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ABU DHABI – ALAC and Regional Leaders Working Session Part 2

Saturday, October 28, 2017 – 10:30 to 12:00 GST

ICANN60 | Abu Dhabi, United Arab Emirates

UNIDENTIFIED MALE: It is October 28<sup>th</sup>, 2017 in Hall B section A, ALAC for the ALAC and Regional Leaders Working Session Part 2, 10:30 to 12:00.

ALAN GREENBERG: Folks, if everyone could take their seats. This is the official starting time, and clearly, we're not quite ready, and we do want to try to get through all four topics today.

One-minute notice to start. Evin, is there any other staff here, or are you it?

EVIN ERDOGDU: Silvia should be on her way shortly but –

ALAN GREENBERG: Okay. Nice if we could try to gather people in.

EVIN ERDOGDU: I've sent her a Skype message, so we could go ahead and begin, if you'd like to.

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ALAN GREENBERG: Thank you. Okay, this current session, the second At-Large working session of ICANN60 is going to be on the New gTLD Subsequent Procedures for selected topics. The topics are ones that are of particular interest to At-Large, and they are community applications, application support, string similarity, and closed generics. We're going to start off with Robin Gross and community applications.

The timing is we have about 20 minutes per session. We're already starting a few minutes late, so we have about 10 minutes or so for each presentation and about 10 minutes for any questions, discussion.

Robin. The slides should be ready. I don't know which order they're in in the slide deck. Can we flip to community applications? There we go.

ROBIN GROSS: Okay. Hi. My name is Robin Gross, and I'm one of the co-leaders of the Work Track 3 of the New gTLD Subsequent Procedures, and today I'm going to talk about the community-based applications and some of the input that we've received so far from the community with respect to the last round of new gTLDs and the concept of community, and some of the feedback that we've had, some of the questions that have been raised and concerns that had been raised about the process and how we

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could possibly resolve some of those concerns or reform those going forward. Can we go to the next slide? Thanks.

Some of the issues that so far we've received feedback on have to do particularly with the community priority evaluation, the CPE as it's called. In particular, there were concerns about the specificity, the strictness of the criteria, the way they were interpreted by the evaluators. Sometimes there wasn't a lot of consistency from one application to another, things didn't always make sense if you'd look at it in a more holistic perspective. There were concerns about the CPE process and the level of transparency that that process had. That was one of the issues that had been flagged that we need to work on.

Currently, the work team, we've considered a number of resources. There was the Council of Europe report, there was the data on the outcomes of the CPEs in the 2012 round, we've received GAC advice on the issue, we've got feedback from the community in the form of community comments on this. We've had a number of meetings where we've discussed this. So we've had a lot of feedback and input from the community.

One thing that has sort of coalesced in all this is we determined that we need a definition for "community" if we are to go forward. What does it actually mean to be a community application? There really wasn't much of a definition for that in

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the last round, and so the thinking is that if we're going to go forward with, again, having community applications that are privileged vis-à-vis other applications, we need to really nail it down a definition for "community." What does that mean, and how do we bound that?

There's been what we're calling a straw bunny proposal that people in the work team have put together to try to begin a discussion on what that kind of definition could look like if we go forward. I won't go into too much of that today, but I would encourage folks to come to the face-to-face meeting later in the week when we will talk in more detail about that straw bunny. Next slide.

We've reviewed an extensive amount of comment, the CC2 feedback as it's been called, community comment. Some people have noted that perhaps the all-or-nothing approach to community applications should be adjusted. Again, there were concerns with consistency among the evaluations, concerns about cost of the process, concerns about transparency or lack thereof in the process. These are some of the issues that have been raised.

And some of the questions that have come forward, is a community designation only applied during the CPE, and is that the right approach for us to take if we are to go forward with

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communities in the next round? Another question is, is it possible to make adjustments to the CPE that would satisfy both the winning and the losing parties involved? And what type of communities do you envision should receive priority in a gTLD application process? Next slide.

Okay, those are all the slides we have on the community-based applications. Did anyone have any questions or any comments on this? I see [none].

ALAN GREENBERG:

Evan, I'm going to start for a minute or two. I'll point out to our speakers, unless you are fluent in Spanish, French and Arabic, you may want to get a set of headsets because we do have simultaneous translation, and people may use the other languages.

Just to get everyone up to speed, Robin used a number of buzzwords which some people may not be familiar with, and that's CPE, community priority evaluation. There was a set of rules to describe a community application. They were only used in this round if someone else applied for the same name. If someone else applied for the same name and you passed the community rules – which were rather difficult and not many passed them – then you got the name. The other applicant lost, period.

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This is one of the few times in ICANN’s history that I’m aware of where they took the concept of public interest – assuming communities are important to the public – to heart, and basically said the commercial interests lose, the community wins, if they pass the criteria. And because it was such an onerous issue, the criteria was set high, and therefore as Robin said, what the criteria are and whether they are used all the time or just if there’s a competition is one of the questions that’s really on the table and really crucial.

Some people have said if you’re a community, you should get a price break, and therefore every community should be subject to the evaluation. All sorts of options on the table, and that’s the issue. Evan was first. Evan, go ahead, please.

EVAN LEIBOVITCH:

Thanks very much. Hi, Robin. One of the differences that we have between this round of applications and the last one is that we actually have some case studies and we have some examples of community applications that we thought were valid and yet were denied. Just off the top of my head, we had .kids, .gay, .music, .uma., .nyc was a special example, but there is a number of cases where there were groups that defined themselves as communities with an interest in TLDs, and they all got what considered to be bad treatment by the process.

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Given that this is no longer just theoretical, has there been any effort to try and interview the people involved with that, go through those processes, understand what didn't work, and use that to try and inform things going forward, or are we just redebating the theory all over again? Thanks.

