
MONTREAL – GNSO - New gTLD Subsequent Procedures PDP WG (4 of 4)

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ICANN66 | Montréal, Canada

JEFF NEUMAN:

Awesome. Okay. Hello, everyone, welcome back. If you can just take your seats and I'll try not to call out people by name, Ray, Sebastian, others. I'm just kidding.

Okay. So, we're going to delve into this substance of a few items that we thought would be good for discussion here because there are some open issues. And, frankly, it's good to use some face-to-face time in order to address them. As much as I like looking at myself on the screen, I'd rather have the materials up there. So, just post that up there in a second There we go. Okay.

So, the first item is the notion of predictability. We've had a number of comment periods on this and we've actually reviewed the comments, and then gone over this again in terms of how do we assimilate those comments, and this is where we think we are. If we go down – so, what are we trying to address here? So, I should probably pull this up myself here.

So, Principle A of the GNSO final report, this is back in 2007, 2008, stated essentially that new gTLDs must be introduced in an orderly, timely, and predictable way. Suffice it to say, applicants and other parties were not fully happy with the way that changes were made after the launch in 2012 in terms of its predictability for applicants and not just

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applicants, but for objectors or for the community to comment, etc. in all areas.

Therefore, the charter asked us how can changes to the program be introduced after launch? And here's a list of a few other ones that were. How can that be avoided? I think the question ... We didn't interpret the question to mean how could we avoid all possible changes. The way that this group interpreted the question really was how can we deal with those changes and improve the predictability? So, if changes become necessary, stated by the Board, how do we address unanticipated issues that might arise and what mechanism should we use in those cases?

So, the goals as we've been discussing for awhile now are to the extent that issues arise after the application acceptance window commences that may result in changes to the program and its supporting processes. Those issues must be resolved in a manner that is as predictable, transparent, and as fair as possible to the impacted parties.

The second policy goal is to promote the predictable resolution of issues. The community should rely on the predictability framework, which we'll talk about below, that's specific to the new gTLD program, that guides the selection of mitigation mechanisms on mitigation of – basically when predictability is an issue. In the event significant issues arise that require resolution with via the predictability framework, applicant should be afforded the opportunity to withdraw their application from the process and receive an appropriate refund. Can we scroll down?

Predictability model intends to complement the existing GNSO processes and procedures, and is not intended to be a substitute or replacement for those, nor should the model be seen as supporting the GNSO Council’s decision-making authority. In fact, the GNSO processes and procedures are incorporated into the predictability framework explicitly. In the event of a conflict, existing GNSO processes and procedures including GNSO input processes, GNSO guidance, process, and EPDP as contained in the annexes to the GNSO Operating Procedures take precedent.

So, what specifically are we proposing? So, what are the recommendations? So, the first one is that the type, scope, context of a change to the program will guide which process should be followed when a change or modification to the program is necessary or requested after the program launches. The working group recommends that a Standing Predictability Implementation Review Team, which I will pronounce as SPIRT as I learned last time, be formed after publication of the final Applicant Guidebook to review potential changes to the program, and to recommend the process that should be followed when considering those changes in accordance with the guidance provided below.

The GNSO Council shall be responsible for oversight over the SPIRT and may review all recommendations of the SPIRT in accordance with the procedures outlined in the GNSO Operating Procedures in annexes thereto.

Next recommendation, the category to the new gTLD, the category of changes to the new gTLD program after publication of the Applicant Guidebook.

Okay. So, the first type of changes that we're talking about are changes to the ICANN organization internal processes. So, with respect to those – and we have examples further down – all minor ICANN organizational internal process changes may be implemented by ICANN Org without the need for consultation. A minor change is defined as a change to ICANN's internal processes that does not have a material impact on applicants or other community members, change applications, or any of the processes and procedures set forth in the Applicant Guidebook. This usually involves no changes to the Applicant Guidebook including the evaluation questions or scoring criteria but may involve the way in which the ICANN organization or third-party contractors meet their obligations under the Applicant Guidebook.

So, some examples that we've been able to come up with are an example or a change in the internal process workflow for contracting or pre-delegation testing. Changing backend accounting systems, I think there are some more below that if I remember correctly. The ICANN organization selecting or changing a subcontractor to perform assigned tasks under the Applicant Guidebook where the original selection process did not involve feedback from the ICANN community.

And I think the example I went over Saturday was where – if ICANN does an RFP (Request for Proposal) on who's going to do the background screening and it doesn't generally involve the community, they're going

to follow obviously the guidance that the community gave, etc. Then, if they were, for whatever reason, needed to change out the provider of those services, they could do that without notification to the community or notification or consultation to the community so long as it didn't materially impact the way that scoring or the evaluations or the program were to work.

However, there are other areas where the community does have feedback on the selection of vendors and if that were the case, and they were to change that out, then that would be considered more than just minor and would fall into the next category of changes under B.

We had some discussion on this on Saturday. There didn't seem like there was too much pushback on that one, but I'm going to look around the room and see just to make sure that it's clear.

Okay. On the second one. Now, again, this still refers to changes to ICANN organization internal processes. So, under Part B, all non-minor changes or revisions to ICANN Org's internal processes must be communicated to all impacted or reasonably foreseeable impacted parties prior to deployment of the change. These are changes to ICANN's internal processes that have or are likely to have a material effect on applicants or other community members.

So, examples include a change to ICANN Org's internal service level agreements related to contracting or pre-delegation testing that adjust the overall timeline. So, you can imagine if they ... Initially, it said, "When the program starts, we're going to be able to complete all initial evaluations within six months." But it turns out after they get the

applications that, no, it looks like we're not going to complete them all for 12 months, then that has a material impact on those that applied, and so ICANN Org should – or must – notify the impacted parties prior to deployment of the change. We're not saying that there needs to be collaboration or others that need to have input as to how it's done, just that there be notification prior to deployment of the change.

A second example may be something like a change is made to the workflow for handling change requests. So, this is a procedural change, not a change in the scope of what's allowed. So, if ICANN initially had one system that they were handling change request, but found for whatever reason that that system was inadequate and then chose to change to another system and maybe it required applicants to type in additional information, that could be considered sort of material, but not one that needs anything more than notification prior to the change. Kathy, please.

KATHY KLEIMAN:

Thanks. So, just a background question as we dive into this document. Can you talk to the question of the difference between the IRT that will be implementing the large number of recommendations that we're going to give them in the standing IRT that we're talking about here? Do you expect the membership to be the same, overlapping, continuing? That will help me with phrasing other questions. Thanks.

JEFF NEUMAN:

Sure. It's a good question. So, after our policy process is done, the GNSO Council will then along – well, it's actually ICANN staff will, in accordance with the consensus policy implementation framework, will along with the GNSO Council commission an Implementation Review Team. And the Council's got control of that according to its own Operating Procedures.

