ICANN Transcription

IDNs EPDP

Thursday, 17 March 2022 at 13:30 UTC

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. Attendance and recordings of the call are posted on agenda wiki page: https://community.icann.org/x/YwB1Cw

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page
http://gnso.icann.org/en/group-activities/calendar

DEVAN REED: Good morning, good afternoon, and good evening. Welcome to the IDNs EPDP call, taking place on Thursday, the 17th of March, 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 on the telephone, could you please let yourselves be known now?

We do have apologies from Joseph Yee.

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

Statements of interest must be kept up to date. If anyone has any updates, 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 IDN's 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 multi-stakeholder process are to comply with the expected standards of behavior.

Thank you, and over to our Chair, Donna Austin. Please begin.

DONNA AUSTIN: Thank you, Devan. Welcome, everybody, to our IDN EPDP call today. I know that it always seems a little strange after an ICANN meeting that is done in a virtual format. Usually, we would take a week off and come back, but it seems that we're in a virtual world. We just keep on keeping on.

So thanks to everybody for joining. Attendance is a little bit light today. Perhaps there's a little bit of burnout from last week, but also, we had a time change. So that may be one of the reasons that we're a little bit lot on attendance today.

We're primarily going to do a bit of a recap of some of the conversation we had last week and try to get through Questions B4 and B5 as well. Maybe we'll get through things pretty quickly today, and we might be able to get folks a little bit of time back.

But now that I've said, that won't happen. So we'll see what we can do.

So, with that, I think we'll get straight into it. And I will hand over to Ariel, who will do a recap of where we were last week, as there's a couple of things that we'd just like to … We just want to make sure that we captured the conversations from last week adequately. And perhaps we can move forward with starting to draft recommendations.

I will note that A4, A5, and A6 language. I just wanted to thank everybody for getting their comments back. And we will probably discuss that last week. I think it would be helpful if we just had a quick run through of some of the comments and make sure everybody is still okay with some of the necessary changes to accommodate those comments. So we'll get through that next week.

So with that, Ariel, I will hand it over to you.

ARIEL LIANG: Thanks, Donna. Just to supplement what Donna said, the main purpose for doing a recap for D1b is to check whether the EPDP team has agreement on initial direction of how these charter questions will be answered. And, if so, then staff and the leadership team will work in the background to develop some draft recommendation language. So this is the time I'd like to check and ensure that we get the main agreement right.

So D1b is about the process to apply for variant labels for new applicants and also for existing registry operators to request to

activate that. And then there's also fee-related discussions. So that's why we have come up with separating D1b into three parts. Part 1 you have seen several times already, so this is, I guess, hopefully the final time. Now, we checked with you. This is the agreement from the team: an applicant for new gTLD and its variant label set should go through one application process. And the applicant will only be required to submit one application for the new gTLD and its variant label set.

So that's what this team has agreed on. And perhaps maybe we need to include some implementation guidance so it's captured in the following two points. One is that the applicant needs to prove to the evaluator that it can manage both the gTLD and its variant and explain how that set will be operated. So perhaps in the application question, this point needs to be addressed.

And another implementation guidance perhaps is that the evaluation and objection for the variant set needs to be completed upfront so that the whole set can go through the process as a unit. That's some other idea we captured, but we just want to make sure this is what the team also agrees on.

So that's a Part 1 recap. I guess I will stop for a moment to see if anyone has additional input or objection or other comments for Part 1's direction.

And I'm not seeing hands or comments in the chat, so I assume it's good—okay, thank you, Hadia, for the comment.

And, Dennis, please go ahead.

DENNIS CHANG: Thank you, Ariel. Good summary. I think what we have in front of us, in general, is okay. I just want to observe … And I think there are questions in the charter that also deal with that, but I just wanted to put there, just for the record, that we see efficiencies when we manage to process all the variant set in one go. Obviously, there are efficiencies. I think the questions are going to arise—and concerns and reservations— if a label in that set happens to block or be in contention with another label that is being applied for. And the things get complicated when potentially the variant that is in the set is not pursued upon the data-specific process. We are processing all the set for efficiencies, but it just so happens that the applicant does not decide to activate that variant in that moment but happens to block one that is being applied-for in that window or process. So what are going to be the dynamics across those things?

So I just wanted to put a concern on the table so that we can pick it up when it's convenient for us. Thank you.

DONNA AUSTIN: Thanks, Dennis. I'm just wondering whether there's any way that we could map that kind of scenario just to try to take a little bit of that … I don't know whether we can take the complexity out of it, but perhaps there's some way for us to depict that or map that in some way so it's a little bit easier for us to unpack and deal with. But it could be a really complicated or perhaps it's not as difficult as we think.

So do you have any thoughts on that, Dennis?

DENNIS CHANG: I recognize that Sarmad has a hand raised, but I'll be just quick to respond to that, Donna. But, yeah, complexities are there. We just acknowledge them and map them. In this specific issue that I raised, I believe there is a charter question specifically on the role of labels that are withheld for the registry operator, right?

DONNA AUSTIN: Mm-hmm.

DENNIS CHANG: Because that's going to be the case. Again, if we want to go the route of processing all the set for efficiency's sake … But then again, which are the ones that are going to be in the path for activation in that moment in that application process, and the ones that are going to remain withheld? What role are they going to play in terms of contention sets and the ability to blog another application if, at the end of the day, they are not going to be activated. So that's a dynamic we need to talk about. But there is a question in order to address those type of things.

DONNA AUSTIN: Okay. All right, so I guess what we'll to do is just try to capture that in the summary of discussion. And then we'll address that in a separate question that's in the charter.