ROBIN GROSS:

Thanks, Evan. Yes, actually we did have a number of participants in the working group who came on the days where we had these discussions and were able to tell us what their experiences were like in the process. That's why many of these issues have come forward, out of those concerns that had been raised. One of the things that sort of came out is this idea of community, what does that really mean? Is it just groups, people banding together and that's all it is? Is it people banding together who have a shared interest or a common goal?

There really wasn't any kind of requirement that communities be perhaps noncommercial, perhaps representative of some kind of minority or less represented communities. It really just came out as if it was just groups. So you've got groups of banks that want to be a community, and you think, "Why are we privileging banks for the sake of, 'well, they banded together?'" And I think we could look at all of the communities and ask

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ourselves, “What is it that we’re really trying to achieve here? What is the public interest objective?”

Because we created the concept of community in the last round pretty much at the very end. You may remember, it was right at the very end of the new gTLD process, and so there wasn’t a lot of thought put in in terms of how we want to bound this, what we want to privilege here, what don’t we want to privilege here, and so it was kind of a hodgepodge, and the evaluators were all over the place. So we’re really trying to nail down what it is that we’re trying to achieve. What are the goals? What is the public interest objective? And come up with a definition if we can that can meet that test. If we are to do communities, if we are to privilege communities in the next round, how can we define it in such a way that we’re not going to get anyone saying, “Oh, I’m a community, I want a privilege too.”

EVAN LEIBOVITCH:

Sorry, a very quick follow-up. One of the things that came up as we were discussing it last time is I remember some of the contracted parties would say, “Well, no matter what you come up with, we’ll figure out a way to game it.” And so the process of making something that couldn’t be gamed almost made the criteria too tough for legitimate bodies to pass. Is that something that is even addressable?



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ROBIN GROSS: I think that's a good point, because I think we did see gaming, if you will, and it wasn't what we had intended, wasn't what we were trying to come up with when we first created the concept. And I think it can be narrowed, it can be better defined such that it won't be as much of a problem the next time around. But I don't think that we can completely expect there will be no gaming, or there will be no attempts to try to circumvent rules and get around the system to get yourself ahead. But I think there are ways that we can tighten it up, even if it can't be perfect.

ALAN GREENBERG: I think it's just the opposite sometimes, we set the rule so high that almost no one made it. We may have eliminated some gaming, but also eliminated what we were looking for, trying to achieve. So how do we do that balance? Good question. Tijani, please go ahead.

TIJANI BEN JEMAA: Thank you, Alan. I cannot agree more with you, Alan, because the criteria was really high, and almost no one passed it. My intervention is about what you said, Alan. Shall we apply the CPE for all applications, or only for applications where there is a

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competition? I think that there is no need to use them for community application where there is no competition. What is the interest?

ALAN GREENBERG: The reason I raised that is there have been suggestions that perhaps community applications get a better price or have different rules associated with each other. I wasn't advocating, I was simply saying that's one of the things that has been discussed. Anyone else? We may not run out of time. Sébastien, please.

SÉBASTIEN BACHOLLET: Thank you. I will speak French, if you'll allow me to. Even if you don't allow me to, I will speak French. I think this is a very important matter, because this question on how certain people [weren't] applicants or as community applicants are understood, although they could actually have asked to be so can actually be answered in the fact that their lawyers told them, "Well, it's so hard to meet all the criteria that you're going to waste your time. It's going to be a source of money squandering, and it'll be the same. You'll always be competing with someone else, so there's no point in being a community applicant."

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So the game that followed eliminated potential applicants as community applicants were understood. I couldn't find the text dealing with this specifically, but I remember there was an intervention by one of those who participated at many applications who wrote, "We participated in defining a community not because we intended to be community applicants for a TLD which was a community name, but because we wanted to compete with them and we wanted the system to be challenging enough to give us an opportunity to get the name, not because we were actually going to go through with it."

So I hope this time, our awareness of our potential conflicts of interest will be taken into consideration when we consider all of this, because if we are to have people who are going to struggle with TLD communities who will be those who define these rules, I think we should pay attention to this. That's important. Thank you.

ALAN GREENBERG: Thank you. We have Jeff Neuman.

JEFF NEUMAN: Thanks. My name is Jeff Neuman, I'm one of the overall co-Chairs of the working group along with Cheryl Langdon-Orr. A

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question I have just goes to – and it’s not meant to be answered right now, but a lot of people have brought to us comments that said the criteria for community was so tough to meet. There are a lot of general statements of that, and it seems to be a common idea expressed by a lot of people. What would really help us and help Work Track 3 would be specific comments on which criteria we think were too harsh, which ones could be more lenient, which ones we think eliminated the organizations – Evan, I know you had presented a few that you thought, or maybe the ALAC thought should have been communities. Which of the criteria specifically do you believe as a group were the ones that made it impossible for them to meet the community definition?

Things like that would be extremely helpful for us. We’ve gotten the feedback that it was seemingly too difficult, but narrowing down on what specifically was too difficult will help us tremendously. Thanks.

ALAN GREENBERG: Thank you. And we’re just about out of time on this topic. Does anyone else have any further, very brief, comments?

JIM PRENDERGAST: Thanks, Alan. It’s funny I’m sitting next to Evan, because I’m going to answer your question. Also remember there is the

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independent review of the CPE process that came about as of the IRP decision that found that ICANN had been involved in a determination. So even though I think that contention set has been resolved, I think it's important that that process play out and we see what the results of that are.

ALAN GREENBERG:

Thank you. Our next topic will be – and I thank Robin and everyone else who participated – will be applicant support, and I'm not quite sure whether Sara Bocky or Christa Taylor will be leading off.

