GNSO Working Group.
22 June 2008.
Paris, France
http://www.gnso.icann.org/meetings/paris-agenda-22june08.shtml

4. New gTLDs - Update on dispute issues, Open Issues? (10:30 -11:30)

http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm
Final Report on the Introduction of New Top-Level Domains approved by the GNSO Council on 6
September 2007

http://gnso.icann.org/issues/new-gtlds/
http://www.icann.org/topics/new-gtld-program.htm

Presentation by Kurt Pritz:
 https://par.icann.org/files/paris/GNSO-gTLD-Update-Paris22jun08.pdf

Councillors who joined after the roll call:
Tony Harris, Tony Holmes, Greg Ruth – ISPCPC, Robin Gross-NCUC, Tim Ruiz –RR, Jon Bing, Olga
Cavalli – NomCom appointees.

Observers who joined after the roll call: Aleksander Oishansky, Pavel Blotsky, Yumi Ohashi,
Ekaterina Manko, Andrey Vorobyev, Mary Wong, Tan Yaling Esam Abulkhirat,Stener Grotterod,
Rodney Joffe – Neustar, Zbynek Loebel – Czech Arbitration Court.

 >>AVRI DORIA: Okay. Good morning. A continuation of our meeting. Well, we had the joint
meeting with the ALAC. Let me see. Oh, this was the wrong meeting I've got up there. That was the
-- that one.
 What I'd like to do first, before we start, I'll go through the agenda, but I'd first like, even though there's
a lot of people in this room, I'd like to go through and have people introduce themselves and mention
their affiliation as it were, council, constituency, other, and slight detail, introduce yourselves. My
name is Avri. I'm chairing this meeting. And I'll introduce myself again when it's my turn.
 Also, we should have two portable microphones, so after we go around the table, I'd like to ask the
people in the chairs to also just briefly introduce themselves, so if we could start from Mike at the table
down here, please introduce yourself, Mike.
 Michael, I should say. Michael. Is it not working?
 >>MICHAEL PALAGE: Michael Palage -- there we go. It's working. Michael Palage. Member of the
business and IPC constituency.
 >>JEFF NEUMAN: Jeff Neuman with NeuStar. I'm on the gTLD registries constituency.
 >>PENELOPE WRENN: Penelope Wrenn. I'm with ICANN.
 >>JORDI IPARRAGUIRRE: Jordi Iparraguirre, gTLD registry.
 >>DAVID MAHER: David Maher, dot org, chair of the registries constituency.
 >>MARIKA KONINGS: Marika Konings, soon-to-be ICANN staff. Now here as an observer.
 >>ALAN GREENBERG: Alan Greenberg, liaison from the ALAC.
 >>ALAIN BIDRON: Alain Bidron, ISPCP.
 >>ADAM PALMER: Adam Palmer, public registry dot org, registries constituency.
 >>KARLA VALENTE: Karla Valente with ICANN.
 >>AVRI DORIA: Avri Doria, NomCom appointee to the council.
 >>CHUCK GOMES: Chuck Gomes, registry constituency.
 >>OLOF NORDLING: Olof Nordling, ICANN staff.
 >>MIKE RODENBAUGH: Mike Rodenbaugh, business constituency.
 >>AVRI DORIA: Hold on. We have to get the microphones working.
 >>PHILIP SHEPPARD: Oh, maybe does that one need to go off? There you go.
 >>MIKE RODENBAUGH: Mike Rodenbaugh, councillor from the business constituency.
 >>PHILIP SHEPPARD: Philip Sheppard, councillor, business constituency.
 >>PHILIP CORWIN: Philip Corwin, councillor with the Internet Commerce Association, business
constituency.
 >>BILAL BEIRAM: Bilal Beiram, councillor, business constituency.
 >>J. SCOTT EVANS: J. Scott Evans. I'm a Gemini. No. And I like long walks in the park and -- no.

J. Scott Evans from Yahoo and I'm with the business constituency and the IPC.

>>KRISTINA ROSETTE: Kristina Rosette, councillor, IPC.

>>CARLOS AFONSO: Carlos Afonso, councillor from NCUC.

>>UTE DECKER: Ute Decker, GNSO Council, intellectual property constituency.

>>JON BING: Jon Bing, NomCom appointee to the council.

>>EDMON CHUNG: Edmon Chung, registry constituency.

>>TOM KELLER: Tom Keller, registrar constituency.

>>ADRIAN KINDERIS: Paul Stahura, registrar constituency and representative to the NomCom.
And Adrian Kinderis is here, registrar constituency.

>>JEFFREY ECKHAUS: Jeffrey Eckhaus, Demand Media.

>>RICHARD TINDAL: Richard Tindal, Demand Media. Demand Media.

>>STEVE METALITZ: Steve Metalitz, intellectual property constituency.

>>STEVE VINE: Steve Vine, register.com

>>CLAUDIO DiGANGI: Claudio DiGangi, IPC.

>>PABLO HINOJOSA: ICANN.

>>CRAIG SCHWARTZ: Craig Schwartz, ICANN staff.

>>BOB HUTCHINSON: Bob Hutchinson from the business constituency.

>>ROGER CASTILLO: Roger Castillo, dot MX/dot LAT initiative.

>>KIM AMBLER: Kim Ambler, International Chamber of Commerce.

>>ZAHID JAMIL: BC, International Chamber of Commerce.

>>RITVA SIREN: Ritva Siren, Nokia.

>>KATJA RATAMAKI: Katja Ratamaki, business constituency, Nokia.

>>ELMAR KNIPP: Elmar Knipp, here for CORE.

>>EVA FROHLICH: Eva Frohlich, Frobbit.

>>WERNER STAUB: Werner Staub from CORE.

>>SOKOL HAXHIU: Sokol Haxhiu from UNDP.

>>YANG YU: Yang Yu from China ORG.

>>DIRK KRISCHENOWSKI: Dirk Krischenowski from dot Berlin and a member of the business constituency.

>>KATRIN OHLMER: Katrin Ohlmer from dot Berlin as well.

>>JOHANNES-LENZ-HAWLICZE: Johannes-Lenz-Hawlicze from dot Berlin as well.

>>YOAV KEREN: Yoav Keren from Domain The Net, registrar constituency.

>>STEVE McDOWELL: Steve McDowell from Florida State University.

>>ROSALIE BERGMANN: Rosalie Bergmann from dot GW, global Web.

>>SIMON EBERLE: Simon Eberle, global Web, GW.

>>KARL KOTOWSKI: Karl Kotowski, registry dot GW.

>>MICHAEL COLLINS: Michael Collins with Internet Commerce Association.

>>ABDOULAYE DIAKITE: Abdoulaye Diakite, University of Conakry, Guinea.

>>STACEY KING: Stacey King, IPC.

>>ANNA MIKHEEVA: Anna Mikheeva, RU-Center.

>>JULIA LOTKOVA: Julia Lotkova, RU-Center, Russia.

>>JIM BASKIN: Jim Baskin, business constituency.

>>PATRICK VANDE WALLE: Patrick Vande Walle, ISOC board and ISOC chapter of Luxembourg, which is also an ALAC ALS.

>>AVRI DORIA: Thank you.
Do we have anybody on the telephone line? Do we have an operator on the telephone line that can confirm that we have a telephone line?

>>TELEPHONE OPERATOR: Yes, of course, madam. I'm the operator.

>>AVRI DORIA: Okay. Thank you.

>>TELEPHONE OPERATOR: There are currently no participants on the phone line.

>>AVRI DORIA: I'm sorry. I didn't hear the last.

>>TELEPHONE OPERATOR: There are currently no participants on the audio.

>>AVRI DORIA: Okay. Thank you very much. Okay. Proceeding with the meeting, so the first -- just to go through our agenda for today, we are now at the reconvening, the first item is new gTLDs, update on dispute issues, open issues, so this will be basically the ICANN staff who is working on this telling us, you know, where -- where things are at, questions, answers, however.
Then we'll go into IANA ICANN names and what the process would be for changing reserved names beyond the new gTLD process, as that was dealt with for the new gTLD process. At least there was recommendations but there were none about the current.

