
ICANN Transcription

IDNs EPDP

Thursday, 18 August 2022 at 13:30 UTC

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DEVAN REED:

Good morning, good afternoon, good evening. Welcome to the IDNs EPDP call taking place on Thursday 18th August 2022 at 13:30 UTC.

We do have apologies from Lianna Galstyan, and Dennis Tan will be joining late.

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

Statements of interest must be kept up to date. If anyone has any updates to share, please raise your hand or speak up now. If you

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need assistance updating your statements of interest, please email the GNSO secretariat.

All documentation and information can be found on the IDNs EPDP wiki space. Recordings will be posted shortly after the end of the call. Please remember to state your name before speaking for the transcript. As a reminder, those who take part in the ICANN multistakeholder process are to comply with the expected standards of behavior. Thank you, and back over to our chair, Donna Austin, to begin.

DONNA AUSTIN: Thanks very much, Devan, and welcome everybody to today's call. Ariel, do you have an agenda for us, or we're just going with ...?

ARIEL LIANG: Actually, there's only one item of the agenda, is basically the objection process, in addition to the chair welcome.

DONNA AUSTIN: I know, it just gives an indication to people that we've only got one item on the agenda. And it's also a good reminder for the chair to make sure that I'm not missing anything. But anyway.

So yeah, folks, not many updates today. I think Ariel has put new text out on the list for folks to review. And I think we've given folks—was it two or three weeks?

ARIEL LIANG: The deadline is August 31st.

DONNA AUSTIN: All right. So a couple of weeks for that. We expect that this conversation we have today, which is more work that was done by the small group for string similarity, we think that going through the objection and other processes, taking into account their recommendations will actually help with the conversation we had last week as well. But just a reminder that we're also seeking input on—we'll be seeking input on both pieces in the next couple of weeks.

And next week, we've changed the time of this call to accommodate overlap with the GNSO Council call. So we'll be doing this call next week, at this time on Friday, not Thursday.

And also, in the background, we're doing some prep on some considered thinking about how we're going to run sessions in KL. And that's something that I hope we can come back and give you a little bit of a heads up around in the next week or two to prepare for the conversation that we're going to have in KL. With that, I'll hand it over to Justine and Ariel to take us through the additional work that the small group did regarding the objection process, and that's connected with the string similarity recommendations that we saw last week. So with that, I'll hand it over to Justine I guess, and then to Ariel.

JUSTINE CHEW: Thank you, Donna. Before I start, I think Devan, if you could try and promote Hadia and Maxim who are still in the meeting room, I

guess that would be helpful. Also. Yes, I'm a little bit down on energy, so I'm going to have to rely a lot more on Ariel today. Hopefully Ariel is going to back me up.

Firstly, I need to say that the small group for the string similarity has completed its work last week. But we had basically split our output of our work and the recommendations that were developed into two parts. The first part being dealing with string similarity review, how, what is the role of allocatable variants and blocked variants as well as the primary applied for label, what roles do they play within the string similarity review upon the introduction of variants for the next round?

We realized that there was a lot to unpack from last week. So we just hope that folks have had the chance to digest some of—at least the hybrid model that was introduced, and the rationale behind that, because we're going to be kind of referring back to the hybrid model a little bit today. So that was the first part in regards to string similarity review.

The second part, which we will go through today, is in relation to the objection process. Basically, the similar question as to what is the role of the primary applied for label as well as allocatable variants or allocatable variant labels, as well as blocked variant labels, what roles do each of these play within the objection process?

And we know from subsequent procedures that the framework for the objection procedure hasn't changed, except that SubPro has recommended an appeals process to deal with any appeals of the panels for each of these objection processes.

So the four that will remain will be string confusion objection, limited public interest objection, legal rights objection, and community objection. So as I said before, part of the task that was assigned to the small group was that, what types of strings and labels must be taken into account when we are looking at these four objection processes?

It's basically the primary applied-for string, requested—Okay, so in terms of allocatable variants, we have broken it down to requested ones as well as non-requested ones. And then the last group being the blocked variants. Okay, was there anything else to add here, Ariel?

ARIEL LIANG: No, I think you covered it very well.

ARIEL LIANG: Okay, good. Thank you. Yeah, feel free to prompt me if you think I've forgotten something. Moving on to the next slide. Oh, yes. I wanted to also ask for indulgence from folks here, too, for us to just let us try and get through as much of the deck as possible before we take questions. Again, if you had a particular comment or particular question in relation to one aspect of what we're presenting today, then please take note of the slide number, we can always go back to that particular slide and discuss the issue that you have in mind.

Okay, so moving on to the next slide, in terms of the general assumptions that we make for the objection process discussion, we were thinking in terms of the objections during the application

round when a primary gTLD string—again, we're just using the term primary to mean the actual label that is applied for, the source label in the case of possibly when none, one or more of the allocatable variants are being requested. So in context of the combination of primary plus allocatable variants or without allocatable variants.

And we consider the fact that objections may be, in that context, as I've said before, the objection process could be against the primary applied for label or it could be against one or more of the requested allocatable variants, or a combination thereof. And the objection itself may or may not affect the entire application depending on the objection process type, and [inaudible] the outcome of the particular objection process itself.

So moving on to the next slide. So, again, we looked at the four different types of objections separately, and this slide 22 covers the string confusion objection. So, this is number one of the four objection process that we looked at.

Just by way of background, the string confusion objection applies when someone thinks that an applied-for string is confusingly similar to an existing TLD or to another applied-for gTLD string in the same round of applications. The operative phrase here would be the same round of applications.