SARA BOCKY:

Thank you very much, Alan. One of our topics for Work Track 1 is applicant support, and we've been looking at the lack of the utilization of the Applicant Support Program during the 2012 round. During that round, there were only three applicants, and only one applicant met the criteria.

The working group has been identifying a number of possible causes for this lack of use or participation in the Applicant Support Program. One of the items would be that the criteria was not configured properly and the program was made available too late, and outreach efforts were not executed well,

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and just a lack in general regarding a holistic support, something that goes beyond a financial support system.

We're currently deliberating these issues, and there's been a lot of discussion regarding providing support beyond financial means, looking at mentoring, technical support, capacity building, annual ICANN fee relief. There have been considerations for expanding the Applicant Support Program to what we're calling the middle applicant, which is a struggling region that is further along in their development compared to the underserved or undeveloped regions, but also needing some sort of support or assistance in getting involved in the application process. Next slide.

There have also been concerns regarding the rule that resulted in applicants losing their initial fee when they did not meet the criteria. There was also some concern about the business model where the registry operators were targeting applicants in underserved regions, and if that could be a factor for consideration. There's been broad support for expanding the outreach through local partners such as GSE and leveraging existing workshops and conferences to elevate interest or participation in the program. And then looking at the AMGLOBAL report, the working group has acknowledged that possible applicant support candidates may not see the business case or environment that it is ready to support a registry. Next slide.

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In looking at all the feedback that we've received from the community questions that we proposed earlier in the spring, some of the overarching questions that we still have or looking for more input on would be broadening the support to go beyond financial means and to increase the reach and effectiveness of the outreach, and improve capacity building. With that in mind, if all these things were to be put in place, what do we do if no one still shows up? And should the concept of a middle applicant be considered in inclusion to help broaden this pool of possible candidates? Any questions, comments?

ALAN GREENBERG: We have several people in the queue. We have Evan, Sébastien, Tijani.

EVAN LEIBOVITCH: Thanks, Alan. A couple of questions. You mentioned in the slides that there was an issue that applicants would lose their deposit if they didn't meet the criteria. I think it goes further than that. What I'd heard from some of the applicants is if they didn't qualify for applicant support, they were dropped for the round. So it was literally an all or nothing. You had to either go in for applicant support. If you didn't get the applicant support, you couldn't then struggle to then see if you could find alternate sources of funding and then keep your application as a regular

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applicant. So it was really a go for broke, all or nothing. And it was far more than just losing the deposit, it was totally getting turfed out of the round if you didn't make it. So I think that's one thing that needs to be kept in mind, far more than just losing the deposit.

But the other thing also is if you look into where ICANN went to promote the last round, if you look at the road shows, the locations, the energy that was spent, and look at how much of that effort was actually spent in the developing world where the applicant support prospects would have happened, I think you'll see a really great disparity, that you'll see in terms of the amount of promotion that was done, in terms of the, "Here's why you should create a TLD." If you look at where that promotion was done and the way those resources were spent, and then you take a look at, "Well, why didn't we get anything from these communities?" Because nothing was invested there to bring it to their attention.

Maybe not nothing, but if you look at the history of how that promotion was done, you'll see that there is not a lot of response because there was not a lot of call for action in the first place. And if there's something that can be done to address that in the second go around, that'll be helpful. But when you're trying to dissect why weren't there applicants, there was an awful lot of, "We just didn't know about it in time." Thanks.



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ALAN GREENBERG: I'll note all three applicants were ICANN insiders, so the [advertisements] didn't work well at all. Sébastien.

SÉBASTIEN BACHOLLET: Thank you very much. Thank you, Sara, for your presentation, and thank you for doing this work. This is important work being done. I have a comment and a question. Comment, you said in your presentation that the only financial support – if I remember correctly – and you can look in the ICANN archives – there was work being done around the pro bono third party services, so it's not only about financial support. Even if it was quite complex to find the people who could help and find the people who needed the help.

Now, second point, I see that there was a study being done. Did you interview and talk to the people that were defining this work and this approach? I think it would be important to interview a few people that did work a lot on that program at that time. They could tell you a lot about it, about the history of the program, why we had to develop it, and so on and so forth. Thank you very much.

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JEFF NEUMAN:

Thanks, Sébastien. Just to jump in a little bit, on the first part, you're right, there was some work done where ICANN had solicited registry operators that were willing to offer pro bono or lower cost services, as well as they were soliciting potential applicants that were looking for support. But ICANN left it at that. All they did was put up a webpage that had these two types of parties, those looking for support and those willing to provide support, but did nothing in addition to that to facilitate conversations or to get the parties together. And as one of the parties that was willing to provide the services, I could tell you that we had never heard from anyone looking for support, and we were expecting ICANN to be a little bit more involved in that process.

One of the things – and it also brings it a little bit back towards Evan's comment which said ICANN should have – on the road show, one of the things they should have done in addition to going to the appropriate places was to explore the value of having your own top-level domain, or what kind of things can be done. ICANN has pushed back in the past on doing anything that sounds like promoting top-level domains. It claims to have gotten feedback from the community that if it talks about the benefits of having a top-level domain or even things like having this meeting being hosted on a .abudhabi domain, it's worried about looking like it is favoring one party over another.

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I think that's wrong. I think that's an incorrect interpretation. I'm not saying ICANN should be involved in marketing new TLDs, but certainly creating awareness of top-level domains, why you could want a top-level domain is within ICANN's remit. And we've gotten some feedback to that extent. I don't know if you all agree or disagree with that notion, but that's something that we've heard. Thanks.

ALAN GREENBERG: Thank you, Jeff. Christa first, and then we'll go back to Tijani.

