
ICANN67 | Virtual Community Forum – GNSO - New gTLD Subsequent Procedures PDP WG (3 of 3)
Thursday, March 12, 2020 – 10:45 to 12:45 CUN

MICHELLE DESMYTER: Good morning, good afternoon, good evening and welcome to the new gTLD subsequent procedures PDP working group meeting on Thursday the 12th of March 2020.

Today's meeting is being recorded. Please remember to state your first and last name before speaking and please keep your phones and microphones on mute when not speaking to avoid any background noise.

With this, I will turn it back over to Jeff Neuman. Jeff, please begin.

JEFF NEUMAN: Thank you very much. Welcome, everyone, to our third and final session during this remote ICANN67. It looks like we have a good number of participants, and I'm going to miss this high number of participants in our calls that start up again next week. But of course, everyone's invited to join those.

Today, we're going to try to get through three topics, and I asked ICANN policy staff to help me with time to make sure that we get a chance to at least cover a little bit from each of the remaining three topics. We do have two hours so we should have plenty of time to get through all three, or at least get through a good portion of all three.

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With that, the topics today will be the role of GAC early warnings and advice, applicant support, and community applications. So why don't we get started on the first topic?

And while that's coming up, just again to note, as we did for the last two sessions, that this is a working session of the working group. Of course, everyone's invited to attend and to participate, but some of these topics may be very deep into the weeds and details of the different subjects, and so just please try to understand that we're going to be talking about these issues and we may not be able to give large, broad overviews of each of the topics.

This first topic is under the heading of objections. There are of course more types of objections than the ones that we're going to be talking about today, but the objections for example also include things like legal rights objections, community-based objections, and I'm sure I'm forgetting a few but the ones we're going to focus on today are what's called GAC advice and GAC early warnings.

A little bit of background. The GAC early warnings were included in the 2012 guidebook, they we're not included in the policy itself. But according to the guidebook, any individual GAC member, or I guess in theory the GAC as a whole, but any individual GAC member could file an early warning which was intended to give an indication to an applicant that there may be some concerns with some or all of the application.

So there were a substantial number of early warnings in the last round, well over 100, I think close to 150 if not a little bit more where

individual governments had the opportunity to express concerns that they may have had about those applications. Some of those but not all of those turned into GAC advice, and we'll explain the distinction between the two as we move on.

The first thing that we have in this section, which I'm not sure—yeah, I think we did have in this last section as well—is an affirmation. An affirmation is just to confirm or affirm something that happened in the last round that we would like to document formally into the policy, and so what we say here is subject to the recommendations below.

The working group supports the 2012 implementation of GAC early warnings. More specifically—and this is a quote—concurrent with the public comment period, ICANN's Governmental Advisory Committee may issue a GAC early warning notice concerning an application. This provides the applicant with an indication that the application is seen as potentially sensitive or problematic by one or more governments. And then there's a citation to the applicant guidebook which is where this quote was taken from. I think we need an end quote there. I'm not sure we have one, so we'll fix that.

Before I go on to the new recommendations, I just want to [inaudible] any comments or questions. Okay, if everyone could please make sure they mute the microphone. Thank you.

Okay, so then the first actual recommendation, which we have bracketed text because there's been several different views expressed from members of the working group, and so one of the things we'll talk about during this session now is which set of bracketed text we

are more comfortable with. But essentially, this states a GAC advice must include clearly articulated rationale, including the national or international law, and here's where we have bracketed text.

We could state “And merits-based public policy reasons” or we could say “or merits-based public policy reasons.” I think there's just a difference in hyphens there. Or it could say, “and/or merits-based public policy reasons upon which it is based.”

So they are very similar to each other, but I'd like to open the queue to get some comments on that. So I'll go with Paul, and I suppose, Paul, you'll cover what you raised in the chat.

PAUL MCGRADY:

Thanks, Jeff. I'd like to maybe have you respond to the question in the chat, which is, these have just been put out in front of us as we have to choose one of these three. Is that what's upon us, or are we talking about whether or not to include one of these three, because the merits-based public policy reason, what ever in the world that might be, basically is an exception that swallows the rule.

So, is this a binary situation where we get to choose none of the above or in the alternative, one of the three? Or is it that it's already been decided by somebody that we have to pick one of the three? Thanks.

JEFF NEUMAN:

Yeah, sorry about that. No, it's not been decided by anyone that we need to include any one of these three. These were just suggestions

that people had, and that's why we included bracketed text. But of course, if the group doesn't think any of these are acceptable, then obviously that's not something that we need to include.

PAUL MCGRADY:

Perfect. Thank you, Jeff, I appreciate that. So I think we should not take any of these three and we should leave it the way it is. I have no idea what a merits-based public policy reason is. I have no idea how to verify what a merits-based public policy reason—verify that it in fact exists. I have no idea how to decide whether or not a merits-based public policy reason in one jurisdiction is consistent with all the other merit-based public policy reasons in all the other jurisdictions of the world.

This is a six-lane freeway of an exception right down the middle of what GAC advice is supposed to be, which is a clearly articulated rationale that is based upon national or international law that can be identified, interpreted, looked at, understood by an applicant.

This basically gives the GAC a complete veto over any application that it wants to veto, and I think it is a really bad idea. Thanks.

JEFF NEUMAN:

Yeah. Thanks, Paul. I'm going to go to Jorge next. Jorge, please.

JORGE CANCIO:

Hello Jeff and hello everyone. Thank you for giving me the floor. On this issue, I would tend to suggest or recommend that we refer simply

to what is established in the bylaws. So GAC advice is regulated by the bylaws and the function of the GAC is regulated by the bylaws, and the requirement of providing a rationale to an yes GAC advice is regulated by the bylaws, especially after the 2016 accountability reforms.

So I don't think that we should lose too much time here on defining what can be the rationale of the GAC because the GAC has a function according to the bylaws, and the obligation of providing a rationale is already provided for in the bylaws.

So I would suggest the recommendation would read something like GAC advice must include a rationale consistent with what is provided for, what is defined in the bylaws. And that would spare us a lot of discussions on what the scope of the rationale can be.

I hope this is helpful and makes sense. Thank you.

JEFF NEUMAN:

Thanks, Jorge. We are trying to just pull up the bylaws right now and figure out where the language came from. I think this was included in the initial report as our language and then we got a bunch of comments on it, and I think this bracketed language was derived from the comments that we received, and I think there was also someone that submitted language from—I believe it was the Amazon IRP decision.

But with that said, again, this bracketed language is not something that needs to be included, but without the bracketed language, then it would just have the national or international law, and I think that's

what Jorge's comments were, that that would limit GAC advice to things that are more limiting than what's in the bylaws. So I take that comment and I think we don't want to narrow what the GAC may provide advice on. That's not the intention. Greg, please.

GREG SHATAN.

Thanks. First question is how any of these recommendations relate to early warnings that are not advice or not GAC advice. Each of the three recommendations refers only to GAC advice. I'll leave it there for the moment. Thanks.

JEFF NEUMAN:

Thanks, Greg. So this section deals with both. Obviously, we're strating with the GAC advice topic and you're correct that the three recommendations on the screen right now only do apply to GAC advice, but there are some additional recommendations on the next page which we haven't got to yet.

Jorge in the chat talks—it's from Section 12 in the bylaws—that the Government Advisory Committee should consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues. And thank you, ICANN Policy has pulled up the specific provisions in the bylaws, so I do think that helps. Let me just stop there and see if there's any questions while you're all looking at that section.

Sorry, I meant to be speaking here. So the first question is—we may come back to this section, because I think ultimately, what's really important is what the new TLD process does with GAC advice as opposed to what the definition of GAC advice is. So I'm going to propose that we move on to the next couple recommendations and then we may come back and revisit if we think that the definition is important enough to come back to and redefine as something other than what's in the bylaws.

