ICANN Transcription

IDNs EPDP

Thursday, 12 January 2023 at 13:00 UTC

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DEVAN REED: Good morning, good afternoon, and good evening. Welcome to the IDNs EPDP call taking place on Thursday, 12 January, 2023 at 13:00 UTC. In the interest of time, there will be no roll call, attendance will be taken by the Zoom room. We do have Nigel Hickson will be joining late today. All members and participants will be promoted to panelists for today's call. Members and participants, when using the chat, please select everyone in order for everyone to see the chat and so it is captured in the recording.

Observers will remain as an attendee and will have view only chat access. Statements of Interest must be kept up to date. If anyone has any updates to share, please raise your hand or speak up now. If you need assistance updating your Statements of Interest, please email the GNSO Secretariat. All documentation and information can be found on the IDNs EPDP wiki space.

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Recordings will be posted shortly after the end of the call. Please remember to say your name before speaking for the transcript. As a reminder, those who take part in the ICANN multi stakeholder process are to comply with the Expected Standards of Behavior. Thank you and back over to our chair, Donna Austin, please begin.

DONNA AUSTIN:

Thank you, Devan, and welcome everybody to today's call where we may need, as Emily noted in the agenda when she sent it out, we've got quite a bit to get through today, and we may need to go through to the two-hour mark for this call. Just a heads up that in the absence of any objection, we're going to do things the other way around. Expect to have a two-hour call, and we'll try to finish in 90 minutes rather than the call being 90 minutes.

So from this call forward, the expectation is that we will take two hours for the call. We've still got quite a bit of stuff to get through in order to get our initial report published by April. So we're going to err on the side of caution and go for two hour meetings moving forward, unless we have considerable objection from the group. So I think it's just a matter of being pragmatic and understanding that we've got a bit of work to do.

So let's ramp it up to two hours a week and see if that helps us get done what we need to get done. Just for today's call, I'm just going to say, please bear with us, we've got a bit to get through, but we're also going to, particularly with the consideration of charter question A3a, we're going to test the consequences of the

hybrid model. I'd have to say my leadership team this week, we've found this pretty difficult to wrap our heads around.

As usual, Ariel has done a really good job of finding a way to visualize what we're trying to get to or get a better understanding of, but it is going to take us some time to get through the slides and potentially get everybody on the same page about what we're trying to do. So please, bear with us, and hopefully, it'll all make sense as we start to go through it. So with that, I'm going to hand over to Ariel, and we'll start today's call proper. So Ariel, over to you.

ARIEL LIANG: Thanks very much, Donna. Hello, everybody. So, we will first tackle the charter question E4 before we tackle E3a, even the numbers after that, but we think logically speaking it may be easier to do this one first before we do the other one. So charter question E4 is a question about whether their string contention resolution mechanism needs to be adjusted due to the implementation of variance.

I just want to provide some quick background and then clarify the scope of the question of what the group is expected to tackle. So, in terms of string contention, we look at the 2012 round and the purpose and the background related to that. So in the 2012 rounds, if two or more applicants for an identical gTLD string, basically, exact matches up the same string, if they're applying for the same one, and then both of the strings have completed all previous stage drop the evaluation, then they will go into string

contention resolution, because only one applicant can have that string.

So that's the first kind of aspect of that. Then the second aspect is that if two or more applicants, they apply for similar gTLD strings, that's based on the assessment of the string similarity review, and then also, those strings have completed the other stages of the evaluation, and also, those strings are identified as a possibility of creating user confusion if more than one of the strings is delegated, then those similar strings will go into contention, resolution as well.

So that's an [00:06:42 - inaudible] how it worked. Another point I want to note is that even variant gTLDs wasn't a thing to say in 2012 rounds, but as you recall, the applicants are able to identify self-identified variants based on their IDN tables submitted to ICANN in 2012. In the AGP, it also includes the specification that if two or more applicants, they apply for IDN strings that are variant string according to the IDN tables submitted to ICANN, then those strings will be considered in contention with one another.

So there are consideration for variance even though there's no formalized definition at that time, and there's no RZ-LGR, of course, but variants are also considered in contention in 2012 round. With this background, SubPro PDP has some deliberated on the string contention resolution mechanism and proposed some recommendations, but one thing we want to note is there is no substantive changes to the mechanism. So basically, for the applicants to resolve the contention, they could do it via settlement between the parties, so they can self-resolve that, and then if the

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apply for string is community string, then the applicant can elect the community priority evaluation to resolve the contention.

Then for other non-community TLDs, the resolution mechanism is an auction. So these are the mechanisms for string contention, resolution, and there's no change, no substantial change to that. Also, for the EPDP team, this is not something we have to discuss in terms of what exactly the mechanism has to be to resolve contention. It's more about, what strings going to contention set because now we have variants. So that's possibly the area this group should focus on.

So that's a quick background on the contention resolution. Also, I want to share this flowchart again, we shared this a while back, but now this is more relevant to the topic we have. So this basically shows how contention sets are created in the relevant steps in the evaluation process, and then you can see how it flowed down to the string contention section.

So I just want to go through some of the major steps quickly and refresh everybody's memory. So the first part, we probably don't need to go through, it's the administrative checking, but then the second part is basically when contention stats would be created or modified. So if you're looking at Step five, the initial evaluation, ICANN will run an algorithm for all apply for gTLDs against all other apply for gTLDs. So in this step, identical strings, they can be identified, because the algorithm should be able to detect that.

Now we do have variants applications, and what's is expected is that if a two apply for strings that are variants for each other, according to the RZ-LGR, then this algorithm should be able to

detect that as well. So in those cases, those identical strings and strings of variants, they should be added to contention sets in step five. Then in terms of step six, this basically talks about the string similarity review, and the panel will decide what additional strings that need to be added to contention sets due to the bureau confusing similarity.

