
ICANN Transcription

New gTLD Subsequent Procedures Working Group

Monday 19, August 2019 at 2000 UTC

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<https://icann.zoom.us/recording/play/tXX6Grr9JDKgnjz9u2wO-sTaX-KLEqG3TueNTwgdiWxPL1M6Kk3vBhQ4rFikLdiU>

Zoom Recording:

<https://icann.zoom.us/recording/play/oTvHlqrEMT9DKFcJu2aN2kdgD2SxRgJkdawr3w7trWDMrosKjVgKSdoo8mvNfyEs>

Attendance is on the wiki page: <https://community.icann.org/x/VKujBg>

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JULIE BISLAND: Welcome, everyone. Good morning, good afternoon, good evening. Welcome to the new gTLD Subsequent Procedures Working Group call on Monday, the 19th of August 2019. In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. And if you're only on the audio portion, would you please let yourself be known now?

RITA HOUKAYEM: Rita from Canada.

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JULIE BISLAND: Rita, thank you very much. Alright. Well, hearing no other names, I would like to remind all participants to please state your name before speaking for transcription purposes, and also please keep phones and microphones on mute when not speaking to avoid background noise. With this, I will turn it back over to Jeff Neuman. You can begin, Jeff.

JEFF NEUMAN: Thank you very much. Welcome, everyone. This is the 19th of August as was said earlier. Our agenda again looks fairly familiar as we just keep going through the topics on the list and through in accordance with the work plan. So, today's topic, hopefully we won't spend that much longer on reserved names because we only have a couple of issues to talk about there. Then we will get to the registrant protections. Well, I'm not sure we have closed generics on here, time permitting. I don't know if we'll have that time. But if we did, just wishful thinking and maybe we'll get onto that or at least if we did, we would just be starting it.

Jim asked the question about the work plan. Yes, it's on the wiki page and at some point we can get that on the chat, but it is in the same place it has always been and so hopefully someone could post the link.

Before we get into the substance, let me just ask if there are any updates to the Statements of Interest? Okay. Not seeing any. I'm sorry, was there someone who wanted to...? Okay. It sounds like someone else has an open line. Is there anyone who wants to say something? Okay. Well, if you do have any updates then just put it

on the chat or send an e-mail or you can wait until Thursday's call, either way.

Alright. So, the link is for the summary document that we are now on which covers application/evaluation criteria and that includes the first topic which is reserved names which left off on Thursday last week. If you recall, for those that were on the call and I guess for those that were not, reserved names covers a couple of different areas. We already discussed on the last call that there were some issues with the term "reserved" because it could mean different things in different situations. So, we'll have to be clear as to what we mean.

Reserved means we also discussed could be either the top level or the second level and we spent a lot of time last time talking about different situations where there would names that were unavailable to apply for at the top level, and today we're going to focus a little bit on [inaudible]. If you could please mute your phones. We're going to spend a little bit of time right now as we get to the tail end of the reserved name subject talking about reserved names at the second level. So, these are again not at the top level, so we're not talking about a registry or dot whatever. We are talking about the second level, so it would be whatever second level name.tld registry.

And so, the first topic that we have today is that registries, regardless of the type of registry, have the ability to reserve an unlimited number of second level domain names and release those names at the registry operator's discretion through ICANN accredited registrars. So, just to recap, registries can reserve an

unlimited number of second level names. The only requirements are that they be allocated through ICANN accredited registrars.

An example, as many of the geographic top-level domains reserved the number of the geographically important names for that geography in order to have those names registered by let's say city – if it was a city top-level domain by city organizations or entities. An example, for .nyc, New York City, you could have reserved names for the police, for fire departments, for city services, etc. A lot of geographic TLDs reserved names for those entities, other registries, open registries often reserved the subset of names as premium domain names.

So, one of the unique things with the reserved names are that oftentimes when those names were released, it was unclear at that time as to whether those needed to go through a Sunrise process, but certainly it was clear that those names once they were released from reservation did absolutely have to do a Trademark Claims process. Now, we're not necessarily going to be talking about the intellectual property components because a lot of that hopefully we'll be discussed or is being discussed in the Rights Protection Mechanisms PDP. But there are a couple of topics here that we asked about during the initial report and that we think fall within our scope but that's also up for discussion as to whether we should tackle these particular issues or whether we should send them to the RPM group. But previously, this group thought that we could address those topics and not refer them to the RPM group.

Some comments that came in. There were a number of registries that – I'm sorry, Registry Stakeholder Group, Neustar, the geoTLD

group, .berlin, and GmbH and company, KG/Hamburg top-level domain oppose any kind of limit on the number of names that could be reserved by a registry. There were, however, some comments of support for putting some sort of limit on that number.

For example, Jamie Baxter from .gay, supported limit but that there should be exceptions to allow for innovation and to benefit, let's say, communities and end users. LEMARIT suggest a limit of 5,000 reserved names including their IDN variance but did not necessarily provide an explanation as to why that was the magic number. And Yadgar, suggest that there should be a limit but does not provide a specific number. INTA, Valideus, and Intellectual Property Constituency expressed the concern that if names are being released from reservation after the Sunrise period, that historically the Rights Protection Mechanisms could have been circumvented. In other words, there were names that were reserved, but because they were reserved they were not in the Sunrise period. In other words Trademark owners couldn't register those names but if it turned out that maybe it was reserved for one reason but that party that it was reserved for didn't want it and the registry ended up releasing it, yes, they had to go through Claims but the person – a trademark owner didn't have the chance to get that name during Sunrise.

The registrars express a concern, new idea that they believe that the rights to the names are being sold direct to the customer with an expectation that the registrar will help manage, resolve the domain and this was an issue for registrars. The normal process would be that the registrar allocates names to their customer but in some cases reserved names were allocated through the

registry and then the registrants or the one who got the name would have to find a registrar and then register the name and oftentimes the registrars had to accept these registrations without necessarily understanding how that registrant acquired the name in the first place. They believe that's counter to the whole notion of using a registrar and they say that a limit should be – whether a limit should be considered depends on the procedures that it would use to release the name. If the registry is going to reserve an excessive number of names, registrars want that list of names to be disclosed to them prior to them entering into a contract to offer the top-level domain.

