ICANN Transcription

GNSO New gTLD Subsequent Procedures PDP Working Group

Monday, 02 November 2020 at 20:00 UTC

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ANDREA GLANDON: Good morning, good afternoon, and good evening. Welcome to the New gTLD Subsequent Procedures PDP meeting, being held on Monday, the 2nd of November, at 20:00 UTC.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you are only on the audio bridge, could you please let yourselves be known now?

Thank you. Hearing no names. I would like to remind all participants to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise. As a reminder, those who take part in ICANN multi-stakeholder process are to comply with the expected standards of behavior.

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With this, I will turn it over to our Co-Chair, Jeff Neuman. Please begin.

JEFF NEUMAN: Thank you very much, Andrea. Welcome, everyone. It's our … I'm trying to remember what day it is … Yes, it's Monday. So welcome, everyone, to another week. A lot of topics to discuss.

Let me just start by asking if there are any updates to any statements of interest.

Okay. Not seeing any hands or anything in the chat.

Just before we get to today's topics, let me just remind everyone that there are some questions and comments that are on the e-mail list. Please do take a look at them, and please do comment on them. We're compiling the comments from the predictability materials. You'll notice one overlap between the predictability materials from two calls ago and the call we had or comments on systems. There's an e-mail that talks about that. So these are issues that we do need to try to resolve on the list, so I'm very interested in your feedback. Once we get this feedback, we'll just do a status e-mail of where we are on those things and hopefully bring those issues to a close if we can.

Today's issues are going to be application change requests, string similarity evaluations, and auctions. But, when we get to last topic today—the one on auctions—I'm going to refer to an e-mail I sent around I believe it was yesterday; I'm trying to keep my days here straight—on the creation of a small team to try to make sense of some of the comments to see if there is a way to combine the

comments or review the comments and come up with some sort of solution that may address all of them, or at least most of them.

With that, let's jump right into application change requests. That's Topic 20. They're—okay, great. Thanks, Julie, for putting up the link. I'm going to actually go to my own version because it's small to read up on the screen. But, if you can read that on the screen, that's great. More power to you.

On the application change request, you'll see that there was a number of diverse groups that supported the outputs as written, and a couple additional ones that said it wasn't ideal but were willing to support it. Then there were a number of contributors that basically didn't have an opinion on the issue.

Of the ones that did have an opinion or didn't support certain aspects or all of the outputs, there's a couple of common themes that we certainly notices. One of them was that … You'll see, from the first three comments from the Intellectual Property Constituency, also supported by Flip and the INTA and the Global Brand Owner and Consumer Protection Coalition, they wanted to make sure that the … Sorry.

Let me go back a step. In the situation where we allow a change to the application, and the specific change is that we're allowing a change of strings in cases where you have to dot-brands that both have rights in the string, and rather than go to an auction or whatever other kind of resolution there may be, the two or more brand owners decide that they would like to change their strings and come up with a mutual agreement to do so.

The IPC, NTIA, the Global Brand Owner and Consumer Protection Coalition wanted to make sure the new string, which is going to be the brand name plus some sort of descriptive word—we'll get a little bit more into that with some later comments—would also qualify for Spec 13. Technically, Spec 13 at this point is written as that the string has to match exactly the trademark. Therefore, by changing the string, you're technically now having a string that doesn't exactly match the trademark. Therefore, these groups wanted to make sure that we can still qualify these new strings as being dot-brands.

You'll see in the leadership comments that we had assumed that this was going to be the case. In fact, if you look at the rationale, you'll see that that point is in there. But the point that these groups want to make is that it should eb not just in the rationale but should become part of the recommendation itself so that the new resulting strings do qualify for dot-brands, even though they didn't fit the exact definition anymore.

Because leadership that this is just clarifying something that we had thought was part of the original proposal, we do not see any issue with making this part of the recommendation itself. But, that said, I do want to make sure that there's no disagreement with that approach.

Jim, go ahead.

JIM PRENDERGAST: Thanks, Jeff. Just more of a clarifying question for you. If in fact the dot-brand applicant does decide to change the string that

they're applying for, it would not have to be a term that they have trademarked in order to qualify for the Specification 13 designation?

JEFF NEUMAN: No. Sorry. I might not have said that clearly. Basically, what we said is that the string could be their trademark plus a descriptive word, and a descriptive word would have to be something that matches the description of goods and services in their trademark registration.

So, if you took the case that we've been talking about for a while, like SAS—and I probably should have looked at the actual trademark registrations—you have the SAS Airlines and you have SAS, the software and analytics company. Let's say they both agree that the airlines would change it to SAS Air, and let's assume that the analytics company did SAS Analytics. You would still have the trademark in there—the SAS. And the analytics would be derived from the description of good and services, and the Air would be derived from the goods and services of their respective trademark registrations.

JIM PRENDERGAST: And, with that descriptor, it would then, in fact, still qualify for Spec 13, even though it doesn't have a trademark for that specific term?

JEFF NEUMAN: Yeah. That's what we're saying, yes. It's the unique exception so that the brand doesn't lose the protections of being a dot-brand

simply because it adds the descriptive term but only because it's changing its application so that it doesn't have to enter string contention and auction, essentially.

JIM PRENDERGAST: Thanks for the clarification. I'm not sure all would agree with that, but it's clear in my mind. Thanks.