But that IRT, once their work is done and it's submitted to the Board and the program actually launches, that IRT is dissolved. That group that was implementing the policy is gone. What we're saying is that a new standing Implementation Review Team should be created whether the GNSO decides that that should be the same people or not, that's not something we're opining on. I think that's within the GNSO's remit.

Later on, you'll see that we want to make sure that groups are represented and that there's sufficient expertise, but other than that, it's really at the GNSO's discretion as to who is on this SPIRT team. I hope that make sense. Sorry. Did you have a follow-up? Okay.

So, Section C then – and now is I think really when we get into talking about an item that might go to this SPIRT team. Again, this is to ICANN internal processes. If the proposed change is not a change to an internal process, but rather a new one that's introduced, and it's likely to have a material impact on applicants or community members, then we would employ the use of this SPIRT team.

So, examples of this type of change include – it could be a new, like let's say ICANN wanted to introduce a new public comment platform tool, and so that was something that not only applicants, but obviously in

this case, third parties would need to understand, then that's something that this team may get called in. A new process or platform is created to submit an objection and I think, Kathy, you might have been the one to bring up these two examples.

So, that's when the SPIRT team will be called in or a new procedural mechanism should determine the order in which applications are evaluated. So, last time when we changed from digital archery to randomization, that's the kind of change we would see here. And, then, we still have a question about where something like a substantial change in evaluation timeline or substantial fees would apply to this type or another type, so we're still trying to figure that out. Let me read the next one and then I'll take comments.

Because this process is new, we believe that collaboration with – we should probably be consistent and use SPIRT there – is likely needed. Staff will work with the community. It should be staff will work with the SPIRT and the community to develop the solution. And, then, once changes are agreed, changes will be communicated to the affected parties before they are implemented.

So, we'll get into how or questions that still remain that we're going to talk about with the SPIRT team, but it's the notion that, at this point, these are the types of changes – the first type of changes – that would go to the SPIRT team.

Before we get to the SPIRT team and how they operate and what they do with this, we should finish the category. So, I don't know if your question – is your question on the categories?

KATHY KLEIMAN: No. It's just a point. When you reread the line staff will work with the community to develop the solution, I think you corrected it in a positive way. Staff will work with the SPIRT and the community to develop the solution. I just want to make sure staff captured that. I think that's what you said when you—

JEFF NEUMAN: Yeah. I think it can. I think some of that was some old wording there. All right, after we get that, can we then scroll down? And in this category of changes – sorry, there was a last sentence there. Just scroll a little bit up. There we go.

Again, this category of changes, these are envisioned to be changes that don't have a substantive impact to applicants and/or community members. All right.

The second type of changes, now, we're going from ICANN organizational internal changes to potential policy level changes or even fundamental policy level changes. So, these are potential changes to implementation that may materially differ from the original intent of the policy and could be considered creation of new policy.

So, an example of the development of an application ordering mechanism. It completely changes from a randomization to something else, then the SPIRT team would be called in to play. I'm not sure why we put the options here as opposed to below the other one as well. We'll work on the formatting.

So, the options of the SPIRT team for these types of changes –policy level changes – are to recommend that either the change is not significant, meaning that it’s not likely to have a material impact on an affected party and that the proposed change is consistent with existing recommendations or they can recommend that additional consideration by the community is needed. In such case, the SPIRT would refer the matter to the GNSO Council. The GNSO Council would then have the discretion to decide what process it uses. And these are ... The ones that they have now are listed, but it’s also made clear or any other mechanism that the GNSO has at its disposal that it deems appropriate.

And, then, let me just get the last one, then I’ll go to Kathy. Under extraordinary circumstances, SPIRT team – so we should change that – could recommend that the new gTLD program could be halted for a communicated amount of time.

Always remember – and I think we’ll cover it again – that the SPIRT team is always under the GNSO’s jurisdiction, so the GNSO could always accept that recommendation or reject that recommendation. But when it says recommending the change, it’s recommending that to the GNSO Council. Kathy, sorry.

KATHY KLEIMAN:

No. Thanks, Jeff. Okay. When we reviewed this in the working group, we spent a lot of time talking about it because it’s really important differentiation and a really powerful one for a group to say when a change is not significant versus when the change should be going to the

GNSO Council. I think I remember commenting that once you deal with a whole bunch of these questions and implementation, everything looks like implementation. If you're a hammer, everything looks like a nail.

So, I'm going to make a recommendation here. Let me provide some context. If history is a guide, most IRTs – most Implementation Review Teams – will be ... These are longstanding technical commitments. They need a lot of technical background to do and they don't always represent the whole of the community. They generally represent ... Since they're implementing existing policy, the policy that we've created, a regular IRT is implementing the policy that we're creating here in this working group.

So, the people who serve in the IRT – again, if history is a guide – are generally full timers who do this and specialize on the technical side. But this is a very different group, the SPIRT. So, can we put in a recommendation ... And this group is really going to be looking at things that need community outreach that we'll need to differentiate what's the future policy.

So, can we include a recommendation or at least guidance to the GNSO Council that there might be a special broader call when it comes time for this standing IRT as differentiated from the IRT that's going to be very technical in its implementation, that the standing IRT really – there should be a special broader call to the community because the whole community should be involved and all stakeholder should be involved

in this kind of call for what's policy and what's not because you're going to want all the views there.

JEFF NEUMAN:

Yeah. Hold that thought because I think below this section on the next page, I think we go into some qualifications if I'm not mistaken. I'm trying to remember everything ahead of where we are. Don't we have somewhere in there? Yeah. So, we're going to talk about the role and the composition. So, let's hold that thought, but it's a good one. Yeah. So, scroll up again. Sorry. Yeah. I thought it was somewhere in there. All right. So, let's just take note of it and we'll address it again under that part because I thought we did say that we need experts. Anyway, maybe I just missed remembering, but we might get to it before that, but if not, we'll get to it at that point. Can we go to the next page? Oh, sorry. Justine?

JUSTINE CHEW:

I actually put in a note to this Google Doc. I'm not sure about the use of terminology, but when I see the word fundamental and then I see it's not going to be substantial change. There seems to be an ... It's an oxymoronic type situation. So, I just wonder if we could have some clarity of the language or perhaps if you could provide some examples about what you mean by fundamental change that in effect come to minor changes.

JEFF NEUMAN:

Yeah. Sorry. Justine, I think you're right. I think the word fundamental should be crossed out there. I think when we first developed this section, we only considered the next part of it, which does talk about the major changes. But these were other changes that still could be policy that may not have a material impact. So, I do think you're right. I do think we should strike out as the header the word fundamental because the first part of subset under that aren't really fundamental, but the next subset, the next bullet point, might actually be. If you go down further. Yeah. So, you know what? We don't even need the separate headline. These are just really new proposals. The other one was changes. I don't think we need the word fundamental in either of those. I think that's right.

