ICANN Transcription

IDNs EPDP

Thursday, 19 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 19 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. All participants and members will be responding 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 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 Wikispace. Recordings will be posted shortly after the end of the call. Please remember to state your name before speaking for the transcript. As a reminder, as you take part in the ICANN multi-stakeholder

process try 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. By way of Chair update, some of you may have heard that the Board is interested in understanding whether our Phase 2o has any impact on the work we're doing in Phase 1 and whether that's going to affect the timing of the SubPro and the next round of gTLDs. We had an early conversation with Karen Lentz today to better understand those Phase 2 questions and whether we think there's an impact on the next round and how we're going to manage that. We're not through our thought process on that yet but when we are we'll come back to the group.

I don't think there's anything else I have for the team. A bit of a heads-up, we're just finalizing some text around some of the charter questions that we have developed some draft text for. That will be hitting your inboxes maybe tomorrow or early next week. So, that's on its way. I'm going to hand it over to Ariel. Today, we're going to go through some charter questions that we've reviewed before, but we want to try to finalize our thinking on it so that we can develop recommendations. So with that, I'll hand it over to Ariel.

ARIEL LIANG:

Thanks, Donna. Today's call is to mainly focus on two charter questions that we haven't completely closed the loop on. One is E2, it's about the objection process. And then the other is E7, which

is a catch-all question. But the specific part of that is related to B5 and that's concerning the evaluation of TLDs with restrictions. Its evaluation of the variance of those TLDs. So those are the last two remaining pieces we haven't completely reached an agreement on. Our hope is that we can get those addressed and then we can move on to the official review of the work input.

And another thing I want to quickly give everybody a heads-up on is when we review the slide and prepare the material, we noticed that there are Org inputs related to both of the two items. And that's why we thought it may be time to put the Org inputs in the slides as we already are discussing the same topics, and then this may be a timely thing to do, and then we don't need to wait till later to review the wok group specifically related to these questions. So, just a quick heads-up on that.

The first one is E2 objection processes. This is a slide to capture what the group has already agreed on. The first box is the recommendation the group has already drafted, which was, "All requested allocatable variant gTLD labels must be subject to the objection process." This is something the group already agreed on and we already drafted this recommendation, so it's just a quick recap. And then the yellow box down below is seeking to capture the agreement by the EPDP team.

For other components of the objection process, we haven't drafted a recommendation text yet because the agreement was just reached. But I want to recap this just to refresh everybody's memory. When we discussed the objection process, there were four types. The first type was string confusion objection. We reached an agreement that an objection can be filed based on the

grounds established by the hybrid model used for string similarity review. And then the two bullet points under No. 1 basically explain what the ground means.

Basically, any line of comparison in the hybrid model can be used as a basis for string confusion objection. And then the only base that cannot be the basis of string confusion objection is the blocked variant that is confusingly similar to another block variant. That is not something the objector can use to argue for string confusion objection. But in other comparisons, the objector can use that as the basis for this specific type of string confusion objection. So we have reached an agreement on this and we need to draw up the recommendation to reflect that language.

And another item related to string confusion objection is regarding the outcome of string confusion objection. I think we could also draw up a recommendation to clarify that, but at the same time, I wonder whether it's necessary. Because it doesn't really differ from the outcome of the string confusion objection from the 2012l round.

So basically, it depends on the objector. If an objector is an existing TLD, then the application may seem eligible to proceed, if the objection prevails. And then if the objector is another applicant and the objection prevails, then the outcome is that the two strings will go into a contention set. So it's basically the same outcome.

Maybe it's not necessary to develop a recommendation to specify this just because we have the hybrid model now and we have variants come into play, but we're open to input and suggestions from this group, whether you think a recommendation is helpful to also specify the outcome of string confusion objection using a

hybrid model as the base. That's a question for the group but we can discuss this after I complete the review of this slide.

And then the second type of objection the group has reached an agreement on is the limited public interest objection. What we need to develop text on is what the objector could object and what the objection can contain. For a limited public interest objection, the objector can only object to apply-for a primary string and the requested allocatable variant label. That's what the group agreed on.

And so, in practice, that means in an objection may contain one of the following options: (1) Only apply-for a primary string in the limited public interest objection; (2) One or more requested allocatable variant labels, they are in the limited public interest objection; (3) The objector can file one objection that includes both the primary string and one or more requested allocatable variant labels. So, this is something the group has agreed on and we can convert this agreement into a draft recommendation text.

