ICANN Cartagena Meeting
New gTLD Session: Draft Applicant Guideboook
TRANSCRIPTION
Sunday 05 December 2010 at 1030 local

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Coordinator: And this is the operator. At this time the conference is being recorded. Thank you. You can begin.

Stefane Van Gelder: Thank you very much. Good afternoon everyone. My name is Stefane Van Gelder. I'm the GNSO Council Vice Chair along with Olga Cavalli. And we will be chairing this meeting in Chuck Gomes' absence, Chuck being ill.

Welcome to (Yule). We will be going through the changes to the Applicant Guidebook and we have Kurt Pritz here to take us through those changes. If - for those of you in the audience that want to ask questions at any time, there's an open mike up there or you can come to the table and ask your questions. Please identify yourselves and we'll take a queue to do that. And Kurt is it perhaps better to ask the questions at the end of each of your explanations on each module? Kurt, please take it away. Thanks.

Kurt Pritz: We're back again as the 5th version of the guidebook and including two sets of experts - excerpts the 7th round. So a couple comments and introductions. You know, what is a proposed final guidebook? Well, a couple things. One is the word proposed. So it gives me an opportunity to provide the traditional disclaimer that it is proposed that applicants or others seeking to benefit from the new gTLD program shouldn't rely on what's in the proposed guidebook or the proposed registry agreement but we all hope it's pretty darn close, right.

And second, what's proposed final? So we were puzzling over how to do the dance of posting a final guidebook that the Board could approve. And would there be a way of posting a final guidebook, you know, essentially not for public comments as to what's going to be changed. So really no way of being able to do that. And even if there weren't public comments or that there'd be plenty of comments on it.

People seeking - and so we hit on the methodology that we used for the ICANN budget that where we, you know, we through community consultation and post a budget framework and then get to the point where we posed a proposed final budget that where public comment is taking, you know, essentially right up to the Board meeting.

And then the Board can consider the budget and pass it or make changes and pass it or send it back for more work. So this same sort of mechanism would allow us to post a guidebook that the Board could consider for approval and then take comment on, you know, right up until the time of the consideration.

And so what the ICANN staff is doing here is preparing comment summaries for the Board as we go along. So we - you know, you've all read - we're all pros here right so you've all read the common summaries and analysis. So the first step of that is to categorize the comments and summarize them so they're not so voluminous and those are being prepared for the Board.

We prepared, you know, one summary analysis already but it was pretty much all George Kirikos. And we're going to prepare another one today I think and - or tomorrow. And then as we get closer to the Board meeting we'll continue to do that so the Board would have at its fingertips, you know, the latest comment and also the Board's going to listen to all the - and all the workshops we conduct here to discuss the guidebook and so they can take that all in and deciding what to do then.

So that's sort of - that's sort of a process point about that. I knew there were some questions about it. And, you know, I'll just pause to see if there's any questions about that methodology.

None. All right. It's going to go really fast. So what - we've done this a couple of different ways. So altogether when one time you guys said, you know, we don't even want to see any presentation. Let's just talk and one time I gave kind of a long presentation.

So what I'm going to do is what seems to work best is we're just going to go through the guidebook module by module and highlight, you know, what's changed and also, you know, if there's any key issues that there's been a lot of discussion across the community. I want to at least stick a pin in those as a tickler for those who might want to ask questions. So there's one or two slides associated with each module about that.

Marilyn Cade: Marilyn Cade. May I ask a (unintelligible). When are we going to talk about the economic study and its implications and the fact that it recognizes negative externalities related to the introductions of vast numbers of new gTLDs, identifies the cost shifting that particularly affects large trademark holders and will have to of course be taking into account because (order) by bylaws require to take into account any new information that is delivered?

Kurt Pritz: So we don't have slides on overarching issues here. There's an overarching session here, you know, here in Cartagena but trying to think under what module it would fall. We could do it like in the end.

Man: Use the mic, yeah.

Alan Greenberg: Kurt, I have a question about something that isn't in any of the modules and therefore would not come up. And traditionally in these sessions we never finish. And I'd like to try to make sure that there is some time during the

session to address issues, which are not particularly focused on but happen to be relatively important and current.

Kurt Pritz: What's our timeframe? Yeah.

Stefane Van Gelder: So why don't you start going through the modules and...

Kurt Pritz: Okay.

Stefane Van Gelder: ...then we can address that - those questions at the end. And Alan you can come back to those points at the end. And I've got you discussed in the queue for those. Okay.

Kurt Pritz: Okay. In Module 1 there were a few significant changes that affect who can apply and how the applications are processed. One is that we honed the discussion of delegation rates that is key to the root zone scaling and stability and security issue.

And there's sort of a marriage of two disparate issues. One is that in order to process applications in a way that is consistent and high quality. It's been determined that, you know, we don't really want to process applications at a rate greater than 500. So if we were to get that many applications, we would start batching them.

What's serendipitous about that is that creates a rate limit on the delegation rate. So while we expect delegation rates of, you know, 215 to 240 a year. Even if we got infinitely many applications, this self-limiting factor would keep the delegation rates under 1000 per year.

Forming the RSAC and SCAC of that, that made a lot of the - that made a lot of the concerns about root zone scaling and stability go away. So there's more about delegation rates and batching in the guidebook.

The background screening criteria has been amended. It's really been fleshed out with how it's going to work, what very specific tasks or information - information's going to be collected from the appliance and how it's going to be tested against what measures. And, you know, we used standards that are used elsewhere for specific areas of screening.

Remember that the word - use of word terrorist was very controversial last time so that's out. But ICANN's obligation to, you know, follow the laws of - follow the laws of the United States and whom it can deal with remain in place. So those are described well I think in the guidebook.

The dreaded (VI) is - the next issue is the Board elected to lift most restrictions on total ownership. The Board decided that there were two issues here. One was marketplace and whether that should be regulated and how ICANN could possibly regulate it and how effective it would be on one side.

And the other issue being that data increase if registries and registrars could share data. You know, that's a point under debate. Nonetheless the Board instructed the creation of a registry code of conduct and increase compliance and auto mechanisms in the guidebook to address potential (unintelligible).

Applicant support is described in the guidebook. Right now ICANN's budgeted I think $300,000 to create regional service centers. Not certain what we're going to do yet. There's the price there but, you know, could create regional service centers or applicant support areas, non-financial areas of support.

Also support that working group in locating funds and then look to the continuing work of the Applicant Support Working Group to develop sources and on disbursement measures.

Then finally there's some clarification around IDN variance and how they're going to be handled in the short term. And one of the things you're going to

hear in Cartagena's, you know, their making a new study to kind of hammer to a solution on IDN variance. You know, taking we know that there's a - the JIG is about to furnish a report that has some solid recommendations in it. So we want to test those, see if they're implementable and then sort of an interim solution on IDN variance.

Then there's some, you know, the big issues that have been talked about are currently being talked about regarding Module 1 or cross ownership (unintelligible) those.

So I'm going to - Stefane, I'll pause here and we'll take questions.

Stefane Van Gelder: Thanks Kurt. Any questions for Kurt on Module 1? Kristina.

Kristina Rosette: There are a number of folks in my community who believe that the new definitions with regard to affiliate and control that have come into being as a result of the vertical integration decision should be applied consistently throughout the guidebook.

For example, with regard to background check, with regard for example to the trademark (CCDRP). Have you all considered that and decided against it? Is it something you haven't considered? What is - what would be the status of that?

Kurt Pritz: Definitely something to take a look at and open comments on but cost of ownership decision came (unintelligible) possible (unintelligible). Happy to get your look at and we'll go back and take a look at it too.

Stefane Van Gelder: Any other questions? Go on Kristina.

Kristina Rosette: All right. And then the next question is it would be helpful to get some understanding of the reasoning or the basis for the new provision that essentially says that the applicant is deemed to have passed a background

check if they're listed on certain (unintelligible). What is the reasoning for that?

Kurt Pritz: That's a...

Woman: There's a little bit - there's a little bit about this in (unintelligible). What we found is that the requirements to be listed on one of those exchanges are pretty stringent in terms of the inquiry that they perform. And the company and the controls involved in it. And it's ongoing through - once that company's listed on the exchange. So we thought that the screening that they would undergo to be publicly listed would be part of a duplicate work by IDN that was not that effective.

Stefane Van Gelder: Edmon and then back to Kristina.

Edmon Chung: If she wants to follow up (unintelligible).

Stefane Van Gelder: Go ahead.

Edmon Chung: All right. It's Edmon Chung. My favorite topic IDN. I want to say that I'm really excited on the fact that staff is taking the issue of IDN variance seriously and then putting actions behind it. But at the same time, I'd just like to say that it's just rather disappointing to see that it's not quite there yet.

I want to correct a impression that seems to be coming from the staff where certain policies have not been dealt with regarding to IDN variance. I think they have been and if you rediscover them in the IDN guidelines that, you know, the ICANN IDN guidelines has always been there in the ICANN IDN guidelines and it's always been discussed through ever since the IDN was first introduced in the RFC.

So this is an issue that especially the Chinese community has been working on for over ten years. And, you know, for staff to now rediscover those

issues, I think, you know - I think it is timely but at the same time it's also disappointing that it's taking so, you know, so long.

But I guess the question really is, you know, how much faster can we go? And because this first round of new gTLDs I think IDN has always been a, you know, IDN TLDs is always a very important part of which I think from the community and from not just the ICANN community. But the interactive community at large has always said that IDN TLDs are an important part and Chinese IDN TLDs require IDN variance. You know, it's really a very important part of it.

So, you know, I'd like to get a sense of what else needs to be done and then, you know, whether it could make it into the first round. Whether it's, you know, whether it's at the application timeframe versus, you know, even if a solution is found between the applicant - a receiving application to the delegation, that would still be acceptable, right. But, you know, at least we should try towards a timeframe like that.

Kurt Pritz: Yes. So we recognize the work that's been done in the Chinese (unintelligible) policy framework for how to delegate variance. I think that experience (unintelligible). Other communities aren't as far along I think variant issues are vary from (unintelligible) across them all. And that the work we'd like to undertake with the community are different working groups for each individual script.

                So (come to) fashion a universal solution I think (unintelligible) by the variance discussion gets gummed up from time to time because you get some place clear in Chinese and then say that doesn't help the Arabic solution and (unintelligible). So I think attacking it on a script-by-script basis might allow us (unintelligible).

Edmon Chung: That's what I want to hear. To let certain scripts, first it is an important initiative I guess.

Stefane Van Gelder: Okay. Just to explain how I'd like to work this. We've got some questions - some remote questions. I'd like to give those priority when we get them because it's always more difficult to participate when you're remote.