Sarmad?

SARMAD HUSSAIN: Thank you, Donna. So one more, I think, point in the same context: there could be some areas where we really have an applicant who is applying for a single label or a string. And of course, variant labels are generated through the root zone LGR. So, in a way, they may be labels which are maybe added on to the application but not desired by the applicant.

In addition to the example which Dennis gave, there's also another implication, which is that, if you're looking at it from and application fee cost recovery point of view, if all the allocatable variants, for example, are being processed, there may be additional fees associated. And actually they may be, in a way, "imposed" on the applicant in case the applicant actually was not wanting to get an allocatable variant or now or later. So that's another implication. Thank you.

DONNA AUSTIN: Thanks, Sarmad. So I think we'll try to capture those points in the summary of discussion and pick them up perhaps in other parts of the charter questions as we go through. So I guess we knew it was complicated. We just need to highlight those complexities.

Hadia, go ahead.

HADIA ELMINIAWI: Thank you. So my understanding from the first bullet is that the applicant, yes, submits one application for the new gTLD and its variant label set. However, if the applicant does not want any of the variant label set, he does not have to put them in the application. So my understanding is that the existence of variant

label sets does not necessarily mean that the applicant needs to include them in the application.

DONNA AUSTIN: It's my understanding, too, Hadia. So hopefully we're in the same place in that regard.

HADIA ELMINIAWI: And then no one else would be able to apply for the variants because we already [said the] same entity. So I don't know if this addresses this part of what Sarmad was saying or not.

DONNA AUSTIN: Sarmad?

SARMAD HUSSAIN: So I think there are two scenarios here. What I heard earlier was that we are pre-evaluating all the variants. When we are pre-evaluating all the variants, it means that all the allocatable variants are actually being considered as being applied for. Worse is if you're just applying one label, and the other variants are not being pre-evaluated. That would be the scenario which I guess Hadia is referring to. So that's slightly different from at least what I was referring to.

So I guess the question is, there are some additional implications if you pre-evaluate all the allocatable variants along with the applied-for string, even if the applicant is not asking for them. Thank you.

DONNA AUSTIN: Ariel?

ARIEL LIANG: Thanks, Sarmad. And, also, I think I didn't explain it precisely. For the sentence on implementation guidance about pre-evaluation, I think what the team agreed on is pre-evaluation of the desire variant labels plus the primary label, not all of the allocatable variant labels in the set. I think that's what the team agreed on. And I'm happy to be corrected if that's not the case.

DONNA AUSTIN: I think that's right, Ariel.

                       Edmon?

EDMON CHUNG: Speaking personally, I think, in general, the direction seems fine, but something came to mind. There were these string similarity objections and other objections. If not all the strings are considered at the same time, the first-come, first-serve process rules. Then a particular variant, if it overlaps with another variant … Then someone coming along in a later round, for example, could become very surprised that they were not give a chance to object, given that it's only the applied-for, desired variants that are included in those processes. And then they are left with not being able to apply their TLD in the subsequent rounds.

So I think we need to really come back to this and think through those scenarios. And my gut reaction still says that those processes need to be addressed for all variants, not just the ones that are applied-for or requested for delegation in the application. So I guess that's something that we might need to think through as well.

DONNA AUSTIN: Thanks, Edmon.

Maxim?

MAXIM ALZOBA: I have two points. The first is in response to Edmon. I find these ideas mutually exclusive. It could be either one legal body for all variants. And in a situation where we create a mechanism to challenge that[—]for example, you have a legal body which obtained some string, and then, in five years, another legal body says, "Okay, I applied for a variant of this string. And on that basis, I will try to withdraw the rights from the first legal body"[—]it's going to create some kind of legal and procedural nightmare, where everybody is going to sue everybody. I'm not sure it's going to be a stable scenario, I'd say.

And my second point is a kind of clarification about the scope. If we hypothetically speak about variants without rounds—some special allocation of whatever you call the procedure[—]we should not limit to those who applied for the [chat box] variants more than ten years ago or around ten years ago because many things

changed and nobody knew that it was going to be an option. So, yeah, it's to separate items. Thanks.

DONNA AUSTIN: Thanks, Maxim. So I'm just seeing a note from Michael in chat: "Taking a look at all variants, not only the applied-for, could require looking at thousands or even millions of labels in the case of Arabic. And that doesn't sound feasible." That certainly resonates with me. So I wonder. We're developing the policy here. So is there a way to take the complexity out of there so that, when you apply for an IDN gTLD and its variants … Is that just one opportunity that you get to apply for those variants? I think we've discussed the possibility that they could apply for additional variants in other rounds, but does that, from a policy perspective, make sense to do it that way? So I guess that's our opportunity here. There certainly could be complexity particularly when you're looking at [moving to] labels. So is there a way for us to minimize that in some way?

So, Maxim and then …

MAXIM ALZOBA: Sorry. I was an old hand.

DONNA AUSTIN: Sorry, Maxim.

Hadia, go ahead.

HADIA ELMINIAWI: Thank you, Donna. So, answering your question, I think it's not a one-time opportunity, but it's just that, when you don't apply for all the variants in the first application, whether it's going [inaudible] [round] or not, you're risking not being able to apply for some of the variants later. But that does not mean that you can't ever apply for them. That's my understanding, at least.

DONNA AUSTIN: Thanks, Hadia.

Satish?

SATISH BABU: Thanks, Donna. So I think the registry operators may prefer to start slow on variants and see how the market responds and then ask for more variants. That seems to me a logical progression. So we might need to be prepared for the ROs to ask multiple times. But I think we can include the survey that we're proposing. We may want to check out what the preferences are going to be.