So if I can ask to go back to the other screen, and of course, yes, Jorge, we have the note of the proposal just to refer to the bylaws. Okay, so the second recommendation on here states that to provide predictability to applicants as well as the Internet community, future GAC advice for categories of gTLDs—if any— and board action thereupon must be issued prior to the finalization of the next applicant guidebook. Any GAC advice issued after the application period has begun must apply to individual strings only based on the merits and details of the applications for that string, not on groups or classes of applications.

And Jorge, I'll get to you in one second. This has to deal with, again, in the last round there were categories that were created. There was a category one that dealt with highly regulated and sensitive strings, then there was a category two that dealt with exclusive access—or what we call closed generics—and of course when there were further discussions on these categories, new requirements were eventually added by ICANN to these applications that were not contemplated prior to when the applications were submitted and so some of the new

requirements according to the feedback that we got changed substantially the nature of the applications and therefore were more difficult for the applicants to proceed, and it could have very well changed their original intentions with the string. So let me go to Jorge.

JORGE CANCIO:

Thank you so much, Jeff. And of course, I don't want to monopolize this, and I hope other GAC members express their views, but I think this—let's call it recommendation 2 because it's rationale 2. While I understand, and I think in the GAC we very well understand the need of providing more predictability to applicants, at the same time, as we expressed in various inputs to the SubPro working group and in GAC consensus inputs, there are situations that are not foreseeable.

And I'm very much of the opinion that the degree of such situations and probability of such situations will be much lower in the next round because we have all the experience from the 2012 round. At the same time, I don't think we can exclude that possibility that there appear new classes of TLDs that required similar treatment and that that similar treatment can only be discussed and found, exposed, after we know what applications have been presented.

So that's for let's say the policy side of this topic, so we have to balance predictability with also the possibility that there are really public policy issues which require homogeneous treatment and there GAC advice should still have a role. And the second argument that would call for more flexible text of this recommendation,

understanding that the working group will want to keep at least some part of it, if that—again, it is trying to put GAC advice into straitjacket.

And yesterday we had this discussion in the GAC SubPro meeting, and there were already voices that expressed that this policy work shouldn't try to second guess what the bylaws say on GAC's consensus advice.

So I feel that due to these two arguments, both the policy argument and also the more institutional argument, we should be careful on this and try to find a better approach where we see the GAC as a partner and not as an institution that is foreign to the community which has to be put into a straitjacket. Thank you.

JEFF NEUMAN:

Thanks, Jorge. And I see there's some good comments in the chat. Let me just read one from Thomas de Haan from the European Commission. Comment says, "It is really odd to codify somewhere in a procedure that an advisory committee cannot advise on something in certain circumstances. It's not compatible, again, with the bylaws."

And then Donna states—actually, Donna, you're in the queue, so please go ahead.

DONNA AUSTIN:

Thanks, Jeff. So I appreciate Thomas and Jorge's intervention, and I certainly completely agree that they have—GAC advice has certain

status in the bylaws, but I think what we're trying to get to here is we're trying to balance the timing of the GAC advice and providing predictability for applicants, because I think you'll both appreciate that as a result of 2012, there was a lot of holdout and a lot of uncertainty because of GAC advice that came after the fact.

So what we're trying to do with these recommendations is find a path that enables the GAC to provide their advice but also keeps that predictability and certainty for applicants. Otherwise, the process becomes very unfair for the applicants if they're hit with something that comes after they had submitted their application. And their application has been developed around the set of requirements which no doubt they had done their best to meet.

So that's the balance we're trying to find here, so it would be really helpful, understanding that GAC advice has certain status within the bylaws. What can we do here to try to mitigate that possibility that GAC advice is going to throw a real spanner in the works for applicants after the fact?

It's not fair and predictability is a very strong principle for this program. So what can we do here to find a path forward that provides the GAC an opportunity to raise concerns? I think that's there with the early warnings, but provide certainty for the applicants as well.

JEFF NEUMAN:

Yeah. Thanks, Donna. I have Greg and then Jorge, and GG. Greg, please.

GREG SHATAN:

Thanks. I think Donna's comment fits well with what I was thinking and put my hand up to say, which is that these recommendations sit here not in the abstract because they are attempts to solve problems. In a sense, we're talking around the problems by only talking about the potential solutions. So we're not talking about why these recommendations were made in the first place until Donna brought it up. I'm not saying nobody has mentioned it, but that's the real issue here, is, what's the problem we're trying to solve? And I think Donna hit the nail on the head several times.

One is that GAC advice, sheerly on the basis of timing, isn't really fit for purpose in terms of fitting into the application process in a meaningful way, in a way that doesn't feel like something that needs to be dealt with as problematic. It's by definition problematic when it comes the way it comes to the board at that time. So whether early morning is or is not the right solution and the right level is a question.

So I think that if we are looking for a way for GAC to participate meaningfully, we can put aside whether the hammer of GAC advice is really needed here, but I think that's kind of where we need to go because the process-oriented comments from Jorge and from the EU or EC are all well and good, but they don't go to the fact that there's a problem that needs to be solved. Thanks.

JEFF NEUMAN:

Thanks, Greg. Jorge.

JORGE CANCIO:

Thank you so much. I think that the problem is not so much GAC advice, the problem is that we cannot foresee everything ex ante. There are things that appear after the fact and only when we see all the applications that have been presented, and some of these problems may pertain to a class of applications.

And I also [went back] to defer on the consideration that GAC advice in the 2012 round on classes of TLDs was a problem, because in fact, it was the start of the solution for many things. If we think, for instance, about category one safeguards or other things.

So the last time, as I said, and there were many things that we couldn't foresee. Neither in the policy, nor in the applicant guidebook we were able to foresee everything. And this time, the probability is much lower. I'm sure that there will be less issues of this kind. But I'm also sure that this is a probability that will still exist. So I think that we should be more sophisticated in trying to approach this and not seeing the GAC as the source of the problem but see the policy problem as a problem, this problem of combining predictability, foreseeability, and the need of addressing classes of problems as they become exposed.

And this in a more rational and more consensual manner, I am completely open. I at least personally am completely open to find the ways and means to do that in a more consensual manner amongst everybody in the community. That's the first part.

The second part, as Thomas said before, the fact is—and we have the bylaws. And I doubt that through a policy development process we can put a straitjacket on something which is not straitjacketed by the bylaws. So I would really urge and suggest that we go in the direction of really finding a solution which is amenable to everyone, including the GAC and so we don't try to address the perceived problem that the GAC is intervening ex post because it didn't want to predict the problems ex ante, but we really address this problem that there might be classes of TLDs which present policy issues and we will only detect that once the applications have been applied. Thank you.

JEFF NEUMAN:

Yeah. Thanks, Jorge. And before I get to GG, Thomas did put a comment into the chat which is more about maybe restating this recommendation in a more positive way where we could state that the GAC is urged to provide advice, if any ... on this.

Let me go to GG and Susan.

GG LEVINE:

Hi. I represent the .pharmacy TLD, and in 2012 we were held up in the application process because we were a string in a highly regulated area. And I do agree with Jorge that things are going to come up that were not anticipated and there may in fact be classes of applications that may merit additional attention, but if possible, it seems to me that it would make sense for the GAC to consider each application individually, because in our case, we already had the safeguards

implemented in our application that the GAC was asking for, so it didn't make a lot of sense that we were held up on that account.

So even in a situation where things come up after the fact, if it's possible to look at the merits of each individual application, that seems to make the most sense. Thank you.

JEFF NEUMAN:

Thanks, GG, and that's a good point. Certainly for categories that we know of now to make sure that whatever restrictions, guidelines or safeguards are going to be there, that we ensure they're there, but also your comment on when the GAC did provide advice on category one, it didn't review all of the applications to see whether there were safeguards. It just gave advice on the category. But again, to be fair, I guess it 's hard to review every single application. But I think we should have a balance between predictability as well.

Susan and then Kavouss.

