ICANN Transcription

IDNs EPDP

Thursday, 12 May 2022 at 13:30 UTC

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DEVAN REED:

Good morning, good afternoon, and good evening. Welcome to the IDNs EPDP call taking place on Thursday, 12 May 2022 at 13:30 UTC.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom Room. If you're only the on the telephone, could you please let yourselves be known now? We do have apologies from Michael Bauland, Emily Barabas, and Donna Austin.

All members and participants will be promoted to panelists for today's call. Members and participants, when using the chat, please select everyone in order for everyone to see the chat. Observers will remain as an attendee and will have view only chat access.

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Statements of Interest must be kept up to date. If anyone has any updates to share, please raise your hand or speak up now. If you need assistance updating your Statements of Interest, please e-mail the GNSO secretariat.

All documentation and information can be found on the IDNs EPDP wiki space. Recordings will be posted on the public wiki space shortly after the end of the call. Please remember to state your name before speaking for the transcript. As a reminder, those who take part in the ICANN multistakeholder model are to comply with the Expected Standards of Behavior. Thank you. Over to you, Justine.

JUSTINE CHEW: Thank you, Devan. Welcome, everybody. I think we may be expecting a few more people to join us. We typically have about 24-25 people on the call. So in any event, yes, Donna is an apology again today. So I have the pleasure of chairing the call again this week.

The first step is the agenda, I believe. Let's have a look at the agenda. Yes. Okay. So we have chair updates. Let me do the chair updates. Okay. So I have three things that I need to just update the EPDP team here, which is that, well, for the volunteers that have volunteered to join the String Similarity small group, if you could just please complete the Doodle poll so that we can get a call scheduled in the near future. That would be much appreciated. I'm not quite sure who has completed the Doodle, who hasn't. But in any case, please do complete it if you have volunteered to join the small group.

The second update would be that we are still expecting inputs to the draft text for charter questions A7 part 1, A9, and A10. I believe the due date for that is next Friday, 20th. But in the meantime, I guess staff will send a reminder at some point in time next week before the closing date anyway. Just a reminder, please do take the time to review the draft text. And even if you do have no objections to it, it would be nice to get a message of support or no objections, for that matter, on the list. So in terms of your contributions, it doesn't necessarily have to be anything to do with amendments or objections, really. A message of support is always welcome. Okay.

The third thing that I needed to report on was, in interest of transparency, I just had to mention that in respect of the outreach to the CJK, the Chinese, Japanese, Korean GPs on the matter of single character TLDs in the Han script, we have received feedback from the Chinese and Japanese GP chairs. Staff and leadership are going through that particular two pieces of feedback at the moment, and we're going to check if there's any clarifications needed, and we will take action to seek those clarifications, if needed. We're going to wait on the feedback from the Korean GP so that we can consolidate all the three replies and present those back to the EPDP team here rather than do it in piecemeal. So I hope that's all right. It's just for expediency purposes.

In terms of the agenda, I just like to mention that E2 will necessarily include discussion of E1 part 2, I believe it is. Okay.

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So I'm assuming that there's no objections to the agenda. So we can proceed to carry on the discussions of E2 and E1 part 2. Okay. Ariel, would you like to take us through this?

ARIEL LIANG: Thanks, Justine. I'm not sure to what level of detail we need to review the context of this question because we did talk about what the objection process is and what are the considerations or the backgrounds of the objection process in the last meeting. So perhaps I can just do a brief refresher for folks before we go into the discussion of the charter question.

So, in general, the objection process is the opportunity for business individuals, government entities, and communities to advance arguments against introducing certain new gTLD in a domain name system. There's several types or grounds for the objection to be filed. So there are four. The first one is string confusion objection, if applied-for string is confusingly similar to existing TLD or another applied-for TLD, and it was not caught in the initial evaluation process, then there is an objection process to raise that on the ground up string confusion.

The second ground is legal rights objection. So it's applied-for string fringes to existing legal rights of the objector. And that's related to trademarks or registered and non-registered. So non-registered means some international intergovernmental organization may also raise the objection based on legal rights ground.

The third ground is limited public interest objection. It's for anyone to raise objection against the applied-for string if it contradicts generally accepted legal norms or norms of morality and public order recognized under the principle of international law.

And the fourth ground is community objection. It's filed by established institutions associated with a clearly defined community that will raise some objection to applied-for string. It's for this institution to file these objections based on the community objection grounds.

So there are four grounds for objection. Here what we want to take into consideration is also the context in the staff paper. What the staff paper proposed is there's no need to adjust the criteria or the ground for objection, because in a staff paper, it proposed that each variant gTLD is subject to a separate application. Because they are subject to separate application, all of the applications will go through the objection process as well. So therefore, there's no need to adjust the objection procedure or the grounds or criteria for that.

Also, another item we want to take into consideration is that for SubPro PDP, it has confirmed the continuation of the four criteria for objection. It's proposed some recommendation and implementation guidance to enhance these criteria, but there was no material or substantive change to the objection process. Here the question for folks to consider, there are two, and I think that can be the starting point for our discussion.

First is, must all requested allocatable variant TLD labels be subjected to the objection process? I just want to remind everyone

that there is that EPDP preliminary recommendation that each application can cover both the primary applied-for string, as well as the requested allocatable variant label by the applicant. So because of that, one application may include more than one label per se. So should all of these requested labels be subject to the objection process? That's the first question.

The second question is, should the allocatable variant labels not requested by the applicant also be subject to the objection process? So that's concerning the withheld same entity labels. If they're not requested by the applicant, do they have a role to play, too? So these are the two questions for your consideration and start the discussion. I see Dennis has his hand up.