Then when names are released, they should be allocated through the registrar channel. All second level reserved names should be set forth in a list to ICANN and posted on ICANN's website along with its required startup plan. Changes to the list should not be allowed in the middle of a launch process.

So, that's the comments from the registrars. I think this next section is kind of related to that and then we'll go take some comments and questions from the chat and from the group. Let's just go over the next one though that we moved which was Sunrise processes for second level domain names removed from a reserved names list. So, these were comments that supported that notion. So, the IPC, LEMERIT, the BC supported that there'd be a Sunrise period. Another way to say it is that every name has to be subject to the Sunrise regardless of when it's released, I think is another way of saying that.

But the registrar say that it should only be that way if it could be implemented in a commercially feasible fashion, and INTA and

Valideus realized that it may not be feasible to do a Sunrise for, let's say, one-off names if a name is released after the Sunrise period. But they believe that trademark owners or those that have trademarks in the Trademark Clearinghouse should have some sort of right of first refusal to get that name before it goes to the general public. But the registries do not support such a process.

Okay, lots said there about reserved names. I'll go to the chat and then if anyone wants to get in the queue, please do that.

Jim says that he's curious to hear from those who also participated in the RPMs Working Group on the question of referral or is it already being addressed?

Katrin says that "For geoTLDs, it is important to be able to reserve names, as Jeff mentioned, independent from any limits. Most geoTLDs will reserve a reasonable amount of names just for city/administration purposes. However, every registry operator should continue to release reserved names via the registrar channel, and names should also go through claims service."

Maxim says, "The right of first refusal would extend right beyond what trademark owners have in the real world."

Okay. All of that said, is there anyone in the queue that would like to make any comments on these ideas that are presented? These are new ideas or concerns but they are up for comments right now. Just I will note that Susan as responding to Maxim saying that not really that the rights – that's exactly what a Sunrise is not.

Okay, Kristine please.

KRISTINE DORRAIN: Hey, thanks. This is Kristine Dorrain. I just wanted to I guess comment on Jim's question which is the RPMs as I recall – missed a couple of weeks of calls – had discussed the idea but I don't think it has made any recommendations yet, and of course the initial report isn't out. But I know it has discussed the idea of reserved names and whether or not it goes through a Claims or Sunrise or whatever.

I also wanted to make sure that we're not kind of conflating two concepts of reserved names, so the geos at least in the RPMs that we've been talking a lot about, the 100 names that registries can reserve to themselves in advanced of Sunrise, so that, for instance, for geos that's the context in which we're talking about it, they can have access to their names without having the first one and pass the Sunrise or Trademark Claims or Sunrise list to allow them to make sure that their city names are all protected, etc.

That's I think as far as we've gotten on that, but that's slightly different from just sort of the registry being able to conduct its business after the fact, after it's run a normal Sunrise and what names it kind of holds from registration for whatever business purposes it has. I think those are slightly different and I just want to make sure that we're not conflating the two issues here and if we're just make sure just talking about reserved names post Sunrise, or just generally speaking, not the 100 names that registries reserved for themselves. Thank you.

JEFF NEUMAN:

Yeah. Thanks, Kristine. During the last call, we spent time talking about the 100 names, so this is separate in a part from those 100. So, these are not names that are for use by the registry operator either for administrative or operational purposes. These are the rest of the reserved names, however they're reserved. So, hopefully that's now clear. And then there's this other concept I should mention then I'll get to Maxim – about a qualified or a launch plan or I forgot the A stands for right now and additional launch plan or I forgot what the A is, sorry. But that's something else for a certain number of names that did not have to go through a Sunrise but – approved launch plan – thanks, Susan. It's A is for approved – really wasn't used very often because there were so many restrictions that it did not really I think serve the purpose. So, Maxim's got his hands raised. So, Maxim, please.

MAXIM ALZOBA:

Actually speaking about the reserved names and geos and QLP, for some reason, there is a belief that 100 names is not for city with few hundred street names, monuments, lots of public services and the so-called right of first refusal would damage ability of city to deliver required names to the city government and public service and the ALP which was referred by Susan actually didn't work because .core and materials are available at RPM face-to-face meeting a couple of years ago. The thing is they tried with few cities and the implementation of the program was so bad that the same questions were sent back and forth in a year. And for registry doing nothing in a year, it's a huge spending of money because registry has to pay lots of bills. And in situation where the delivery of the services to the city is at question, not many were

eager to risk and actually the only one which tried in the end was .Madrid. And actually even the 100 names was taken by ICANN staff without consultation with registries and geoTLDs. So, it's just question about number.

To say more, registration which ALP didn't work, the only way to deliver names to city was to reserve it, have few rounds of limited periods. For example, in our case, it was limited period for local media license services for local trademark owners. In the end, if the reserved names go through the first refusal right to trademark owners, .police would go to eyewear maker, natural would go to some shopping company etc. And it would damage public interest because I remind you that cities represent millions of citizens and trademark owners, yeah, basically commercial entities. Thanks.

JEFF NEUMAN:

Okay. Thanks. So, I'm looking at Susan's note on the chat and she says that the RPM group is spending a lot of time on these launch programs. My assumption – Susan, if you could correct me if I'm wrong – I would expect that the RPM group is really only talking about the intellectual property components. I would expect not necessarily like the number of names or the procedural around it, but certainly whether those names should go to Sunrise and how it interacts with trademark owners. Okay, yeah, Susan is just confirming that.

