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## ICANN Transcription

### New gTLD Subsequent Procedures PDP Working Group

Thursday 08, August 2019 at 2000 UTC

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JULIE BISLAND:

Good morning, good afternoon, good evening, everyone. Welcome to the New gTLD Subsequent Procedures Working Group call on Thursday, the 8<sup>th</sup> of August, 2019.

In there interest of time, there will be no roll call. Attendance will be taken by the zoom room. I want to remind all to please state your name before speaking for transcription purposes and please keep your phones and microphones on mute when not speaking to avoid background noise.

With this, I'll turn it back over to Jeff Neuman. You can begin, Jeff.

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*Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.*

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JEFF NEUMAN:

Thanks, Julie. Welcome, everyone. Our agenda is pretty straightforward and up on the Zoom room right now. We are going to start with application queuing, although we touched on it briefly on the last call. So we'll just get all the way through that and talk about application change requests. Those are change requests instituted by applicants, not the type of change request we discussed on a previous call this week, where we discussed changes that ICANN or the community want to make to the application process. This deals with changes that an applicant wants to make.

Before we do that, let me just ask to see if there are any updates to any statements of interest.

Okay. I'm not seeing any hands raised. How about any other agenda items that we want to cover today?

Okay. Well, let's get to it then. If Julie H. or Emily could bring up the current document we're looking on, and also if you could put the link into the chat. So the document is up on the screen now and you now have the link. We started to briefly touch on some of the items in the application queuing. This refers to, once the applications are submitted, in what order are they reviewed. We in general talked about using the random same draw method that was used in the 2012, assuming that ICANN could legally do that again. All indications were, although we do not have a definitive legal opinion – we didn't ask for one – we did get general informal guidance from ICANN that they didn't see, at this point, any hurdles or obstacles to do it in a similar fashion.

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One of the items that we need to talk about on this call was, if we scroll down to the – there we go – the priority – yes, this highlighted area – which talks about that there was a notion that was introduced during the comment period that several groups had supported, including the registries, the BRG (that's the Brand Registry Group), Business Constituency, and the Non-Commercial Stakeholder Group. They did seem to support the notion of making priority numbers transferrable between applications in an applicant portfolio. This mean, let's say – let's make it really easy – you apply for two string and one of your strings gets priority # 10 and the other gets 10,000. This would give you the discretion to move of switch priority numbers/switch strings, or, in other words, take your string that was given priority 10,000 and make it priority #10.

This was not supported, however, by a number of other groups, including the registrars, Mark Monitor, and Alexander Schubert, who expressed concerns that this could cause gaming. ICANN org also had a concern where they said that they could foresee a secondary market for priority numbers. They thought that would be a natural unintended consequence of having numbers transferrable.

So, in essence, what we see is just a mix. Some support. Some oppose. At this point, I don't think it rises to the level of having a consensus-level support, but we'd love to hear some thoughts from this group on whether we should explore this transferability of application numbers.

I see Christopher in the queue.

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CHRISTOPHER WILKINSON:

Hello. Good evening, everybody. It's 10:00 here. Jeff, thank you for giving me the floor. I don't want to necessarily start this thread, but since nobody else is asking for the floor, I'll just make two small points.

First of all, please recall that I am very skeptical and actually opposed to the idea of having portfolio applications. If this process is going to result in a few large registry/registrar conglomerates applying for 20, 40, 50 or more new gTLDs, count me out.

Regarding the practical aspects of what has been raised by your introduction, please recall that not just me but quite a lot of people have felt that it would be more practical to have applications grouped by priority and by subject: the main groups that have been frequently evoked. I don't want to go into that and take your time, but it seems to me quite clear that, if you had the grouping of applications by subject matter or by characteristics, it would greatly reduce the problem. Thank you.

By the way, I do not want to have a system which facilitates gaming.

JEFF NEUMAN

Thanks, Christopher. We have a couple questions in the chat about how this could achieve gaming, and Emily just posted, "The ICANN org doesn't say "gaming" but it talks about creation of a secondary market." The way I think it could lead to a secondary market is really in relation to contention sets since, at the end of the day, the contention set needs to wait for the last application in

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that contention set to be reviewed and finish all the processing before it can get to the contention resolution stage. I could foresee some backend or backroom deals where someone in a contention set who happens to be a portfolio player starts asking for money or other compensation in negotiations to move their priority number up. I think there's a whole bunch of things that could be done in terms of games that could be played or negotiation tactics that could be undertaken with contention sets especially.

Susan [then] suggests, "What if we say we can't do it if your string is in contention?" What do others think about that? You are allowed to transfer – keeping in mind ... I know, Christopher, your comment that you don't support portfolio applicants. There's nothing that this group, I believe, is going to recommend with a consensus that you're not allowed to have more than one application. I don't see that, to be honest, coming through, regardless of whether it's two applications, five applications, or whatever. This is the notion of transferring priority amongst applications. Thoughts?

Paul is supporting, saying, "It sounds sensible if there is broad support for this. Only registrars and one individual stated they were against it." Yeah, that's true, Paul, in the comments, but this was a new idea that not every group may have commented on. So I don't want to extrapolate. Either there's broad support or broad opposition in this case.

Anne, please?

Anne, are you on?

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We can't hear you, Anne. At least I can't.

[JULIE]: I'll try troubleshooting with her, Jeff.

JEFF NEUMAN: Okay. She's saying, "Not on the phone. Just a question in chat." Okay. Did I miss a question or ... oh. "Does that priority numbers can be sold?" I think the notion is that you can only transfer the priority number to another application from the same company. So you can't sell it to a third party, but I'm sure there are ways to use that in negotiation tactics.

Anne asks, "Does it say that?" We summarized these into questions, so, ultimately, if we do adopt this, we will make sure the wording is clear as to what you can and can't do. I just want to see if there's support for the concept first before we get a little – and express concerns that you might have. Let's not word it.

Paul, please?

PAUL MCGRADY: Thanks. Just wanted to read my comment which is, Jeff, your concern is we don't have enough information here to extrapolate broad support. On the other hand, under the same theory, we don't have data here to extrapolate that there is no consensus either. There does seem to be enough interest on this topic – I think it's fascinating – that we should definitely not extrapolate non-consensus and kill it. Let's keep it alive and let's find a way to

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go out there and find whatever you need one way or the other so that we're not extrapolating an outcome on it. Thanks.