JEFF NEUMAN: Okay. Sorry. So when you say we wouldn't all agree with that, what's the …

JIM PRENDERGAST: Personally, I don't have an issue, but I have feeling there may be others who are either on the call or are not on the call who have a concern with it. But I can't speak for them. I know that were some concerns when we talked about this, about broadening it to include non-trademark terms.

JEFF NEUMAN: It still does incorporate the actual trademark term plus the descriptive word that's in the trademark registration. What we're not saying is that all applications for trademark term plus a descriptor would qualify for dot-brand. It's only in this unique situation where you have two or more entities applying for the same string, and the brands decide by mutual agreement that one or both of them change their strings to something else. So it's pretty narrow.

As Paul is saying, yeah, there's an example. Delta could be given to the airline, and faucet company and it could each change their string—Delta Faucets. Right. But not something that's completely unrelated, like Delta cellphones. Yeah. And it would still have the protection of a brand TLD, meaning it could be a closed TLD and it can be only utilized by that brand owner and/or its affiliates and/or trademark licenses. And there's some other protections in there for brands.

Yeah. Susan just points out that that's what's in the rationale anyway, but years down the road, people may not be aware of the rationale and may just look to the rules. So it makes sense to just clarify that.

Moving along then to the next set of comments, there were four comments in this part that we believe either have already been resolved through our previous discussions or are noted. But it doesn't seem like it's the type of things that we'll do anything about because we've had discussions already about these things.

For example, there are some that oppose allowing anyone to change their strings. There are some that are worried about the gaming that could result. Then some are reserving their views until after the guidebook is drafted. But these, again, seem to cover issues that we've already discussed many times, and I don't believe these comments we need to go over one by one.

Then we get to Line 19. Actually, 19 brings up the same issues that we just talked about with the brand Spec 13 treatment.

Then we get to the Board comments. There's a couple here that I just wanted to note, not that we need to necessarily discuss. But it's highlighted in red there that the Board—and sometimes Org does this, too—sometimes makes statements that say, "Well, this makes things more complex. And an increase in complexity, while it increases flexibility, could lead to higher costs." But they don't really say anything more than that. So, from a leadership standpoint, it's, "Okay. Thank you for that, but this is in line with our discussions. We'll note it but then move on."

Just looking at the list. Okay.

Then ICANN Org presents, as they do on a lot of these subjects, a bunch of more tactical implementation details. So we'll note a few of them. One—and this comes up, I think, elsewhere in other sections, so I'll state it—is essentially that they don't want us to use the term "public comment" because that has a separate connotation in the ICANN world of being, what, 42 days or 40 days or whatever it is. They understand that there needs to be comment on these changes, but they don't want to call it an ICANN public comment period. They'd rather have it call it something like an operational comment period, just to avoid confusion.

Let me stop there and go to Anne.

ANNE AIKMAN-SCALESE: Just quickly, these Board comments, particularly the first one—how are those related to the operational design phase proposal? It seems the concern being expressed there—what would be the

acronym, [ODT]?—is actually calculated to address that type of concern in a way. Or am I off-base?

JEFF NEUMAN: Well, I don't know how thorough the operational design phase is going to actually be in terms of projecting the exact costs, but yes, when they are putting together their budgets and everything else, they're going to have to consider all these types of proposals that we're making, including ones that may add some complexities to the system.

ANNE AIKMAN-SCALESE: Yeah. So I guess what I'm thinking is that that's the answer to the Board's comments there in a way, but I don't know. Is there a public comment period that's been specified for the operational design phase?

JEFF NEUMAN: Not really. They were soliciting comments during ICANN69, and I think there may be some groups that are … Well, I know the council is thinking about writing a comment on it, but I don't think there's an official comment period.

ANNE AIKMAN-SCALESE: And it's nothing that we want to comment on as a working group?

JEFF NEUMAN: I don't think so. I think we need to focus on the policies and our implementation mechanisms because the design phase is not really the point at which … It's not like ICANN is going to be ruling some of these in or out. It's just going to be trying to come up with overall budget information, as well as resources and a whole bunch of other things. So I don't think we need to.

CHERYL LANGOND-ORR: Jeff?

JEFF NEUMAN: Yes.

CHERYL LANGDON-ORR: Thanks, Jeff. We welcome and we publicly [inaudible] with the design phase, but we don't need to respond to public comments received. We need to consider public comments received, but we don't need to react or respond. We are doing as much [inaudible] can by saying, "Yes, they've been noted," "Yes, we've discussed them," or whatever necessarily differently [towards] everybody else's. So I don't think we need to react just because the Board has said it.

JEFF NEUMAN: Yeah—thanks, Cheryl—especially a comment like this that just really said it increases complexity and cost. This comment does get repeated several times, not just by the Board but also ICANN

Org. But, again, I think that's not a substantive comment on the actual proposal but just a general statement.

ANNE AIKMAN-SCALESE: Thanks, guys. I appreciate it. I also note that, as Karen has noted in chat, the operational design phase happens before the policy recommendations are approved. So that's why I was bringing up the relationship between the two. But thank you.

JEFF NEUMAN: Okay. Thanks, Anne, and thanks, Karen.

Let's see. ICANN Org … The other things we noted as leadership are—oops. So there was a question that was raised by ICANN Org that said, "Are there …" So this again is all under the application change process. ICANN, in their comments, states that some changes they didn't allow in 2012 to be made [was] because they related to CPE (Community Priority Evaluation). So the question we need to consider is, are there certain areas that we think in the application should not be able to changed because it relates to a particular kind of evaluation?