For our purposes here, I think we'll leave that question of whether they have to go through the RPMs to the RPM group. We'll put as an action item that we need to liaise with the RPM group and Cheryl and I can do that with the leaders of the RPM group to

understand and make sure we're not overlapping. So why don't we do that? I guess the only other issue is on the number of names, and if we solved the intellectual property issues or at least worked through them with the RPM group or is there anything left for us to discuss before we get to the follow-up section on just the number of names?

Okay. I'm not seeing any comments, so why don't we then move on? We will take that as an action item, move on to the last part which is a SSAC paper. Recommendations from SAC090 which dealt with a whole bunch of issues but part of those issues were with respect to special use domain names. So now we're talking at the top level. So, let's now just forget about the second level at this point. We're talking about at the top level and the SSAC came up with this paper, which again addresses a whole bunch of other things.

The part I want to focus on here first is this notion of the special use reserved names. We talked about this earlier as to the recommendations that we had to keep those names reserved. So, names like .test and .example, these are all top-level strings that are reserved pursuant to IETF RFC. Many of you may know that although names are not frequently added to this special use list, there have been in the past few years at least one name that was added and that's .onion, and so now and forever more .onion will be not be able to used as a top-level domain registry because now that that term is reserved. So, the real question SSAC had was, what if the IETF updates this list, what are the mechanisms by which these groups would communicate with each other? So, it's ICANN's responsibility to approve the delegation of new top-level

domains but there's been at least a tacit level agreement for ICANN to make sure that if the IETF wants a special use string that that string will then be withheld from being delegated as a top-level domain.

So, the questions then become – if you look at it, how can we deal with putting it – sorry. We're not on a corp. Can we just go up a little bit? Here, yeah. First of all, how should ICANN handle different situations about, let's say the IETF goes through their processes and all of a sudden out of those processes comes this new special use domain, if no string has already been delegated for that nor are there any pending applications for that string – I mean that's probably the easiest situation in which case that string could be reserved for future rounds. That's one way to deal with it. How do we deal with it if – or I guess on the other extreme is if the IETF tries to reserve a name that has already been delegated then presumably ICANN's response to the IETF would be, well sorry, they've already been delegated so we understand the IETF wants to – this is a special use domain but we cannot undelegate something that's already been delegated. Those are the two fairly easy situations. But let me ask the question, what if there is a round ongoing and there are applications for a string that happen to match what is being asked for by the IETF? Any thoughts on that and how we can prevent that?

Okay. Well, one thing could be that there is an IETF liaison to the Board. I believe that's still the case under the new Bylaws. One thing could be that the liaison's required to notify ICANN as early as when that string is being considered because presumably the IETF processes it's not like one day they decide they want a

special use name and the next day it's a special use name. There are drafts and there are preliminary steps, so to make sure that the IETF liaison to the Board is keeping the Board and the community up to date on these drafts as they go around.

Donna, please. Your hand is up.

DONNA AUSTIN:

Thanks, Jeff. Donna Austin from Neustar. And apologies for my ignorance. With the special use names, what would the IETF be using them for? I'm just trying to work out whether they use it as a public TLD or whether it's for other specific purposes that they have, so it's not visible to anyone on the Internet. Thanks.

JEFF NEUMAN:

Thanks, Donna. There is an RFC 6761 which talks about the considerations of when and how to and why to have a special use domain. In general, they do not operate like what we normally think of as top-level domain registries. In other words, they're not generally for commercial type public facing applications. They're generally for different purposes, either test purposes or for just different private – I don't want to say private root – but I guess private applications. I'm not an expert on this at all and I'm not sure they are necessarily restricted to that but that's generally the way it's been.

Roger has his hand up. I know Paul does too. Paul, do you mind if I go to Roger because he may have a better explanation. Okay. Roger, please.

ROGER CARNEY: Thanks, Jeff. Yeah. You're going down the right path. The intent was that the special use TLDs would not actually resolve, so .example, .test were ones that really aren't supposed to resolve. Some of it does a little bit but that was the intent.

One problem that occurred two years ago or so was they were trying to solve some Internet of Things issues and they started a RFC to reserve .home through one of the groups, and it got quite a ways down the path of actually becoming a standard before some people got word of it and requested it to be stopped.

So, I think, Jeff, your idea of maybe having the liaison communicate those things would probably be a good idea so that we could see if that is going to cause a problem or if they're actually going to try to get them to be resolved in the DNS name, then we could now participate in that discussion. Thanks.

JEFF NEUMAN: Thanks, Roger. Paul's next in the queue. Paul, I don't know if you want to ask the question that you put in the chat as well.

PAUL MCGRADY: Thanks. This is Paul McGrady. I'd like to understand how all these fits in with the .onion which came into being a little while ago. So maybe Roger can answer that question. And then I also wanted to ask a broader question about whether or not this question is really for this working group, right? We're tasked with looking at ICANN's new gTLD Program. This question sounds like it is sort of

one level up which is what are the ways in which one can get new gTLD? One of the ways is ICANN's new gTLD Program. The other way seems to be the special thing that the IETF gets to do, I guess.

What are the other ways? Again, I think that maybe we can address what happens if there's a collision between ICANN's new gTLD process and third parties new gTLD process in terms of, for example, if something is pending then ICANN would favor its new gTLD applicants over third party processes. I'm not sure. But again, I'm wondering whether or not this is a question that's one level up not really for us, but it could be for us, I'm not sure. Sorry this sound so rambling. Thanks.

JEFF NEUMAN:

Thanks, Paul. Roger, do you want to respond to Paul's?

ROGER CARNEY:

Yeah. This is Roger. Thanks, Jeff. For .onion, that's a perfect example, Paul. Dot onion, it doesn't resolve only a few years in their app is the only time it actually resolves. So that was one of the first ones that came up after the test ones for consideration at the IETF, and it really did get down to the fact of how .home got stopped was A, we're trying to let it resolve outside of or inside the DNS as new normal names do. So it got basically stopped and said that's now how we anticipated this to be done. They've gone through a couple of processes to try to identify what a true process because today if you follow the IETF process, you can answer like six questions and get a TLD. If you answer them

correctly, people review it and it looks right – there’s no money, no nothing, no consideration. It’s just you answer six pretty simple things and you can get the TLD reserved in your name.

