
JOHANNESBURG – ALAC and Regional Leaders Working Session Part 3

Monday, June 26, 2017 – 13:30 to 15:00 JNB

ICANN59 | Johannesburg, South Africa

UNIDENTIFIED MALE: This is the ICANN 59 ALAC and Regional Leaders Working Session Part 3 on the 26th of June 2017 from 1:30 to 3:00 in Ballroom 4.

ALAN GREENBERG: Can people please take their seats? It is starting time.

We will start the meeting with first a word from our sponsor.

YESIM NAZLAR: Thank you very much, Alan. I would like to remind everyone to state their names before speaking. And also, please don't forget to speak at a reasonable speed because we have English, French, Spanish and Arabic interpretation. And if you speak too fast, it's really very hard for them to interpret what you are saying. Thank you very much.

ALAN GREENBERG: Thank you, Yesim.

This session is on new gTLD public interest issues. A little bit of background. You probably are aware that when ICANN was started, one of the concepts was that we would make sure that

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we're more generic TLDs. At that point, the only ones that were available publicly were .net, .org and .com. There was .edu for education and a few others that were used only by the US government.

The first several rounds of gTLDs, which resulted in TLDs such as .info, .museum, .aero were all selected. Essentially, people applied and ICANN used its value judgments to decide which gTLDs would allow and which wouldn't.

That resulted in a number of interesting scenarios. Some TLDs which have survived, some which didn't really work very well and of course, there was .xxx, which caused a huge amount of problem for a variety of sources and ended up in court.

When the decision was made to come up with new TLDs to have an additional round, the belief was that ICANN should exercise no judgment. That is people would apply, the open market would take care of things and ICANN would not put rules associated with TLDs.

It became pretty obvious once the first – the list of names was announced that that was not necessarily a good thing at least in the views of At-Large and in the views of many governments. And, the classic one was if you have .bank, should people actually presume it's a bank? That was resolved easily by the people who applied for it but there are others that were not as

easily resolved. As a result of a number of government GAC actions – and Holly will be talking about them in some detail – various mechanisms were put in place with an attempt to make sure that TLDs were operated in certain ways to protect the public.

What we're talking about today is a little bit of that history where we are today and how we're going forward with the next availability of TLDs. And should we have such protections built in, should we abolish them all? This is the time it's being decided with the end of PDP and this is the time that we need to get involved and make our views known. We don't necessarily get our way. But if we don't speak now, we're not in the strong position to complain afterwards.

And with that, I'll turn it over to Holly.

HOLLY RAICHE:

Thank you, Alan and Yesim.

Slide one. And I absolutely repeat what Alan said, these are the big issues or at least they have in the views of the people who have been there for a while. These were issues and what we'd really want to do is hear from you on what you think the issues are with new gTLDs, what you think our positions should be.

And, what I hope is a lot of you join in the wikis when we go to making comments.

The other thing that I would say and unfortunately, Ariel is not here, but there's a long history of ALAC comments on a range of issues that I will be talking about.

So, if you go to the Policy page for ALAC and you look at the list of topics, you'll notice that new gTLDs have attracted something like 82 comments over the years starting from probably about 10 years ago. That's not – is that the first slide?

UNIDENTIFIED FEMALE: Yes.

HOLLY RAICHE: Okay. Thank you.

I'm going to pick up where Alan stopped, which was when it was up to the Board as to should we allow new generic top-level domains be and be allocated not simply on a – there's an applicant we will give them a name. But how do we do this?

The Board was faced with what are the principles that are going to be behind the introduction of new gTLDs. And they came up with a set of principles. This is taken from the Board decision. They had to be something like an orderly, timely and predictable

way of doing so. There should be IDNs, and IDNs have formed part of this discussion but really they're dealt with separately and they raise their own set of problems in terms of what script you use, what language you use. I won't deal more with IDNs except that they were seen as an important part of new generic top-level domains.

The terms that you will see consistently use to judge the effectiveness or otherwise of new gTLDs come from these Boards and before that, from the Affirmation of Commitments, the AoC, which was the agreement that was in place between the U.S. and ICANN, and the term is Competition, Consumer Choice and Trust. Those had been the measurements consistently as to whether or not there has been a successful introduction.

There should be technical criteria clearly about capability and operational, and String Evaluation. This has another been another issue, is ICANN in the business of content regulation? And this is where it's seen that we don't have a place there.

So the String Evaluation must not infringe on the applicant's freedom of expression rights. And Alan, probably, this is where you have the .xxx and that started to get into that territory. It's not territory that ICANN was terribly comfortable with and still is not.

Next slide, please.

Okay. Just a really parted history. 2008 which is [inaudible] ago, the Board finally said, “Okay, we will introduce new gTLDs.” And, the first task was to get what was called an Applicant Guidebook. So, if you want to be – if you will, the registry, for a new gTLD, what are the criteria? And I’ll have to say there are several versions of the Applicant Guidebook. It went through a lot of comment and certainly, ALAC putting a lot of comment. I remember reading a couple of versions. I don’t know how many versions it took before it was finally approved. The 11 sticks to my mind. But that is going to be and that became the test of, “Did you meet the criteria or not?”

At the same time, the Consumer Trust, Consumer Choice and Competition Working Group, this was the group that had to work together to say, “How are we going to make up our minds about the introduction and how it’s measured?”

This was one of the really early interventions of ALAC. We had our own set of criteria and we had to work out how you measure this stuff. So, if you think about it, how do you measure trust? And we had some tests. How do you measure choice? We had some tests. And how do you measure competition? That’s a bit easier because there are so many competition regulators around the world. There was some easy test there.