And to Edmon's point that we examine the entire set, I'm not sure of the numbers that we're talking about here. It has been pointed out that it could be thousands or even more. If we can get an estimate on the numbers involved, that will also help arrive at a consensus on this. Thank you.

DONNA AUSTIN:	Thanks, Satish. I think that data is really helpful to us in trying to work through this. So I guess I'm looking at Sarmad when I wonder what's possible.
	So, Maxim and then Sarmad. Then I think we'll try to draw a line under this. I think we've had some good discussions, so we'll rework the summary of discussion points and see if there's any further questions or issues that fall out of that. So, Maxim and then Sarmad.
MAXIM ALZOBA:	It's an organizational question. Jeff is stuck in Zoom limbo—I mean, in attendees. He cannot use chat and asks that he be promoted to panelist. Thanks.
DONNA AUSTIN:	I believe he has been brought across. Thanks, Maxim.
	Sarmad?
SARMAD HUSSAIN:	Thank you. I was just going to respond to Satish's comment. As far as the number of variants—just allocatable variants—are concerned, we recently ran the TLDs which are already delegated. So it's dependent on the string, of course, which is being applied for. For Chinese, this could go up to—or Han script—the … Actually, scrolling through that, it just shows 18 variants from one of the delegated TLDs. And Arabic, the largest number is 12,400. So that's some data on the existing TLDs. Thank you.

DONNA AUSTIN: Thanks, Sarmad. So 12,000 is a big number. Okay.

Jeff, if you're talking about your e-mail as it relates to the conversation around these, we haven't got to that yet.

Edmon, go ahead.

EDMON CHUNG: I guess the numbers are useful to consider. One other thing that we might want to think about is the likelihood of overlapping variants from two independent applied-for strings. I am much more familiar with the Chinese table and understand that that is certainly possible for a completely independent applied-for string to end up having one particular variant overlap and causing an issue. For other situations, I'm not as sure, but maybe that's something that we might want to get a sense of as well because the situation that I want to avoid is: if there are "hidden" variants that are not considered in the process, then the first-come, first-serve rule is probably not fair with the objection process. The objection process is supposedly provided to people who maybe don't want to apply for the TLD or are not ready to apply for the TLD yet but would like to have the option to object if it intervenes with their brand or their community string.

So I guess that's the part I want to highlight and we might want to think through. Maybe that's not something we can resolve, and then that's that. But I guess I'm just raising it up for us to think through.

DONNA AUSTIN: Thanks, Edmon. So I guess I have a question. So when we think about an IDN gTLD and its variants, are we considering that as a set? Or are we considering the as separate strings? From what I'm hearing, I'm thinking we're considering them as separate strings. And I'm not sure what difference it makes, but I was kind of thinking, if the gTLD and its variant is considered as a set, whether that makes it easier to deal with than if they're being considered individual strings. So I'm not sure whether that makes a difference or not.

So, Michael?

MICHAEL: Thanks. I just wanted to comment on Edmon's comment that he said. There could be two strings or two labels with overlapping variants, but that would also mean that those two labels would be variants of each other due to [trendativity]. So it's not possible to have Label B and a Label B which are not variants of each other but both of them having a Label C which is the same. And C is a variant of A and of B. So it's to say either both labels are already variants of each other or there is no overlapping in their variant labels. Thanks.

DONNA AUSTIN: Thanks, Michael.

Edmon, is that an old hand?

EN

Okay.

Jeff, go ahead.

JEFF NEUMAN: Sorry I missed this. I got screwed up with the time and got caught on something else, so I don't know if all of this was covered. But to answer your question, Donna, I think it can be either considered a separate string or a set depending on what the application is. So if it's an application for a new TLD in the new TLD process, and they want to apply for variants along with it, it can be considered as a set. But if there's a TLD that has already been approved and then they later come and say that they want to have one or more variants delegated, then that would just be an application for that string as part of the overall set. So I don't know where we got to on the decision of whether everything needs to go through the new gTLD process or not. And I apologize because I missed the beginning. So part of it sort of depends on that.

But in any case, the applicant that applies needs to show that it can handle the variants that it is applying for. It should not have to show that it could handle variants for which it is not applying for, if that makes any sense. So if there's an objection, it needs to be an objection not because something is a theoretical variant of a string that someone proposes but they're not proposing the use of the variant. I think that would lead to very weird results.

And what ultimately that means, at the end of the day, is that, yes, it's the first to file unless there's multiple in the same round. But essentially, if it's in different rounds, then the first to file gets the

string and they're accepted and has the exclusive right to any of the variants, regardless of whether they initially indicated an interest in it or not. There's no other way to do it.

DONNA AUSTIN: Okay. So I think what I want to do is a I want to draw a line under this conversation. There's a lot to unpack in what people have said. We may be getting off topic and maybe there's an easier way to come back to this to respond to this question. So I think we'll draw a line under it here because I think we've been discussing it for almost 30 minutes. So let's draw a line under this with the understanding that we'll come back to it. We'll do another summary of the discussion. And maybe we'll talk to Sarmad in the interim and see if we can unpack this a little bit so that we're focused on the question and what the intent of the question is. And it is difficult because there are so many variant rules when it comes to the variants and the evaluation process and string contention and objection and all the rest of it. So we'll do our best to unpack it and try to find a path forward.

So, Ariel, I will hand it back to you and we'll move on. Thanks.