Now we have settled on the hybrid model. So, the string similarity review panel will decide what strings are similar based on the assessment of the hybrid model. So that could include strings that may not be in contention with each other, but because they're variants are confusingly similar, so those strings have to be added to the contention sets as well. So that's step six. Then, after ICANN publishes the contention sets, we go to step eight, that's related to the extended evaluation, and then other objection challenge and appeal process related to the string similarity review.

So here, I want to note that the challenge and appeal mechanism, they are recommended by SubPro, so this will be new in the next round, and they can potentially affect the contention stats. So, for example, if there's a successful challenge against the string similarity, review panels, judgment of similar strings, then the contention sets may be reduced as a result of that. So some strings may be removed from the contention sets, because the challenger believed they're not similar, and then their claim was successful.   So that's a potential possibility to reduce the contention sets.

Then in terms of the objection process, that was already in 2012 round, that will continue in the future rounds. So if there's a

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prevailing string confusion objection, then that means the object or identified strings that are confusingly similar and the string similarity review panel didn't. So in that case, additional strings will be added to contention sets. Also, for the appeal mechanism, so that's basically against the string confusion objection.

So the result of that is some strings may be added to the contention set, some strings may be removed from the contention set. So basically, all these some mechanisms could change the number of contention sets on one string going to it. Then also, in the step eight, we mentioned there's the extended evaluation. So some strings may not be able to pass certain elements in the extended evaluation, and then they are removed from contention sets because they don't pass other elements of the review. So this is just to illustrate how the contention set grow or shrink due to these different steps involved.

Now we go to the section of string contention. So one part I want to highlight is that in the 2012 round, applicants were encouraged to self-resolve string contention anytime prior to the conventional resolution process, and I believe this will continue as well. So self-resolution is highly encouraged, and I want to just provide you a quick example what that means. So if there are two applicants that are applying for similar strings or identical strengths, one of the way for self-resolution is to create a joint venture. So one entity will control the string instead of two, so that through the joint venture, this contention can be resolved.

So that's just one example how self-resolution works. That's encouraged any time prior to the contention resolution process

kicks in. Then in the event that those contention cannot be self-resolved, there are certain elements or ways to do that.

Formally, it's through the contention resolution process, and as noted before, if one or more of the community based TLD, the applicant for that elects to use the community proudly evaluation as a way to resolve contention, they could do so. Then for non-community TLDs, auction is the way to resolve contention. So once there is a clear winner emerge from these processes, the prevailing party will proceed to the next step of the application process, and the non-prevailing party cannot proceed.

So that's how it works. I just want to stop quickly and see whether there's any questions or confusion about the process before we go to the charter question itself. Not seeing hands were comment, so I trust everybody is [00:17:06 - inaudible] well familiar with the process. So now we're looking at the charter question. So basically, due to the implementation of variant top-level domains, whether and how a string contention resolution mechanism need to be adjusted.

So that's what's being asked. It's a very general and broad question. We try to analyze it by providing some more nuanced questions for your consideration, and hopefully, by answering these questions, the group will have a clearer picture what recommendation may be needed to clarify how variants may work in the contention resolution mechanism. So the first question we want to ask the group is that, should a recommendation be developed to explicitly specify that if two apply for strength that are each other's variants, according to the RZ-LGR, then those strings must be placed in a contention set.

So I just want to provide you a quick example to explain what this question means. So if you say applicant A applies for string A, in the society, it's actually SPC in traditional Chinese, and an applicant B, which was a different entity applies for the HSPC in simplified Chinese, then those two strings must be placed in a contentious set because we can't have the different entities that control variant strings. So basically, those two strings that are definitely variants for each other, one is traditional Chinese, the other is simplified Chinese, but they mean exactly the same thing.

So we're asking the group, should we provide a recommendation to explicitly specify that if two variant strings apply by different entities, then those strings must be placed in a contention set? So that's the first question. Maybe I can just go to the second or third one to give you a flavor what are being asked, then we can stop anytime to discuss this specific question. So the second question is that we're trying to understand what exactly go into the contention set. So we're asking in a contention set, sorry, actually a question. Second is about the resolution. I'm sorry, I apologize.

So in the contention set, if one of the labels is already allocated, should the contention be resolved in favor of the entity that has already allocated label? So this may be a little convoluted to read the sentence, but what we mean here is that, for example, if applicant A applies for string A, and that's a brand new application, but there is another existing registry operator B, already has a existing TLD B and is applying for a variant label of that existing TLD, and for some reason the brand new application TLD A is confusingly similar to the allocatable variants of existing TLD B, and then they go into a contention resolution. In that case,

should the contention be resolved in favor of the existing registry operator?

So that's the question we're asking. So that's the second one. Then the third one, just to give you a quick heads up is that we may not be able to resolve this question before we tack le the E3a, because they're very much related, but I want to put it out here for your consideration. So the question is asking, should the entire variant label sets, including all allocatable and blocked variants in the set, be processed in a contention set, as opposed to the only apply for strings?

So that's related to the consequence of the string similarity review? So once you identify [00:22:05 - inaudible] confusing with similar strings, do you only resolve contention among the confusingly similar ones? Or would they have to consider the entire set related to those strings? So that's the third question.

So I will stop here, and then perhaps, to open up discussions, and maybe we can start tackling from the first question first, because this may be a little bit easier than the other two. I will pause now and see whether there's any hands or -- I see the comments, but I haven't got a chance to read it. I see Edmon has his hand up.

EDMON CHUNG: Yes, Edmon here. Speaking again, personally, every time. So previously, we were talking about similar strings. If we talk about the actual string in the variant, I think this group has discussed this and has been done with it that if it's outright a variant, then it has to be considered a contention sets based on the RZ-LGR and the

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adoption of that. So, my feeling is that these three questions, yes, I think it's probably good to include them as for thoroughness for discussion, but it relates to the adoption of the RZ-LGR and also the principle that we see it as one application and, and so on.