So, this set of changes are policy level changes with the new policies. The first category we talked about changes to what was already in there. This is now talking about new policies. So, let's say for example after the application window launches, there's a new rights protection mechanism that is decided on by the community and that needs to be incorporated into the program or there's something else that could have a material impact like the development of a new contract specification or the creation of new exemptions to the code of conduct. I'm sure there's hundreds of more examples, but this seem to be policy level changes that were more significant and were new to the program as opposed to just changes. And while I have a moment, let me welcome Cheryl.

CHERYL LANGDON-ORR: Well, thank you.

JEFF NEUMAN: So, for this one ... And if we scroll down, you'll see it's got very similar to the last one, but couple other options because it's considered more material. These new policy level changes to the program must be referred to the SPIRT. Staff will collaborate with the SPIRT to consider the issue and determine the mechanism by which the solution will be developed.

Options could include recommending that the new proposal does not rise to the level of actual policy development, but it's really an implementation detail and/or that the new proposal is consistent with existing recommendations. The SPIRT may recommend that additional consideration is needed. In this case, that they would refer the matter formally to the GNSO Council, then the GNSO Council would use whatever is that at its disposal. So, those are the options there currently. Who knows if they have another option. And, then, under extraordinary circumstances, the gTLD program could be halted for a communicated amount of time.

So, it's very similar to whether it's got a material or nonmaterial impact, but a finding of from the SPIRT that it's got a material impact would presumably be taken by the GNSO Council more in the way of something fundamental that needs one of those policy processes as opposed to a guidance process. Again, these are really just to help the GNSO Council evaluate what needs to be done by the community or can be done or should be done by the community in response to the overall

change or new policy. Could we could go down one more? kay, let me go to Paul.

PAUL MCGRADY: Thanks. Just clarification. So, the SPIRT has the power to halt the program, the Council has the power to halt the program, or that Council has the power to recommend to the Board to halt the program. Who would halt the program?

JEFF NEUMAN: Yeah. So, thanks, Paul, and I think you made a good point. So, it should say recommend instead of just halt the program. It should say recommend.

PAUL MCGRADY: Because I was going to immediately apply to be the chair of the SPIRT because that's a whole lot of whole lot right there.

JEFF NEUMAN: So, it should be they can recommend it, and then again, all the recommendations they have are subject to review and oversight from the Council. So, it's all up to the Council. All right. Now the change is being made as we speak. Edmon, please?

EDMON CHUNG: I think you answered part of the question, but then, is it the Council that holds the power or the Board?

JEFF NEUMAN:

I don't think that's a question we can answer. I can't grant the Council power to halt the program. Ultimately, it's the Board, right? But it's just a recommendation to the GNSO who presumably if they agree would send that up to the Board.

Okay. Some of this initial language, I think, should be made more consistent with the language above it now that we've made some changes. But essentially, what we tried to do – the more important part of this section is the chart. So, we try to go through this to see, again, in chart form, when the SPIRT would be involved and then some notes as to what we think the role of the standing IRT will be and then that will shape its recommendation to the Council.

So, I don't know if we need to go over this again, but when you go back through this document – and I believe the link is now on Zoom or should be on Zoom – and it will certainly be sent out in the notes. Go back and review these charts. So, I think it's another helpful way to look at what we were just talking about. And if we can go scroll to some of the questions and things, we'd like to just ...

Okay. So, some of the issues we really need to come to a decision on is – and these are questions that were in the other document and based on the discussions. We panned in some answers or some things that we thought would be answers, but obviously, that's just our first impression. So, what decision-making authority does the SPIRT have? So, here, we put in all decisions are advisory in nature and intended to serve as guidance for ICANN staff, as well as the GNSO Council and the

community. So, it's all kind of advisory. The decisions have no hard impact.

When must the GNSO Council be consulted? We put in there that the SPIRT will submit its advice and recommendations to the GNSO Council who maintains the supervisory role. And then the GNSO Council should employ processes and procedures to consider the SPIRT recommendations as expeditiously as possible. And because of the conversations we've had, I wanted to again – or we wanted to again – stress ultimately that the GNSO Council can choose to accept the recommendations of the SPIRT or reject them by letting the SPIRT know of its decision rationale and proposed next steps.

Okay. So, this is where we get to Kathy's question, I think. Or Kathy's point. So, composition of the SPIRT. And this is where we have not delved into this too deep. So, there's some comments that we got in that said it needs to be representative similar to that of IRTs, how they're envisioned. I know Kathy made some comment of how it's been in practice. But the comments that ... I think it's envisioned to be. It's supposed to be representative I think and the operating procedures.

So, this refers to the fact that they should be representative, similar to what is the wording in the GNSO operating procedures. And I understand that you may believe that's not been carried out in practice but the wording I think is, if you go back to that, probably still appropriate. Kathy?

KATHY KLEIMAN: So, I'm urging us – and let me know if this is controversial – to flag that this is really a special extraordinary type of advisory group. It's not the traditional IRT. And Cheryl, I think I mentioned before you came in that, if history is a guide, IRTs tend to be much more technical. They're not representative of the whole community because they're implementing policy. So, here, we've got—

CHERYL LANGDON-ORR: It's specifically implementations.

KATHY KLEIMAN: Right. So, it tends to be people who do this much more full time and they do a lot of work and they implement the policy. Here, this determination of whether it's policy or not would be better I think as a broader community group. It sounds like Jeff is trying to reflect that but I would say we want to go beyond traditional IRTs. My recommendation was that I'd like to share a recommendation or guidance to the GNSO that this should be a special broader call for this type of standing IRT and explain what it is to the community so that we can get all stakeholder groups represented on it. Thanks.

CHERYL LANGDON-ORR: Thanks for that, Kathy. And you've got a little precedent to play with here, people, and that's what was done with the work stream 2 – not IRT, but IT, implementation team. Because the work stream 2 implementation team is in fact not all but those who were able to continue on from the leadership of the tracks into overseeing the

implementation. So, I think there might be some opportunity there for precedent to work with, because I hear what you're saying. I certainly agree with what you're saying. But I think we also don't have to reinvent it from the base because we've got one running right now but it's called an IT, not an IRT. Probably for the very reason you pointed out.

JEFF NEUMAN: Let me go to Elaine first and then I'll come back.

ELAINE PRUIS: Thank you. So, you can tell me to go back and read through the documents if you'd like but I'm curious as to if this proposed review team is similar to any other review team and is it unnecessary to create a whole other review team? And if the framework we're proposing aligns with the evolution of the ICANN MSM.

JEFF NEUMAN: Yeah. Thanks, Elaine. I was going to joke around and say go read the materials but I'm kidding. This is pretty unique. This has not been done before because we're talking about creation of a standing committee that is always there. It's always around and it's there for a specific purpose that is not necessarily policy related, although as Kathy said, it needs to recognize what is policy and what's not so it can refer to the appropriate place. It needs to be kind of the watch dog of the gTLD program. So, it's something new. I don't think we've ever seen anything like it that I can recall. So, it's kind of an interesting experiment, too, if it works.

I'm going to go to Kathy because she's next in the queue and then Edmon.