ARIEL LIANG: Thanks, Donna. So we're just going to take a quick look at Part 2 of the recap. It's about existing registry operators' request to activate allocatable variant labels. So the first two points are some of the initial discussions, but the most important takeaway we got from the previous meeting is the agreement from the team to distribute a questionnaire to Chinese and Arabic TLD registry

EN

operators to understand whether they have interest in requesting allocatable variant labels. And then also in the questionnaire, we could potentially ask, if so, what labels they're interested in activating, what's the timing related to that, and then whether they have any other considerations, such as pricing-related things.

So, just to let folks know, staff have developed a draft survey, but it's no ready for primetime yet. The leadership team still needs to take a look at it. And we have some internal discussion with the GDS team just to understand the right approach for that distribution of the questionnaire.

And I see, Jeff, you have your hand up, but I just want to flag one point. Since we have some Chinese community members in this team, we may want to seek your suggestion for what's the best to reach out to the Chinese TLD registry operators, and what's the best tool to use to get the survey results because, as we know, Google Form and those tools are not available. So if you have any suggestions, we'll welcome that.

I'll stop here.

DONNA AUSTIN: Thanks, Ariel.

Jeff?

JEFF NEUMAN: A couple things—one on process. So I had to miss the ICANN session because of conflicts. And there were others that did, too.

Most PDPs adopt a process where agreements can only be declared where there's at least two meetings that have discussed it. So I think that's important—to not just take the results of meeting and then say there's agreement for a survey—because I'm about to just give some information on why I think it may not be as great of an idea or it may be as relevant as we think it is.

Yeah, sure, I don't care if we ask, "Do you plan on applying?" but I would object to asking them about fees or anything else. And this is because SubPro has already said how the fees should be determined for future applications. It did not differentiate between future applications of variants of existing or … It just said that it should be on a cost recovery basis. So if we're going to deviate from cost recovery, we really need some good reasons why, and not just because existing operators want to pay less, because obviously they're always going to say that. Why would you not if you're an existing operator?

So I think it's important, before we even have any questions or discussions about fees, that we affirm the principle by SubPro of cost recovery, no matter what it is—if it's a streamlined process or not—and that it's not going to be the choice of what registries want to pay but rather a function of what it costs to evaluate.

And that gets back as well to the e-mail, which is … We talked about, for the last several weeks, that when someone applies for one or more variants, careful consideration needs to be taken for how that registry is going to manage the variants. And that includes educating registrars and registrants. So if we're going to create some evaluation process, we can't just say what the fees should be without an understanding of what it would cost to do

that evaluation. That would be unfair to ICANN. Plus it kind of reeks of that we're catering to existing gTLDs and incumbents.

Finally, what we're determining now, although it says "for an existing registry operator to activate an allocatable variant," and all we're thinking about is "prior to the next round," in theory this is going to be the precedent between any and all rounds. So if there's someone approved in the next round and they didn't initially apply for an allocatable variant but they all of a sudden want it, then this is the process they would follow as well. So I really encourage us not to be very short-sighted and only think about an existing registry operator as of today, which is the problem with surveying only existing registry operators today.

I hope that makes sense. And I'm sorry for throwing a wrench in it, but I did send an e-mail on it. And the conflict at the ICANN meeting should have been avoided, but we couldn't. Thank you.

DONNA AUSTIN: So, Jeff, just to be clear, the purpose of the questionnaire is really just to get a sense of the interest of existing IDN gTLD applicants in applying for a variant if that becomes available. So we're not going to talk about fees. We're not going to suggest anything about fees. This is going to be pretty basic to establish the level of interest of existing registry operators in wanting to activate variants. And then that will help us consider this question. So all we're trying to do is understand the quantum of the problem, if I can put it that way. So it's not much beyond that.

JEFF NEUMAN: Sorry. New hand, if I can.

DONNA AUSTIN: Sure.

JEFF NEUMAN: I guess what I'm trying to say is, while it's interesting information, it's not going to understand the quantum of the problem because, in five years or whatever, when we have the new round and there's new registries in place, they, too, may decide, "You know what? We've been in operation for year. We want, now, a variant." So then they will be existing registry operator. So a survey of existing registries now will not quantify the problem that will exist or can exist.

DONNA AUSTIN: We're trying to quantify the problem in the context of this question. So what should be the process by which an existing registry operator could apply for all the allocated variants for its existing gTLD?

And correct me if I'm wrong, but I think this question specifically relates to IDN gTLD applicants from 2012. And it won't go beyond that. That's my understanding, but I'm happy to be corrected on that.

JEFF NEUMAN: I think, when we developed the question in the charter group—I don't know if Dennis is here—it was the overall question of, how

does an existing registry seek to activate allocatable variant labels, regardless of when that registry became an existing registry, not 2012? I don't think it was limited to 2012. I could be wrong, but I'm pretty sure, when we discussed it, it was, what was the process for someone that's been delegated, whether it was in 2012 or whether it was in the next round, that now decides they want a variant? So it was not limited to 2012 when we were discussing it in the charter group.

DONNA AUSTIN: All right. Dennis or Edmon, if you can confirm. It seems that Ariel's recollection is that it is specifically related to 2012.

So I'll go to Maxim, Hadia, and then Michael.

MAXIM ALZOBA: I think this set of question is quite relevant to the questions of: same registry agreement or different registries' agreement? And I think all questions tied to fees should be seen in a matrix of potential options, like, what if it's going to be same registry agreement structure with a single array for each TLD? If it's variant or not, it doesn't matter. So it's going to be a matrix of three by three, or something like that. Thank you.

DONNA AUSTIN: Hadia and then Michael.

EN

HADIA ELMINIAWI: Thank you. So my understanding to this question is that it gives an opportunity for applicants of 2012 who were not able to apply for their variants because variants were not allowed back then). And that's we are talking about a simplified process before the next round. So that's how I understand it. Thank you.

