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SINGAPORE – GAC Plenary 2  
Saturday, March 22, 2014 – 16:00 to 17:00  
ICANN – Singapore, Singapore

>>                                    Could people please take their seats. We'll be starting very shortly. Again, if people could please take their seats, we'll be starting very soon. Thank you.

CHAIR DRYDEN:                    Okay, everyone. We need to get started. If you could take your seats, please.

Okay. So as it turns out, we had scheduled a couple of briefings from ICANN staff for this time, so we will have the briefings and then we will return to our discussion of gTLDs. So to my left is Akram Atallah who is running the gTLD operations part of ICANN and the two issues that we had identified for briefings were issues related to the string similarity at review process and I believe the specific request underpinning that was to understand better some of the rulings or apparently inconsistent rulings that have come out regarding strings that have been in contention and then a briefing about auctions, and we may have questions on both of these areas. We also have had written briefings on these topics, so they are in your materials, if you want to quickly look at what was provided to us in the form of a briefing by the NGPC.

We're going to start with the auctions topic, and then we will move to discuss the string similarity issue and the rulings related to that. So as far as I'm aware, this is -- the purpose of this is an informal session with

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staff and an opportunity to ask questions. And so on that basis, let's begin. So over to you, please, Akram.

AKRAM ATALLAH:

Thank you, Heather. Thank you very much for having us. I want to mention that I have with me Trang Nguyen and Russ Weinstein who are both actually working on the new gTLD program, and next to Russ is Allen Grogan who is our chief contracting officer. I am going to be very brief. We don't have any slides, but we thought that we would actually give you an opportunity to ask questions so we can address your concerns on both of the topics.

On the topic of auctions, it's important to know that the auction has been specified in the Applicant Guidebook and as per the AGB we are proceeding in holding the auctions as a mechanism of last resort. So we've given all of the applicants' ample time to resolve their issues and now that we've been well into the program, we originally started with 233 contention sets. We are now down to 186 unresolved contentions, contention sets, which represent about 630 applications. After receiving the comments from the public comment period that we put on the auction rules and they were published on 6 March, we now have finalized the auction plan and we posted all of the auction sets and the schedule online for everybody to see. We are also -- the auction rules specify and the guidebook specifies what's called a ascending clock auction, and the first auction is slated to be held on 4 June 2014. So overall as we -- as the spirit of the auction was always an auction of last resort which meaning give the applicants as much time as possible to resolve their issues among themselves, we -- all the rules reflect that



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even the auctions that are set, even once we notify them of the auctions, they could still resolve their issues up to a week before the auction is held. So we're trying to accommodate that as much as possible. And we will see how that works out. The auction, as it's laid out right now, we have scheduled ten auctions with a roughly 20 auctions per event and we know that some of these auctions that have been scheduled are not eligible to move forward, so they will be pushed out until, you know, if they have a -- some objection on them or they're going through some other process and they cannot move into the auction, they'll be pushed out. Everything has been scheduled by priority, and so we're ready to move forward. And I think that as we mentioned earlier the first auction will be in June. We'll see if many of these auctions will resolve themselves before then. Any questions on the auctions?

CHAIR DRYDEN:

Okay. I see Iran and the European Commission and Italy.

IRAN:

Thank you very much for the information. You refer to the existence of the auction in the guidebook. At the time that this provisions were established perhaps the community did not have a clear idea about the gTLD or new gTLD and about the sensitivity and the delicacy of some of them. I could not identify the gTLD as other national or international resources, but it is similar. It is very, very important. Putting something on auction means you convert the resources which belong to the entire community on the commercial auctions. This does not seem to reflect the demand of today nor the demand of tomorrow, in particular at the



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time that we are on the very sensitive time that we looking into how we could better govern the Internet, which gTLD is part of the Internet. We should be very careful about proceeding with that until we have a clear idea whether the notion of auction commercializing this as a result of contentious matters between the parties or concerned parties, making it possible for those who have a better financial possibility to override the real need of the others that were stuck, not being in a positions to resolve the problems. It is something that ICANN Board need to carefully consider and to be very, very cautious about that.