CHRISTA TAYLOR: One of the questions that kind of ties in earlier to what Evan was saying was, was the criteria perhaps too stringent, and therefore people were less likely to apply? I.e. if they did apply for it and they were later declined because they didn't meet the criteria, they would lose their deposit and their application wouldn't go forward. I guess one of the other questions to add to it would be, is that criteria too stringent and therefore we kind of pushed everyone away from wanting to apply? Thank you.

ALAN GREENBERG: We have Tijani, Seun, and Sébastien, and I'm going to close the queue unless we have time when they're finished. Please try to keep your intervention short.

TIJANI BEN JEMAA:

Thank you, Alan. I was one of the active members of the JAS working group from the beginning, and I can tell you that even people who are opposed to any support were part of this working group. They were pushing us to make the most tough criteria saying, “There will be gaming. People will get the support while they don’t need it,” etc. I agree with you that the question of Sébastien about – I forgot about it. Okay, I will speak about the other thing.

We had money to support 14 applications. We had only three applications, because of those criteria, because we said that you’ll lose your deposit. Second, if you don’t pass the criteria for support, you will lose the right to apply. So it’s not only that people didn’t apply. And from the three, only one was accepted, and even this one was dropped because of the community criteria to accept community applications.

In our work there was not only financial support, there was support for several other things. But you said it wasn’t applied, or people didn’t ask for it. Because we didn’t implement the support since there was no one accepted. One accepted and then dropped, so it’s normal that people will not ask about anything. They didn’t get the financial, they didn’t get the other

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kind of support. But in our report, we put also other kinds of support. Administrative, legal, capacity building, etc.

Why people didn't apply? Several things. We are aware of the business case, Sara, but it wasn't the only reason for this situation. The outreach, ICANN did very good outreach in North America and Europe. They went there, they made everything to make people come and apply, and then they said, "Oh, we don't need to continue like this. We will do it online." Online for people who don't have the means. You understand? So I am really sad for that, and I hope that we will try to make a new program which is beneficial for the community in general, and especially for people who need support. Thank you.

ALAN GREENBERG:

Thank you. We have about six minutes left. I've asked for a two-minute timer with alarm, please. Do we have a response to Tijani? Everyone agrees. Seun?

SEUN OJEDEJI:

Thank you. I guess the two-minute timer starts on me. Okay. I just want to respond to Jeff. I personally believe that ICANN should not be involved in the marketing of TLDs or specifying, for example, the instance you gave, .abudhabi, they shouldn't be specific to that level. But I think if there is a program they're

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running for TLDs, they should be able to promote that. This is not specific to a TLD, it is a program, and if people are not aware of it, then how do they engage and actually take advantage of it? Unless the intention is that they don't want people to take advantage of it in the first place. So if you want people to really take advantage of it, then you have to let them be aware of the program.

I personally know somebody who applied from my region [inaudible] and he failed really bad. I could see because I was following him. I was not involved in ICANN as much, but following up with him because we were involved in other things together, and when it finally broke, it was so said. I don't know what that implication could mean in the future for him in terms of doing business with ICANN or engaging in TLDs, but the issue is very complicated. Thank you.

ALAN GREENBERG: Any responses? At this point I have Sébastien and Andrei, and I'll close the queue unless there's any sufficient time.

UNIDENTIFIED FEMALE: [Christa had a response.]

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ALAN GREENBERG: Sorry. Christa, go ahead.

CHRISTA TAYLOR: We have had some feedback, and one of the items was to make sure that the program going ahead is more culturally sensitive to ensure that people don't feel bad for applying, and they do actually use it. That is already on the radar, so to speak. How we go forward or how we make recommendations to ensure that's I guess properly worded and encourages it is going to need some work, but it is noted already. Thank you.

ALAN GREENBERG: Sébastien.

SÉBASTIEN BACHOLLET: [inaudible] recalled exactly the same thing. It's maybe good if we can talk together. I was involved in the JAS program before I joined the Board and when I was on the Board, because I was the one who pushed this program when I was within the Board. I was almost the only one, but at the end we finally got some money to do this program. And I would be very happy to have discussion with you about my recollection of this at the time. Thank you.

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ALAN GREENBERG: Response? No? Andrei.

ANDREI KOLESNIKOV: I'll be short and just echo and support what Sébastien said. There are thousands of records of the discussions, issues on the table which were developed for the New gTLD Program, and of course, we shouldn't take this as black and white. There are so many shadows, there are so many ifs on the table, especially for the community support applications, for the developing countries, etc. There were hundreds of them. And what actually should be really done for that, I think that at least ICANN staff should just go through all these records, all these discussions, and especially in the [critical] areas, it's all there. You just take it out, think about it, see what happened at the end of the day when we launched this program, and just propose a solution for many of the issues. That's it.

ALAN GREENBERG: Yes. There certainly are lots of records, and still lots of people around who were heavily involved. And I think the single thing I remember most is there was so much pressure to set the targets high to make sure we didn't have any gaming that we set it out of the target altogether. And your application gets completely rejected and taken out of the pool was another one of those anti-gaming things. If you're not going to be really needing



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support, you're going to suffer for applying incorrectly. And I think sometimes the fear of gaming kills the ability of actually doing anything. The last speaker is Christopher.

CHRISTOPHER WILKINSON: Thank you, Alan. I speak mainly from the point of view of my long experience in development economics, particularly in Africa. The first round of applicant support was a failure. I must confess listening to what we've got to date, I appreciate the amount of work that is being done, but I'm not convinced that we're on the way to a defensible and reasonable success next time around.