SUSAN PAYNE:

Thanks, Jeff. Hi. Yes, I was actually going to say in part what GG was saying or related to what she was saying, which is that I think perhaps a couple of the reasons why we were making this recommendation, which we addressed firstly the issue that GG identified so clearly whereby some applicants who perhaps had particular conditions already in their application, verification requirements or eligibility limitations, or maybe they were .brands, so they already had in their application something that really was addressing the GAC concern but

they got caught up in this process and delayed extensively for really no good reason. So that was one, I think, of the issues that we wanted to try and address in making this recommendation.

And I think the other area where certainly I know that some issues occurred was that there's a danger if sort of global advice is given about a category that unless the strings that the GAC is actually considering this advice applying to are actually set out exhaustively, there is a danger that something gets missed. And I believe that that did actually probably happen last time around where perhaps there may have been some strings which the GAC was expecting someone else to do this identification exercise for them, and so some that may have been ones that the GAC was also concerned about didn't necessarily get picked up because the GAC didn't identify them.

So I think we were also trying to address that as well, so we were trying to say that—I suppose what I'm suggesting is that, okay, if there's a kind of category of advice that we feel needs to be given, then perhaps that should also, in addition to identifying the category which is kind of part of the rationale if you like, that [we actually let] individual strings be identified and that this be based on their own merits individually so that some TLD that actually shouldn't be caught up in that advice is not caught up unnecessarily.

JEFF NEUMAN:

Okay. Thanks, Susan. Kavouss, your hand is up. Is it related to number two or rationale number three? Kavouss, you're still on mute. Okay, let

me go to Anne and then I do want to try to wrap up number two and go to number three. So Anne, please.

ANNE AIKMAN-SCALESE:

I think that it seems like the biggest problem that we're trying to address, given that the bylaws say what they say, is the question of commercial delay or business delay and the problems that result if an applicant is held too long in standstill. So I almost feel as though the most important thing to address here is just the timing of receiving the advice, and of course, that is going to depend on the number of applications, because for all of us, not just the GAC, it takes time to analyze these things. Like I remember in the 2012 round, within the IPC, assignments were made for individuals to take analysis of applications and read through them thoroughly and raise any issues.

So if we could somehow focus on timing and promptness of review, depending on the number of applications, I think that would go to what Greg's point was, let's figure out what type of problem we're trying to address. Thanks.

JEFF NEUMAN:

Yeah. Thanks, Anne. Just to kind of wrap that up and then get to number three, because I know there are going to be comments on number three as well, I think we are starting to get towards a more positive-based solution on this one. I think it sounds like we're coming together on more of a process argument and on timeliness and on

urging, to the extent that there are known categories, that the advice is made known in advance to the extent we can.

So I think it doesn't sound like we're very far apart, which is encouraging. I think we just need to work on the language, but it sounds to me like I think we can get there.

I do want to quickly go to three, and then get some more comments. Rationale number three, we've been talking about the bylaws for quite a bit, even in this session, and because the bylaws were changed in 2015 or 2016—I'm trying to remember exactly when they were adopted, but because they were changed and now there's language in the bylaws that do address what the board must do or the threshold for rejecting GAC advice, the working group believes that the current language in the guidebook is either conflicting with or creates additional rights than what are in the bylaws, so therefore, this language that's currently in the bylaws that GAC advice will create a strong presumption for the ICANN board that the application should not be approved, there's a view of the working group that this language is unnecessary in light of the bylaws but also has the unintended consequence of hampering the ability for applicants, ICANN Org and the GAC to mitigate concerns which could allow an application to proceed.

So there's a view within the working group to remove that language, not to take anything away from the GAC but more to be consistent with the bylaws. Let me open that up for discussion. Kavouss is first in the queue and then Paul. Kavouss, do you have a microphone? All

right, let me ask if Michelle or someone can help with Kavouss, and in the meantime, I'll go to Paul and try to come back to Kavouss.

PAUL MCGRADY:

Thanks. So yeah, I think it makes sense for this to be removed for some of the reasons that Jorge has already brought up, which is he doesn't want the GAC advice constrained in any way by the applicant guidebook. And I suppose the flipside of that coin is that it should not be enhanced in any way by the applicant guidebook. The GAC advice is the GAC advice, it's found in the bylaws.

And as I'm looking at all three of these—and I know, Jeff, you probably don't want to hear this, but I'd like some time to provide some alternative language for the working group to consider that I would put on the list that—I think there's a way to deal with getting the concerns of the community for predictability, getting those concerns dealt with in comfort, and at the same time, sort of dealing with and understanding Jorge's desire not for GAC advice to be constrained in this way by the applicant guidebook.

So I know that sounds mysterious, but it is a little bit because I'm going to have to spend some time wordsmithing. But I'd like to be able to have basically, if we can, put a placeholder here, not declare it done, and give me a day or two to put something out on the list for everybody to consider.

JEFF NEUMAN: Okay. Thanks, Paul. And yeah, absolutely, this is not the last time we'll be going over these issues and we have to take the feedback from all of these sessions and incorporate them into the draft. So yeah, Paul, if you can work on some language, of course circulate it, and hopefully there are more members of the GAC that are on the mailing list that could weigh in as well. This is obviously a very important issue for them.

Let me try one more time with Kavouss. If we've got him able to speak—

MICHELLE DESMYTER: Actually, Jeff, I'm dialing out to him now.

JEFF NEUMAN: Okay. I'm going to go ahead to Anne, and then if you can just let me know when we have connectivity for Kavouss. Oh, wait. Yeah, Anne, please.

ANNE AIKMAN SCALESE: Yeah, just quickly, Jeff, I am very supportive of Paul's idea to do some redrafting to try to reflect the balancing that's been discussed in this session, and I think it has been a fruitful session.

I think one consideration, as Paul is redrafting, is in consideration of the applicant themselves, they do need some kind of heads up as to what the bylaws actually say, because it's not fair to applicants if they are preparing an application and they don't really understand the GAC

advice process, because that in and of itself is something that they want to be warned about, want to consider. So perhaps, again, another direct reference to the bylaws provision would be helpful. And here, I'm just talking about how to be considerate of applicants who are not already part of our system. Thank you.

JEFF NEUMAN: Yeah. Thanks, Anne. And as we stated, yeah, we're going to work through some of that language based on the feedback we'd gotten, very valuable feedback, and like I said, I don't think we're far apart on this. We just need to find the right words.

Okay, let me try Kavouss again. Michelle, do we have Kavouss?

MICHELLE DESMYTER: Not quite yet.

JEFF NEUMAN: All right. I'm going to go on to the next one, but I promise once we get Kavouss' connection fixed, we will go straight to Kavouss. The next recommendation deals with early warnings, so it states to the extent that there's a decision to allow a longer period for the GAC to provide early warnings above and beyond the public comment period, the application process should define a specific time period during which GAC early warnings can be issued and require that the governments issuing such warnings include both a written rationale, [basis,] and specific action requested of the applicant.

So probably a little bit of background is necessary there. In the last round, GAC early warnings were supposed to be done within a very similar time period as the public comments, but because of the realities of the number of applications as well as coordinating all of these actions, the GAC did get more time—understandably so—to file their early warnings, and so what this is saying is that essentially, if the GAC does need more time, then we should define a very specific time period where that needs to be in, recognizing it may be longer than the regular public comment period.

And the second part, I think, is important as well, because we're going to do something different—as you'll see from the next recommendation which I might just read as well, because unlike the last time where we didn't foresee a process of interaction between the governments and the applicants, during this process, we are actually—I'm going to read recommendation 5—the applicant must have the opportunity to engage in direct dialog in response to GAC early warnings and GAC advice and amend the application during a specified time period.

So again, the last time, the 2012 round, we not only failed to have direct dialog between the governments and the applicants, we also did not allow any changes to the applications. We think a lot of the early warnings could have been resolved more quickly through direct dialog than the process we had. So I think—and I'm hoping that these both are, specially recommendation 5 is seen as positive.

So let me go to Kavouss, if I can, just to see if his connection's up. Sorry, Jorge, I know you're in the queue but let me see if Kavouss is— Michelle, could we have Kavouss yet?

MICHELLE DESMYTER: We do have him connected.