Is there any thoughts on that?

From the perspective that we were looking at, essentially, we didn't necessarily see that there were areas of the application that shouldn't be subject to change. Now, perhaps we don't allow certain things to change while it's in the middle of a particular evaluation. But, if it's prior to that evaluation occurring, or even after that evaluation occurring but to address issues with the

evaluation, I'm not sure we want to set some hard and fast rules about not being able to make changes to certain sections. But this is something I'd love to hear other thoughts on.

Okay. It's a quiet group. If there's no interest in that, then let's go into the next one. I found this was an interesting one, but I think it's got a fairly simple solution. ICANN Org rightfully points out that, in 2012, there was no dot-brand Spec 13 when the applications came in, so there was no dot-brand evaluation that occurred during the main evaluation process. Any evaluation that occurred for someone that wanted to be a dot-brand actually occurred either while they were signing a contract or after they signed the initial contract. So it wasn't something that was actually evaluated. But, if you look at our rule, which says that, if two brands are applying for the same string and they would loke to change their strings so that they no longer are in contention with each other, and of course not in contention with anyone else, and it matches their trademark plus a descriptive word, then it would logically reason that brands—at least these brands—need to be evaluated as brand TLDs prior to accepting the change of string because, if they don't qualify as a brand TLD, then they don't qualify to make the change of strings.

So we can do one of two things in this situation. One, we can say that everyone is asked to fill in a checkmark or something saying whether they're applying for a brand string. Then, if it's applying for a brand string, we could either say that all of those brand strings are evaluated against Spec 13 right away. Or we can say that you only need to evaluate those that have contention for which they're proposing to resolve that with a brand plus

descriptive term. So you don't have to review every dot-brand string to see whether it qualifies for Spec 13 out at the outset—only in those circumstances where the brands are choosing or electing to change strings. So those are, as I see, the two options. There may be some other options, but those are two that I saw right away.

Paul, go ahead.

PAUL MCGRADY: Thanks. We may be jumping ahead a bit, but the other place where this might pop up is if we listen to the public comments indicating that the closed/sealed bid of last resort is not workable for dot-brands. So there are lots of proposals from public comment that dot-brands be exempted from that process. And, if that is where we go, which makes sense to me, of course, then the dot-brand would have to be qualified as a dot-brand before it could be exempted out of that. So it does seem like there's some momentum up front to identify dot-brands.

The really good news is that there's not much to it. You just indicate you're not going to sell second-levels. The only second-levels will be within your organization—the applicant, its affiliates, its trademark licenses—and you've got to download a copy of a registration certificate from an appropriate trademark office. So it's not like there's some bigtime thing that needs to happen. It just sounds like it needs to happen sooner. Thanks.

JEFF NEUMAN: Thanks, Paul. Sorry it took me a second to get off mute. So we're sort of bringing two things together. But let's at first just assume for now that everyone is doing the sealed bids. It just makes it easier to assume that. Would you be in favor of reviewing everyone that wants to qualify for a dot-brand—like, indicates or checks a box or whatever—or just those that are in contention? Because even the auction ones would still be just those in contention.

PAUL MCGRADY: Jeff, that question is directed at me, right? If so, I'm fine if there's some reason to put off evaluating whether or not somebody qualifies as a dot-brand until later if, at the end of the day, the only ones that matter are the ones in contention. That seems fine with me. I guess there's some sort of efficiency upfront that overall evaluations of everybody that has designated it … that it would be a dot-brand just because that's a bit of news to come in after the fact. The only reason why there was a Spec 13 framework is because ICANN Org fought us tooth and nail on "recognizes brands as a thing." I guess, if I were the outfit that's in the business of signing registry agreements for terms that contain famous brands, I might have dug in, too. But, in any event, we're not in that same situation. The dot-brand ship has sailed.

So the short answer is I see no harm in doing it up front. If there's some sort of efficiency in doing it later, I'm fine, too, as long as we are evaluating the ones up front that need to assert dot-brand status for the two reasons we talked about so far. There may be other reasons. Thanks.

JEFF NEUMAN: Thanks, Paul. It's definitely clear that brands that want to change their strings certainly need to be evaluated as being dot-brands prior to accepting those string changes, and it may need to be evaluated for other purposes that we get into later on. So we don't have to express an opinion in one way or the other. As Martin said, this could be figured out during the IRT. We could just recognize what ICANN Org has recognized, which is that, at the very minimum, those that want to change their strings need to be evaluated to see if they are dot-brands in order to test to see whether they're allowed to change that string. So I think that's all we really do need to say. Then whether all of them are reviewed or not can be figured out during the IRT.

My document keeps shifting back and forth. The only other comment I think I see, which I thought was actually in the rules anyway, is that ICANN—actually, it's not the only other one—wanted to confirm that a dot-brand string change must be in the same language and script as the TLD string and in the trademark registration provided. So I think that was a given. So, if you have SAS, and you've indicated that your string is ASCII and it's English, then you're change has to be SAS descriptive term in ASCII English. It can't be in some other language. So I think that seems like a no-brainer. But I think that was the intent anyway.

There was a wording change that you can go read later on that I think makes sense to change it around to the way that ICANN is worded – #3.

Then ICANN states rediscussing one of the items we just covered, which is that ICANN was basically saying, if we allow the brand plus a descriptive word, then it's not really a dot-brand. What we're saying is, yeah, we understand that, but we're giving the dot-brand this one narrow exception so that it still is a dot-brand even though it changes its string.