Sooner or later the community will ask the ICANN of the consequence of these conversions of the rights and accessibility or equitable access to these resources if they are converted to the financial modalities enabling those who are better off to override those who may not have that possibility. I hope you will be able to pass this message and to be very, very careful with respect to the date that you have mentioned, 4 June, and with respect to the one week that you have put as the last opportunity. Perhaps there need to be look at that one and perhaps that should be considered or reconsidered, getting holdup of that until the time that we have clear idea about the future of Internet. What you had was perhaps a good course of actions but last year but not this year. This year we are in the new era. The entire world is looking differently, entirely differently.

What was done a few days ago by one institution, he would not have done it last year. They did it because of the situation circumstances, prevailing circumstances. So we should be careful about the circumstances and we should be careful about what is the situations. A good politicians is the one who act in accordance with circumstances.



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You should not have a fixed procedures irrespective on what direction the wind blowing. The wind does not blow in the direction that you will talk before. It is blowing in the other directions. So we had some questions about the appropriateness and validity to proceed at this stage with this course of action. Thank you.

CHAIR DRYDEN: Thank you for those comments, Iran. European Commission, please.

EUROPEAN COMMISSION: Thank you, Madam Chair, and thank you Mr. Atallah for being here today providing feedback face-to-face. The European Commission provided our comments in written to the reply period, and we were surprised when we saw that red line that none of our comments had been taken into account. And perhaps the most important one was the way in which auction rules regard community applications. So if you could offer us some explanation as to regards whether the community applications would be directly affected negatively by the auction rules I would be grateful. Thank you.

CHAIR DRYDEN: Thank you. Just one note for the commission, if you could slow down, please. Thank you.

AKRAM ATALLAH: Sure. Let me first address the gentleman from Iran. I thank God I'm not a politician, and I'm actually implementing a set of rules, it's an

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operational set of rules that the community actually built together and we are just following those set of rules and we're implementing them.

Regarding the community applications, the CPE or community priority evaluation is still going on and the applications that have applied as a community will have the opportunity to be assessed first before going into auction. And if the community application is actually proved to be a community application and passes review, then actually it automatically wins the set and there is no competition against the community application. And therefore they won't go into an auction. So from that perspective, a community application has priority, but it has to demonstrate the rule -- and pass the rules of the community application. Thank you.

CHAIR DRYDEN:

Thank you. Okay. I have Italy next, please.

ITALY:

Okay. Thank you, Chair. So my question is about the procedure. If I understand your work is just to conduct the auctions following the -- not only the guidebook but also what has matured in the time, including GAC advice, including at-large suggestions and things like that. So -- and we have been talking about this community or known community applications, but you know that from the community there are some expectations that would like that some -- some application that was nothing the category of the community to be considered as the interest of the community, let's say. So then you conduct this and you make a report to the Board before the decision of the Board, I suppose. This is



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something that we would like to know because the point is, in cases where there are not certain evaluation on the merit, let's say, is it possible that the GAC is involved in a way or another instead of simply deciding and then we see the result? Because let me say, normally you provide in the average new -- 15 new contracts every week, so this is the average of the last two or three months. And -- but in the case of auctions, it is something that maybe should have some reflection before a final decision because it is very, very much visible, the point. And the expectations are in the GAC and even in the at-large and in the community may be even higher than a single new applicant. Thank you.

AKRAM ATALLAH:

So basically we -- we have accepted the GAC advice on communities and we are monitoring any of these issues. If there is community support or if there is community dissent against a certain application, we will take that into consideration and bring it to the Board for evaluation. And so we're doing that right now. So the GAC advice has been accepted and we're implementing that. I don't think that we are doing a process, as you have mentioned, where we're evaluating them before going to the auction and trying to figure out if one is a community or not. But if we have comments from a community on a certain application that's overwhelming one way or another, then that application will be taken aside and addressed with the NGPC. I hope that answers your question. Thank you.