So somebody could be objecting to an existing TLD competition-wise, applied-for gTLD string. Right. And who has standing to file a string confusion objection? It would be an existing TLD operator if the allegation is that it's confusingly similar to an existing TLD. And, of course, the applicants in the same round if the two

applications, they think that they are confusingly similar to each other.

And then in terms of the considerations, it would be the case that the strings would have passed through string similarity review, because the string similarity review happens before the objection process. So if a particular string doesn't get passed a string similar to review, then the possible contention may not even occur, and therefore you may not even need an objection process.

But that's not to say that the string that goes through the string synergy review would automatically bypass the objection. Someone can still file an objection against a particular string that passes the string similarity review, could be on a different basis.

And the task of the dispute resolution service provider, the DRSP, panel is to consider whether the applied-for string is likely to result in string confusion. So that's what the panel is charged to do. And it's important to point out that the string confusion objection covers not only visual similarity, which is the main or the sole element for string similarity review. But the string confusion objection also covers other types of similarity in terms of not only visual but oral or similarity in meaning, whatever that is put forth by or alleged by the objector.

And the potential outcome of it would be that in the case of an existing TLD holder, operator being the objector, if the objection prevails, then the applicant for the new applied-for gTLD will withdraw. If the objection does not prevail, then presumably both applications would proceed to the next stage.

And if it were the case where the two strings were applied for in the same round and they are alleged to be confusingly similar, then one particular applicant could be the objector against the other applicant. And in that case, if the objection prevails, then both applications will probably go into a contention set. And then it would be referred to the procedure that resolves contention sets. And if the objection does not prevail, then both the applications will proceed to the next round, because they're not found to be confusingly similar or confusing.

And then there's a note about the limited appeal, mentioned that before that's been recommended by SubPro. So basically, it's just an added stage of the objection process. And there's a mechanism for which a limited appeal can be filed.

Right. Moving on, can I ask Ariel to take us through this chart thing?

ARIEL LIANG:

Yes, of course. So the group needed some concrete example in order to understand the specific questions for consideration about string confusion objections. So this chart was created for that purpose. And the examples were proposed by the small group members.

So on the left-hand side, you will see the string A1, it's a Chinese script [inaudible], I think it's an artist's name. So the assumption is that this is an existing string. And A1 existing string has allocatable variant, A2, and also blocked variants A3 through A6.

So in this example, the group regard A1 as an objector. Because there's another string that's being applied for which is B1, it's another Chinese string. It's [inaudible]. It's a trademark, wordmark. And it has allocatable variant B2 and blocked variants B3 through B12.

So if the object or A1 would like to submit a string confusion objection, it has to be based on certain grounds and make certain arguments. So the group considered a series of questions, on what grounds A1 objector can submit a string confusion objection against B1.

So the first question is, can the existing TLD of A1, the existing operator of TLD A1 submit a string confusion objection against B1, by arguing that B1 is confusingly similar to A1?

So I think based on what the group discussed, that's a pretty straightforward question, that's a pretty clear-cut answer, is yes. They definitely could, because B1 is being applied for. So it could make that kind of argument, that objector.

And then the second question is, can a string confusion objection against B1 be filed by arguing that B2, the allocatable variant of B1, is confusingly similar to A1?

So there are two separate scenarios for this. One is, if B2 is requested for activation at the same round, can that argument be put forward, and then an objection can be filed? And if B2 is not being requested for activation, can a string confusion objections still be filed by arguing that B2 is confusingly similar to A1? So that's the second set of questions.

And then the third is, can a string confusion objection be filed against B1 by A1 arguing that any of B1's blocked variants is confusingly similar to A1? So, these are some of the questions the group considered. And then actually, there are many more of that. And you can see the arrows are basically pointing to the comparison that can be potentially made by the objector, so the group is basically considering what's the answer to this series of questions in order to consider what would be a valid ground for string confusion objection.

And this arrow is very much similar to the hybrid model presented in last week's call. So basically, we're comparing the primary string against primary string, a primary string against allocatable string and the primary against blocked and then also, we're comparing the allocatable string of an existing string against the primary applied for and the allocatable, and then against blocked. And the only thing it's not being compared against is basically blocked against the blocked.

So basically what the group did is to go through all these series of questions and then consider what would be the answer to that and whether the ground for comparison is valid or not. So that's the purpose of this chart. And then also, the series of questions posted on the right is to consider what would be a valid ground for string confusion objection. So that's basically these slides. And should I turn the floor over to Justine to talk about this slide and the recommendation from the group?

JUSTINE CHEW:

You can carry on if you like.

ARIEL LIANG:

Okay. So after considering these questions, and looking at the chart, the group basically came to a conclusion that all the answers to these questions are yes, if we followed the same hybrid model of the string similarity review. And then this is based on several assumptions.

The first is that the string confusion objection also aims to mitigate the misconnection risk that string similarity review aims to prevent or mitigate. So they have the same objective. So because of that, it warrants the same hybrid approach, just like the string similarity review.

And then the second presumption, which is basically very much related, is that the primary applied-for string and all of its allocatable and blocked variants must be taken into account in the string confusion objection. And that will help mitigate the misconnection risk to the maximum level. So everything has to be taken into consideration in the string confusion objection in order to prevent misconnection risk.

And then the third assumption is that the string confusion objection will affect the entire application. So for example, if the objector argues that an allocatable variant label of an applied-for string that's not being requested to be activated is confusingly similar to the objector's existing string, then basically, that string confusion objection can be filed, and then if it prevails, then the applied-for string may not be able to proceed the next step. So basically, if any of the grounds proves to be true, and then the objection prevails, then the entire application will be affected.