So I think, like the last few times, we were talking about similar strings between the allocated variants and if they are similar, but if they're exactly that string, then, of course, it has to go into contention. So hopefully that makes sense.

ARIEL LIANG: Oh, sorry. Sorry. Yes, I just wanted to quickly note that for Q1, that's our common understanding, but seeing the AGB in 2012 rounds, of course, our RZ-LGR didn't exist, but now it exists. So we're wondering if making the recommendation to make it explicit can be a good thing so that can be incorporated in the AGV for future rounds. So that's why we're asking a question.

DONNA AUSTIN: Thanks, Ariel. So these questions are for completeness and to ensure that as Ariel said, there's no ambiguity. So I think there's agreement in the chat that Q1 seems like something we should be doing.   I'll note that Satish's comment that, isn't Q1 already covered under the same entity at the top-level principle that we've already agreed upon.

That is correct Satish, but as I said, this is for completeness, because they could be-- like any process, there's going to be holes in it, so I guess what we're trying to do here is just-- this is about the implementation, so for completeness, as it makes sense

for us to be a little bit more explicit about some of the things that may be misunderstood or misinterpreted, as it goes through the implementation phase.

With question two, in the contention set, if one of the labels is already allocated, should the contention be resolved in favor of the entity that possesses the already allocated labels? So it's really about how do we-- I guess it's about the timing of the application. So what we may see in the next round is existing IDN gTLD operators applying for their variants, and whether we think they have a particular priority, I suppose, no, priority is not the right word, but whether they have existing gTLD status that we can apply to the variants that they apply for as well.

So that would lead to any-- it's hard to say whether it's-- I guess it is a contention set, but how do we ensure that the resolution is resolved in favor of the existing IDN TLD operator? So if they're applying for the variants of the TLD that's delegated, and there's a new applicant coming along that's applying for the same, does it make sense that they go through that contention set trying to find a solution, or ultimately ending up in an auction? Or does it make sense just to identify that the existing gTLD operator more or less has the first option on the on the variance so they would go out because it's associated with an existing gTLD?

So I don't know if I've confused people or made it more or whether it's been helpful. That's what we're trying to get to in Q2, it's the situation where an existing IDN gTLD operator is applying for the variant, and a new entity is seeking the same variant. So is there some kind of weight attached to the existing gTLD operator? As Michael said, due to the same entity principle, it can't be allocated

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to the other entity. So that's the other thing. I think again, for completeness, it probably makes sense if we articulate what we expect the outcome would be. Samad.

SAMAD HUSSAIN: Thank you, Donna. This is Samad. Just that, I guess, a clarification question in a way. Two strings can go into a contention for two reasons. One, that they are variants of each other, that they are similar to each other there. So I guess when we say in the contention set, if one of the labels is already allocated, I guess a question is what is the cause of the contention, and does that have an impact on how it should be resolved? Thank you.

DONNA AUSTIN: Yes, thanks, Samad. Maybe it is the way that we've worded this, and it's not necessarily-- I guess this is more about flagging the idea that this wouldn't actually be a contention set because the same entity principle as other folks have called out, and the fact that the IDN gTLD already exists. Again, for completeness, and ensuring that we have this covered, we could actually provide some language in our report that ensures that there's no ambiguity around this.

ARIEL LIANG: Thanks, Donna. Actually, originally we have Q3 before Q2, so that make sense what Q2 actually means, but I just wanted to clarify what this question is really about. So when the hardware model was proposed, our assumption is that in the contention

sets, the entire variant labels that will go into it, so that's why it's possible in the contention that one of the labels already allocated, but it's not exactly the label that's actually being applied.

So the example I tried to explain is that if applicant A applies for string A, and an applicant B, which is actually not applicant, its existing registry operator B applies for allocatable variant of existing TLD, and we can call the string B. They're both new applications, but one of the applications comes from existing registry operator. So if string A and B, if they are in contention, how do you resolve that situation?

Then our understanding is that the contender will be resolved in favor of the registry operator, because that registry operator already has a TLD that's already allocated, and the registry operator is applying for the allocatable variant of that TLD. So you resolve in that direction, that's what this question is about, and then our assumption of this question is that in a contention set, the entire variant labels are going into it. So when you see that, you will notice one of the labels already allocated because that's the existing TLD. So that's why we're asking this question.

DONNA AUSTIN: Thanks, Ariel. Nigel.

NIGEL HICKSON: Yes, thank you. Good afternoon. Yes, I think I'm on understanding now then. So I don't really understand the question in that case, so isn't it like me saying applying for a name, and the

person that's already got the name would then be disenfranchised, which would be an onsen.

I don't understand why there is a question then if-- so if we're saying that because of the rules that we've already set because of our understanding of contention and the technical issues behind it, if the new applicant, if he was granted that variant, would then be effectively disenfranchising the existing holder of a different variant, then, yes, is that the case? In which case the question is not a question. What is it?

DONNA AUSTIN: I think I have these things straight in my mind, and then people start talking about it, and it's not clear at all. So I think the reason these questions are here to help us think about when that output of our work becomes part of the implementation. The charter question we have here is about ensuring consistency in the implementation of the string contention resolution mechanism for variant label applications of existing and future new gTLDs.

So I think that's why we're asking this question. So just to have a discussion to make sure that we're on the same page, and we understand what we're talking about. Not that I can personally say as your chair that I really understand what we're talking about here. I think what we've identified is, we've identified a number of issues where there could be a little bit of confusion around the process.

So I think how I'm thinking about this is that when we're developing our recommendations in our final report, we make sure

that we're very clear what we're talking about, or what the recommendation means, and to ensure that we do have that consistency and implementation between what the SubProb recommended and what we're recommending. Hadia.