JEFF NEUMAN: Okay. Kavouss, can you speak? All right, I'm going to go to Jorge and then we'll see if we can figure out what the issue is.

KAVOUSS ARASTEH: Operator—

JEFF NEUMAN: Oh, wait. Kavouss, try again.

KAVOUSS ARASTEH: Do you hear me, please, now?

JEFF NEUMAN: Yes, I hear you. Great. Thanks.

KAVOUSS ARASTEH: Okay. I'm very sorry disturbing you and the operator. I'm very sorry. In the rationale two, you commented that now we are on the positive direction. I hope the positive direction would have a balanced

solution. Currently, the text is unbalanced. Exclude any activities from GAC because of the current text. So the text should be balanced to have acceptable mutually for both parties, GAC and others.

With rationale three, do you remember yesterday I suggested that we don't need to change rationale three as you propose, [saying that delete that.] We just could say, please see bylaw section so and so. Connecting this with the bylaw, because hierarchy bylaw is higher than the guidebook. Guidebook just is a guidebook, it's not a bylaw. So it should not override the bylaw. Therefore, in the guidebook, we should say, see also the bylaw. In that case, it is quite clear that what the [inaudible] advice mean and what is the situation to accept that advice or to reject that advice, if it is rejected by 50%, what is the subsequent procedure?

So connect them together, cross-reference them together for rationale three. Thank you.

JEFF NEUMAN:

Thanks, Kavouss. I do think we're getting to a more positive, balanced approach for number two and three, and number one for that matter. So we hope that text that Paul is drafting and others can weigh in on will get us closer to that.

Jorge, please, and I've been reminded from ICANN Policy that, just in order to give everyone an opportunity, let's get the comments to two minutes or less. Thanks, everyone. Jorge, please.

JORGE CANCIO:

On recommendations one through three, I'm happy that we're going into a constructive direction, and looking forward to any drafts. On recommendation four, a little bit with my lawyer's hat on, I think that really, the recommendation is saying two things, but it's a bit mixed because the first phrase is about this question of the extended time period, so a specific time period for GAC early warning, and then on the fourth line after the "and require," this should be, I guess, separate sentence because you don't want to limit that only to the cases where a specific time period is awarded. But I guess that's something you want or we want in general, that there's a rationale and a specific action requested of the applicant. So I would separate that in two sentences.

And on five, I would welcome also an explanation why "and GAC advice" is bracketed, because I think this is a good idea for both GAC early warnings and GAC advice. So I'll leave it at that for the moment, and I hope I didn't use more than two minutes. Thanks.

JEFF NEUMAN:

Thanks, Jorge. You did perfect. and both of your comments are very well taken. I think it does make sense to perhaps separate that, the recommendation four into two different recommendations because they were not meant to be tied to each other. So I think we'll perhaps make that two different recommendations.

And recommendation five, the reason why GAC advice is in brackets is because that was something that leadership, Cheryl and I and ICANN Policy, Org, noticed was missing. The original recommendation

only said GAC early warnings, and we propose adding “and GAC advice.” So that’s why it’s bracketed. I probably should have explained that. so I guess the feedback is—and it seems like you're supportive of including GAC advice. I would ask the question, is anyone not supportive of including that language?

That was, again, something that leadership noticed was missing, but may be a good add. So I'll leave it at that and ask Kavouss—your hand is up, so please go ahead.

KAVOUSS ARASTEH:

Yes. I'll come back to rationale four. I think then you say in the third line [that application process should be fine in a specific time.] Do you mean that the applicant or the process? Who defined this [inaudible] specific time? What is the criteria of this specific time? So you put, again, the government in some sort of, I would say, difficulty if the specific time is not sufficient for government to make a comment. We should distinguish between the government and the private sector that they have all possibilities in a matter of days and maximum a week [inaudible] whereas in government, there's a lot of process to be done until we have the reply to the early warning. It is not one person who decides. Sometimes they have to go to [inaudible].

So how this defining the time period will be executed? Who defined that period, and what that period would be. This is the first question. My reading may be different from Jorge.

And rationale five, I think that we say that the applicant must have an opportunity. The applicant always has the opportunity. So what does it mean, must have? Who give this must to applicant? Do we say 15 days that GAC should do this? What does it mean? I think maybe you say applicant must be encouraged to speak to government for receiving comment and so on and so forth. So when you say the applicant must have an opportunity, what does it mean? Who established this must?

JEFF NEUMAN:

Okay. Thanks, Kavouss. Thank you for the comments. The first comment I think is very fair. I think the wording is a little confusing when it says the application process should define. I think what's intended there—and someone can correct me if I'm wrong—that it should say the applicant guidebook should define a specific time period. It was not intended to mean anything other than that. So I'm going to request that a note be added to change that to applicant guidebook. It was not meant to imply that there was some kind of different process for determining the time period.

And then the second one—and others may want to weigh in, but the feedback we got was that some applicants that got early warnings tried to reach out to the governments and the governments didn't respond to them. So this is trying to say that when a GAC member submits an early warning, that they should make themselves available to the applicants to discuss and to try to work something out.

So I think that's what is meant. Of course, an applicant can always reach out to the government. This is trying to say the other way around, that the government really, if it files an early warning, it must make itself available to discuss the situation with the applicant.

But we have two people in the queue, so Anne, and then Kavouss.

ANNE AIKMAN SCALESE: Thanks, Jeff. In that regard—and maybe this is the implementation and not policy, but drawing from other fields, it would be helpful, I think, if governments could designate a point of contact for this purpose. If the governments would consider doing that, that would be helpful to applicants.

With respect to the last part of rationale four where it says not only written rationale or basis but also “and specific action requested of the applicant,” I think we might be shooting ourselves in the foot with that one because if there are concerns that are expressed that are public policy concerns but folks aren't quite sure how to address them, and if what we want to encourage is cooperation and negotiation between the government and the applicant, I think when you are asking for specific action requested of the applicant, what you're going to get in most cases is “We the government request that the applicant withdraw the application immediately.”

So I don't think that language is helpful to the process that we're trying to encourage, and I would suggest that it be added at “written rationale basis,” period, because otherwise, we're just going to get,

“Hey, withdraw the application.” And that puts the parties at polar opposites from day one of what should be a collaboration. Thank you.

JEFF NEUMAN:

Thanks, Anne. Kavouss, you're in the queue.

KAVOUSS ARASTEH:

Yes. I think the second part of the number four, I don't understand where this term “rationale” comes from. The only area where we have rationale is the bylaw with respect to the GAC advice, that the GAC advice must be accompanied with rationale, but never in the early warning we are talking of rationale. Maybe you're talking of some reason, some reasonable argument, but not rationale. You don't ask the government to sit down and have a rationale that what we're doing in the GAC communique with two or three or four sessions, hours and hours. You put a lot of pressure on the government. I don't think that they have this thing, that rationale. I think you replace this rationale with reasons by which or for which this early warning is made. Make it simple and don't go to the second part, specific action.

What do you mean that they do a specific action? Usually early warning has some action, but you want to get another? What do you mean by specific action? Any possible action, any suggestion for action, but not asking a specific. Otherwise, they will say, “Sorry, your early warning is not accepted because you have not provided rationale, because you have not given a specific cause of action.”

So it is something, again, not in favor of governments. You put a lot of pressure on the governments. So we were looking to have some improvement in the applicant guidebook. It seems that now you do everything to the GAC. Everything. GAC fails to do this, GAC fails to do that. So please, kindly replace the second part by something reasonable but not one sided. Thank you.

JEFF NEUMAN:

Yeah. Thanks, Kavouss, and I'm looking in the chat. I think, as Greg says in the chat, perhaps the term “rationale” is too specific of a meaning because it’s enshrined in the bylaws with respect to GAC advice and the communique. So the main point is really to help applicants to see if there's a way that they could fix any of the problems that are identified in the early warning. That’s really what we’re trying to do, because the last time, there were a number of early warnings where a government just said, “I don’t like this application for .whatever,” but there was nothing in there that would give any guidance to the applicant or to the ICANN Org as to what would fix or lessen the concerns of the government.