KATHY KLEIMAN: I'm happy to wait for Edmon.

JEFF NEUMAN: All right. Kathy is deferring to Edmon. So, Edmon, please.

EDMON CHUNG: So, that's actually in response directly to what was discussed. In my mind, I guess I understand SPIRIT as, let's say, after the next Applicant Guidebook is adopted, then the SPIRIT will be seated. So, it's a little bit different from IRT. IRT solves the problem of URS. Last round, the URS was created during the Applicant Guidebook process. And that would be taken care of by the IRT. And once the new guidebook... I don't know whether it would still be called guidebook but let's say it is – new guidebook is done, then the SPIRIT will be seated, and then from there on, it's like the application window and stuff going forward. So, it's a little bit different from the concept of IRT, I guess, in my mind.

JEFF NEUMAN: Yeah. Thanks, Edmon. Do you want a response specifically to that? Kathy, can I... Elaine? Okay, Elaine, please.

ELAINE PRUIS:

Thank you and thanks for the information. So, I just would like to suggest that there is something sort of similar that happened as part of the transition which is the Customer Standing Committee which provides oversight for the IANA function. It's been successful because it has a very narrow remit. There's absolutely no question about what the role of that group is. So, if we go forward with this, I would suggest that we try to follow that precedent. Thank you.

JEFF NEUMAN:

Yeah. Thanks. I think that's really good. I think we should look at the internal procedures. I think, for the makeup, I think we're going to be different because I think the Customer Standing Committee had a specific ... It has to be some registries ... Yeah. But other than that, I think the way it operates is a good reference. And I was also going to suggest to ... Can we input the language ... I'm trying to find it now, but the language that's used in the GNSO operating procedures for constituting an IRT. Because I think it's got the representative language that's needed. We just may say "and we really mean it" or something like that. But that might be helpful, as long as – to the composition.

And I know, Elaine, you were on the Customer Standing Committee, so it's really good to get input from you when we go to some of these next questions to see if there's some insight that you have on this. Again, it was a little bit different. It wasn't fully representative but it is a standing committee and it's got a very narrow remit. Anne, sorry.

ANNE: I just want to second your suggestion to use the language that exists in the GNSO operating procedures subject to any further comments that Kathy might have. I think, actually, the language that's in those procedures for constituting an IRT does actually require broad representation, but that, again, would be subject to what Kathy is talking about, how it happens in practice versus what we want to happen here. But I do like that language that you've asked for.

JEFF NEUMAN: Okay. Thanks, Anne. So, we'll put that in there. Then I'm going to go back to Kathy and Karen is in the queue as well.

KATHY KLEIMAN: So, we don't have the language in front of us and I don't remember what it says but I think here that we want the group to be actually more representative than many IRTs. So, can we have another bullet point – and I put it in the chat – that requests or recommends that the GNSO Council conduct a special outreach and really flag what this group is and what they're looking for and what its powers are because it's going to be very different than any IRT, as you pointed out. So, a third bullet here with some guidance to the GNSO Council that can take it or leave it but that we don't just want a continuation necessarily of the underlying IRT. This is a different set of skills. Thanks.

JEFF NEUMAN: Yeah. Thanks, Kathy, and I think labeling that as guidance is good because we can't really order the GNSO Council to do anything. But I

think that makes sense. So, we're capturing that. Maybe not real-time but we certainly go back and capture it. Karen Lentz?

KAREN LENTZ:

Thank you, Jeff. This is Karen Lentz from ICANN Org and I wanted to speak about the composition point with regard to an IRT. So, you have the language up there now. It's always an effort to try to recruit an IRT that has representation from all of the affected stakeholders but it is ... With the IRT, it's really dependent on who volunteers. So, we might want representation from a certain group where nobody really steps forward. So, that is a challenge that we face with IRTs, and if you're looking at composition here, there may be other models to consider, perhaps, where if you're really looking to have representation from each stakeholder group, for example, that might be something to consider.

Then, I'll add one other difference that I think a couple of people have touched on from a normal IRT versus the SPIRIT is an IRT doesn't have a chair, that the IRT occurs when the Board directs ICANN Org to implement a policy and then the IRT is convened to review and provide implementation advice through that process. But it's really in that instance where an ICANN Org staff person is leading meetings with the group in facilitating that feedback process, where it sounds like this group is a little more like a working group in terms of being composed of GNSO stakeholders and having a chair type of model. So, that's one consideration. I'm writing down some more questions but I'll wait to see if they're answered as we go. Thanks.

JEFF NEUMAN:

Thanks, Karen. Yeah. We've played with the names so many times, I think I gave a real horrible acronym at one point. I think I called it the SNAG. What did that say? Standing new gTLD Advisory Group. People didn't like that one for obvious reasons. So, this is definitely not like your standard IRT but I think SPIRIT sounds good so we'll go with that.

What's also important – I don't want to gloss over it. And I'll get back to Edmon in a second. So, the registries wanted to make sure that there was the required expertise on the group to handle some niche questions. And I think that's important because there may be some questions that come up that the normal policy folks may not necessarily have that expertise. So, questions, for example, of pre-delegation testing and the impact of certain changes on a backend registry operator submitting details or submitting data through EPP. That's pretty specialized.

So, we could, to address the Registry Stakeholder Group concern, we could say that this group has the power to also ask for additional experts as the need arises or we could just have it in the qualifications for people in this group that you need to understand everything which obviously would be very difficult. So, leaning towards the first option which is that the SPIRIT team should have the ability to call on an expert or so to help it understand what's going on. Does that make sense?

Edmon, I'm sorry. I saw your hand. So, go back to you.

EDMON CHUNG:

Kathy has her hand up as well. What you just said, Jeff, actually makes sense but I put my hand up building on what Karen was saying.

Two things. One, if finding volunteers for the SPIRIT is problematic, then we can even consider maybe defaulting the chairs of the stakeholder groups ... This is a big enough topic, I guess, in terms of what ICANN does. New gTLD rollouts should be big enough. We can default the chairs of the stakeholder groups to be on it if they couldn't find somebody else.

The thing that I also ... From what Karen was saying that I thought about is how do we envision this to operate? Do they have [time-to-time] meetings? Do they suddenly spin up only when certain things happen? Who decides when certain things happen? How does it spin up? That might be something we need to think about as well.

JEFF NEUMAN:

So, we'll get a little bit into that in the next series of questions, but a lot of that, not to be flip, but the implementation review team of this policy will work on some of those. I don't think we need to get into every single detail. Certainly, there were some really important ones that you were mentioning in that but there were some other ones, like how often they meet. I don't know if we, this group, needs to consider that. But anyway, I did not mean to be flip on that one. Sorry, Kathy, you had your hand raised.

KATHY KLEIMAN: I think it would be a really good idea to not call this an IRT, as others have said. A standing committee or something else. Because it's really not operating like an IRT. It's really looking at the differentiation between implementation and policy. So, there seems to be confusion as I talk to people. I don't want to change your acronym. If you put an "I" in there, we can ...