DENNIS TAN TANAKA: Thank you, Ariel. I didn't mean to interrupt. If you need to continue, I can wait.

ARIEL LIANG: No. This is all the slides for this question. So yeah.

JUSTINE CHEW: The background to this particular charter question was we went through it last week, the last 15 minutes or so of the call last week. I wanted people to have some perspective and to think about it before we actually just went on to discuss the actual questions per se that you see on the screen now. So I'm hoping that people have had time to digest it. If there are any questions or comments, then please feel free to raise them now. At this moment, I will take

Dennis's comments or questions. Thank you, Dennis. Go ahead, please.

DENNIS TAN TANAKA: Thank you, Justine. Thank you, Ariel, for that background context, very useful. I think we understand the basis. We're not here to talk about or dispute correct or adjust any of the basis for objections. The criteria, that's already been settled, that SubPro work, and we're not touching that. So really, the question for this group is those that we see on the bullets at the bottom of the slide here, must all requested allocatable variant TLD labels be subject to the objection process? And whether the allocatable variant labels not requested, what do we do with those?

So let me start with the second one. Talking about the allocatable variant labels not requested. I see this question is similar to the one that we are considering for the string similarity. So fundamentally, we are trying to determine what is the set that is going to be used for the evaluation process? Is it going to be the three levels that we talked about? The primary plus allocatable and requested, the second level is the primary plus the all allocatable, and the third level, the primary plus allocatable and blocked. I think everybody remembers, though. But I think for the second question that we have here for the objection process, in my mind, for consistency and throughout the evaluation process, you want to have the same set, right? I don't think that we anticipate having a different set for string similarity, a different set for objection process. So I wonder, I just put the question out there. Would this small group that we are convening in order to review these bases or examples that they maybe expand their

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remit a little bit and also think about objection processes? I think at the end of the day, we are trying to define what is the set that is going to be used throughout the evolution process? That's for the second question.

Going back to the first question, must all requested allocatable variant TLD labels be subject to the objection process? I think, again, as a context, as a way of background, variant labels, once they are delegated to the root zone and use, they're no different. One variant to the other variant, there is no difference for the DNS. They are independent TLDs delegated in the root zone, and from an application standpoint, they will behave as independent domain name. With that being said in perspective, I don't see why you would not put a variant TLD label under the same rigor of objection process, because at the end of the day, also, what is a variant? What is a primary? That depends on the applicant, right? The applicant can start with let's, for example, have a set of two labels, A and B. The applicant could decide to apply for A as a primary and B is a variant calculated, but it could be the other way around as well. So I don't see why we would need to distinguish the two for string similarity objection process purposes. So I think making that distinction between the two, I don't think that serve well and it's easy to gain, if you will. Because again, it depends how you applied for that and how the other label is calculated. I mean, it could be either way. So I just want to put out there thoughts around those two points. Thank you.

JUSTINE CHEW: Thank you, Dennis. Before I take Edmon's hand, I just wanted to mention something that may be worth considering by the EPDP

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team here, which is the fact that the objection process comes after the string similarity review. I can't remember who said it, but I recall someone saying that if the string similarity review doesn't catch something because it's kind of like out of scope of the review, then it could still be caught by the objection process. So that may prove something to consider for the second bullet per se, I think. Edmon, please go ahead.

EDMON CHUNG: Thank you. Edmon here and speaking personally. As, Justine, you just mentioned, I think there is merit for that thinking. In response to Dennis, I guess, in general, I think that approach is probably not correct but it's probably a good approach, to think about it that way in that kind of principle. But I do want to raise that if that's the case, here we have a situation, I guess well known Chinese situations whereby, and a blocked variant might be what someone else's trademark, for example, and the famous example is, of course, HSBC, which uses a special character that would be rendered blocked if someone applies for the traditional or simplified version of HSBC in Chinese. In that case, then if someone applies for it in full traditional or simplified Chinese, then HSBC would have no grounds. If we don't also put the blocked variants as potential strings to object against, then HSBC would not be able to object to it. I think there are obviously other examples as well.

So if we apply this concept, then we really need to look at the entire set, including allocatable and blocked variants to be considered, at least for this string objection process, I guess objection processes in the trademark objection process.

JUSTINE CHEW: Edmon, before you go, I just wanted to clarify something. You said something about a blocked variant. The thing is, a blocked variant can be applied for. So I'm not quite sure what you meant by that per se. Would you be able to repeat or clarify?

EDMON CHUNG: I just sent it to the chat so it's clearer. The standard HSBC in Chinese utilizes a special character, that if you applied for that character specifically, you would get two variants: full traditional and full simplified. But if you applied for the string in its traditional form or simplified form, then you will not get the special HSBC string and that will be blocked. So that's the classic example for this.

JUSTINE CHEW: Okay. Thanks for that. Dennis?

DENNIS TAN TANAKA: Thank you. Just a follow-up. I have the same, I guess, follow-up questions to Edmon. So just trying to understand the example, I think it's important. Potentially, there are other types of cases like these in other scripts as well. The cases that you apply for the first string and that string would calculate two variants and the traditional and simplified Chinese, right, the second and third row, and both of those variants, their disposition values are allocatable. Is that correct?

EDMON CHUNG: Correct.

DENNIS TAN TANAKA: Okay. But the second example was what if the applicant applies for the traditional Chinese version? So the second row, it will calculate the variant, first and third, because the variant, the way it works, they need to have symmetry and transitivity so the variant set is the same. But let me just pause there. So the second version, you said the primary as a traditional Chinese, you would get two variants, the first and the third. Let's not go to disposition values yet, but you wanted to establish that the variant set is the same.

EDMON CHUNG: Yes, that's correct.