JEFF NEUMAN:

Yeah, Paul, did say that there was neither enough information to support nor to kill it. I just want to get to finality. I want to move closer to closure as opposed to just leaving another issue out there. If folks on this call thinks this has merit like Paul just said, then it's something we can keep on there and explore a little bit more. But if it's something that others don't feel like we should spending the time doing, please let us know that, too. We're just trying to move it and not just keep everything stagnant.

Susan says, "I'm still struggling to understand what the gaming would be. Seems like a perfectly sensible suggestion." I think, Susan, if we take out the notion that you can't do it if it's in a contention set, I think that would take out a lot of the gaming. [We really are] pretty narrow.

So there is some interest in this. In order to push this forward a little bit, if there's someone that wants to take the pen on this and try to write a proposal on doing something on transferability, taking in the notions we've talked about, that would be great. If we want to keep it alive, let's get some volunteers to help [with the wording] of a proposal that would make sense. So who's volunteering for that?

Christa is saying somewhere in this discussion there was a concern on the sale of applications. Paul is saying he could fill in, Christa. So what we're talking about on this call, Christa – thanks,

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you and Paul – is that essentially it can only be transferred to someone within the same applicant, and, if one of your applications in a contention set, you can't move that priority number. It's got to stay where it is. I think those were the concerns that were expressed.

Moving on – so we have that as an action item – I crossed out the next one, not because we're not going to discuss it. It actually appears later on. I just thought it was related to another area. So it's towards the end of this document as opposed to right here. So that's why I crossed it out.

Application queuing if there's a first come/first serve process. There many groups that opposed first come/first serve. I am going to really skip over this because we do not have any consensus or even remote pathway consensus on having a first come/first serve process. You can see those comments and read them if you want, but I think we can just skip over those for now.

Priority processing for certain strings. This is another area where we really need to drill down on what we want to do as a group here. There was some support for processing certain strings on a priority basis. For example, with respect to IDNs, the ALAC public interest community – that was a group of commenters in non-profit organizations – and the Non-Commercial Stakeholder Group expressed support in the comments for continuing to give IDNs priority. ALAC had expressed support for giving community applications priority.

I'm not going to get to that third sub-bullet yet, so let's just talk about those. So while I say there was some support, there was



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also some opposition to that. The registrars, the registries, Neustar, and [Lamar IT] do not support prioritization of IDNs or any other type of string.

So we have some support. We have some against. At this point, it doesn't seem like, unless those either in support or those against will change their view, it doesn't seem that we have any consensus one way or the other. So the default, as Kathy is asking, is that it will be done as it was done in Round 1 – or I should say the 2012 round, not Round 1.

Christopher, please?

CHRISTOPHER WILKINSON:

Hi. Thank you. I'll keep going until I fall asleep. Look, first of all, the proposal to open the next round by specific windows for specific categories of applications is a first step toward prioritization. Secondly, I generally support the At-Large/ALAC proposal, to which I would add a priority for applicant support applications.

We've got a real problem to reorient this process towards the public interest and towards something that is remotely credible in the public eye globally. I think the people who are asking for no prioritization, no restrictions on portfolio applications, have got another thing coming. I don't think you'll ever get this through the Board, let alone public opinion, if you continue with those kinds of ideas.

As a footnote to what I've said, most of you know already I do not accept the so-called default, that, if we can't agree, it has to go

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back to the 2007 or 2012 policies, which were not suitable at all and produced a situation that we've got now. Just to recall, we want to have prioritization. We want to have—

JEFF NEUMAN: Thanks, Christopher.

CHRISTOPHER WILKINSON: ... phases windows and serious effort to improve the contribution to competition and choice.

JEFF NEUMAN: Thanks, Christopher. Sorry, I'm just trying to keep everyone to the time of two minutes if we can because we have a lot to get through. Let me go to Jamie.

JAMIE BAXTER: Thanks, Jeff. I think when I looked at this question I looked at it from a very practical perspective. I clearly wasn't looking at it from the point that community applicants should be pushed to the front of the line just because they're community applicants. I looked at it from the perspective that the process to delegation is so incredibly long in the community applicant process that does everybody a benefit to at least get them through initial evaluation early because they're still probably never going to be the first ones to get delegated.

The example that I shared was that our community priority evaluation was 8 or 9 months long in itself. So it's the reason why

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I suggest that communities go in the early stages: it still doesn't really prioritize them, but at least it helps level the playing field a little bit. I wanted to share that perspective in case those who weren't participating in community priority evaluations understand what that does to the path to delegation in the long run. Thanks.

JEFF NEUMAN:

Thanks, Jamie. I understand what you're saying. I think that the priority that we're talking about here is just priority in doing in-the-queue for evaluations. So I'm not sure it would make things go faster if, for example, there was a community-based application that was in contention – well, you'd only need to use a community evaluation if there's contention. If it was in contention with something that wasn't a community, then you got a whole other host of other issues where you would then be moving up non-community applications up in the queue because there is one community-based application that may or may not succeed.

So I'm not sure how that would actually work. These are things I was thinking about as we were going through the comments and writing things up. At the end of the day, it still has to go through a [inaudible]. It still has to go through CPE. So I'm not sure how much of a priority boost it would get by just being moved up a little bit in the queue.

JAMIE BAXTER:

Jeff, if I can respond to that, it's the little things that would help, I think, because, if you are at the end of the prioritization line or at the back of the pack and not only do you get evaluated near the

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end but then you also still have to go through community priority, you're just making a really long path to delegation to some when, if there was a way of helping make that playing field a little bit more balanced, I think that would be something to look at.

I think it's also important to point out that there was an arbitrary decision made that no community priorities could start until all contention sets were through initial evaluation. Does that really have to happen? Can a community applicant not be pushed to the front of the line and be given the option to start their community priority evaluation as soon as their initial evaluation is done? Is that another way to speed things up while the other applications in the contention set are still waiting to be evaluated?