DONNA AUSTIN: Thanks, Hadia.

Michael?

MICHAEL: Basically, what Hadia said. I think we can handle TLDs differently depending on whether they were applied for during 2012 when there was not the possibility to apply for variants and for TLDs that apply in the next round because then there will be some possibility for variants. So I think it makes sense to differentiate here. Thanks.

DONNA AUSTIN: Thanks, Michael. So, Dennis, I know you put in the chat that, during the charter drafting, we were focused on the existing gTLDs in the now. The same situation could apply in future gTLDs—hence the question about timing and sequence. So that's Question B4, if I'm correct.

But I'd like to hear from others about …

EN

JEFF NEUMAN:	Sorry. What's B4, Donna? I'm sorry.
DONNA AUSTIN:	It's about the timing and sequencing. Ariel, correct me if I'm wrong, but I think that's the question on timing and sequence.
JEFF NEUMAN:	Again, why would … Sorry. I'm just thinking, why would we waste our time coming up with two different processes when it's the same problem that will exist? Why not come up with one process, the same evaluation that is applicable across the board? Why should it be that existing gTLD registries should have some different process and therefore some advantage over any … At the time that there were applications, it was known you couldn't have variants. So it's potentially possible that registries didn't even bother applying because they couldn't have variants, but now you're giving some unfair advantage to existing registry operators.
DONNA AUSTIN:	So, Jeff, are you assuming that, for IDN gTLD applicants that want to seek, from 2012, the variants, the only way for them to do that is for any future round of new gTLDs? Is that your assumption?
JEFF NEUMAN:	No, that's not my assumption at all. But my assumption is that whatever we come up with, as Dennis said, will be the same process for any TLD that's delegated in the next round and wants an allocatable variant at a later time after their initial application

EN

was approved and they've been delegated. So we should be coming up with a consistent process for how an existing gTLD, regardless of when it's existing, can later apply for an allocatable variant.

And the point that Hadia is making I just disagree with because it's not just the gTLDs that applied in 2012 that couldn't apply for variants. It was anyone that was contemplating applying. So it's possible, in theory—and we have no idea, but it's possible—that someone didn't apply at all because they knew they couldn't have any variants. We just don't know. And I think we could [make it] one process.

DONNA AUSTIN: But we have two questions in this. So what should be the process by which an existing registry operator could apply for or be allocated a variant for its existing gTLD?

And, separately, there is a question: what should be the process by which an applicant applying for a new IDN gTLD could seek and obtain any allocatable variants?

JEFF NEUMAN: Correct.

DONNA AUSTIN: So we've got two separate questions that we're trying to answer here.

EN

JEFF NEUMAN:	But it's the same—
DONNA AUSTIN:	So, in my mind, Jeff, it's not the same. And that's where we're trying to scope the problem, which is why we agreed last week that it would be a good idea to have a questionnaire so that we could see what the interest from existing registry operators was in applying for variants.
	So I'm confused when you talk about a process which you seem to think is a unilateral process, whether it was for those from 2012 or those in the future. So I'm not understanding.
	Dennis, go ahead.
JEFF NEUMAN:	Well, can I clarify that before Dennis goes? Because I think I may have created some confusion.
DONNA AUSTIN:	Go ahead.
JEFF NEUMAN:	So let me just clarify. What I'm saying is that, for the first part of Question 1B, we should come up with a process by which any gTLD, regardless of the timing of when it is "existing," should be able to apply.

EN

The question for the second part is: an applicant for a new gTLD should include in their application any allocatable strings that they want to apply for at that point in time. Then that answers both questions.

And then the fees and everyone else, I think, we shouldn't even begin to touch because there's already a policy that says it needs to be cost recovery.

So I think these questions are actually easier than we're making it sound, but all I'm saying is there should not be something special for just the 2012 applicants or the TLDs and we should be thinking of a policy that's implementable for now and in the future.

DONNA AUSTIN: Dennis?

DENNIS CHANG: Thank you, Donna. Two different questions. And I don't think we need to argue on that. So there are two different questions, two different scenarios. The 2012 round has unique characteristics because that round already passed. And existing gTLD existing new gTLD operators that would like to apply for their variants that they were prohibited from for applications will need to go through a unique process because they will not benefit—I mean, with a big caveat here—from any future process that we might put in place where variants are going to be invalid in the process.

So the 2012 gTLD applicants will have a unique experience because potentially they will need to start from scratch. But certain

components should be repeatable in the future again. So depending on how we are going to end up with a future process of how you process variant sets and how you define the timing and sequencing, which [occasion and activation] of the variants. And that's why the idea of processing all sets in one single process and then you activate variants as you decide to do so was a clever idea: because it allows the applicant to gain efficiency. It removes frictions as far as going through the processes and application and what have you. And then you just activate, as you activate IDN tables, for example.

But again, we want to go back. So there are two different questions that we need to answer. It might be that, as we discussed, we end up with one single process that addresses both types of problems. But I think we need to look through two different lenses here first and then we can find a common solution for both items.

DONNA AUSTIN: Thanks, Dennis.

Satish?

SATISH BABU: Thanks, Donna. So I agree to what Dennis has stated as two separate questions, but I would say that—this is my understanding—these are also two different policies. The first one for the existing gTLDs is not indefinitely open. It has to a window/time period, after which it is over and completed, whether

EN

it's the new policy that we're creating that's opening that and it is all the subsequent rounds.

So I'm not sure whether we want to mix these together into a single policy which may be unworkable. I see some sense in separating these two and keeping a time limit for the first one.

