that the leadership is seeking feedback on. Okay, any questions on the questions? Christopher, please.

Christopher Wilkinson: Hi, Christopher Wilkinson again for the record. I have several comments on this matter but I think I'll reserve them for the next section on applicant support. But on your specific point, long before we get to increasing prices for excessive numbers of applications, we really need two fundamental parameters for the process. One is the capacity of the staff to evaluate applications. For the sake of arguments I think that's limited and it's down to the staff, in all honesty, to say how many score and certainly not hundreds, of applications they really think they can honestly process per week or per month.

Secondly I just recall that I have advocated on several occasions without it being very thoroughly reported in the - that the whole process should be done by batches. And we should never be in a position where applicants can force the staff's hand to accelerate or reduce the quality of evaluation because there's such a backlog and a queue. This has to be up front managed in terms of the capacity, the announced capacity, the funded capacity, to which the CEO and the staff will adhere to process honestly and accurately the applications. And if it is X, so be it, and if the work track says it should be 2X, I'm sorry.

The second point comes back again to this question about multiple applications per entity. For the sake of argument I would accept a maximum of somewhere between 5 and 10 for applications excluding entities who have

already gone in for speculation. And that's easy to measure because after - since 2012 they still haven't got the TLD online, that's prima facie evidence that they asked for too many.

Limit severely the number of applicants that can be accepted from individual entities and that in and of itself will help to solve the problem. Raising prices because there are too many, that's really not going to work because some of the people who seem to have the ability to - the ability to apply for many seem to have a lot of money and at least in the United States where the interest rates are still very, very low, they're probably doing it on borrowed money anyway, so no, no this business of raising prices, that would be grossly unfair to serious applicants. Just limit the number of applicants per entity severely. Thank you.

Jeff Neuman: Okay, thanks, Christopher. Without getting into - there's been a lot of discussion on limiting applications so I don't want to get into that on this call. But certainly we're capturing everything that's in the chat. I do want to Katrin Ohlmer does bring up a point I want to make sure that we acknowledge which is asking a question in this section about ways in which we - if exceptions to the same pricing, so if we establish variable pricing or variable fees, how we would make sure that there was no gaming of that so that we should ask questions on that topic. So we have captured that and we will make sure.

Another one for question is, how do we ensure that there's predictability for the applicants? So I think those are really good questions and others that I've seen in here are also really good to make sure that we are asking all the right questions.

Okay, looking through the chat, and looking at the time we have left I think we can go to 1.5.3, and most likely end at 1.5.3, finish this section so we'll have to go to 1.5.4 on the next call because that's a pretty long topic anyway. But 1.5.3 talks about the - essentially the length of the application submission period. And this one is actually one that even the leadership had to go back

on several times to make sure we understood a couple different terms that were used in the 2012 round and how we're using them moving forward.

So the first thing to keep in mind is that when we are talking application submission period, that literally is the time in which the application system is open to accept applications so that means not necessarily all of the time in between when the final Guidebook is released and the closing of the period but rather when the actual physical system of accepting applications is open. So if we were to do an analogy to the 2012 round, I believe it opened up on January - somewhere around January 12, 2012 and was supposed to end around April 12, 2012 but because of a glitch, ended up being suspended on April 11, 2012, or somewhere around there, and reopening up for a couple weeks in May.

So putting that glitch aside, the application submission period was somewhere around, well it was supposed to be somewhere around 60 days. However, - or sorry, 90 days, did I say 60? I meant - wait - it was 60 days. Now, the proposal here is, if you scroll - actually I should scroll because we all have access on there, what we say here is for the next round of new TLD applications, applicants should have a minimum of three months from the time in which the application system is open until the time in which applications would become due.

We wanted to contrast this with the communications period, which was separately defined in 2012 but often confused with the submission period. The communications period is the time in which the - ICANN implements its communication plan and outreach plan in order to draw applications in. So one of the options that was considered by this work track was that the communications period, to make sure that that is at least six months long. And we talk more about this communications period in a different section.

But that we also no more than two months of the communications period for the next round of new gTLDs should overlap with the application submission

period leaving at least one month following the closing of the communications period and the closing of the application submission period. Again, I know that caused some confusion within the - with the work tracks and leads, so I want to make sure that we understand that here or that it's clearly worded. Are there any questions on C or the first option that was under consideration D?

I'm seeing a lot of chat, unfortunately with WebEx it's hard to see much of the chat. So if there's anything - I'll look towards Cheryl to see if there's any reason - anything in the chat that we should go over here?

Cheryl Langdon-Orr: Jeff, Cheryl here. I need the most recent part from Katrin and Maxim, is probably worth noting to the record.

Jeff Neuman: Okay, so comment from Katrin is, "I'm not sure if a period of one month between end of communication period and end of application period is sufficient to propose. Even in Europe many applicants made the decision at the last minute." So that's - and Maxim agrees with that. That is a substantive comment that I think I good to respond to the questions. It's not one of the recommendations, it's just something that the group had considered so certainly in the comment period that would be important.

Seems like Anne and Jim have their hands up so I'm going to call on Jim first because we haven't heard from him yet, and then Anne.

Jim Prendergast: …remember us talking about these periods in this specificity as far as the length of them putting some numbers around them. And I'm - where did the - I certainly don't remember the "could be shortened to as little as 60 days" for the application window, so maybe I've missed that call or something but do we - has that been noted in the transcripts and the recordings of the calls? Thanks.