My only suggestion at this time – which may sound a bit heteroclit, but my main suggestion, as soon as ICANN At-Large support – ICANN has defined the criteria. Why don't we ask ICANN to outsource the whole business of promotion and additional selection of candidates? Outsource it through international agencies who have far better contacts at the local level in large numbers of countries. I appreciate that ICANN and the staff are trying to do it better this time, but it's really a diversion. I can't see where they're getting the resources and the languages from, and above all, I wouldn't like to see quite so much ICANN resources diverted into this on a very interim basis. Outsource the hard work, if necessary for a modest fee, but

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outsource it to competent international economic agencies who have their feet on the ground in very many countries.

ALAN GREENBERG: Thank you, Christopher. Jeff, do you want to respond?

JEFF NEUMAN: Yes, thanks. The first part of your statement, Christopher, was that the program was a failure, and then the second part, you said that when ICANN develops the criteria, then that should be outsourced. I guess what we're trying to figure out is – we don't want ICANN as an organization setting the criteria. We want the community – you all – to come back to us and tell us what the criteria should be. What was too harsh? What was not? What was added in there that you felt was only added in there to prevent gaming that you really didn't want to agree with?

We've tried to talk to a number of the former members of the JAS working group, and we certainly encourage you all to come and participate and give us your expertise, and I think that's what's been missing. Most of the people who have volunteered for this particular work track which deals with a number of issues other than applicant support have not been the ones who have been the closest to this issue. And so one of our messages to you all is, look, if you think it's been a failure, then help us.

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And I don't believe that we can outsource everything to an international organization. We need your help. I'll leave it at that. Thanks.

ALAN GREENBERG:

To be clear, one of the reasons we scheduled this session is just for what Jeff said. There are very few At-Large people working on this overall project. I'm not just talking about applicant support, but overall. And very few who are religiously participating. And if any of these topics are of interest, then if you haven't already joined the group, join, and if you have already joined the group, participate. We're going to have no one to blame but ourselves if we don't like what comes out of it and then criticize it. So this is the opportunity. It's been going on for a while now, but it's not finished yet.

We have Sébastien. We are over time on this topic, so very quickly.

SÉBASTIEN BACHOLLET:

Two points. First, [John], sometimes when you talk about ICANN and we talk about ICANN, we don't say the same thing. You talk about the organization, the staff or the corporation. We talk about all of us when we talk about ICANN, more generally

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speaking. Then your understanding of what we were talking maybe not the same level of what we are talking about.

The second point is that I agree with you, Alan, but I also disagree. It's not because – there are people who can't be everywhere to do everything and so on, and I think it's also the role of the working group to reach out to the people who can give them good information, and not just waiting for them to be participating to the working group. If not, every one of us will need to be everywhere.

ALAN GREENBERG:

And with that, I thank you, and it is a problem, but ultimately if people don't participate one way or another, whether they're dragged in or go in voluntarily, it's hard to get the right input.

The next speaker is Karen Day on string similarity. Karen.

KAREN DAY:

Thank you, Alan. I will say just before I get into that, to speak to Sébastien's point and some that others have raised, one of the issues that we have seen in several topics that we're dealing with in Subsequent Procedures is that with regards to [inaudible] communities and several things is there are many applications that are still in some form of contention or review,

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or relitigation where the applicants, the parties involved do not feel that they are able to speak to us yet.

For instance with the community priority evaluation review that's going on, we've had some community applicants say to us, "[I] really want to give you my specific, detailed feedback, but I can't yet." So we will be going over our community feedback that we did get later today in our face-to-face session. But that's been one of the hurdles that we have faced throughout the PDP, is just overall timing with participants in some of the more contentious matters not being in a position that they can freely divulge specifics of their issues, because they're still ongoing even today.

And with that one little side comment, I will move over to my specific area today, which is string similarity. I've split this into two topics, and I'll defer to Alan if he wants me to take a break for question and discussion between the two. There is string similarity during the application evaluation process, and then there is an objection process based on string confusion that comes later after the applications had been evaluated and allowed. First – so Alan, if you want me to stop for questions after the string similarity, I'd be glad to.

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ALAN GREENBERG: I think it's important to note the difference between them. One is just visual, and the other is far more inclusive. But why don't you do both? And then we'll take questions.

KAREN DAY: Very well then. With string similarity during the evaluation process, the issues that the working group was tasked with dealing with was concerns primarily relating to the lack of clarity going in around the rules for singular and plural strings. Applicants didn't feel that they knew going in what was going to be allowed and what wasn't, so there were applicants who didn't apply for something they thought wouldn't be allowed, but then saw that their next-door neighbor were being granted an application that they had assumed they wouldn't be allowed, and vice versa for singulars and plurals. So basically just a lack of stability there.

There was concern about the time required to perform the analysis and release the results. Everyone felt that that was way too slow and it took too long. The current state within the working group is we received quite early on when we first looked at this issue a proposal from the Registry Stakeholder Group which has been fairly well received throughout the working track as a whole, and they recommended that Policy Recommendation 2 – which for those who might not be familiar

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with it reads, “Strings must not be confusingly similar to an existing top-level domain or a reserved name” – the registries’ proposal recommends that that policy recommendation stay essentially the same, and that we simply build on top of that new implementation guidance, and that guidance would – for singulars and plurals – be based on dictionaries on a per-language basis being used to form contention sets. So English would be in contention with English, French with French, Russian with Russian, and so people would know going in that, “This is what I’ll be facing and who I’ll be put in contention with.”

The other proposal from the registries which has been I think pretty universally agreed, as close to consensus on this as with anything, is the elimination of the Sword tool which was used in the 2012 round. This was an application in which a potential applicant was told that they could go in and enter into this online application the string that they were considering applying for, some behind the scenes analytics would be done, and you would be given results telling you how likely you were to be facing contention or string similarity issues. Applicants found the results to be not at all reliable, so that was one recommendation.