JEFF NEUMAN: Sorry. I was thinking if you take out the "review" ...

KATHY KLEIMAN: Also, I think it's important for what Karen said, that this be chaired by a member, or multiple members, of the community because it is working with what's coming in from ICANN staff, so we don't want ICANN staff chairing ... I mean, this is very different. This is a new thing.

JEFF NEUMAN: Anne, please.

ANNE: I'm not going to comment further on the name. I thought it was already pretty well distinguished because we went through a lot of discussion about that and I thought SNAG was really bad because we don't want things to get snagged and held up in this team.

To the point that Karen raised about chair and that Kathy talked about, I have this vague recollection that in the policy and implementation

working group, in the work that we did on the annexes, there was a way to designate liaison to GNSO Council and that that person essentially operates as kind of a chair because you have that person ... We have all the right language in here about coordinating with GNSO Council. I think there's some language in those annexes about designating a liaison when it talks about how an IRT works and designating a liaison. That might be helpful to the issue that Karen has raised.

JEFF NEUMAN:

Yeah. Thanks, Anne. And it's interesting because technically an IRT is chaired by ICANN staff. ICANN staff is the one that controls the IRT process, the traditional one. But this is different. But I do think maybe borrowing some language. I don't want to take the Council's discretion away as to who it must appoint as a chair. I think we should say there should be a chair coming from the community and then leave it up to the GNSO to appoint that through ... Someone remind me of what they call that appointment process that they have of appointing people to groups.

CHERYL LANGDON-ORR:

Selection committee.

JEFF NEUMAN:

Yeah. The selection committee. Maybe that's what we say, that the GNSO Council selects a chair through that process. I don't know. That might be the easiest way to do it. I haven't really thought about it. It's

just kind of off the cuff. But we don't want to remove the R and call it the SPIT team? No? Okay. Paul?

PAUL MCGRADY:

If we call it the Standing Committee on New gTLD Emergencies, we could call it the SCONE which would be consistent with Strawberries and Pizza.

CHERYL LANGDON-ORR:

Just briefly, just to remind you, we don't have to get into the weeds on all of this, either. I know it's all very exciting and we're looking like we can actually agree on all sorts of things and rush of blood to our head happening here. But I think we can give enough electric fencing around the paddock to leave the implementation and the nuances and the details to the next step, many of which I hope will be done by the same people sitting around the tables. It's not like you're not going to get in there and make the world a better place.

But it is of course a possibility for someone to lead and be a liaison. And we certainly have EPDP example where the liaison to and the vice chair of is the same person. And that's okay. But there are other options. Of course, you can have utter independence in your chairing and there's no reason why an utter independent cannot be a liaison as well. So, there's lots of options. Let's not get perfect and good. Let's get the good done. Thanks.

JEFF NEUMAN: Thanks, Cheryl. Steve, please?

STEVE: I think what this conversation is illustrating is that there's a lot of complexities here. So, I guess what I'd say and introduce for your consideration is that, in theory, based on all the hard work and time and energy and great work that you guys are doing to improve the next round of new gTLDs, the likelihood of this SPIRIT being needed should, in theory, be lessened.

So, I say that in the context of how something like this would be resolved currently without the introduction of a SPIRIT. More than likely, the GNSO Council would look at the issue and determine whether or not it's policy or implementation and then make recommendations on what could be done next.

So, I say that because this is very complicated.

UNIDENTIFIED MALE: No, it's not.

STEVE: Or it's not. None of it is complicated? Okay. Maybe no one agrees with me that this seems complicated and that there's other ways to maybe resolve this. Thanks.

JEFF NEUMAN:

Thanks. I like your optimism, Steve. I just think that in accordance with all of our discussions, we know that there will be unanticipated changes and I think we're actually coming to a place where we're sort of agreeing on a lot of things. I know this is going to be interesting for ICANN staff to work with, but I think in order adequately address the issues that happened in the last round, we need to have something like this in place, and certainly the community has long supported this. We'll certainly have some bumpy roads but hopefully, as we make the new gTLD program an ongoing program which is what is recommended by us, this will be called into play several times.

Because remember – this is important. We say after the launch of the new gTLD program, what we're saying, it's not just a program of one round. This is a program of round after round after round. So, this could be two years from now when an issue comes into play, Steve. That's another reason why constituting this team is important because it could be that instead of doing a whole new review when the community or ICANN believe that a change is necessary, we now have this team to help give recommendations to the council as to when an adjustment – if an adjustment should or should not be made. So, if we take it up a level and look at it that way, I think the role of this team is important.

I would like to jump ahead because I hope there's a complicated issue – when I said it was easy, here's the complication or one of the complications. Conflicts. So, it's two ahead.

Inevitably, the hardest thing about this, I think, constituting it is to make sure that we're all comfortable as a community with those that serve on this.

There are going to be a lot of members of the community that either are an applicant, advise an applicant, are objectors, advise objectors. You name it. They're all going to have different roles. Again, it's not just applicants. It's those that ... Because we're talking about the overall programs – those that file objections, those that file community comments, those who are lawyers and others. So, there is a good part of the community that could be, in theory, conflicted out, depending on how strict we make the conflicts rules.

So, one of the things we've said is we make it very specific as to who would have a conflict. Do we just punt it to an implementation team or do we say it's okay to have a conflict, but on this team, you have to – sort of like our Nominating Committee – you have to keep everything confidential. You're there as an individual, not representing an organization or an interest and you're there specifically to do what's best for or in the interest of this group.

I actually think, although it's hard to do that latter part, I think if we say that you can't have conflicts in general, I think we're going to eliminate the entire pool of people that would be interested in serving on this. So, I throw that out for consideration. Paul?

PAUL MCGRADY: It's an important point. Right. So, if we overdo it, basically this committee will be people who have no idea what's going on. So, instead of treating this like a judicial proceeding, maybe we should just treat it like a very hyper-focused form of community participation. Maybe we can put a note in here somewhere about that.

JEFF NEUMAN: Thanks, Paul. I see two hands. I'm going to go to Elaine, then Anne.

ELAINE PRUIS: Thank you. I think we should not eliminate people who know what's going on and make sure we include people who are subject-matter experts and I think it should be 100% transparent. I don't know what we would suggest should be policy that wouldn't become public anyway. And by having that transparency, there will be accountability of those people who may be perceived as having a conflict of interest.

JEFF NEUMAN: I think that makes a lot of sense. Definitely, the transparency of we should – if we haven't already, we should make sure that we put in requirement for full transparency. Thanks. I think that's really good. I know we have Anne and we have Alan. Is there anyone else in the queue? And Kathy. Thanks.

ANNE: I agree with the notion of full transparency and I don't think that deliberations of the SPIRIT team should be confidential. I think that poses a problem with leaks and all that kind of stuff.

I certainly agree that they're going to have to be the potential to have members who are otherwise involved in the community and it shouldn't be restricted.