So that's the presumptions of the string confusion objection recommendation. And then just to reiterate, basically, what the group recommends is that the string confusion objection can be filed based on all of the grounds down below. So any direction of comparison that you see in this chart is basically valid and an objector can file a string confusion objection by making the arguments based on the direction of comparison in the graphic here, So that's the recommendation for string confusion objection. And should I turn over back to you, Justine? And I also see Jeff has his hand raised.

JUSTINE CHEW: Okay. Donna, did you want to make a call about Jeff's hand?

DONNA AUSTIN: This is your show today, Justine. Your call.

JUSTINE CHEW: Okay, Jeff, go ahead.

JEFF NEUMAN: Yeah. So I want to just clarify some terminology here. So anyone can file an objection, but you're talking about prevailing, right? If you show that this is confusing. Because I think the terminology we're using is confusing me. I don't think we should be saying whether a string objection can be filed. It could always be filed. The question is whether they would prevail if they succeeded in proving that it was similar. So that's number one. I can wait on the

others, but I think I just want to make sure our terminology is—we're on the same page here, because like I said, should never be talking about whether someone can bring an objection. It's whether they would prevail in an objection.

JUSTINE CHEW: Right, okay. Yeah. What we mean to say is the objection process is available—in the context of a string confusion objection, the objection process, the string confusion objection process is available to an existing TLD operator or another applicant if they can make the case. Assuming they will make the case that it is confusingly similar in some way. Question of whether they prevail or not is up to the panel to decide. We're not suggesting that—well, all we're saying is the objection process is available on the basis of all the primary label, the allocatable variants, as well as the blocked variants, but not in comparing the blocked to the blocked.

JEFF NEUMAN: Can I just say that in a different way, Justine, just to make sure I understand it?

JUSTINE CHEW: Sure.

JEFF NEUMAN: So you're saying like if you take number five, if an allocatable variant of the primary applied-for string is found to be confusingly

similar to an allocatable variant of an existing TLD, they win, right?
That's what you're saying?

JUSTINE CHEW: Sorry, can you repeat that?

JEFF NEUMAN: Okay, so for number five—

JUSTINE CHEW: Which slide are you referring to? Sorry.

JEFF NEUMAN: The one that's up there and right now.

JUSTINE CHEW: Okay, 24.

JEFF NEUMAN: Okay. So if you look at number five, if an objector can prove that an allocatable variant of the primary applied-for string is confusingly similar to an allocatable variant of an existing TLD or another applied-for gTLD, the application for B1 will not be allowed. Is that what you're saying?

JUSTINE CHEW: Well, I need to know what you're talking about in terms of B1.

JEFF NEUMAN: Oh, sorry. Yeah, it'd be great if you could have both slides up at the same time. Okay, so if an objector can show that—I'll do 5A here, if an objector can show—if an existing TLD operator, let me do it that way. if an existing TLD operator can show that an applied for—God, this is hard to say here. If an objector—5A is if they request for activation. Okay.

So if an objector, an existing TLD operator can show that an applied-for string's allocatable variant is confusingly similar to its own allocatable variants, it will prevail.

JUSTINE CHEW: Yes.

JEFF NEUMAN: Okay. So I think that's—

HADIA ELMINIAWI: No, that's not what we were saying. If I may. I think we are not getting—Can I talk? I think we're not getting really what Jeff is saying. So, Jeff, we are not saying what is going to prevail and what is not going to prevail. We are saying the basis on which objections can happen. What you were saying means that an objection could happen between an existing blocked variant and an applied for blocked variant. And actually, what we are saying, that no objection can happen on those bases.

So actually, the way we are thinking as a small team is different than the way you are thinking. You started by saying that any kind of objection can happen, and then what we are saying here, that no, not any kind of objection would be accommodated, like blocked against blocked would not be accommodated.

We are not saying though what will succeed and what will not succeed. So, we are saying that an existing primary and an applied for primary allocatable and blocked—an allocatable variant and the applied-for string allocatable variant and blocked can happen. But what we are saying is that blocked against blocked cannot happen.

JUSTINE CHEW:

Okay, I think is getting a bit confusing. I don't necessarily agree with you, Hadia. I think I tried to understand what Jeff was saying, and I think I did. But if Jeff, you want to use a specific example of 23 and pose your question again, then maybe we can understand a bit better and don't ourselves get mixed up.

JEFF NEUMAN:

Okay, so I understand what Hadia is saying, and I accept that, too. What the small group is saying is that with the exception of blocked against blocked, the existing operator can be bring a challenge against any of those scenarios. But my question is you're also saying that if they prove that it's similar, they win, right? I mean, that's all at the end of the day. It's not that they can bring it.

JUSTINE CHEW: Correct. Because it's not up to us to determine whether they prevail or not. It's up to the panel. We're just exploring the possible consequences.

JEFF NEUMAN: Correct. Right. No, I understand that. It's any trademark owner can bring a—I'm just doing an analogy here, can bring a challenge based on their existing trademark. Whether they win or lose is up to the panel.

JUSTINE CHEW: Yeah. We're going to be dealing with legal rights objections in a minute.

JEFF NEUMAN: Yeah. But with the similarity, even on this, putting aside the—I still can't understand why if an objector has certain variants that are blocked, and we're not sure why they are blocked, right, there was just a decision made by a label generation panel, I don't understand why an objector with their blocked variants can prevail if they show that their blocked variants but not their main or allocatable string, are confusingly similar to an applied-for string.

JUSTINE CHEW: You're going to have to try and identify the number in those arrows, what you're referring to.

JEFF NEUMAN:

Okay, absolutely. Yeah, this is really—okay. I don't understand why an existing TLD operator who is not allowed to allocate A3 through A6 can file an objection against B1 based solely on the fact that an allocatable variant, B2, is confusingly similar to a A3 through A6. To me that doesn't make sense, unless B1 was also confusingly similar, the actual string they're applying for.