CHAIR DRYDEN:

Thank you. I have Denmark next, please.



DENMARK:

Thank you very much. I have a question, a general question, about auctions. I'm sorry I haven't had the opportunity or time to actually review the specific auction rules, but you say that you are going to use an ascending clock auction and I just wondered also, sort of in line with what you just said about considering community eval -- community applications for the evaluation before the auction, maybe you could specify some more -- I mean, what concrete rules, what concrete rules there are to ensure a level playing field for the applicants. Or the parties going to auctions. Thank you.

AKRAM ATALLAH:

So as I mentioned earlier, there are -- there were 233 contention sets at the beginning. Some of them were resolved, either through the parties involved resolving the issues among themselves or there were some applications that lost some objections or something, but we ended up now with 186 unresolved contentions. Out of the 186 unresolved contentions, there are only 100 that can move right now into auctions. And the reason that the others cannot move into an auction is because one or more of the applications in the contention set still have some processing to go through and one of the processing that they have to go through is CPE or community priority evaluation. And other things. Either they have objections or other things. So the community priority evaluation will have to happen and they would have to clear any objections or any remaining processes before they can -- an auction set can move forward. So that's happening on a regular basis.



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Regarding the ascending clock auction, this is a method that was specified in the guidebook. And that's why we're actually following that. There are a lot of other ways to do auctions and we've been lobbied to change things and, you know, as with everything that we've been doing, we've been following the guidebook and staying with the guidebook because all of the applicants, when they put their applications in, they are dependent on what's in the guidebook in formulating their plans and their business plans and how they're going to move forward. So everybody knew the rules and we don't want to change the rules on the applicants midstream. So our intention all along has been to follow the guidebook and stay with the guidebook as much as we can.

I hope that addresses some of the issues. If you want more details on the auction, Russ, do you want to provide some highlights on the auction, how they will happen and --

RUSS WEINSTEIN:

Sure, sure, Akram. So the auctions are going to take place online. It's an Internet-based system that the auctions will take place on. They'll be connected simultaneously. So multiple contention sets will be auctioned at the same time. The ascending clock auction is a particular auction method. We'll talk more about the auctions at a session on Monday. But you can find materials online about the ascending clock auction. It's, basically, with rounds of set timing and set pricing where you'll opt in to continue to participate in the auction until a winner is determined.

And that gives you a quick overview of an ascending clock method.



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CHAIR DRYDEN: Thank you. Lebanon, please.

LEBANON: Thank you, Madam Chair. Akram, I really believe we need to rethink two items. One is why we would go through an auction in the first place, where, in general, auctions more or less disadvantage a certain group.

I mean, I'm not sure -- I mean, I agree with the representative of Iran on this issue. I mean, we really need to consider it.

The second issue is the proceeds of the auction. I mean, I don't think in any case ICANN or anybody should be making money out of that process. I mean, the proceeds, if anything, should be going back to -- I mean, I don't know if it's the community or somewhere but not ICANN. I mean, it's not the place where we should be making money.

CHAIR DRYDEN: Thank you, Lebanon. So, Akram, maybe you could respond to the point about the proceeds and how they will be handled?

AKRAM ATALLAH: Sure. Thank you, Heather. Thank you, Imad. So the auction proceeds will be set aside, if there are any. The issue that is at hand, I think, everybody's wanting to have an answer on what's going to happen to the auction proceeds before we know what are these proceeds. It's very difficult to -- for the board to say oh, we're going to do this with



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this money when we don't know the amount of money that's going to be there. So the board has decided that they will review the mechanisms -- or, actually, they're going to provide the mechanism for the community to make a decision on what to do with the money that is raised from these auctions. But, before we do this, it's important to know what is amount we're talking about. And, anecdotally, I will tell you that we don't expect to have that many auctions. Although we're talking about hundreds, we don't expect to have that many auctions. There are a lot of applicants that keep telling us that they're going to settle these things on the steps to the court, I think -- on the court steps. I guess that's the term they use. And, basically, it's the last minute. They're going to all wait until the last minute before they settle their differences and then resolve these contention sets.