Is that it for this section? Again, every time I scroll down, it just scrolls too far. Yeah. Okay. So that's it for the application change request. Not too bad there. Some clarifications there, but not much other than that.

Now we go to the next topic, which is the string similarity. This one gets a little bit more in depth. Sorry, I'm going to pull mine up, too. There were a number of groups—the NCSG, BRG, IPC, BC, INTA, Article 19, the ALAC—that actually supported this as written, which is good news, plus, if you add on those that didn't think it was ideal but still supported plus those that had no opinion. It really does show that there is at least wide acceptance of this section, which is good. But, that said, there still are some comments that we got that were filed that you'll see that want to allow both plurals and singulars of the same term. So, with those that have filed those comments, the leadership response was, "Thanks. We've discussed this before. There didn't seem to be any kind of overwhelming opposition to treating plurals and singulars in the same contention set. Therefore, leadership does not see a reason to rediscuss that issue."

That said, though, the registries do point out—this is one of the other brand exclusions here—that … The gTLD registries are saying that the single and plural variations of the same string

should not be permitted except where it's an exclusive-use TLD, meaning it's a dot-brand or a code-of-conduct-exempt registry or TLD. So the registries are not necessarily saying that they … What we say in the recommendations [is] we don't limit it to dot-brands or exclusive-use TLDs. We just basically say the rule is looking at the intended use. And, if the intended use of the strings are different, like "spring" and "springs" and "new" and "news"—there's many other examples we can use—then it should be allowed, but the registries are saying, no, it should only be allowed if it's exclusive-use TLDs. This was not a view that was expressed by any others, other than the registries, I believe, but, if we scroll down, maybe potentially the IPC may have? Or the BRG? No. Okay.

So have a decision to make as a working group. This was only recommended by one group. So do we want to—it is only one group—revisit, or do we want to just say, "Well, it does seem to have a good amount of support not limited to just exclusive-use TLDs"? From the comments, it was not a widely held view.

I'm just waiting, giving everyone a second to think about it.

CHERYL LANGDON-ORR: I'm not seeing a land rush of people.

JEFF NEUMAN: Yeah. Okay.

CHERYL LANGDON-ORR: It's 40-odd of us today here—ah, there we go. A few people with their hands up. There we go.

JEFF NEUMAN: Okay, good. Susan and then Greg.

SUSAN PAYNE: Thanks, Jeff. I'm not arguing a particular position here one way or the other, but I think there are also some comments that perhaps don't say what the registries say but do raise concerns about the intended use element. So maybe it's worth us thinking of those comments at the same time.

JEFF NEUMAN: Yeah. Fair enough. So let me go to Greg, and then we'll get into the intended use.

GREG SHATAN: Thanks. I agree with Susan that the overall objection doesn't seem to be widely held but it does touch on an issue that comes up in other contexts as to the concept of intended use. So, given that this was really only held by one group and maybe a couple of members of that same group that are directly beneath it on the page, typically that would say to pass it by, unless, of course, it was insanely persuasive to everyone. It doesn't mean a single group can't come up with an amazing idea at any given time. But I think there is an issue that needs to be seen as a being a little

more at least worth discussion. I'm not saying it's worth making any changes. Thanks.

JEFF NEUMAN: Okay. Let's talk about the intended use component because obviously what we're saying is that plurals and singulars should not be allowed unless the applicants can show that they have different intended uses for the strings. There are some groups that have stated that it is difficult to show intended use and that, if it's documented in a PIC or some other contractual commitment, then it's often difficult to enforce and may introduce some level of unpredictability.

The SSAC said—sorry; I'm just reading some of the comments—(not on this particular one necessarily, or maybe it was this one) … But the concept of intended use comes up a few times, not just in string similarity. So the SSAC did say that they had concerns about trying to figure out intended use and that it was sort of subjective. You'll see, if you scroll down, there are some … GoDaddy registry also talks about it being difficult—GMO, I think, as well.

I'm going to skip Anthony Lee's comment for the moment because that's a different issue. I'll skip the ccNSO one for now.

The ICANN Board does also bring up there same objection that we talked about a couple weeks ago, which keeps coming up, which is this whole bylaw issue of whether they're allowed to look into the content of the string and whether that poses an issue with their mission.

But we only had a couple options here. I guess the three options are that you could say, “No plurals and singulars, and that’s it. That’s a hard and fast rule.” You could say, “No plurals or singulars except for brands or exclusive-use TLDs.” Or you could have this concept of intended use. I’m not sure there were too many comments down this path. I certainly know the Board raised a couple issues, and ICANN Org raised a couple issues, with intended use. But, at the end of the day, we need to make a choice as to what we want to do. Our recommendation, when we release the draft final report, was that, if they had different intended uses, you could allow them to coexist, and also that you can enforce those through either PICs or contractual commitments.

Greg, go ahead.