Because there could be other remedies for just not allowing the entire string to go forward. Right? Because let's say that B1 is not confusingly similar to any of those, A1 through A6. Let's just make that assumption. Right. And let's say it's only B2 that is confusing to one of those, A1 through A6.

Well, you could always say to the applicant, "Okay, you're allowed to have B1, because that's not confusingly similar to anything. But we're not going to allow you to have B2." But instead, what you're saying is you're not even allowed to have B1, because there's an allocatable variant that's confusingly similar to blocked.

JUSTINE CHEW:

I think we're getting a little bit into the weeds. But if I may just say that, again, string confusion objection encompasses elements beyond visual similarity. So it talks about similar meaning, it talks about oral similarity. So the point is the whole set for one label is supposed to mean the same thing. So therefore, what you are describing in terms of scenario could possibly lead to misconnection because somebody is mistaking the taking a particular label to mean something else, and therefore they get misdirected, which is why the small group is saying that it's important to still include the blocked variants in the process of

objection, just to the level of excluding blocked variants against block variants.

JEFF NEUMAN:

I understand that. But again, if you take the extreme example that—again, let's assume that B1 and A1 are not confusingly similar. And let's even assume that B2 is not confusingly similar to A1 or A2. But let's assume that there is a blocked variant that the applicant could never apply for because it's blocked. And one of those blocked variants is confusingly similar to A1.

So let's say only B3 through B12 may be confusingly similar to A1. I don't understand why that would prevent B1 from going forward. Because if A1 and B1 are not confusingly similar—I can't understand why a blocked variant that could never be introduced should prevent the allocation of because what is allowed.

JUSTINE CHEW:

If I may just explain it in this way. The internet end user doesn't know and doesn't care about blocked variants. What we're trying to say is regardless of whether that label is blocked or not—Okay. Even though that label is blocked, it could prove to be confusingly similar in the event that it was actually in the root. But because somebody is using it to—and could possibly be confused by it—I'm not doing this very well. Little help from some of the small group members. It is about the labels in the set being regarded as the same word or has the same meaning so to speak. So even though a particular label is blocked, someone else could still

mistake it for something else. And therefore, it's still important to factor the blocked variants into this process of objections.

JEFF NEUMAN: Yeah, I'm with Nigel on this one. Just because it means the same thing—that's a synonym, right? Even if you just took it in the English language—So let's say the word auto and car, those don't look anything alike. They could mean the same thing. Someone could be confused that the TLD operator for car is the same one as the operator for auto. That doesn't mean we should block them. If it's solely based on meaning, that's not, alone, enough to prevail in an objection. Especially if you're saying—yeah, I just can't get my head around someone being able to object based on what they're not allowed to allocate anyway.

JUSTINE CHEW: Okay. Hadia, you have your hand up.

HADIA ELMINIAWI: Thank you. Yes. I think the reason we went for that—it was specific to a Chinese example. I don't recall the example now. But it did seem, to those speaking the language—at least this is what I understood—that it is really confusing. Thank you.

JUSTINE CHEW: Yeah, I'm not sure the Latin example that you raise, Jeff, is ideal one to explain the situation because we all know that cars and auto don't look similar at all, but they could mean the same thing.

But yeah, we will look at it from the context of the language and the script as well.

JEFF NEUMAN: Yeah, but—I'm sorry, I'm looking at A6 and B1, they don't look anything alike.

JUSTINE CHEW: Ariel, would you like to add something?

ARIEL LIANG: Yes, and I guess I just wanted to make a couple of comments. And I think using synonyms, that's probably not the right comparison to variants, because it's not just based on the same meaning, it's basically exactly the same word, just different way of writing it. So like the auto and car comparison is not something really applicable to our understanding of variants. So that's the first comment I want to make.

And the second comment is regarding the example. So this one, the Chinese one is probably not the best. And in last week's meeting, we did use another example, which is the Arabic one. So if you recall, basically, for like A1, that's the primary string, it may look almost exactly the same as a blocked variant of B1. So if you look at A1 and B3, they look almost exactly the same.

So if both strings are delegated in the root zone, and then somebody looks at B1 but also knows that B1 can look like B3, then they may mistake B1 as B3 and then as A1. So they may

make that misconnection kind of understanding of these two strings. So that's probably a better example than the Chinese one. Because if you look at A1, B3, they look very much the same, but B1 is the blocked variant of B1. That's the second comment.

And then the third comment, it's Maxim's comments in the chat. And he said, why we need to consider blocked variants if they do not exist? I think it's they are not allowed to exist in the root zone because of the RZ LGR rules, the determination, but they do exist in the actual use of the language. Like if the language doesn't even have that character, for example, how could we even know about those blocked variants? They're blocked because they're not allowed to be by the rule of RZ LGR. But they actually do exist in the actual use of language, and the end user may encounter that in some other context. So that's the third comment I have.

JUSTINE CHEW:

Thanks, Ariel. And, Jeff, I mean, you're talking about A6 being very dissimilar to B1. It's not about the actual character, per se. It's about the group of blocked variants as a group being available to be used as part of the objection process.

JEFF NEUMAN:

Sorry, if I may. Ariel said this is a good example. I actually say that this is a bad example, because in this one, B1 and A1 are so close to each other that there's no way an objector is not going to base the objection of B1 from their own string, right? They're not going to just say, "Oh, the blocked variants are similar."

But in the other example, I would say the Chinese example is the best example because that's one where you can see some blocked variants that don't look anything like the primary that the other person is applying for. That's the example we need to consider. There's no visual similarity at all between the primary and the primary or even the allocatable and the allocatable. That's the situation that we should be looking out for the end user. But just because something's blocked in one by a label generation panel for one purpose, but it's not blocked for another purpose. I mean, I don't understand. If we can go back to the example the Chinese one.