When you look at the outcome and there's been a report back on the Consumer Trust, Consumer Choice and Competition, and you look at what the tests are, you see some of the tests we had proposed are not out there and some of the answers that we thought were there aren't there. You will be aware that Kaili who is trying to find a seat and can't, and Carlton who is in the room, both of whom are sitting on a working group to look at the evaluation to see whether or not the introduction of new gTLDs has in fact enhanced all those three criteria.

2012, the applications opened – and I am not going to go into the tortured process. And what was that, the arrow? Oops, that dreadful process. It was a dreadful process. It had its own set of difficulties, which we won't go into.

But by 2013, you had the beginnings of the new gTLDs being delegated. It was done in rounds of 500 each and that also created its own problems. You now have a range of new gTLDs gradually being introduced to the market. And, the final date really is where we're up to now.

One of the chairs of the Subsequent Procedures Working Group can be here about 45 minutes to talk about where we're up to. Because where we're up to now is looking back at the whole process, looking back at the research that's been done to see if we can actually measure whether the introduction, which was

supposed to enhance Consumer Trust, Consumer Choice and Competition. Whether that happened, what additional tests you might want and indeed, what additional information is necessary to make those judgments?

At this stage, it is not clear that there's going to be another round. ALAC has basically said, "We want to see the results of the surveys, the research first, so has GAC. So, while the assumption is there's going to be another round, it's not said in concrete and indeed, some of the feedbacks that all of us can participate in will assist in making the determinations about whether there's a round and what new conditions might apply if there should be.

Could I have the next slide, please?

This is, if you will, a graphic illustration of the 1,930 applications that were finally granted. And, if you're looking at that, there should be a few things that strike you. North America has 911 out of the 1,930. That is almost 50%. The next largest clearly is Europe. South America – where are the South Americans? You had 24. That's not much. Asia Pacific – and if I ask Kaili and I said, "A lot of those who are in China?" What does that mean? Kaili will tell you or maybe not. It may or may not mean that there's lots more competition or it may mean something else, and we're not sure. And from Africa, there's 17.

Now, some of the issues that have arisen that we, as ALAC, have to look at is why those numbers look the way they do. And some of the questions that have been raised are, first of all, did the cost of application stay in the way? It was \$185,000 for an applicant to say nothing of the cost to setting up a registry in doing everything else. That's expensive.

There was a program that was supposed to provide financial assistance to underserved regions. We have to find out why that didn't work because it didn't work. There may be other reasons why for South America and Africa, the numbers looked the way they do. We need to understand why. And if that's a good thing, it may not be a bad thing.

UNIDENTIFIED FEMALE: [Inaudible], Garth.

HOLLY RAICHE: Garth.

GARTH BRUEN: Thank you, Holly. Garth Bruen, ALAC.

So, for that 911 from North America, do you have statistics that show if a percentage of those are attributable to a single company or a single group of companies? Thank you.

HOLLY RAICHE:

I haven't done the counting. I actually counted the number of applicants just who put in their Public Interest Commitments and I'll deal with that later. But 255 PICs come from donuts. Those are the numbers we're looking at. And, at one point, probably about five years ago... no, probably about three years ago, I looked at the numbers. And yeah, there are a few big registries that got bigger.

So, if you're looking at the [inaudible] of competition and you look at in terms of new registries, there are some new registries in China. We're not sure whether that means new players or if there are other reasons why the names were purchased. And indeed, if you're saying, "What is it we want to know for the lessons carried forward?" We need to understand all of those. At one point, we actually did those. Garth, I'm not sure that we've done them now that all the names are up.

But certainly, one of the things if ALAC has stuff to be followed through, I'd want to know if it's not a good thing that Africa has 17 new registries, if it's not a good thing that South America has only 24, if it's a good or bad thing, does it worry you? And, should there be a good look at the cost involved, the technology involved, the expertise involved, the actual communications capacity involved? There may be a whole range of issues.

But that map alone ought to raise some issues for ALAC if you are actually looking at the next round and whether there should be and what policies should be put in place so that the next map doesn't look like that.

Okay. Next slide.

One of the really big issues for ALAC and not just for ALAC, for GAC as well, was a thing called the Public Interest Commitments. Every applicant, all 1,930 of them, had to in their application and every application, parts of it had to be made public was state what they're going to do, what is the mission of purpose of them having the domain name. And, in those statements, there would be – this is what we hope to do with the domain name – and to a certain extent see if the name itself was going to in any way determine how it was used and what sort of registrars would be allowed.

The trouble with that was that what is put in the Public Interest Commitments, actually, it's Clause 18, is not binding. The only thing that is binding on the successful applicant is what is in the contract and the contract does not include their statement about the mission or purpose for that domain name.

We looked at them in ALAC and thought there should be some relationship between what the applicant says they're going to do in terms of the mission and purpose of that name and what

actually happens. And this should be made somehow enforceable.

So, it came up the concept of the Public Interest Commitments but because this is after the fact, because people had already signed contracts. You could not bind people, you could not say, “Now that you have a successful application, we’re going to demand that you change the contract you’ve just signed.” In legal terms, that just would not be possible. So, the next best thing was to come up with a concept of Public Interest Commitments.

We were supported very strongly or rather GAC, we supported them, they supported us, with the communiqué that they come out with in Toronto that said, “It’s necessary for statements of commitment and objectives to be transformed into binding contractual commitments subject to compliance and oversight by ICANN.” That was the beginning of what is an ongoing discussion about PICs that’s just the beginning.

Okay. Next slide, please.

Sebastien. Oh, Humberto.

HUMBERTO CARRASCO: Thank you very much. I’m going to speak in Spanish, please.