So I think that, Paul, you’re right, and I am not going to answer the question because I don’t know. Is this the right place to constraint that? I think it’s the right place to at least facilitate that discussion between the groups. Thanks.

JEFF NEUMAN:

Thanks, Roger. And I think what we really are addressing are conflicts. We do have the general principle that we have which is that we reserve all the special use names from applying for those as top-level domains. That’s in our policy. The question is, what do we do if there is a conflict or if we see a conflict coming down the road? Hopefully – I should say obviously – the IETF liaison to the Board and others would check in and notify the ICANN Board that this is something that’s happening. My hope as well was to be that ICANN would have a discussion with the IETF as to the choices that they’re making, but at the end of the day, I think we have a very different view from what I understand in the IETF than they do with ICANN. At least the people that I’ve talked to within the IETF, they believe that they actually control the name space but they’re given sort of a license for – and if you look at the MoU between IETF and ICANN, it’s that the IETF basically, if they request a string, they have to get it according to that MoU because they – I guess they have a first right to that and I believe that’s what the MoU states.

So, there's not much we can do about that from a relationship perspective because that's sort of set but hopefully there's enough notice down the road and there's enough common sense within the leadership of the IETF and ICANN to ensure that the IETF does not choose something because its got value as a top-level domain but chooses things that are related to the private purposes that they need to use it for.

Donna, please.

DONNA AUSTIN:

Thanks, Jeff. Are these names temporary? So, they're only used for a short period of time, or once they're assigned that agreement is reached, they're assigned permanently? I kind of think that it makes sense to give some kind of priority to the IETF but I think we need to understand more about their criteria for how they decide a name is required, and then whether it's a temporary or permanent thing. But I'm also kidding a little bit into where Paul was coming from as to whether – what's the policy question here for us? Thanks, Jeff.

JEFF NEUMAN:

Thanks, Donna. Maybe Roger can jump in if I'm wrong, but I don't think the RFC mentions that it can only be permanent. I think it's just whatever the use is for it gets used, and in theory that could be temporary or that could be permanent. I'm believing that most of them that have been used are permanent. Now, remember these are not top-level domains in the normal sense that we think about them. They look like top-level domains and they could easily

conflict if there was a top-level domain that was allocated. But they are not supposed to use them as you would normally use a top-level domain.

It's hard to explain any better than that. I'm sure there are people that can do it but in general, they're not supposed to think about them as top-level domains, that anyone that wants to allocate names to third parties for a common use of a domain name is suppose to defer to IANA and those processes. So, I don't know how often we're going to run into a problem like this, but with .onion, that sort of raise this, as Paul said about there is a famous paper or famous comedic parody site called the Onion and obviously now that's out of circulation.

Donna says, well it seems sensible that the IETF would not be looking to use a name that already exist as a TLD. I think that is the way that it works. I think that they don't try to have conflicts but I think at the end of the day, if we're between rounds – so there hasn't been a round in six, seven years. Seven years, yeah. The IETF, I don't know how they would view other proposals right now until another round starts.

Some of the other questions that were asked in that SAC90, I believe are really ones that are in the purview of other things that are going on within the community. So, if you look at 3i .corp, .home and .mail, I think those are now – not “I think,” I know those now are being looked at through the NCAP project that's ongoing. I don't think that's really within our scope at this point except as to how we address name collision in general.

The last one is what we've been talking about which is how should ICANN discover and respond to future collisions between private use names and proposed? We talked about the IETF and that seems easy enough or practical enough to create a liaison relationship to try to make sure it doesn't occur, but what about the private name spaces that we don't know about yet but we come to know at a future time?

An example would be the GSMA which is a global organization that deals with mobile communications and standards for telecommunications has been using a private root for their enum type service for certain entities within the communications and satellite industries to communicate through of use of a private name space. They use something that I think it's .gsm or .gsma, those are only in the private root. They have not, to my knowledge, communicated with ICANN about their root and who knows what would happen if in the next round someone applies for it. I'm not even sure how much GSMA still using it because that's now 16, 17 years old when they starting doing it. But that's kind of an example of something that's making use of a private instance of DNS that could essentially conflict with if there were those TLDs that were granted.

Any thoughts on that? As Rubens says, "It looks like a name collision waiting to happen." It certainly could and I'm sure that there are a number of examples that nobody knows anything about.

Alright. Well, these are tough subjects. That's why they're in our parking lot. It's not like we have to come up with the solution at

this point. It hasn't posed any huge issue yet but just some stuff to think about in the reserved names category.

Donna is asking if there are any stats as to how often these come up? I mean except in the context of name collision where it could be discovered that there's been use of a string, I don't think it's ever come up as an official issue. Oops, sorry, I got stuck here. Rubens says, "Donna, already existing name would automatically I guess create an inoperability problem, so indeed unlikely an already delegated TLD would be used."

I see a new message but I can't get to it. Okay, and Kathy asked for a link to the doc. That was done.

Okay. Avri says, "Requests are rare and always accompanied by an Internet draft." I'm not aware of Internet drafts that are around but there very could be. I suppose we could ask someone to see if there are any drafts out there at this point. Okay. Why don't we now go to change course here a little bit, to go from reserved names to a topic that's called registrant protections.

There's obviously a lot of things that viewed as registrant protections in the new gTLD Program. Different people, if you ask them what a registrant protection is, would give different answers. But here it means very specific things that were mentioned – I think it actually comes, if I remember correctly, from testimony that – it might've even incurred – corporates gave to the United States Congress. He had said that there were a number of registrant protections that were built into the new gTLD programs separate and apart from the intellectual property rights and others. He listed a bunch of those "protections" and so that's what we discussed in

the initial report, and then we analyzed those comments. There's a link there to the comments and to the analysis from what we called Subgroup B which looked at this issue.