Okay, so, Ariel, you said in A1, that is the name of an artist, right? Is that what you said?

ARIEL LIANG: Yes.

JEFF NEUMAN: Okay. And what is B1?

ARIEL LIANG: It's a mark.

JEFF NEUMAN: A trademark?

ARIEL LIANG: I believe so. But Jerry is the one that contributed this example. So welcome, Jerry, to chime in.

JEFF NEUMAN: Okay, so these two have very different meanings, right? We can agree on that?

ARIEL LIANG: Yes.

JEFF NEUMAN: Okay. So let's say, in this case, A1 and B1, they look alike too, right, so they would probably allege A1 and B1. But let's say they didn't, for whatever reason. And they just said, "Look, a blocked variant of my artist name looks like that trademark. And therefore, you shouldn't allow it to go forward." I think that's ridiculous. Because if there's a trademark owner saying, "Well, I don't care that your blocked variant of your artist name looks like my trademark, I should have every right to use my trademark on the Internet. And people will understand when they come to my website that it's nothing like the artist." Right?

That's the part that baffles me as to how we can be saying, we can be depriving another applicant of the use of their trademark simply because of a blocked variant of an artist name. This is the example that worries me. The other example you pointed out, it's clear, very clear that all of those strings, allocatable, blocked and existing, look the same. That that's an easier example for me to get behind. But this one, I can't.

JUSTINE CHEW: Yes, but there isn't necessarily a clean cut, one size fits all things. So we are compromising on what we think is appropriate, which is the hybrid model. I'm going to call on Michael because he's had his hand up for quite some time.

MICHAEL BAULAND: Thanks. Maybe I can try to put an example where this could cause a problem. It's the case when you—first of all, we're talking about top-level domains. So in all real-life examples, you will always at least have one other label before [this,] which may be the same for both top levels.

So if you see a domain with [inaudible] label x.a1, but you then think that you saw a label which is x.b6 for example, when you see the x.A1, you think you'll see x.b6 because it's the same. And in your mind, you still have x.B6, and when you then go to the computer and type the label, x.B6, of course, doesn't work because B6s is a blocked variant. It will never be assigned.

But you then think, "Oh, yeah, B6. But B1 is essentially the same. So you then type in x.B1." And then you get to a completely different page. And I think that's a problem, because we are not just—there's always other labels included, which then can be the same for A and B. Does that make sense?

JUSTINE CHEW: Jeff?

JEFF NEUMAN: Yeah, I mean, the same argument, Michael, that you're making could be made by any—and I'm here on behalf of the IPC. I can make any example with a trademark, taking it even out of the variant context, and say, "Well, look, anyone who types in my trademark is going to expect me there, and oh my God, it's not. Someone else is there." That happens every day. But both are allowed to coexist in different contexts.

I just don't agree with the notion of stepping in and doing this overbroad protections and not allowing two legitimate uses to coexist. Or, worse yet, if one party is prevented from using a string, why would that prevent another party from using that string in an acceptable manner or a string that looks like it? To me, that's just baffling.

JUSTINE CHEW: Okay, Jeff, I think I'm going to draw the line here, it appears that we can't really come to a conclusion today anyway. So let's draw the line on string confusion objection and move on to [the rest and see if] we encounter the same issues. Maybe it might resolve itself. Can we go on to the limited public interest objection? Ariel, can you take over please? Thanks.

ARIEL LIANG: Okay, sounds good. So just as a refresher of the background, the limited public interest objection aims to prevent a situation that an applied-for string contradicts generally accepted legal norms of morality and public order recognized by principle of international

law. So some of the examples of these principles of international law include the Universal Declaration of Human Rights, the Declaration on the Elimination of Violence Against Women, the International Covenant on Economic, Social and Cultural Rights. So these are some of the examples and the things that need to be taken into consideration when filing a limited public interest objection.

So in terms of who can file it, it's anybody and then also can include the independent objector. And what needs to be considered by the panel that reviews the objection is that it needs to conduct analysis on the basis of the applied-for gTLD string itself. The panel may, if needed, use as additional context the intended purpose of the TLD as stated in the application. So that's what's in the AGB.

And in terms of the potential outcome, if the objection prevails, then the applicant will withdraw its application. But if the objection does not prevail, then the application proceeds to the next stage of the application process. And very similar to the string confusion objection, the SubPro also has put forward a limited appeal mechanism. So for this particular type of objection, and then if an appeal is filed against the panel's decision, then the outcome of the appeal will determine whether the application can proceed or not. So this is the background of this type of objection process.

So in order to consider what is basically a valid ground for filing limited public interest OBJECTION, and what the variants' role in this, the group took into consideration this particular example. So the example is about B1, that's applied for primary string, and

that's a mark basically, and then B1 has allocatable battery and B2 and blocked variants B3 through B12.

So basically, what the group need to consider is what will be the answer to the following questions. One is, can someone submit and limited public interest objection against B1 by arguing that B1 is contrary to general principles of international law for morality and public order? So that answer seems to be straightforward and clear as a yes, definitely. Someone could argue that the primary string has problems.

So then the second question is, can someone file a limited public interest objection by arguing that B2, which is the allocatable variant of B1, is contrary to general principle of international law for morality and public order?

So for this question, it has two scenarios. If B2 is requested for activation, then it does seem like this is a straightforward answer, is yes, if B2 asking for activation and it has problems, then the limited public interest objection can be filed based on that ground. But if B2 is not requested for activation of what to do in this scenario, so the group has some discussion of that, and I will present the conclusion in the next slide.