DENNIS TAN TANAKA: Okay. And then move on to the next step, the disposition value would be different. So in the case where you start with a second row, the first row would be blocked, and then the simplified version would be allocatable.

EDMON CHUNG: That is correct.

DENNIS TAN TANAKA: Okay. Thank you. So the concern here is that depending on how you start, do you put the allocatable variant through the evaluation process, it depends where do you start with your primary. So this is an example of how you start with the primary the result in two levels. Variant in disposition value may be different. So you're saying because in the second example, the first one would be blocked, it will not serve in any of the objection similarity process unless we expand this set to include in the blocked labels as well. So for the sake of this exercise, we're talking about a Level 3 type of scenario in terms of what is the set that you put through all these evaluation process? I think that's where you're going and how do we approach it. And you are putting a clear example that I think our SubPro will capture as a way to inform their discussions and deliberations. But thank you. I just wanted to clarify what was the exercise here. Thanks.

JUSTINE CHEW: Okay. I think I get it now. Thank you, Dennis, and thank you, Edmon. Earlier on, I was thinking more in line of the legal rights objection, which is related to the trademark. But what you're trying to get at is actually the string similarity objection. If something is blocked, if a particular variant is blocked, that means that the registry that holds the primary label wouldn't have standing to object from a string similarity point of view. I think that's what you were trying to get at, Edmon, and correct me if I'm wrong. Dennis, do you have your hand up again?

DENNIS TAN TANAKA: Yeah. Thank you, Justine. Just a follow-up. I'm not a lawyer. I don't have expertise, but just based on my experience in looking at the objection cases through the 2012 round, a objection based on trademark or trademark rights I think.

JUSTINE CHEW: Legal rights, yeah.

DENNIS TAN TANAKA: It is not only limited to exact match strings, right? I think objections could rise on similarity or what have you. So a case like the one that we are looking at the Chinese simplified and the special case, the company, the organization would have the means to object, maybe not an exact match basis but on a different basis, which could be—I don't know if it's going to be a string similarity or confusing similarity or what have you. I'm just saying that I understand they are not exact match. I don't know how trademark rules work in China, Hong Kong, Taiwan. But yeah, well, something to look at.

JUSTINE CHEW: Yeah. Okay. I take your point. I don't think I'm in a position to give you a proper answer either. I'm just wondering whether staff would have any comments in terms of the realm of trademarks for the purposes of the legal rights objections, whether trademark objections from a trademark point of view or trademark perspective would extend beyond exact matches. I will give staff a bit of time to see if they can come back with a question. In the meantime, Satish, you have your hand up. Go ahead.

SATISH BABU: Thanks, Justine. Now, the example that Edmon talked about, I think it is very important for us to understand it fully. I haven't understood it, to be very frank, but I don't want to hold up the meeting to further explain this. If possible, I'd like staff to create a page where this example is actually explained, and those reference to the third level string similarity evaluation. That aspect as well as the legal rights aspect can be … The reason is we have to go back to our constituencies and explain to them. So unless we understand it fully, that would be very difficult. So if possible, if staff can work with a webpage somewhere in the wiki to kind of explain this better. Thank you very much.

JUSTINE CHEW: Okay. Can I get a reaction from staff whether that's doable, please?

ARIEL LIANG: I just wanted to clarify, Satish's request is the request to explain the example provided by Edmon or the request is to clarify what's legal rights objection, how the legal rights objection works? I just want to understand what the request is.

SATISH BABU: Thanks, Ariel. I think Edmon's example is important to understand from whichever [inaudible], because I'm not very clear, there was a discussion on—Edmon says more than the trademark objection. So whatever is the aspect that meets this example—it's an

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unusual example because I wouldn't have thought of it otherwise. And this probably applies only with CJK. So those are the barriers to understanding. So if this example can be clearly put down somewhere so that we can refer back to it later, that's enough.

JUSTINE CHEW: Okay. So if I understand it correctly, to use Edmon's example of the HSBC case and examine the implications from a string similarity objection as well as legal rights objection perspective. Steve, you had your hand up and down again. Do you want to say something?

STEVE CHAN: Thanks, Justine. Not a whole lot to add other than I'm diligently taking notes in the background. So I think the prospect of trying to turn that into a clear example shouldn't be too difficult because we have the bulk of the discussion captured in the notes itself. Thanks.

JUSTINE CHEW: Okay. Great. That's good to know. Yes. And if you have more examples that you think would apply, then by all means, put them in the chat so that staff has more examples to work with, to see if there's some standard application for things. I also take the point that I wonder whether this is something that the small group that's examining the string similarity evaluation might want to take into consideration as well as suggested by Dennis. So I don't want to say one way or the other. Maybe leadership can have a think about it and see what's the best way to proceed. If we think they

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can be separated, then we'll bring this chart that staff will build back to the group next week, hopefully. If not, then we might try to put this into the small group assignment. So I hope that's fine. Does anyone else have any questions regarding the two questions or discussion that you see on the screen right now? Anyone else has got queries that they want clarified through either stuff in attention now or later. Ariel, you had your hand up. Please go ahead.

ARIEL LIANG: Thanks, Justine. I was just Looking at the AGB, based on the legal rights objection, whether it needs to be identical, like whether it needs to be exact match or not, and just to respond to an earlier question. In the AGB it says in the case where the objection is based on trademark rights, the panel will consider these non-inclusive factors, and one is whether the applied-for gTLD is identical or similar, including in appearance, phonetic sounds, or meaning to the objector's existing mark. So, it doesn't seem to need to be exact match. Then the same language applies to objection filed by an IGO, which is non-registered trademark, but also they can be filed based on legal rights objection grounds. So it also said the applied-for gTLD is identical or similar, including appearance, phonetic sounds, or meaning to the name or acronym of the objecting IGO. This is the language in AGB.