Another recommendation which is still being debated in the working group is if a string is placed into contention due to

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similarity issues, for instance a singular and a plural, would one way to resolve that contention be to allow one of the applicants to drop their string, but rather than lose everything that they've put into it up until this point and be left with nothing, be able to say, "I will give up for instance .hotel," and I know this is an existing contention set, but it's just what's coming to mind. If we had .hotel and .hotels, if .hotel said, "Okay, I'll walk away from it and let .hotels move forward and proceed, but because I've spent three years on this and I've invested these \$200,000, I don't want to just give that away and get nothing. Let's look at the list of everything that's been applied for today. I see that nobody has applied for .pink. I'll apply for .pink. Can I use my money, my time and my application and just instead of .hotel, let's just erase that and change it to .pink, and not have to wait until the next Subsequent Procedure, the next time applications are allowed?"

That's one potential remediation that we are discussing to perhaps make it easier for applicants that do get put into a similarity contention set. That's on the table. I won't say that it's – we're trying to talk about gaming and things like that, but it's definitely on the table still.

Then after the evaluation phase, once applications have been allowed, we come to the objection stage. And then there, if an application is deemed to be – by any third party – confusingly



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similar to another application, another string, then they can file a string confusion objection.

And the issue we've been asked to look at here is around the general concern – generally, there are concerns about objections overall, how they were handled, there were inconsistencies. But specific to string confusion, it again is primarily about the inconsistent outcomes. And again, this is a situation where we still have some outcomes pending. We haven't been able to get the forthright discussion with some of the applicants that we've hoped for, so we're moving forward the best we have.

Right now, we have again general support, high level support for that Recommendation 2 for that remaining. There's some discussion for a proposal from registries that would make the objection process a little more predictable where rather than in the 2012 round, an objector would file multiple objections against many similar strings, the registries talk about an objector filing one objection against a group of applications for a similar or identical string, and then each applicant responds individually, but that holds the cost down for the objector. You would then have one panel reviewing all of these as a group, you would have a consistent single determination rather than five objections against the same string by the same objector and you get three opinions going one way and two going another way.

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That was a proposal that has received some good support. It came from the registries.

So today, I would love to hear from members of the ALAC, your thoughts on these proposals that we're considering, and any other specific ways that you feel like that we can deal with and improve these issues around string confusion and string similarities.

ALAN GREENBERG:

Thank you very much. We have eight minutes left in the session. I have a brief comment first in the queue, then we have Sébastien and Tijani. My comment is the registry proposal I think is great. It's a big change from what we had before, and I think considers the concept of plurals, not just from an English point of view with Ses, but from a general one. My one problem with it is the concept of contention sets by language, because number one, the same word is used sometimes in multiple languages and it's not intuitively obvious which it's going to be.

Second of all, when the word is not identical, they are often very similar. Perhaps adding an E in French or something like that, and that means although they're in different contention sets, we have a real confusion potential problem if both of them go forward and the winner is almost the same as the other one. So

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that's an interesting issue that will somehow have to be fleshed out in what is otherwise I think a marvelous proposal.

Next, we have Sébastien.

SÉBASTIEN BACHOLLET: As you are the first to talk, you talk what I wanted to say. The next time, give us the floor and then you will add at the end, Mr. Chair. Thank you.

ALAN GREENBERG: I did put up my card first. Tijani.

TIJANI BEN JEMAA: And it was also the same point, but I will add something. I don't think that we have to consider the contention by language, but we can consider the contention between ASCIIs and IDNs. Those are different strings, and it's normal that inside the Russian language, contention will be considered in the Russian language. But French, English, Spanish, etc. will have the same problem. Thank you.

ALAN GREENBERG: We have plenty of time now. Apparently, we don't need it. Last call. Any questions on any of the other topics we've had until now?

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TIJANI BEN JEMAA: Cheryl.

ALAN GREENBERG: Cheryl, please go ahead.

CHERYL LANGDON-ORR: Thank you, Alan. I don't have a question, but I did want to make a comment and a plea, particularly to the regional leadership sitting around this table. What you've heard out of these presentations today so far – and you've got a little bit more, but some of us are probably going to have to leave for their next meeting shortly – is that you are welcome to contribute now to these conversations as they are developing, as they are happening.

We have heard that, of course, we can't necessarily convince all of you to join meetings that are running twice a week every week in some cases, but it doesn't mean you can't put together a position paper from your region, from your At-Large Structure, from yourself, and take the opportunity. You see the people who are the co-leads. They're friendly, they're welcome, they're open, they're wanting to hear from you. So let's give them some material to work with. Thank you.

ALAN GREENBERG:

See, they're all smiling. Right, I will thank the people who are here as speakers. You're welcome to stay. I'm doing the fourth presentation, but I know there's also a major session going on on the same topic, and you may want to vacate and start doing some prep on that, in which case that's the reason I've put myself last. So anyone who's choosing to leave, feel free, but we'll proceed. Can we get the presentation up on closed generics, please? And the next slide.

Alright. The first question is, what is a closed generic? Like much of what we're dealing with in this area, there's no crystal-clear answer. A closed generic is essentially a dictionary term which could have many meanings, but someone is choosing to use it in a particular meaning and potentially restrict its usage. Next slide.

The concept of closed generics was contemplated during the original policy, and essentially, no provision was made for it. The question arose during the program, and the New gTLD Process Committee looked at it, and their wording that they request that the GNSO specifically include the issue of exclusive registry access to generic strings – so that's the exclusive use – serving a public interest goal as part of the policy work it is planning to initiate in the new rounds. In other words, this group was

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constructed to consider exclusive use and factor in the public interest in deciding how and under what conditions to allow generic strings. Next slide.