So perhaps this is just a wording issue that we can fix, because it’s really trying to encourage the collaborative process. And it sounds to me that that’s not something that anyone has an issue with, it may be more of a wording change. So let us take that back and fix the wording to be something more—that encourages more collaborative of a process. Does that sound like a good plan?

And I see there are some suggestions in the chat, so we're capturing all of that and we'll come back with some more collaborative language. Okay, the sixth recommendation, before we go on to the next topic, from what I've heard from the various meetings, I don't think this one should be controversial, but it's basically now codifying the fact that applicants must be allowed to change their application, including the addition or modification of commitments in response to GAC early warnings and/or GAC advice.

So to the extent that an applicant can work out its differences with the government or governments by making additional commitments, we should allow applicants to do that and have it become part of the contract. Justine, please.

JUSTINE CHEW:

Thanks, Jeff. Based on what you said, and I was looking at rationale five as well, if we could consider tying both five and six together by just amending the last few words. So instead of in response to GAC early warnings, could we suggest that it be "which address GAC early warnings and/or GAC advice?" Thank you.

JEFF NEUMAN:

Yeah. Thanks, Justine. I think you're right. Having them as separate recommendations is a little bit confusing and tying the two together makes a lot of sense. So great. Thank you for that suggestion. Let me go to Donna.

DONNA AUSTIN:

This may be a nonissue, but I just want to flag it in case. So there is the possibility that there would be four applications for the same string. And because of the way that the purpose or perhaps who the applicant was, there may be a different interpretation from the GAC about whether that application is a concern or not.

So I'm just wondering whether there's any qualifiers we have to put in here about—so contention sets or same strings and the applicability of GAC advice—as I say, it may be a nonissue, but I seem to recall from 2012 that the GAC took issue with some applicants for certain strings but not other applicants for the same string. But I may be wrong in that. Thanks.

JEFF NEUMAN:

Yeah. Thanks, Donna. You're not wrong. I think there were a couple of circumstances where some of the applications, one or more of applications in a contention set were viewed as problematic where others were not. So it's not a nonissue. I think these recommendations address it, so I'm not sure what we need to change from here, but you certainly brought up a circumstance that was the case for a couple strings.

Kavouss.

KAVOUSS ARASTEH:

Yes. I agree with the objective of number six, but the way it is worded I think still needs to be clarified. We don't want to automate everything

and we don't want that some very few cases generalize that and have regulations. We should avoid overregulating the situation.

This is overregulation. This causes a considerable difficulty. Let us see how many of these cases have happened with respect to the entire 1800 or 1920. If it is one or two cases, we do not need to do that. So it depends on that, so we should avoid overregulating and we should avoid putting pressure on either party, shortcoming of GAC or shortcoming of the applicant. We should have a fair balance between the two.

Currently, this fair balance does not exist in number six. Thank you.

JEFF NEUMAN:

Okay. Thanks, Kavouss. We'll take that back and we'll try to figure out if there's a different way to state that. if you have any suggestions, let us know. Okay, I want to jump to the next topic if we can, which is applicant support. Paul, do you have a comment on applicant support or are on the last topic?

PAUL BLAKER:

[inaudible] I think we need to look really carefully at the language here. I don't see how we can guarantee that every government on the GAC will be willing to engage in a dialog. [inaudible] and then it doesn't happen, we could get in [inaudible] an opportunity for applicant [engagement,] maybe we should put it in those terms rather than implying that the applicant will have some kind of right which we can't actually guarantee.

I also wonder about the use of the word “dialog” and what [inaudible]. Does that mean face-to-face meeting, or can it be [inaudible]?

JEFF NEUMAN:

Yeah, thanks, Paul. We had a little bit of sound issues, but I think I understood the comment on the language of the rationale to—going backwards, I think, to clarify what dialog means and then also take into consideration the fact that some governments may not have the ability or choose to engage in that dialog. So we might need to consider that as well in these recommendations.

I think the hope is that most of the governments that do file an early warning could provide a point of contact that could discuss the issues, not necessarily face-to-face but in a way that would enable an applicant to solve whatever those issues are.

But Donna, I'll go to you, and then I do really want to get to applicant support. So Donna, please.

DONNA AUSTIN:

Thanks, Jeff. I don't think it's fair and reasonable to hold any of this open to codify that all GAC members need to have the opportunity to comment on the various applications. I think as it played out in the last round, it was the Australian government that took the lead in identifying a lot of the GAC early warning, and many of the categories that came out were the result of further discussion within the GAC of that.

So I think as a collective, it's fair that we say the GAC, but I don't agree that there has to be an opportunity for every government to have time to assess all the applicants. I think that's unreasonable and that will create significant delays.

JEFF NEUMAN: Okay, thanks, Donna. Kavouss, last word on this topic and then we're going to applicant support.

KAVOUSS ARASTEH: Yes. I have some difficulty with what Donna mentioned. She said that the opportunity should not be given to every government. Okay. To whom it should be given? To those who have all possibilities? Why should it not be given to every government? Where is this equality of access or equality of rights of equitable access? Why [inaudible]? I think if some government has difficulty to express themselves but they have the idea, they could seek the advice of the GAC leadership, the advice of the ICANN board, advice of the ICANN Organization. So they should help them. They might have the idea but they may not have the possibility how to put it on the writings.

Why do you want to exclude that? Why do you favor the applications and exclude the governments' rights? In particular those who don't have manpower but they have idea, they raise the flag but it may not be possible to explain everything. Why do you want to exclude them? This has been since centuries everywhere, even before the creation of ICANN. Always the community was excluding the people they did not

have time, they did not have opportunity, they did not have enough resources and so on and so forth. And sometimes think that lack of replying is agreement. So let us have a balanced and fair thing. Allow every government to express, each government. If they have a problem, give them some time. If they don't reply, give a reminder to them, and if they need assistance, either assistance of the GAC leadership or GAC chair, or assistance of ICANN board, or assistance of ICANN Organization.

We would like to engage everybody in this course. We don't want just to hide it from the people, "Okay, you missed the [train,] now go ahead." Let us a little bit change that. Thank you.

JEFF NEUMAN:

Thanks, Kavouss. I think Donna clarified that she's not talking about governments shouldn't have the opportunity. What she's saying is that there should be a time frame for governments to respond and that the process should not necessarily be held up just because there are some governments that want additional time, that we should still continue with the process. So I don't think Donna is saying at all that she doesn't think governments shouldn't have the opportunity.

Okay, so let's go on to applicant support. I know there's definitely interest in this, and I think most of these should be similar views, at least from the discussions that I've heard, to what the working group is thinking.

The first is an affirmation that the working group affirms implementation guideline B from 2007. That's the GNSO policy which states application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process. Application fees may differ for applicants that qualify for applicant support.

We just put those last five words in there. It's a little bit different than the original policy. The original policy basically just had, "may differ for applicants." It didn't add the qualifier, "that qualify for applicant support." We think that is needed there based on other discussions that the group has had. So that's affirmation one.

The second affirmation, which is pretty long so I'm not going to read the whole thing, but it's just affirming guideline N from the 2007 policy which addresses a fee which basically says ICANN may put into place a fee reduction scheme for applicants from economies classified by the UN as least developed. And we're actually talking about modifying that, so here's the recommendation.

The working group recommends that, as was the case in the 2012 round, fee reduction and nonfinancial assistance must be available for select applicants who meet evaluation criteria through the applicant support program. It believes that the high-level goals and eligibility requirements for the applicant support program remain appropriate. And then the rest goes on to state that in the 2012 program, applicant support was not limited to only the least developed countries and the working group believes that the program should continue to be open

to applicants regardless of their location so long as they meet all the other program criteria. Therefore, we recommend changing the language to state ICANN must retain the applicant support program which includes fee reduction and nonfinancial support for eligible applications.

Donna is asking what does nonfinancial assistance mean. We'll talk about that, and it's also in the rationale. That just means all the other assistance—as Emily says, the pro bono assistance program which includes technical assistance, consulting, and—yeah, in footnote 24. Thanks, Emily. So I'm going to go to Justine in the queue, please.