Single-character second-level domain names, discuss a paper by Jon bingo relation between ccNSO and GNSO new gTLDs.

Then we have lunch. There is no lunch provided today, so people will have to find their own lunch. Anyone knows of a free lunch, let me know.

IDN ccTLDs, and this will be a discussion of the -- basically the state of the IDNC working group. Edmon will be basically giving us an overview of the key issues in the final report.

And then we can also talk about where we're at on it.

Then we have to do a prep for the ccNSO/GNSO meeting. Well, actually we prep for the -- right, that one, and then we also prep for the GAC meeting, briefly. We have a joint meeting with GAC this afternoon at 4:00. And then there's a board dinner this evening for the GNSO Council members.

And that's it, so I guess starting with the new gTLDs update, do you have slides or such? So I'll hand the meeting over to Karla.

>>KURT PRITZ: High, everybody. I'm Kurt Pritz from ICANN, and Karla and I put together this brief update. Certainly not comparing in detail to the full day we recently spent together in Marina del Rey, which staff viewed as very -- very constructive and led to some amendments in the implementation plan.

So this update is meant to give a brief status of the implementation plan, so a very terse overview with some of the work that's been done during the time between when we last met in Marina del Rey and now, which was a couple months, I think.

So as you can see, the whole new gTLD process will be very straightforward and simple. It only has five boxes. And one of them is to receive applications and the other one is to hand out new gTLDs.

But really, it's intended to be a simple process in a majority of cases, and robust and complete only when it has to be. And so the -- we expect most of the new gTLD applications to be received and then go through a business and technical evaluation and then be delegated. Really, that evaluation has five questions associated with it.

In certain cases, though, there's an opportunity for objection, to provide those who would object to a TLD a path to have their objection heard, and to have a clear process for that. And of course there also has to be an accommodation if two or more parties apply for the same string.

This is slightly more detail of the fastest path for a gTLD application. There's five questions. One is, is it a reserved name? Two, does it affect DNS stability in any negative way? Three, does it -- can it be confused? Will it arise in confusion with other existing TLDs, other applications or other reserved names? Four and five, does it meet certain business and technical criteria; i.e. does the applicant demonstrate the right amount of business and technical competence in order to operate a TLD?

What's the next one? Let's go -- yeah. Okay. So -- what?

>>KARLA VALENTE: Do you want to go there?

>>KURT PRITZ: I think so. Is there another slide about business and technical criteria?

>>KARLA VALENTE: Following. After this.

>>KURT PRITZ: Okay. Good. So applications are going to be in rounds, just like the GNSO asked, until demand can be heard, so the application period will probably be at least 30 days. Probably more like 45 days. And staff will review the applications for completeness, which is straightforward.

The tendency, the thinking, is that, you know, if the application's not complete, you get your application and most of your money back.

No information will be posted until the close of applications, so at that time, when that information is posted, that's when, besides from whispering to one another during the breaks in the ICANN meetings, that's when everybody will find out where there is contention between strings or if there's possibly controversial applications when all that information is posted.

Tim, do you want to ask a question? Yeah, it's fine with me.

>>AVRI DORIA: Okay. I wanted to know whether you wanted questions.

>>KURT PRITZ: Yeah. No, I think this is okay.

>>TIM RUIZ: I was just curious, you know, where in the -- you know, in the previous slide, where in that process the posting of the applications happened, if it was before it goes through that initial evaluation or after. Did I --

>>KURT PRITZ: Yeah. So the applications will be posted before the evaluation starts.

>>TIM RUIZ: Okay. Oh, I see it. Okay.

>>KURT PRITZ: So you can check out the landscape.

There's -- there's a set of fees associated with applying for a new TLD. There will be a very small fee associated with getting a password and getting online and getting the system and potentially trying out the algorithm that's available for use.

Then there will be an application fee, and there's been considerable discussion about pay as you go. What's envisioned right now is that there will be an application fee to cover the costs of the initial

evaluation and extended evaluation, but if you enter into a dispute, there will be additional fees. Those fees would be paid directly to a dispute resolution provider, not ICANN, because that part of the process that we're going to talk about a little bit later is outside of ICANN.

>>CHUCK GOMES: Kurt?

>>KURT PRITZ: Yes.

>>CHUCK GOMES: You said there will be -- the application fee will be both for evaluation and extended evaluation, so, in other words, the cost of extended evaluation will be spread across all applicants, even if they don't need extended evaluation?

>>KURT PRITZ: I think so. I -- there's -- when we're trying to calculate an application fee, what you need to do is, you know, lay your fixed costs over your variable costs, you know, to make sure you've covered your costs. The more you divide the fees up, the more guessing you're going to do about how many pass and how many fail, and you're going to be more wrong.

And secondly, I think the application fees are -- is not a small number, and to have an additional iteration of an application that we call an extended evaluation, but an additional iteration of an application not be an additional pay as you go or put somebody through that decision once they've made a substantial decision to start in the first place.

But, you know, it's one of those 60/40 decisions and it's not an earth -- you know, earth-shaking decision either way. Is that okay? Oh, Jeff.

>>JEFF NEUMAN: Hi, this is Jeff Neuman. Just a question. I'm not going to ask you on what the fees are for the evaluation, because that's a complicated subject, but you did say there would be a, quote, small fee for just getting a password to get on the system, so given the fact that you said it's small, you must have something in mind, so can you share that with us.

>>KURT PRITZ: $1,047. Or maybe 200, something, you know, in the hundreds.

That was scribed, wasn't it.

>>AVRI DORIA: Uh-huh. Everything is.

>>KURT PRITZ: So these are -- these are, again, another discussion of the initial evaluation steps. So the first check would be the really straightforward checks, and that is, first of all, does the string negatively affect DNS stability.

And ICANN published the ASCII rules for this some time ago, and if I looked them up somewhere I could kind of tell you what they are.

Yeah. So -- and they're -- if you read the RFCs carefully and sort them all out, you can figure it out but, you know, there's a 63 maximum character on strings, strings can't be composed of all digits or start or end with a hyphen, and you have to save that XX-- label for IDNs. There is IDNA work going on right now in the IETF. That's going to result in additional rules for IDNs.

And then the additional preliminary check here is for -- to determine whether string confusion arises. The GNSO recommendation, that string should not be confusingly similar to existing TLDs or reserved names, so we -- after a lot of consultation with the community, we understand that these decisions are basically human decisions. Whether confusion arises is a human condition and not -- not a number.

So we've done a lot of development work with an algorithm that will be used to inform the work of examiners. This is very -- we're going to go here.

So this is very typical of how patent examiners do their work in many areas. They use an algorithm to give them a score to determine if there's some level of potential confusion before going on to the next level of examination, which is sort of a human looking at it.

So this algorithm that ICANN's developing in partnership with SWORD calculates potential confusions based on alphabetic and visual similarity, and I know what that means now so I can talk about it.

But if you take dot com and dot C zero M, you get a pretty high score because, one, they have two out of three letters similar. If you do visual similarity, you get a higher score because they have two out of three numbers that are similar and zero is really close to O.

So this beta version that's --

>>KARLA VALENTE: Sorry.

>>KURT PRITZ: That's okay. The beta version that we're developing, we're developing in three scripts so far. But the company also has a standard methodology for expanding the number of scripts, and it will be planned to be expanded for the scripts in the Unicode table. So we've done -- we've had thousands of tests run, and so these are some examples of test scores you get. There's no pass/fail. There's no number that says that something's -- raises confusion to a level that the string should be discarded, but it's a score that will be given to the examiners.

The examiners, like I said, have a role very similar to those in patent offices., and as a matter of fact, the firm we've retained does this work for many European patent offices and patent offices outside Europe. They do this level of search.

So did we cover everything, Karla, on the previous slide?

>>KARLA VALENTE: I think so.

>>KURT PRITZ: Okay. Michael.

>>MICHAEL PALAGE: I'll pass.

>>KURT PRITZ: Ah, come on.

>>KARLA VALENTE: Okay.

>>KURT PRITZ: Okay. So the first -- sorry. Go ahead.