And that gives the Councilors priority and then open the questions over to you. So I believe that we have Berry Cobb asking a remote question. Is that right?

Marika Konings: Yes. This is Marika. So on behalf of Berry Cobb, he's asking, Kurt can you expand on the rationale for implementing the batching? Is it in response to recommendations of limited or controlled (unintelligible) or (mero) based on the capacity limitations for ICANN to process applications?

Kurt Pritz: Hi Berry, how you doing? So the limitation is really based on being able to ensure consistency and quality across the evaluation spectrum. ICANN undertook this, you know, manpower planning study to see how it would process applications and how many evaluators would be needed and in what regions and the like.

And, you know, in the case of - when we get to 500 applications, in order to process them in 4-1/2 months or whatever we committed to, that would require 75 technical evaluators. And that's what, you know, when we - that's not a magic number. But we looked at spans of control and how we would ensure consistency across many different evaluators.

So we drew a line there as the maximum, you know, (unintelligible) quality. So we said we don't want to have more than 75 evaluators doing application (in parallel). And so that's the limit we imposed in order to ensure for the first round anyway that we would process 500 applications at a time.

And then serendipitously, you know, that helped solve the - really (corral) the root scaling problem. If we can make that commitment, then the technical

community's okay with the proposed delegation rates, as I understand. Berry, ask a follow up if you want.

Stefane Van Gelder: Thanks. So in the queue I have Kristina, John, I put myself in the queue, Tim and that's it. Kristina.

Kristina Rosette: My question actually really is more to Module 2. So I'll hold it.

Stefane Van Gelder: John.

John Nevett: John Nevett. Quick question for you Kurt on cross ownership. Are you going to provide any additional rationale to the GAC or to the U.S. Government in relation to the letter that they sent the other day?

Kurt Pritz: I think so. There's quite a bit of information on (unintelligible) rationale. So what we discussed is, you know, recently as last night is how to repackage that in a way to (unintelligible).

Stefane Van Gelder: Do you have a follow up to this? Yes. Okay. I'll put you in the queue. So, Tim.

Tim Ruiz: Kurt I noticed that in the eligibility section Item K where it's, you know, things that could disqualify some that might otherwise have qualified. And that is the condition of a pattern of decisions with the UDRP or perhaps the ACPA or equivalent legislation. Three or more such decisions with one occurring in the last four years.

And I was just wondering if any thought had been given to - maybe you'd consider it falling under one of the other ones if someone who file a UDRP ended up with a decision of reverse domain name hijacking. It seems to me that that would equally disqualify that if that was an applicant especially if that occurred within the last four years.

My personal feeling is that you could even look at a pattern of UDRP filings that don't result in a decision in favor of the complainant and that could be grounds as well. I know that would be much more difficult to try to find - define parameters around but at the very least decisions of reverse domain name hijacking (issues).

Kurt Pritz: (Unintelligible).

Coordinator: The operator unable to hear online.

Kurt Pritz: So we'll take a look at that. I mean my first initial reaction is I'm not sure that - understand where you're coming from - the desire to kind of have a balance there but I'm not sure (unintelligible) have a history of abusing the DNS with cyber squatting. (Unintelligible) that rationale would apply to people who have been abusing the UDRP.

Tim Ruiz: Right. Well you have other conditions in there about, you know, financial misconduct and so and so forth, other kinds of criminal behavior that has nothing to do with the DNS. Right. So this I think falls, you know, within that category as well.

Stefane Van Gelder: Okay. I'm up next in the queue. I just wanted to ask in the application form questions why some of the questions that were previously marked confidential have been removed and are deemed not confidential including questions on - financial questions about the applicant.

Woman: So the - I don't think they really have. I think the - the way we previously had it was that some questions in there were specifically labeled confidential and those have been stricken from the part you might be mentioning in Module 1.

What we've done is on the actual application form which is an attachment to Module 2 that contains all of the questions and criteria, there's a new column in there that indicates for each question individually whether it's going to be

part of the public posting or not. So I don't think many of the actual, you know, substance of what's confidential or not has changed. But the format of presenting has.

Stefane Van Gelder: Thanks. I have Jeff, (David) - (David)'s gone.

Jeff Neuman: Thanks. So just a follow up to John's question on vertical integration. And not really so much on the substance of what the outcome was but you kind of triggered it by saying well, you know, things that are in the resolution clauses are really paid attention (unintelligible).

So I want to read to you a resolution that I've heard a lot discussed this week, which everyone seems to have their own spin on. This is from March at the Nairobi meeting, probably familiar with it. It says if a policy becomes available for the GNSO and approved by the Board prior to launch of the new gTLD program, that policy will be considered by the Board for adoption as part of the new gTLD program.

Resolution before that - right about it was within the context of the new gTLD process there will be strict separation of entities offering registry services and those acting as registrars. No co-ownership will be allowed. So the question is pretty simple. What was the new policy that was available from the GNSO?

Kurt Pritz: Well I tell you I don't know. To me that's pretty clear that the Board was saying that if a policy is developed, the Board would adopt it. But if the policy - if the policy wasn't adopted, the Board could do something else. And I think there is a subsequent - there's a subsequent resolution to that that states that specifically. That was in Nairobi?

Jeff Neuman: Right. It says if a policy becomes available, that policy will be considered. But there was no policy that became available. So the resolution before it says there'll be strict separation. It's created a clear message to the community

that unless the GNSO came up with a policy otherwise, strict separation would be followed and that's not what happened.

Again, I think this is - I'm not questioning the substance of the outcome. I just think it was very poor management and it was poor - it was a very poor process the Board followed, was not transparent, no accountability in that and I think the Board needs to be very clear on resolutions and its tactics because you left an impression with the entire community that something different was going to happen.

And, you know, that's just not the way that things should be done in the future. And I've heard a lot of spin but it was very clear to everybody what that resolution meant. So I think that's something you all need to fix in the future because that's - there's something to be said for precedence.

And in the very first day of law school we learn that, you know, you don't change precedent unless there's some substantial or compelling cause. And the same economic reports that were available to the Board prior to Nairobi, the economic reports didn't change. So I want to know what information caused the Board to change its decision because that is a complete reversal from what the resolution said.

Kurt Pritz: So I understand what you're saying, the Board subsequently after that said that absence consensus policy or policy developed by the GNSO that the Board could revisit the decision.

Stefane Van Gelder: Can I go to the open mike. Please identify yourself. Mike.

Michael Palage: Mike Palage. Just to follow up Kurt on Jeff's question there. I think one of the things that you heard from the GAC session yesterday is this same point that Jeff was raising is under the affirmation of commitments, there is an expectation to the Board to explain its decision.

And we don't know how to reconcile the Nairobi resolution and then the Trittenheim resolution. It's kind of hard to reconcile that and would really help if the Board would follow its obligations under the affirmation commitments.

To get back to my original question though however, it's a follow up on the one that Kristina had started off with regarding the background checks. Now in one of your previous comments Kurt, you talked about the need for consistency and quality across the application process.

So I don't understand how exempting certain people from the background check that you'll be - end up being for all applicants just because someone's listed on a stock exchange somehow exempts them. For consistency and quality purposes it seems that everyone should go through the same process.

Coordinator: This is the operator. Stand by. That line has disconnected. One moment. I'll see if I can call it back.

This is the operator. We'll have to wait until that party dials back in. Please continue to stand by. Hopefully party will dial back in in a moment. Thank you.

This is the operator. As I said, we're unable to hear anything off the leader's line. At this time we're unable to hear anything. Thank you.

Kurt Pritz: Hello.

Coordinator: This is the operator. Now we can hear you. Thank you so much.

Kurt Pritz: Okay. That's good. All right.

Coordinator: And this is the operator. Now we're unable to hear you again. Are you continuing the call?

Kurt Pritz: Yes. We're online. We're just holding when the meeting starts.

Coordinator: Thank you.

Man: Operator, I'm chatting with the room and they're trying to dial back in right now.

Coordinator: Okay.

Kurt Pritz: Yeah. We're dialed in. We're good.

Coordinator: Okay. Thank you so much. I appreciate your letting us know you're on the line.

Kurt Pritz: Okay.

Coordinator: Thank you.

Excuse me. (Morgan Sagget) joins you.

Man: (Unintelligible).

Michael Palage: So I wonder why that was eliminated similarly on the - people have already spoken about the concern about the free pass for publicly traded companies but I'm wondering whether - is that a (irreplotable) presumption that anybody - any company that's publicly traded passes the background check or would public comment information be considered that might be contrary to that conclusion. Thank you?

(Morgan Sagget): Hello. Who's there?

Kurt Pritz: It's Kurt.

(Morgan Sagget): Yes. And are you calling in for the GAC meeting?

Kurt Pritz: Yes.

(Morgan Sagget): Okay.

Kurt Pritz: No I'm not.

(Morgan Sagget): Yeah, you're on. Okay. We haven't started the meeting yet so you are on speaker. Just kind of your chat was going across the room. So I just pulled you off for a moment. And I'm going to connect you back into the room. And they still haven't started yet so we're just waiting for them to get going. Okay.

Kurt Pritz: Operator, are you online?

Coordinator: This is the operator online, correct.

Kurt Pritz: Yeah. Can you tell me what happened to the gTLD session?

Coordinator: This is the operator. They are connected. We're just not hearing them.

Kurt Pritz: Okay. All right. Thank you.

Coordinator: So continue to stand by. I don't know why we're not hearing them.

(Morgan Sagget): The reason why you're not hearing them is they haven't started yet.

Coordinator: They haven't started yet, okay.

(Morgan Sagget): For the GAC they haven't started yet.

Kurt Pritz: Negative. The GAC is not this line. This is...

Coordinator: Right. This is...

Kurt Pritz: ...for gTLDs.

Coordinator: Correct.

(Morgan Sagget): No. This line should be the - I'm going to hang up and yeah.

Coordinator: This is the gTLD dot line.

(Morgan Sagget): This should be the GAC line.

Coordinator: Is the gTLD call over?

(Morgan Sagget): Hold on.

Kurt Pritz: Negative. It goes for two hours.

Coordinator: Okay. But I'm not hearing - we're not hearing anything on that call.

Kurt Pritz: Then it's a technical issue.

Man: Pardon me. So you're calling - you're wondering why you're not hearing anything?

Coordinator: Correct.

Man: We haven't started the meeting yet.

((Crosstalk))

Coordinator: This is the gTLD line.

Man: We entered with the GAC pass code, the G-A-C pass code. So we should be
                    in the GAC's meeting room. Is that not correct?

Coordinator: Okay. That is not correct. But we will correct that. But we do need the party
                    for the gTLD to dial back in. Can you - okay.

Man: I'll absolutely tell them to do that, no problem.