So when we think about these types of registrant protections, if we were to go back to the 2007-2008 report, there was a principle in there which said that "A set of technical criteria must be used for assessing a new gTLD registry applicant to minimize the risk of harming the operational stability, security and global interoperability of the Internet." We think that that is a policy goal that still remains applicable.

The second one is "The New gTLD Program must continue to incorporate measures into the application process and program implementation that provide protection for registrants."

When going through all the material and the comments, we came up with some high level – what we believe, the leaders believe, are high level agreements. So one of the topics considered a registrant protection was having an emergency backend registry operator. This way, if they were are registry to fail, there would be a backup to keep registrants names running for at least at the DNS level for a period of time. Until such time as the community through its processes could figure out what the next step is for that top-level domain. Does the original registry resolve the problem and get the top-level domain back? Or on the other side, does this top-level domain go to a new registry or does this top-level domain – do we transition it out in some way?

So the high-level agreement says that comments generally supported or at least did not oppose maintaining the existing

registrant protections that were listed in the report, including the EBERO and associated emergency thresholds – triggers – for an EBERO event and critical registry functions.

Comments generally also supported providing top-level domains under Specification 9 – actually, it shouldn't be “under Specification 9,” it's an exemption from Spec 9 – and Specification 13 with an exemption to the EBERO requirements. In other words, if you have an exemption from Specification 9 or you are a Specification 13 brand registry, what that is generally – that is where the registrant is or is an affiliate of the registry operator or sometimes thought of as a single registrant TLD. And therefore, having an EBERO is not necessary because the only registrant that's being harmed is the registry itself. And Work Track 4 I want to say they discuss this issue at length and that they did not see a need to have EBERO respond to brand top-level domains or those that got an exemption from Specification 9.

Comments also supported improving the background screening process to be more accommodating, meaningful, and flexible for different regions of the world and in different circumstances. So yes, another registrant protection is deemed to be the background screening that's done, which includes the criminal check, the check for financial crimes and cybersquatting. Those are the general background checks.

Any questions on the high-level agreement? Does anyone have any issues with those being considered high-level agreements?

Paul is saying, “Or trademark licensee.” Right. I said an affiliate. I used the term “affiliate” I guess in a much more loose way, but

yes, that's true. So for Spec 13, the registrant could be a licensee of the registry as well.

Sorry. Kathy says, "No audio." Hopefully you have it back. Sorry, the question is, "What exceptions?" Kathy, can you just maybe give a little bit more ... oh. "If they are added for registrant protections, what exceptions are supported?"

Okay, are we talking about the EBERO or are we talking about the background screening? Just waiting for Kathy to respond. Okay, so the EBERO. What we're talking about for Specification 9, those exempt from the code of conduct as well as for those brand top-level domains is an exemption to the rule that if there is an emergency threshold crossed that in EBERO, the emergency backend registry operator needs to be appointed and take over. So it's essentially exempt from those or if this goes through, they would be exempt from having an EBERO, come in and take over. Does that answer your question, Kathy?

Okay, I'm not seeing anything there. If we go to some general comments about registrant protections, these are either concerns or new ideas. The first one was from the ALAC which states that "There might be special circumstances that require adjusting the evaluation process to accommodate applicants for underserved regions and perhaps brand TLDs, but standards for applicants should remain high. ICANN should do a better job of applying those standards during the application process than was done during the 2012 round. There are certainly instances when applicants that failed to meet the registrant protection standards were nonetheless allowed to proceed, casting the shadow of impropriety on the entire process."

That was a comment made by the ALAC. I don't know if there's anyone from the ALAC that could speak to this comment. I'm trying to remember if they provided examples or just made this statement. Anyone from the ALAC want to jump in?

While you're thinking about that, Kathy asks if we can make this more specific in the public comment summary. I'm assuming you mean about what the exemptions would be for. While we generally don't try to alter the public comment summary that was done by group B, I think it was, we certainly will make it clear in any final report that contains these recommendations.

Okay, nobody wants to step up from the ALAC and give some more background. Part of this when I read it was I was looking or hoping to get some examples because there's a statement here made that it should be obvious to everyone what the instances were where applicants failed to meet the protection standards. But I'm not sure at least I understand what those are, so maybe we can ask the ALAC as an action item to come back and just give us some examples of where they feel there were applicants that failed to meet the standards but nonetheless got approved. We'll ask Justine to follow up. Great.

Then some general comments on exemptions from registrant protections. Marques, which is a European trademark association states that "A brand applying for a single entity (which again is the Spec 9 exempt entities or Spec 13 brands) should have its own application path including a number of exemptions to registrant protections. They should not be required to submit information on their Board Directors if they are publicly quoted, should not have to submit an operating budget, should not have to connect with

the Trademark Clearinghouse, and should be exempted from providing a Letter of Credit.”

The registrars – Julie, if you could, or Steve, whoever’s got controls, scroll down a little bit. Thank you. The registrars state that there should be no exemptions, as it could all be game. So any exemptions should only be granted on a case by case basis.

Maxim says in the chat, “Why no budget if they, for example, cannot afford it?”

I believe but I don’t want to speak for them. It’s not that they don’t have a budget. I think because those registries do not operate on the traditional model, meaning selling registrations at the third level, it is certainly when you’re analyzing them from a financial standpoint, you’re not looking at whether they’re going to bring in the substantial revenue based to cover the cost. You can’t really financially evaluate them in that kind of way like you would in open registry, but rather financially they would have to be evaluated on whether that corporation could sustain the top-level domain as an expense rather than as a revenue generator. So I think that’s what they’re saying.

Then there was a comment made by Rubens: “I think the budget issue...” Yes. We will address this again when we talk about the financial evaluation. We’ll certainly get there. Rubens says that the TMCH connection should be only addressed by the RPM group. I think that sounds right as well that if there are any exemptions to the Rights Protection Mechanisms that that issue probably should be addressed by the RPM group. We can double-check. That’s

another one to double-check just to make sure that that is on their plate.