JUSTINE CHEW: Thank you very much for that clarification, Ariel. A good place to look is the AGB. If you wouldn't mind popping just the clause number in the AGB where you read that from, that will be helpful

to our participants here. Yeah. Thank you very much for that. Okay. Clearly that would seem to imply that it's not just exact match, but also phonetically, visual, as well as meaning similarity. So, I think we need to take that into consideration when we examine the implications of objections to variants from both a legal right and string similarity point of view. So I think the approach that we're taking in terms of what I suggested earlier, whether to do it as part of the small group assignment or to bring that back as a chart for the full EPDP next week, would still apply. We'll come back to that. Okay.

If there's no more questions or comments regarding this particular charter question, then I suggest we can move on to the next charter question, which is D2. That's right. Thank you. Sorry, I have a mind block. Ariel, would you mind going through the slides for D2? I would just like to point out that if you see a particular reference to a term, for example, like EBERO and you're not quite sure what is involved in EBERO, then I would ask you to just put the—okay, just give me a minute. I suggest that you just put your hand up or put something in the chat or something. But I think that would be explanation in the next slide. So just don't be too anxious, really. Just a minute.

Okay. So I have a question from staff as to what is the conclusion for E2. Okay. Sorry, can you go back to the slide on the two questions, please? Okay. Which question? Is it these two questions, the questions or discussions that you're asking for conclusion on? Verbalize your query.

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ARIEL LIANG: Sorry, I was looking at AGB. I may have missed it when the concluding words for these questions were made, and I just want to clarify, did we answer these two questions or that's pending the example staff needs to be without and further deliberation on example? Did we at least answer the first question, and then for the second one, we haven't?

JUSTINE CHEW: I think it's the latter, really. My reading, and if people object to this particular conclusion that I'm about to present, then by all means, raise your hand or say something. I think the conclusion for the first bullet would be yes, and the conclusion for the second bullet would be pending. Either the chart that staff is referring, whether that comes back to the call next week, or whether that's put into the assignment for the String Similarity small group. So the answer is pending. Does anyone disagree with that conclusion? Okay. I don't hear or see any comments per se. So is it okay to move on now, Ariel?

ARIEL LIANG: Yes. That's very helpful. Thank you.

JUSTINE CHEW: Okay. Please go ahead then.

ARIEL LIANG: Okay. So now we're moving on to D2. The question is, in order to ensure the same entity principle is maintained for a gTLD and its

allocated variant TLD label, what are the operational and legal impacts to the—there's three aspects we are asked to consider. One, registry transition process or change of control in the Registry Agreement; two, Emergency Back-End Registry Operator (EBERO) provisions; and three, reassignment of the TLD as a result of the Trademark Post-Delegation Dispute Resolution Procedure. The acronym is TM-PDDRP.

There's one thing I want to mention is that this question has an implicit dependency with D1a, which was the charter question deliberated a long time ago. It asks, should each TLD label be the subject of a separate Registry Agreement with ICANN? If not, should each TLD label along with its variant labels be subject to one Registry Agreement with the same entity? Because we're talking about registry transition procedure as a main topic in this question, this D1a is relevant. So I will just provide some context and background and we can gain clearer understanding of the question and discuss later.

So this is an overview of the registry transition process. What it means is there's a change in the contracting party of a gTLD Registry Agreement with ICANN. So this process is to enable that change to happen. The purpose to have that processes in place is basically in pursuit of ICANN's fundamental mission, is to ensure a secure, stable, and reliable Internet, interoperable connection, basically. So it defined such process to transition a gTLD while minimizing the impact on registrants and gTLD users, and also provide transparency to all the parties involved. Now we're talking about the detail of the transition process.

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There are currently three different types of transition process. The first type is the registry transition process with proposed successor. And also in other words, it's also the change of control in the Registry Agreement. So what this means is that when a registry request ICANN to assign a Registry Agreement to a prospective successor of that registry, this process will be enacted. So some circumstances may basically make this process happen. So for example, the registry is being acquired by another registry or organization. There's a name change in the organization, and also there's a transition to the registry service continuity provider. So due to these circumstances, this type of transition may happen.

There's also some other circumstances related to the geographic TLD is that the government or public authority that previously support that geoTLD withdraws its support and propose a different registry to take over that geoTLD. So those circumstances will trigger a registry transition process with a proposed successor. So we know who's going to be the next organization that takeover the gTLD.

Then the second type of transition is the registry transition process with request for proposals. This one, the fundamental difference compared to the type one is it doesn't know who the successor is at that point in time when the request for registry transition was happening. So that's why a request for proposal needs to be launched in order to identify a successor registry. That's the second type.

Then for the third type, the Emergency Back-End and Registry Operator temporary transition process. So that's EBERO

temporary transition process. So this process will happen under two conditions. One is that the registry is in breach of its Registry Agreement. And second, a critical function is being performed below the emergency thresholds. I will give you a quick overview of what the critical functions are. But here what you need to remember is that there are two conditions need to be met in order for this EBERO temporary transition process to happen. Oh, sorry, my computer's doing crazy things.

So another point about this transition process is it's indeed a temporary measure, and it's to protect registrants and gTLD users. And this temporary measure will remain in effect until the underlying issues are resolved or the gTLD is transitioned to another operator using one of the first two types of the process. So either it was propose the successor where it needs to launch an RFP to find the successor. So these are the three types of transition process. Here, this is an overview of what you may expect with regard to the first two types of a transition process. And then here is some key actions that need to be done by ICANN when it receives the request for registry transition.