JUSTINE CHEW:

Thanks, Jeff. I'm not questioning the intention behind rationale two. I was just a little bit concerned that it starts as an affirmation, but then in the language itself, it goes on to talk about it recommends such and such. So that, to me, affords some confusion. I wonder if there's something that can be done to just not confuse readers between affirmation and recommendations. Thank you.

JEFF NEUMAN:

Yeah. Thanks, Justine. It is labeled an affirmation with modification, because I think the concept of what was done in 2012 is what we're affirming, but we're just modifying the language and that's why it's labeled as affirmation with modification. But we can take that back. We can state it as a recommendation. I think that's fine if we think that that's less confusing.

Paul McGrady states, “I think we should make nonfinancial assistance a defined term.” So Paul, I think that’s good, but let’s get down to some of the other recommendations because I think that may help with more definition around that, and if not, we’ll come back to that comment.

So the third recommendation—and her ewe go, right? So this starts it. The working group recommends expanding the scope of financial support provided to applicant support program, beneficiaries beyond the application fee to also cover costs such as application writing fees, attorney fees related to the application process, and ongoing ICANN registry level fees. And then there's a footnote to define what that means.

I'm going to go through the rest because it all relates to the comment from Paul, and then I'll come back to Christine. So recommendation four, the working group recommends that ICANN seek opportunities to improve outreach, education, application evaluation and program evaluation elements of applicant support program as proposed in the implementation guidance below. And then the implementation guidance—let me actually stop here because I think we’re getting a little bit off from the third recommendation. So I'm going to stop and go to Kristine.

KRISTINE DORRAIN:

Thanks, Jeff. My comment actually goes back up to the affirmations, and I mentioned it in the chat. I think we just need to clarify, because when you see the first affirmation, [inaudible] with modification

rationale one, it's unclear that the modification is necessarily the italics, although I guess you could kind of guess that because the "with modification" is in italics.

But then in the next section—and maybe I'm just misreading it, I don't really know where the modification is. So my only suggestion is purely procedural, is make it clear on both of those, what was the original guidance and what was the addition, and that the addition is a new recommended change. That's all I wanted to say. Thank you.

JEFF NEUMAN:

Yeah. Thanks, Kristine. I think you're right, it's a very long paragraph affirmation and it gets a little confusing. I think the modification is changing guideline N to the language that's at the bottom, but we need to make that clear. So I think it's a really good comment and we will fix that in accordance with your comment.

Let me go to—let's see, there are some comments in the chat. It's getting harder here to follow because there's lots of really good comments. So Paul—yeah, a comment from Anne at Jamie—okay, well, there's CPE guidance. I'm going to skip that for now.

Let me go to the other implementation guidance for rationale four and come back. Sorry, Kristine, is that a new comment?

KRISTINE DORRAIN:

Thanks, this is a new hand.

JEFF NEUMAN: Oh, good. Okay, go ahead.

KRISTINE DORRAIN: Thanks. So as I recall, going to this recommendation for rationale three, we talk about expanding the scope of support to include possibly ongoing ICANN registry level fees. I don't remember—it's been a while, but I believe the Registries Stakeholder Group commented on this. We have a requirement that registries be able to financially operate a TLD, maybe the initial cost of the application or something is expensive, but you do need to be able to operate the TLD to demonstrate security and stability.

So, how are we addressing that here to ensure that a registry is capable of financially securely and stably offering their TLD? And at the same time, consider how we're going to support them. Thanks.

JEFF NEUMAN: Thanks, Kristine. So nothing here alters the evaluation criteria, so you could have for example a brand in an underserved region that's able to keep a TLD going but may not have the resources, the \$25,000 a year to fund ICANN. But that may or may not be related to whether they can operate the TLD. So I think there's just a recognition that perhaps—sorry, let me just add they may also have nonfinancial assistance, pro bono assistance such that a backend operator for example may agree to run the registry for them. But again, that may or may not have anything to do with whether they're able to pay the

\$25,000 fees. So I think it's just a recognition that there could be a need for that as well. Kavouss, please.

KAVOUSS ARASTEH:

Yes. On recommendation or rational four, first of all, in the first [inaudible] ICANN seek opportunities. When you talk about the word "seek," seek from whom? I think we don't need to say "seek" opportunities. We just say ICANN to improve outreach, not seeking. I don't think ICANN seek from anybody.

And then continue that, I suggest that we replace education by increasing awareness but not education, because ICANN does not have any school to educate the people, just increase the awareness of the people that need more awareness. So you do that. and for application evaluation, you need to put some verb, whether you go back to improve application evaluation and improved program evaluation, that we have to reword it by taking out "seek" opportunities and by replacing education by increasing awareness and redraft it to have a real meaning what we really ask ICANN to do. Thank you.

JEFF NEUMAN:

Yeah. Thanks, Kavouss. Fair points, good points. I think the word "seek" is not necessary there, and I think you're right that we could state it as more of an action as opposed to a very passive voice. So I think that makes a lot of sense. And the implementation guidance

below that is meant to expand upon what it means to improve outreach and education.

So I'm going to go through those, and then we can come back to Edmon. So what we're seeing here is that outreach and education should be delivered well in advance of the application window as long as lead times help to create awareness about the program. Then there's some bracketed language which still needs to be discussed, and that such outreach and education should commence no later than the start of the communication period.

Communication period has a certain meaning that's been discussed by the working group before. The second implementation guidance deals with a dedicated Implementation Review Team should be established and charged with developing implementation elements of the application support program. Outreach efforts should not only target the global south but also middle applicants which are located in struggling regions that are further along in their development compared to underserved or underdeveloped regions.

The working group supports recommendation 6.1(b) in the program implementation review report. That's a report that ICANN staff did—or I should say GDD did—to evaluate a program, so that's a long report which I highly encourage everyone to read that because it does have some excellent comments in there. And that report stated, “Consider researching globally recognized procedures that could be adapted for the implementation of the applicant support program.”

There's the next guidance which says in implementing the applicant support program for subsequent rounds, the dedicated Implementation Review Team should draw on experts with relevant knowledge, including from the targeted regions, to develop appropriate program elements related to outreach, education and application evaluation. Regional experts may be particularly helpful in providing insight on the evaluation of business plans from different parts of the world.

Let me scroll down. I can't remember if there's more. Yeah, okay. Then there's a whole bunch of detail on the dedicated Implementation Review Team should seek advice from experts in the field to develop an appropriate framework for analysis and metrics to evaluate the success of the applicant support program. The working group identified a non-exhaustive list of potential data points to support further discussion in the implementation phase.

The working group anticipates that the dedicated IRT—that's Implementation Review Team—will consider how these and other potential metrics may be prioritized. And then there's a whole list of these metrics.

A lot of this is taken from the CCT review team recommendations as well as discussions from the working group. So this long implementation guidance rationale four does come from the CCT review team report as well as from discussions of the working group. And then, sorry, can you scroll down a little bit more? The next recommendation—and then we'll come back to comments.

The working group supports recommendation 6.1(a) in that same implementation review report which states, “Consider leveraging the same procedural practices used for other panels, including the publication of the process documents and documentation of rationale.”

This last recommendation is really intended to formalize the applicant support review where they're not coming up with the procedures on the spot after the program launches, which is what happened in 2012. So what we're saying with this recommendation is that when we establish this support review team or evaluation team, they need to document their processes and procedures so that we can all understand, the community can understand the criteria that they're using to evaluate.

And then there's another recommendation, but I'm going to stop here because that was a lot of material. So let me go back to Edmon who has his hand up, and then I'll see if I can draw in some of these comments. Thanks.

EDMON CHUNG:

Thank you, Jeff. I guess a clarification question. It seems, reading this, the point of departure that the group is taking is from the applicant support program implementation and not the joint applicant support, I guess, report that was created that led into the implementation documents.