GREG SHATAN: A couple of thoughts on this. First, I think what’s important in choosing between any of those options—I think there’s a fourth option, which is just “free market, and let plurals and singulars co-exist broadly”; I’m not saying that’s the best choice or even a good choice, but it is a fourth choice … But the bottom-line question is, what harm are we trying to avoid, and which of these is best tailored to avoid that harm without unintended consequences? So I think that’s a big filter we have to put this through because, frankly, I’m not exactly sure what harm, other than some sort of general confusion between audi.car and audi.cars or something along those lines …

On a separate note, the whole idea of plurals and singulars, I think, needs to be perhaps more focused because I'm concerned we're thinking—many of us—as English-centric people. We're the majority, but not all plurals are formed by putting "s" at the end of the singular. But, if somebody has .mouse, does this mean that nobody can get .mice? Is that what we're aiming at? What about plurals and singulars in other languages? What if a plural is meaningful in a different language that's different from what the singular that we're concerned with is? Are we somehow making life unnecessarily difficult for different uses? So I think those are all indications in one case with plurals not being formed directly by putting an "s" at the end of a place where the harm isn't really there and the rule needs to be tailored. The second gets into the issue of unintended consequences. We need to think poly-linguistically and even poly-script-ly. A lot of this doesn't work for certain IDNs because there's probably different ways that plurals are formed.

JEFF NEUMAN: The recommendation is that you can't have a plural and singular in the same language and the same script. That's what the recommendation says. It doesn't say anything about adding an "s" or an "es" or anything. It's plural and singular, however that is, by using a dictionary. So it's not that difficult to figure out what it is a plural and/or singular of the other. You can see two applications and know one is technically the plural or singular or the other. Then you look to use to say, well, are they using it in that manner? If not, then you can allow them to coexist.

But the reason why we're not … You added that fourth option. That fourth option is not … I didn't put it as an option because, with the exception of one or two commenters, everyone supported the notion of not allowing plurals and singulars. So I consider that one off the table because there was just too many comments that supported the no-plurals-and-singulars rule.

With that said, understand intentions can change. That's why you have contracts. And you have contracts that can be enforced. Certainly I understand why the registries made a distinction saying that you can have it for brands because it's pretty self-evident that, when a brand is using their trademark terms, one in theory could be the plural of the other, but they're allowed to coexist because they don't have the same meaning, or they're with completely different goods and services. Certainly one can understand why the registries would argue that.

I'm just reading some of the comments.

At this point, with the language, it's not as complicated an issue, at least at a high level, because there are dictionaries that can tell the plurals and singulars of each other, even if they are in another language that's not English.

Katrin is asking, what's the harm? We're not going to re-go-over all of this. I think the one thing I pointed out the last time is it's hard to tell what harm there is because, if you look now, most of the generics that had singulars and plurals are now owned by the same entity because they felt it was enough of a threat to actually acquire both of the versions. So it's almost like the market has told us that it does view these singulars and plurals as being either

confusing or ones that need to be run by the same organization because that's what the market has done. So I don't think it's helpful for us to get back into that overall discussion.

But, that said, there are several other areas where we do have intended use, and we can have contracts, and those contracts can enforce the requirements to make sure that a registry that was in contention or could have been in contention because it was a plural or a singular of another registry or in fact may not have been allowed because they were a plural or singular of an existing TLD … You can have in their contract what they cannot do in their use. If that means that they need to enforce it against registrants or registrars and ultimately registrants, then that's something that it'll have to do.

Marc is saying, "Are saying now that we need to have actual statistical evidence of harm to prohibit or restrict something?" I think there was overwhelming opinion in not only this group but in previous ones that plurals and singulars should not be allowed to coexist when they are intended to be used for the same purpose.

Does anyone want to address if there's a way that we could make intended use a little bit easier to flush out or enforce?

Okay. Maybe, as we go on to some of the ICANN Org questions or other ones, we can get more specifics.

If we can scroll down. Okay. Again, skipping—actually, no. Let's take this in order now. So, as you're thinking about that, Anthony Lee doesn't address here singulars and plurals but rather something we did spend a couple of sessions talking about: the

notion of ideographs, which are characters that look the same but have completely different meanings. It could be in the same script or even in different scripts. Leadership looked at this and went back to our notes on this subject. We didn't come to any kind of conclusion and thought that this was a little complicated for us, and it's the type of thing that we (leadership) are recommending. We actually give this comment to the new IDN PDP that's about to get underway—something that perhaps they can look at. But it's not something we think there is support to not allow or allow ideographs for.

I'm waiting to see if there's any comments on that.

Okay. Then we scroll down. The ccNSO Council—I'll just touch on this one—asked why it can't be the same process that [we have and that] they have for the fast-track. We actually did invite the ccNSO in for a session. I think you might remember that. It was a bunch of months back. But, at the end of the day, we realized that the gTLD process has so many other components to it, including objections and other aspects, that it just didn't make sense to have the exact same mechanism as the cc's or to do a new PDP to just try to mirror them.

So that's why we do not recommend adopting that comment. Registrars have this note a couple times, which is that they want to make sure that the registrars are not the ones at the end of the day that get all the burden from PICs and from enforcement. So you'll see that again in the PICs section. Nothing for us to change at this point but just something they wanted us to note.

Then we get to the Board comments. The Board does want additional guidance and recommendations for having objective criteria to determine the different intended uses. Now, this is something—I see Donna's hand … Actually, let me just go to Donna. Donna, please?

DONNA AUSTIN: Thanks, Jeff. Just on the registrar comments about enforcement, how does that work in practice? I'm trying to think of the intended use. So, if we had "spring" and "springs"—that was the example used in the report—would it be the responsibility of the registrar when it was selling the domain names to have a flag that says, ""Spring" is only if you want the spiral kind, and "springs" is only if you're interested in what the other example was"? I guess I'm just trying to understand whose responsibility is it to enforce that. The registrar or the registry?