So they include the following. One is conduct assessment of the situation. And so that means that ICANN use to investigate. Would there be a change in the entity providing the backend registry function after the transition? And does the TLD have a relevant community that must be consulted so that it's related to a community TLD? So that needs to be confirmed as well, whether the successor will have done enough support. Then is this a geoTLD? Because geoTLD requires government support and support from public authorities. And then are there any restrictions

in the Registry Agreement that might affect a transition? So these are the first set of homework or assessment that needs to be conducted by ICANN to analyze the situation first. Then it needs to perform a risk assessment off the gTLD in question, the current registry, and backend registry operator, if there's a need for change after the transition.

Third is the launch a request for proposal subprocess. So that applies to the type two transition if a successor wasn't identified at the beginning, they need to find one.

Another step is to check whether the proposed successor registry has the require support. That's specifically related to geoTLD.

Next, there will be an evaluation process of the applicant who is going to be the successor registry using the process defined in the Applicant Guidebook. And to put an evaluation, the scope varies based on different applications. There can be the full evaluation, which is very similar in scope of reviewing a new gTLD applicant. And then there's more limited scope than can be done. It can be narrowly focused on one or more areas of the evaluation of a gTLD. Then the third is the minimum scope. That means it's a narrow scope of review performed internally by ICANN. So that really depends on the gTLD. It depends on the registry and the successor and specific situation involved.

One of the final actions is to perform pre-delegation testing, if there is a change in the backend registry operator services. So these are some of the actions that you may expect with regard to the transition process. And I see Anil has his hand up.

JUSTINE CHEW: Ariel, I was going to ask you to pause for a bit so that you can catch your breath. Anil has a question. Anil, go ahead, please.

ANIL JAIN: Thank you, Justine. This is the clarification of the first line of D2 where it is said that it is allocated variant. So is it only applicable to allocated variants or is it also applicable to allocatable variables? This is my question. Thank you.

ARIEL LIANG: Thanks, Anil. The language of the charter question clearly indicates that the scope is to talk about allocated labels. So if it's merely allocatable but not allocated, there's nothing to worry about with regard to registry transition because the registry can only take care of the allocated ones.

JUSTINE CHEW: Right. If it's allocatable, it means that it's not assigned to anybody per se. It's available for application by the registry, so it's not delegated. So that means that it doesn't appear in any Registry Agreement and it wouldn't have any particular obligations tied to it. I hope that answers your question, Anil. I see your hand is still up.

ANIL JAIN: Yes or no both. Basically when we are talking about variant then we are talking about the same entity. It means that for the same entity, the applicability is not only dedicated variant or allocated

variant but also variant which is not yet allocated also. This is what my understanding is. If I am, my understanding is wrong, I would like to stand to clarify and correct myself. Thank you.

JUSTINE CHEW: Okay. Let me just try and repeat what I said earlier. If it's an allocatable variant TLD label, that means the party, the registry, or the registry operator that holds the primary label is eligible to apply for the allocatable variant. But it doesn't mean that they will get it. Okay. So there's a difference between allocated and allocatable. Allocated means that they have got the variant and it's subject to Registry Agreement based on whatever we recommended earlier and it would have obligations tied to it. So as long as the variant is allocatable but not allocated, it wouldn't be delegated. I hope that clarifies it.

ANIL JAIN: The definition is quite clear. Thank you. I understand that D2 is only restricted to allocated variant. Thank you.

JUSTINE CHEW: Correct. Only allocated variants would draw obligations. Sarmad, please go ahead.

SARMAD HUSSAIN: I think when there is a potential change of control, then the allocatable variants can then only be applied for by the new entity which actually controls the allocated and delegated variants. So

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they would, I guess, indirectly, also "move" to the new applicant or actually the registry operator but just because they are set up like that. Thank you.

JUSTINE CHEW: I see. Okay. I'm assuming that's what Anil meant. Yeah. All right. So I missed the point about what he was talking about in terms of potential, the impact to allocatable variant if the allocated variant in that set moves to somebody else. Yes. So then the eligibility for the allocatable variant would also move to whoever takes on that particular delegated variant. That is my understanding. But I would take advice from staff whether that particular question is actually covered by any of the charter questions, if it's not clear in D2.

ARIEL LIANG: Thanks, Justine. I do see Dennis and others have had their hand up. Should I stop? I'm happy to defer to them first.

JUSTINE CHEW: Sure. If you could find the answer in the meantime. Dennis, please go ahead.

DENNIS TAN TANAKA: Thank you, Justine. In my opinion, the principle that the allocatable variants are allocated to the same entity answers the question, addresses a concern. That depends on how you implement that might have implications as to how you move forward, right? For the sake of this conversation, let's say you run

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the Root Zone LGR, you find the allocatable variant, and you create a database, and you assign affirmatively who is the registry operator at that time and something changes, you will need to update the database, which is more work. But if you stay in principle that the one of the eligibility requirements to apply for allocatable variant labels, you need to be the same registry operator, then at that moment in time in the future, when it's applied, you check whether that registry operator is eligible to apply for those allocatable variant labels. And then you don't need to change anything, you stay by the principle that the same entity, meaning the same registry operator can apply for the allocatable variants of any label that it's already handling.

JUSTINE CHEW: Yes, correct. So long as the right to the allocated variant lies with a particular party, whether it's the entity that got it first or whether it changes hands as part of the registry transition process, whoever holds or runs that particular allocated variant would be the party that becomes eligible to apply for allocatable variants tied to that particular allocated variant. So yes, I believe the principle would hold. I'm just trying to work out whether we need to mention it at all because it would fall under, I believe, one of the other charter questions where it's a packaged thing. So I'm not sure that we need to explicitly mention it here. But it's just to address Anil's question earlier perhaps. Abdulkarim and then I have Maxim. Abdulkarim, go ahead.