>>ADRIAN KINDERIS: Adrian Kinderis. I was just waiting to see if we were going forward, if there was any more. To with respect to similarity, I see there that that's visually similar. Are you still continuing -- sorry. Is there another slide on similarity at all.

>>KURT PRITZ: Not yet.

>>ADRIAN KINDERIS: Okay. So are you looking at phonetically similar and is there any other similarities that would be assessed at this stage.

>>KURT PRITZ: There -- after this preliminary evaluation, later on there's an objection -- there's an objection process, and it's not settled, but the way it's set up now is that virtually everyone has standing to object to a string based on the fact that it raises string confusion with another -- with another string, and that confusion can be based on anything. It can be based on sound or meaning. But it's -- there's also a pretty high bar, so there has to be, you know, a real probability that confusion is going to be raised in the minds of users, based on -- based on these two strings.
 So the criteria is really based on it really has to be a high probability of confusion, and not whether it's oral or meaning or whatever.

>>ADRIAN KINDERIS: Just two things to say to that. Number one, so just to be clear, you're only doing a visually similar check initially?

>>KURT PRITZ: Right.

>>ADRIAN KINDERIS: Right. That's number one.
 The second one is, I think it seems fairly binary, at least to me, whether something means the same. At least if that's going to be something that can be a rule, that it is assessed.
 So if -- if dot business, for example, goes up and as say it means the same as dot com, hypothetically, that seems to me to be fairly -- you know, you're going to be judged for meaning.
 I think if there was some sort of ruling or at least some sort of perspective that was made visible prior to that, you can save people a helluva lot of time, because if I can have something that can mean another TLD or I can't have something that can mean another TLD, I think that should be a descriptive rule that's put in because that's fairly binary.

>>KURT PRITZ: I understand.

>>ADRIAN KINDERIS: And then you could then take the risk of you putting in an application that potentially is going to be confusingly similar.

>>KURT PRITZ: Uh-huh. That's a good point. Chuck?

>>CHUCK GOMES: Yeah. Kurt, with regard to the fact that everybody has standing, does that then translate into -- so anybody can file a dispute, and so it's a very easy way, then, for someone to just cause delays and added expense for an applicant if that's the case. That seems to be problematic. What's your thinking on that?

>>KURT PRITZ: Well, our thinking -- (laughing) -- our thinking, I think, is that not everybody can object on every ground. There's different standing requirements on different grounds.
 In this case, for confusion, we're attempting, I think -- the GNSO is attempting to protect users against confusion and the harm that can result from that, and so attempts to narrow down the class of people that could object to that, as soon as you start down that path you start excluding users, so it became problematic right away.
 And I also want to mention that there's a fee associated with objections, and a favored scenario that the loser pays, so that it's a -- it would be a significant investment. You know, there's a significant detriment, I think, to making a frivolous objection to slow something down.

>>CHUCK GOMES: Okay. That's helpful. And so anyone can file a dispute there, but their dispute may be dismissed very quickly if they don't meet certain criteria. Is that what you're saying?

>>KURT PRITZ: Say that again?

>>CHUCK GOMES: Anyone could claim confusion, okay?

>>KURT PRITZ: Right.

>>CHUCK GOMES: But it wouldn't necessarily go through the full dispute process if it didn't meet certain criteria. Is that what I heard you say?

>>KURT PRITZ: Well, I -- well, that's a very good question, and so there's a -- there's a statement that needs to go in front of all of this, that, you know, the board has not even approved the -- not yet approved the policy recommendations.

>>CHUCK GOMES: I understand.

>>KURT PRITZ: And this is all tentative work by staff.

>>CHUCK GOMES: Sure.

>>KURT PRITZ: And with a lot of consultation in the community.

So one potential way to run a dispute resolution process would be to have a screener that would make some preliminary determinations in the case of, you know, really, really frivolous objections. So whether that -- you know, that's part of it or not, you know, has been a point of discussion. I think Mike was next.

>>AVRI DORIA: Yeah. You have four. You've got Michael, Tim, Paul, and Yoav, at the moment, who have asked to speak. Oh, and Jordi and...

>>MICHAEL PALAGE: Thank you, Avri. I -- Kurt, when we were talking about this third-party challenge mechanism back in L.A., one of the things that we were using as a reference point was the UDRP, which is -- the standard there is the likelihood of confusion.

My concern here is your exact words were, "We want to raise the bar real high."

I don't think ICANN should be trying to define legal standards of confusion. They need to allow dispute providers -- in this case, WIPO -- that clearly have guidelines. There are international treaties which talk about the likelihood of confusion, so I would just encourage ICANN not to talk about where the bar will be set. Just say that you will use appropriate standards, so I just think that's just -- it -- it potentially sends the wrong message to the wrong people, and suggests that ICANN is, if you will, doing stuff outside of its narrow technical mandate and it's just the Trademark Office. Us trademark people cringe with the patent references.

>>KURT PRITZ: I think that's a good point.

>>MICHAEL PALAGE: Thanks.

>>AVRI DORIA: Okay. And we've got several people on the list now so I'm actually recommending that everyone sort of make their point and then Kurt answer, unless obviously he wants to in the middle but at the moment, we've got Tim, Paul, Yoav, Jordi, Tony, Kristina and Eric. So Tim.

>>TIM RUIZ: Just a couple of questions. One, there's only one dispute resolution process, or are there multiple ones at different points in the process? In other words, if something passes this initial test for confusion, there's no -- is there an opportunity for a protest at that point or does that come later in the process?

>>KURT PRITZ: So objections are filed -- while this initial evaluation stuff is going on, that's when objections are failed. And then the objections are dealt with on any one of the four grounds immediately after the yellow stuff.

>>TIM RUIZ: Okay. And then on the string confusion, who is the ultimate -- who makes the ultimate decision there? Does that fall back to ICANN or is that done by these examiners?

>>KURT PRITZ: Right. It will be these examiners. Of course, you know, the board role isn't precisely defined but the board will, you know, finalize all -- you know, the results of the entire process for those applications that are accepted and denied at the end of the day.

>>AVRI DORIA: Paul? Okay. Yoav?

>>YOAV KEREN: Yeah. I kind of completely disagree with the thing that I think the guy -- Mike, was it -- said before, that ICANN shouldn't state what are the standards.

We had a very long discussion in the IDN -- GNSO's IDN working group regarding the confusingly similar issue, and, first of all, this is, by the way -- the thing about meaning sounds to me really -- this is -- it doesn't make sense because if someone brings out a TLD similar to something that is already -- already exists with the same meaning, so what? Who cares?

And if there's a legal issue, I don't think -- even if there's a legal issue, it sounds very awkward that if someone already has a TLD, then he owns the meaning of all the equivalent TLDs.

Now, this brings us to the IDN issue, and the long discussion was there that if someone owns a TLD right now, an incumbent TLD right now has their TLD with some phonetic sound, it doesn't mean they should own the same TLD with all -- with the same phonetic sound in all other languages.

So I think that ICANN should decide what's going to be here, and there might be -- it might be the right way is maybe even to do it for ASCII, some standards for ASCII, some standards for IDN.

But we should remember that if we're going to go that way, and if any TLD -- and I'm going to the IDN now. I'm talking about the IDN. If any IDN TLD that will be out there could be opposed by someone because it's phonetically similar to an incumbent TLD or something else that sounds the same, this is going to just stop everything, so... this is what I...

>>AVRI DORIA: Yeah, okay, thanks. Jordi.

>>JORDI IPARRAGUIRRE: Hi, thank you. It seems like there is quite a lot of, let's say, controversy regarding type of squatting. And I wonder if it has been taken into account if it is really worth to take that into account regarding the -- comparing the strings. For instance, C zero M versus COM may have 88% but what about when an M is an N, which in many, many keyboards is just beside it. Would

that include certain confusion? Amazon.com, amazon.con? Is that an issue, not? Just a question. Thanks.

>>AVRI DORIA: Thank you. Tony?