Thank you, Sebastien. Regarding the limited number of applications coming from South America, I believe you have made – you have posted a very good question regarding...

Can you hear me? Can you hear me? Can you hear me, Holly?
Can you hear the translation? Okay.

So, I will repeat what I have already said. Okay.

UNIDENTIFIED MALE: I can [inaudible]. Go.

HUMBERTO CARRASCO: Okay. So, just give me five seconds.

And now, can you hear me? Sorry.

Can you hear me? Can you hear the English translation?

The question she post is – well, we should ask ourselves whether for a user – it's really relevant to analyze with a number of applications for the program of new gTLDs is relevant or not. We might think that in the case of Latin America because it's the region. I represent Latin America and the Caribbean whether more applications would guarantee [whether] diversity [with the] consumers and therefore there will be more choice. It's just an assumption.

But what I would like to say is that apparently, it would seem sensible to make an analysis from the point of view of the form of new gTLDs but also, we should look at the development of the ccTLDs in Latin America because this may give us information on the growth of demand among users. Let's say that maybe users in Latin America prefer ccTLDs rather than other gTLDs. This is just an idea I want to share with all of you and maybe we should think about this in the future. Thank you very much.

ALAN GREENBERG:

I really don't think we can do the full analysis that the CCT Review Team is charged with doing here. One can hypothesize all sorts of things. I can claim that the businessmen in Latin America were far better businessmen than those in North America and Western Europe because they look that and said, "That's not a good use of my money."

So, there's a lot of aspects to it and hopefully the review which report will be published relatively soon or at least the draft will give us a little bit of insight into that. But let's not try to address all of the answers at this point. We're going to run out of time very quickly. Thank you. Holly.

ALBERTO SOTO:

Holly, there are many reasons for these figures. There are some reasons that are related to ICANN. Those that are not related to ICANN is the financial and economic status in the region. There are some government measures that limit the use, they don't limit the use of the Internet directly but they discourage the use of Internet through domestic rules and regulations.

The applicants must register with the IRS. So, first, they have to collect the taxes, after that, you have to go to NIC to get your registry. This discourages the use of the ccTLDs. So they go to other places. They go to .com or wherever.

And there are many other instances related to who wants to sell or communicate something finds it's easier and cheaper or even free to go through Instagram or Facebook. So the use of this social media for business purposes is discouraging the use of domain names. Regarding ICANN, I believe that there is a domain which is within LAC and which is .lac, which is not easily sold because those who have to sell it are not interested in it because it's not profitable for them. Thank you.

HOLLY RAICHE:

Sebastien and go ahead, and keep going, so we don't run out of time. Thank you.

SEBASTIEN BACHOLLET: Merci, Holly. Thank you, Holly.

The last screen with the applications, we need to know which are on the root and which are going to be put on the roots because in Africa, we have less. There are some applications that were forgotten. Then, when you say that in South America and in North America... In North America and in Europe, we have a certain amount. You have to know that some American companies have applied in Europe and in other continents also maybe, so there are more American companies, North American companies who have some extension files, some applications made in Luxemburg for example. An important American company has made an application. Thank you.

HOLLY RAICHE: Okay. Just moving right along, could I have the next slide, please?

Okay. Some of the other issues with PIC Registry following the call by GAC and supported by ALAC, there was a thing called Specification 11 which is how the mechanism for a public interest comment. It was in a very short timeframe released for public comment on the beginning of the February commenced, ended in the 26th of February, applicants were given 28 days, and

then they were open for public comments. So, it was a very quick turnaround period.

And really of the 19, 30 applicants, barely 500 have submitted a PIC. So, when we're talking about the Public Interest Commitments, I suppose we first ought to say thank you for submitting them before we start criticizing them because basically, less than a half have submitted a PIC. By the way, all of these PICs are available on the ICANN website. Next slide, please.

In the Specification 11 which is about the PICs, this is what you say as well as your voluntary statement. So, the first thing that you have to put in your PIC is that you will only use the accredited registrar that was party to the 2013 RAA or subsequent RAAs. And in fact, one of the main registries who purchased domain names, who purchased, in fact, 255 has crossed out that second phrase or subject to RAAs. Although with amendments to the 2013, RAA this is now mandatory so that subsequent parenthetical expression no longer matters.

The next commitment, they'll operate the registry in accordance with their commitment and with a process for dispute resolution that was developed which we helped develop, they'll comply. And then they're supposed to list their commitments which some of them do and some of them are very formulaic.

Okay. Next slide, please.

So, the statistics of the 130, there were 499. Now, if you go to the website, there are 513. And of those 499, 255 are with one company. And in fact, if you look at the statement, the PIC from those 255, they are identical.

Next slide, please.

What they say, the first clause is automatically put in Specification 11. And the commitments they list, it's easy to be critical but these are some important protections for consumers.

The first is they'll be open nondiscriminatory. Now, on the one hand that sounds like a really good thing, but on another hand, it means that if the registry for the name, for example, tennis and an applicant registrar for that name deals only in soft ball, there is nothing stopping them from getting the name "tennis". There is no necessary connection at all in these 255 between the name and how it will be used.

There are protections for geographic names which you would say is already part of the protections that are allowed. There's a Rights Protection Mechanism and the anti-abuse policy. Those are the things that are in 255. There's a lot of variation between some of the others.

Okay. Next slide, please.

Okay. Do you have a question about this Harold? Is it about this?

HAROLD ARCOS: Thank you, Holly. No, it's [inaudible]. I'm going to speak in Spanish.

HOLLY RAICHE: Yes, go ahead.