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ABDULKARIM OLOYEDE: Okay, thank you, Justine. I just wanted to seek a clarification regarding EBERO, that at the end of the emergency period, what's going to happen? Is it that the original TLD operator is going to be allowed to operate it again, or is it going to be reassigned? Because I'm thinking of the implication if it. At the end of the EBERO, is it going to be reassigned? Just like what was mentioned earlier, I do not see any implication as long as it's the same entity. But I'm just thinking of the EBERO situation. Thank you.

JUSTINE CHEW: Okay. I'm just wondering whether we can defer that answering the question to when Ariel continues with the slides on EBERO. I'm not quite sure whether the answer is captured there. Can we come back to your question once we've gone through the EBERO slides to see whether the answer is there or not?

ABDULKARIM OLOYEDE: Yes, that's fine.

JUSTINE CHEW: Okay. Thank you. Maxim, go ahead, please.

MAXIM ALZOBA: Speaking about EBERO and provisions in contract. Effectively, EBERO is a post mortal process for a particular TLD. Because if you read in Registry Agreement, you will see that EBERO and termination of the contract are almost in the same clauses.

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Speaking about the particular TLD from the set of variants, the particular registry organization has, if one of few labels goes down, from one hand, you might think that it's something wrong. But the same process happens when there is a shutdown of a TLD due to termination. Imagine a situation where three official languages in the country are supported and one of them decided not to be used anymore or one of scripts decided not to be used anymore—I've seen this—and there is no reason to support it anymore. And thus, removal of one of the variants from the set due to natural reasons shouldn't lead to the death of all contracts of this particular registry. And given that the principle of one entity for all variants, it means that one of the variants just goes down. That's it.

Speaking about the transition process, a change of control, I believe that having provision in policy resulting from these PDP saying that these rules should apply to every TLD from the variant set make situation where it's not important if all TLDs are in the same Registry Agreement and having annexes list in other TLDs from variant set. Or if it's all indifferent, it doesn't matter. If policy says that it should be applicable to all then on the side of implementation, ICANN could proceed to the prescribed procedures. That's it. Thanks.

JUSTINE CHEW: Thank you for that, Maxim. I'm hoping that that kind of answers the question that Abdulkarim posed. But if not, please feel free to raise your hand again. Okay. Can we can we move on to the next slide? Ariel, are you prepared to continue?

ARIEL LIANG: Yes, I do. I think we're getting into the discussion on EBERO. I'm not sure everybody in the call are familiar with the background of EBERO, so this is intended to provide that context. So what are EBERO? Basically, there are organizations that have entered into five-year contracts with ICANN to operate the five critical registry functions in the event of a gTLD registry operator failure. And then these critical functions are the DNS resolution for registered domain names, the operation of shared registration system, operation of registration data directory services, registry data escrow deposits, and maintenance of a properly signed zone in accordance with the DNSSEC requirements. So these are the three critical functions.

Why do we need EBERO? The main goal is to preserve the operational security and stability of the Internet. And then that's why we have EBERO to temporary be activated should a registry operator requires such a system to sustain the critical function for a period of time.

Currently there are three EBERO service providers that have the contract with ICANN. These are the Canadian Internet Registration Authority (CIRA), China Internet Network Information Center (CINIC), and Nominet.

So when the EBERO function will be activated, it's for ICANN to declare an event that requires the EBERO emergency services. Also it's for ICANN to coordinate all the emergency response activities. The goal is to have the event resolved as soon as possible, but preferably within a 12-month period.

So this is the background or context of EBERO. Then there's some other information. I think maybe helpful for the discussion is how ICANN select the EBERO providers. So ICANN selects the providers through an RFP. In the RFP, it will align the registry operator requirements to EBERO provider requirements. So basically, EBERO provider should at least be able to perform like a regular registry operator. Then there's a minimum requirement is they need to have at least three years of experience operating DNS and one year of experience operating RDSS and EPP services.

Also there's a goal for increasing geographic diversity for the EBERO providers. So that's kind of logical to have that diversity in place to counter emergency situations in case one geographic location service goes down, the other could help cover.

Also there's the evaluation process for the EBERO providers. It's similar as the one for new gTLDs, and that also includes pre-delegation testing on the infrastructure to be used in an emergency situation.

There's some other information that I like to share about EBERO is what they do not do. EBERO providers, they're limited in their services they can provide. For example, they do not provide additional services. A registry operator may offer to its customers such as web hosting, network analytics, those type of functions that are not related to the critical functions of the registry services. And then also they do not accept new domains, domain renewals, domain transfers, or domain name delegation from registrars, except for under exceptional circumstances such as outcome of a UDRP determination. It requires some actions for the domain

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names. So unless there's exceptional circumstances, they do not accept these changes or requests from registrars. They do not expire registration or auto renew them. And also, EBERO does not apply to some of the legacy gTLDs.

Then finally, there are some cases in which current backend registry operator may serve as the EBERO if the registry operator requests ICANN to do the emergency transition to its current backend registry operator where the backend registry operator is operating the critical functions within the term of service level defining the Registry Agreement. Then the backend registry operator company is not related to or affiliated with the registry operator. The final point for this is a backend registry operator accepts to operate the gTLD under better or equal terms than those agreed by the EBERO. So under these circumstances, the current backend registry operator may serve as the EBERO instead of the three providers that mentioned previously.

So these are some of the contexts of EBERO. I will stop here and see whether any comments, questions regarding this point.