Maxim says there should be something proving that they can spend ... okay. Yeah, Maxim's comment is about the financial evaluation. Let's save that one for when we're talking specifically about financial evaluations.

Then Paul says the Letter of Credit was a pain in the bleep to get and was silly to have a company whose revenues are many times those of ICANN's, that ICANN doesn't have the business savvy to determine high risks from low risks. I'll note just as someone who – what I always kind of got a laugh at was financial institutions. I would have to go get a Letter of Credit from another financial institution and watching that process play out was – Paul used the term “pain in the bleep” and I think that certainly, from what I saw, was definitely the case. Kathy, please.

KATHY KLEIMAN: Yeah, can you hear me, Jeff? This is Kathy Kleiman.

JEFF NEUMAN: Yes.

KATHY KLEIMAN: Okay, good. New location so I wasn't sure. I have a general issue with this in the high-level agreement. Not the specifics that you're giving but I think we need to narrow down the language that we're using. Specification 9 is the registry operator code of conduct. In

registry and protection, there generally are lots and lots of different protections across the board including, as you just mentioned, in RPMs. So how do we narrow them if we're talking about here is registry and protections vis-à-vis EBERO? And I still don't understand what the exceptions are but it seems that we're creating a special set for protections for closed brand.

Then how do we narrow this down, that this isn't a full discussion of registry and protections, and that this is really about EBEROs, so that we don't freak people out? Because registry and protections will be under many other umbrellas as well. So focusing on EBERO – and, Jeff, it sounds like we are highly focused – these comments, this high-level agreement – just on that and just on closed brand. Could of course EBERO for open TLD is going to be a real issue for registrants? The idea that all registrars should have access to the TLDs regardless if they're operating at a different language or different currency, that's a very important registry and protection. We're not talking about narrowing this down, so how do we narrow down our language? Thanks.

JEFF NEUMAN:

Thanks, Kathy. In the initial report, if you click on the section that talks about this – and I'm just scrolling through here. The initial reports are my own copy. In Section 2.7.2, we do talk about the types of protections specifically that we're addressing and goes into the list as it was. I think I explained a little bit earlier. This list came from what Kurt had presented in some congressional testimony that were gone on to be labeled registrant protections. So when we write the full section out, we'll be very clear as to

which protections we're talking about again. So it's in the initial report now and the questions that we asked were specifically on those types of protections, so hopefully when we get to the final report and the final recommendations that it will be clear what we're talking about.

KATHY KLEIMAN: Jeff, this is Kathy.

JEFF NEUMAN: Please.

KATHY KLEIMAN: I'm still nervous because – actually, it looks like Julie is writing in details. But can we include a comment then to you, Jeff, and then to Julie Hedlund that says that we're limiting, that this discussion of exception isn't an exception generally from Specification 9, which is the code of conduct, but specifically – I mean it sounds like we're looking for an EBERO exception for those Specification 13. So that we don't wind up cross referencing, can we say that in the comment it's in fact the extent of our agreement here? Thanks.

JEFF NEUMAN: Yeah. Again, just don't think of this document as the final recommendation. This document is to help us write the final report, but if it helps, what we're talking about from the initial report are from pages 111 through – there's a little bit of history on

the EBERO, it has a little bit longer section than some others, but essentially it's to page 119. So, 111 to 119 in the initial report. That's in here now but certainly in the final recommendations, it'll be clear what we're talking about.

Okay. Jim says, "We should just get rid of EBERO altogether. There's no point in ICANN artificially keeping failing registries alive forever."

There were a lot of discussions within Rubens and Cheryl's Work Track 4 about EBERO and whether we should get rid of it or not. At the end of the day, that work track concluded that it was better to have it there than not, but there are – and we'll go through this with the general comments on EBERO. There are some changes or things that ideas that the group had as well as comments that we got on what to do with the EBERO. They felt it was still a legitimate thing to have but you'll see in the comments that we'll get to in a little bit. Actually, right now because we're on that right now. So let me just ask if there's any other questions up until now then we'll get to the section on general comments on EBERO.

The BRG said that the EBERO is not appropriate for some registries, so we're just talking about that before, including .brand TLDs. The Registries Stakeholder Group said they're requiring both EBERO and the COI (which stands for the continuing operations instrument), which many people thought of as either a Letter of Credit or a cash escrow, that was unnecessarily burdensome. Either the community should determine which is the least burdensome and to accomplish the consumer protection goal or allow each registry to choose either having an EBERO or a continuing operations instrument.

Valideus states that the relationship between an EBERO event and the invocation of the COI (continuing operation instrument) should be clarified. The COIs from the 2012 round gave ICANN much broader ability to draw on them than was envisaged in the Applicant Guidebook.

Any thoughts on those? Again, this is not on the exception but on the EBERO itself, and requiring EBERO and the COI.

Kathy is asking if we can re-label the whole section registrant protections (EBERO). Kathy, there are some things here on background screening. We'll get into there. That wouldn't cover it but after we get through all the sections, let's think about the labeling.

Okay, this next part, now we're talking about the exemption for single registrants. ICANN Org stated that "The definition of .Brand TLD includes Affiliates of the Registry Operator. Working group should clarify whether the EBERO exemption applies only to single registrant TLDs, or if it is extended to all Registry Operators with Specification 13, some of whom may not be single registrants." That was the point that Paul was making earlier about the ability to have trademark licensees.

Valideus states that "The exemption from EBERO requirements should include an exemption from having to obtain a COI, and should apply to registries which have an exemption from Specification 9."

The SSAC says that "The implications of exempting any TLD from EBERO requirements should be considered carefully. For

example, it is possible for domains in other TLDs to rely on nameservers in a single-registrant gTLD. If any gTLD is exempted from EBERO requirements, there must first be some assurance that no other domain outside the exempted gTLD can ever rely upon the exempted gTLD for resolution.”