HADIA ELMINIAWI: Thank you. This is Hadia for the record. I think Q2 and Q3 are sort of related, although, Q2 talks about an already allocated label, but Q3 addresses the future that could happen to a non-allocated label now. So I think, for example, if we say that the answer to Q2 should be, yes, then it does make sense that the answer to Q3 is also yes, so that in the future, there's more predictability. Does this make sense?

DONNA AUSTIN: I think so Hadia. I think so. Okay. So I know that was clear as mud, but I think we would kind of have a general idea of what we're trying to get to here. So in theory, it shouldn't get to a contention set, because if there's a new applicant applying for a variant of an existing TLD, then that should be knocked out earlier on in the process because of the same entity principle, and so, only one person can apply for the variant.

An existing gTLD operator is the only one that can apply for the variant because of the same entity principle. So that should knock out any other applicant that comes in for that variant. Okay. So with Q3, just keep that question in the back of your mind because you thought this was complicated, we're about to do your heads in. So with that, because what we want to do is pretty much test

the consequence of implementing the hybrid model in the next slide. So Ariel, if we can move on.

ARIEL LIANG: Donna, so basically, yes. Anyway, do you want me to start on E3a? Okay. So E3a is related to the consequence of the string similarity review. The question itself may not be super precise, but we could clarify it when we're deliberating on this question. So asked if a string is rejected as a result of string similarity review, should other variant strings in the same variant set remain allocatable, should individual labels be allowed to have different outcomes and actions? So what that means is, some labels be blocked, and some label can be allowed to continue with the application process.

So the reason I'm saying this question is not precise is because the string similarity review may result in two scenarios. Rejection may be one of them, but there's another going to contention. So that's why it's not precise. In the 2012 rounds, as all of you are familiar with, so the situation is simpler because we don't have variants officially yet, but in the first scenario is, if an apply for string is find confusingly similar to existing TLD, then that string is ineligible to proceed in the application process.

During the illustration here, you see string T1 is a brand new apply for TLD, but string T2 is existing TLD. So if they're confusingly similar, then T1 cannot proceed in the application process. Then the second scenario is that if two or more applied for strings are found confusingly similar, then they're added to a contention set. They're not directly rejected, because they have to sort it out

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through the conventional resolution. So if T1 and T2, they're applied for string in this illustration, then they're added to contention set.

That's the potential consequences. So now, what we need to discuss is that, because the hybrid model is used in string similarity review, we would like to understand what's the consequence of the hybrid model? Then the overarching question we want to ask is that if using the hybrid model, it's found that one of the labels in the set is found confusingly similar to another label in the set, what should be the consequence for that label and other labels in the variance set?

There are two clarifications I want to provide related to this overarching question. So the stats of what we mean here is the primary string plus all of its allocatable variant labels and all of its blocked variant labels, as calculated by RZ-LGR. Then the confusing similar situation we noted here is basically based on hybrid model, how it's found confusingly similar. So all the labels in the set are being compared against each other was the exception, the block variants are not compared against the block variants.

So any other combination that works based on the hybrid model. So to where the overarching question is, if one label has confusing similar issues, what's the consequence for that label and the other labels in a set? In answering this question, we thought there are maybe two camps of thoughts. So this is based on discussions with the leadership team, and there may be this group of additional thoughts, but we just want to provide our general framework to start a discussion.

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So the first thoughts we have is that the variant sets must be treated as one unit. So all of the labels in the set should face the same consequences of the string similarity review, so you don't have a differentiated outcomes for different labels in the set. They have the same fate, basically. The possible rationale to support this thought one is that the hybrid model was created to follow the principle of conservatism and that is to avoid introducing variants in a manner that would adversely impact the DNS.

As all of you are familiar, the goal of the hybrid model is to mitigate the no connection and misconnection risks potentially crossed by confusingly similar strings. Then that could include the apply for string, existing string, and the variant labels, it's not just limited to the apply for an existing string. If one label in the set has a confusion risk, then the other labels in the sets equally have confusion risks, because they're variants, and they're regarded the same.

That's exactly the risk the hybrid model attempts to mitigate. Also, another important thing is, when we use the hybrid model, we can identify those confusingly similar variant sets, but the purpose of that does not stop at identifying the set. If you do not carry out the positive ones to treat the set as one unit, then the confusion risks cannot be mitigated. So therefore, for thought one, all of the labels in the set must face the same consequences substring similarity review and allowing different outcomes could potentially perpetuate the risk of confusion, and it will contradict the goal of the hybrid models.

So the possible rationale to support set one is the principle of the stats, and then treat all the labels in the same way. Then set two

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is something kind of opposite from set one. So what we describe here is that the labels in the variance set should be treated as individual labels, and could face different consequences. So we tried to think of some rationale to support this thought, and we hope the group can react to that too. So physically, even the labels, they might be regarded as variants among each other, but they're still individual labels, and they can exist in their own lives. So they're still individual labels.

Then another point I want to note is that this position value of the label may change depends on what the primary label is chosen. So one label may be regarded as a block variant of another label, but once you change the primary label, that disposition value may change too. So another consideration of the thought two is that if a label is not applied for or cannot be applied for, it won't have the potential to cause confusion risks.

I note that this is actually very much opposite to what the hybrid model proposes, the hybrid model includes not apply for variance and blocked variants. So [00:48:16 - inaudible] has to be a point to support that. Then, if the confusion risks only exists for storage on label, once those labels are dealt with, those risks can be removed. Other labels in the sets that do not have confusion, risks shouldn't be adversely affected.

So these are the rationale to support thought two, and then, of course, the group can react to that, and whether you believe that's the right principle to believe and whether you agree with thought one. So that will be a foundational point to assist our discussion for the actual consequences of the string similarity review. Donna,

I don't know whether I should stop here for a moment before we go into the details of this question.