The fourth question is, can someone file limited public interest objection against B1 by arguing that any of B1's blocked variants, so B3 through B12, is contrary to general principles of international law for morality and public order?

So these are some of the questions that the group considered in order to develop a recommendation. And what the group also

considered is some of the presumptions based on this particular type of objection process. So what the group understood is that, unlike string confusion objection, the limited public interest objection is not intended to prevent failure mode, because it's really just focused on the applied-for string itself. And it's to prevent delegation of strings that may contradict legal norms of morality and probably order. And that's a fundamental problem. So it's to really focus on the string being applied for.

And then the second presumption about this type of objection process is that the outcome of the objection may not affect the entire application. So there could be some different scenarios how the objection may be filed. So the objector may be only filing against the primary applied-for string. And if the objection against the primary applied-for string prevails, then the entire application is ineligible to proceed. So that's pretty straightforward kind of outcome.

But then the second outcome is that the objector only files the objection against the requested variant of the primary string. And then, if objection prevails in terms of against these variants, only the affected variants are invalid to proceed, but the primary applied-for gTLD and the other non-affected requested variants may proceed to the next stage of the application process. Because again, for this type of objection, what the group understood is that it's really just focusing on what's being requested. It's not really trying to prevent misconnection risk, like the string confusion objection.

And then the third type of scenario is that objection may include both the primary string as well as one or more requested

allocatable variant. So if such objection prevails, because it includes the primary string, then the entire application is ineligible to proceed. So these scenarios basically explain the presumption that the outcome of this type of objection may not affect the entire application.

So based on these presumptions, the group developed this recommendation or reached the conclusion that the limited public interest objection can be filed against primary applied-for string—that's a given—and also requested allocatable variants—that's also a given. And I note that Jeff had some issues with the word “can.” Maybe we can find a better term to kind of capture this.

But then what is not a valid ground is that the limited public interest objection should not be filed against non-requested allocatable variants, because what the group understood is that if those variants are requested, in future rounds, there should be objection process in the future rounds too. So objectors should be willing and active to file objection at that time.

But if there's a possibility for variants to be activated between rounds, then the objection can also be filed against these non-requested allocatable variants, because due to that particular situation, all checks should be done upfront at a pre-screening step.

And then the last type of variants, the blocked variants, what the group understood is that for this type of objection, they should not be filed against blocked variants, because they're not being applied for and then they can never be delegating into the root

zone. So they will not cause the potential issue of contradict legal norms of morality or public order.

So this is what the group concluded based on this type of objection process. And I will stop here for a moment. And, Justine, would you like to take over or pause for a moment for any comments or questions?

JUSTINE CHEW: Does anyone have any questions pertaining to limited public interest objection? Yes, Nigel.

NIGEL HICKSON: Yes. Thank you very much. And thank you for that very clear exposition of this particular recommendation. I just wondered if an example could be—I know you've given an example with B1 and etc., but if a more sort of understandable example could be given in terms of how—if the objection, the public interest objection was on the primary application, then how it might or might not affect the variant?

Because I just wondered whether one can have a definitive rule here in that sometimes the variants would be covered by the same concerns, and sometimes they wouldn't. Or is that not the case? I'm just trying to get my mind around whether we can be so certain in this area. Thank you.

JUSTINE CHEW:

Thanks, Nigel. I'm going to go out on a limb and try to answer your question. I'm not sure whether the small group actually discussed this, but I think the answer to your question would depend on whether the applicant has requested for any of the variants together with the primary string.

So if, for example, the applicant has only applied for the primary string, then the objection can only be filed against the primary string. If the applicant has applied for the primary string, together with, say, one or more allocatable variant—and obviously, they can't apply for blocked variants, so they can only apply for a primary string and one or more allocatable variants. Then presumably, an objector could file the objection against the full set that's been requested or applied for. And if the objection prevails, then the full set wouldn't be allowed to proceed. That is one scenario.

If there's no more comments about the recommendation on the limited public interest objection, then I would like to proceed to the legal rights objection. Ariel, would you mind? Please. Thank you.

ARIEL LIANG:

Okay. So for legal rights objection, as a refresher for the background, it's to prevent a scenario that an applied-for string infringes the existing legal rights of the objector. So in terms of who can object, that's rights holders. They can file such a legal rights objection. And that includes eligible intergovernmental organizations.

And in terms of consideration of this objection by the panel, they need to determine whether the potential use of the applied-for string would take an unfair advantage of the distinctive character or the reputation of the objector's mark, or unjustifiably impairs the distinctive character or the reputation of the objector's mark, or creates an impermissible likelihood of confusion between the applied-for gTLD and objector's mark. So that's some of the considerations by the panel.

And some other possible factors the panel also need to consider include that the applied-for gTLD is identical or similar, including appearance, phonetic sounds or meaning to the objector's existing mark, the applicant's intended use of the gTLD would create a likelihood of confusion with objector's mark as to the source, sponsorship, affiliation, or endorsement of the gTLD. So these are some of the factors for the panel to consider.

In terms of potential outcome, it's very much similar to the limited public interest objection, is that if the objection prevails, then the applicant withdraws. And if it doesn't, then the application proceeds to the subsequent stage of the application process. And of course, the limited appeal mechanism as recommended by SubPro plays a factor in terms of the outcome of the objection. So, if the appeal is also filed, then we have to see what the decision will be and then determine whether application can proceed or not.

And to consider this objection process and the potential recommendation, the group also use the same example of B1 which is applied-for string, it is trademark, and then B2 is

allocatable variants B3 through B12 are the blocked variants of B1. So these are some of the questions to group tried to answer.