I might want to suggest that there be a more detailed SOI than we have generally in the community, so that when these discussions are occurring, hopefully in an open and transparent manner, people do understand the source of the ... Yeah. A more detailed SOI I think would be very appropriate for this group.

JEFF NEUMAN: Yeah. Thanks, Anne. I think that's a really good recommendation. I think similar to those that are serving on the names collision analysis project discussion group – NCAP – I think they have a more detailed statement of interest. I actually think that makes a lot of sense. I have Alan, Kathy, and did I see another hand over here? No. Okay, Alan.

ALAN GREENBERG: The companion problem that you have when you have people who are conflicted or involved is how do you make decisions in this group? Where people who are making the decisions may have a very personal and very major vested interest in an outcome one way or another.

It's true in any PDP but those groups are large enough and open enough that at least it's very visible. This group is not, although it may be technically open, is going to be a smaller, more focused group. We're talking in the middle of a process where they've already invested a huge amount of money – or potentially. I don't know the answer but I think we're going to have to think carefully about how this group makes decisions to make sure that we're not getting vetoes from the people who don't want the answer to be one way or another.

JEFF NEUMAN:

I think that issue hopefully will not be as great, because again, it's only recommendations made to the GNSO Council who has the discretion to accept them or reject them. It's really just to provide advice. So, any decision that's ... It's not even really decisions. Any recommendation that's made by a majority of that group could easily be rejected. That will be known to the Council who is going to then decide whether it should intervene or do something about it. But it's definitely a good point. I'm hoping it's not as much of an issue. Kathy, please.

KATHY KLEIMAN:

Since it is a new group and it may be standing for quite a while, I think we should make whatever conflict of interest procedures exist, I think we should make expressly subject to periodic review. And also that there should be a requirement of recusal if your company or client is directly involved in a matter where it could be materially affected. You've got to have some kind of flagging of direct interest.

JEFF NEUMAN: Thanks. I'm going to go to Julie and then I might just put myself in the queue to address what Kathy said. Julie?

JULIE HEDLUND: Just a reminder on the issue of conflicts of interest, when the GNSO operating procedures were being developed, there was an extensive discussion about whether or not there should be a declaration of conflicts of interest and it was determined that really the working groups couldn't operate if you had to declare conflicts of interest because everybody had some sort of interest. I mean, it was really understood that that's the nature of the ICANN community and that's why we ended up with these statements of interest procedures.

There's also terminology in the voting section of the operating procedures that specifically say that there is not a conflicts of interest policy with respect to members of the council.

So, just something to keep in mind before we go down a path of requiring some kind of conflict of interest policy. It may not actually be realistic to do so.

JEFF NEUMAN: Thanks, Julie. I was just thinking the whole directly impact ... I mean, I can't envision the SPIRIT team being given a one-off situation that only involves one backend provider or one applicant. I think it's overall bigger issues than that or changes, other things. I would think that if

there's a change to pre-delegation testing, let's say, that would basically, if we had a rule that it would impact anyone directly, then every single backend operator would be eliminated but that's exactly the expertise that you need in order to make the decision as to whether there's a material impact.

I'm hoping that the more detailed statement of interest combined with keeping that updated and declaring any of those types of interest should ... At least people will know what went into that and who.

Again, let's say there's something that changes an objection. Do you just basically take out everyone that could potentially provide an objection or public comment or advise on an objection? See where it gets a little ... It's hard to figure out all of that and it probably would eliminate all the people that you want that has that expertise. I'm a little worried about that. We go to Susan and then, Kathy, did you want to follow up, too?

KATHY KLEIMAN: Sure.

JEFF NEUMAN: All right. Let me go to Susan first and then Kathy.

SUSAN PAYNE: So, I think I'm going to slightly disagree with you, Jeff, although not entirely. I think you could imagine scenarios that are big-picture issues but they specifically affect maybe one or two applicants. An example

from last round might be the singular plural thing, which we fixed. So, that's not going to come up again. But as a working example.

And if you had got one of the people in the SPIRIT who is actually going to be directly impacted by whether a decision was made to put them in contention or not put them in contention, then it doesn't really seem appropriate that they're opining on this. I think an expectation of recusal is the way to go.

JEFF NEUMAN: Thanks, Susan. Kathy, is it okay if I respond to that just real quick?

KATHY KLEIMAN: I was just going to say much more eloquently said than I could.

JEFF NEUMAN: Okay. Thanks, Kathy. So, the only role for the SPIRIT team is to recommend to the GNSO what it thinks should happen in the following circumstance. It's not going to solve an issue. It's not going to recommend a contention set. It's going to say to the GNSO we think this is in an issue of policy, and the GNSO, you need to institute – or you should institute one of your existing mechanisms to address this or we don't think this will materially impact.

I guess we could put in a concept that parties should use their discretion to recuse themselves if something directly impacts them. But I don't think putting that as mandatory. Did you want to add something?

SEBASTIEN DUCOS: Indeed, because there's a two-stage process, as long as the recommendation or conflicting aspects of the recommendation re named, and you say this party recognized this and that, then let indeed the GNSO Council decide if that's a matter for [recusal] and for that particular angle to be [inaudible].

JEFF NEUMAN: Thanks. So, let's put up there the points that we were talking about of the statements of interest, the periodic review, and the others. You guys took better notes than I did. Then put in brackets something like recusal, question mark, and then know that after just reflecting on this we'll need to come back to that concept.

Confidentiality obligations I think we were just addressing. Does anyone not agree with the point that was made by a few in this room that everything should be fully transparent and that there should be no need for conversations or other aspects to be confidential? Does anyone disagree? Disagree. Because it was seeming like we were leaning towards it. It sounded like a sense of a couple of the comments that they wanted full transparency for all the conversations. I'm now looking to see if there are people that don't agree with that feeling. So, let me go to Alan.

ALAN GREENBERG: I'm not saying I don't agree. I guess I don't know enough about the process by which things will be raised to this group's ... Situations that

occur during the application process, during the evaluation process, that will get raised to this group, is there a possibility that by raising the issue, you're revealing information about applications which might be confidential? I just don't know. I don't know enough about the internal process last time or exactly when this will be triggered. I can see situations whereby revealing the fact that there's a problem, you're opening the kimono, so to speak.

JEFF NEUMAN:

Yeah. Thanks, Alan. I think it's a really good point and it could be something where the SPIRIT team, when they meet and they're having conversations with ICANN staff, to say, "Look, if you, ICANN staff, want to propose this change and still want to go forward with it, we think we would have to recommend that the Council consider it, and therefore everything would get out there. Maybe it's something you might not want to go forward with." I think those kinds of discussions may be of the type that maybe not everyone does want out there. I think it's an interesting point. I see Paul's got his hand raised. No? But Donna does. Okay.

DONNA AUSTIN:

Thanks, Jeff. So, if this ultimately becomes a council decision, would it be worth considering that a subset of councilors actually form the SPIRIT? Would that cut through some of the ... No?