DONNA AUSTIN: Yes, thanks, Ariel. So just to add a little bit more context to the leadership discussion that we've had on this, and we had quite a bit of discussion on this. So a couple of things. We don't know how the string similarity review is going to be conducted, but if we think about it, logically, we do know that it will be a manual process and that it's going to be a panel or somebody with expertise seeing down and having a look at the strings, and from a visual perspective, do they look confusingly similar?

Now, one of the ways that that will-- I think the only way that-- well, no, I don't know how it's going to be done. One of the things that occurred to us is that you may have-- if the string similarity review is done on an individual string by string basis, what you may find, or what one of the outcomes may be, is that the string similarity, when it's conducted, identifies that a blocked variant of one string may be confusingly similar to an allocatable variant of another string.

Our discussion was along the lines of well, does it make sense that if that's the only confusion, and it's not the primary, is that really-- and this a little bit goes back to our risk analysis, does that warrant putting the whole-- those two applications into a confusingly similar situation so they're in a contention set? Or is there another way to deal with that situation?

So, one of the things that I've been thinking about is, rather than if-- I think if the primary, or the apply for labels are considered to be confusingly similar, and that's the what happens with this-- that's the result of a string similarity review, then contention set seems to be a logical consequence, but if it is the fact that it's a blocked variant of one, and perhaps an allocated variant of another, does putting the applications into a contention set make sense?

So what we're going to have a look at here is some of those possible situations and whether it warrants going straight into a contention set, or perhaps there's a possibility for additional consideration by the DNS security panel to assess the level of risk that might be associated with those two strings that have been identified as confusingly similar. So what we're recognizing is that, if we agree that it's the variant set, so the full set, the full complete set, that is compromised because of one string, does that warrant putting it into a contention set and letting those two applicants pretty much duke it out to see who's the winner?

So that's the idea behind-- is it overkill to-- if it's a blocked variant that is confusingly similar with an allocatable variant of another applicant, does it make sense that we put it straight into contention set? Or is there a secondary review by a DNS security panel that can decide whether the confusingly similar elements really will pause misconnection or no connection? So that's what the thinking is behind thought two, and that's why we'll run through this exercise.

It's fine if the group thinks that the complete variant set, then if one string is identified as confusingly similar with another, and it doesn't matter whether it's a primary, whether it's the applied for

string, or whether it's a blocked string, it doesn't matter. If it's confusingly similar with another application, then it's in the contention set? Or if we think there are levels, are there other options to consider that before it goes to a contention set? So, just trying to understand the consequence of the hybrid model? So, Edmon, go ahead.

EDMON CHUNG: Yes, thank you, Donna. I think this is a useful illustration or way to think about this, but I would think that we need to think about in the processing of the string similarity review, we probably in the first approach should be over towards the conservative side, which would be the third one, but if there is an appeal, if someone applies, and they are put into contention set, and they have a method to appeal, then thought two would be tested in the appeals process, because then it will be considered further, but the initial part, I think, would probably be the policy itself generally should err towards the conservative side, given all the issues, and also these are really corner cases, we really talked about corner cases.

When corner case happens, then the appeals process kicks in, and what you thought was confusingly similar may not actually, based on further study, be confusingly similar, but just similar, and therefore, they can exist. Likewise, in the case of existing strings versus new applications, then the objections process can also kick in, both the existing round, the two applications existing round or an application on a particular round and an existing TLD, the objection process could kick in, and the objection process would determine whether it's really confusingly similar or just similar.

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So I think the key word is whether it's confusingly similar. If it's confusingly similar, of course, they can't exist in the zone at the same time, in the root zone at the same time, but if a panel or further study reveals that it is simply similar, but not confusingly similar, then the appeals would win or the objection would win, and then, the two strings can actually coexist. So I think it's not the policy to determine thought one or thought two, but actually the result of appeals or objection mechanism that tests thought two and see if it should actually be pushed that way. Hopefully, that's useful there.

DONNA AUSTIN: Sorry, I was talking to myself. So Edmon, I think what you're saying makes sense, and I just have a question for anybody out there, and it's a current SubPro process. So if two applicants have put into a contention set because of the string similarity review, is there currently an option for an appeal, or some review of the outcome of that decision? So that's what I'm not clear on? If there is the possibility for appeal, then that's great, and we'd need to explore that and see whether we want to provide some implementation guidance for variants. So Ariel. Sorry, I missed Hadia. Hadia, did you take your hand up?

HADIA ELMINIAWI: I did, but I wasn't going to answer your question. I was going to speak to the idea of having a DNS security panel examining or reviewing a case where it's confusingly similar with a blocked variant.

DONNA AUSTIN: Okay. Go ahead.

HADIA ELMINIAWI: Okay, so I actually think it's a good idea to have such a panel, because risks are directly associated with probabilities, and when you actually know the actual string that is applied for, and the blocked variant that is confusingly similar with them, those probabilities can be mathematically calculated, and thus, you could have an accurate result when taking a decision. So I think that such a review does have its merits. Thank you.

DONNA AUSTIN: Thanks, Hadia. I think potentially, that review could be, a consequence if somebody appealed the decision of the string similarity, but so some good thoughts about how a decision can be challenged. Ariel.

ARIEL LIANG: Thanks, Donna, and thanks, everybody for the discussion. I'm proposing we if could actually talk about the specific consequences of the string similarity review first, and then if the group can settle on what's the defaults, and then we can discuss what appeal or challenge or objection could help, taken out, for example, the strings that are regarded confusingly similar about a panel, but actually not.

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I think, first we need to deal with what happens next once the panel has found two confusingly similar strings, and then based on the two scenarios that I just noted, what's the default consequence. Then, once we settle on that, we can talk about what other implementation guidance can be developed in responses to these consequences. So that's my suggestion, basically, to move on to the next slide, if possible.

DONNA AUSTIN: I think that's where we're at Ariel, so go ahead.