HAROLD ARCOS: My question was on the prior topic but it is certainly related to this as well. A couple of comments on the mandatory nature of the statement, there will be no binding nature eventually. The question is, as we have to contribute to the next process, the question is, is it necessary if we are going to develop a clause that will not be mandatory that is so important to comply with one of the factors? Wouldn't we be wasting our time if we focus on this?

And the second comment is on the map. One of the intentions of the New gTLD Program was to develop competition, to create competition. Within Latin America, there are 24 applications but from seven applicants. And in elsewhere, there are a few

hundreds from two applicants. This requires some analysis on our part because we might be promoting not a very good practice.

We said that the mission of the program was to create competition and we might be legitimizing monopolies and that is not necessarily user diversity. So, as everyone said, we should revisit this key aspect. Thank you.

HOLLY RAICHE: Alan.

ALAN GREENBERG: Thank you. On the PICs, Holly's only gotten partway through the process right now. When the original policy was announced, there was no concept of a PIC because as I said, the intent was the open market will think. The Board recognize that there was a demand and introduced the concept of a PIC, a voluntary PIC

So, any registry, any applicant that wanted to, could submit these Public Interest Commitments and they would become part of the contract. Now, in some cases, that commitment included the clause saying we may change them and the rest of them, they did not say that and therefore they are part of the contract, period.

But as we went along into areas that Holly will be getting into now, because of requests from the GAC, there was another thing introduced that was a non-voluntary PIC. And those are mandatory. There is not an option. They vary depending on which kind of registry it is. And those also, they're not voluntary, that part of the contract.

Now, the current gTLD discussions are looking as a base, the original policy which did not include the concept of PICs. And so, one of the discussions on the table right now is should there be something like a PIC, should there be some other mechanism instead of a PIC, and how do we go from here?

So, this primary is talking about the way public interest issues were addressed in the first round. The question is going to be how do we do it in the future? But to do that, we have to understand what the options were last time around and that's what we're trying to discuss.

In terms of multiple registry or a single entity making multiple applications, it's really very hard to stop them especially since you can do it under one name, you can do it under multiple names. It's not an easy thing to control. And unless you think you can really police it, putting rules in place that aren't policeable is a really difficult issue. It's being discussed but it's a difficult issue. Thank you.

HOLLY RAICHE:

Thanks, Alan. And a point, first of all, to Sebastien, one of the issues that we raised at the time was, do we actually need all this stuff because people are no longer using domain names. So why are we doing this?

That said, the things that are on the Board and the people have raised questions about is important to raise the questions because in fact, these are still hard issues. So, what I'm hoping is this is a baseline for at least thinking about is it important that the names are important, is it important that there's some kind of commitment to do what you say you're going to do, how do you write that in to be enforceable if you want it to be, and you may not want it to be, what is it that ought to be enforceable or not?

So, there's a whole range of issues that are still there that we have to grapple with as ALAC because the next round stares us in the face. When it happens, we have to have positions. We have to have thought everything through. So, if you've got questions, that's a good thing.

Next slide.

We came up with a compliance mechanism so that people could take disputes and have them resolved. And if you sign up for a

PIC, one of the things you sign up for is being bound by this particular process. I won't go into a lot of detail because the slides are here.

Let me just back up for one second. The reason you need a dispute resolution is, originally, the idea was you don't need a dispute resolution because if you are, as a consumer, harmed by a new domain name, you can take a complaint. The problem with that is the only parties that can complain to a breach of contract are the parties to the contract. And consumers cannot, in fact, at law complain, "We don't like what's happened" because they weren't party to a contract. So, it was necessary to come up with some process and this was it. The idea that if you are troubled, you go to ICANN. Now, the question is open, how you'd know to do that, but never mind.

The next one, next step would be ICANN would review whether or not this was in violation of a PIC. They would then get back to the registry operator who would have some time to resolve dispute. If it wasn't, it would go back to ICANN for review. There would be a party's conference and depending on the outcome, there might be some compliance action.

Now, that would be a standard process. And again, one of the things we ask is, do we like this? Does it work? Has it even been

used? So, another step in the whole process of working through PICs and how to resolve complaints if they're not met.

Yesim, next.

Okay. Some of the other issues that arose from new gTLDs, the first... let me think. This is an issue that both GAC and ALAC have been involved in. Things like the restriction [inaudible] for Category 1. And I'll tell you what, after I get talking about the PICs, can we get Alan's slides? But not right now.

What we were talking about was if you look at some particularly high category – and I'll come to the next slide what we mean by that – we want you to look particularly at the registrant eligibility criteria for that and the policies that would provide an additional level of protection that would be incorporated in the PICs remembering that the PICs must comply with dispute resolution process.

Could we have the next slide, please?

Okay. That's the first issue. Another issue that came up – and these are just the range of issues that came up with new gTLDs – was the strings. Part of the eligibility for a new gTLD was whether the string that you're proposing, whether that is a hotel, a bank, a university or whatever is, is it so confusingly similar to

another proposed string that the public will be confused and therefore potentially misled?

So as part of the Applicant Guidebook, one of the rules was that in fact, that if the strings create a probability of user confusion and the term they use was visual similarity, that in fact, they not be allowed.

We made a statement to the Board that said, “Well, that actually doesn’t work” because one of the things that became very clear was if we’re talking about a string, somebody wanted cars and somebody wanted car, are they similar or not? And should therefore the application be accepted for both car and cars? Or should there be a rule that says it’s not simply visual as a similarity check. It actually looks at the two and see if consumers are going to be confused.

So can we look at the next slide? And I’ll show you what the outcome of that was.

For those that can read, this is the thing that faced ALAC and in fact, other [inaudible], everybody looking at it, there were unfortunately different Boards to make up the decision as to whether something was confusingly similar or not. So, we wound up with a ridiculous outcome where for one structure, the ruling was similar to sports and they both can’t exist as new

gTLDs. Same thing, tour is confusingly similar to tours. They can't both have strings.