So, really, we have no idea. It would be very hard for me to even guess the number of auctions or the amount that we're going to -- that's going to be collected from the auctions in order for even to start contemplating what could be done with this money.

So the intention is that the community will decide what to do with the money. As soon as we have an idea what we're talking about, there will be a mechanism for the community to get together and deliberate on what to do with that. Thank you.

CHAIR DRYDEN:

Thank you. I have European Commission next, please.



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EUROPEAN COMMISSION: Thank you, Madam Chair. It will be just a remark and, hopefully, a slow remark. Thank you for providing the briefing on auctions, but I just wanted to comment on the rationale behind it. Normally, the auction rules are designed under the assumption that the applicant that will be able to pay the highest bid is the one that will look after it in the better way for the TLD. In a better way. So it kind of shows that deep pocket applicants will be necessarily the most nominative ones, which is not the case. And also I will dare to say, after reviewing some of the applications currently in contention, smaller applicants sometimes tend to have better public interest commitments, better applications, because they know they'll have to face bigger applicants or what we call usual suspects in the registry realm. So just wanted to remark that sometimes the small fishes will be paying the consequences of these rules. Thank you very much.

CHAIR DRYDEN: Thank you, European Commission.

I have Lebanon, please.

LEBANON: Just a quick comment, Madam Chair. And that is, from somebody who has been involved with auctions and a little bit of game theory, I think we may be subjecting the process to blackmail. That's all I will say.

CHAIR DRYDEN: Thank you. Okay. On that note -- Belgium, please.



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BELGIUM:

Merci, merci. I will speak in French.

It has to be accepted so that the others may participate. So I would like to speak about these two elements. First of all, is the respect for the warranties included in the applicant guidebook regarding community applications to respect this category as quite difficult.

We would like each applicant to provide its own security and would like to enforce everything related to the warranty and the right of third parties. The geo names and the provisions included in the applicant guidebook are respected and not systematically set aside due to a very strict and narrow interpretation.

I would like to conclude by saying that we would like to favor dialogue among the participants. We would like and try to be constructive.

CHAIR DRYDEN:

I have Iran. And then I think we need to move to the other briefing we have on string similarity. Iran, please.

IRAN:

Thank you, Madam Chairman. Sorry to ask for the floor again.

I am not in agreement with the example given by our distinguished European Commission colleagues that the small fish is a victim of a big fish. We are in a civilized world. We are not dealing with somewhere that the gazelle is the victim of the lion. This rule does not govern here. This is the resources belong to everybody. If there is a contentious

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which cannot be resolved, we have to find another way. If you proceed with this, you would have more and more objections trying to line up many other things, pushing the things to the auctions. And then the one who have the capability and financial affordability could override the other one. This is not the proper course of actions.

Mr. Akram says that he follows the guidebook, but I said that we need to look at the guidebook again. That was many years ago. We are not in the same world. That world is entirely changed. One year ago you did not even have a right to talk about Internet in international organizations. I was in a conference, and they said don't talk about Internet. This is not allowed. But today we can talk easily in all conferences about Internet at the governance of the Internet and not the same world. Please kindly convey this message. We are not without any reflection follow what is in the book. You have to review. You have this review process in the ICANN. You review everything. You should not stick to something which -- for years and years. The world is changing, and we have to change. If we don't change, they will change us. We will be changed, if we don't change ourselves.