And on the survey, I feel that this one is correct: we have to think of the future. But since all the data that we have used so far is from the past, I do not see any problems in sounding out [inaudible] particularly contentious to gather information so that we can pick a better position on it. Thank you.

DONNA AUSTIN: Thanks, Satish. Sorry, I'm trying to catch up with what's being said in chat. But what I'm hearing is we do have two distinct questions here that we need to answer. It may be that, in answering those questions, we agree that there is one solution to address both questions. But I think we have to look at the questions separately and then see whether there's commonalities and where we end up. But I don't think it's reasonable to assume that certain things will happen.

Jeff?

JEFF NEUMAN: Thanks. I think we need to come up with, as Dennis said, a repeatable process. What I was a little discouraged by in reading the notes from the last meeting, especially when it came to fees, which is the third question in here—I think the third, if I'm reading

correctly—is as to why we were discussing anything other than, from a policy perspective, cost recovery.

So what was going on in the chat as well is that Edmon and I were going back and forth on that perhaps there's, as Satish said, a limited window for existing gTLD operators. So the process may be a little bit different. But at the end of the day, the evaluation is going to be the same.

And so it just, to me, seems like it's a little premature to either address the fees question, including annual registration fees or whatever that is until we've, for the application fee, finalized the criteria for the evaluation and, also, for the ongoing fees, finalized what the requirements are going to be, if any, on a yearly basis that need to be incorporated into a contract. And there may not be any. You just don't know yet because we haven't talked about it.

And so my recommendation, therefore, is to perhaps agree that we will recommend a process by which a 2012 registry operator can activate allocatable variants for a limited time period. I think that's what Satish said. And then I think we need to park everything else—oh, sorry. And the second question, I think—I don't know if anyone disagrees … If a new gTLD applicant wants variants, and it knows what variants it wants at the time of application, then wouldn't that just be in the application for the new IDN gTLD? I haven't heard anyone say that that's a bad idea. So that seems like it's the answer for the second one. And again—

DONNA AUSTIN: So, Jeff, all we're trying to discuss here is we're just doing a summary of the discussion on the part of the question which is related to an existing registry operator—

JEFF NEUMAN: [For] 2012.

DONNA AUSTIN: Right. We're not talking about fees at this point. We will get to that. But all we were trying to have a discussion around here was on an existing registry operator. And we did have a discussion last week and then we had agreed that it would be helpful to survey those from 2012 to see whether there's an interest in requesting a variant. And there was a possibility from that survey that there was no interest. So then we've scoped the problem: that perhaps this question is no longer relevant because nobody is going to be interested in applying for a variant.

So that was the purpose of the survey. It was to try to scope the problem. And the only question that we're trying to deal with here right now is related to an existing registry operator. The intent was that we would get to the second part of the question and the third part of the question, but what I fear has happened here is that it's been all blown up and conflated and now it's a matter of just trying to unpack that and make sure we can work our how we're going to deal with this. Yes, we need to understand the different parts of the process and evaluation and all that kind of stuff. I don't think anyone is disagreeing with that. But we're just trying to keep this simple and focused on the questions that we have in front of us.

And for this part of the discussion, it was only supposed to be about an existing registry operator. And then we get to the next part and then fees later.

So if you have a response to that, and then Maxim.

JEFF NEUMAN: Yeah. I will drop this if there's a question later on that says, how do later existing registries apply for allocatable strings that they didn't initially apply for? Is that a separate question in our charter?

DONNA AUSTIN: I could be wrong, but I think that would be part of the conversation of timing and sequence. So the conversation we had last week was, what happens if you only apply for some variants in one round, and then what happens when you want to seek them afterwards? So I believe we will cover that in B4.

JEFF NEUMAN: Okay, that's good. Then as long as we cover it, that's fine. I just think we're going to end up discussing the same thing twice. But, fine. Cool.

DONNA AUSTIN: To some extent, Jeff, we're trying to stick to the script. And our script is the charter questions. We understand that there's going to be some overlap and duplication, but we need to make our way through the charter questions. And that's what we're trying to do.

Maxim?

MAXIM ALZOBA: I think we might cause some confusion. And just for the avoidance of that, I suggest we use applications for the rounds with applications for TLDs and something like activation requests if we're speaking about the idea of activation of variants outside of rounds or maybe in rounds—but the process, which is not the same as for applications. We will spend less time explaining what we meant. Thanks.

DONNA AUSTIN: Thanks, Maxim.

Ariel, can we move on to the next part, please? We'll try to pull this all back together and do a summary of the discussion. I still believe that there are folks within this group that think there's value in going ahead with the survey, so we will still work with staff to develop that. And then we can come back to that. Ariel?

ARIEL LIANG: Thanks, Donna. So this is a recap of Part 3 of the discussion. I won't use the word "agreement" anymore because I do know that Jeff has voiced his disagreement on the mailing list, which is also captured in the summary here. So it's about the associated fees related to variants.

And then the points that have been discussed include several. One is that the 2012 round applicant already paid the fees, and

this can potentially be considered in their activation request of variant labels. And then of course the cost recovery revenue-neutral principle has been stressed by members, definitely including Jeff. And then also we captured a point that this question is hard to tackle at this point without addressing the evaluation criteria and all the necessary steps for evaluating variants. So it may be hard to answer at this point.

But just to recap for the sake of members who were not in the previous meeting, there was some support for the application fee to include [inaudible] primary applied-for gTLD and the variant labels, but there may be some additional fees that needed to be included for variant labels due to the evaluation necessity. So one idea is that a similar process to the 2012 round, where additional fees were required, can be referenced here, such as the community priority evaluation process, the registry service evaluation. Those processes include additional fees. So this could be something to consider for future applicants of variant TLDs.