If you are down and then you look at different but completely different outcome, TV is not confusingly similar to TVs, pet is not confusingly similar to pets. And the ridiculous one that we wound up with in the bottom where there was a ruling that .com is similar to .cam or is not similar to .cam and should be allowed or should not be allowed.

So, another of the issues that arose from new gTLDs was we need a better test as to whether the strings are similar and, therefore, they should not both be allowed to stand.

Alan.

ALAN GREENBERG: Thank you. One of the things that's important to understand is there were two different confusingly similar standards. No, that's not funny.

HOLLY RAICHE: No, I know.

ALAN GREENBERG: It was done carefully and done well in that sense. In that, the automatic check was only visually confusingly similar. That is, would it look the same?

However, anyone could then file an objection that said such and such a string is confusingly similar with my application or with my existing TLD. That confusingly similar was not limited to visual. That was a judgment call which could include meaning and any other sorts of confusing. And that's where we ended up getting different rulings as to whether singular and plural are confusing.

In the case of cam and com, Verisign, the operator of .com filed objections against several .cam applications, .cam typically meaning are short for camera. And because the procedure did not foresee objections against the same character string being filed multiple times did not specify they had to go to the same person.

So, two of the complaints went to one person, a third went to another and they ruled differently. And that was the result. It was, to be honest, an innocent mistake we didn't think about it. But that's what the end result was.

HOLLY RAICHE:

Yes. The end result on that was, again, one of those things that the – we and the GAC both put up our hands and said this is yet another issue that if you're going to have another round of gTLDs, you're really going to have to sort through what your rules are and what the process is in determining whether or not you can have strings that are similar or not and what you mean by that.

Could I have next slide?

The safeguards that were ruled, that the GAC – and we supported them on this – were most concerned about in terms of new gTLDs and they've had many communiqués about new gTLDs. This was one of the important ones.

What they wanted was that for every applicant to have and for the process to involve WHOIS verification, mitigating abuse activity so that if you are, in fact, the new registry, these are the things that have to be required – security checks, documentation and a complaints handling mechanism.

So, if you're looking at the sort of consumer safeguards that you want to make sure happen in terms of new gTLDs, this was the list that the GAC came up within their [inaudible] statement. And again, it's one of those things that have come after the fact, pretty much, not in the very beginning.

The point of a lot of this is to say if there is another round, where are we in terms of have we got all of the issues that we want addressed before the next round? And this has come up with a very good list. The GAC has been very good in looking at new gTLDs.

Okay. Next slide.

One of the really important differentiations that GAC made was they came up with Category 1. For them, for the Category 1, new names, they were particularly concerned about strings that link to what they called highly regulated or professional sectors. What is it that is going to be really confusing consumers that are linked to highly regulated? For instance, .lawyer, .bank, .banker. Those are the sorts of things where they said, “We have a problem.”

At the very least, there should be a particular set of rules for anybody that holds these names. Not only compliance with applicable laws, but there should be security measures for the collection of data. If you can imagine .health and people using a string with .health and giving up health information or financial data, this is particularly sensitive or potentially particularly sensitive and there ought to be some particular requirements attached to those what they call Category 1.

They also want establishment of working relationships with the relevant industry or self-regulatory body. So, if you've got .lawyer, you ought to be in-touch with the relevant .lawyers.

The other category was what they're calling "restricted" and the hope there was that we don't have open registration. The idea you don't have a name and then let it be used for anything. You have a name and it should be only used for that generic term. So, it was really the GAC and we were supporting them saying you have to look, number one, at what they call the Category 1 but also then saying for some names, it's important that they not be open.

Is your hand up? Okay. We've got a few. I think I saw Javier is first.

JAVIER RUA-JOVET: Thank you, Holly. Just a question on the highly regulated names like .health, you mentioned .lawyer and we haven't mentioned .doctor. What's the final rule in terms of .doctor? Is it directly linked to health, to medical things? What was that?

ALAN GREENBERG: I don't believe that one has been resolved yet. Certainly, the major applicant of it has claimed that it should not be linked at

all and it should be a completely open TLD and the customer will have to determine if you're talking about a medical doctor, a veterinary doctor, a doctor of religion.

In terms of lawyer, I believe that there were some restrictions put on voluntarily in .bank and insurance, there definitely were. It varied. But as we'll see when we get to a chart in a moment, the GAC was probably a bit overreaching in some of these. It's interesting to say on .lottery, there should be restrictions. Lotteries are highly regulated virtually everywhere. On the other hand, saying .poker, who is the regulatory agency on poker? So, to say you should go to the regulatory agency is really easy but is there one? So, it's all over the table.

HOLLY RAICHE:

I think one of the problems is with the PIC is that in the end, a lot of them are just plain voluntary. So even if you manage some of this stuff, then you have to say, well, how long does that last? These are the things.

Seun?

SEUN OJEDEJI:

Yes, thank you. Just based on the numbers that you gave us in terms of the number of PICs that have been submitted, is there

anything that is motivating the applicants because there seems to be significant numbers that are still pending? So, is there anything that motivates them or requires them to submit it whereby the number inclusive from 513 to the total number of applicants? And if there is nothing motivating them, why is it going to be anything useful?

The second question is, Alan, when you were saying that the application for cars I think went to two different people, what do you mean by that? Thank you.

HOLLY RAICHE: There were lots of people applying for exactly the same name, lots of them.

ALAN GREENBERG: Sorry. com? Did you say car or com?

SEUN OJEDEJI: I think it's cam, yes.