Currently, we have a number of generic strings that were used and allowed. One of the examples is .apple. .apple is a nice red or green thing that you crunch on and eat. It's also a brand of computer, phone, watch, and many other things these days. Apple was granted the right to use the generic term as their brand, and there is a presumption they're not going to start selling apples. And presumably, if they were to start selling apples, they would have to allow all apple growers to participate in that. But we're assuming Apple will stay in the consumer business and not the apple business.

Another example is – and this gets a little bit complicated, and maybe Jeff wants to get in and try to explain, because I have a hard time doing it – a name such as “office” or “play” which is a generic term, but is not going to be used in a restrictive way.

Can you go in? I'd never be able to define this one really well in simple terms. Maybe you can.

JEFF NEUMAN:

Examples like “office” and “play” are terms that while they don't necessarily have a trademark associated with them, they are

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being used in a way that is different than the dictionary definition. They can be granted not Specification 13 which is the brand TLD specification, but they can get things like exemptions from the code of conduct, and they can get exemptions from having to offer that to third parties, so they can use it completely internally without providing that to third party registrants. They may still have to do a sunrise, they may still have other restrictions that are incorporated elsewhere in the agreement, but they don't have to provide that to third parties.

ALAN GREENBERG:

And the next kind is even more confusing, because this one says that, yes, it is a generic term, yes, it might be licensed to a company that has as specific brand of that generic term, but essentially, they promised to play nice. And so we have a makeup company that owns “makeup,” but they can't use it just to sell their own products. And there's a presumption they will do that properly. Next slide.

So in order to move forward, we really have to address several issues. The PDP has to look at under what conditions there is a public interest good that is done by granting the use of a generic term. If it's being used as a brand for instance and purely as a brand, then that effectively covers the issue. If it's not being, how do we make sure that the public interest is being served?

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And again, we use the term “public interest” glibly, not being able to really define it, and understanding that there are differences of opinion across the community as to what it means.

The whole concept of predictability becomes important here, because if someone is applying for a term, they would really like to be able to predict with some reasonable level of certainty whether they are putting either enough provisions in their application to control how it’s being used, or other reasons that they feel they will be granted. Predictability is important. We’re asking people to invest a lot of money, not just in the application fee, but in the whole process of building a potential business, and predictability is important.

The other issue is that of innovation. I’m not sure if that’s the next slide or not. We talk about – this is an opportunity with new gTLDs to have innovative business models, not just someone having a TLD and selling second-level domains. Some of those business models are easy to imagine around generics. And how do you, again, protect the public interest and the same time promote interesting ways of using TLDs, and still have the same level of predictability we want?

You obviously can’t prescribe what the innovative business models are. We’re presuming other people will build these new



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business models. So how do you balance the various needs? If you outlaw closed generics altogether except in the case of brands or other very restrictive uses, then you're presuming that you will not have the innovative uses that we would like to see imagined. And how do you go forward on these kind of cases? Last slide.

How do we determine what is a generic string? How do we determine if the implementation is in the public interest? And how do we at the same time maximize predictability?

I've skipped over a lot of the subtleties. This is a really complex issue. But really, those I think are the core questions that we're asking and looking for some guidance. I will have to declare that I attend a lot of these meetings, and a lot of them are boring and repetitive. And the discussions on closed generics I think have been some of the most fascinating ones, because there's all sorts of potential and opportunities, and we don't really know how to make sure it happens.

Tijani, your queue is up. I haven't been watching who has put their queue up. I'm told Andrei is first. Can we settle on what the queue is? Let's say Andrei –

ANDREI KOLESNIKOV: Tijani is first.

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ALAN GREENBERG: Tijani is first, Andrei, Evan. And Tijani, could I ask you to manage the queue since I'm the speaker?

TIJANI BEN JEMAA: Thank you, Alan. I have a big difficulty to understand the interest of these closed generics, whose interest they are serving. When you speak about innovation, who will define what kind of innovation, what is the innovation? How do you know that there is not another one who will say, "The innovation is here, not there?" How can we guarantee that these closed generics are serving the public interest, even if the public interest is not well defined? I mean if they are not serving the commercial or political interests. What is the need of them? Thank you.

ALAN GREENBERG: Jeff, go ahead.

JEFF NEUMAN: I think there's a baked in assumption here that the only model that's acceptable that serves the public interest is selling domain names or registering domain names at the second level. Let me give you an example of something that I could easily

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foresee as being much more in the public interest than offering names at the second level.

Let's take an example of .disaster, or .relief, and let's say the International Red Cross applied for that. And let's say they wanted to take every single disaster after it happened and then establish a second level name. So for the U.S. we had hurricane Harvey, or whatever earthquake happens or disaster around the world. I could tell you that that would probably serve the public interest much more than if the International Red Cross got .relief and then just offered it for second level registrations for anyone in the world.

That's just one example, and there are a lot of other examples I know of that I can't speak of, because they were clients that weren't allowed to go forward, but again they didn't want to disclose their use and give that away to others. But I ask everyone to have kind of an open mind, to think outside the box of other potential models that could be out there other than offering second level registrations for purchase to third parties. They are out there, and that was really one of the intentions of the program, to see other models go forward.

TIJANI BEN JEMAA:

But what about .apple and .office?

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JEFF NEUMAN: [I will explain.]

ALAN GREENBERG: We are not going to reverse the ones we did last round.

ANDREI KOLESNIKOV: I'll make it simple. For the particular .brand which Jeff probably won't say anything because of the clients, but I'll give you one example of a .brand which is a closed generic, basically. What it says, the registrant must be an affiliate entity of Yandex or an organization explicitly authorized by Yandex, or a natural person explicitly authorized by Yandex. So there are no other exceptions, but these three criteria to register domain name .yandex, which I guess very similar to what other .brands doing in the closed generics, in .brands, which is kind of completely opposite picture of your example, Jeff, for the .disaster, right? These are the open [inaudible] creativity and help for the public use, basically for the relief and things. Another one from the other side is a completely closed and registered for its own use .brand. So these are two different things under the one umbrella.