So I think there's options here. I don't like the idea that it's just going to be what it was because we can't come to consensus on something, which is why I wanted to highlight the practical reasons around this that I think are important to understand. Thanks.

JEFF NEUMAN:

Thanks, Jamie. Anyone else with thoughts on that? Does anyone support the view Jamie has expressed to evaluate community applications first because there is generally a longer cycle because it has to go through CPE?

Anne is expressing some support for that. Christopher, a short comment, please.

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CHRISTOPHER WILKINSON: I'm supporting Jamie, basically. He doesn't solve all the problems, but he certainly steps in the right direction to solve the particular problem of the community applications. I think that's a go.

JEFF NEUMAN: How does everyone else feel about that? GG also says it makes sense. Then there's other support. "I would still support that IDNs go first," from [Tiwo Peter].

Greg, please?

GREG SHATAN: Thanks. I think I'm more in the Paul McGrady camp on this one. I suppose, if I believed that every community application was as pure as the driven snow, I might feel differently. But I think there were a host of problems with communities and so-called communities. As such, I think that I would not be in favor of a preference. There's already an absolute preference being given to communities. Maybe it's too late to question that, but I'm beginning to wonder whether we should be questioning that. So I don't think that giving an additional preference in terms of timing really makes much sense. Thanks.

JEFF NEUMAN: The only thing, though, that Jamie's proposal would do, just to clarify, if I understand this correct, is that, if an application is required to go through CPE (Community Priority Evaluation), if and only if that were the case, then that application would be

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given priority for its initial evaluation. But it still has to go through CPE and it would still have to wait until all other applications were evaluated before it goes through the – well, actually, we got to think about it because, if it succeeds in CPE, then the other applications for that string, unless they're also a community, would not succeed. So it's interesting. It brings up another added little bit of a wrinkle.

Let me go to Maxim and then Jamie.

MAXIM ALZOBA:

My thinking is there is a combination of IDNs which are communities. Why? Because, to game something, you need to have something lucrative. IDN communities are too niche to be something of interest for those who want to get money out of gaming. So I think, if we see a combination of IDNs which is also a community, it's a really niche product. I'd say it's a really niche TLD with not many people who are interested to get something out of having the contract void. It might be the combination which might need help because, if we have just community, we don't know if it's just a real community of, let's say, guitar lovers – those that want to have a good guitar – or those who want to just sell it off to some guitar vendor or some IDN which might be more or less popular idea. For example, we have lots of people speaking a particular language and they're going for IDN strings which make lots of sense for people speaking that language. But if we see a combination, I don't see a risk of gaming because it's too niche to be lucrative. Thanks.

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JEFF NEUMAN: Thanks, Maxim. Greg, your hand is up. I'm not sure if that's an old hand or a new hand. Sorry. I know that – okay, great. Thanks, Greg. Jamie, please?

JAMIE BAXTER: Thanks, Jeff. I think you recapped the sentiment correctly and highlighted another very important point. That is that, if the community application does an early evaluation so that they can at least start their CPE, hopefully they're not going to take 8 or 9 months like they did the last time. But if they do and there's still evaluations going on, there are some evaluations that won't even have to happen because a winner would already have been declared, especially if it was only one community application in the contention set.

I think there's just a larger issue here about the expectation that a community application has to ensure a longer period for some unknown reason. If we can help solve the problem for everybody to get to a resolution quicker, I think it benefits not just the community applicant but also the standards who are potentially in contention with them. Thanks.

JEFF NEUMAN: Thanks, Jamie. It does bring up that unintended benefit that you were saying, which is, if the other applications in the contention set then wait for the results of the CPE – because, if the CPE succeeds, then ICANN would not even need to evaluate the other applications. Perhaps those other applications could get a much larger refund back as well.

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So I think there is some interesting proposals out here. We just need to move to closure. There's two proposals on this call that I think have some merit that are relatively new from here to extrapolate out. The first is the one we previously talked about with the transferability, which Christa and Paul will working on some wording for. Then there's this one on community-based applications getting prioritized but only so they can get to CPE quicker. I think that's another one that may be worth just exploring a little bit further.

We need people to work on these proposals and try to gain some support within the group because otherwise we could be discussing things forever. There's some great ideas – I'm not wanting to throw any of these out – but we are to the point where we got to either accept the proposal or accept the ideas and then work on it to see if we can get to a consensus or drop the ideas because we're not going to get to a consensus.

There's some comments in here if we just go back. Christa Taylor says, "What an applicant support applicant who needs time to raise funds" – whoops, I got kicked up a little bit – "to raise funds if they are not eligible for applicant support funds?" Maxim says, "Christa, I think it means they ran out of both time and money." Christa says, "No, we want to give them time to raise funds, and the length of time was a concern in prior discussions." Paul says, "I only heard two individuals supporting the special treatment for community applications. Is that enough to keep it alive? Seems like we could put that one to rest." I think it's more than two, Paul. I think the ALAC did express support for community-based applications. So it's the ALAC as well.



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I think, like the other one, Jamie, if you want to flesh that one out a little bit more and submit it to the group for consideration in a separate thread, I think that might be beneficial. I don't want to kill that proposal yet because there is some support.

Question: "Would standard applicants like the idea of getting a full refund without the need for an evaluation if CPE could be decided before the initial evaluation of standards?" Jamie, I think, if you wrote up the proposal or just pull it out of your comment and talk about some of the pros and cons, you can send that out to the list and see if it gets traction with other members because it [inaudible] next action item.

Let's move down then on this document if we can. Other methods were proposed, but they were only proposed in one comment. The registrars proposed creating a randomized system that excludes the show that accompanied the last drawing. I'm not sure how to take that idea, other than just saying that one group was concerned about the fanfare around the draw. But I'm not sure what else to do with that comment.

Maxim says, "I think, if there's not much support for the community privileges, then it does not have support and does not fly." Maxim, I can't say that there's not much support just from the call because there were some supporters. So I think we should just give Jamie and opportunity to draft up something and see if there are others that would support that proposal because ALAC is in support of that preference as well.