ALAN GREENBERG: There were several people who applied for it. Only one could get it but we're discussing what was happening at the application process where there were multiple applicants for .cam. By the

way remember when Holly was talking about the number of PICs, it was the number of PICs on applications. Many of those applications ended up getting withdrawn or otherwise disappeared, for one reason or another, and in many cases there was competition of multiple applicants. I think there were six applicants for .doctor, for example.

So don't equate the number of applicants with the number of final TLDs in any given case.

HOLLY RAICHE: How much time to I have?

ALAN GREENBERG: We have about a little bit less than 20 minutes before we have to close completely.

HOLLY RAICHE: I'm going to take two more minutes and then Avri is going to come up here. Could I have the next slide? I'm delighted everybody wants to participate but I think I'd like to have Avri talk about where we're up to next.

The other issue was community names and it was an interesting definition that didn't necessarily work well because in the end there were a lot of applicants that would have passed the test

for community name but they were not allowed to. In fact...
Could I have the next slide and then we're going to bring Avri up.
Good, it's finished.

ALAN GREENBERG:

In community there was a test for community but the test would only be applied if there was someone else applying for the name that was not treating it as a community TLD. So there are plenty of community TLDs that were delegated but they were ones where there was no competition for that same character string.

In virtually all of the cases, and I think there was one exception for character strings where they were competing, most of those did not pass the test for community because communities did have priority over any non-community applicant if it passed the test. And there was a strong worry that this test for community will be gamed because it did give you a priority over other applicants and therefore the rules were made quite stringent.

HOLLY RAICHE:

Okay, we've got two questions from the floor and then we've got Avri, so can we have two quick questions?

FATIMA SEYE SYLLA: Thank you. Fatima Seye Sylla, AFRALO, Senegal. My question is when you register for .health, for example, if you're not talking about meaning, can someone else register for .sante? It can be, yes, so by language, you can—

ALAN GREENBERG: The strings clearly are not the same string so there was nothing automatic that said you couldn't. However, one of them could file an objection against the other and claim that they were sufficiently similar, that they should not both be delegated. There were many such objections filed. Some of them won and prohibited multiple domain—well, didn't prohibit, it meant that they were now on a contention set, that they're both be treated as if they were the same string and go to auction or whatever. Other ones were viewed as not being similar and to the layman in the street, some of those judgments were really silly.

RON ANDREW: I'm right here. I'm sorry, Holly. Good afternoon, everyone. Many of you within the ALAC who've been around for a while will recognize me because I was a very strong proponent of the PIC process and the importance of Public Interest Commitments. And I commend ALAC and particularly its leadership because you took a very strong stand right from the beginning with us – others, the BC and other members of the community.

What’s really important to understand is that you’ve heard from Holly and from Alan that for the ALAC, this is a critical issue. We talk about Public Interest Commitments in passing but in fact you represent all of the uses of the Internet really with a face. And when we talk about what we do here at ICANN, our first priority is to protect the public interest and to think about our policy development in the public interest. But often that gets pushed aside for commercial interests.

As Holly’s gone through the history and she pointed out that the largest portfolio manager of top-level domains actually put into—they wrote a number of commitments, about 14 of them, and they said these applies to all 24 of our highly regulated strings.

Quite clearly there’s a difference between .pharmacy and a .insurance. They’re just different entities so they have different types of things you need to look at. And then they had the audacity to say, “And by the way these commitments are not commercially interesting for us, we will unilaterally withdraw them.”

So these are not the way we want to see the commitments made and the fact that you’re taking this up now and you’re giving more consideration to it, this is our time to get things right. We can’t go back and put the genie back in the bottle for the errors

we made, but certainly as we go forward we want to make sure that an operator that operates a string in a highly regulated space in the real world must be also watching and being very careful in the online world.

So I just want to commend ALAC for having taken a very strong stand back in L.A. ALAC called for a public comment, and this is only a thing that the Board can do or an Advisory Committee can do and in fact ALAC stood up and did it and I took great pride in watching you do it.

And so I commend you all for your efforts and I hope that you continue to fight this good fight because this is where the fight is. It's with the ALAC pushing this forward and believe me, many of us in the community will support you on this. So continue the good work and thank you very much for having this opportunity to speak to you. Thank you.

HOLLY RAICHE:

Thank you. For those of you who don't know Avri Doria, I can only say I don't know where you've been. She has been involved—there's a thing called Subsequent Procedures. It's a PDP in GNSO but it is having to grapple with, as the term says, subsequent procedures for the next round of new gTLDs, and I would like just a summary.

Have we got the page up? That's it. That's a wiki page. That's your page and just a rundown of where we're up to on all of the issues.

ALAN GREENBERG: In three minutes or less.

AVRI DORIA: Right. Well, at a certain level of obstruction, I'm sure I can do it in three minutes. But basically, yes, the Subsequent Procedures, the reason we called it Subsequent Procedures is because we're not even sure that it's a round yet. We have proponents of rounds. We have proponents of first-come-first-serve. We have proponents of some hybrid thing in the middle. Therefore, to be neutral about it we call it Subsequent Procedures referred to as Sub Pro for short.

We're well into the discussions but the way I describe all of the discussions is we're going to go through each topic probably three times at least. The first time is pretty much complete and when you say go through all the subjects, we've got somewhere between 32 and 36 top-level topics and then we have subtopics.

One of the points of our Policy Development Process, PDP Working Group is that we can review everything about what went on in the last round. And we had a very long document of

issues that needed to be resolved so we're going through them. Our principal is that if we don't have consensus to change something, then the previous policy and the previous Application Guidebook stand. If there is a consensus to change, then the GNSO has the full ability to change it and of course there are ALAC as well as GAC and other folks participating because the working groups are completely open, but it is a GNSO Policy Development Process.