I think that is a good point. I don't think I've seen to date any brand TLD registrations being used as primary to registrations in another TLD or primary for nameservers that are used by other TLDs, but that is certainly something that needs to be considered because, yes, if you do not have an EBERO and let's say the nameserver is one that is in that brand TLD but the nameserver is being used also to support names in other TLDs, then an outage in the brand TLD could easily cause an outage in other TLDs where the nameserver is common. So I think that's actually a really good add to make sure that if there are exemptions granted that care should be taken to make sure that there's no reliance within that TLD.

Let's see. Let me go back. Donna says, “There are many reasons why a registry might be failing, it may not necessarily be financial so EBERO still has value, but perhaps a broader conversation is warranted about how long EBERO should be in place.” Plus one Donna.

Paul says, “Let's not call them single registrants TLDs anymore. It led to extra confusion in 2012. Let's call them .brands or Spec 13s.”

Rubens is making the point that it could be either or both of those. Many banks outside North America struggle to understand the COI.

Jim says, “Did Work Track 4 address the viability of EBERO post five years when all the registries get their cash or Letter of Credit returned? ICANN is still on the hook to pay EBERO providers but there is no designated funding for a TLD if it goes out of business. Example, how much longer is ICANN going to keep .wed alive? If I’m not mistaken, it’s been in EBERO for well over a year.”

Then we have Rubens’s response, “The topic of what happens when the COI runs out was not discussed in Work Track 4.”

Jim is saying, “Or if the registry fails after the COI is returned.”

These are good questions. I think because this is a legacy TLD issue as well as new TLDs, perhaps this is an issue that maybe others would like to take out outside of the new Subsequent Procedures. It will be a very long time before something in the next round reaches the five-year mark. This sounds like a good conversation to refer to the council or other groups to discuss this issue. Jim, please.

JIM PRENDERGAST: Thanks, Jeff. I’m not quite sure. I’m just following your rationale there on why you would kick EBERO out to the council instead of handling it within the PDP. Thanks.

JEFF NEUMAN: Yeah. I wasn’t kicking EBERO outside, not the whole issue but the question on what happens after the five years when ICANN they can’t draw on funds because the COI is now done or is returned or whatever is done at the end of that process. I think that that is a

good question, but whatever answer we come up with here is going to be more applicable and needed more quickly for the existing TLDs as opposed to the ones that we'll be allocating. It sounds to me like that's a bit of work that probably should be discussed between the contracted parties in ICANN and the community as well.

JIM PRENDERGAST: Right. I mean I guess I understand the answer we've got on some other issues. It doesn't apply to last round. This is only looking forward but I think we're missing our duties and trying to be as thorough as possible by not addressing in this group for going forward in whatever we come up with and the GNSO Council could retroactively apply to the other round.

JEFF NEUMAN: Yeah. Jim, I think that is a way to do it. Right. If we talk about it in terms of subsequently what happens. At this point, as you said, the EBEROs only have been invoked once. Once because of a failing registry. It has been invoked in theory for some registries that wanted to back out but once because of a failure. I don't even know if they drew upon the Letter of Credit or COI. I'm assuming they probably did. But the only exemptions that they're talking about now would be for the brands and for Spec 13 brands and Specification 9.

Jim, is that a new hand?

JIM PRENDERGAST: No.

JEFF NEUMAN: Maxim says it will be cheaper to redirect it to a zombie top-level domain. I don't know if there's a .zombie, Maxim. But you could certainly apply for it or get the IETF to do a special use. I'm kidding. It's a joke. About the IETF, if someone wants to apply for it, cool.

Okay, now let's switch a little bit ... oh, Kathy, please.

KATHY KLEIMAN: Jeff, just a question. A lot of things are going on around these, so if I'm missing something, I apologize. What we're talking about EBERO of changes for brands, so Specification 13, but you keep referring broadly to Specification 9 which is the registry code of conduct, which had a lot of work done to it in round one. Is there anything generally that we're changing in Specification 9 that does not apply that would apply to the all the other TLDs – the open TLDs, the geo TLDs? Because it makes me nervous when you talk about changing Specification 9 broadly. It seems like it's just in context with Specification 13 needs but I want to check with you. And if so, can we clarify please? Thanks.

JEFF NEUMAN: Yeah, so Specification 9 is the code of conduct and we will be talking about that fairly soon, I think. But there is a provision to get an exemption from the code of conduct and that is within Specification 9 itself. And that Specification requires you to show a

few things, one of those is that the space is only being used by the registry operator or its affiliates and you also have to show a couple of other things. So there is an exemption process that's already written in that would exempt you from parts of the code of conduct as well as parts of other sections in the agreement. So what we're talking about here is for those entities that have been granted that exemption, they should also be exempt from the EBERO requirement. That's what this is saying.

KATHY KLEIMAN:

If you could lay that out very, very clearly, I think that will help everyone who encounters this material in the future. Thanks.

JEFF NEUMAN:

Okay. I take your comment and we will try to make that more clear. And if it's not, we will enlist your help to make sure we're making it clear.

Okay, switching gears a little bit to the background screening. Again, the background screening was for applicants, their officers, boards of directors, etc. There were different types of background screening. There was financial, there were criminal/financial screenings. There were also exemptions to those. If you are a public company, for example, certain screenings did not have to be done. So there's that.

But here, there were some groups that said that brands and those that are exempt from Specification 9, their proposal is to take the exemptions that are currently given to publicly traded companies

and to the exemption for officers, directors, material shareholders of these companies.

Essentially what the Guidebook says is that if you are a publicly listed company, there are certain screenings of the company that you don't have to get but some of the screenings still apply to their officers or directors or shareholders. So there were support from the Registries, Fairwinds, BC, BRG, Neustar, Valideus that says that they basically extend the background check exemption to include officers, directors, shareholders of those publicly listed companies.