>>TONY HARRIS: Yes, I'm a latecomer so I hope I don't say anything stupid because I've missed what went before, but I just wanted to make a point that I'm a little concerned. This type of discussion might take us down a road where we might have to wait three years to come up with the perfect-type solution and I don't think that's probably such a good idea.

>>AVRI DORIA: Yeah, in fact, that helps me -- I'll jump in. I'm hoping we can keep most of the questions to questions of understanding and clarifications as opposed to arguing things that we've often had.

Okay. Next I had Kristina.

>>KRISTINA ROSETTE: Just a couple points. First, I would actually -- primarily suggestions. First, following up on something Michael had suggested, it would seem to me that it would be easier for ICANN to suggest that whatever entities will, in fact, be providing these dispute resolution services, part of their response to the RFP be what type of standard are you going to be applying; what type of, for lack of a better description, summary judgment procedures will you have to try to eliminate clearly frivolous objections because notwithstanding the idea that a monetary disincentive in the form of a fee and the loser pays, I think there are still going to be scenarios where that's not going to stop people.

Another point that I would suggest is to really keep in mind that to the extent that you're exporting the trademark likelihood of confusion standard, to keep in mind that it is an overall assessment, that generally, and almost rarely, do you have a scenario where one particular factor is so dispositive.

If, in fact, you do have a situation where it is visually similar but is phonetically different, it means something different, it really is a balance. It shouldn't be that just one factor pushes it that direction. And I would just suggest to kind of keep that in mind in applying that.

And that I guess, finally, the other thing I would note is that as we go forward with this, I think it really will be incumbent to the extent, if you haven't already thought about ask -- requiring the dispute resolution provider to do this, that they make these determinations available and even within the initial examination -- evaluation, that if it is, in fact, determined early on that someone's application would be rejected, at least within the initial evaluation because it is confusingly similar to ask that that information be made public, frankly, so that you give future applicants guidance as to what is or is not going to happen. Even in the potentiality that you have already got an application for the same string already in the pipeline. I think it will winnow things down a little.

>>KURT PRITZ: I heard your first two points. To your third point, I think in several instances applications that are rejected become, you know, essentially reserved name because they would just be rejected again. Right? Is that what you are talking about as far as your third point?

>>KRISTINA ROSETTE: I would use --

>>KURT PRITZ: I wouldn't used the term "reserved name."

>>KRISTINA ROSETTE: I wouldn't use the reserved name label, but I would say it would be helpful for the community to know what determinations had already been made.

>>AVRI DORIA: Yeah, that was part of our recommendation initially.

There is Eric and Philip on the list.

>>ERIC BRUNNER-WILLIAMS: Eric Brunner-Williams. Kurt, you identified the IDN working group at the IETF has a role. Could you identify the requirements that are missing in the present definition of IDNA which are necessary -- that have been given as a requirement to this working group? I started participating in the working group when it was formed and was unable to find an ICANN-originating requirement.

>>KURT PRITZ: I'm not the expert at this. Right now the IDNA, the protocol the way it is written, is an exclusionary-based document, as I understand it; so states what cannot be included in IDNs. And the working group is attempting to write an inclusionary-based document so it clearly lays out which scripts are acceptable in IDNs, how language variant tables are created so that the potential applicants of IDNs have a clear roadmap for which IDNs they can apply for in which scripts and which are not available.

But there is complexities associated with that that I get every once in a while staring at the whiteboard, and then I forget.

>>AVRI DORIA: Okay. I've got Philip -- oh, you're still --

>>ERIC BRUNNER-WILLIAMS: I wasn't finished. That's the -- the second part of the question is what is the date upon which -- I am looking for boundedness on ICANN's schedule. So we're unstable to stick with the bounded when the IETF activity will close so we are unable to state when the ICANN activity will close.

So what part of the clarity is missing from the present requirements that is necessary for guiding the present applicants?

>>KURT PRITZ: So I think I'm going to answer a slightly different question, and that is should we wait to delegate IDNs until the IDNA work is complete. I think that's an interesting policy discussion. I think it's one that's going to happen at this meeting, whether ICANN should wait to delegate IDNs until that effort's complete.

>>ERIC BRUNNER-WILLIAMS: I may not pass as an expert in this problem domain, though I have worked on it for the better part of 30 years. I am unable to identify the actual requirement statements that originate from ICANN that went to the IDNA working group before it was a working group.

So the inability to identify a requirement that originates from ICANN, from the GNSO, from the board, from any part of this system, it troubles me that I can't identify the requirements.

>>KURT PRITZ: All right. I'm -- you have 30 years, I have one and that's only part-time so I'm not going to be able to answer that question well. Although, I know, as you do, the IETF formed a group for this purpose to create this protocol and they're well down the path on it.

>>ERIC BRUNNER-WILLIAMS: Thank you.

>>AVRI DORIA: I got Philip and. Then I would like to give you a chance to continue with the presentation.

>>PHILIP SHEPPARD: Thanks, Avri. I just wanted to provide like a bit of clarification in terms of intent on the concern that was raised earlier about confusing similarity and whether or not that's going to allow people to exercise unreasonable rights over that. If the gentleman who actually raised a point wants to listen to me, he can do so.

The intent of what we discussed in terms of confusing similarity was not to award monopoly rights to any existing first-mover. It was not to somehow embed anything because you happen to be an existing registry. It was all to give the user a better experience. And I think if the system that we're putting in place for that does have a perverse affect of embedding monopoly rights in an existing registry, then clearly we need to address that in the short-term because that's not the intent we were trying to achieve. It is all to do with a better user experience. That's the intent. And I think it's very important that we maintain that and look for perverse effects in our systems.

And I guess we wouldn't be able to judge that until we start seeing something happening. But I hope the community will scream if they do.

>>AVRI DORIA: Okay. Please go on.

>>KURT PRITZ: So I'm going to move forward with alacrity. The next level of the initial evaluation focuses on the applicant rather than on the string and it's so the applicant can demonstrate a business and technical competence for operating a registry.

We've developed -- the applicant will also be asked at this stage to self-identify whether they're a community-based applicant. Can you just fill out the rest of the slide?

In the technical criteria, we've identified approximately a dozen areas where the applicant should demonstrate that they understand the planning and execution that needs to take place in order to operate a registry, say, EPP or registry failover planning to name two.

Of course, at this stage of the game, these applications are just promises, right? And so what we'll do at the end just prior to delegation is test what we can, do a sort of tech check, if you want to use the IANA terminology, to determine if the applicant does, in fact, at this stage just before delegation meet the baseline technical criteria before delegating the registry.

An extended evaluation is essentially an iteration of the initial evaluation, so provides the applicant an opportunity to respond to questions from the evaluator and clarify his or her application -- actually, its application. Tony?

>>TONY HARRIS: I have a question of open versus community. Could you amplify that a bit, please, what exactly the implication is? Is there any difference in the form of application or anything that we should be thinking about?

>>KURT PRITZ: The application will accommodate the self-identification of an applicant as a community-based applicant. The GNSO recommendations put into place a preference for community-based TLDs in that if there's contention between strings at the end of the application period, a community-based applicant could ask that a comparative evaluation be made of all the contending strings.

So at the very start, we'll ask the applicant to self-identify as community-based. If there is, in fact, this contention and this comparative evaluation at that stage, there will be a test to determine if the applicant meets some community standing criterion and does qualify as a community-based TLD and a set of criteria that will cause the community-based TLD to demonstrate that it is clearly and convincingly adds more value to the DNS.

>>TONY HARRIS: Thank you very much.

>>AVRI DORIA: You also have a question from Jeff.

>>JEFF NEUMAN: This is Jeff Neuman again. I have two questions. First is you talked about a dozen or so technical criterion. I'm just wondering who is setting that technical criteria. And I know there are papers out there, one of them is the registry failover one. And I was initially told that paper was not going to be used for anything other than registry failover, but it seems like it's bleeding into this.

The second question is actually a preliminary question and I'm not sure where to ask it but I'll ask it now which is who can be an applicant. When I ask that question, I'm really talking about the economic study, I guess, that was done or theory was done, or whenever that's going to be finished, when that's going to be finished.