Alexander Schubert made a comment that says, "Any entity that doesn't wish to speedily proceed would indicate that at submission

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of the application. Every application receives a random number. The applications are then queued by these numbers.” I think that’s just a procedural enhancement proposal because already did, as Alexander said, seem to support the idea that the choice of whether to be in the draw or not should be allowed to be made during the time you apply, which means you can also pay for that as well at the time you apply. So it could be known right away: which applications are subject to the draw and which are not.

Maxim then says – I think this is [inaudible] – “Can we have a kind of letter from the person proposing the idea and then do a Doodle poll to measure the temperature of the room about that?” That is certainly one way to do it, Maxim. Let me talk to the other leaders of the group and get their thoughts on what the next step would be.

Christopher then Maxim.

CHRISTOPHER WILKINSON:

Good evening again. I think I’m unmuted and online this time around. I’m watching my timer, which takes a rather large chunk of my screen. But so be it.

I wanted to support Maxim’s earlier idea. I find it very attractive. If it’s not the IDN it could be geographical. I can very well imagine that there will be community applications from small geographies of the Faroe Islands. Neutral. I’m not Danish. The Faroe Islands come to mind. There are other situations where, if you could combine the geographical characteristics, even the IDN characteristics, and the community characteristics, that would be a

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real winner. You need to have a way to give priority to those kinds of applications. Thank you.

JEFF NEUMAN:

Thanks, Christopher. I know that Work Track 5 is discussing the issue of priority, so I'm going to just put that hold until Work Track 5 comes back with their thoughts on whether there should be any type of prioritization with geographic terms. I know that's a topic there, so I don't want to preempt that discussion. So let's just keep that idea on hold until they come back with their recommendation.

Maxim has lowered his hand. He supports that. "In some cities[,] some languages are interesting only to the locals so there's not much harm to support prioritization of those." Okay.

The reason why I moved this next one to the end is because it talks about future rounds. It was actually up earlier in the document. This is the section that looks like it'd deleted, but it was just moved. This is the concept of prioritizing applications in the next round over those in subsequent rounds' windows. In other word, as INTA and Valideus said in their comments, "Where a TLD has been applied for by one or more applicants in an earlier application but it's not yet delegated, then it should not be possible for an applicant in a future application window to apply for that string or any string which could be considered confusingly similar, which should also apply to applications from the 2012 round."

The reason this is new – we probably should move this over to the section where we deal with this. I'm blanking on which section. What we had general agreement already on is the concept of not

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processing applications from a future round is there is still an application for that string in the previous round. In other words, if we were to take 2012 as an example, let's say .web is still in its accountability mechanisms. What we generally agreed on was, at the very minimum, if someone applied for .web in the next round, we couldn't even look at that application to process it until after all of the applications here in this round were processed, which would mean that, if .web ultimately got awarded from this previous round and it got a contract and delegated, then obviously you wouldn't consider any of those applications in the next round.

This goes a step further and says you shouldn't even be able to apply for a string that was applied for in a previous round until such time as that string is fully evaluated and either finally accepted or finally rejected in that previous round. So this is preventing the application as well, not just preventing the processing of an application. So that was suggested by INTA and by Valideus.

But what it also would have required is not only could you not apply for that string but, if there was an application for something that was considered confusingly similar, it would have to go through some sort of analysis.

Let me just go back to the comments here. There was a comment from Anne. Anne Aikman-Scalese says, "2012 applications are out of scope for this policy process not in the PDP charter. The other issue is that applications made in 2012 may or may not meet the policies adopted for the next round. In addition, a determination as to what is confusingly similar [around] a string confusion objection,

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not a matter of preventing an application from being made [inaudible] putting the chilling effect on new applicants.”

Maxim says, “I agree. We shouldn’t change this.” Susan says, “This isn’t a suggestion to change a past round, Maxim.” Anne: “Donna says” – okay, sorry. Welcome, Donna. Maxim says, “Susan, that’s what I meant.” Anne says, “Susan, the INTA comment goes to 2012, but that’s out of scope.” Susan is saying, “It does not,” and Paul disagrees.

I also think, Anne, this is not really going to the 2012 round. What it’s saying is that, for future rounds, we should not allow an application for a string if it’s still pending in the 2012 round. So it’s not impacting or affecting anything from the 2012 round. It only impacts future applications. So I think this would be in scope. Unless one other leader – I’ll give Cheryl or anyone else on the leadership team, if they want to jump in ... My off-the-cuff determination is that I think that this part is in scope because, as Paul does say, there are applications.

Christopher, are you in the queue?

CHRISTOPHER WILKINSON:

Yeah, I guess I’m in the queue. Thank you. It’s now of course [2:11]. Look, two rather contradictory observations. First is that my guess would be that you don’t have any option and that unresolved applications that are still active from the previous round have to be respected. Therefore, you can’t accept applications for the same string in the

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new round. I would take legal advice from ICANN Legal, but I think that's probably where they'd come out.

On the other hand, it is absolutely professionally shocking that there are still applications unresolved since 2012. I cannot imagine how the managers responsible for this can take responsibility for such a situation which puts discredit on ICANN's processes and policies.

I think the main lesson for this is that the new round must have a 24-month deadline. If your application has not been resolved within to years, you're dead. You cannot possibly credibly propose a regulatory system for allocating assets which can produce this kind of result. Thank you.

JEFF NEUMAN:

Thanks, Christopher. I just want to go back and just make it clear that there is general support. I can't say consensus yet. I think it'll come to consensus. But there's certainly general support that strings that were applied for in a previous round will get priority over applications for that same string in a future round. So I think we are respecting those previous applications.

This question is whether someone should be prevented from even applying for that string. If we have rounds that are predictable – in theory, once a year, once every other years; however many times it is – there are going to overlaps in the processing. It's just the very nature of how long these take. Whether it's two years, five years, or ten years, there's going to be overlap. So we do need to decide what we want to do. It's already decided, I think, that

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previous rounds will be finished and consider those applications [to final] before you consider applications for that same string. But now we're talking about whether they should even be prevented from applying.

So lots of comments in here. We need to come to finality. Kathy asks, "How many are unresolved?" We were asked this question several months ago. We do have a document. I don't know if someone from ICANN staff could publish the link because I know we're a little short-staffed today, but there is a document – it's on the community wiki – that we've been updating that shows a number of unresolved strings and the reason. There's not too many that are left, but there are some.