The reason why I ask this is there were certain elements in the joint applicant support team report that was not implemented last round, and the board made a resolution because of the time limitations that those things should be looked at at a later time. So my question, I guess clarification question, is, are we thinking that another joint applicant support group needs to be formed to re-look at some of those things, or are we supposed to do that here? Or do we think that the Implementation Review Team should be the group that will look into that? And if the last option is what we're thinking, then we need to probably point back to the joint applicant support report, not just the implementation documents that were published by ICANN. Does that make sense? It's a kind of clarification question.

JEFF NEUMAN:

Yeah. Thanks, Edmon. So what we're saying here is that the GNSO policy process normally has just one implementation team that implements all of the recommendations, not just applicant support but everything else. What we're saying here is that we want two policy implementation review teams, one that is dedicated only to applicant support because it's such a niche area, it's not an area that the community as a whole has expertise in, and so I think your addition of making sure that we pay attention to the original documentation I think is a good one, so we should put that in there.

But yeah, I think what these are, these recommendations and implementation guidance is a recognition that we need people that do this type of thing every day to take a look at how we can create an

effective applicant support program. And that, we believe, would be a completely separate team than the one that's implementing all the rest of the recommendations for the rest of the new gTLD program. So hopefully that makes sense.

And there are a lot of messages in the chat. There's some concern about creating a class of registries that will fail. I think that not the intention, so if there are things we can do to clarify that. Jorge has a comment. The GAC underserved regions will look into these recommendations and we hope to get back with feedback in the coming weeks. Jorge, that would be fantastic, and I think also that group will be instrumental in helping with the ultimate Implementation Review Team that does get underway once the policy is approved.

I think we did kind of a deep soul searching within our group and realize that we're not the ones necessarily with all the expertise and realize that we need global experts to help us establish an effective program.

Some more in there about making sure registries don't fail, middle countries—this is from Marita Moll. This is an awkward designation, you could really drop that and it would still make sense, so we'll take a look at that. Yes, the IRT should study the JAS report—that's the joint applicant support, not to be confused with reports that were done by consultants that were called, JAS consultants.

Cheryl's saying we did look at it, and Cheryl was a member of that group, if I remember correctly. There's lots of comments in here about

rephrasing. Kristine's pointing out that the Registries Stakeholder Group did oppose rationale three, so we'll go back and look at that as well.

And Kristine, if there are elements of rationale three that are acceptable or could be acceptable with alternate language, if you could let us know.

Marita says, "I meant middle applicants, not middle countries." And Christa Taylor who was deeply involved in one of the leaders of this subgroup that was working on this says, "From what I can recall ICANN fees would not be covered as part of applicant support. If there is, then some type of timeline/maximum should be outlined."

Okay, there's lots of things in here. Rationale three is important for things like CPE fees. That comes from Edmon. That's community priority evaluation fees and objection process fees. And then Susan states, at Rubens, "I guess I'm saying we shouldn't be insisting that they have insurance against failure if we already know they're low on resources."

Okay, so we will take all those comments into consideration. Great comments. We do need to find an appropriate balance. But on the whole, it sounds like some of these others, at least with rationale four, seem to be fairly noncontroversial, understanding there is controversy around recommendation three.

Can we scroll down to the next recommendation? It's recommendation six. Okay. Recommendation six—or rationale six,

ICANN Org must develop a plan for funding the applicant support program as proposed in the implementation guidelines below. The first one is ICANN Org should evaluate whether it can provide funds as they did in 2012 or whether additional funding is needed for the applicant support program in subsequent rounds, and the second one is ICANN Org should seek funding partners to help financially support the applicant support program as a program.

Going to recommendation seven. Thanks, Kristine, for putting that into the chat. We'll take a closer look at that. The seventh recommendation, applicants—and this is really an important one, so I do want to make sure we get comments, because this is a change from the last round.

Applicants who do not meet the requirements of the applicant support program must have the option to pay the balance of the full standard application fee and transfer to the standard application process. Applicants must be provided with a limited period of time to provide any additional information that would be necessary to convert the application into one that would meet the standard criteria, for example showing how the applicant for financial and other support could acquire the requisite financial backing and other support services to pass the applicable evaluation criteria.

That said, this limited period of time should not cause unreasonable delay. I think we have a typo here. Probably something like, “Such that the other elements of the new gTLD program or other applicants for a

string in which the application may be in a contention set.” Oh, two. it should say, “Delay to the other elements.”

So the change here is that in the last round, if you applied for applicant support and you failed, your whole application was thrown out and you did not have the ability to demonstrate that you could come up with the resources. We think that was wrong. We think that if you fail the applicant support evaluation, you should have the opportunity to try to pass the regular evaluation process.

And then the final recommendation—I’ll come back to the chat and the queue—is that the financial assistance handbook—and there’s a footnote to that—or its successor, subject to the changes included in the above recommendation, must be incorporated into the applicant guidebook for subsequent rounds.

So there was a document called the financial assistance handbook which the group thought was very instructive and helpful, and rather than just have that as a side document, we thought that those elements should be formally incorporated into the program.

Okay, lots of stuff there. I know we went through that very quickly. Let me go back to some of the comments that we have in here. Jorge, “I would suggest that Implementation should be done with a group composed of global south, underserved regions people.” Jorge, I think that that is a helpful suggestion, and I know that’s part of the intent. And there’s some questions about middle applicant.

And Paul states, “I really dislike sounding like a grinch, but it’s ultimately the registrants of a failed registry that pay the price.” Kristine points out the rationale three. Sorry, I think I went too far back here.

Paul states that the Registries Stakeholder Group position here is sensible. Edmon says that position does not bar support for fees before registry operations though. I mean, it’s not against it. Anne Aikman-Scalese says the recommendation is here due to participation by more than the Registries Stakeholder Group, and that’s correct. So if we find that the Registries Stakeholder Group are the only ones that have that position, then that would be likely a minority report, but we’ll have to assess that towards the end of the process and not right now.

Christa states that for rationale six, suggest adding a reference to funding related to excess funds related to the fee floor. Christa, that’s a good add, and I think we do have that in the—there’s a section at the end of each of these that talks about dependencies and references to other sections, but it would not hurt to have that reference earlier as well.

Okay, some discussion about different positions. like I said, at this point, let’s not attribute support or opposition to any particular groups, let’s just note that for later discussion.

Justine states, “Great to see recommendations that have rationale seven and eight.” Some more discussion about Paul. Okay, so any other comments or people who want to get in the queue? Chat is very

helpful. I'm sorry if I missed any comments in the chat, I'm trying to get to all of them. if I missed one, it was, I promise, not intentional.

Okay. Can we scroll down a little bit in this section? I just want to see if there are any things in the new ideas that need to be discussed. So in all of our sections, we have a section called new issues. This is also areas for discussion. So let me just read this paragraph to see if there are any comments.

In considering public comments, the working group discussed prioritization of successful applicant support applications. Specifically, the working group considered whether there should be any changes to the 2012 approach of establishing priority between applications if there are more qualified applicants than funds available.

The working group did not come to a conclusion on these points, and therefore we have not recommended a departure yet from the 2012 implementation.

So what we're saying here is although this didn't happen in 2012, what if there's only a limited amount of funds available in the applicant support program and more applications pass than we have funds for. We have not yet come to any conclusion.

So I do want to open the floor here to see if there are any comments on thoughts of how we prioritize applications for applicant support if there is a limit on funds and there are more applications that qualify. Any thoughts on that? is this something we should just leave to the

expert group? Which is fine, we can do that. Or is there any guidance? Justine, please.

JUSTINE CHEW: Thank you, Jeff. In terms of At-Large discussions, there was one suggestion to approach it from a regional perspective. We probably need to get into the weeds a little bit more, but the idea is to look at maybe having a quota based on regions. Thank you.

JEFF NEUMAN: So Justine, just to clarify, are you saying that if we have applications from multiple regions that would qualify, we'd seek, as best as possible, to provide an equal number or two spread it out in some way that provides equity among regions? Is that roughly what you're saying?

JUSTINE CHEW: Yes, something along those lines. Thank you, Jeff.