And more importantly -- let me see how to ask this question. I'll ask it in a direct way because I am usually pretty direct.

There are a number of registrars in this room very interested in being registries, spent a lot of money on being registries. Been in a lot of business development activities for registries. When are you going to make a decision? How are you going to make that decision as to whether registrars can own registries or registries can own registrars is the parallel to that? When is that going to be made?

And I would proffer it needs to be made soon because a lot of companies in this room are spending a lot of money and you are going to disappoint a lot of people if you come out one way or another.

>>AVRI DORIA: Adrian.

>>KURT PRITZ: Wait, wait, there was like a dozen questions there. There were three questions asked four times.

ICANN contracted with In Trial to help us fashion technical criteria so the technical criteria really go to at the planning stage demonstrating you know how to run gTLD registry.

Registry failover is about registries, so I don't -- this isn't a bleeding thing. It's just like existing registries now helping fashion this registry failover plan, we're really fashioning it for the new registries that are coming online, so an understanding of that.

And I understand your point about the economic study, and, you know, we could talk about that for a long time, but I understand the sense of urgency and we're working on it.

>>JEFF NEUMAN: Can you be a little bit more -- you're working on it. But if there is going to be a -- do we all have to wait until the draft RFP to figure out what the rules are in cross-ownership? That's a big problem for a lot of people in this room.

>>KURT PRITZ: So there will be -- I think there will be a draft of the paper in a couple weeks after this meeting and that paper will be posted for public comment. It is being done by Charles River Associates, which is an economist that ICANN has retained to do economic studies for them.

>>AVRI DORIA: I have Adrian and then Michael.

>>ADRIAN KINDERIS: Adrian Kinderis. Can you go back a slide, please? So the community-based assessment, that is merely just to set the scene for any potential contention later on? That's all that is at that stage?

>>KURT PRITZ: Yes.

>>ADRIAN KINDERIS: Thank you.

>>AVRI DORIA: Michael. Michael.

>>MICHAEL PALAGE: Thank you. Kurt, follow-up with the CRA study. Craig Schwartz a couple of months ago said it should be out periodically, that it appears to have slipped. My question, though, is a broader one regarding openness and transparency. The bifurcation between registrars and registries is an important one. It was one of the founding principles set forth in the white paper and it is something that the business community and users have relied upon. In this economic study, to my knowledge, ICANN has not reached out to any businesses.

I guess, my question to the business -- or the user constituency sitting around this table, have any of them been consulted by CRA in that? And I guess my follow-up question to ICANN is, the fact that you have not involved users in this consultation process, how do you jive that with ICANN's commitment to openness and transparency because this clearly is a critical issue.

>>KURT PRITZ: The paper will be published for public comment. If you have people you think should be interviewed or constituency members or constituencies that you think should be included in the interviewing process, tell me and other people can be interviewed.

>>AVRI DORIA: Paul?

>> PAUL STAHURA: I urge ICANN to allow competition in this space by not preventing new entrants into the registry business, those entrants being registrars, individuals, small businesses. I think the bar should be lower or lowish, and please let other companies become registries besides the incumbents.

>>AVRI DORIA: Okay. But I would like to avoid getting into a debate on it now.

>>JEFF NEUMAN: I don't want a debate. I don't want to be taken as to be seen as advocating anything restricting competition.

[Laughter]

My simple point is, make the decision, ICANN. If you have already made it, let the community know. Be very clear in your standards. Make it unambiguous because right now the registry contracts, if anyone looks at it, are completely ambiguous. There are a lot of loopholes.

Either you close the loopholes up for everybody and apply it to everyone or you open it up to everyone. I am not advocating at all restriction of competition. Just be clear because that's something that you have not been in the past.

>> Predictability.

>>AVRI DORIA: Go to your next slide.

>>KURT PRITZ: So after the initial evaluation disputes can be objected to on four criteria and will be filed earlier, as I said. Let's go to the next slide.

I just don't want to read this but ICANN is working towards agreements with several internationally-recognized dispute resolution providers. So you can probably picture who the large ones are. We've had several meetings with several of them. We've developed with -- we've developed through our outside counsel a set of procedures that would guide -- that would direct the dispute resolution processes. Necessarily, there's some holes in those procedures to accommodate the differences in procedure with different dispute resolution providers. So they are now working with us to finalize the processes.

It seems clear that these processes will take place independent of ICANN so the dispute would be between the dispute resolution provider and the objector and both those parties would pay fees to the dispute resolution provider.

>>AVRI DORIA: Okay. I've got two comments one from Michael and then Robin.

>>MICHAEL PALAGE: Kurt, with the multiple provider model, could you explain, does that mean that the challenger will get to pick what provider they want to have resolve? Because one of the things that, I think, people were very keen with in the UDRP, there have been a number of articles as to what provider is more friendly, friendlier towards the complainant, et cetera.

So could you explain in these multiple provider environment how will they co-exist? Will it be a round robin, you get one, you get one, you get one? Challenger gets to pick. Could you elaborate please?

>>KURT PRITZ: Let's go on to the next slide and then take all the questions about this because there is a bullet here for you, Michael.

There is an intent to the extent possible to consolidate proceedings. So if there's multiple morality or public order objections to one string, we would work to consolidate those.

In the first round, only one dispute resolution provider will be assigned to administer all the objections under any one ground. In developing this procedure, we think that -- we, I think, in discussing it amongst everybody in this room and others that consistency is very, very important and so we would have, you know, potentially multiple dispute resolution providers but only one for each form of objection.

There's defenses to objections that are part of the process and also we're working through guiding principles are standard with dispute resolution providers. We took considerable -- we made -- we took a lot of feedback in that all-day meeting as opposed to the five or six minutes we have left here and reworked aspects of the community-based dispute resolution standards in line with our last face-to-face meeting and have made other changes.

>>AVRI DORIA: I have a question for Robin. But another is I'm not trying to cut this off after five or six minutes, so definitely going to allow the time and rework our schedule as we need to let this end. Robin?

>>ROBIN GROSS: You'd mentioned that outside counsel had prepared a paper for the dispute resolution providers. And I know a lot of us on council are very eager to get more information about this process so I'm -- I would like to request that that paper be provided to council and the community.

>>KURT PRITZ: So that's a really good question and, you know, I think we're all struggling here a little bit because we're doing this implementation work and we want to make aspects of it public and we want to share it with the GNSO but we're still working in an environment where the recommendations aren't approved yet, so we can't enter into agreements with dispute resolution providers yet.

You know, I gave one caveat so far but certainly there is all very tentative information. And applicants should not be relying on what's said here because, you know, results may vary when the recommendations are posted and then we start implementation and we start churning out information. But I'm for a dispute resolution procedure and sharing that as soon as possible.

>>AVRI DORIA: Okay. I had Jeff.

>> PHILIP CORWIN: I just read in the last 24 hours that the people that proposed .XXX had filed for independent review. Our association objected to .XXX not based on the concept but based on the particular the contract, which brings my question around.

You have a standard evaluation process, but will there be a standard contract template? Will it be the same contract for every proposal or a standard starting point which will be customized proposal or de novo contract based on the target audience, the type of content, whatever?

Eventually, everything ICANN does by contract to set up a new registry must be by contract so what will we -- the community when they look at these contracts, will it be pretty much the same contract for everybody or wildly disparate contracts?

>>KURT PRITZ: This is for the pink slides later on, but there is intended to be one base contract. There might have to be some variation working with governments or IGOs because of their restrictions in choice of law or something like that. I think there will be a very rapid path for those who sign that agreement and very -- you know, not fast path for those who need to negotiate and get separate board approval on specific terms.

>>AVRI DORIA: First of all, I want to apologize for calling you by the wrong name when I called you. But that allows me to remind people, say your name when you start to speak, especially if I get your name wrong when I call you.

>>PHILIP CORWIN: No offense taken and it was Philip Corwin who asked the last question.

>>KURT PRITZ: Let's go to the next slide.

At the close of the dispute resolution, there is string contention -- let's go on to the next slide.

So that occurs when there are two or more strings that are identical or that are -- raise string confusion. Certainly they will be given time for parties to resolve the issue before the applicants enter into either comparative evaluation and auction.