Let's see. I'm hearing still report from INTA and Valideus, but are there any others? Perhaps Paul, I think, supports – okay. Paul supports the INTA proposal. Are there any others?

A new hand from – oh, I'm sorry. Susan, I missed you. Susan, Greg, and then Maxim.

SUSAN PAYNE:

Hi there. Since I work for Valideus, I just through I would try and clarify. I don't whether the clarification that you gave was accepted by Anne. It seemed like she was still questioning it in then chat. The reason why it's also referring to the 2012 – that's not an attempt to reopen the 2012 round or any suggestion that that should be the case – was merely I think, because the way the question was drafted. The question was drafted looking at, let's call it, Round 2 and then Round 3, 4, 5 and so on. So our view

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was just that we shouldn't just be starting this consideration at Round 2. We should be saying, if there's still something from Round 1 that is, for whatever reason, still going through a process, then aren't we doing future applicants for Round 2 or 3 or 4 a disservice if we let them apply for something which will sit pending possibly for years or potentially will never come to fruition?

Let's take [web], for example. I don't think there's any suggestion that the web application won't go to someone, even if whoever was allocating it – even if they lose the legal challenges, there was still other applicants. So I don't think there's a suggestion there that web is in the mix. If web had been delegated, then no one would be able to apply for web in the next round. So what's the difference? That was what this proposal was trying to suggest. It was really trying to save the applicant of being done the disservice of allowing them to apply for something that they don't have the real prospect of getting because it's mired in some of the dispute process or whatever.

JEFF NEUMAN:

Thanks, Susan. I think that helps explain, hopefully. I see Anne. Did you want to respond?

Anne has got a comment, and then I'll go to Greg. Anne says, "Round 2 applicants can decide whether or not they want to take the risk and apply for the same string or not." Okay.

Greg, please?



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GREG SHATAN:

Thanks. Personally, my view is that, first, there should have been no bar on applying for something that had been applied for in the prior round. I also note that, in the 2012 round, anything from any prior round had expired and there were a number of unsuccessful lawsuit arguing otherwise. In my view, that's the appropriate way to deal with these things. I think they really should evaporate or, at best, they should be given the ability to reapply but with no preferences in the new round. But they should not be grandfathered in from prior round and should not be given preference. I think we can take a look at that over time if the rounds are coming so fast and furious that they're really all part of the same single process, but at this point, I don't think it makes sense to have applications that are zombies on life support that then go to the head of the queue for the next time around. Thanks.

JEFF NEUMAN:

Thanks, Greg. I don't think anyone is suggesting that strings applied for in previous rounds go to the head of the queue. I think what they're talking about here is whether – well, actually that is the title of this section. You're right. But that's not what this proposal is talking about. This proposal is only saying that we shouldn't even allow applications for a string that is still pending in some manner in a previous round, as I think is this one. It seems like it's getting some level of support. I notice that Kathy is agreeing with Susan, but there are others that basically say, "Do it at your own risk."

Christa is saying, "I think we may need to add something along the line that applications are still floating out there as they haven't been withdrawn by the applicant for whatever reason." Certainly,

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Christa, to the extent that we do allow applications, I think it's clear we must make sure that potential applicants and applicants know what's out there or where to access that information so that, if we allow applications for a string, then they know the risk. So that's certainly if we go down the path. Susan is saying, "But it costs them to even make the application, which can't all be refunded." Greg is saying, "But it could be at their own risk."

So there's arguments both pro and con here. So I'm going to ask – I think this one is a Susan one or an INTA one – if we could just draft that and send it around. If we can get people in the group that like the proposal, let's see if we can get some support. Otherwise, it just seems like there is some that support and some that aren't.

Maxim and then Paul.

MAXIM ALZOBA:

Actually, speaking about the hard limits for the application to be successful, I think it's not the correct idea because, usually in situations where applications are stuck, there is something extremely wrong in its path. For example, it's ALPs for the geos, where formally you could have something to follow to get the list of preferences, for example, for local trademark owners in the particular city, etc., etc. But, in reality, it was the implementation that prevented registries from using that. In famous situations where some concerns were raised by some governments, we have something in the end like shredding our TLD, which you never know if it's alive or not in any particular moment of time.

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So I think, first, applicants shouldn't be responsible for the way that ICANN resolves the contentions or reviews the application because they are not affiliated. So they shouldn't be responsible for what ICANN does with the data they supplied. The second is that I support the idea that, if the draft is drawn, then why not gather the temperature of the room about the support or maybe some useful [inaudible]? Thanks.

JEFF NEUMAN:

Thanks, Maxim. Just looking at the comments, there's still some discussion going on about that. I do want to get to the last point. Emily just posted, "You can find out an individual application's status by going to [gtldresult.ICANN.org](http://gtldresult.ICANN.org) site." You can type it in, but that's not going to show you a list of the ones that are not resolved in one place. You'd have to go through and look at it by status. We did produce a chart that should be on the wiki.

Paul, please?

PAUL MCGRADY:

Thanks, Jeff. I just wanted to very gently and kindly push back on the notion that Greg raised that, if you have a pending application, no matter how hard you've been fighting for it and how dead it is not, it would be automatically classified as zombie and kicked out when the next round opened. I think that is the ultimate gaming scenario, where, in our upcoming round, somebody simply didn't like an application. All they would need to do is delay it until the next round opens, and the applicant is just out of luck. I think Greg is a terrific human being, but I think that's a really bad idea. I just

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don't want it to be put out into the universe without having been challenged. Thank you.

JEFF NEUMAN:

Thanks, Paul. I think the action item there – Susan, if I can just ask you, being one of the proponents of that – is to just circulate your proposal around. Susan is saying, “Yay.”

The last one was a concern by ICANN org, but I want to preface this concern with saying I didn't see any support in the comments for what ICANN is org is concerned about. Luckily, there was wording in the report that asked about priority over, but I didn't see any comments in support that said that, if you applied for a string in a previous round and were unsuccessful, then you should then priority for that string in the next round because you tried applying for it before. So I think, unless I'm [mis]reading anyone, if you disagree on this list, notion of giving priority to applicants who previously applied is not something that has gained traction here.