ARIEL LIANG: Okay, perfect. So just to assist our discussion, I created some visuals, maybe will may not be helpful, but basically, I want to say we have the set one that incorporates the primary string T1 that's being applied for, and then T1 has one allocatable variant it is requesting, and then another allocatable variant is not requesting and also a block variant. So each set has four labels. That's basically what I'm trying to explain here.

Then for set two, that's existing string T2, with its allocatable variants, there are two options, one is being requested, the other is not requested and the blocked one. Then for set three, it's another apply for string T3, and then has three variant labels similar setup as set one. So that's a quick note, the visuals to begin our discussion.

So based on what I've heard so far, especially what Edmon said, if we continue following the principle of conservatism, then thought one, basically treating the entire set as one unit is the foundation

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we're following. So, in the event of the first scenario, if apply for string with a variant label is found confusingly similar to an existing TLD, or its variant and label, then the consequence we think of based on thought one is that the entire set of the apply for string cannot proceed in the application process.

So this illustration basically showcases the two sets of labels, and then we use the hybrid model to compare the individual label against each other. So everything is being compared except for blocked variant. If there's confusing similarity found in any of these comparisons, the consequence for the application is that the entire sets associated with the application cannot be applied as long as the existing TLD T2 exist.

So that's our understanding of the consequence of scenario one if we follow the principle of conservatism. If we do not follow the principle of conservatism, then it could have varied outcomes, but I don't know whether we want to go into detail of the discussion here now. So we tried to illustrate what are the potential situations that you found in terms of confusing similarity?

Do they differ or not in terms of the consequences of the affected string. I think I can stop here for a second and then see whether there's any reaction from the group, whether they agree what we assessed in terms of the consequence of set one for scenario one, weather, we've got it right.

DONNA AUSTIN: Nigel, what do you mean by you think this goes too far [01:06:09 - inaudible]?

NIGEL HICKSON: Yes, thank you. I suppose what I'm trying to understand here is on these two thoughts. I think I come from and then the gap come from to an extent is that clearly, we can't have in a contention set, if things go to contention, then, absolutely clear that we can't have things that are confusingly similar or, for technical reasons can't coexist.

If there's a possibility that that's not the outcome from these applications, then surely, we should have some mechanism, and perhaps it is just an appeal mechanism, which the applicants can use rather than just rejecting everything out on hand, because we're not saying here that everything is confusingly similar, are we?

DONNA AUSTIN: No, we're not, but I think that the important thing, which is what you're seeing on the screen now is that the existing, the fact that there is an existing TLD that has, as we've discussed previously, the same entity principle, is pretty much going to knock out any applicant that applies for a string that's the same or has variants that are the same or confusingly similar. So there's a right that exists for existing gTLD operators, whether it's IDN, or whether it's just an Ascii. Justine?

JUSTINE CHEW: Yes, thanks, Donna. This is Justine for the record. If I may just introduce one way of thinking about it is, it says here on slide 11 is the consequences, the entire set cannot be applied for so long as

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T2 exist. I want to go back to what Edmon said before that. Maybe what we're trying to say is, the consequences should be the impact, but it shouldn't say that cannot be applied for.

So, presumably, somebody can try to apply for it, but the determination of the string similarity review will say that you cannot apply for this, therefore, the application doesn't proceed, whatever, and then the applicant can challenge that determination. If they are successful, then, you get a different outcome. That's another way to think about it.

So, rather than prevent somebody from applying altogether, you can allow them to apply, and then if they don't get a favorable determination through the RZ-LGR and or even the string similarity review process, they can challenge that, or if they are really on the ball to begin with, they may have already figured out before they apply using the RZ-LGR. It's probably far-fetched in some cases, but they could even try and challenge the result that they are anticipating beforehand. Yes, before the application window even opens. I hope that makes sense.

DONNA AUSTIN: Okay, it looks like it does to most people. Steve, go ahead.

STEVE CHAN: Sure. Thanks, Donna. This is Steve from staff, and I've been chatting in the background, I think, maybe distracting folks. I'll try to verbalize the point I was trying to make, which is, I think the question in front of us is about the implications and outcomes when strings in two sets are found to be similar. I think what is

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maybe making this discussion a little bit harder is we're talking about the different mechanisms that lead to the outcome of similar and how those can be challenged and things like that.

I'm just wondering if it might be simpler if we make the assumption that indeed we are at a point where the panel or maybe through objections, there's a determination that strings are similar, and maybe just isolate this discussion to now that we know that strings in two sets are similar, what do we do? So just a thought that maybe if we isolated the conversation to just talking about the implications of similar strings and sets, maybe the conversation will be a little more direct, I suppose. Thanks.

DONNA AUSTIN: Thanks, Steve. I think that was the point that Ariel tried to make a little while ago. So we'll try to keep that to that, but I understand that people are seeing this for the first time, and it's a little bit hard to wrap your heads around. So we'll try to keep to the fact that this is about a determination has been made of confusingly similar, so what's the consequence of that? Ultimately, what we're trying to determine, what we're trying to say, what we have agreement on is whether you know, the sanctity of either set-- whether we maintain the sanctity of the set, and if there is confusion, then the consequence is contention set. Okay. Justine.

JUSTINE CHEW: Yes, just a quick one. So, what I guess I was trying to say is, thought one consequence is the default, and the challenge

mechanism allows the applicant to reverse that if they are successful in the challenge.

DONNA AUSTIN: Okay. Then we're back to you, Ariel.

ARIEL LIANG: All right. Thank you, everybody. I think based on what we are hearing, the group is agreeing with the thought one consequence, but we need to massage the language a bit. So basically, the default consequence is that the entire set is ineligible to proceed, that's the default consequence, but we already know there are mechanism in the program that could allow an applicant to challenge that determination.