And then the other item related to limited public interest objection is the outcome of such objection. And what we understood is that if the objection prevails against the primary string, then the application is ineligible to proceed. And this scenario also includes a situation where the objection contains both the primary string and one or more requested allocatable variant labels. So if the objection prevails for this particular scenario, the entire application is ineligible to proceed because the primary string is being objected to and the objection prevails for that. So that's the first type of outcome.

And then the second type of outcome is if the objection prevails only against one or more requested allocatable variant labels, then the primary string and other unaffected requested variant labels are eligible to proceed. And only affected variant labels are ineligible to proceed. So that's the second type of outcome for limited public interest objection. And that's what we understood, the agreement from the group when we discussed this. We also need to develop a draft recommendation language to reflect this agreement.

And now I will stop here for a moment and then see whether there are any immediate comments or questions. I see Hadia has her hand up, so Hadia, over to you.

HADIA ELMINIAWI: Thank you. Just a clarification, Recommendation 3.1 says that all the requested allocatable variance must be subject to the objection process, whatever the objection process is.   After drafting a recommendation for string confusion objection, objection will be extended beyond the allocatable variance. So Recommendation 3.1 would be a subset of the recommendation talking about string confusion objection.   So, 3.1 is a general statement, but after drafting the string confusion objection, non-requested allocatable variants might also be subject to the objection process.

ARIEL LIANG: Yes, I think you are correct, Hadia. 3.1 is the baseline for what strings must be included in the objection process. It's basically, "I'll apply-for string plus all requested allocatable variant labels." That's the baseline. And then for string confusion objection, that extends

beyond the baseline. Because the hybrid model is the foundation that can establish the ground for the string confusion objection.

So in this particular type, some other non-requested allocatable variants and blocked variants can also come into play, so we can make this clear. And mind you, there are four types and we're only talking about the first two because these are the two types the group has agreed on -- the preliminary recommendation, how it may look like. I will go to the next two types, which the group still needs to finalize what the agreement is. Thanks for the question.

Any other comments or input? Also, please note my question earlier, do we need to develop a recommendation to specify the outcome of string confusion objection? From my personal point of view, I think a recommendation may not be needed because it doesn't differ from the usual. So even variants come into play and it still doesn't differ. If objection prevails, there are two types of outcomes. So, that's a question for the group, and I hope to hear folks' feedback on this.

DONNA AUSTIN: Thanks, Ariel. My personal opinion would be for completeness, that we do have a recommendation on the outcome of the string confusion objection and make sure that that's consistent with whatever we've said in the hybrid models. If we don't have a specific recommendation, we need to at least make sure that we're connecting the dots on those two. So, for completeness, I don't think it would do any harm.

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ARIEL LIANG: Hadia?

HADIA ELMINIAWI: I just raised my hand to say that I am having an outcome for the string confusion objection. When we talk, for example, about the limited public interest objection, we do have an outcome of limited public interest objection, and there is a difference if the objection is against the primary string or the variants, or even maybe the blocked. I do understand Ariel's point that this does not differ from the case of a non-IDN string, but again, I do agree with your line of thought. Thank you, Donna.

DONNA AUSTIN: Thanks, Hadiya. And I know that Satish had a question in chat, what might the outcome possibly look like? Ariel, I think you have an answer to that?

ARIEL LIANG: Yes, I do. And I also note that the preference is to develop a recommendation on that. In terms of the outcome of string confusion objection, I think I noted earlier, it depends on the objector. And for this type of objection, the objector can be two types.

One is an existing TLD registry operator, the other is another applicant for a new gTLD. So if the objector is an existing TLD registry operator and if the objection prevails, then the application that's being objected to is ineligible to proceed. That's the default outcome. And then if the objection fails, then the application will

still proceed to the next stage of the program. So that's for the first type of objector, as an existing TLD registry operator.

And then the second type of objector, which is another applicant, if the objection prevails, then the other applicant's gTLD application and the application that's being objected to, those strings will go into a contention set to further resolve the string confusion contention. And then if the objection fails, then there's no effect on the application, they both can proceed to the next stage of the program.

So this outcome is no different from a regular TLD application in the 2012 rounds, that's why I had that question. But because we do have the hybrid model come into play to establish the ground for objections, for completeness, we can clarify the outcome and also make sure to note that it's consistent with the 2012 outcome. That's my understanding of this.