Also, in the other comment, ICANN org wants us to be very specific as to when they could start processing applications in a new round. So we just need to be very specific. In other words, if we allow applications in a current round for strings that are being processed in a previous round, we need to carefully spell out what needs to be completed before we actually look at an application in that current round.

Trang, did I get that right? I'm assuming I did because you lowered your hand.

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“Yeah.” Thanks. Okay, cool. Greg is supporting what I basically said about priority for those that applied in a previous round with a new application, so I think we can put that one to bed since there were no comments in support and no one here is speaking in support.

Is there any other text that’s below that – I can’t remember – for referrals? No. Cool. Let’s move on then to another fun one, which will take longer than just this half hour on this call. I think this is an incredibly important one. This was a topic that came up with the supplemental initial report, and it deals with changes to applications itself by an applicant, whether that’s a minor change, like changing employees that were listed, or a major change, like your company was sold to someone else or whatever it is. These are the types of changes. Obviously there were a tons of different types of application changes in the last round, partly because of the length of time it took to go through it all. Just natural changes, and then some larger ones.

There was no policy initially on this. ICANN basically was governed by the terms and conditions, which we talked about in the previous call, which talked about applications not being transferrable or licensable. So it did have some guidance on things that would be allowed, but with everything else, there was initially no process. So they created a process of how to submit changes. They created a process of which changes require comment and things like that. It seemed to most commenters to have worked fairly well, but it needs to be documented in the guidebook.

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So the policy goal here is that the framework for considering and responding to change requests should be clear, consistent, fair, and predictable. Again, these are changes by the applicant to its own application, not changes to the program.

Kathy has a comment before I get to the high-level agreement. Kathy, please?

KATHY KLEIMAN: Hi. Can you hear me, Jeff?

JEFF NEUMAN: Yes.

KATHY KLEIMAN: Terrific. It seems to be that the change request should be clear, consistent, fair, predictable, and limited, in part – we’ll be talking about extensively over the rest of this meeting and next meeting – to not waste the community’s time. So I’d like to propose we say limited there, that you can’t do anything you want, any time you want, if you’re an applicant. Thanks. Happy to go into more detail if people want it.

JEFF NEUMAN: Thanks, Kathy. We’re going to get into the details now, I think, on the types of changes that should and shouldn’t be allowed. I think it’s: the framework for considering responding to change requests should be clear, consistent, fair, predictable, and subject to what we’re now discussing. I think just putting the word “limited” in there

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might be – well, let's discuss what should be allowed and shouldn't be allowed. I think we get to that here.

Let's see. A high-level criteria-based change request process, like the one that was employed in 2012, with the following operational improvements – oops. Sorry, guys. Let me turn off my phone. Sorry about that. So the first one is that ICANN org should provide guidance on both changes that will likely be approved and changes that will likely not be approved. So this gets to what Kathy is saying: basically, the types of changes that we're going to look at and types of changes that we basically don't even bother with. So it should be clear.

ICANN org should set forth the types of changes which are required to be posted for public comment and which are not. So applicants in 2012 were not sure which ones would go out for comment and which ones wouldn't. The reason why all changes don't go out for public comment is sometimes it's changes to – sorry, guys – the confidential information that was never disclosed in the first place, or sometimes they're just changes to employees or other thing that are not the type of – I'm laughing. Sorry, Paul. It's not that I'm popular. It's my wife calling. So the types of changes which are required to be posted for public comment should be set forth in the Applicant Guidebook – the types of changes that would require a re-evaluation of some or all of the application and which changes wouldn't. Again, I think it's self-explanatory.

Anyone disagree with those as far as being in high-level agreement? Again, this is at the high level, not the detailed level.

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Kathy, please?

KATHY KLEIMAN:

Jeff, I could be misinterpreting here, but it makes it sound like all this rests on ICANN org. It seems to me that, if I read this correctly, I and the Non-Commercial Stakeholder Group would disagree. What it seems to be saying is that ICANN org decides which changes would be approved and what changes won't be approved and what changes are required for public comment and what changes aren't. It seems to me that a lot of that is resting here. So how do we modify this high-level agreement to reflect that ICANN org isn't operating on its own on this?

JEFF NEUMAN:

Thanks, Kathy. Part of this is referring to the criteria that ICANN used in 2012, which is – I can't remember. It is linked above, Emily, in this document? I know it was included in the report. So it's in the initial report. If you go to the initial report, you can see the criteria that they have so far for the changes that were deemed the ones that they would look at and some criteria. So it's in there. So it's not totally within their discretion, but at the end of the day, once ICANN is ... I think, once we set the policy – it seemed like most commenters agreed with what was in the supplemental initial report – then it's for ICANN org to implement. So we're telling them that using the specific lists that already in place that are from the supplemental report is fine but they need to give guidance in the guidebook to explain those to make sure applicants understand.



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Someone – is that Emily? You reposted all of them? Someone reposted all of them. So that’s – oh, thanks, Trang. Either Trang or Emily. Thanks. So in all those discussions, those seemed agreed upon.

Kathy, if you read that section in the report and you still feel uncomfortable with the discretion, let us know. I don’t think it’s giving ICANN as much discretion as it sounds if you read this high-level agreement out of context.

Your hand is still up, Kathy.

KATHY KLEIMAN:

Yeah, it is, and it has to do with discussions in Kobe, Jeff, where – I may be jumping the gun here – the changes some of us thought were coming through – changes in response to, say, the GAC early warnings or whatever future warnings they had, or in response to the community ... But in Kobe we were talking about any change, any time, that people want, that applicants want. That’s what we talked about in one of our face-to-face meetings, and it generated a lot of concern and discussion.

So I think we should nail this down a little bit per what Paul McGrady said in the comments. We don’t have to spend a lot of time here, but we are going to be deciding under what conditions what are the criteria for comments and changes. So I do think we’re going to nail this down a little more. Thanks.

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JEFF NEUMAN:

Thanks, Kathy. I think, as we go down from the high-level agreements, we're getting there. We'll get to the detail. If we don't, then bring it up at that point if we've missed something. But, yeah, that's the intent.