JEFF NEUMAN: At the end of the day, it's the registry, but the registry can, in coordination with the registrar … So the registrar comment is really—you'll see it repeated a couple times … What they did not appreciate was, outside of this context, the Spec 11 3B stuff or the 3 stuff where basically it was that registries have to have in their agreement something that requires the registrars to do A, B, and C. The registrars felt that that was a backhanded way of revising the registrar accreditation agreement without negotiating with the registrars. So, from the comments and from discussions I got, it's not that the registrars are not willing to assume some responsibility (because it is, at the end of the day, their customers)

but they don't want all of the responsibility like they have in Spec 11, where it's basically the registry wiping it's hands clean once it puts something into the registry agreement. So hopefully that gives a little bit more context for the registrar comment.

I think the Board's note … Again, if we still like this policy of the different intended uses, one of the things that we can refer to IRT is to come up with more concrete guidance on how to objectively evaluate whether they have different intended uses. So the high-level policy is to allow the strings to coexist if they have different intended uses, and then the IRT would work on how to test for that.

Then the Board points out that, obviously, there has to be commitments by registrants made to use the TLD in conjunction with what the registry is bound by or what the registry agrees to. But it says the Board is—again, this is another PIC thing—concerned that the proposed reliance on PICs to restrict the use and potentially the content of names registered in delegated TLDs raises questions about compliance with ICANN's bylaws. So this brings us back to the same issue, which I think we can work through. But there's another area where that appears.

The ALAC comments on strings that have been applied for but maybe not delegated or not in use. They argue that there isn't a recommendation or clarity on an approach for treating applications in the next round for strings which may be found to be confusingly similar to strings which have been applied for in the 2012 round but remain unresolved or not yet delegated. So we do have a proposal on that, and that's in the application assessed in rounds, basically saying that … Well, actually, it's two parts. One is that

the recommendation we do have is that we don't allow exact matches for strings that have been applied for in a previous round but are not yet resolved. But what do we do with the situation where there is a string that's found to be confusingly similar to one that was applied for in 2012 but not yet resolved? Leadership was discussing this and thinks that the option there is to basically just put those applications on hold until, [with] the original application, it's decided what to do with that.

I'm trying to come up with an example. Let's say .web is not yet finalized by the time that the next round comes, and someone applies for . … I don't know. What could be confusingly similar in this situation? I was going to say "webs," but that was applied for. Maybe that's a hard one to come up with—something confusingly similar. The point is that, if something is applied for that is confusingly similar but doesn't identically match a string that is not yet final from a previous round, you first find that that string is in fact found to be similar. Then, if it is, you would put that application on hold until the final resolution of the 2012 or the previous rounds—how they deal with that string or the one that's confusingly similar—and then take it from there. So, if the original string in the 2012 round never gets delegated or never goes forward, then you can release the hold on this confusingly similar one and just move forward with it because there was nothing that was delegated. But, if it is similar, then you'd have to apply this same rule here that, if it's similar, then it doesn't get allowed, unless it's a plural/singular, in which case it would get allowed if it's got a different intended use. Sorry. That's complicated to just say orally. It's probably one of those things where it's better if you could see it in writing or see the example in front of you.

There are some comments from ICANN Org that deal with variant labels and LGRs. We note this. I think that's all we can do: just note that the string similarity review process needs to take variance sets into consideration. So that's noted.

Oops, I think we skipped a couple here. Yeah. Regarding Recommendation 24.3, this is an interesting one. We talked about using a dictionary for words—you can find the plural and singular—but what about things like acronyms or abbreviations? You can have, for certain acronyms and abbreviations, plurals and singulars of those. The example that ICANN uses is .tld and .tlds. I would think that, if it's an acronym and it's a plural acronym of a singular acronym or the other way around, then the same rule about plurals and singulars apply. But, if it's merely a string that's not an acronym but just any three letters, like XYZ, because that's not a word nor an acronym, then by definition, you can't have a plural or a singular of that non-word and, therefore, you would allow both to exist because there is no plural of XYZ or some random string that doesn't necessarily have a meaning.

Elaine asked the question, "Who decides what's an acronym?" Well, in the purpose of the TLD, there should be a description of how they want to use it and what it stands for. So, if you were to look at the 2012 applications in Question 18, you had that. You had people put in what their purpose was. And, yes, it goes, again, back to intended use.

I'm just looking at the comments. Just looking at … okay. Thanks, Martin. So, yeah, I think it's important to look at the intended use because that goes to the confusion element in a way. Ultimately, at the end of the day, it's to prevent consumer confusion from

having a plural and singular, each with potentially different rules for the same set of purposes. I think a lot of this is logical. Yes, there's going to be some edge cases, but I think, at the end of the day, most of the cases will not be edge cases.

Elaine says—actually, this is a good one because this is pointed out in some of the comments—"A registry can have an intended us but may not be able to do much about the content displayed on the domains." Elaine, I'm going to challenge that. Why? Why can a registry not requite in its registration agreements that second-level names only be used in a particular way?

ELAINE PRUIS: Can you hear me, Jeff?

JEFF NEUMAN: Yeah. Go ahead.

ELAINE PRUIS: It's Elaine. I think, if it's a—what do we call those; they're not closed TLDs—restricted TLD, then yes, but are we now saying that any registry that expresses an intended use has to become a restricted TLD?