Can a right holder submit a legal rights objection against B1 by arguing that B1 infringes the existing legal rights of the rights holder? So that seems to be yes, very straightforward answer. And then the second question is about B2, can some kind of right holder submit a legal rights objection by arguing that B2, the allocatable variant of B1, infringes the existing legal rights of the rights holder? So there are two scenarios. One is if B2 is requested for an activation, that seems to be also a straightforward answer, is yes. And then if B2 is not requested for activation, then the group has some discussion about that.

And then lastly, can a right holder submit a legal rights objection against B1 by arguing that any of B1's blocked variants infringe the existing legal rights of the rights holder? So that's some of the questions the group used to drive the discussion of the recommendation.

And then in terms of recommendation, the group is actually split into two different options. And this is option one that we're presenting. It's based on two general presumptions. So the first presumption is also very similar to the one you saw for the limited public interest objection, which is that legal rights objection is not intended to prevent failure mode but to prevent delegation of strings that infringe the existing legal rights of the rights holders. So it's very much focused on the applied-for string, where the string requested to be activated itself. It's not really tried to prevent failure mode like string confusion.

And then another key presumption is that the outcome of the legal rights objection may not affect the entire application. So if the objection includes the primary applied-for string and it prevails, then the entire application cannot proceed to the next step. But if the objection only includes one or more requested variants, and then that prevails, so only the affected variant cannot proceed, but the rest of the application can proceed to the next step.

So that's some of the key presumptions. And then in terms of the recommendation itself, this is option one, as discussed by the group, which is very similar to the limited public interest objection, is that legal rights objection can be filed against the primary applied-for string and requested allocatable variants. And that's pretty straightforward. But such objection should not be filed against non-requested allocatable variants, because that can be taken care of during the objection process in future rounds when those variants are being applied for.

However, if variants can be allocated—I'm sorry, can be activated between rounds, then the legal rights objection can also be filed against those non-requested allocatable variants in the same round as the primary string, because that will serve as a pre-screening step for all these variants.

And then, for the blocked variants, the option one recommends not—that that legal rights objection should not be filed against those blocked variants, because they can never be delegated in the root zone, so they won't have any possibility of infringe existing legal rights of a rights holder. So that's option one, which is very much the same as the limited public interest objection.

But in terms of option two, some of the members in the group advocate that the legal rights objection can be filed against not only the primary applied-for string, but all of the allocatable variants and all of the blocked variants. So that's a much more conservative approach.

And these are some of the additional rationale provided to explain why this approach is supported by some members in the group. They believe that this will help prevent the event where a delegated string may block the chance for a right holder to apply for another string that is the same or similar to any valid variant of the already delegated string.

So this is pretty difficult to understand by the text itself. But we're going to go to the next slide to show an example that probably can explain a little better. And then the second additional rationale—but it's more like a consideration—is that if the objection is filed against a non-requested allocatable variant or blocked variant, then it really needs to meet a higher bar to prevail. So basically, the objector needs to demonstrate to the panel that an applied-for string or a string that can [inaudible] be delegated in the root zone will potentially cause harm to the rights holder and infringe the existing legal rights of the rights holder. So the group did consider this, that a higher bar needs to be met in order for that type of objection to prevail.

So to explain some of the support for the option two recommendation, the group discussed this particular example. So we'll say that A1, which is a trademark, it's only applied for during the gTLD application round one, we'll just say it's round one just for simplicity of explaining the example.

So A1 is being applied for as new gTLD and it's a trademark, and then A2 is the allocatable variant and then A3 through A6 are the blocked variants of A1. So A2 is not being applied for, and then of course, A3 through A6 can never be delegated, so only A1 is in the process.

And if legal rights objection recommendation option one is adopted, it means that an objection can only be filed against A1. And such an objection cannot be filed against A2 and A3 through A6. So that's what option one entails. And our assumption is that A1 has passed the evaluation and got delegated to the root zone. So there's no issues with A1 in application around one.

And then we also know there's another string where another particular mark is B2. So B2 is a trademark. And then the rights holder of B2 didn't file any application during the gTLD application round one, but would like to participate in the new gTLD application round two and apply for the string that corresponds to B2.

So if the legal rights objection recommendation option one is adopted, then B2 may not be able to pass the string similarity review in round two, because B2 may—basically, because there may be some confusing similarity that can be detected. Actually, I wrote it wrong. So B2 looks very much similar to A4. And then A4 is a variant of an already delegated string, A1. So based on the hybrid model of the string similarity review, if that's been put forward, then B2 cannot be delegated, because it won't be able to pass the string similarity review.

And then if the legal rights objection recommendation option two is adopted, for the trademark holder of a B2, even if it doesn't participate in round one and apply for a string, it can still participate in the legal rights objection process by objecting to A1 and arguing that some of A1's variants, A2 and A4 are similar to the existing mark of B2.

And if such objection prevails, then it may happen that the application for A1 is ineligible to proceed in round one, and then B2 may have a chance to be delegated in round two. So basically, the outcome will be very much different based on the different options that we provide for legal rights objection. So that's some of the additional rationale for option two and this is an example to illustrate it. And I will stop here and I see that Jeff has his hand up.

JEFF NEUMAN:

So this is just like for string similarity, I only agree here with option one. Again, I think the presumption for all of these objections should be that we're not here to prevent a failure mode. And so I agree with that. And that's why option one makes sense. That's why the legal rights objection one makes sense to me. And that's why the string confusion one does not make any sense to me.

I agree with option one. Let's just put it that way. And I think that that same rationale should be applied into string confusion. Otherwise, we're giving existing registry operators greater rights, and we are trademark owners. And that shouldn't be the case. And on behalf of the IPC, I believe if two different companies have marks that are not confusingly similar to each other, they should be allowed to coexist even if a variant—blocked or unblocked—is

similar to the mark or its variant. That's the way the world exists with respect to trademarks, and that's the way the world should exist with string as well, so I can't see why option two is good here, just like I don't see why the hybrid is good for the string confusion. Thanks.