I answered a question earlier that -- I think it is Tony's question that caused me to describe this process. So comparative evaluation is entered into contending strings when one or more of them is a community-based TLD that they have been able to demonstrate that they've met standing requirements as a community-based TLD and that then they demonstrate clearly and convincingly that they add more value to the DNS than the other contenders.

If they don't make that demonstration or if there is no election for comparative evaluation or there is just open TLDs that are in contention, we'll enter into an auction. We've recently developed an economic case for auctions. It is a paper that will be published -- I don't know why it can't be published right away, but we're going to talk about it this afternoon -- that's fairly interesting. We're working with Power Auctions that is headquartered in the U.K. Is that correct?

And they've done several spectrum auctions around the world. Then we'll select a third-party service to be the auction provider. It might be Power Auction; it might be somebody else.

And then very importantly in this and many aspects of the new TLD program, there is significant cash flows involved here. And so ICANN will undertake a community consultation before the first auction is held to determine the use of funds, how there will be separate -- it is separate from the ICANN budget really so how those funds will be segregated and how they might be applied for different purposes. Jon?

>>JON NEVETT: Thanks, Kurt. Jon Nevett, registrar constituency. Quick question on what you just said. You guys retained -- what was the name of the entity? Power Up?

>>KURT PRITZ: Power Auction.

>>JON NEVETT: Power Auction to design an auction for this purpose. Do you think it would be a conflict of interest for them to be an applicant to provide those auction services as well, if they're designing them?

>>KURT PRITZ: I don't know. It hadn't struck me before as more of a business guy, I thought more of the efficiencies of them wanting to succeed at what they design, but I'll take your question and think about it. Thanks.

>>AVRI DORIA: Okay. I've got Paul and then Michael.

>> PAUL STAHURA: I just want to make sure before the auction, there is going to be an opportunity for the applicants to cooperate, the ones who are in conflict with each other. Is that still there?

>>KURT PRITZ: Yes.

>>AVRI DORIA: Michael.

>>MICHAEL PALAGE: Mike Palage. Kurt, when we talked about this, when we began this whole endeavor for new gTLDs, we talked about it being self-funded. So to me, if, in fact, there are, if you will, lottery proceeds from this, to me I think that should stay within the new gTLD process to help offset future applicants, taking money outside of this process, does ICANN envision taking and using that money for something outside of the new TLD process? Because wouldn't that be, then, in conflict with the original premise that it be self-funded?

>>KURT PRITZ: So, yeah, the new gTLD process will be self-funded. If we sit around a table and write numbers on the backs of envelopes, we could possibly get to some fairly large cash flows and then say, Well, let's make the next three rounds of gTLD for free because they've all been paid for by this auction. So I'm not sure that's the right approach or to take -- you know, put that money in the bank and use the interest to pay on auctions.

So I think -- I think there's significant sums of money, and I think there should be a community discussion about what to do with it, but what I'm saying is that none of that will happen until we have this consultation because we've had one consultation about the process being self-funding.

>>MICHAEL PALAGE: Just a follow-up. As we've seen now with certain registrars failing, it's probably likely that certain registries will fail. So perhaps saving that money for a rainy day for when those registries fail might be a good idea as opposed to spending it prematurely.

>>AVRI DORIA: Okay. I have Jeff and then J. Scott.

>>JEFF NEUMAN: Can I ask a question -- sorry, Jeff Neuman. A question on the comparative analysis. I guess it was a slide back or two slides back. Maybe I am the only one confused. Let's say it is a community-based one and there's one applicant that comes forward and says, "I represent five groups within this community" and there is another applicant that says, "I represent two groups." Is that part of a comparative analysis or does that just go straight to auction? I've heard four or five different views each thinking they're right on how this is going to go. So am I the only one confused?

>>KURT PRITZ: If an applicant says they are a community-based applicant, then if -- if, then, at the time of contention that applicant wants to enter comparative evaluation, they'll be asked to demonstrate that they are a community-based applicant. That's the first time they'll really be asked to provide that information because it is not needed till then.

If they demonstrate that they are community-based, then the contenders can go into a comparative evaluation.

In the comparative evaluation, if one of the contenders demonstrates clearly and convincingly they add significantly more value to the DNS -- I said that wrong but a couple of those words were the right way -- then that applicant will be awarded the TLD.

If one isn't a clear and convincing more value added to the DNS applicant, then the comparative evaluation will not render a decision.

>>JEFF NEUMAN: Sorry. Just to follow up on that, if one applicant says they represent a community but another says, no, this should just be open so they apply for it on an open basis, how does that work?

>>KURT PRITZ: If there's one community-based applicant, they can -- he can ask that they -- it can ask that they all enter into a comparative evaluation.

>>JEFF NEUMAN: So if you allege -- if you say you're community-based, you will automatic -- and you can show it, you will automatically trump the one that wants to use it for a generic purpose?

>>KURT PRITZ: No.

>>JEFF NEUMAN: So then I'm confused because if you're in a comparative analysis, but the second applicant can't show that they represent a community, wouldn't they lose?

>>KURT PRITZ: No. We're talking about adding value to the DNS, right?

>>KRISTINA ROSETTE: Actually, I guess one thing now Jeff has gotten me confused because I would think that in the scenario that he's posited, that recommendation 20 that talks about where you've got substantial opposition from a community, which -- and I would imagine you would have a scenario there where you've got two entities purporting to represent the same community -- there's going to be objection there, that that would go into the dispute resolution.

So I think if we're all confused, that --

>>KURT PRITZ: So you're right, Kristina. I think the process is clear. During the objection process, if somebody purports to represent a community and there's substantial opposition to that, there can be an objection made that that applicant should not be -- that application should not be granted based on Recommendation 20.

After that, if there's -- if they survive the objections, if there are objections, then they would enter into this comparative -- the comparative evaluation.

>>AVRI DORIA: I've got J. Scott, Marilyn, Paul and then Tim. So J. Scott.

>>J. SCOTT EVANS: I actually don't have a question. I just want to clear up the public record because we are being transcribed. Earlier Michael said the proceeds from the lottery, and I don't believe we have ever discussed a lottery. We discussed an auction. And just for the record, given the historical precedent that word has had in this process.

>>AVRI DORIA: Actually, to correct the record completely, within the GNSO we certainly did talk about lotteries but they're not within the plan.

>>J. SCOTT EVANS: Okay.

>>AVRI DORIA: Some of us still favor them. Okay. Marilyn, Paul and Tim.

>>MARILYN CADE: My name is Marilyn Cade. I think consistent with long-standing practice, we all should be stating our interest when we have one, so I'll state my interest.

I advise overstock.com and my question -- I'm going to make the comment about the use of auctions. The proposal that overstock.com submitted related to the use of auctions at the second level in relation to single letters, so having stated that interest, let me now speak as an individual.

I have a big concern -- and I will think about it and use the public comment process -- about the use of auctions in the allocation of the top-level strings.

I think that they're -- I strongly support the need to have a cost recovery mechanism, but I advise another client, AT&T, who in their comments on the JPA expressed a strong concern about ICANN developing an economic interest in the role that they play as the trusted party that manages the top-level space, and I'm afraid that auctions give ICANN a financial interest in that responsibility, and I -- I have grave reservations about that, and whether that is the best way to fulfill the limited public trust role that I think ICANN has and that we should all look to it to do.

But I'll make that statement for the record and note that I am making a distinction between the use of auctions at the second level, where that already exists, and the role that ICANN plays in expanding the namespace. Thank you.

>>AVRI DORIA: Okay. Paul?

>>PAUL STAHURA: Paul Stahura. I have two questions.

So I -- back to what Jeff said, maybe you could help me because I'm a little bit confused but I don't think so.

So comparative evaluation. If there's two parties, one claims community and one doesn't, that -- if the one who doesn't claim community provides significantly more value to the DNS than the other one, the one who claims community might not necessarily win. Is that correct?

>>KURT PRITZ: That's correct. Or neither of them could win.

>>PAUL STAHURA: Right. They might go to a tie, for example.