And then, in terms of ongoing fees, there is some support for that the transactions be aggregated for both the primary TLD and its variant labels. So these labels should be considered as a single TLD, and then the ongoing fees should reflect that. So there's some support for this idea as well.

And then this is the recap for the fee discussions. We don't know whether the group is ready for any draft recommendation language to be developed at this point. But maybe not. As Jeff said, it may be a hard question to tackle at this point.

So I'll stop here. And he has his hand up.

DONNA AUSTIN: Thanks, Ariel.

                       Jeff?

JEFF NEUMAN: Thanks. So I'm going to put on my lawyer hat for the moment. When talking about fees, we need to be extremely careful that we do not get into details of numbers or anything other than formulas from an anti-trust perspective because, especially in our working group, there are incumbent registries as well as potential future registries. So for us to be discussing leniency on fees or anything other than an overall principle is very dangerous and it may get to a point where, at least as attorney, I'll drop just because I don't want to be associated with it.

                       That said, the way we tackled it in SubPro was that we came up with a formula which essentially was cost recovery. That is a consensus policy, by the way, now. It hasn't been approved by the Board, but it seems to me that whatever the costs are to evaluate and implement should be the costs that are charged, regardless of the fact that some people paid $150,000 before or whatever other elements there are. We really just lay down the principle, and then an implementation team or, more likely, ICANN, which is going to implement, will determine what the fees are based on the formula.

                       So I'm just going to urge caution, please, as an attorney, to not get into specifics of fees because it's not appropriate. And I can't be part of it, by the way. Thanks.

DONNA AUSTIN: Thanks, Jeff. So I don't think there was any … All we're trying to do is here is establish, in principle, what we think is a reasonable path forward. Revenue-neutral or cost-neutral, I think, is well understood by this group, but we had agreed that, for future rounds, one application would be submitted for an IDN gTLD and its variants.

So, in principle, does it hold that that is one application fee? And I think, based on the discussion we had last week, we all understand that there's probably different elements that an IDN gTLD and its variants would have to go through. So, in principle, should there be an extra loading attached to that so that the conversation we're having here really is, in principle, discussions? We're not talking about specifics, just whether, in the context of an IDN gTLD and its variants, is a single application, but knowing that there is different components to that from perhaps a regular gTLD. Should there be some additional loading to accommodate that?

So I think that's the context of the conversation we had last week. So I don't think it's any of the concerns that you noted. I don't think we went there. And I don't think there's any intention of this group to go there, either.

So, Jeff?

JEFF NEUMAN: Thank you. Then I think, using that, this question, again, should be, at least from a policy perspective, easy. If we as a group agree that, when someone wants a variant, there needs to be an

EN

evaluation, I think, as we talked about for the last—I don't know how many—weeks, they can actually manage it. If ICANN determines that there are increased costs to do that or another evaluation, then that answers itself. That means that, yes, there will be additional fees to cover the cost of the separate evaluation.

So I'm not sure we need anything else at this point. I think we already have the guidance that's needed. Is there something I'm missing?

DONNA AUSTIN: So I'm really interested to hear from others within this working group to see if they have anything to add on this question. This is obviously a recap of the discussion we had last week. So if your thoughts have changed this last week or you have anything to add, then please do that now.

Satish?

SATISH BABU: Thanks, Donna. I was also not there in the last meeting, but I did listen to the recording.

Now, to answer Jeff's question, I think there could still be a few things … I mean, it is not simple as it looks. For instance, an applicant has only the primary domain name that is applied for. Another one has the primary plus one variant. Another one has the primary plus two variants. So you can have a number of different possibilities there.

EN

And the question of what the fee should be of each of these applications is not very easy to [inaudible] unless you want to charge on a per-variant basis cost. But we have so far discussed that the whole thing should be or could be covered in one cost.

So these are things which still are open. When I look at it, I feel they are still unanswered questions. Thank you.

DONNA AUSTIN: Thanks, Satish. And I would note that, during our conversation last week, I think it was Jerry that mentioned that an IDN gTLD and its variants are … The purpose of applying for a variant is really so that the user, depending on which variant of the string they're using, has the same experience. So it's coming back to really one TLD. So I think that was something important that Jerry raised last week. And I don't think we should necessarily lose sight of that either. There is a need for the variant to ensure the same user experience.

Jeff?

JEFF NEUMAN: Thanks. And that could be very much one intended purpose. That is how Jerry … And frankly, I think that's the right approach. But at the end of the day, it's going to be for a registry to explain why it wants the variant and then how it meets whatever the criteria is that's set up.

And to Satish, if it costs the same to evaluate one variant as it does two or three variants, according to whatever the criteria is,

EN

then it could be the same cost. If it costs more to look at two, then it could cost more. At the end of the day, it's all cost recovery. It's, "ICANN, just figure out using all the evaluation criteria that we developed. What is it going to cost?" And that's how the fees are set. For us to do anything else just doesn't make sense to me because we don't know what it costs. Thanks.

DONNA AUSTIN: So I think it's important to understand within the context of discussions that we're having now. We're just trying to get some in-principle agreement on some ideas. So I think we've covered off Jeff's concerns and Satish's, and we can put a pin in this for now and move on.

And just to note, we were never talking about [inaudible] fees here. So it was just in-principle agreement on what the associated fee should be.

Okay. Are we read to move on, Ariel? And we're 12 minutes from time. Is that correct?