If we're talking about the multistakeholder democratic and everybody, you should democratic. Auction is not democratic. Auction is ruled out by commercial power. So small fish cannot live in a democratic world. All fishes could live in a democratic world. Small or big.

So, if ICANN claims to be next month or the year after that that he wants to be a multistakeholder approach, democratic, transparent, and with full freedom bottom-up approach, we need to look at the small fish and the big fish. Thank you.



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CHAIR DRYDEN: Thank you, Iran. I have one more request from Turkey, please.

TURKEY: Thank you, Madam Chair. I think all the -- let me make this point. All the applicants knew in advance what they're going to face, right? Everything was clear. It was contested, if their application, they will auction will be the issue, the process. And I don't believe that right in the middle of that selection process we should change our course and do different treatment for any applications. It could be also we could also face some legal problems at the end. Thank you.

CHAIR DRYDEN: Thank you, Turkey. Let's move on to the other topic, which was string contention. And I believe the specific issue associated with this that is of interest to us were how the inconsistent rulings or apparently inconsistent rulings are being handled. If I'm mistaken in that, then, colleagues, please do correct me on that. But, if we could move to this topic and take any questions on that, then that would be grateful.

So, Akram, if you could just give us a bit of an introduction.

AKRAM ATALLAH: Sure. So thank you, Heather.

On the issue of string similarities and the rulings and the inconsistencies or perceived inconsistencies, I think that the issue is complicated because every set of similarities was reviewed separately. And, based



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on that, every ruling was specific to the way that the applicant defended their application. So it's very hard to say all of these things should be treated together. So every -- every string similarity was done in -- looking at the two strings and the way the applicants viewed those strings.

Now we've identified a few that we thought that the community has thought they were inconsistent. We've actually posted a proposal to review two rulings. And we're still in the comment period on those right now.

And these are specific to a set called -- that we identified as an inconsistent string similarity ruling. There are some other issues that the community has brought up. And the NGPC is still looking at those. But, at the current time, there is, I think, a ruling for car and cars. And there's a ruling for com and cam that was considered as inconsistent. And there is a public comment period on that, and we're collecting the comments. I think they should be done early April. And we should be able to present a -- if we're going to move with a process to deliberate on these or review these findings in the April time frame.

CHAIR DRYDEN:

Thank you. And is it correct that these situations arise when you have applicants for the same string being considered by different panels? What is it that leads to the particular situation that you are considering needing to address?





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AKRAM ATALLAH:

So I think that the in both cases there were multiple rulings by different panels that actually came to the different results, if you want. And that's where the inconsistencies were identified.

Now, if I talk to the lawyers, they tell me every ruling was done based on certain positions that the applicant has presented. So every applicant said this is why my string is not similar to this string. So, when they reviewed these things, it's not necessarily that judgments are inconsistent. Because you have to also look at what the defendant or the application or the applicant presented. But, regardless, the fact remains that, if a -- if a car and cars are viewed as similar and then another car and cars are viewed as not similar, it makes us look silly. And that's where the inconsistency is coming from. So we're reviewing that. And, like I said, we put a process in place to have maybe a -- instead of a -- the reviewers who made these decisions were one panelists. So the proposal is to put multiple panelists and have them review these decisions and then come back with an outcome. But, again, I don't think that the decisions have been made. This is a proposal at this stage. We're collecting the public comment on that. And then from that, there will be a decision on whether to move forward with the review or not. Thank you.

CHAIR DRYDEN:

Thank you. Okay. Are there any questions. European Commission?

EUROPEAN COMMISSION:

Thank you, Madam Chair.



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One of the reasons why we were very keen on having this session is string similarity review also affects singular and plural. I think it was back in Beijing when the GAC advised the board and the NGPC to review their decision to consider the coexistence of both singular and plural. And one of the main reasons why there are inconsistencies is because we have singular and plurals with exactly the same propose. I understand there is a request for comments the number 1,599 that request that each TLD must have a clear propose, a clear and defined reason to be. And, therefore, singular and plural seem not to have the same propose as an item. And I don't understand the added value of having both of them. So we would like to have this decision reconsidered, if possible, again.