JEFF NEUMAN: The reason I would suggest against it is we're trying to say that the people on this should have the requisite expertise and have familiarity. I don't think we should automatically ... I mean, if the Council wants to do that, that's the Council's choice. But I don't think we should specifically recommend that it's a subset of councilors. I think they're already pretty stretched and I know, speaking completely personally, when we elect councilors, we don't elect them for a role like this and I think that would put another thing to consider when we're picking our councilors. I know it would make things pretty easy to just have but, personally speaking, not with my chair hat on, I would be very reluctant to do something like that. But that's personal. Happy to hear others. Paul, Alan, and Justine.

EDMON CHUNG: It's actually me, Edmon.

JEFF NEUMAN: I'm just pointing to Edmon.

EDMON CHUNG: So, back on the question on confidentiality or full transparency. I understand what Alan is saying but I'm not sure I'm fully convinced yet because if the only recourse that this SPIRIT can do is whether there is more policy work or no, the policy work itself will have to deal with whatever is disclosed, right? That it doesn't make sense at all because the policy development process would need to be open.

So, I'm not sure I'm completely convinced. So, I'm still slightly on the side of full transparency for this, especially with the potential conflict of interest. It has to be fully transparent in my mind.

JEFF NEUMAN:

Yeah. Thanks, Edmon. It's possible we may say or recommend that in extreme circumstances where disclosure of confidential information would be needed in order to figure out that issue, there could be an election of the group to make things confidential. I'm not saying we should. That's halfway in between. So, there's different options. Okay, people, you may not think that's right.

I guess the thinking I'm having may be, when I was interpreting what Alan was saying and then I'll go to Justine – or Alan and then Justine – is that if the standing SPIRIT team says to ICANN staff ... ICANN staff comes in one of the meetings and says, "Look, we're thinking about this type of change. We're kind of seeking some advice from you." If they never end up going forward with doing that recommendation, then that information may never ever become public and that's fine because it was just like a brainstorming idea. It was a safe place, if you will, for ICANN staff to have an idea expressed that it was thinking about. I think there's good arguments, frankly, on both sides. But maybe in extreme circumstance.

So, Alan, then Justine.

ALAN GREENBERG: Thank you. To be clear, Edmon said he wasn't fully convinced by what I said. I wasn't trying to convince anyone. I was simply raising a flag saying, "Is this an issue?" But it strikes me that the whole process of how do we handle problems that arise during the implementation during the application process, at any level, there might be something which satisfies this 'oops, I can't tell anyone about it' but who do I ask? Because I'm not supposed to be asking the community. I guess Karen is the best one to ask. In the last time around, were there cases like this or am I imagining scenarios that don't exist?

JEFF NEUMAN: I won't put Karen on the spot. She can think about it. Let me to go to the people in the queue and Karen can decide whether she wants to enter the queue or not. I'll go to Justine, Paul. That's for you, right, not for Edmon? Okay.

JUSTINE CHEW: I think, Jeff, you sort of touched on what I was going to say. I think the only area of concern to me would be if anything touches on the confidential portions of the application that comes in.

JEFF NEUMAN: Yeah. Thanks, Justine. Paul?

PAUL MCGRADY: I put some proposed text in the chat. Absent extraordinary circumstances, all proceedings of the SCONE shall be open, recorded,

transcribed, and publicly available. The idea behind that, I was actually kind of riffing off of Susan's example of the hotel hotels. I know it's settled, so we're not bringing it back up. But say one of those applicants had a trade secret and their big plan was to actually assign a domain name for each hotel room in their giant chain from which they would operate the Internet of Things in that room. Toasters, microwaves, and whatever. And there would never be a second-level domain name registration ever sold, so the chances of anybody being confused by hotel and hotels would be zero. That would be an interesting trade secret for the SCONE to know about and it might affect the outcome, right?

So, I do think we need an extraordinary circumstance exception but I think the general rule should be the light of day is almost always better than not.

JEFF NEUMAN:

Thanks, Paul. I see what you did there on changing the name. Acting like it's already changed and therefore it will happen. But I think that's ... We'll capture that specific language because it's in the chat. I'm sorry, did I miss someone? Karen does want to get in the queue.

KAREN LENTZ:

So, I guess where this discussion kind of lands for me in thinking about implementation and what kind of issues or questions might arise, kind of goes to the part that we haven't gotten to yet on ICANN Org may surface an issue, should it use the predictability framework, should all

issues, even operational ones, be filtered through this? If so, how can we avoid getting bogged down in process.

So, I think some of the use cases that are in here do envision that ICANN Org is bringing something to the SPIRIT saying, “We’re thinking about using this different public comment platform. Do you agree that this is not a policy issue?” versus one of the other examples was there’s a new consensus policy coming out of the GNSO and it needs to be incorporated somehow into applications that are already in progress under a certain set of conditions. In that case, who would raise that issue? Would it be the GNSO process or ...?

Then, one other example is if it’s something like there’s a new technical issue and it may apply to certain applications or other applications, like can it come from some other part of the community? How does it get drawn to the attention of the SPIRIT?

As I’m thinking about these questions, they’re not all alike, and in a lot of cases ... I guess one example that I can think of from the previous round that maybe was a little bit akin to this was the prioritization draw.

There was a paper, it was discussed in some form where there were a few papers on the different ... On the archery concept and then on the prioritization draw. But there wasn’t any process in place to formally propose that or identify it as a change. It was trying to be transparent about what the plans were and take feedback.

But the question of what's the source of these changes that are being considered by the SPIRIT and what is the threshold and who can bring them I think is an important question. Thanks.

JEFF NEUMAN:

Thanks, Karen. I think we have a bunch of different things in there. The first example was kind of the interplay between other policy processes that the GNSO is already doing, or finished in that case, and the impact or the coordination with the SPIRIT or some sort of interplay when that happens.

In theory ... Not in theory, but when there's a consensus policy, there's an implementation review team that's set up to implement that policy. I think the SPIRIT can serve as some sort of advisor if they think that there's some impact on the new applicants that IRT needs to consider in its work on implementing that particular consensus policy. I think that's an edge case. And the SPIRIT could recommend to the GNSO Council that a particular thing should be incorporated into that IRT as well. And it would be a good issue identifier perhaps.

But the big issue on who can bring actions, I think staff is probably the one that would bring most of the issues, and then there would have to be some sort of intake type process and some sort of threshold to whether the SPIRIT should take that issue up or not. I see Anne. Then anyone else? Okay, Anne.

ANNE:

The experience was the things that we studied in terms of case studies in policy and implementation working group, there were just so many things that arose after the application were accepted. I think Jeff makes this extremely important point that if we go into a situation of ongoing rounds, in order to keep things moving, you need a team like this.