So on the topic you're talking about, PICs, there's certainly an open discussion about did they work? Are PICs even valid? And by the way, I'm going to say things that may or may not be my opinion because I'm speaking in general as the co-Chair of a group. But are PICs even valid if they constrain content? If a PIC has to do with the content then is it valid?

Now there are some that argue, "Sure, if it's engaged in voluntarily, anybody can engage in something voluntary in a contract." Can ICANN enforce it? Probably because it's a contract, but it's content. Then again if PICs are somehow enforced by ICANN or by the Board, can they be called voluntary? If someone says you've got to have this speck or you don't get our PDP and the speck refers to content, then there is an issue.

So there is a lot of discussion about it. We will be discussing all the varieties of PICs and anybody that comes to the geographic names at the top-level discussion tomorrow and Thursday will find that there's even proposal for a new kind of PIC called the geo PIC, which is PICs about how you will use a geographical related name if you get it or a name that might be geographically related.

And these are problems that came up with .spa. Someone applied for something that referred to spas but there's a town called Spa that said, "That's a geographic name. You didn't get our permission." So everything that was a problem last time is a subject for discussion this time.

So, as I said, we're going through things three times. We've been through all the discussions once in something I called The Blue Sky and my co-Chair called the pros and cons. He's much more down-to-earth than I am sometimes.

Now we're going through the topics a second time based on the comments we received from you all, and I believe that there were At-Large comments. Yes, so they're all being synthesized. We're going to go through all the topics again based on the comments we received and then we'll go through them one more time to basically answer two questions. 1) Do we have

consensus for changing the prior policy? And, 2) what do we have consensus on?

That's a high level of what we're doing. I'm obviously not going to go into the 36 topics and I couldn't do it without a slide in front of me anyway.

HOLLY RAICHE: First of all, thank you, Avri. Can you just scroll down to show the latest news I think at the bottom of it. Is that in the newsletters?

UNIDENTIFIED FEMALE: Yes.

HOLLY RAICHE: Scroll down further and what you're going to find—by the way, this is on the GNSO wiki page, it's called Subsequent Procedures. I'm glad we found out about that name. What Avri didn't say is—

AVRI DORIA: Those have new gTLD in it too.

HOLLY RAICHE: Good, new gTLDs. What she didn't say is very helpfully there are newsletters about each topic that they are dealing with. So this was just a real overview and not really complete but I suggest if

you are interested, and I'm quite pleased that many of you are, read the newsletters because that says this is where they're up to. There are four sections to the Subsequent Procedures. Could you go over which four they are?

AVRI DORIA:

Sure. There's four. One of them is working on issues like the application and issues like that. One of them is working on all the legal issues. One of them is working on dispute resolution procedures and such as that. One of them is working on IDNs and other issues. And we may end up with a fifth in time on geographic names but we don't have it.

The other thing we do, each of those groups meets independently. We basically have a rotating schedule of five different meetings, one for the full group and one for each of the subsequent. Only a co-Chair or a masochist will attend all of them. I'm both a co-Chair and a masochist, obviously.

Whereas what we try to do is keep a schedule of the topics on each of the sub-teams so that we say at least two or three weeks in advance that this team will be discussing vertical integration, this team will be discussing PICs, this one will be discussing name collision, so try to give it. So we describe what we're doing in the newsletter, and thanks for bringing them up. We're really quite happy the staff has been putting them out, works with us

and we think they're great. And then we have these schedules. If one of the sub-team areas is really appealing, you can join just one of the sub-teams without having to join the whole group, without having that. And of course we have that same model that everyone's gotten into. You can be a participant if you do an SOI, etc., or you can be an observer and just be on the mailing list if you just want to track it passively. Talking in meetings requires having an SOI. It's one of those GNSO things we don't care what interest you have as long as you say them.

HOLLY RAICHE:

Given the questions that we've had, I would have all of you have a look at the groups and the subgroups because every one of them is being represented by the questions that are around the table. And Alan would desperately love to speak.

ALAN GREENBERG:

I just wanted to highlight something Avri said and follow through the implications of it. PICs were not part of the original policy. The operating procedures for the PDP are if we don't have consensus to change, it doesn't change. That implies that if there is strenuous opposition, for instance, among registries and registrars on something like PICs, we will not likely reach consensus and we will have an easy decision but an impasse when it goes to the Board, for instance, for its approval.

We haven't really discussed how we're going to try to finesse that since the PICs were added by the Board last time. Maybe PICs were the wrong thing but a mechanism to address the overall issue was deemed to be needed by the GAC certainly, by the ALAC, by the Board, and how we resolve that is not something that we clearly—at least nothing I clearly understand.

AVRI DORIA:

I think I can answer that one. What we've accepted as the status quo – and today in GNSO we did have a discussion on what exactly does status quo mean – but I think the notion of status quo that we went into this with was that not only the policy of 2007 but the AGB plus all the other stuff is being treated as status quo. So that means it becomes policy once this working group passes it on.

So with those things, the rule that you just mentioned may actually work in the adverse where the PICs are there, the Specification 11 and 12 are there, and they'll only go away if we have a consensus to get rid of them. So we were kind of forced to treat the AGB and its etceteras as that, but you will find those in the GNSO that go, "Whoa, wait a second, we didn't." So we may indeed have issues on that but the presumption that we've made is there's sort of a de facto status quo about the AGB and its stuff, but we could get rid of it.

ALAN GREENBERG: I'm one of those masochists who attends all the meetings or at least plans to. I hadn't heard that interpretation, so thank you.