Coordinator: Thank you so much. And I will put you in the correct spot.

Man: Okay. Thank you so much.

Coordinator: Stand by.

Man: All right.

Coordinator: And the gTLD line has been reconnected.

Kurt Pritz: Hello. Everybody there?

Man: (Unintelligible).

Coordinator: Go ahead.

Kurt Pritz: Module 2 contains the evaluation criteria, the questions and the scoring and
                    (unintelligible). So what changed here? Well one is the string requirements,
                    we expect a (unintelligible) draft form. I don't know if it's in final call but it's
                    pretty close to the end. And it says no numbers. I'd say you can have a
                    number if it's an IDN so, you know, IDNs (unintelligible) which could be
                    (unintelligible).

Then in content originate we got some specific (unintelligible) or region so we put it for those protections and additional (unintelligible) names that (unintelligible). Several names that...

Coordinator: And this is the operator again. We're not able to hear.

Kurt Pritz: So we, you know, we included that list so there's rules in the guidebook about if you apply for a continent or region name you have to get the approval of so many (unintelligible). So that is (unintelligible).

I'll tell you, you know, there's - this has been great and terrible. This is the gTLD process. You know, (unintelligible) I think is I wish we talked more about all the criteria and (unintelligible). And nonetheless I'll tell you that staff in between meetings works on those questions and those criteria to make them (unintelligible). So are there any questions about those things? Yes Marilyn.

Stefane Van Gelder: Marilyn.

Marilyn Cade: Thank you Kurt. To go back to the comments you made, you said that the - there could be no things that are digits. Is that correct?

Kurt Pritz: Cannot contain digits.

Marilyn Cade: Is it feasible to have a single letter as the string? And that would be because (unintelligible).

Kurt Pritz: (Unintelligible) by the guidelines.

Marilyn Cade: But what's the technical reason for that because you know I work extensively on the Reserve Name Working Group and the finding of that group which included technical (by links by) (unintelligible) others indicated that single letters and numbers of (unintelligible) are okay. But that there are numbers -

there are problems with numbers at the end. But that for the work would be needed about the issue of releasing single letters. So for the work means for the work. It doesn't meaning no. So my question is you're saying that the answer now would be no.

Kurt Pritz: Yeah.

Marilyn Cade: Because the further work hasn't been done.

Kurt Pritz: Yes. (Unintelligible). So the reason is not a technical one. The reason is I think that there needs to be policy work for how those - that valuable beachfront property would be allocated. That was echoed by the IDN Working Group. They were talking about, you know, for example Chinese characters where there's (unintelligible) argument for releasing (unintelligible).

Marilyn Cade: Just one clarifying question. But as I understand the (things) that I did on this topic, numbers will continue to be an issue because of the potential of the confusion with IP addresses. The Reserve Name Working Group said that if numbers or letters were allocated at the top level that they should...

(Morgan Sagget): Hello operator.

Marilyn Cade: ...(unintelligible) second level. It didn't actually say that they should never be released. So just to be clear, we are talking...

Coordinator: This is the operator.

(Morgan Sagget): Operator. This is (Morgan). I think we're in the call here. This room is connected to the telephone number, which is being announced into a large main room. So can we ask that you don't make an announcement? Is there another way that they need to get our attention that you could do that?

Coordinator: Meetings - there's nobody logged into the meeting user.

Edmon Chung: Another one is on the string similarities. I think Kurt, for responding to the council earlier today on the issue, the council did resolve on sending a letter regarding - sort of a clarification on confusingly similar versus just similar.

And it has implications, especially for IDNs there are cases where two or more strings could be considered similar whereas, you know, because the IDN (unintelligible) actually provides the user - a better user experience. That should be taken into consideration.

I find it, you know, Kurt you've mentioned a - the briefing to the board and I was reading it and I think it seems to me that there's a couple of things that were - seems like the staff was a little bit confused about. What was in the new GTLV policy from the GNSO is to avoid confusingly similar string.

Not to avoid similar string. That is very clear in the recommendation.

And to say that there is no operation - you know, I just want to reiterate that there is operational experience about similar TLD strings today. So that should not be an issue.

And it was - it seems to me that it was presented as an issue. We stayed away from a direct comparison with variants because they are potentially different things.

And whereas the briefing specifically alluded to variants. So I want to understand why.

And the big problem right now is that when - through the initial evaluation if a - two strings are considered similar then they're not even allowed to go into extended evaluation. If it goes through extended evaluation and confusingly similar is being taken into consideration then that is completely, you know, implementing the GNSO recommendations.

Whereas if it's only, you know, similar and you're out and there's no recourse then that is not implementing the GNSO recommendations.

Man: When you're differentiating between similar and confusingly similar are you differentiating between the degree of physical similarity between the two strings? Or are you parsing how they're used?

Edmon Chung: Well in the initial evaluation based on the guidebook it only take into account visual similarity. So that is what I was talking about.

So in term - that doesn't give you whether something is confusingly similar.

Man: So is the test - well the test is that if two strings are so visually similar that they would likely cause user confusion. That said there's a physical degree of similarity.

Edmon Chung: But that's not the recommendation. And that's not, you know, that (unintelligible) implementing the recommendation from the GNSO.

Where it says it's a test of confusingly similar rather than just simple similarity which is what this alludes to in terms of the initial evaluation.

Man: Right. After - and the likelihood that there be user confusion.

Edmon Chung: And then that would probably be determined in the extended evaluation, right. Because right now the problem with the process is such that when it goes through the initial evaluation if it's considered similar it already gets kicked out of the whole process and to not come back in.

Man: If it gets considered (unintelligible). So what I understood what you're getting at is that, you know, registries can operate two very, very, very, very, very, very similar names in a way that prevents user confusion by the policies of

the registry in how they treat those two (unintelligible) that ICANN should consider that if it's the same entity running the registry then they can operate it in a way that obviates the user. Right?

Edmon Chung: Well that is all along the, you know, the intended result of the GNSO recommendations. Because this is a very important part of IDN.

You know, when IDNs are introduced there could be situations like that.

Man: Right. So I think - and I think what the board was saying was that for certain TLDs that could be fine that they would operate them in a way - in accordance with their own internal policies that prevented user confusion. But how do we standardize those policies so we're sure that any (unintelligible) will operate them in a way (unintelligible) you might not - you might know how to do it.

Or the Chinese TLDs, they might know how (unintelligible). But how do we assure that all TLDs, you know, all TLD applicants apply for visually similar strings, they say that's okay, we're the same entity.

But there's no rules in place that will require them to operate the TLD in a way that (unintelligible). There needs to be policy work that sets a standard for (unintelligible).

Man: Can we - yeah we can pick this up again. But just to give other people time for questions.

I had, yeah, I was in the queue. Was this a follow-up to this?

Kristina Rosette: Yeah, absolutely. I mean and this is the issue that I tried to raise when the council was talking about this issue.

Namely that the whole point of having some principle about avoiding user (unintelligible) goes back in large respect to trademark law. And trademark law is all about competing at the source.

So if you have the same entities operating two visually similar strings there can be no confusion at the source. Because it's the same entity.

So I think there - I agree with Edmon. I think this needs to be looked at a little bit more closely.

And just kind of following on on that, kind of the subsequent string question is that if there is in fact a determination by the string examiner that strings are visually similar -- which is one third of the likelihood of confusion tasks used throughout the world -- is there going to be any consideration given to whether or not these strings in fact coexist on for example the U.S. Patent and Trademark Office Principle Register -- which is the trademark registry that would apply, you know, to ICANN as a California corporation.

Has there been any thought about doing that? Because I think you are going to have a real problem with a lot of strings getting kicked out on visual similarity.

When in fact there is not going to be any source confusion. And in fact where these strings coexist in the real world without any consumer confusion.

So, you know, at a minimum I think this needs some more serious consideration. And I would think that there's definitely some opportunity for moving that into extended evaluation.

Because I think otherwise you really will end up in a situation where a lot of strings that -- for no other reason other than a very arbitrary path -- would be able to coexist.

Man: I think it does require additional consideration. But I don't think it's a trivial problem.

                 I think that a TLD could operate similar strings in a way that causes user confusion. And that user confusion could be detrimental to Internet users and serve the benefit of the TLD.

                 It could be a trademark and then something very similar to a trademark. And that TLD if it's a bad, you know, if it's a bad actor could use that very similar - that TLD that's very similar to a market.

Kristina Rosette: But I'm not talking about that situation as much as in terms of I mean, yeah, to some extent. But I also think the point that Edmon is raising is that we're - the same entity - you can't - so they're going to be confused with what?

                 I mean why would the registry create a situation that is going to - I just - to me it's just you're taking trademark principles and kind of mutating them in a way that doesn't really make any sense. And if you're that concerned about how it's going to work then fine, put them in extended evaluation.

                 Or come up with standard contract language that goes in the contract. That if there is that kind of finding at the similarity evaluation this, you know, whatever provision you create that goes into the registry will take the following steps to avoid user confusion.

                 It goes in the contract. Boom, end of problem.

                 Then you've got a way to deal with it if it turns out later to actually cause confusion.

Man: But I don't think it's a boom, end of problem situation. I think that contract language and those terms need to be carefully thought out.

When the two Chinese CPTLDs were delegated there was a lot of back and forth about so what are your registry rules to ensure that users are not going to be confused. That you will use this TLD in a way that will result in user confusion.

And it's not a trivial problem. And I think - I really think it's a policy discussion to determine what those conditions are.

Under what - what needs to go into the contract in order to ensure we avoid user confusion. I don't think it's simple.

I don't think ICANN staff can develop criteria for doing that absent either a lot of work with the registry or TLD community. But more likely, you know, I'd see that discussion happening here.

So I'm for it. But I'm concerned that there's potential for abuse. And that user confusion will develop.

In the meantime similar strings are not delegated. So no one else is getting them.

Kristina Rosette: So but what is the rationale for not moving those to extended evaluation to provide the applicant with an opportunity to demonstrate why in fact there is no likelihood of user confusion?

Man: Well we don't have a standard for it.

Stefane Van Gelder: Can I just let - Wendy's dying to get into this.

Wendy Seltzer: Thanks. I mean so to my ears I'm hearing that this is precisely why TLDs are not the equivalent of trademarks. Because well for some people they serve as source indicators.

For others they serve as location designators. And if a registry were to assign coke.fu and coke.f00 a user might be confused about how to get to the one that he wanted to reach selling coal products.

And forcing all of that into ICANN's contractual resolution I think would over burden the contracts compliance department. And it might well be a matter for extended policy discussion here.

But it seems to make sense to me to defer that.

Kristina Rosette: But we're talking - I guess the point I was referring to was Edmon's scenario where it's the same entity. So there can be no user confusion as the source.