Paul is asking if we can reference the seven criteria in the first bullet point. Sure, we could, absolutely. We could at least do a footnote if nothing else. These are meant to be summary documents. I should say, just to take a step back, this is not exact text for a final report, though we are getting there and this will be lifted. Our final text will obviously be based on this. So I wouldn't worry a huge amount about the text in this summary document, but we'll at least put in a link in the [wiki] to make it clear what we're talking about.

The next high-level agreement: Commenters generally supported allowing application changes to support the formation of joint ventures. ICANN org may determine that, in the event of a joint venture, reevaluation is needed to ensure that the new entity still meets the requirements of the program. The applicant may be responsible for additional material cost incurred by ICANN due to reevaluation, and the application could be subject to delays. This came up in connection in talking about: if resolution sets are able to be privately resolved, then one of the resolutions may be the combination of applications or entities into a joint venture.

So what we're saying is there was an absolute prohibition on this type of change in the 2012 round but now most commenters supported the notion of allowing it. Again, we're not talking about whether it should be out for public comment or not but just the general notion that it should be allowed. If it is allowed, then they

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applicant should be responsible for the cost. As we get into more detail, I'm sure Kathy would say – I'm sorry to put words in your mouth, Kathy – that, certainly, if it's a joint venture, there should be a time period for public comment on that.

Let me go back because it seems like I'm missing some things. If I miss a comment in the chat, if someone could just raise their hand if they want it read during here. I'm doing the best I can here, but comments are coming fast and furious. Susan is commenting to Anne. "I'm not sure how that's appropriate." – oh, okay. Sorry. Maybe that's from a previous discussion. Christopher says, "Isn't this a minor issue? Most of the financial and managerial changes would normally be approved. Changes to the string would not be allowed." Well, Christopher, we're going to get into that in a second – the changes to strings – because it's not yet resolved, at least with this group. Paul likes the JV idea as a means to get out of expensive auctions which only help ICANN and not applicants. Okay.

The third bullet point – we'll get into some of these details – is, if it is allowed that an applicant may change the applied-for string because the original string is in a contention set, the new string should not create a new contention set or [enter it] into another existing contention set. This again is the conditional – "if" it allowed. So we haven't reached the decision that it should be allowed or it shouldn't. But certainly there was high-level agreement: if this group does allow a changing of string because the string in the contention set, then that string must not – instead of "should," it said, "must not" – create a new contention set or enter into another existing contention set.

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KATHY KLEIMAN: Hi, Jeff. New hand.

JEFF NEUMAN: Okay, Kathy. Please.

KATHY KLEIMAN: Not crazy about this bullet point because it's easy to miss the nuance that you just said – “if it is allowed” – and the fact that it is currently in dispute that applicants ... In Round 1, applicants were not allowed to change the applied-for string, and now there are objections to this. I don't know why this has to be a high-level agreement, but if it is, let's clarify is significantly, please. Thanks.

JEFF NEUMAN: Thanks, Kathy. We're going to get to this discussion now, anyway, as to whether it should be allowed. The reason we put it in there now and it is highlighted – well, you highlighted it, actually – is because it's the conditional (“if it's allowed”). We would obviously take it out if it's not allowed. As a final recommendation, if you were allowed to change a string, then it could not be a conditional “if.” We would put it as a recommendation.

Let's go down to the areas where there is divergence. Where specifically is the comments on the string itself? Because I may be misremembering whether it's in this section whether it was in contention. If we scroll down a little more ... scroll down ... There we go. We're on Page 7, middle of 7 to the bottom and beyond.

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This is where there were a number of groups that suggested that you should be allowed to change the applied-for string to a closely-related string in order to avoid contention.

The examples that were provided – I use the one that Karen Day, who used to be part of this group (I think may still be a part but doesn't have the time anymore to participate as much) ... Karen talked about how she works for a company named SAS. They applied for .sas. The airline SAS also applied for .sas. When they entered into conversations, one of the options that they would have liked to have was that the airline could .sasair and the software analytics company could have .sasanalytics, or something like that. That type of thing, if you take yourself out of the ICANN box, is good for both of those applicants because they can both then have, especially because they would have agreed upon it, extensions. And the public would also not be harmed in any way if they both were given strings. Assuming you can limit it in a way that would prevent most types of gaming or all types of gaming, then it seems like these groups – the BRG, the ALAC, the IPC, the BC, and the registrars – all seem to support it. There's some caveats we'll get into. Opposition came from the registries and the Non-Commercial Stakeholder Group.

Given what we discussed, we can read all of the divergence and why. Actually, we will. Why don't we do that? Of those that opposed it, the registries said that it raises a risk of gaming for a string it knows it will be contented to be given a slot and cherry-picking uncontended strings, ensuring that an uncontended path through the program after [reveal day] that gives them an advantage that do not apply to change their strong. Any additional

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applications that apply to change their strings that may create new contention sets.

So I think the caveats to everyone that supported this was that it shouldn't create new contention sets. So I'm not going to read that last sentence from the registries because I think we've addressed that one. Non-Commercial says, "This creates a very difficult situation for applicants and an almost impossible one for the public and the ICANN community to monitor. The changing of strings midway into evaluation will cause confusion in the way. The proposal is not fair, not reasonable, not envisioned by the rules, and not a valid way of proceeding. It will require repeat of evaluations and other procedures." We talked about that. "This type of contention should go to open auction. To do otherwise is to completely screw up the rules."

So we can, as a SubPro group, recommend new rules, and that's what we're talking about. Putting aside circumventing the rules, we're actually talking about what the rules should be. I'm interested to know if limited – Kathy's got her hand raised, which is good. What I'm interested in is to hear more about how it would not be fair.

Kathy, please?

KATHY KLEIMAN:

Jeff, if it said what you said, then we'd be having a different conversation, perhaps. If it said – we did the research as well in Non-Commercial – that the idea of two trademark owners coming through with SAS were delta and then that the modification is to

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add some kind of descriptor of the industry – Delta Airlines and Delta Faucets – for the top-level domain, that’s one thing.

But as Alexander pointed out in the chat, this has to do with generic words. The possibilities are endless. We talked about people applying for .cloud, which probably went in the first round. Then you’d have .cloudy, .icloud, and .cloud. It’s likely creating massive confusion on the net.