JEFF NEUMAN: No, not any registry. But any registry that's allowed to coexist as a plural and singular? Yes, they have to become restricted—restricted to their area. Otherwise, we wouldn't have allowed them to coexist. So, in a way, yes, I think that is what we're saying.

Donna, go ahead.

DONNA AUSTIN: Thanks, Jeff. This almost comes back to contention set resolution because “spring” and “springs” in their intended purpose have the same intended purpose. Are they in a contention set?

JEFF NEUMAN: If they have the same intended purpose, and they’re both applications in the same round, then, yes, they’d be in the same contention set. Right. If one of them had already existed as an existing TLD, then the other one wouldn’t be—and it’s the same purpose—allowed at all.

DONNA AUSTIN: Right. But, if they came in in the same round—“spring” and “springs”—and they had the same intended purpose, then they would be in a contention set.

JEFF NEUMAN: Yeah.

DONNA AUSTIN: Right. And they would not have the opportunity to change their intended purpose to get out of the contention set? Or would they?

JEFF NEUMAN: We have not discussed that one way or the other. It would be a pretty big change, and it would be subject to comment. But we have not discussed whether that would be allowed or disallowed, for that matter.

DONNA AUSTIN: Okay. Thanks.

JEFF NEUMAN: Anne, go ahead.

ANNE AIKMAN-SCALESE: Hi, Jeff. I'm just wondering if this whole question of intended use should somehow in our recommendations be lodged in the registry voluntary commitments category. The reason I'm asking that relates to ICANN's previously expressed concerns about content regulation and about how they would enforce. I know this is a crossover with two different subjects, but it does strike me that there's a pretty big difference between [inaudible] and continued compliance with intended use versus eligibility safeguards regarding licensing. Those are pretty objectively monitored. I'm just wondering if we need to consider whether intended use would have to be an RVC category when we get to that section about how that's going to be enforced and whether or not ICANN is engaged in content regulation. Thanks.

JEFF NEUMAN: All of these areas with intended use or purpose will ultimately be subject to how we come out on that. I think we'll be okay, but, for now, I'm going to ask if you could just put that aside. Obviously, if we can't find out something that works, then it'll blow up a lot of different things. But I think that there are ways to make it work, and we're still trying to get a call—the leadership team our Board liaisons—to talk about this issue and see if there are ways to work through it.

Elaine brings up that there's no requirement to adhere to Question 18's statements. I think what we're saying, though, Elaine, is that, in certain circumstances, whether it's Question 18 or whatever you want to call it, I think that there will be binding commitments. Look, if you want a singular and plural to coexist, then there'll be a binding commitment to make sure that they are used for different purposes. If you're okay with it all being in the same contention set and you roll the dice, that's good, too. We're also going to see other areas where Question 18 or that type of thing will come into play or can come into play. If you're going to make commitments, let's say, to get out of an objection, or if you're going to make changes to your application to cure any potential issue that a third party has, those things are going to have to be enforceable. So, yeah, we know how it came about in the last round, and it was an afterthought. It was just thrown in there. But I think, for these limited purposes, where intended use does have a meaning, there will need to be enforcement.

Jamie is asking the question, "What happens if one applicant wants to stick to intended use, and the other applicant wants to get in contention? Which route is taken?" The answer actually

depends on what's in contention. If there's four applications for the singular, and one for the plural, if the plural one wants to go into the contention set because it wants to use it for the same purpose as the four singular ones, then it's going to go into contention resolution regardless of what the singular one wants to do because the singular one has three other applications for it. So, Jamie, it's one of those things where you have to look and see what it's in contention with.

Yeah, Kurt, we cannot anticipate every single scenario. That's true. So, if there's two applicants, you can't force two parties into contention. So, if one …okay. So I see the question that you're asking: if the plural says, "Yeah, I'll commit to only using it in this way," but the singular one doesn't want to commit in only using it in that way. Hmm. Good question. Let's think about it. Look, at the end of the day, there are a couple possibilities here. We can just say, "You know what? Only brands are allowed to have plurals and singulars, and, therefore, it doesn't matter with the intended use." Or we could say, "The ban on plurals and singulars is absolute, and there's no exceptions." Those would be the easy ways out.

So I'm going to ask everyone to think about that as we go on to the next thought. I'll put it into e-mail, but we do need to come to a conclusion. No one is saying it's going to be easy, but, if we're trying to expand the space and not put everything into a contention set where plural and singular have different meanings, then there's going to be added complexities.

And Donna is right. For this to work, every applicant needs to identify its intended purpose and the outset and be willing to be

held to it. Right, but, Donna, you could say, “My intended purpose is to have a completely open TLD for anyone that wants” … Yeah, you have to be ready if you want to coexist with another to have things enforceable.

All right. Just to clarify some of the other comments, ICANN Org says, “Well, what about other types of inflections or “actor/actress” or “house/housed?” No, there’s no recommendations on that. Those are allowed. We’re not touching those. We’ve made an affirmative decision not to expand this into anything other than plurals and singulars. So we’ve already considered that. So we note ICANN’s comment.

Kurt says, “This will be another level of complexity: [inaudible] applicants.” Possibly, Kurt, or it may actually encourage new applicants if they think they can coexist. “We don’t know” is the answer at the end of the day. Like I said, the easy rules we could, as a working group, adopt, but I’m not hearing much in the way of comments of changing our recommendation. So it’s something we need to think about.