CHAIR DRYDEN: Thank you, European Commission. Okay.

United States next.

UNITED STATES OF AMERICA: Thank you, Madam Chair. And thank you, Akram, for clarifying sort of the current status. I would like to just comment very quickly on what our colleague from EU just mentioned and sort of suggested that we, too, recall that the GAC advice was pretty firm on that. So it might be very useful to revisit that. My next point is actually a question. If you would be able to clarify whether you are looking at all of the rulings that have been considered inconsistent, or are you just addressing the two sets?



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AKRAM ATALLAH: So we've looked at all of the comments that came about. And these two sets are the only two sets where we identified inconsistencies. There is another set where we've identified as an outlier. And that's also being reviewed. But we have not actually decided on a mechanism to review yet.

CHAIR DRYDEN: Thank you. So next I have Italy and then Iran.

ITALY: Okay, Thank you, Chair. So I understand that, of course, you listened to the opinion coming from the constituencies from the GAC, et cetera. And then you rely on an evaluation of the panels that are given to you, the opinion about the confusing fact having singular and plural.

So, in certain cases, you can decide to accept this, despite the fact that the GAC said is confusing only singular and plural.

And I'm -- just to make an example, I'm referring to "career" singular that you delegated, signed the contract on October 9, and "careers," plural, on 2 October.

So the real problem in the end is not to be completely against you for the choice. But then you have to explain what is the fact that in this case it may be the plural may have a different meaning compared to the singular or things like that.

But you have to face these kind of explanations that, in my opinion, should be given almost the new contracts that you sign procedurally. Thank you.



CHAIR DRYDEN: Thank you, Italy.

Iran, please.

IRAN: Thank you, Chairman.

May I seek clarification, what do you mean, Akram, by multiple ruling by different panel could lead to different result? Multiple ruling by different panel on a specific, given subject? That means you give a single subject which is run or governed by multiple ruling and then by multiple panel? Why multiple panel? Why multiple ruling? You should have a rule to cover or govern a case. Why you have multiple ruling? This multiple ruling is one after the other? That is correct. You apply step one and a step two and step three. But multiple ruling, what does it mean multiple ruling? And then why multiple panel? The panel is something that is in the guidebook and so on and so forth. Why we have multiple panel? It's quite clear that, if you give a particular subject to three different people, they might have four different ideas. So I seek clarification on the meaning of this application of this multiple ruling by different panels. Thank you.

ALLEN GROGAN: So I'm Allen Grogan. Let me try to answer that question. Thank you for the question.

The way that the expert determination panels worked is that an applicant could file an objection against another string. And, if there



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were multiple applicants who had each applied for the same string, those decisions did not have to be consolidated before one objection panel.

So, for example, in the case of the car and cars, there was one applicant for the car string and it objected to three applications for cars strings. But those were decided by three different panels. They weren't decided before one panel. And there was discussion within the community over whether we should force consolidation. The decision was made not to force consolidation. And the result was, where one applicant was objecting to cars, that applicant won that determination. Where that applicant was objecting to another application against cars, a different result was reached. And those are the decisions that we believe are inconsistent. And we have a proposal out for community comment to try to reconcile them, because we believe those decisions should be decided in a way where the same result applies to all of them.

CHAIR DRYDEN:

Thank you. Okay. So I think I have no more requests to speak.

Okay. All right. So we need to get back to our gTLD discussion on other topics. So, at this point, I will thank ICANN staff. Thank you, Akram, and your colleagues for coming to brief us on these topics.

It has been helpful to us to be informed about auctions and the issues associated with string similarity.

So thank you again. And we look forward to our next briefing at some point in the future.



AKRAM ATALLAH: Thank you, Heather. Thank you, GAC.

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