Wendy Seltzer: Of course there can be. If the same entity controls foo and f00 and chooses to delegate at the second level to different places, the end user -- trying to distinguish between string .foo and string .f00 will be driven to two different places and forced to make that visual distinction.

Stefane Van Gelder: Yeah, yeah. You can - it's obvious an interesting discussion for this evening. Right.

Avri you had...

Avri Doria: Yeah. I'm just trying to understand what was said before. So if I understood the reason that you were basically not allowing for extended evaluation is because there isn't a set of policies that determine how -- even if it's the case of the same owner -- you would prevent the confusion at second and third level because we've seen that technically doing that there isn't any sure way of doing it.

And procedurally it's difficult to define. Yet you were able to decide to allow that for the case of the ccTLDs, the ID and ccTLDs that had exactly the same

set of problems were exactly the same point of control as the - exactly the same second and third level confusion issues.

And yet you were able to decide that there was a way for them to procedurally keep the confusion out even if it couldn't be done by a direct technical. So I'm not quite sure I understand.

And not actually making an argument one way or another. But I'm not understanding the parity between the two situations.

Where here we don't have a way to do it but there you did have a way to do it.

Man: So I could answer the question several different ways. One is, one is the ccTLD, one is the cTLD.

One, you know, it was a painstaking process that sort of remains an experiment that - for delegating variants. Two is those variants in fact aren't similar.

They're just variants. So they're not confusingly similar names.

And three is that that particular applicant had a lot of experience doing that very same thing. So it was thought that if we were going to try to work through that issue with any TLD that would be a good applicant to do that.

And so all those things don't really scale on (unintelligible) TLDs. And I - so the - I think that, you know, I agree with Wendy.

You know, (unintelligible) .com and then .c0m and that NV could choose to delegate second level name e-mail or second level trademark infringing names to .com and cause user confusion. An argument that actually resonated with Kristina when we first talked about this.

So anyway there is a difference. And I can - I could sit over there and make the same argument you're making.

But, you know, it can be differentiated in some way. Whether you buy into that or not, you know, I understand.

Stefane Van Gelder: Okay. I had myself in the queue next. Mike, you've been standing there for a long time so I'll go after you.

Go. Go on. And then (unintelligible) you had a question too? No, okay.

Michael Palage: Just a follow-up Kurt real quick. It would really help following up on my previous comment if you could explain this, put this in writing.

This is one of the things I think you heard from the GAC. Explain as Avri said why you could do it in the cc and why you can't do it in the g.

That would help to put it in writing for both the DNSO as well as the GAC to understand this difference.

The second point I just wanted to follow-up on was a comment that was made by Marilyn Cade earlier about the single letter allocations at the top level domain. I think your reference was that was valuable beachfront property.

I participated in the reserve name working group. And I don't recall that being part of the policy formulation.

So again if there were other economic factors that ICANN was considering in this implementation process -- if you could highlight that in any statements. Because again I don't recall that.

And it's Dan who was a member of that on staff could point to that economic valuable beachfront property for excluding those strings in this round I would appreciate it. Thanks.

Man: I think Marilyn said that the reserve name working group said the single names should be delegated and additional work should be (unintelligible).

Marilyn Cade: No I said that at the top level the reserve name working group said further work should be done in order to do the allocation of single letters at the top level. So I kind - it was sort of what I said but not quite.

Michael Palage: Yeah I'm not good at that. So I agree.

But I think additional policy work needs to be done. And then, you know, the beachfront property moniker was - or label was just something I copied from somebody else.

Thanks. But they should be delegated, you know, with additional (unintelligible).

Stefane Van Gelder: Okay. Can I just ask why with the string requirements you've in this version of the applicant guidebook people are no longer allowed to ask for a string that has digits and - letters and digits.

Man: Because the RFC says so.

Stefane Van Gelder: But it didn't say so before.

Man: Yeah.

Stefane Van Gelder: You just missed it.

Man: Yeah it's a revision. No it's - yeah it did not say so before. It's a revision to the RFC.

Tina Dam: Hi so this is Tina Dam at ICANN staff. So the RFC we're talking about never said that digits were allowed in the TLD.

                    What it was changed to was to allow it in the case of IDNs where the A label would contain digits. But for digits in top levels was not allowed.

Man: And so what we were anticipating - so this RFC's been working on - worked on. And what we're anticipating since numbers are required for IDNs that some numbers would be required in the preliminary work we did.

                    Indicated as long as the number wasn't the trailing or leading character that it would be okay. And the ITF RFC determined that, you know, I don't know if it's an (abundance) question or that, that number should be included.

Stefane Van Gelder: Right. In the interest of time let's move on to Module 3 please. Can I come back to it?

                    Because people are getting anxious that we won't get to the end. Is that okay?

                    Perhaps you can - yeah you can do it at the end. Yeah.

Edmon Chung: Can you - just right now how it's written the IDN (ask) label would also be disallowed how it's written. And I think - I understand it shouldn't be.

                    But I think there needs to be some editorial changes to it. No, no, to the applicant guidebook.

Stefane Van Gelder: Module 3?

Man: Legal rights objection area. We expanded some (unintelligible) top level
                based on (unintelligible) something we've talked about for all modules the
                guidebook's never put in.

                And we (unintelligible) top level and (unintelligible) can object to top level
                registration of (unintelligible).

                Criteria for determining what an IGO name (unintelligible).

Coordinator: This is the operator. We're not able to hear again.

Man: Any objection there is - complete defense has been eliminated. That's always
                been somewhat controversial.

                (Unintelligible) the complete defense which required an adjustment in the
                standard in order to protect some bona fide community applicants. Then the
                objection formerly known as morality in public order.

                We adopted several of the recommendations of the Rec6 working group. And
                among them are that there be the ability for governments to provide
                notifications of controversial names to applicants that didn't rise to the level of
                an objection but was a notification.

                We included the reference to additional treatise. Change the name in
                brackets there.

                And, you know, re-worded the policy recommendation language to
                (unintelligible) of international law and provided a lot more clarifications and
                information about how the quick look test would be run. So those are - that's
                what's - well I'm sure what we're going to (unintelligible).

                So what we didn't change in the objection formerly known as morality and
                public order is the board role. So reading the work of the Rec6 working group

and then having a discussion with them -- there was some uncertainty as to the specifics of some of the recommendations.

And we furnished the working group with a set of clarifying questions so we could really identify, you know, where we have differences or where we have opportunities to adopt additional material. So a reading of the board role in Rec6 requires a board vote of every (unintelligible) name or the objection was upheld.

That differs from the board resolution of the board role in the new GTLD process where they maintain responsibility and oversight for the program. But don't vote on individual applications where the board can be subject to lobbying and other pressures.

And where they don't have expertise. The scope of the standards -- the recommendation 6 working group recommended widening the discrimination standards which means more TLDs would be kept out -- significantly widened it.

And although it said that was a consensus recommendation our discussion with the working group members indicated that something - the scope of objections should be, you know, more limited and not widened. So (unintelligible) clarifying question about that.

And then standing to object there's, you know, what is the standing of - that the GAC and ALAC to object. So what - if the GAC wanted to object to a TLD application what would constitute that? Would it be one GAC member or how would we go about it?

And - the scope of standards. So discrimination is one.

Another one was that if there was an objection by ALAC and GAC that the standard for upholding the objection would actually be lowered. And current

thinking is standards for determining the outcome of the objection should be the same for all entities.

So I think that's kind of where the issues are on Rec6. And there's going to be a session on it on Monday.

And board members will be there to listen to the Recommendation 6 working group members and understand their recommendations and have a discussion about it. Lots of activity there.

Man: We can just end it there so...

Man: Thank you.

(Steve):   I have a question about community objections. In Section 3.4.4 there were two additions to what an objector has to prove in order to detriment.

It's always been in the guidebook that the objector would have to prove detriment to the group the objector was planning to represent. Now there are two additional tests.

One is they had to see the material detriment to that group. Second they have to prove material detriment to the broader Internet community.

So even if they were able to prove that they represent a group -- a language group, an ethnic group, whatever -- it would really be directly materially harmed by a new - by a (unintelligible) they lose the objection if they can't prove that the entire Internet community would suffer the same detriment. So I wondered if you have a - could provide a definition of material detriment or you're planning to?

And could you provide a definition of the broader Internet community in this context. So that objectors will know what it is they have to prove in order to prevail on an objection here.

Man: So we can work to clarify that. You know, we - as a way of explanation when we eliminated the complete defense we saw scenarios where -- let's see, I'm trying to think of an example that would be okay.

So there's a community, you know, application or an application that could purport to represent a community. It doesn't have to be a community based application.

And say a hate group, you know, objects to that community and says there's harm to my hate group. So absent the complete defense that hate group objection would carry because there's detriment to his community.

So we sought to protect against that by requiring detriment not just to that single community but also to the broader Internet community. And then - but we sought also to make it - make sure that that detriment was material so - to try to balance that.

But the addition of the broad community was meant as a counter balance to bad outcomes that occur with the elimination of the complete defense. So that's not exactly answering your question.

And I'd have to go back and see if we can provide a better definition of what material detriment means.

(Steve): I hope so. And I hope you can also provide a better explanation of how these two are linked.

Because the complete defense applied no matter how much detriment you showed. If I could prove that everybody in the world would lose a kidney if this gTLD were granted they'd still win.

Man: Right.

(Steve): If they represented the community.

Man: Right.

(Steve): That was the complete defense.

Man: Right.

(Steve): That's gone.

Man: That's gone.

(Steve): But do - why do I have to prove what I have to prove that everybody in the world is going to lose a kidney if - rather than just having to prove that my group that I represent will be harmed. So I don't find your hate group scenario particularly plausible.

Because again it has to be a group represented by the same string. So - and in fact it could be even - well we've been through this on many occasions.

It just strikes me that requiring community objector to prove harm - that material detriment to the broader Internet community -- that's the highest standard I think in this entire guidebook. It's going to be impossible to me.

And it basically means there will be no community objection. So I hope you can clarify first why you thought it was needed -- because I don't think it came from any public comments (unintelligible).

And second maybe what is intended by the broader Internet community.

Man: Okay. So we'll work on the second one. But I just want to take another shot at the first one.

When - so it wasn't - the detriment wasn't inserted as - based on a public comment. It was not needed before because the applicant had a complete defense.

And you and others have indicated there were problems with that complete defense. We got rid of it and ran scenarios.

We determined another problem. And so think about dot any ethnic group both the lovers and the haters of that group can identify with that string in that community.

And so can - so there could be a bad outcome where the haters of that community say that string's associated with my community. And we're harmed by that string being in it.