Okay. And then my second question is: To what Marilyn's saying about these second-letter auctions -- or the second-level auctions and the top-level auctions. They might be two different types of auctions, is that correct? They're not necessarily the same type of auction?

>>KURT PRITZ: That's correct.

>>PAUL STAHURA: Okay.

>>AVRI DORIA: Okay. I have Tim and then Adrian.

>>TIM RUIZ: So I guess Paul asked part of my question was just to confirm that, you know, a generic -- intended generic TLD could possibly provide more value than a sponsored one, so to speak.

But there -- I guess you're saying value -- more value to the DNS. I guess that's lost on me a little bit. Are we talking about in a technical sense or is it more that we're talking about value to the namespace? That they're that they've proposed?

>>KURT PRITZ: So -- I think it's value to the namespace. One of the reasons why, at this stage -- which is tentative and should not be relied upon -- that we're using words like "clear and convincing," which is dealing with a legal term of art, is to say that comparative evaluations by their nature are subjective and problems will arise with subjectivity in a close race.

So that if you have a race called "comparative evaluation," you really want a clear winner in order to use that tool, so the problems with subjectivity don't arise.

>>TIM RUIZ: Thank you.

>>AVRI DORIA: I've got Adrian, Yoav, Mike, Robin, and Michael. So Adrian?

>>ADRIAN KINDERIS: Adrian Kinderis. Can we go back a slide, please? And back a slide? And -- you know what? Maybe I'll just skip going backslides.

>>KURT PRITZ: Your question?

>>ADRIAN KINDERIS: I'll try to remember the question without seeing it. So with respect -- when do you -- can you just clarify for me when you're going to comparative evaluation or auction? Is there a straight-to-auction scenario?

>>KURT PRITZ: Yes. If none of the parties -- if none -- if none of the parties are community-based, it would be straight to auction. If one or more of the parties are community-based but elect -- did not elect to go to comparative evaluation.

>>ADRIAN KINDERIS: So say that last one again. I misunderstood your last one. I got the first one, if they're not. If they are community-based? So is he E. say you got two community-based applicants.

>>KURT PRITZ: And neither of them elect to go to comparative evaluation, it would go to an auction.

>>ADRIAN KINDERIS: Kin so they have the choice.

>>KURT PRITZ: The community-based ones have the choice.

[Speaker is off microphone]

>>KURT PRITZ: Right, right. But Adrian said straight-to-auction.

>>ADRIAN KINDERIS: Yes. No. Appreciate it. Thank you.

>>AVRI DORIA: Yoav?

>>YOAV KEREN: Yeah. Actually, it's very -- I want to continue what he asked because it seems to me that the fact that there is not a comparison between two applicants that are not community-based would -- and I'm going for what Marilyn said -- would give some internal interest for ICANN to just approve everyone and send them to auction.

Now, let's say that there is an applicant which is a very bad applicant, but they are -- you can say yes for most of the things that, you know, are on the application, and but they have a lot of money and there's another applicant which is very good and they don't have a lot of money.

And this way, there's no comparison. It goes to auction, and the bad one wins. So why don't you send everyone to a comparison before you send them to auction?

>>KURT PRITZ: So I would recommend this: That we're going to publish a paper that describes the arguments for auction that are economically based, and establish a comment period around that, and I think, you know, Marilyn's comment, your comment, and other comments here would lend -- you know, they belong in the public comment form about that, so -- rather than try to answer your question, which is a complex one.

>>AVRI DORIA: Okay. I've got Mike, Robin, Mike, and then Edmon. So Mike Rodenbaugh.

>>MIKE RODENBAUGH: Thanks. It's Mike Rodenbaugh. So I'm still stuck on this which will create more significant value to the DNS between identical strings. One is community-based and one is open.

So I seem -- it seems to me that clearly we want to prevent, you know, tiny made-up, game communities that maybe didn't even exist before this whole process was being discussed, from preventing, you know, valid, big uses, but it seems to me that in doing that, you're leaning towards a rule that whoever is going to sell more registrations is going to win.

I don't think that that's where you want to go either. So I don't under -- really understand how you're going to balance that and create objective criteria for dispute resolution provider to make that decision.

Do you have -- have you -- can you talk a little bit about what those might be? Why you guys are thinking that?

>>KURT PRITZ: Yeah. So I think there was broad support in the GNSO for support of community labels, especially for, say, you know, indigenous groups. You know, dot Sioux in the U.S. or Maori in -- south of the equator there, and so the comparative evaluation was built around accommodating the value that we all saw in protecting those groups.

And so that's what the comparative evaluation is built around, that we all don't want a process where a small player like dot Sioux or dot Maori cannot get -- you know, doesn't get a TLD because a much larger player is involved.

So the comparative evaluation is built around that goal. So I think we're -- we're supporting the same thing.

>>MIKE RODENBAUGH: I think so. In those examples, I think that -- they're very clear. I just think there's going to be a lot more gamesmanship that happens with strings. People basically will come up with communities that --

>>KURT PRITZ: Right. So the idea would be to draw a really, really tight line and a standing requirement that qualifies one as a community. But I think -- I think there was really broad support among us that we didn't want to see one of those community labels awarded to some place that it didn't belong because there could be an auction. That we wanted to preserve that right.

But -- so we don't want that result. And given that we don't want that result, how do we best implement a procedure that can be reliable? And so it's -- it's not impossible. It's difficult, but -- and it goes to how to write that criteria about what a community is, I think.

>>AVRI DORIA: I have, yeah, Robin, Mike and then Edmon. Robin?

>>ROBIN GROSS: Yeah. I have sort of a question along the same lines. This idea of an analysis based on what provides more value to the DNS.

So I'm also very keen to understand the criteria that we're talking about with respect to the term "value," so how is "value" defined in this analysis?

>>KURT PRITZ: So I think -- I think there's a set of factors around bringing lasting value to the DNS, having broad support in that community or well-supported by that community.

But again, it's a subjective analysis, and that's what makes it difficult.

>>ROBIN GROSS: But so what -- what is the criteria?

>>KURT PRITZ: Well, I don't have the criteria.

>>ROBIN GROSS: How is it defined?

>>KURT PRITZ: I don't have the criteria.

>>AVRI DORIA: Mike?

>>MICHAEL PALAGE: Michael Palage. J. Scott, thank you for my misspeak on "lottery" and "auction."

To answer the question, Robin, about bringing value to the DNS, that actually has been a criteria that has been existed in a lot of the RFPs, even dating back to the 2000 round, so I think when -- one -- when the community is looking for some type of basis, they can look historically as to some of this criteria in the past. I don't know if ICANN's going to be looking at it, but I would recommend them to look at criteria that has been involved.

A follow-up question to Kurt. During the last consultation in Marina del Rey, with regard to community, your one slide at the time said, "Where one would claim a community" and then I think, Paul, in response to Paul, you indicated that you might change that to where someone would have to demonstrate.

So that's what I'm hearing today, that there will be a criteria in which if someone claims, there will be a verification process to demonstrate. Is that correct?

>>KURT PRITZ: That's right. The "claim" word, that quote was lifted out of the implementation guidelines that were part of the policy recommendations. But what you're saying is correct, that they'll be asked to -- when we get to this stage, they'll be asked to demonstrate that they're a part of a community.

>>MICHAEL PALAGE: Thanks.

And then just the final point: When you were -- Kurt, when you were talking about sort of "clear and convincing" with the idea of two competing things, just for the benefit of the people in the room, when I was sitting on the ICANN board at the time, we had the Telcordia report that, if you will, resolved the dot net issue between the two very closely aligned competing bids between VeriSign and NeuStar, and in that scenario, the board had to make a decision based upon one blue or one yellow or one color, so to me, that may be an example where the comparative analysis did not, if you will, provide a clear and convincing comparative analysis, and in which case an auction might have been the preferred basis for resolving that.

>>JEFF NEUMAN: I firmly disagree with that.

[Applause]

>>AVRI DORIA: Let's stay away from that debate also, please.

[Laughter]

>>AVRI DORIA: Okay. I have Edmon.