JUSTINE CHEW: Okay, note, Jeff. Anyone else? Dennis, go ahead, please.

DENNIS TAN: Thank you, Justine. Just wanted to voice a comment that I put on the chat box, an observation on blocked variants. And I don't want to presume the subgroup did not look at it or consider it. You may tell me later. But the observation is that many of the blocked variants—and this varies from script to script. But in the example that I gave you was this, what is referred to as—I don't remember the label, but related scripts, and that's the term I was looking for. So Latin, Cyrillic, and Greek, and to some extent, Armenian as well are considered related scripts, to the effect that many of the variants that are created from a Latin label create labels [that mix these scripts,] Latin, Cyrillic, Greek, and potentially Armenian as well.

So many of these labels commingle on these scripts, and therefore they are blocked, because there's a prohibition on mixed script labels. There are certain carve-outs, exceptions for the Japanese language, which makes it valid script. But anyways, in the Latin, Cyrillic and Greek, those blocked labels are not meant to be delegated.

And so if we are—and I don't agree with adding blocked variants into the mix of review panels or what have you—you will need to add an additional step to qualify which blocked variants would be somehow valuable to be put into these review processes. Because not every single blocked variant—I don't know, I think you understand what I mean here, right? That these labels are not meant to be delegated. So hence, this nature of mixed script labels even adds another complexity at least for me to understand why we would need to include those in these review processes. Yeah, thank you.

JUSTINE CHEW:

I kind of caught what you said, I think. But it isn't so much an issue of cross-script in the label itself. But it is a common script for a number of languages which use the same script that could lead to confusion. So maybe I've missed the core point that you're trying to get at. But in any case, I'm noticing that it's five minutes to the top of the hour. Donna, did you want to draw the line on the conversation here? Because we do have a couple more slides, but I don't think we'll be able to get through them in four minutes if we're going to allow for discussion.

DONNA AUSTIN:

It would be good if we could just get through this deck. So do folks have an extra 10 minutes they can stay on for to get through the last part of this? Okay, [inaudible] at the moment.

JUSTINE CHEW: I would suggest we try to get through community objections. I don't think that one is all that complicated. So Ariel, please take it away.

ARIEL LIANG: Yes, thanks, Justine. And for community objection, maybe I won't read out the whole background, but it's to prevent allegation of strings that have substantial opposition from a significant portion of the community that the gTLD targets. And in terms of potential outcomes, similar to the other two, the legal rights and limited public interest. And then the limited appeal mechanism plays a role here too.

And also, the group used the same example, B1, to discuss this particular objection process. So what they tried to answer are the questions, including, can established institutions submit a community objection against B1 by arguing that B1 has a substantial opposition from a significant portion of that community? And then B2, the allocatable variant has opposition from the community. And then that includes the two scenarios, one is requested for activation, the other is not requested for activation. And then lastly, can a community objection be filed based on that B1's blocked variants have substantial opposition from the community?

So in terms of the recommendations, it's very much similar to the legal rights objection. There are two options. The option one is that only the primary applied-for string and requested allocatable variants can be the legitimate grounds for community objection be

filed. So the objection can be filed against these two types of strings.

But then for the non-requested allocatable variants, community objection should not be filed against such variants, unless variants are allowed to be activated between rounds, then the objection can be filed and that could serve as the pre-screening step. But for the blocked variants, community, objections should not be filed because they cannot be delegated. So that's option one.

And option two, also similar to the legal rights objection, is all of these strings, they can be taking into account. So community objection can be filed against the primary string, all allocatable and all blocked variants. And again, the rationale is basically to prevent a situation that a string is delegated, but then it may block the chance for another string to be applied in the future because it won't pass the string similarity review.

And then again, another kind consideration is if an objection is filed against a non-requested variant, or a blocked variant, then it needs to meet a higher bar to prevail.

So to demonstrate the rationale, the same kind of example is used. And then you can basically just understand that we replaced legal rights or rights holder with a community. So basically, if A1 passed the evaluation, got delegated, but B1 may be a potential string that can be applied in the future, and it may encounter the situation that it won't pass the string similarity review because it's confusingly similar to A2 and A4, which are the variants of A1. And then that may block the chance for a community to apply for

B2 in the future, for example. So these are very much similar to a legal rights objection. And I will stop here.

JUSTINE CHEW: Okay, it's top of the hour. Donna, did you want to adjourn the call? I'll pass the chair back to you. Thank you.

DONNA AUSTIN: Thanks, Justine. And I don't see any hands up. So I think well done to everyone for getting through this today. As I said, these are topics [inaudible] discussed last week. We will be coming back to these. We appreciate it is a lot of information to take in and a lot to unpack. We hope that you have the opportunity to go back to your respective groups, have conversations with them, and then come back and we'll have further discussion around today's call and the string similarity review that we covered last week.

And just, again, we recognize that this was a narrowly scoped project, I suppose, that the small group looked into. It didn't carry it through to kind of the implementation and follow-on effects. So we need to keep that in mind. It's kind of part one of what needs to be a further conversation depending on where we take the recommendation.

So this is really hard. I know I keep saying that, but it is. But thanks for sticking with it. And I have every confidence that we'll get there. But again, one of the goals here is to ensure a solid introduction of IDNs and variants to the top level, and also to make sure that whatever recommendations we come up with can

be implemented. So those are two things that we need to keep in mind as we work through this.

So thanks, everybody, and we will see you next week 24 hours later than today. Thanks, everyone.

DEVAN REED:

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

[END OF TRANSCRIPTION]