JEFF NEUMAN: Okay. That's helpful. Donna, go ahead, please.

DONNA AUSTIN: Thanks, Jeff. This might be an easier discussion if we had a bucket of money assigned rather than trying to take some of the money out of the application fees of other applicants. So if there's a bucket of money that is put aside through the ICANN budget for applicant

support and it's a separate process to evaluate whether an applicant can qualify for applicant support, that may be an easier way to do it than muddling the two. I'm not sure how this worked last time, but it seems to me that it would be simpler if the applicant support program was run as a separate operation to the new gTLD program in some way.

I think there has to be a separation before any potential application comes into the evaluation process. But as we talk through this, I'm just getting a little bit concerned about how this would run in reality if we don't know what funding is available and how many potential people are looking for applicant support.

JEFF NEUMAN:

Yeah. Thanks, Donna. It's a fair point. It's almost a chicken and egg problem, which is why we have the recommendation of ICANN establishing a pool. In the last round—and I can't remember if this was based on GAC advice or how it came to be, but essentially there was a recommendation that ICANN and ultimately the board agreed and passed a resolution to reserve \$2 million for the applicant support program.

Now, at the end of the day it didn't use all of that money because of the fact that there were only, I think, three applications and only one qualified. So it's kind of a difficult discussion because we don't know where that money, at least initially, is going to come from. We do talk about—and Christa brought this up—when we talk about the fees and the application floor and allowing excess fees to be used towards the

program, but that's only known once all the applications are submitted.

So there's likely going to need to be some money set aside from ICANN. I don't know how, but we sort of need to set some rules before we know where that funding is coming from. I know that's a difficult chicken and egg problem. Cheryl, please.

CHERYL LANGDON-ORR:

Thank you. Yes, Jeff, it is a chicken and egg problem, but we did have an allocation in our time. Any future program would have, I assume, the good sense and fiscal management to have an allocation next time. And the guidance that we need to give needs to be sufficiently detailed but also at a particular level which allows for a lot of the pitfalls and in-the-weeds issues to be properly dealt with by the experts in the implementation aspects as well. So that IRT is going to be critical in this.

For example, Justine's statement that there was a suggestion about a regional balance if one needed to find a way forward of distributing a set of [inaudible] potential applicants that were greater than the bucket of money available does seem all very warm and fuzzy, but has more loopholes than I could think of in five minutes, and I'm sure others can do it as well, not the least of which has been outlined in the chat.

So these are not quickie reaction type decisions that need to be made. These are the things that need to be discussed in detail and thought

about deeply. But also, the implementation is where it's going to be particularly critical. Thank you.

JEFF NEUMAN:

Yeah. Thanks, Cheryl. Absolutely. These are just sort of gut reactions from people just to discuss the subject. But certainly, these will have to be explored in more detail by an implementation team that is set up to, again, experts in these kinds of areas and in distributing grants or funds, things like that that I'm not sure—while certainly I could speak for myself, I'm not qualified to make those decisions or even recommendations on those.

There are some good comments in the chat, some interesting ones about the International Space Station. Not sure how relevant that is, but certainly enjoyable to read. Justine points out—you're right—that we do have a recommendation in here that talks about ICANN Org developing a plan for funding the applicant support program.

Are there any other comments or questions on this section? Sébastien, please.

SÉBASTIEN BACHOLLET:

Yes. Thank you very much. Just to say that when this discussion came to the board, you may wish to ask Bruce Tonkin because he was the one who made the proposal, if I remember well, but sorry, it's a long time ago. I guess he suggested that \$1 million must be available, taken into from the reserve fund if needed. And the discussion was, is it enough, is it not enough?

But [long story short,] it was enough. I don't know if you want to do the same, but at least if you want to know what happened, Bruce is the best one to talk about that. Thank you.

JEFF NEUMAN:

Yeah. Thanks, Sébastien. That's very helpful. And for others, I think you were on the board during that period of time, or around that time, or were certainly involved in the program. So that's really helpful. Thank you, Sébastien.

Cheryl states, "Our recommendations for the future AGB needs to be at sufficiently high level of guidance." Right. Our group really needs to provide the high-level view with the understanding and recognition that we are not the experts on this, or again, speaking for myself—and I'm sure a lot of others in the group that we're not the experts on this and that we just need to help guide that implementation group.

Okay, so we have been through a lot of materials in these three sessions. We made a lot of progress. The next calls—I know we have not gotten to the community applications, but no worries, we will absolutely get to them in time. We are starting up our working group calls again right away, so next week. We will have our calls, and if someone from ICANN can publish the time of those calls, we will certainly continue on these items. We'll make the updates that we need to from this meeting. We will include them in the regular working document that we have. So starting on our next call, we will be back into that document.

And let me go to Kavouss really quickly, and then I'll close it up.
Kavouss, please.

KAVOUSS ARASTEH:

Yes. If you'll allow me, just for this paragraph that you're talking, new issues, there are many things you're talking about, and here saying that changes to applicant, establishing priority. We don't know what are the criteria to establish priority.

Then we say that more qualified. Who could decide that this application is more qualified than other applications? I see some anxiety, some doubt about some [influence] and so on, so forth with priority establishing and the qualification.

So the idea is good, I support the idea, but for all of these, we need to have criteria. What are the priority criteria, and for qualified, what do you mean by more qualified? In what respect more qualified? Thank you.

JEFF NEUMAN:

Thanks, Kavouss. I think we mean there if there are a greater number of applicants than funds available. So we meant the term more as a quantity, not quality. So if there are a greater number of qualified applicants than the funds we have available. I hope that helps explain that. it was not intended as a qualitative assessment.

Okay. So Michelle has posted the timing of the next call. Leadership is going to huddle together to figure out and send out the agenda shortly after this.

CHERYL LANGDON-ORR:

Jeff, sorry, it seems to me—and I know I'm biased here—that it makes sense for us to continue on with community applications on Monday's meeting. We've got the [impetus,] we've got the energy, we've got all that people have prepared for that we didn't get to today. So that's what I would suggest, and that way I don't need to huddle with you.

JEFF NEUMAN:

Okay. There you go. So Cheryl, we're going to go to the next subject, community applications, on the next call. And then the session after that, we will just continue discussing these five topics to get closer to draft final recommendations on these topics, because while we have the energy and the background and all of these discussions, it's best to see if we can get them as close to final as we can and then move on to different subjects.

I'll also note that for the last call in March—or maybe it's the first one in April—we're going to have members of the ccNSO country codes to help us in our discussion about string similarity since there are some overlapping issues.

So other than that, please do check the workplan. We will post that on the list again. That has [inaudible]. So with that—sorry, Kavouss, is that a new hand?

KAVOUSS ARASTEH: Yes. It is your last meeting in the ICANN67, or you have another meeting?

JEFF NEUMAN: This is the last one, Kavouss, that we're having.

KAVOUSS ARASTEH: Okay. So then if it is the last one, just very short, if you have a minute, I really once again formally in this ICANN67 virtual meeting, I think it is incumbent to all of us to express our sincere appreciation, gratitude and satisfaction for all the work that co-chairs have done and will continue to do and the chair of the working group tracks and others, and those behind the scenes, and the secretariat for preparing so many very useful documents that really help us to understand.

I am sorry if I was not able to attend some of your meeting because of the World Radiocommunication Conference. It took four and a half months of my time and was as successful result, but I would join you again to that, and once again, appreciation to you and Cheryl and others. I think everybody will agree with me and we give a virtual applause to you. Thank you.

JEFF NEUMAN: Thank you, Kavouss. This was definitely a team effort. And ICANN Policy, Steve, Julie, Emily, Michelle and everybody else that's been helping out have been excellent in helping us out. So thank you,

everyone, and hope to see all or most of you on the call on Monday.
Thanks, everyone.

CHERYL LANGDON-ORR: Bye for now.

MICHELLE DESMYTER: Thank you so much, Jeff, and thank you, everyone. The meeting has been adjourned. Have a great rest of your day.

[END OF TRANSCRIPTION]