So we're trying to prevent that negative outcome. What you're saying is, you know, that it's like a little bit of a (unintelligible) machine.

So we'll take, you know, I understand your comment. And, you know, we'll talk some more about it and see if we can work through it.

Man: Thank you.

Man: Thanks. (Unintelligible) before you - I have Tim wanted to ask a question and (unintelligible).

Tim Ruiz: Thanks. So just on that same topic Kurt, just so I'm clear because we're formulating our comments or whatever. So the - it's in that paragraph where, you know, it says likelihood of material detriment to the rights or legitimate interest of its associated community -- is that referring to the associated community of the objector?

Or the associated community of the application?

Kurt Pritz: Community of the objector.

Elliot Noss: Thanks for that. I appreciate and understand...

Man: Say who you are.

Elliot Noss: Sorry. Thank you. Elliot Noss from (Unintelligible).

I appreciate and understand completely (Steve)'s desire for specificity on those points. And without commenting on the specific I want to take it as an opportunity to use that to extrapolate to a general point.

I think that one of the things that we have struggled with as a community over the last two and some would argue 12 years is the overreaching desire for specificity. And I strongly urge everyone in the community to remember that we will be much more accurate, effective and appropriate if we allow issues to not be necessarily completely defined in the abstract.

But to allow issues to play out in the specific after delegation. And I think that the UDRP has provided a great example of how that can work in many regards.

(Unintelligible) great extent one of the great successes is that it wasn't over specified at the beginning. And the body of thinking was allowed to evolve.

I think with new TLDs we're going to have three or four or five different streams where we need to allow that thinking to evolve. And when we're dealing with the specifics -- not bogeymen in general or shadows hanging around corners -- we're all going to make a lot greater use of our time and solve our problems more effectively. Thank you.

Antony Van Couvering: Kurt do you want to respond to any of that?

Kurt Pritz: No I'm good.

Stefane Van Gelder: Okay. Antony?

Antony Van Couvering: Hi I'm Antony Van Couvering from Minds and Machines. This - my comment has nothing to do with Module 3 because it is a comment I've made many times and it's not in the guidebook at all as far as I can find it.

And Kurt I would like you to quickly respond to the question of people registering TLDs as trademarks and whether ICANN is going to give those any priority. You mentioned that you thought it was somewhere when we met in Nairobi and in Brussels.

But I have not been able to find it. Thank you.

Kurt Pritz: I don't under - priority in what way?

Antony Van Couvering: So I register .foo as a trademark. And then I am not the only applicant for .foo.

And I use my trademark to gain a priority over the non-trademarked version - application.

There have been a lot of people registering top level domains as trademarks and running around saying that they're going to get the TLD because they have a trademark and a prior right.

Kurt Pritz: So I think Antony thanks for pointing out if there's - if we could give a better answer we'll try and maybe come up with something and maybe put something in the guidebook to kind of proactively address that. But I think right now the answer would be there's nothing in - there's no such provision in the guidebook that would give any such priority.

There's - anyone can apply for any string. And there are grounds for objecting to strings.

And there's a string contention resolution process. But otherwise there's no special priority given with having a - you know, it doesn't give you bonus points in any evaluation that I can think of.

It doesn't help you in the string contention. There - I don't see how it would come into play right now.

Antony Van Couvering: Well one quick follow-up. I would just say that that may be true but on the ground there's a little bit of an arms race going on that's I think highly destructive.

Where some of us are doing this as almost as a defensive measure to deal with the fact that some of our potential competitors are doing this. And it'd be nice to end that and get some advice from ICANN that a trademark for a TLD is not going to be considered as any kind of priority.

Instead of just leaving it out. Thank you.

Leaving your rationale out of the guidebook. It'd be nice to see some specific language.

Stefane Van Gelder: Mary.

Mary Wong: Thanks Stefan. In the interest of time leaving some of the Rec6 discussion for Monday NCSG at this point would like to ask one question about the independent objector.

And in the guidebook it says that obviously besides independents and so forth that his or her tenure is renewable. So our question is in what (unintelligible) metrics for determining renewal or non-renewal?

And would the ICANN staff be willing to work with the members of the GNSO community and others in other SOs and ACs in developing those metrics? We - so as not to delay the process.

We're not saying that the metrics must be identified now and included in the final version. But we would like to see those metrics developed and implemented.

Kurt Pritz: That's right. So they're not determined yet.

And they would be determined when we enter into an agreement with an independent objector. And then have terms for renewal.

So we would welcome working together on what those would be with the GNSO and the broad community. And, you know, the board also wants to see what the measures of success for the new GTLD program are.

And I think that would, you know, inclusion of that among those is important. So yeah that's really well taken.

Stefane Van Gelder: Tina?

Tina Dam: Just following up on Antony's comment I'm a little concerned about where this could go simply because I think what he's talking about is people such as, you know, Minds and Machines parent company applying for .golf and .kids and .poker et cetera as to get trademark registrations. I know that there's a whole slew of them on the community trademark register.

                But I would just caution ICANN to be very careful about how you go about that. Because if you aren't careful you're going to end up basically emasculating the legal rights objections which I think I can say with some degree of certainty if that were to happen any delay that we've had so far would just continue to increase.

Kurt Pritz: And the clearinghouse for example doesn't accept those sorts of trademarks, you know.

Stefane Van Gelder:Any further questions on this module? Let's move on to Module 4 please.

                It's short apparently.

Kurt Pritz: Oh no. Go ahead. Take questions.

                So did I leave that in there? So we did -- we continued to run scenarios, had discussions with different community members about touring for community evaluations or community priority evaluations.

                And at the end of the day decided to leave the guidebook the way it was.

Stefane Van Gelder: Alan, you have a question.

Alan Greenberg: Kurt there's some discussion in the guidebook in a footnote about the - how windfall profits from auctions might be used. There has been some community discussion that it's going to be an interesting and perhaps difficult

issue because of tax status and the money is actually accrues to ICANN it may not be easy to get it out without impacting tax status.

Has there been any discussion that you can share on the concept of foundations or whatever else that might be used (unintelligible) in place for that kind of money?

Kurt Pritz: Yeah so the problem or the rub is ICANN's status as a (unintelligible) and what forms the company might take (unintelligible) establish, you know, a foundation might be different.

Different ways of going about allocation of the funds would dictate different forms of organization. So it becomes kind of a complex issue to discuss with it in terms of the guidebook.

And not one we really want to - not a discussion, you know, the form of organization of ICANN is not one we want to put up for public discussion to have a discussion about. So I think the community discussion that has to take place is, you know, how the money should flow and who should get it and who should decide who gets it.

And then ICANN can, you know, appropriately form around that and still have it (unintelligible).

Alan Greenberg: My question was has there been any internal discussion of the auctions, not so much are you going to publish it in the guidebook.

Kurt Pritz: Yeah so there's been discussion of options where, you know, here's one form the company could take. Here's another form the company could take.

So there is a list of options. But certainly no decision or even discussion about which one of those to take.

But legal analysis that says here's what the options are and that they're viable.

Man: Some transparency would be nice on this. Thank you.

Stefane Van Gelder: Avri.

Avri Doria: Hi. Thank you. My sort of a follow-up on that -- and I want to make sure again that I understood. Sometimes I don't necessarily understand.

So in your response did I understand correctly that you do encourage the community to come up with suggestions to work with you all to come up with concrete proposals on how those monies could be dealt with whether it is foundation or some other mechanism. And you're looking for community GNSO et cetera input on those things.

Kurt Pritz: Yeah sure. You know, ICANN is what it is.

So, you know, personally we don't have any dog in that fight other than to make sure the money is put to good use.

Avri Doria: So one follow-up. So and actually working corporation with a group in the community doing that would be a reasonable way to go about it?

Kurt Pritz: I think so. I feel like I'm being led down the garden path a little bit. But...

Avri Doria: No just trying to clarify. Thank you.

Stefane Van Gelder: Any further questions on Module 4? Amadeu

Amadeu Abril: No? Okay. Amadeu Abril. Okay Kurt one question.

Try to forget the (Jordi) initiative here. Do you think that .card - the application received of .card in 2004 is a community based TLD application? Regarding the policies, the intent or who was applying et cetera, et cetera?

Kurt Pritz: Well...

Amadeu Abril: I will tell you why I'm asking that. The question is if you take the comparative valuation criteria, the community evaluation criteria it shows that .card would score 11, most probably 12.

Beyond that it's very doubtful according to your own staff regarding the differentiation of the questions. Really think that .card is one of the example of community that we have working.

Not the only one but one of them for me without a doubt. The question is if all those like .museum that have somehow close numbers, predefined close numbers even if you can view .museum all the time.

But, you know, there are associations with, you know, cards, yeah? You have numbers and registers.

Could possibly succeed. But any other type like .card that's pretty well defined but somehow the population is really more in influenced those using a language for communication which is something you - it's objective but not predefined.

You don't have a card for just speaking one language. They are really in the back side.

And language TLDs would be just one example. There are many others that are perfectly similar but for most probably would fail below 14.

Not below 13 perhaps but below 14 very easily depending on interpretation. I think this is a problem.

Kurt Pritz: So there could be two applications, right -- .cat and .catalog. And .cat is sort of a generic word too where others might have a claim to it.

So it would make sense in a community evaluation that the community that picks a name that's, you know, right on top of its label would score higher than a community that elects to choose a generic word where there might be competition for that word.

In the STLD round there were just sponsored or, you know, I'll use the word community based TLDs. And so there was a baseline criteria for that.

But in an open round there's competition for names. And so the criteria encourages but does not require but encourages, you know, communities to apply for the label that's most clearly associated with that application and community.

Amadeu Abril: Yeah but the question is not the label. The question here, our question's about, you know, the policies.

And once again there's an extraordinary premium for having name selection with closed number members of the community. And the closed numbers members of the community is the real problem here.

If you don't have that and this is true for most communities -- it had cultural, linguistic, religious, hobbies or whatever you have not, you know, membership card carrying - and there is not a central register like, you know, the super register or something like that. In all these cases it's very difficult to score 14.

That's a problem, I repeat.

Kurt Pritz: It's not small numbers, right. It's just members of a well-defined community.

Amadeu Abril: Well yes. I will do the same I did previously. I will say again to you and many others the, you know, analysis of how different types of existing TLDs were to score according to my view (unintelligible) and then we'll see whether, you know, the results of what we all expect or not.

But I repeat I would expect things like .cat to be able to score 14. For instance in order to have little trouble with an application for cards, being generic or (unintelligible) competing application .cat.

They would have an option in that case if they failed to score the 14 -- .cat or many others. While .cat is there it's not a problem, right.

But similar things. And I insist -- I think there's an excessive premium for close number of communities in - because they score in many different places at the end. That's the real problem.