Jeff Neuman: Yes, thanks. These should all be in there. Again, that's - it's in Section D because it was something that may have been either in a comment that was received or in, you know, to work stream - I'm sorry, to CC2, or it may have been in the emails or it may have been during the discussion but, Jim, it didn't rise to the level of being a preliminary recommendation or implementation guideline so that's why it's in Section D so certainly any comments to those would be important for the comment period. So I can't tell you where it came from, we can do some research, but I think the clarity is more important now and of course making sure that we ask the right questions about that option is put in there.

Sorry, I missed - there was chat there so we have Anne, Christopher and Jamie. So Anne.

Anne Aikman-Scalese: Yes, thank you, Jeff. Regarding the dependencies section, does this particular item that we've been discussing have a dependencies section for application submission period?

Jeff Neuman: It has a section but there's nothing in there.

Anne Aikman-Scalese: Oh okay, I just thought perhaps the best thing to do there would be to raise the question about that's been floating around about priority rounds, in other words, the dependency there is related to maybe some work that's begin done in Work Track 3, I don't know what's happening in Work Track 5 about that but I think there is outstanding in the community a dependency question about whether there should be any priority rounds and the reason that I think that that has to be a dependency is I don't think it's been, you know, determined within Work Track 3 and I know that coming out of the GAC we just may see - we have already seen in some GAC comments they asked that we, you know, give due regard to the European Commission recommendations on community applications.

So that's a long path to saying that I think that the dependency that we want to state is that there's probably Work Track 3 work on priority rounds one way or the other.

Jeff Neuman: Okay thanks, Anne. Let me just ask a question on that because this section is trying to deal with the application submission period, I guess, regardless of at the end of the day whether certain applications get priority over others, or whether there's separate - there are separate rounds. I'm just not sure why that's a dependency. What we're trying to say is how long should an applicant have from the time in which the system opens up until the time in which the system closes to enter their application information in? And so I'm just trying to figure out where - what the dependency would be, whether or not…

((Crosstalk))

Anne Aikman-Scalese: Just the dependency would be whether or not there's only one round, because I think that this - the way this is phrased assumes one window, sorry, one window. So the question would, you know, the dependency would relate to whether there's only one window. You could have different answers to this depending upon whether you had one window or two or three. So...

Jeff Neuman: Okay.

Anne Aikman-Scalese: …unless you want to state that if there is only one window as the assumption underlying this, but there is the dependency there.

Jeff Neuman: Okay, thanks - thanks, Anne. All right, we'll take a look at that. I know that - sorry I lost the list of who - I know Jamie had his hand up and Christopher, so let me go to Jamie, then Christopher.

Jamie Baxter: Yes, Jamie Baxter here. I'm wondering in the discussion points that went on related to the application submission period, was - I want to make sure that

there was a thorough discussion about the nature and the logistics of community applications. When suggesting a six month communication period for those who hear about it on Day 1 of that six month communication period, if they're a community organization is six months enough to actually complete the requirements of a community application for all communities?

I'm not suggesting in any way that it, you know, be shortened or lengthened, I just want to make sure that that's considered because it's a very important detail of community applications because it takes time to generate the ideas, have the community discussion, create the community policies, get the stakeholder buy in, I mean, those sort of things take much longer than somebody who just simply has the money from an investor and can throw an application together.

So I just caution that, I'm not suggesting that it be shorter or longer, but it is an important element if we're looking at the overall program that community applications and the way they are put together do not get left behind here. Thanks.

Jeff Neuman: Yes, yes thanks, Jamie. And I think so there is - when we get to Section 1.4 which you all have copies of now, there is a more thorough discussion of the communications period, so I think that we'll make sure that - or when you read that section if it's not covered in the deliberations let us know. I do - we want to make sure that that concept was captured.

Okay, I know Christopher has had his hand raised and I see Jim's hand, I think that's an new one so Christopher then Jim.

Christopher Wilkinson: Thank you, Jeff, so Christopher Wilkinson for the record. I put my hand up before Anne made her excellent statements with which I fully sympathize. First of all, there should be internal consistency between all these chapters of the report which is not yet the case because some of the

chapters assume that there will be a single window and it will be a global free for all. As you've gathered, I'm not in favor of that solution.

In the context of what we're looking at now, Page 12D, second bullet. Absolutely, my full support, organized as a series of application windows, precious words. That should be our fundamental policy. Then we can discuss the labeling of the application windows, their scheduling and how each application window, depending on whether it's geographical or community or generic, each application needs more or less time to have a good submission period and a good evaluation period, that's secondary.

And as I said right at the beginning, please ICANN staff, tell us how many applications you can handle per month during the whole process. But for present purposes, absolute support for the second bullet on Paragraph D on Page 12. Thank you.

Jeff Neuman: Okay thanks, Christopher. Let me go last to Jim and then we'll wrap up this call. Jim.

Jim Prendergast: Jeff, was an old hand, sorry about that.

Jeff Neuman: Oh great. Then I won't go to you, Jim, thanks. Great. Okay so it looks like we've covered up to 1.5.3. Next week we will announce -we're likely to move the time of the call next week because of the GDD Summit and the - and so look out for that. Hopefully we'll get that out tonight or first thing in the morning tomorrow, oh actually it is first thing in the morning for some of you tomorrow, so we'll get it out shortly so thank you, everyone, for a good call. Look for Section 1.10 to come out shortly and for the announcement of when the call will be next week.

Cheryl, do you have anything else to add?

Cheryl Langdon-Orr: No, all good. Thank you, everyone.

Jeff Neuman: All right, thank you, everyone.

Julie Bisland: Thank you, Jeff. Thank you, everyone, for joining. Today's call has been adjourned. Operator, can you please stop the recordings and everyone have a good rest of your day or night.

END