As far as who raises the issue, I think very often, looking at the older examples from 2012, it could be staff. It could be – or generally even at the level of CEO it could be GNSO Council. It could be ... An issue can be raised pretty much by anyone I think whether how much that issue gets vetted by the SPIRIT team would probably be ultimately be up to Council. If SPIRIT team wants to bring an issue to Council level, Council could respond, “Sorry, not interesting,” or would respond, “Yeah, we need to make a determination in Council about that issue.” I think the issue could arise from many different sources. Thanks.

JEFF NEUMAN:

Yeah. Thanks, Anne. I think we should also be clear that this team is not meant in any way where individual applicants bring an issue that they have regarding their application or questions. And maybe we do basically say that either an issue is brought by ICANN Org or the Council and limit it at that, so it’s got a gatekeeper even before it gets there. That’s something really to consider. But the Council doesn’t necessarily represent applicant. So, if a bunch of applicants have a concern ... We’ll have to think about that a little bit more. But we know that this group should not be used for individual questions or requests – or requests

from individual applications. It's not why it's there. Edmon and anyone else? Okay, Edmon.

EDMON CHUNG: Just quickly on that. If a bunch of applicants have particular concerns, it should go to the GNSO and go through the bottom-up process. Because at the end of the day, this group, SCONE or SPIRIT, would only be able to ask the GNSO to spin up their own process anyway. That's the idea.

JEFF NEUMAN: That may be right. We should just think about that a little bit and maybe bracket that, because I know the last time there was a constituency formed – or an interest group, sorry, formed – within the Registry Stakeholder Group. I think they were called the NTAG at the time. That seemed to work well because the registries made sure that the Council was aware of any issues that impacted them. We can't predict that that will happen again. I think it would be great if it happened again.

Let's think about it because you may be right. Maybe it [inaudible] GNSO Council and that's fine. Bracket that. Elaine?

ELAINE PRUIS: Thanks. I would suggest that we don't severely limit who could raise issues because there may be a single applicant who notices an implementation issue and can't get footing in the stakeholder group

because maybe there's some conflict with other applicants. So, I don't think we should restrict who can ask for some review.

JEFF NEUMAN:

Yeah. Thanks, Elaine. Like I said, we'll bracket it because it's a good point. You've got to kind of have to balance the limited role of this group and applicant's concerns during this but I think it's a good point. I know we have limited time left.

So, for this section here, there are some other obviously important questions that are still around, including whether there should be public comment on the recommendations. Maybe, maybe not. Think about if all ... If it's just recommendations to the GNSO, then the GNSO will follow its normal procedures of what to do. So, I'm not sure that public comment needs to play a role or not. But there are certainly different comments one way or another.

So, some more details we need to work out on this. One thing I do want to plug – and part of this has been my ... I'm trying to get conversations going in these smaller groups and was hoping not to have to lead those and hoping that people would just be having conversations and kind of forwarding it on but it didn't seem to work very well.

So, I have made a commitment to try to push the conversations of ... This particular item is in one of those small groups. I think we made a lot of progress. We'll continue this discussion on that smaller group. If anybody that was not a member of that smaller group wants, as a result of this discussion, to be member of that small group, please let—

CHERYL LANGDON-ORR: It would make a larger group.

JEFF NEUMAN: Yeah, it can be larger. It's just we didn't want to burden all 200 members of the mailing list with all of these specific points, details. So, please talk to Emily, Steve, or Julie and they'll probably point you somewhere else anyway. But talk to them so that you can get on the list if you want to talk about this.

The other items, too, we didn't get to today but we will, and that is the issue of closed generics. The issue with closed generics is pretty simple. Sorry, the issue is really difficult. The issue this small group needs to figure out is whether we think there is actual likelihood of getting to some sort of compromise or consensus recommendation. It's not to actually ... We don't want it to be too extensive. If it looks like it's what the debate has been which is some on one side, some on the other. Maybe a couple of people in the middle trying to propose things but the ones on the extremes are not budging.

If it looks like it stays that way, then I don't think we're going to have a recommendation likely within the group, that we're going to get consensus on and we don't have to continue that conversation much more.

The other item on there was the string contention, I believe, which really when you boil it down to, we were trying to limit the issue – to continue the discussions we were having on the notion of whether we

do auctions at the beginning or at the end and the impact that would have on private resolution of contention sets. If you did the sealed bid auction at the very beginning, then presumably there may or may not be an opportunity for private resolution, whether that's through a private auction or through any other means of negotiation. So, the timing definitely has an impact on whether private resolution of contention sets is possible.

So, those are kind of the structured items as we go along that we're trying to pinpoint the individual issues and not have these wide open discussions, like, I think we're settled or the working group is leaning towards from all the discussions in the mailing list, that auctions still remain the most viable way to resolve a contention set. The type of auction seems to be leaning towards a sealed bid and the timing is one that's still up in the air. So, we'd rather not, if we can, revisit things that we think have already been sort of agreed upon. But if we have to, obviously, we will.

I hope that makes some sense. There's a lot of work ahead of us, and as Jim noted, there is not much time in that timeline but I do think that we're having ... As we're going back and leadership has been working with staff to try to come up with some proposed draft final recommendations, I think we may be further along. At least I feel like we're further along on a lot of subjects than some may feel because we spent a lot of time talking about subjects we're not as far along but there are, if you remember, more than 40 overall subjects and you see that we've only pinpointed a few of those. That's not to say we're necessarily in agreement on all of them. Anne, please?

ANNE: Just a real quick question. I know everybody wants to get out of here. But do you guys designate for public comment the standard of review on appeals or the document on appeals? I can't remember. You did? Okay, thanks.

JEFF NEUMAN: Yes. Appeals was one we think of very likely because, although we raised the question in the initial report of whether to have an appeals process, and overwhelmingly it said yes, we did not have all the details that we've since been talking about.

So, standard of review is one of the items as well as the subjects for review and who may bring those and things like – the chart, basically. That chart we did to help us with the discussions.

So, let me look around the room.

CHERYL LANGDON-ORR: Kathy wants the last, last word.

KATHY KLEIMAN: No, no. Last question, maybe. Following up on Anne's question, what is the proper form for those questions? Is it the full working group or is there some subgroup that's working on that issue? Which is appeals, the limited appeals.

JEFF NEUMAN: Yeah, The appeals is with the full working group. The subjects that are with the smaller groups are the predictability framework, closed generics, RSP preapproval and I know there's one more. Why am I forgetting it? Steve, Emily, Julie? There's four, right?

CHERYL LANGDON-ORR: Three will do.

JEFF NEUMAN: Three will do, okay. There might be another one. We'll send that out to the list as well. So, thank you, everyone. I really think this last session was very good. I would love to be able to have more face-to-face meetings. Unfortunately, budget does not allow for that. We are continuing on the same schedule after this meeting. We'll have the next week off but then we will start again on the two meetings per week, the Monday and Thursday. Same rotation. But just think of the bright side for those of you that are on work track 5. There's no more of those calls. So, there is a bright side.

Thanks, everyone. Great, thank you.

CHERYL LANGDON-ORR: Bye for now.

[END OF TRANSCRIPTION]