I want to jump to auction for a second. Elaine, I’m going to take this to the list. I’ll present the choices, and I’d like to get feedback from everyone. And please do respond. When only two people respond—thank you, Donna and Anne and (or three people) Justine—it’s great. Love the responses. But we would love other people to weigh in, even if it’s only a 1+ to one of the other commenters. So it just helps us figure out if there’s certain levels of support.

Can we go to auctions real quick? I say “real quick” not because we can solve this thing real quick but because … well, okay. “And Rubens.” Thank you, Justine. Rubens does weigh in, too. Thanks. So I sent around an e-mail earlier or this weekend. There’s comments all over the board—not in a bad way—on this. There are very few that support it as is. You’ll see only a few individuals. Then there’s a group that supports it generally but still has some comments that they don’t support. It falls into several categories. So there are comments on—I don’t know if you want to pull up my e-mail. Is that something you can do easily? Sorry. I probably should have … awesome. Okay. So the Board has their comments, which I tried to summarize in #4, but then the other comments are in really four different—I think four different—categories, if I remember correctly. So we have comments in general about private resolution of contention sets. There’s a number of groups that are not in support of that and don’t see a way that it could work. Where it says “GoDaddy,” I do need to clarify it’s the GoDaddy registry. It’s just that I was short-handing it, but it’s the GoDaddy registry, not the registrar part. So the comments fall into private resolution in general, mechanisms of last resort/auction, and how the auction is conducted. Then there’s the mechanism of how the auction is conducted, and then there are a bunch of comments on this bona fide intention because we say that each applicant must have a bona fide intention to operate the TLD, and that’s not something that’s easily objectively defined, as we knew going in.

So, on the private resolution, there are still groups that do not support any form of private auction. On the other hand, the

GoDaddy registry doesn't see the issues that we pointed out in our working group: the harms of allowing private auctions.

On the mechanism of last resort, there's a few comments from the IPC and brand groups and the BC that do not like sealed bids for brand TLDs. There are a couple groups, like the BC and the ALAC, that still prefer the Vickrey auction, though I think we have discussed that on a number of occasions. Then there is the GAC, who still don't think that commercial and non-commercial entities should ever go into auction with each other. Then there's a concern from the Registry Stakeholder Group that the only way to change your bid with a sealed bid is to withdraw your entire application. So they didn't necessarily think that that was better.

With the bona fide intentions, I think all of the comments could be classified as, "This is way too subjective. How the heck do we enforce it? We're worried that it's just so subjective that it could easily be gamed."

So what leadership would like is to see if there are a small group of individuals—by "small," we're not limiting the size—that are interested in this topic who can see if they can take all of the comments in the collective and try to work on a set of either clarifications or improvements to what we the working group have already put together to see if we can resolve some of these situations. Obviously, some of them are polar opposites, so you can't really satisfy them. But others are more worried or maybe a little less concerned if, for example, you can come up with some objective requirements for a bona fide intent or something that would make some of these other groups feel more comfortable.

So that's the goal. Take 14 days to do it, and then, of course, bring it back to the full group so we can discuss.

So Paul has volunteered. I think the best way to do it … Obviously, if you say you want to volunteer in this chat, we'll take note of that because we have the chat. If you decide after the call or want to think about it for a little bit, please send a note not to the full list but to … Steve, Emily, Julie, which address should I tell them to send it to so they don't flood the full list?

STEVE CHAN: Hey, Jeff. There's probably lots of options that work for us. You can send it to any of the three of us, or all three of us together—Steve, Emily, or Julie—or you can use our Secretariat address as well. Whatever you prefer.

JEFF NEUMAN: Okay. And if it gets sent to me, I'll forward it to them. Just don't send it to the full group because—I can't stop you from doing it—I think people might get too many e-mails.

So you guys that are volunteering, Cheryl and/or I or both of us—I guess I said "and or I"—will certainly pop in to the group and make sure everything is going okay, but we want it led by you all to see if there is a way to address the concerns that are raised. The Board has some concerns. We didn't go over those on this call, but … Look, the summary is not meant to take the place of reading all these comments, but I did try to sum it up. I have not included the ICANN Org comments in here, not because they are not worthy of being considered, but I think a lot of them really boil

down to the mechanism and more specifics in implementation. So, once you get past some of these more high-level issues, then you can turn to the ICANN Org comments and address those. So that's specifically why I didn't include it here.

Awesome. Okay, a lot of stuff covered today. If you could get your response to the predictability stuff by the close of business tomorrow, and if you can get responses to the systems stuff—and what else did we cover the last time?—by Thursday, we would greatly appreciate it.

Jim points out that Org did flag stuff that they find difficult to work through.

Elaine, the purpose of this exercise is to see if there's a way to improve our recommendations or guidance to address the comments. So it's a mixture of both. We'd like the comments to be addressed, but I think the best way to address them maybe is through clarification of or improvements to the proposals that we made.

Okay. Lots of stuff. Thank you for hanging in there for an hour-and-a-half. These auctions and eventually closed generics, I think, are the two real tough ones. Thankfully, not every issue is like this. So I think we're staying on track here and happy with the progress we're making.

The next call is on Thursday. I'm waiting for someone to put the time in there if they can. 03:00 UTC. Okay, great. For those of you in the United States, make sure you do your civic duty if you haven't already. Those around the world, I guess, pray for us. No,

I'm kidding. Good luck, everyone. We'll talk on Thursday. Thanks, everyone.

[END OF TRANSCRIPTION]