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JEFF NEUMAN: Yes. Thanks, Andrei, and that's why setting a rule that prevents everything may not be the best way to go. We should – or we may, if the community wants this we may develop criteria or things to measure public interest other than the inside-the-box offering third parties registrations of second level names.

TIJANI BEN JEMAA: Evan?

EVAN LEIBOVITCH: Thanks. Evin Leibovitch for the record. I have to say my last name because I'm not the only Evan in the room anymore. I want to go on record as totally supporting Jeff's point of view on this. I personally think there is no public interest to be served in preventing closed generics, and I'll explain why.

If there was a public interest in restricting access to generic words, that ship has sailed a long time ago with the second-level domain. The public has no expectation that if they go to cars.com that they're going to get a generic catalog of different vendors of cars, so there's no expectation anymore that anything .cars should or would necessarily be any less objective. And so in terms of the issue of public expectations, I don't think anymore there is a public expectation that any name on the

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Internet right now is necessarily going to go to an impartial place where you're going to find everything.

I'll use what might be perhaps one of the most crass commercial examples of a closed generic that I could conceive of. For instance, that would be .books. I believe that was even applied for by a certain company that right now I think is in dispute with some governments over some other, nonrelated matters, but let's say you have a book store that wants exclusive use to .books, and everything under .books becomes like a card catalog that allows you to do any kind of search, but you'll always be brought back to that one vendor. That's an example of something where you've got a generic word with a creative use, but it still points to one vendor.

Well, if there's a place where you want to have the world's book stores, somebody could do .volumes or .pages, or .whatever, there are all sorts of other generic words. When there were only 24 gTLDs, then having any particular thing being closed down was as big deal. Now that there are maybe hundreds and maybe thousands of gTLDs to choose from, having one particular or even a small set of generic words that are closed off when alternatives abound I think is not a great use of our time in protecting any public interest. I don't think there's a public interest served by preventing these. Thanks.

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ALAN GREENBERG: Could we have a timer with alarm, please? We only have about seven minutes left in this session.

TIJANI BEN JEMAA: Alan.

ALAN GREENBERG: Thank you. I'd like to disagree with Evan. The Consumer Trust Review Team has looked at the issue of, are people with the new gTLDs – at least at some level – developing an expectation that a top-level domain does mean something? And the indications at least from their draft report are the answer is yes. And whether that proves to be a major issue going forward or not, I don't think we can presume that first-level domains will be taken in all forums to be equivalent to a second-level domain which is a complete free-for-all. So I don't know the answer, but I'm not sure it's as clear as what Evan was saying.

TIJANI BEN JEMAA: Jeff.

JEFF NEUMAN: Thanks. I actually don't think Alan and Evan's points are actually disagreeing very much. I think what Evan is saying is that here's

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no expectation that it's multiple vendors or that it's one party or multiple. You're saying that Consumer Trust said that there's an expectation of the consumer that when you go to it, it's at least related to the topic for which hit is.

I think those are not saying different things. It could be the same. In other words, to your point, I'll use Evan's example, .books. If it points to a card catalog that's controlled by one vendor, it's still relating to books, which is still what he CCT is saying. So both are true.

The CCT didn't say there's an expectation that here are multiple vendors or multiple parties that own names all related to the string. What they said is that there's an expectation that the contents you find on those sites are related to the string, which I think both fall in line.

TIJANI BEN JEMAA: Thank you. Carlton.

ALAN GREENBERG: We have five minutes.

CARLTON SAMUELS: Like Jeff, I don't think Evan and Alan are so far apart as Alan might think, but as a fellow [when he was asked] how would he



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know what porn was, he said, “I know it when I see it.” And that is a problem we have with these closed generics and these ideas. We have a sliding scale of [subjectability] here. There is no way you can predict what it’s going to be until you see it, until somebody explains to you what it is. And so whatever framework that we decide is going to happen, it has to embrace the idea that it has to be explained to you before and make sense before you decide how to tag it. And this is all we can say about these things. To me, it’s a lot of wasted effort to try to build a rigid evaluation structure to make sense of this. Thank you.

TIJANI BEN JEMAA: The queue is empty. Sébastien.

SÉBASTIEN BACHOLLET: Thank you very much, Tijani. Don’t you think that we are slowly but surely going to the content? Aren’t we talking about content or to what we are developing when I hear about if .books is about books? So we’re going to look what’s inside and we have to make sure about the content. Aren’t we talking about content? Isn’t that far from our remit?

TIJANI BEN JEMAA: Any other question?

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ALAN GREENBERG: I'll put the Chair's hat back on. This is the first time we've tried to do a session like this in a few years. [Has it been] a good one? Do you want to do more?

I see a bunch of yeses. Thank you. Enjoy your lunch. I will not be back with you for the next session, because I'll be in the new gTLD session. I wish you a good meeting, and I'll see you at 3:00. Or 3:15, whatever. Thank you.

UNIDENTIFIED FEMALE: The session is now adjourned. However, if I may for all the APRALO ALSes, APRALO-funded ALSes attending the capacity building session, if you'd be so kind as to present yourself to Mario who will give you a red ribbon, and he has all the names of the funded travelers. And then there is lunch for the APRALO ALSes just outside the door, but no ribbon, no lunch. Thank you.

UNIDENTIFIED MALE: [A professional photographer.]

UNIDENTIFIED MALE: To staff, is it okay to leave laptops in this room?

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UNIDENTIFIED MALE:           What?

**[END OF TRANSCRIPTION]**