JUSTINE CHEW: I'd like to ask for indulgence of the participants here. I mean, I realized that the presentation is rather academic today. But because the charter question specifically mentions these three things, which is the transition process or change of control EBERO, and also the TM-PDDRP, we wanted to make sure that participants have an understanding of what those processes are and what they entail and do not entail. I see a couple of hands now. Anil and then Sarmad. Anil, please go ahead.

ANIL JAIN: Thank you, Justine. I want to understand what is the current provision during the emergency situation. When the registry operation is given only for five years, is there any possibility of allocation of the variants if requested by the emergency registry at present? Thank you.

JUSTINE CHEW: That question, I think, is still pending because this group hasn't decided whether application for variant would be entertained outside of rounds or within rounds only. So that might put a spin in the words of how to answer your question. If that's not a satisfactory answer, then by all means, post a supplementary question. But in the meantime, I'll go to Sarmad.

SARMAD HUSSAIN: Thank you, Justine. Just to share that in the case of EBERO, basically, the TLD actually moves to one of the EBERO providers, which means either CINIC or Nominet or CIRA. So they become the registry operator. If that's the case and we apply or move one of the variants and not all the variants into EBERO at the same time, then we will be in a situation where you have, let's say, two variant TLDs. One is being controlled by the original applicant and then the other one by the EBERO provider. And that inherently then violates the same entity principle, which requires that all the variants be controlled by the same entity. That was the reason in the staff report we presented. We had suggested that if one variant goes into an EBERO process, all the complete variant set

which is allocated and/or delegated moves into the EBERO set that is to sustain the same entity principle. Thank you.

JUSTINE CHEW: Thanks for that, Sarmad. I think that's part of the question that we're considering under this charter question. Anil, you still have your hand up. So I'm just wondering whether you had a supplementary question, which I will take after I talk to—

ANIL JAIN: No, Justine. Thank you. It was an old hand. Thank you.

JUSTINE CHEW: Okay. Right. Sarmad used to have your hand up, did you want— all right. Maxim, please go ahead then.

MAXIM ALZOBA: First of all, I'd like to say that situation which Sarmad explained makes removal of one variant impossible, because after termination of the contract, it goes to EBERO. And then we need to explain how it will work. Because if one of the variants is not supported in the country anymore or decided not to be supported, then it shouldn't lead to station where all IDNs of their particular country will go down because of this artificial idea. I repeat, the question is about the design of how then a single string of a variant set will be allowed to go down without killing all others. Because if the language or script is not supported anymore, there is no reason to continue to support the TLD. Thanks.

JUSTINE CHEW: Dennis, go ahead please.

DENNIS TAN TANAKA: Thank you, Justine. I think I tend to agree with Maxim here. The way I'm looking at it, processing these thoughts is that there might be different avenues depending on what triggers EBERO. Is it complete failure by the operator for X, Y, Z circumstances? Or is it a breach of contract? And to what end? What needs to look at the issues there? The other scenario is where a registry operator decides proactively to not continue operating one of that [inaudible] set. It's not one single event. I mean, depending on what triggers EBERO, there might be different outcomes in terms of how do we uphold a single entity and how we go about that. But again, I think this conversation is helpful and I think next time we get together, I'm sure we'll get a clearer picture of all the externalities here so that we can make a more informed decision, or at least have more informed insights into the conversation. Thank you.

JUSTINE CHEW: I'm sorry. You're a little bit muffled to towards the end, Dennis. Could you repeat your last comment?

DENNIS TAN TANAKA: I think I said, good conversation, good discussion, good input, insights. And I think next time around, we meet again, we can see—I'm sure Ariel will come up with a brilliant way to visualize all

of this conversation. Looking at the different trigger events of the EBERO and then how we think about the single entity in those different events.

JUSTINE CHEW: Brilliant. Thank you. Yes. That's absolutely clear. Thank you. Thank you for that. I believe staff has captured that. It's an action item for staff. I think that's a great way to put it. Thank you for that, Dennis. We have 15 minutes left so can we just quickly go through the rest of the slide, which is just on the TM-PDDRP? Just to end the conversation on this per se so that we have a full picture and we can continue on looking at the various aspects that was raised today in the next call. Ariel, do you want to take us out on TM-PDDRP, please?

ARIEL LIANG: Yes, of course.

JUSTINE CHEW: And also the discussion questions. Thanks.

ARIEL LIANG: Just as a general overview what is TM-PDDRP, its dispute resolution mechanism for someone that believes a registry operator is intentionally and systematically infringing trademarks in its top-level domain, either by itself or by aiding third parties. So it's a dispute resolution mechanism specifically against registry operator's conduct of trademark infringement. The point we want

to focus on in the charter question is not really the mechanism itself, it's outside our remit. But the specific aspect is regarding one of the remedies of a TM-PDDRP. Basically, the potential outcome of a TM-PDDRP resolution process.

There are several types of remedies. There's a graduated enforcement tools against a registry operator. So these are the more gentle ones, that including measures against allowing future infringing registrations or suspension of accepting new domain name registration for a set period of time. So these are the gentler remedies. But then, the harsher remedy is that in extraordinary circumstances, the registry operator's Registry Agreement may be terminated because of the outcome of a TM-PDDRP. Also the remedy cannot include deleting, transferring, or suspending domain registration unless the domain name registrants are persons or entities under control of the registry operator. So that's something to keep in mind. The specific focus we have for this charter question is regarding one of the outcomes of PDDRP is what if the Registry Agreement is terminated because of that, what would happen next? Here brings to some of the potential points for discussion. And we'd like to highlight the context in both SubPro and staff paper regarding registry transition process, that including EBERO and also the possible outcome of the TM-PDDRP.