Man: Amadeu - thank you for that Amadeu. So I think please if you can help with specific comments on particular - I mean we're kind of flipping through the criteria and trying to figure out which one you're talking about and which one you think should get more points or less points or how to change the wording on a particular one.

But like (unintelligible) said we've done this a lot. And it's hard.

And we know there are people who don't want to raise the threshold. Some want to lower it.

And it's a tricky thing -- one of the harder things in the guidebook. But to go back to your first question I'm not sure if we both - maybe we both - Kurt and I are both misunderstanding it.

But yes we think .cat is a great sponsored TLD, could and would be a good community TLD. But we didn't necessarily design it to make sure that if this were to run again and .cat were to apply that .cat would get 14 points.

That wasn't like a design goal. And - okay.

And one of the features of that is you're basically saying by scoring 14 points that no other application is even worth looking at. Because that application -- once you get 14 points -- there could be 10 other well qualified applications for the string that have great business plans and are well qualified.

But we won't even look at them. We just boom, give the TLD to the applicant that scores 14 points.

And I'm not sure if we ran it again today and .cat were one of 10 applicants that in that case we would want to just give it straight to .cat and not look at the other nine applications and go through the whole contention process. There might be other applicants who would - could also have a claim to or do a great job at running a .cat registry for other reasons.

Stefane Van Gelder: Thanks. We've got just under 45 minutes left in this session. So perhaps in the interest of time we can move on to Module 5 which is the last one that Kurt's presentation will cover.

And then open it up to questions both on that module and more general questions if there are any. Going to spoil my game plan.

He hasn't presented it yet.

Kurt Pritz: So at Module 5 we've describe the board role and the process where they retain responsibility and oversight but did not get involved in individual

applications as we discussed before. In the trademark clearing house we took many comments about the definition of substantive review and clarified that.

The, you know, all trademarks are included in the - all registry trademarks are included in the clearinghouse. And then which ones are registries honored to - required to honor in the IP claims and sunrise period.

And depending on which one it's a little bit different scenario. That was actually in guidebook four.

And URS, we shortened the response time back to 14 days. In the registry agreement among other things associated with co-ownership we included a code of conduct with regard to how the - that really focuses on how the registry and registrar should separate their operations when they're co-owned.

Are there any issues? So this is it.

Kristina? Oh wait, there is - and the code of conduct. Why don't you go back?

Jeff Neuman: Yes I'll go. I asked Stefane early on I think you. Yes, I have three questions and they're all on new stuff that was put on. So it's not rehashing anything old.

One of the things, and this first one's going to be a little detailed because it's a little technical. But there was a big change in the way that ICANN is measuring service levels in the registry agreements, which I think has the danger of - it was well intended.

And, you know, I understand the intention of it. But essentially it took the SLA measurement, instead if being completely internal within the registry system, now service levels are measured from an external sources of ICANN. Which

could be impacted by externalities that have - that are under - that are not under any kind of control of the registry where the SLA is being measured.

To be specific, it used to be in DAG Version 1 through 4. And how we operate today that service levels are measured from the time a transaction enters the registry system to the time the transaction leaves the registry system.

Now ICANN has changed it to where ICANN from some node from anywhere in the world will somehow measure the service level of a transaction which could be impacted by network latency or all sorts of externalities that of course the registry has absolutely no control over.

And I think that, I think it needs to go back to the way it was. Otherwise you're going to have registries fail service levels for reasons that they have no control over.

And I think the intent was that like registrars they can test to see if their who is is up. You could test that from external sources. And that makes sense. So there's a big difference between testing whether a service is up versus what the response time is.

And you can't really do a response time test from an external source. So I think that needs to go back to the original language. Or, which would be much more complicated, somehow ICANN would have to have, and I'm not advocating this at all.

But somehow ICANN would have to have some probe within a registry system in order to measure it. And I think that would be way to complex for you all to do. So I think, so that's Number 1. I don't know if you want to respond to that or?

Francisco Arias: Hi, this is Francisco Arias. I work in ICANN staff. The idea, by the way, this has been since Version. The idea is to measure the service from the point of view of the user or at least closer to that.

But regular way that is doing now with the (head quote) and the lease, according to the lease to serve the measurements are done inside the registry of Philippines.

And the idea now is to be able to measure something that is close to the experience of the user. So you can measure all the user experience the DNL resolution, the whole resolution.

Jeff Neuman: But the issue with that is the user has their own externalities from their own IST or wherever they're coming from that have nothing to do with the registry system.

So you'll have a lot of false positives where service levels are not being met, but they actually are. From, you know, I can't control it. If you're coming, pinging the who is let's say.

If you're pinging it from Thailand and our closes node is in China, and something in Thailand is going on that's affecting all the ISPs here, you're going to measure that and you're going to get a miss from the registry.

But the registry is actually not missing. It's taking the transaction. It's processing it. It's doing it within the response time. So there is no service level violation. But you will come out with a miss.

And then that would be a breach by the registry operator. The registry has absolutely no control of it. If you want to see if something's up or not, as far a complete availability, I understand that.

And then even then you got to make sure that there's not externalities preventing from wherever your node is. But if you're checking response times, which are in the, you know, milliseconds, you can't do that from a external source.

Francisco Arias: The way we are trying to deal with this is to have multiple points of measurements. So you can try to avoid the difficult and these kind of issues. So if there is an issue in Thailand, it will be isolated from the measurements.

Jeff Neuman: I think we should talk about it. But I think you're still going to have the same problem. And you're going to have false misses. I think it's a big issue for registries or anyone wanting to get into it because it's definitely going to - it's going to look to the outside that you're missing service levels when you're actually not.

So I think if we could kind of meet on that and talk about that after.

Man: Yes, I'm definitely happy to meet and talk about that. And thank you Francisco for stepping in. But I think the point, I mean what Francisco is saying is we're not going to just say oh, you missed one response time in Thailand, boom, you're in breach.

It's, you know, the idea is to have let's say, I don't know if it's two, five, ten probes I think they're called. And we check from different places. And if we - if we're checking from ten places and none of our ten probes can reach your registry, but you're saying you're registry is up and running fine then I think that's your problem, not our problem. But we'll work on it.

Jeff Neuman: But that's not the way service ever measured in any industry. And I'll go even Marilyn with Telecom, you only measure from the point that something enters your system to the point it exists your system.

Everything else is completely external. And even if you got from five different sources in the world, it all is where you're pinging the system from. Unless you're right in the system itself, you'll never get an accurate measurement, ever.

You can do it 10 times or 20, you'll never get it.

Man: So that's on response time. But availability is...

Jeff Neuman: No, availability, you know, yes sure.

Man: Then again, you know, we're happy to look in it. I think the whole question about that SLAs and the measurement is something that, you know, is one of the like my top things I wish there was more community focus on.

I don't think we can make kind of all like nobody bothers to go through the, I mean some people do. But there's a lot of meat there in the specs. And it's of, I would think of community interest, you know, what does the community expect in terms of registry up time?

And we don't know ourselves with that. (Unintelligible) comment, we don't get a whole lot of comments. So it's good to hear the feedback. And we'll definitely work you on that end. And if people have other comments, we're happy to take those too.

Jeff Neuman: Yes, I think...

Stefane Van Gelder: Jeff, Jeff, can we...

Jeff Neuman: Yes, I've got other points.

Stefane Van Gelder: Yes, I know you have. Can I come back to them? Can I go over to some other questions? Or do you want...

Jeff Neuman: Sure, I guess.

Stefane Van Gelder: I will get back to them. It's just...

Man: I'd like to make one correction that Francisco pointed out, it's 20 points (unintelligible). We'd have 20 probes technically for availability and response.

Stefane Van Gelder: So I had Kristina next.

Kristina Rosette: I have a question about the 7.4 with regards to the trademark clearinghouse which indicates that substantive evaluation by the trademark clearinghouse validation service providers will require evaluation on absolute grounds and evaluation of use.

With regards to that first requirement, evaluation on absolute grounds, is the intent that the trademark clearinghouse provider itself will conduct an examination on absolute grounds?

And if so, do you really have a candidate service provider that can do that?

Man: Yes I think so. And it's for cases where there's not substantive. You know, for trademarks for jurisdictions without substantive review.

Kristina Rosette: But I think almost every trademark jurisdiction in the world conducts examination on absolute grounds. So to have the clearinghouse provider try and do it is not only duplicative, but I think frankly likely to result in just inconsistent consequences.

Man: Yes so we would certainly honor the absolute grounds.

Kristina Rosette: Okay.

Man: Filing of a trademark registration.

Kristina Rosette: Okay. And then with regards to the evaluation of use, is that going to be use required at the time, at what point and time and in what scope? And what I mean by scope is if you've got a trademark registration that covers, you know, 37 items, does use have to - is there a requirement that the market be in use?

                        And again, at whatever time it is, and that I think is important to find out, on every single one of them, on one of them? What's the standard there? And are we likely to see more detail on that?

Man: I guess you will. I don't know.

Kristina Rosette: Okay, all right, what about the timing for the evaluation of use? Will it be for example when the trademark owner wants to submit the relied upon mark to the clearinghouse?

                        When they want to rely on that registration for participation in an RPM? At what point and time are - is that use requirement going to apply?

Man: So I think that, well it's certainly when it's entered into the clearinghouse. That's how you get into the clearinghouse. But then isn't there some provision in the clearinghouse that there's updating or submitting of information or a re-evaluation?

Kristina Rosette: Right. But I think that's limited to kind of ownership and validity of registration, et cetera. I don't think it really goes to that.

Man: We'll provide detail around that so it's certain. But do you have a point of view about what it should be?

Kristina Rosette: Not yet.

Man: What are we supposed to do?

Stefane Van Gelder: Okay, Alan, Jeff, I'll put myself in the queue after that.

Alan Greenberg: Two things, just one a very quick comment on Jeff's question on response time from registries. And I'm not a registry, and I don't really care.

But I found the answer to be almost classic ICANN tunnel vision about focus on US and Western Europe issues. If the registry is in Thailand, and Thailand is experiencing a problem, all 20 probes will fail.

I think we really need to think about registries being somewhere else other than New York and Washington and Chicago. Make sure that the test really, I don't really want to go into it in detail.

I'm just saying the details should address that kind of issue. It's really important.

My specific question I was going to ask or comment I was going to make however is on the 14-day response time. I was exceedingly disappointed to see the board deciding to take an overall GNSO policy recommendation and change one specific detailed point in it.

Without recognizing or even commenting on the fact that within the STI group that developed it, there was a significant amount of horse trading that went on to get the intellectual property people to agree to move 14 to 20 days.