So maybe that's not something we have to spell out in this case, but good to notes, perhaps in the rationale, so that's what we're hearing. I think we don't need to go through the setup slide, because that's thought two, and I don't think that's what the group is converging on. Now, we're talking about the consequence of the second scenario, that when two apply for string end up being a contention set.

So actually, we shouldn't say, if two apply for a string and if it's found any of their labels are confusingly similar, now, what happens next? So, basically, we have set one and set three, we have both for the apply for TLDs. The arrows indicate the comparisons based on hybrid models. So if confusing similarity is finding any of these directions of comparisons, then what happens next?

So if we follow the thought one, the principle of conservatism, then the default consequence is that the entire set one, and the entire set three, like all of the labels in those sets, are added to a contention sets, and then the applicant may have to resolve that contention through the resolution mechanism, and only one winner could prevail. That's our understanding. So if the applicant for set one prevails, then the entire set three cannot proceed in the application process, and if set three prevails, then the entire set of set one cannot proceed.

So that's the default consequence of this second scenario, and then we want to confirm whether that's the correct understanding. Now you will see, it's actually related to the E4, that's [01:16:10 - inaudible] question we're asking what's going to a contention set? So if we follow the conservative principles, then all the labels in the set, they're going to look contention set. Yes, I will stop here and see whether-- I saw some comments in the chat already. Yes.

DONNA AUSTIN: So Edmon, to your comment, I wonder if that's-- understanding what Steve said, if we can just break this down a little bit, but if we can just stick to the outcome is-- so I guess this is difficult. So, Edmon, to your point, just one nuance, before contention resolution, there should be challenged objection allowed?   My thinking is that the challenge objection should happen before it goes into a contention set, because what you're challenging is whether it really is confusingly similar, and therefore, it shouldn't be in a contention set. Doing it the other way, I'm not so sure. Edmon, and then Anil.

EDMON CHUNG: Yes, thank you, Donna. I think we're saying the same thing, but it's just that the default process would have identified it as a contention set, but once it's identified it, then the applicants should say, wait a minute, this should not be a contention set, and there should be a way to challenge that. If they were successful, and the panel, whatever decides that, oh, this really shouldn't be a contention set, of course, then it breaks it apart, and they will move forward separately. So I think that's really what I'm saying, and I think I'm feeling we're on the same page.

DONNA AUSTIN: Okay, thanks, Edmon. Anil.

ANIL JAIN: Thank you, Donna. See, in this particular scenario, my suggestion is that at least one, either set one or set three, should be delegated. It means that the contention, which is there because of the situation of confusing similarity, we should define a very clear set of rules under which we have to set this contention so that there is no further litigation with respect to that party who lose the contention. So this is a very simple suggestion, which I have. Thank you.

DONNA AUSTIN: Thanks, Anil. I certainly agree that we should have clear rules, so that's what we're trying to get to here. So, Ariel, if you want to continue.

ARIEL LIANG: Thanks, Donna and everybody for the discussion, but I think the next set of slides is basically to assess thought two consequences, but we are hearing the group is that we're converging on thought one consequences for the second scenario. So basically, the entire steps going to the contention set and the prevailing party proceeds and non-prevailing party cannot proceed, and that includes all of the labels in the set for the non-prevailing party.

So that's the default outcome, and I think it's probably sufficient to develop some recommendations to reflect that language, but we can note that in the program, there are already existing mechanisms to allow the applicants to challenge the determination by the string similarity review panel, and that could potentially alter the contention set.

I don't think that's something we have to develop recommendation on, because it's already part of the program and already recommended by SubPro for those mechanism, and I think we just need to note that. So I actually don't have additional slides for the charter question E3a, and I don't know whether there's any additional recommendations that need to be developed to clarify the consequences of a string similarity review? Or what we have discussed so far is sufficient.

DONNA AUSTIN: So Ariel, I do think that we may need to provide some implementation guidance for variance, just to make it clear that if

somebody wants to appeal, so what's the grounds for the appeal? So I think we are going to have to develop something. Anyway, let's keep moving.

ARIEL LIANG: So there is no more slide really for E3a because that's about thought two, but I wonder whether the group wants to talk more about the implementation guidance that we plan to develop?

DONNA AUSTIN: Sorry, Ariel, I'm watching too many things here. Could you repeat that?

ARIEL LIANG: Yes, just saying we don't have more slides for E3a. We got the understanding of the default outcome, and we're hearing some implementation guidance may supplement those recommendations, and I see Edmon has his hand up.

EDMON CHUNG: Okay, thanks again. Edmon here. I guess, implementation guidance is good. In terms of how we discussed it, I think part of what you have for thought two is already useful as that guidance. As in, we don't want to be overly-- if there's actually not a likelihood of confusion, then the panel, whoever the challenge or objection panel, should actually look at that. I think we can describe that situation a little bit from the guidance, but ultimately, I'm guessing the panel would take either a legal opinion or

technical opinion, or a combination of the two, based on how it's set up.

So at that point, that would be beyond this group to guide them, because if it's a matter of legal opinion on whether that should be considered confusingly similar, and the keywords confusing, then that's a legal test. If it's a matter of technical tests, then that's a technical test that's not really for us to decide, except that I think we can highlight that, the key aspect is whether it creates user confusion.

Some of the previous work about the false positive versus not connecting, is already useful guidance, actually, useful guidance to include in some form, and that is what you described as thought two. Hopefully, that's useful.

DONNA AUSTIN: Sorry, talking to myself again. Thanks, Edmon. Ariel, can we keep moving with-- so folks we are reaching-- I think we're reaching the normal 90-minute point, but we're going to keep going to until another 30 minutes. So if folks need to drop off, and if that's the case, I encourage you to listen to the rest of the call when it becomes available, but we're going to push on for another 30 minutes. Ariel.