ARIEL LIANG: Yes, that's correct. So just before we move on to the next question, I wanted to make sure capture the actions for staff. For Part 1, we could potentially develop some draft recommendation language and implementation guidance. The pre-evaluation elements may be a little hard to address. Then maybe we can put a pin in this and not develop draft outcome language related to this idea. But the other part can be captured in recommendation language and implementation guidance.

EN

And then, Part 2, we will still go ahead with this brief questionnaire idea. And staff and leadership team will work in the background to get the questions ready for the tea to review. So definitely you will have a chance to look at the questions themselves before the survey is distributed to the eligible registry operators.

And then, Part 3, I don't think we have draft recommendation ready yet, although we did hear some principle agreement on the cost recovery point that applies to variant labels. I know we could potentially put a pin in this and see whether we can develop some draft recommendation after tackling the later part of the charter.

And I see Jeff has his hand up.

JEFF NEUMAN: Yeah, that's what I was going to ask. Before putting a pin in it, are we in agreement at least on this call? And then, because agreements should be confirmed, whatever we do should follow a cost recovery, revenue-neutral principle? It would be great if we were and then can instruct the recommendations to reflect that.

DONNA AUSTIN: So, Jeff, the way that we've been managing our conversations and the agreement on draft recommendations is that we have the discussion, and the leadership team and staff develop draft recommendations. And it's the draft recommendations that folks had a chance to review and decide whether they agree on that. And that's how we have agreed to sign off on recommendations. So the agreement to draft language is really where we do the sign-off. The in-principle agreement gives us, I guess, the

information we need to develop draft recommendations. Or if we don't think we're in that spot, then we'll come back to topics and continue discussing until we do.

Okay. Ariel?

ARIEL LIANG: Thanks, Donna. We only have eight minutes left, but moving on quickly to B4A, just as a reminder, in the last meeting, the group did discuss B4, which about the timing and sequence for an existing and future registry operator with respect to applying for or activating their allocatable variant TLD labels. That question is parked at this moment because the questionnaire may help inform the answer to that questions.

And also, there is an action item for staff and the leadership team to develop a strawman process to see how a variant label is being evaluated and what are the elements that are necessary. So that process could also inform the answer to this question as well. And that's why B4 it's parked at this moment.

And that's why we're moving on to B4A, which is that, for variant labels with the status of "withheld, same entity"—i.e., not requested for allocation in the application process—what role do they play? Just to provide context here, the role we're talking about is not about those "withheld, same entity" labels in the objections, string similarity reviews, string contention, and other steps in the process. We're only talking about their role in the initial application or request for activation step. And [inaudible] to understanding they do not really have a role to play, other than

being set aside for the same entity. So that's what staff assumed what their answer could be.

So the short, simple answer is, no, they don't have a role to play, other than being set aside for the same entity. But we want to check whether that's the understanding of the team as well.

DONNA AUSTIN: Thanks, Ariel.

Jeff?

JEFF NEUMAN: Thanks. I'm wondering if this is a good place where we say that just because something is withheld for the same entity doesn't mean that that entity automatically has any rights to it without going through whatever the application request for activation— whatever the next step—is. I think it's important to make that explicit statement. By being put … Sorry, I'm trying to word it better. By being by classified as withheld to the same entity, that does not give any rights to the registry operator to claim those names outside of the approved request process or whatever we end up calling it. I think it's important to state that.

DONNA AUSTIN: Thanks, Jeff.

Any other thoughts on this one from anyone?

Dennis?

DENNIS CHANG: Thank you. So I'm reacting to Jeff's observation. I'm not sure I would support that. It just raises questions about the, for example, scenario we're talking about: to review and process the variant set at once, and then labels could be activated later. Those labels will have this status of "withheld for the same entity," and therefore, because they went through a former application process, the registry operator will have claims over it.

So I just want to be mindful. We haven't really thought through the whole process, so I think it would be too early to tell whether a registry operator will have legal claims or not.

DONNA AUSTIN: Thanks, Dennis.

Jeff?

JEFF NEUMAN: Thanks, Dennis. Can I ask for a clarification, Dennis? So when something has "withheld for the same entity," are you saying that it's only going to have that status if they've already applied for it and just haven't activated it? Or is that the same status that would be given to a variant that wasn't asked for in the initial application? Because if it applies to both, it's different than if it only applies to what you said, which is they've already included it in their application and it passed evaluation and they're just waiting.

I do agree with you that, if that's the case, and it's only those, what I said is not necessarily correct. But if it includes both, I still stand by the claim section, especially given the registry agreement, which states that no registry operator has any intellectual property or other legal rights in a given string, even the one they're given the authority to manage via the registry agreement. I know this because I'm in a discussion with ICANN on other things. So it is a true statement that no registry has a legal claim on any string regardless.

But my question is, to Dennis, for "withheld for the same entity," is that only for strings that have been applied for, evaluated, and passed but just not activated? Or is it also for strings that were not included in the application but are variants and withheld?

DENNIS CHANG: To quickly respond to Jeff, I don't know. I don't think we have looked at the label status in this context yet.

DONNA AUSTIN: Hadia?

HADIA ELMINIAWI: So I agree with Dennis that we have not discussed this yet. However, whether "withheld, same entity" includes only the variants included I the application or not, generally speaking, even variants that are not included in the applications cannot be applied for by another entity, even if it does not have that status. Right?

EN

DONNA AUSTIN: I think that's right, Hadia.

Okay, let's park this. We'll capture the discussion and see if we can address some of the questions that are being raised here. We might to go back to some of the definitional pieces that we were working on previously.

Okay, so it's time. We're going to call it. Thanks, everyone, for attending. And we will see you all next week. Thanks.

[END OF TRANSCRIPTION]