The people who wanted a larger time gave up a lot keeping that in. And have the board make change at that level of detail to an overall GNSO policy recommendation I found exceedingly disappointing in what I thought the board was not supposed to be inclined to do.

Man: So Francisco did you want to make a comment about Alan's first point?

Francisco Arias: Yes, just a point. I got to say that if the rate breaks in Thailand, then the 20 probes will be in Thailand. That's not the way it is.

Alan Greenberg: I was assuming your 20 probes would be wherever your 20 probes are, probably not in Thailand. And if the problem is on the Thailand (gateway), all of those probes will fail despite the fact the registry is still acting properly.

Francisco Arias: If the rate is in Thailand, there is a problem in Thailand. And so the world cannot see the TLD (30 cent) issue with the TLD.

Alan Greenberg: There may be an issue with the TL - with the network in Thailand. It's not an issue with the TLD whose only crime is locating there.

Francisco Arias: You didn't mean crime, did you?

Alan Greenberg: Fastidiously yes I did. But, no I didn't mean crime.

Francisco Arias: I don't think it's a crime.

Man: So there, you know, your point on the URS is well taken. There is protections, there were also protections added for registrants in case of the 14-day response time is exceeded, you can file, you can re-file and re-open and have the URS hurt again.

There's an appeal. So, you know, a balancing took place.

Alan Greenberg: I just found it disappointing that the board decided to make changes at that level. Without even going back to look at what the arguments were for setting it at 20 days within the group that they had asked for the very tight deadline on for coming up with that recommendation.

Man: I think the board looked at all the arguments.

Stefane Van Gelder: Okay can I go to Jeff.

Jeff Neuman: Thanks. My next comment is on the code of conduct. And I think this was the intent of the code of conduct. But it just, it's a pretty easy fix. When you say in Number 1 it said the registry will now allow any parents, subsidiary, affiliates, sub-contractors, et cetera.

I think you mean for all of those for that TLD and not just in general. You could have a sub-contractor, let's say it is a registry and they sub-contract to anyone. Could you back end services?

The way this is written right now, it would prevent that sub-contractor from doing any of these things, the other TLD or any other business that it has, which is not really your intent.

I other words, are you looking at it? Do you understand what I'm saying? I think what you mean is will not for this TLD directly show preference et cetera. Because if you have a registrar already that becomes a back end registry operator...

Man: Yes so I understand. So we'll - to comment, we'll go through the code of conduct to make sure where it should say and should not say in the registry TLD in each case.

Jeff Neuman: Right. And then the last comment is on pricing. The pricing section, not specifically on pricing. But I think this section still, and I read the comments and the response.

I think it still prohibits or still interferes with certain types of rebate and other marketing programs that are done on a seasonal or, you know, on a temporary basis.

It still implies that upon renewals of domains that there still needs to be a six month notice, even if there's a separate rebate program where everybody knows it's a temporary rebate.

But the overall issue on pricing which is something that we need to kind of visit it. Now that we've obliterated vertical separation right, so now we completely allow integration.

The general question that's come up with the registries is why are we even delving into any pricing regulation at all? And why can't we just have a simple market test like you have for integration?

In other words, why does it matter the pricing practice of a registry that's got no market power? So I think that's just a question. Again, it's not for now. It's a pre - it's a deeper question.

But it's something that needs to be looked at. I mean if you've gone now with the vertical integration saying well we're going to allow everything to happen unless there's market indicators or market control otherwise, then why are we even really getting into pricing regulation? Unless there's some sort of market control.

Man: So just yes. Thanks for the comment. And look forward to detailed comments. And hopefully it's always helpful, especially you guys, like exact text because that definitely wasn't the intent of the pricing provision to restrict the registry from offering discounts and temporary sales.

And so we're happy to look at that. And we've been through several versions of that. And we want to get it right just like you do. And just to reiterate that we're not, I mean the way I see it and others have made the point that the price provisions there are not price regulations.

They're price notification requirements. So it's about transparency. And like you've noticed, at least that's where the weight is. And I'm not sure about the point about registries and market power.

I mean as far as I think the comments that led us to put in the renewal price provisions weren't so much about, you know, market power and market share like you're thinking about.

But more about it was concerns from registrants that were thinking they were going to be locked into their registrations. And I think that might, you know, in terms of switching costs and being held up for high renewal prices.

And I think that might apply just as much in a small TLD as a big TLD. And whether or not there's integration. I think it was just a plain kind of consumer protection argument we heard, but happy to look at your comments.

Stefane Van Gelder: Thanks. I had myself, Wendy. But perhaps I can go to the two Philips since they've been standing there for a long time.

Philip Corwin: Thank you, Philip Corwin. On the (ERS), I'd like to commend Alan for his remarks. We share his disappointment that the board would go to their retreat in Norway and take a very long, difficult SGA RT compromise that was unanimously adopted by the GNSO and change that without explanation.

A question about it, the new rule is 14 days. But there can be a seven-day extension. I believe the standard is for good cause. I'd have to look at that. But will staff be providing any further guidance?

And I realize you can't vision every situation where a registrant might ask for that seven-day extension. But some further guidance as to what might or might not constitute good cause for receiving that extension.

Man:	So I want to go back to Elliot's comment. And, you know, the more specificity, yes, the more you might tie yourself up into knots. A lot of contracts have, you know, approval will not be reasonably withheld.

Or, you know, upon a showing of a...

Philip Corwin:	To clarify, I was not requesting specificity. I was requesting some guidance and perhaps to the point of illustrative examples of what might or might not constitute good cause just to give registrants some idea of what would get them that seven-day.

Without binding ICANN or the staff to this does and this doesn't because you can't anticipate every possibility.

Philip Sheppard:	Okay. So thank you. It's Philip Sheppard and speaking on behalf of the business constituency. I want to go back Kurt to the point that you were hearing earlier from Kristina.

And this is the qualifying wording in terms of trademarks for the various aspects of Module 5. We completely share the objection you're chasing. We completely share the objection of the board we're chasing.

Unfortunately, neither certain wording yet covers it. We have however been consulting widely with expertise globally on this. We've got a set of wording which we think does cover it.

You will get that very shortly as part of the EC position paper which is a very specific paper which has got, you know, some old wording, new wording styles. So you got twice the decision you were requesting from Kristina.

I've just shared that wording with Kristina and the IPC. And their initial reaction was that seems also to do it. So they will look at that in more detail and also respond on that.

But I hope that you take that. It does cover it. And the key issue that we're covering is at the moment your wording is overly specific about (first) and trademark (cogenes). And it's not global.

But chase price is the same objective. We can it in the way that is global and that provides rights for the balance between rights of trademark owners versus, you know, a balance we need in terms of where cyber squatters you may want to stop.

But you will be making price to difficult for one. It's going to be difficult for the others. So you need to get balance right. We think we've just about done it. So I would urge you to look at that wording and convince the board that we all share the same vision.

It's just that perhaps, you know, there's greater expertise on this particular issue elsewhere.

Man: And yes, we will furnish wording.

Man: Okay. I had a question, just a clarification question about the time limit that is imposed on an applicant to execute the registry agreement. Can you confirm that there's no time limit once that has been done?

There's not time limit imposed on the applicants to actually launch a TLD. So that once he does execute it, the agreement, he doesn't need to launch in any set time.

Kristina Rosette: So I believe what it says in the registry agreement is there expected to be delegated within a year of the time they sign the agreement. And that also has a provision that it can be extended if, you know, they can show that their working, you know, taking the steps toward doing that.

I realize that delegation is not exactly the same as launch. So, you know, as far as when you have to start selling names there's nothing about that.

Stefane Van Gelder: Thanks. Wendy you were next.

Wendy Seltzer: Very quick question, the recent changes highlight the limitation that a registry can sell names for no more than ten-year increments. Is there a reason not to permit a registry to engage in other models that might allow longer registrations?

Man: So that ten-year increment thing pre-dates me. I think it goes back to the 1999 contracts. And to, I don't know reasons why, I don't know if this is the original rational.

But one is that it prevents data from kind of going old if there was, if there were lifetime registrations, there would kind of be fallow registrations where the registrant had died or gone away.

And it would sit there for 30 years or 50 years and no one else could get that name. So it requires kind of a once in a while refreshing of the name space. At least once every ten years someone would have to renew it in each name.

So there, and also there's kind of a, and again whether, I don't know if this is it's intention. But it means, the way it's set up now if a registry were to fail and we'd have to find a new operator for it, if it had sold all lifetime registrations, there's not a renewal stream of money coming in.

There wouldn't be much incentive for a new registry to take it on. Whereas if you know that, at least in ten years from now, all those names are going to come up for renewal. There's more value in somebody else taking over that registry.

Wendy Seltzer: Just, I supposed I should clarify the question. Where the possibility of extended registration considered in the re-drafting area?

Man: I don't know that anyone's - that that comment has come in. If it has, I don't remember. But that might have been our first answer. But I guess we're happy to take comments on that.

And I don't know that that's written in stone anywhere. That's just how it's been in the contracts for the last 11 years, 12 years.

Stefane Van Gelder: So at the beginning we had Marilyn and Alan who wanted to ask questions, at the end Marilyn on economic studies I believe. And then we've got Adrian and Tom.

Okay, we'll go ahead then.

Man: (Dan), so would you be open to if we provided comments that reflected this. Would you be open to, you know, in adopt brand sense, having domain names that didn't have registration terms at all?

If, I'm just thinking out loud, if I'm a brand, say IBM, why would I need, and I'm using to my notes my own internal purposes, why would they need to have any registration term whatsoever?

(Dan):   Yes, we'd be open to take comments on anything. Just off the top of my head it seems like it's, you know, we'd have to just think about it. You know, how would that work for who is and registrar who is? And is that just a field we can drop out if they need it? Just haven't thought it through, you know.

Stefane Van Gelder: Marilyn.

Marilyn Cade: Thank you. Quite some time ago, well more than a year ago, I cooperated with AT&T and (Allison Mason) and then (Mark Monitor) to put together

(unintelligible) formed, articulate, easy to understand and stimulating discussion about what an economic analysis should address in order to identify negative and positive externalities.

I have been an advocate for ICANN completing the needed work in that area. And I want to note my appreciation for the delivery of Phase 2 of the progress for meeting ICANN's obligations to fully understand the economic implications.

The report is very helpful and does indicate the issues related to network externalities. It was delivered to us on Friday. And I of course studied it in great detail, see me later.

My question is given that the board, according to the bylaws, must take into account new information. And this is new information. What's the process in order to enable the board and staff to incorporate the implications of the study? And my second question is how long is our comment period on this?

Man: So the board is, you know, reading the report with everyone else. And has scheduled us a separate session on Wednesday dedicated solely to this so it could gain a better understanding of it.