ARIEL LIANG: So we're basically done with E3a, and then, I guess I think there's still some catch up with staff have to do to check the notes and the recording and see what implementation guidance we can develop, but at least we can develop recommendations for the default

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outcomes of the string similarity review based on hybrid model. I think we just need to go back to answer the parked questions here for E4. So Q2, maybe we can answer Q3 first, because it's simpler now.

So it asked whether the entire variance sets should be processing the contention set, as opposed to the only apply for string. So basically, the answer is, yes, the higher set goes into the contention set, not just apply for a string. Is that the correct answer to this question? Yes, I saw comments in the chat said yes. So we can record that and then make sure to incorporate that in the recommendation.

Then for Q2, I think it's also an easy question to answer now, because this illustrates the scenario where confusing similarity is found between apply for string and a variant of existing string basically. So in that case, the default outcome is that the apply for string and it sets isn't eligible to proceed. So basically, the answer to Q2 is a yes as well, but we can make it more explicit what it really means. I see folks also commenting, yes, for Q2.

That's basically it for E4, but I don't know whether Samad is still in the call? I think he is, and I think he may have another additional topic to bring up related to the contention resolution. I don't know whether he wants to bring that up now or later. I see his hand up.

SAMAD HUSSAIN: Thank you, Ariel. So there's another case here, which is perhaps not addressed directly, so I wanted to bring it up. This is a case where the same applicant applies for two different labels, and they

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are considered similar to each other. Question is that would these two different labels from the same applicant go into a contention set?

The follow up question is that if they do go into a contention set, how's that contention resolved? I guess, will the applicant be forced to drop one label? Or can the applicant, under certain conditions, continue with both labels? It's the same applicant. Thank you.

DONNA AUSTIN: Thanks, Samad. So I think there actually was a situation in the 2012 round where an applicant quite deliberately applied for two strings that they knew would be considered similar, but well, there was a possibility where they thought they would be considered similar, but they applied anyway. I think the tactic was they would, depending on the outcome of the evaluation, they would make a decision whether to drop one and keep the other alive.

So it could be a tactic from an applicant. So I think in AGB it should be encouraged that or explain what the consequence would be, but if an applicant decides to make that decision, then my sense is, so be it, but we should just make sure that we're explicit in the guidebook about potential consequences. Samad.

SAMAD HUSSAIN: There could be a possibility that there is a case where both strings are actually needed for delegation by the same applicant. It's not being done for any other reason. Thank you.

DONNA AUSTIN: Right. In your scenario, Samad, if they do end up in a contention set, because of the variants are found to be confusingly similar, then I suppose they could object to that ruling if they wanted to, or if they are the only applicants in the contention set, then they would make a decision about which one they wanted to take forward. So they would have that possibility to resolve among themselves what they wanted to do. Hadia, and then, Edmon.

HADIA ELMINIAWI: Thank you. This is Hadia for the record. Again, if it's the same entity, and the two labels are confusingly similar, and it's a technical issue, then one of the two labels shouldn't proceed. It doesn't matter if it's the same entity or not, but if we do have a technical issue, then it should not proceed. Whether there is a legal issue, that's another thing, it's the same entity and that might need further discussion. So I would agree with a yes. Thank you.

DONNA AUSTIN: Thanks, Hadia. Edmon.

EDMON CHUNG: Edmon here. Very similar to what Hadia said. I think if it's a technical issue, it's a definite no, but if it's a legal problem, then the challenge would, you can probably challenge it and allow both to exist, things like .kid and .kids or .car and .cars are the same. So this is an issue not specific to IDN actually, it's for English TLDs as well. I guess my point is that this group doesn't have to

talk about this because this is an issue that's kind of more and more generic than specifically IDN related.

DONNA AUSTIN: I agree, Edmon. Okay, so, Ariel, are we done?

ARIEL LIANG: Yes, I think so. So, basically, just to quickly recap for charter question E4, we can potentially develop perhaps, yes, three recommendations based on the answer to the questions here. I think the additional topic that brought up by so much, that's as Edmon said, it's not specific to IDNs, it's applying for all the gTLDs, so I don't really know whether there's a need for this group to develop recommendation on that topic. I don't think so, personally speaking, but please correct me if the group has a different opinion on that.

Then for charter question E3a, we can already develop recommendation language to reflect the default outcomes for the two scenarios as a result of the string similarity review, and then, we need to check the notes and reporting to see what implementation guidance can be developed to support the recommendations.

If there's any pointers the group want us to include in the implementation guidance, we'll welcome that, because I wasn't able to completely remember what needs to go into the implementation guidance, but as I understand, maybe some mentioning of the existing mechanism for the applicants to challenge the determination, but a string similarity review panel

could be part of the implementation guidance, and then notes like what specific application for those four variants? So that's what I heard so far, and welcome any input if the recap is not complete or were correct.

DONNA AUSTIN: Ariel, can you just go back to the actual charter question? Okay, so the charter question, "After a requested variance string is rejected as a result of a string similarity review, should the other variants strings in the same variant set remain allocatable? Should individual labels be allowed to have different outcomes actions, some labels blocked and some be allowed to continue with an application process?" So I think, based on the conversation that we've had today, we can answer those questions, and basically, the sanctity of the variant set is important here.

So strings will not be considered differently. If the string similarity review decides that two applicants are in contention because of confusion within the complete variant set, they would resolve the contention set by whichever means they end up with, or there is the possibility for challenge mechanisms of the string similarity review. So that's another option for them before. I'm not clear whether it's before it goes to contention set, or when that actually happens in the process, but I think that's where we are on answering the question.

Okay, so after saying that, we would take the additional 30 minutes, we've taken an additional 10 minutes. So, thanks, everybody for following along today, and sorry if the chair was

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extremely confused, because she was. I had a lot of trouble with today's conversation, but I think we got there in the end. So thanks, everybody. We will see you in a week's time.

DEVAN REED: Thank you all so much for joining. Have a wonderful rest of your day.

[END OF TRANSCRIPTION]