Before I go into more details, why don’t we modify this to be the example that you gave and the historic example that was raised. That puts us into a much narrower set of gTLD string changes. Otherwise, I think we’re going to have a big argument, which we don’t want to do on a nice summer day. Thanks.

JEFF NEUMAN:

I was talking into mute. Thanks, Kathy. I think that’s a really good suggestion. I know initially some had discussed that, but for purposes of the supplemental initial report, I think we wanted to make it broader to get comments. If we modified the proposal off the cuff in a way that, basically, you are a brand owner and have trademark rights in a string and you are in a contention set and you wanted to modify it to create that term plus a descriptor or something like that – I’m sure we can find better words – does that sound like something that could be supported?

Let me go to Jamie, Trang, Donna, and I think we’ll close it up – is Donna the last in the queue – after Donna.

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JAMIE BAXTER: Thanks, Jeff. I think I agree with Kathy on limiting this to those with trademarks. Now that we're talking about it, I think the example that you presented around SAS is a very simple one. It's two particular brands and there can be a quick solution. But if you look at the 2012 round, there were some strings, especially in the generic lane, where there were nine or ten applicants. Then you start to have to answer the question of, how do we address how quickly somebody gets to pick a name and does that conflict with another competitor who also wants that name as they're moving forward. So it just raises a lot of other questions about processes that have to be put in place [and] rules around, when you realize you're in contention in a big contention set on a generic word, how quickly you need to get your new solution in to beat the next person who may also want that?

So something just to think about. Your example was very simple and easy to walk through, but I think there are much more complex out there that probably have to be addressed in this discussion. Thanks.

JEFF NEUMAN: Thanks, Jamie. I think we're narrowing it down such that we may be heading to a good place.

Trang and Donna.

TRANG NGUYEN: Hello. Can you hear me?



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JEFF NEUMAN:                    Yeah. Now we can hear you. Thanks.

TRANG NGUYEN:                Oh, it's the double mute. It gets me every time. Thank you. I wanted to highlight some of ICANN org's concerns with this proposal as well. One of the things that we were very careful about in the 2012 round is change requests that were submitted for changes to the applied-for string. We recognized that that could completely destabilize the program because those types of changes would require, number one, a string similarity reevaluation. So all of the strings would have to go through the evaluation again. There are lots of issues with that. Then there's also the process of string contention objection which occurs after string similarity evaluation.

So we wanted to flag an issue and a concern with relationship to this proposal from that perspective: that, if any application is allowed the change the applied-for string, essentially all of the applications would have to be reevaluated for string similarity evaluation for that new string that's just been changed. Then the string contention objection process would essentially have to occur again, which could create additional contention sets based on that. So it's just a problematic issue to be dealt with.

Secondarily, I want to also flag that it's going to be very difficult, and it's very subjective to determine what "closely related" means. Something that might be considered closely related to an applicant may not be considered closely related by somebody else. So this is a very subjective type of evaluation now. If we evaluate this type of change against the change request criteria

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that were defined for the 2012 round, we want to look at that and see how those criteria would be applicable to a string name change. Things like would other third parties comes to mind. That was one of the criteria. Fairness to applicants. Would allowing the change to be construed [inaudible] to the general community? Would this [allowing of] the change to be construed as unfair? Materiality. The timing.

So those are all of the criteria for a change request that were defined last round. If you look at those against a string name change, there's some big considerations that would need to take place there. So I just wanted to raise those for the working group's consideration and discussion. Thank you.

JEFF NEUMAN:

Thanks, Trang. I think, if the proposal is narrowed down enough where it's the brand name plus a closely related term or something – you could even say a word that's in the trademark registration because there are descriptions in trademark registrations – I think it's pretty easy. I think all of those complications go away. In other words, it's not going to fail string similarity that pass string similarity and then allow a descriptor terms afterwards. I can't imagine any situation where it would then fail string similarity.

I also think then incidents of a string confusion objection – I'm not saying we shouldn't allow for a time period for it – or even a legal rights objection would be so miniscule. I can't even think of how it would come into play because you had a right, unless you already had an objection to the initial string. So, if, as Paul said, you did

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merck and change it to merckus, and mercku or whatever it was, those two companies, who are the most likely ones to complain, would have agreed to that in advance as part of their contention discussions. So I think – sorry; I’m explaining this very long and I know we’re over time – we narrowed down the proposal, a lot of those complicating factors go away.

Anne asks a question – then we’ll end the all – “What about ibrand? Isn’t that closely related? What does Apple have to say about?” Anne, I don’t think adding an “i” to a brand is a descriptor term that is what we envision, but certainly we could make sure, if you use, let’s say, a word that’s in your trademark registration – I’m pretty sure we can avoid all of that. “Double iPhone.” Okay, thanks.

Christopher, I got to get to Donna because we’ve sort of run out of time and I’ve closed the queue. So let me get to Donna and then close out the call.

CHRISTOPHER WILKINSON: Well, I just wanted to say that I would qualify my opposition to string changes unless in the light of what Trang has said. But my main point is that a national trademark, whether it’s merck or another one, does not provide any justification for a monopoly gTLD. Thank you. Donna?

JEFF NEUMAN: Sorry, Donna. Go.

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DONNA AUSTIN: Thanks, Jeff. For the reasons that Jamie and Trang just went through, I have some reservations about this change. I think it would quickly become very complicated. So I'm not willing to give on it just yet. I would like to see another proposal that would address all of those things that Trang and Jamie have raised because I don't think this is as simple as we think it is. Thanks.

JEFF NEUMAN: Thanks, Donna. We will write this one up. I could actually write this one up, because I think I understand it enough to write something on this one, where I think we can solve the simple situations and not have the ones that Trang is talking about. Again, we're not talking about – we'll close the call up – changing around letters. We're talking about adding a descriptor term. That was the proposal.

Thank you, everyone. I will write that up. I think our next call is on Monday. If we can post the time up there. Otherwise, we can then close the call.

There you go. August 12<sup>th</sup>, 2019. Monday, 15:00 UTC. Thanks, everyone.

**[END OF TRANSCRIPTION]**