ICANN Org says, "Consider providing ICANN Org flexibility to address any such issues that might arise with applicants (as was done in the 2012 round)."

The SSAC disagrees with all these. "Publicly traded companies must not be exempted from the financial evaluation. The barrier to be publicly traded is very low in some jurisdictions such as penny stocks in the United States, and such companies do not undergo extensive screenings. For example, in the USA, not all public companies are subject to the Securities and Exchange Commission's reporting requirements. Exemptions should not be extended to officers, directors, material shareholders of these companies, all of whom should be subject to background screening."

IPC disagrees with the exemptions and states that they do not support any exemptions. "Background checks provide more transparency in the application process and prevent disingenuous registrations."

ALAC does not support any exemptions to background checks.

As you could see, the IPC, the ALAC, the SSAC are not supportive of exemptions to the background check. Fairwinds, BRG, Registries, Neustar, Valideus all support the exemptions, which tells me we have a split in the community and absent being able to resolve this one way or the other seems like we're kind of a standstill on this issue and potentially the default of just doing what we did in 2012.

Yes, impasse.

Paul says it's going to be hard to do background checks on all shareholders of a publicly traded company. Yeah, I think, Paul, I'm pretty sure it's been a while since I read the Guidebook, that part of it, but yeah, there was definitely a threshold.

Katrin is saying 15%. That sounds right. Or 10 or 20%. Which in a public company, it's a very high threshold to me. There are very few publicly traded companies that have a more than 15% shareholder. But there are, there are plenty. But it's not huge majority of them.

ICANN Org on the timing of background screening says that "Given the large number of change requests on Question 11 from the 2012 round, consideration should be given to whether background screening should be performed during Initial evaluation or at contracting."

It's an interesting thought. The evaluation process for the new TLDs could've lasted anywhere from a few months to a few years. For those that lasted a few years, because they were later on in

the priority list, their officers, directors changed in a lot of circumstances. So ICANN would do an initial background check but the background check they did initially was not good two years later when there was a whole new different set of officers, directors, etc.

What do people think about the practical suggestion from ICANN that we do not do any background screening until contracting? Silence. I could think of some pros and cons of that. Obviously, the thing in favor of it would be that it's more efficient and you don't have to do the background check as much. The con is that you're going to get all the way to contracting before you know that one of the directors is a fraudster or is a criminal. You really want to get all the way to contracting before you find that out. Then what do you do? Do you just say you got to get rid of that person? Wouldn't that be easier to know earlier? As Kathy says, it seems a little late.

Donna, please.

DONNA AUSTIN:

Thanks, Jeff. Donna Austin from Neustar. I don't necessarily think that it's a bad idea. I think I'd want to understand is whether the background screening would be the same as you would conduct earlier on in the process but I think what ICANN is trying to overcome is a resource issue that's front loaded. Thanks.

JEFF NEUMAN:

Sorry, it took me a second to get off mute. From what I understand, it's the same background check that they did and, in

fact, even now when you ask for a change in registry operator, the process now still calls for that background screening if they haven't, if it's not going to an existing registry that they've done these background screenings for. So that is still what they do regardless of when the change is made.

Alan is saying, "How often were there problems?" Alan, I'm not sure that there were – you mean problems where someone failed the screening? I think ultimately everybody passed. But if you're asking were there problems with the timing in doing these, we weren't able to collect that many other than the efficiency argument that Donna was just talking about.

ALAN GREENBERG: To be clear, I meant problems where people didn't pass the test.

JEFF NEUMAN: Yeah, I'm not aware of anyone actually failing the test ultimately. I know Paul McGrady has expressed some thoughts on the background screening and some passed. I will give all the opportunity that wants to address that.

I have Donna and Alan in the queue. Paul, do you want to address? Okay. Let me go to Donna and then Alan. Donna, I don't know if you are speaking. We can't hear you. Okay, let's go to Alan.

ALAN GREENBERG: Okay. I guess if there weren't many that failed the test last time then it's better – we're not likely to have many cases then where someone fails early so we don't proceed farther in the process. So it sounds better to defer it and actually do a background check so the people who are applicable near the time of delegation instead of doing background checks on people who may not be involved a year later or two years later. The issue of, but if we wait, we're going all the way through before discovering the problem. Last time we apparently, from what you're saying, we didn't have any problems, didn't have any that didn't go further. So it sounds like it makes more sense to do the check once and do it on the right people.

JEFF NEUMAN: Yeah, thanks, Alan. Just to address Kathy's comment as well because I think it's related, Kathy says, "But isn't this all done during initial evaluation?" the answer is yes but it's also done when there's a change request file because a new director has come in or there's a new officer or for whatever reason, that new officer, new director, material shareholder, also at that point go through the background checks, and so you can end up in a case where it's taken three or four years where you've done a whole slate of board of directors initially, they've passed, and now by the time you get to contracting stage, a whole new slate of directors.

Cheryl is saying, "As there were changes between early checks and when changes happen at the end." Yes, there's lots of changes in there.

Okay. Let me scroll down – if you could scroll quickly down just so I could see how much is left in this topic. That’s pretty much it, right? I think there’s this one item which I think we can address this online because it was just about potentially asking certain questions on the application. I think we can take that online. If it seems like there’s really active online discussion then perhaps we can address this first during the next call, but please be ready next time. Very important subject, I know it has certainly gotten a lot of interest is on the closed generics issue. So please be prepared to review this Section 2.7.3 in the document and be ready to discuss and have a good conversation. Potentially think about if there are compromised proposals or not.

Okay. Thanks, everyone. Next call is Thursday, the 22nd of August, 03:00. Wow. So that’s an early or late time depending on how you look at it. Talk to everyone then. Thanks, everyone.

CHERYL LANGDON-ORR: Thanks, everybody. Bye for now.

JULIE BISLAND: Thank you all. Have a good rest of your day or night. This meeting is adjourned.

[END OF TRANSCRIPTION]