The board's going to take into account the findings of the - of this report. The board's also going to listen to the community, you know, during this week. And in order to understand whether, you know, what are the implications of the report for the timing of the new GTLD process.

And they're going to have several implications right. The report on it's, you know, the report could indicate that GTLDs should be launched without any changes in the guidebook.

The report could indicate that we ought to consider changing the guidebook. The report could, you know, and initial review of the report could indicate we

need a new public comment period on the report so that the community could interpret the report and report its interpretations to the board.

So I think the, you know, the board wants to hear while we're here what you think and what should be done. And so it can make a decision on that.

Stefane Van Gelder: Thanks, Alan.

Alan Greenberg: Thank you. The recent launch of the Russian Federation IDN ccPLD has experienced a number of irreg, what I would call irregularities with regard to registrars registering tens of thousands of names with the expressed intent of auctioning them immediately.

As I understand it this was in violation of registry rules. So there may be some legal recourse of such. Principle 1 of the GNSO recommendation said GTLDs must be introduced in an orderly, timely and predictable way.

And this pretty well violates the orderly part of it. There is currently nothing in the applicant guidebook that prohib - that sets any rules regarding this, especially in the situation of vertical integration where the registry is the registrar.

You don't even have the registry trying to protect it against registrars. It's protecting one selves against - something against one selves is pretty hard. The current RAA has a provision saying if ICANN ever comes up with rules about registrars warehousing, then they have to be followed.

The chances of the GNSO undertaking a consensus policy development in a timely manner, given that this will be controversial among some people, is unlikely. We're unlikely to get it done in the right timeframe.

Is ICANN considering anything - to put anything in the applicant guidebook to try to if not eliminate this kind of thing, at least put some level of control or obligation on the registry to attempt to control it.

Man: So are you talking about the registry auctioning names or registrars registering for self selling (convention).

Alan Greenberg: Right, so I mean just specifically in this particular case, it appears that at least one registrar...

Stefane Van Gelder: Alan why don't you get Andre to explain it seeing he's sitting next to you.

Andre Kalashnikov: Okay, it's out of 20 credited registrars, one decided to take orders instead of serving the principle first come first served around the internal option.

Basically what it did, it reserved a few thousand domains for it's own name. And then put it on auction. And it just, you know, it just screwed the whole system basically because other registrars were serving first day and first served.

And the question I tried to ask before, there will be any measures in the accreditation agreement or are the rules just, you know, to protect the warehouse and to protect the self registry or the registrars to sell their place on secondary market or auction?

Man: I'm just, there's one thing I'm not clear on on your question. In this case, the specific example that you're mentioning am I right in thinking that the registry's attention?

Though the entity that ICANN would delegate the contract to, or sign the contract with, took...

((Crosstalk))

Man: First of all, it's in the...

((Crosstalk))

Andre Kalashnikov: We are the registry. We set the rules okay. And so everybody must be on the same, with the same rules. And one registrar decided to warehouse domain space.

                      And if you have GTLD applicant as a registry, you got permission to do, you know, to run the TLD, then it will deal - it will, there will be any limitation on the registrars to auction the domains in the initial registration?

Stefane Van Gelder: Yes, okay. Adrian wants to respond. I don't know.

Alan Greenberg: So we've always talked about the issue of warehousing of names and how the money flows and how that could be regulated.

                  So right now registries for example reserve names and auction them. So the money flows to registries. If registries are prohibited from doing that, then it - then what you've just described happens and so the money can flow to the registrars.

                  The registrars are prohibited, sorry. Then that money that wouldn't fall - can flow to registrants who might be associated with registries or registrars. So that's a, it's a very interesting issue.

                  And I think ICANN should act on it. I think the first step for us is to undertake the sort of analysis of how the money flows because we don't want to enact some solution that, you know, just winds up with some sort of workaround.

So I think if those who want to, you know, implement some change, do so with an understanding of how the whole market functions. You know, maybe the problem is that ICANN is selling these TLDs for $185,000.

If we sold them for market, then that would...

Stefane Van Gelder: Andre could I just, because we've got five minutes left. I want to give the chance for the people standing there to say something. Adrian did you have a...

Adrian Kinderis: Yes. First of all Alan I think to your point, you solved it in your first sentence. Though a registrar infringed. The registry pulled them up on it. And then we're done.

So I don't know exactly know what you're asking ICANN to do first of all. Second of all, I stress strongly to ICANN and to Kurt that please do not make rules that limit innovation and new business.

And once again, let me do within a top brand scenario, now that there is vertical integration, if I'm IBM, I might want to be a registrar. And I might want to register names directly for me.

So I would not want to see anything that prohibited necessarily warehousing of names as it may restrict innovation.

Stefane Van Gelder: Okay. One sentence please.

Alan Greenberg: The point I was making with this particular registry is acting relatively honorable and did put some rules in place which were violated. That becomes a legal issue.

The part I'm concerned of is we are always talking about what about the bad actors who may be there and we don't protect them? And I'm suggesting we

should put some rules in place to make sure all registries act easily honorable in that case.

Stefane Van Gelder: Thanks, thanks to you both, Tom please in 30 seconds if you can.

Thomas Narton: Case agreement, Section 7 which refers to the right to protection mechanisms. As you know, every registry is required to do either one, ID claims, pre-launch or sunrise.

Both of which use a trademark clearinghouse. But the language of that section does not prohibit registries from also allowing trademark owners to optionally submit directly to the registry during sunrise without going through the clearinghouse first.

And I'm wondering if that's the intent to allow the registries to provide an additional option in addition to the clearinghouse for people who want to submit during sunrise? Because it doesn't prohibit the registry from offering optional services like that.

Alan Greenberg: Thanks Tom. We'll go back and look at that. I think it'd be okay for a registry to allow it, but not to require it was the idea.

Thomas Narton: Okay. So my second question is they only have to do what? So they do ID claims? So then they then could do a sunrise period that did not use a trademark clearinghouse at all?

Alan Greenberg: I think as long as they offer the ID claim service that would secure the allegations. But we'll go back and look at that again. It's on my list.

Thomas Narton: Thanks.

Stefane Van Gelder: Thanks Tom, (Marcus), very quickly if possible.

(Marcus Sorvi): Yes sir, (Marcus Sorvi) from the Northern LC CCLD. I would like to get back to the question of when the sells about the renewals.

Our registry is not using renewals for quite a long time. We never used them. (Unique) is not using them. It's still allows registrars to use renewals. I would like to know the flexibility in the current language of the agreement whether it's allowed for registries not to use renewals still offering this option to registrars to use it in their systems.

But it's not clear, the language in the contract right now.

Alan Greenberg: Educate me, how does it work?

(Marcus Sorvi): Well we register a name for - in the - no end dates, so open date. But you can finish it at any moment you want. And you pay for quarter or per month, depending how the registry works for the registration periods, open registration.

It's a very simple life cycle. And it works really well. I mean I can give you more details if you want. But we run it for since we started the business. And (Unique) does the same story. So we got quite big registries in terms of experiences.

Alan Greenberg: Yes so again, thank you. And have you take comments on it. I'm just, my first concern I'm hearing from many and their view is that I'd have to think through all the other places where it might have implications.

Like I know there are lots of policies and agreements that address expiration dates.

(Marcus Sorvi): If I can help you. We made an extensive analysis on that. We have it on paper. So if you want, I can show you.

Alan Greenberg: That would be great. Yes, sure.

Stefane Van Gelder: Thanks, we're out of time now. So Antony I'm sure, you're standing there. So go ahead. But just be very quick.

Antony Van Couvering: Very briefly, Antony Van Couvering from Minds and Machines. Since we are commenting on the economics study throughout this week, I would like to point out that I really prefer Kurt's wording which are findings as opposed to Marilyn's which is information. Because I am not aware that economic studies looking into the future have any predicted value.

And I have not seen any empirical evidence it shows that they do. In fact, we're, in my country, we're finding that they can have absolutely disastrous consequences.

So I urge everyone looking at that economic study to realize that it's crystal ball game in large part. Thank you.

Stefane Van Gelder: Thanks, Keith and then we'll stop there.

Keith Drasek: All right, thank you Stefane. Keith Drasek with VeriSign, I just had quick question related to the language. Some of the language in one point in the code of conduct, since that it's new language in this version of the guidebook, I think it's relevant.

It also is relevant to the questions of warehousing, the questions of the definition of a registry-related party and particularly in the context of vertical integration.

So I'd just like to briefly read the line item in the code of conduct and then have a follow- up question.

So it says registry operator will not, it will not allow any parent, subsidiary, affiliate, sub-contractor or other related entity, and then in parenthesis it says each a registry-related party to.

And then it's subset B, register domain names in its own right except for names registered through an ICANN accredited registrar that are reasonably necessary for the management operation purpose of the TLD.

In the context of vertical integration and dot brand for example and the questions of warehousing, I think we need a little bit more specificity or clarification about what exactly these terms mean and what's allowed in that context.

And really the question is the purpose of the TLD, to that last phrase, give the opportunity for a registry applicant to say well, my purpose for this TLD is to warehouse the names and then auction them off.

So I think we just need a little bit more detail around what exactly this means, particularly in the context of vertical integration.

Alan Greenberg: I've seen other comments already on that, on that point. And I think this, I mean this particularly, this is all brand new language that came in, you know, literally as I said earlier kind of at the last minute.

So we want, this is the first draft of this particular section. Other parts of the guidebook and the agreement have been through five rounds of edit and review. And this is the first time everyone's looking at this.

So we'd really appreciate comments from anyone from all angles on this community both like sort of, what sort of abuses are envisioned and what sort of conduct should be prohibited.

What sort of things should be allowed? And, you know, there's the dot brand example. There's also sort of other innovative uses for the DNF that might come up that we don't want to inadvertently prohibit, you know, by banning let's say, you know the first thing that pops into my head is like the dot geo application that we saw before.

Where there'd be domain names for each location on earth or something. And that, you know, is that really registry warehousing? Or is that just a registry using names directory or index or something?

So, you know, we need help from the community on thinking this through. Specific feedback would be great. And thanks for your comment.

Stefane Van Gelder: All right. Thanks very much to everyone. We'll end it here. Thanks to Kurt and the team for giving us this time and explaining all those issues to us. And walking us through the latest version of the guidebook.

The next session will be chaired by Olga. It's a GNSO council working lunch. We are going to be preparing for our meetings with the GAP and the ccNSOs.

So by all means, stay in the room if you want to hear what goes on during that kind of a preparation session. But I would ask that you give GNSO councilors priority to the grub. Thanks.

Alan Greenberg: Stefane, I'd like to thank you for managing this session in a timely manner quite miraculously. Thank you.

END