For SubPro, it has a recommendation, where actually this text that you're seeing right now is in the rationale parts of a recommendation, it says to the extent that a TLD were to change hands at any point after delegation, the variant TLDs must remain linked contractually, which should be considered a persistent

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requirement. And this would impact gTLD registry transition procedures, including EBERO. So that's the SubPro's language. But I don't think there's a very explicit recommendation in SubPro regarding transition process, but at least there's some rationale guidance regarding that point, is they must link contractually for all these variant labels.

Then for staff paper context, staff paper has some suggestions regarding potential adjustment to the registry transition process due to variant implementation. The first one is each of the Registry Agreement must contain provisions requiring all variant labels in the set to follow the same process in the event of any registry transition via a registry transition process or change of control. And perhaps some I could clarify if I get it wrong, that all variant labels in the set like mentioned here is only regarding the allocated variant labels, not regarding withheld same entity or blocked ones. So please clarify or correct me if I get it wrong.

Then the second recommendation from staff paper is in no events should the composition of the allocated and delegated set of variant TLDs be allowed to change at the same time as the change of the registry operator. I think, logically speaking, this seems a good direction, because if the change of hand process is happening, it may not be good to get other variant labels added until the process is finalized. And then the successor is identified in the existing TLDs. I think that's the intent of this recommendation, is not to change the composition of the allocated delegated labels until the change is completed for the registry transition.

Then the third recommendation from staff paper is emergency transition of the TLD to an EBERO must trigger an emergency transition of all variant TLDs to the EBERO. I think at this point maybe need to be further deliberated. As Maxim mentioned, a retirement of a label may also trigger EBERO action. Does that warrant that all the other labels after that registry operator needs to be transitioned to EBERO as well if it's an intentional retirement? So maybe that's some point we need to discuss.

Then finally, for the fourth suggestion, in a case where a Registry Agreement is terminated as a result of a TM-PDDRP termination, the same entity would continue to apply. So that's the allocated and delegated variant TLD labels in the set would be assigned to the same entity together. These are some of the staff paper recommendations. And then below, we have included some questions for discussion at the starting point. One is how to maintain the same entity principle in the event of a registry transition process with respect to each of the three types that we mentioned earlier. And here, we want to just provide a reminder that the EPP team already have a preliminary recommendation that's for future and existing gTLDs, each gTLD and their value labels are subject to one Registry Agreement with the same registry operator. So with that consideration, how would the registry transition process be impacted in order to maintain the same entity principle? That's the first question for discussion. And then second, we also talked about the evaluation criteria of the EBERO service providers. So should the evaluation of EBERO service providers take into consideration the applicant's capability for managing variant TLDs, because in the past variant TLDs, at the top level, they do not exist, and then in the future, it may exist.

So should EBERO service providers have the capability to manage them as well? That's the second question. And then third, it's more like a catchall question. Are there any additional consideration regarding the registry transition process involving variant TLDs? So these are some of the starting point. I see Maxim has his hand up.

JUSTINE CHEW: Go ahead, Maxim.

MAXIM ALZOBA: I have a suggestion. To simplify understanding and the work of the workgroup, I suggest we check how things are going to work in the following three situations. First, addition of label of a string to variant set, removal of a string from the variant set, and then transition of all variants. So we don't have too much confusion in the process. Because each might be used in the future, it's better to carefully explore all of these three. So we have the, I'd say, clear picture. Thanks.

JUSTINE CHEW: Thank you for that suggestion, Maxim. Can I clarify or ask supplementally, would that be somehow impacted by whatever that triggers the change?

MAXIM ALZOBA: Most probably for each of these options, there will be a need for the reason of the change. Because for example, failure to provide

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necessary technical functions, it's a bad reason. So there should be some kind of punishment for that. Maybe termination of the contract. But if, for example, a registry provides ICANN with a paper from the state saying that the state no longer intends to support the script on official level, why not? It's not something for which registry should be punished. It's well beyond their level and they should continue to support other languages in the variant set. Thanks.

JUSTINE CHEW: Okay. Great. Thank you for that, Maxim. I'm hoping that staff is clear on that. Anil?

ANIL JAIN: Thank you, Justine. This is with respect to Maxim's question on if a particular variant or string of IDN is not supported by the government. Basically, this normally comes under ccTLD. But also we are discussing the similar issue. In no circumstances—

JUSTINE CHEW: Anil, I think you're breaking. To me, you're breaking up. I seem to have lost audio from you. He disappeared altogether. So I'm not the only one. I see that he's disappeared.

DEVAN REED: Hi, Justine. I see Anil is still with us. And it looks like his microphone did just join back.

ANIL JAIN: Sorry. This was with respect to Maxim's question on the government not supporting a particular string in a particular language. So it always happens that when government stops supporting a particular string or the community, then they go for some of that string in the different language. So I personally feel that that situation may not come, that a particular registrar is not able to support. Yes, the capability needs to be revamped after some time. So at that particular time, I don't support that we should punish the registrar in any sense. I support Maxim in that level. Thank you.

JUSTINE CHEW: Thank you for the comment, Anil. It's noted. We have two minutes left to the call. Does anyone else want to contribute a comment or ask questions at this point in time? If not, then the staff have got their job cut out for them for the next call and do the homework. And all you participants have homework too as well in terms of the draft text for A7 part 1, A9, and A10. Don't forget that's due next Friday. Barring any more questions or any AOBs, I'm inclined to give you one minute back of your time and close the call. All right. Thank you for your attention and your patience and all your contributions today. Good discussion. See you next week.

DEVAN REED: Thank you all so much for joining. Once again, this meeting is adjourned. I'll end the recording and disconnect all remaining lines. Have a great rest of your day.

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