>>EDMON CHUNG: Yeah. Following from discussion about the comparative evaluation, since it's going to be, as you mentioned, Kurt, that it would be relatively subjective, is there any contemplation -- I think at one point in the discussion we talked about some sort of arbitration in those cases.

Will there -- is there any contemplation of a dispute process, appeal, arbitration, if it happens that there is, you know, one particular party that says, "We think we clearly is better," and at that point?

>>KURT PRITZ: Well, there will be an independent party that resolves that issue of comparative evaluation and be asked to determine if there's a clear winner. So whether that's an arbitrator or a dispute resolution provider, you know, it's some label like that that's probably a little different from that. Somebody with experience along the right lines.

>>EDMON CHUNG: So that's considered final, basically, and there's no further dispute process, so the -- whoever is doing the comparative study would basically have final and then if it's inconclusive, then it goes to auction? There's no further dispute or --

>>KURT PRITZ: That's right. So the -- all the dispute resolution processes, the dispute resolution provider will make a decision. You know, the ICANN board is the final say on saying that those decisions are final.

>>EDMON CHUNG: But the -- when I talk about "dispute," it's not about the dispute earlier on in the process.

>>KURT PRITZ: Correct.

>>EDMON CHUNG: The dispute about --

>>KURT PRITZ: Right.

>>EDMON CHUNG: -- yeah, the comparative evaluation.

>>KURT PRITZ: Yeah. Same thing.

>>AVRI DORIA: Okay. One more question. No, no, you have to use a microphone. Otherwise the the- the recording and --

>> Sorry. If I win on the -- and then I add more value, then will my contract reflect or put obligations on me to deliver that value? Question one. And question two, if I don't deliver on that value, what happens?

>>KURT PRITZ: So -- who said that? Did you say that?

>>YOAV KEREN: Yes.

>>KURT PRITZ: Very good. So that obligation will be put into the contract, so there's -- there's -- you know, when you claim your -- so this is, again, tentative information, not to be relied upon by anybody in this room --

[Laughter]

>>KURT PRITZ: So if you say you're a community-based applicant in your application, there's a -- there's a gain there, right? In the case of potentially entering into comparative evaluation. But then you have, you know, an obligation in your agreement to be that community-based TLD. So what you're signing -- you have a -- you're gaining the application and a continuing obligation after that.

There's a couple scenarios for how that might be enforced. One is a compliance program that continually monitors all the TLDs to see if they're slipping into the gray area between being a community-based TLD and not. Another would be does -- you know, does somebody care if that community-based TLD changes, and that would be more of a -- you know, a dispute resolution process. Sort of a post-delegation dispute resolution process. We have one for UDRP now. We could set up one potentially for community-based TLDs that -- where some member of that community can come in and make an objection -- an objection, of sorts, and say, "That's not a community-based TLD anymore. They have to conform and do compliance that way."

>>AVRI DORIA: I'd actually like to cut questions now. I've just been informed that Kurt's going to have to leave fairly soon so I'd like to actually give him a chance to finish his presentation and then I'm sure we'll have a lot more chances to go through these questions, but... so Kurt?

>>KURT PRITZ: Is this the end.

>>AVRI DORIA: No. You get to finish your presentation.

>>KURT PRITZ: Yeah, but this is the end.

>>AVRI DORIA: Yeah, but you haven't spoken to it yet.

>>KURT PRITZ: Oh, jeez. So...

After the evaluation process is said and done, we talked about there being one base agreement. Then the board can -- then the board is expect -- you know, the staff would recommend for the board to look at the process and say that the processes were followed and the determinations that were made in the process should be approved, and then finally that there will be a pre-delegation check for -- to determine if sort of a -- sort of a technical check to determine if the applicant met the baseline criteria.

To the extent we can do that. It's still pre-delegation and the TLD is not operational yet, so we understand there's not -- there's many things that can't be done.

And finally -- finally?

The time line. So we expect to -- so this is a point of discussion that I want to carry on maybe at the next GNSO call, but the draft RFP will be issued not in the too distant future after this meeting, in the late summer/early fall of the northern hemisphere.

Then there will be a public comment period about the draft RFP and then a -- and then board approval, probably, of a final RFP.

And then the GNSO asked for a communications plan that is four months after the issuance of an RFP.

Now, potentially -- well, now, potentially that could be accelerated slightly, as far as the communication plans go, but that would put the application launch, you know, in the late first quarter of next year or the early second quarter of next year.

>>KARLA VALENTE: Calendar year.

>>KURT PRITZ: Calendar year. So... Kristina?

[Applause]

>>KURT PRITZ: Thank you. I think Kristina had a question first.

>>AVRI DORIA: There's Kristina and then Werner had a question.

>>KRISTINA ROSETTE: I just had a question and just an observation.

The question has to do with the second-to-last slide.

>>KURT PRITZ: Uh-huh.

>>KRISTINA ROSETTE: Is it really ICANN's plan to execute a contract with the applicant before the board approves?

>>KURT PRITZ: Yeah. So that's -- I wrote that too early.

I think it's -- I think it's "contract agreement." I think we have an agreement.

>>KRISTINA ROSETTE: Okay. All right, all right, all right. And then the observation would just be that to the extent that there may be a belief by staff that the interest in the cross-ownership issue is limited to registrars and registries, and potential applicants, I can assure you that that is not the case.

>>KURT PRITZ: Thank you.

>>AVRI DORIA: I had Werner -- Werner hasn't had a chance and then Jeff you wanted to make another comment.

>>WERNER STAUB: My name is Werner Staub, from CORE.

I am of course worried, as anybody, about the fact that we're delaying the process again, but it seems to be inevitable.

We just try to keep these delays as short as possible. But what worries me even more is the absence in the pictures that we just saw of the follow-on rounds. If we do not see them, it's as if we design an engine that is only going to do one cycle. That's not going to be a good engine.

So for anybody to make any planning, we have to see the following rounds and, you know, they have to be frequent, such as once in six months. Only then can people make decisions.

More-over, if we do not have them, people cannot count on those following rounds, we actually endanger the first round.

>>KURT PRITZ: Yeah. ICANN is firmly committed to announcing the second round at the same time as the first round were.

>>AVRI DORIA: Okay. Jeff, I guess you're going to get the last question, unless -- no?

>>JEFF NEUMAN: Actually, just a couple -- just really one question.

When you say the draft RFP is going to be posted a couple weeks after this meeting, is that going to include a copy of the base contract?

>>KURT PRITZ: More than a couple weeks after this meeting we'll post the slides, and, yes, I'll include a version of the base agreement.

>>AVRI DORIA: Okay.

>>JEFF NEUMAN: And then just to follow on, the comment I was going to make, you said if one is not compliant -- someone wins this comparative analysis, then there's a choice which you haven't set on yet, which is either going to be ICANN will enforce the contract or it will go through a post-dispute resolution.

If the only outcome of a post-dispute resolution is that forcing the registry to do its job, do you actually think someone's going to pay to dispute that? Or how...

>>KURT PRITZ: You know, maybe if it's loser pays or if a party is passionate about the community, so -- and depending on the cost.

But certainly that's a balancing that has to happen, and what you're raising is a very valid issue.

>>JEFF NEUMAN: Yeah. I mean the reason I'm raising it is because I believe it's really ICANN's job. If you're going to delegate the TLD and award it based on the analysis, then -- or evaluation, then you guys should probably be the one to enforce it.

>>AVRI DORIA: Okay. I wanted to thank you -- oh, you have more questions? Okay. If you're willing to keep questions, J. Scott --

>>J. SCOTT EVANS: I just wanted to know, are the slides -- can we get a copy of the slides? I want to do this in my office for my team and so I need to have these slides, if I could get a copy.

>>KURT PRITZ: No. Conference me in.

>>J. SCOTT EVANS: Or if you want to do it, I'll let you do it.

>>AVRI DORIA: You didn't say in several weeks the slides will be -- or the slides will be out soon.

>>KURT PRITZ: No. The slides will be out right away.

>>AVRI DORIA: Right away. Okay. Okay. Thank you again very much.

[Applause]