AVRI DORIA: I guess I'd better say it again during one of the meetings to make sure I'm right.

HOLLY RAICHE: We've got two minutes left, Alan, and we did promise, but I expect I will see a lot more of you involved in Subsequent Procedures and now that I'm finished teaching for the term.

AVRI DORIA: That was you saying you're going to join us?

HOLLY RAICHE: Absolutely.

AVRI DORIA: Okay, great.

HOLLY RAICHE: Thank you very much for coming. That was excellent and I'm sorry you didn't have more time but she's the person that you

need to know and you need all of you to get involved in Subsequent Procedures in one of the groups or the subgroups.

AVRI DORIA:

Can I add one thing? We try to rotate our phone calls so that they appear in everybody's time zone. We're having pressure against some people that live in the European time zone that work on another Advisory Committee that say we hold them at hours that are unpleasant for them. So if more of you participate, and there are people that are from the Asian time zones, do speak up about wanting at least one meeting in three to be in your comfort zone.

I know it's a big zone so comfort zone is a loose term but basically we try to enforce the rotation of meetings through the three and we enforce, therefore, the principle of nothing gets decided in one meeting.

ALAN GREENBERG:

Just as an advertisement, I'm participating in two PDPs right now. Both of them rotate their times. In the other PDP when it's held at 3:00 in the morning, I don't bother attending because I don't really think anything is going to be achieved.

AVRI DORIA: Some of us actually are very active at 2:00 in the morning.

ALAN GREENBERG: I know, some of us. This one I try to be in no matter what the time is.

ALBERTO SOTO: I think my comment will be out of question. However, I want to clear out my doubts. The restricted domain, where is it restricted? Let me give you an example. .tour can be used in my country only by travel agencies that are previously registered with a public authority, a state agency. So who imposes the restriction? When is it restricted? Before the domain is being sold or is it restricted in agreement with the GAC?

I'm asking this because .health, .[inaudible] would be impossible to restrict. It involves the ambulance, the high complexity clinic, etc.

ALAN GREENBERG: You apply for a domain, you impose whatever rules you decide on that, and then presumably you follow them. So if .tour said, "We will let anyone who applies apply," then that's what they do. If they say, "We will only let registered tour agencies in any given country apply," then presumably they will follow that set

of rules, but it's up to the registry at this point to have decided that.

HOLLY RAICHE: We're supposed to have another speaker here.

ALAN GREENBERG: We are supposed to have another speaker. He hasn't shown up yet so we're keeping on talking. If you look at .bank, .bank said, "We will only accept applications from organizations that are accredited banks in their countries, period." If you look at some other TLDs, they said, "Yes, that's the word that we have but anyone can register." So at this point it is up to the organization.

The GAC said for the certain highly regulated ones, the Category 1 domains, the registry must talk to the authorities but they're not obliged to do much other than that. Actually, all it required them to do was to try to contact the authorities.

ALBERTO SOTO: Alan, the question is that the restricted .tour stopped cascades of fraud cases by travel agencies that did not comply. It is actually a simple example but restrictions of this nature, well, every case of fraud is important but there may be other more important cases of greater public impact significance.

ALAN GREENBERG: We agree completely, Alberto, but the rules that we have in place, .tour may have chosen to put those rules in place but it was a voluntary choice.

We have a few minutes for Herb Waye, our Ombudsman, to speak to us.

SEBASTIEN BACHOLLET: For the other, I want to be sure. It is not on the agenda. I am very happy I'm here but I would have been very happy to know that before and when you start to change something in the agenda, there are people not in the room. They left because they were bored with the previous subject and as it was supposed to go up to the end of this, they are not here and that's a pity they're going somewhere else.

You need to find some way to inform people what you are doing. If not, we can't decide what we do and what we don't do. Okay, all people from ALAC must be here, anyhow, but they are not and that's a pity. And welcome, Herb.

HERB WAYE: Merci, Sebastien. I guess I'll start by apologizing for interrupting your meeting. No, I had asked Heidi if I could drop in just to say

hello. I have been trying to be as active as possible in the community and all of its branches and ALAC, of course, being one of the more important constituency groups and communities.

I have had the opportunity to attend the North American RALO meeting in New Orleans just recently and it was a very productive meeting. I had the opportunity to drop in and discuss the expected standards of behavior and have conversations with the community members so I wanted to just let you know that I am available to attend your regional meetings if you feel it's appropriate or if you feel that you'd like to have me drop in.

My main focus is outreach into the community. I believe the office of the Ombudsman can be a very useful tool in many aspects of your work, both as a facilitator for any conflict you have but also as a resource in any way that you may feel is appropriate.

So it was just my request to drop in so that you could see my face. My office is two floors up in one of the committee rooms, Committee Room #3. Please feel free to drop in. Thank you very much for your time today. Bonjour. Buenos dias and [inaudible]. Thank you.

ALAN GREENBERG: Thank you, Herb. We have a 15-minute coffee break now, slightly less than 15 minutes. There is the cross-community discussion on next generation gTLD directory services that is son of WHOIS. It is a significant issue on our agenda in that there are very significant privacy issues, there are very significant domain abuse issues associated with it, and this is an opportunity for you to get up to speed. I do consider this a mandatory At-Large session. And after that there is a reception, local host reception. It's in everyone's agenda, Level 0, I'm told. Receptions are not mandatory but you're welcome to attend.

Sorry, Sebastien, go ahead.

SÉBASTIEN BACHOLLET: There is a Francophonie meeting in parallels and I will go to the Francophonie meeting and I apologize for not going to the ADS meeting. Sorry.

ALAN GREENBERG: Noted. See you tomorrow.

[END OF TRANSCRIPTION]