And I'm not seeing other comments in the chat or new hands. Is this recap good with everybody, and we could develop draft recommendations in accordance with these agreements?

DONNA AUSTIN: I think we're good to continue, Ariel.

ARIEL LIANG: The next slide is about legal rights and community objection. The last time we discussed this was December 1st, 2022. I know that in that meeting we had not as many attendees as usual because of the IGF, so that's why we want to recap the agreement reached during that meeting among the attendees and then see whether this

is something agreed with the general EPDP team and we can go ahead and develop draft text according to this.

So, what was discussed is also related to what strength can be part of the legal rights objection and community objection, and what are the outcomes of a successful objection? If you recall, we discussed this question a few times before, and there were two options proposed originally by the small group.

Option one is, only apply-for strings including the requested allocatable variant can be objected to in these two types of objections. And then option two is, apply-for string class or allocatable variant labels class or blocked variant labels can be objected to for these two types.

In the December 1st meeting, the group looked at these two types and then tried to analyze what is the reasonable outcome for these objections, and then the group reached an agreement that we should use option one. So only the applied string class, the requested allocatable variant label can be objected to, and then in the legal rights objection and community objection. The non-requested allocatable variants and block variants cannot be objected to for these two types.

The reason the group reached this agreement is that they looked at the potential outcome and understood that if option two is chosen, then it seems to be overly conservative. So the only meaningful outcome is that if you allow an objection against a block variant, for example, then the only meaningful outcome for a successful objection is that the blocked variant can take out the entire application. And even though this block variant will never be in the

root, they have a very important consequence to the string that applicants seek to operate. That just seems too conservative, and option one seems a more reasonable approach.

So that's why the group, during the December 1st call, reached an agreement on this. And also, Steve from the staff side, we published the preliminary agreement on the mailing list for reactions and further input. We haven't received any but we don't want to take silence as consent. So that's why we try to reiterate this agreement on today's call and see whether the group has the same understanding, and we'll choose option one instead of option two.

If option one is chosen, then it's very much similar to the limited public interest objection in terms of what the objection may contain. So there are some options. One is, the objection can contain only applied-for primary strings, and then objection can contain one or more requested allocatable variant labels or the objection can contain a combination of the primary class requested allocatable variant. And if the objection prevails against the primary string, then the entire application is ineligible to proceed.

But if the objection only prevails against one or more requested variant labels, then the primary string and other unaffected requested variant labels are eligible to proceed. But the fact is variant labels are ineligible to proceed. So, that's what the outcome may look like for option one, and that's what we captured based on the agreement reached at the December 1st meeting. That's something we want to reconfirm with the group today and see whether we still have the same understanding or if anything has changed.

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So I will stop here and see whether there are any questions, comments, or input. I note that Michael still favors option one. Thank you, Michael. And thanks, Satish, too. Option one still looks fine. Any other comments or input? Yes, thanks, Nigel.

DONNA AUSTIN: Okay, I think we're okay with option one, Ariel.

ARIEL LIANG: Okay, wonderful. Thank you, Emmanuel also supports option one. Our notes will capture that. We will develop a recommendation for legal rights objection and community objection based on option one, which is only applied-for strings that can be objected to in these two types, and then we will enumerate the outcome for a successful objection in these two types.

So these two slides are to provide you with some heads-up on what ICANN Org has provided input on. ICANN Org did review the objection-related options from the small group and they understood it is an ongoing discussion. They're not providing input for any final text, so they have that understanding. But they do have some input if option two is chosen. Since this group is supporting option one, maybe we don't have to talk about everything in the Org inputs. And you're welcome to look at the Org input PDF document that was circulated to the group in November last year to read the details. And then at some point, very shortly, we will recirculate the Org input because this group has to review them in detail. So, you will see this again.

I do want to quickly note something about Org input's blocked variants because this notion was mentioned in several places in our recommendations, in particular, in the string similarity review, the hybrid model. We did mention block variants play a role there. So I just wanted to note that the Org did ask the EPDP team to elaborate on what block variance really means here because there are two types of block variants.

One type is that the block variant label is within the same script. And another type is the block variant label is created by mixing different scripts. In our discussion so far, the presumption is the block variant we discussed so far is about same-script blocked variants and excludes the mixed-script block variants.

And I think this is RySG's input when the hybrid model was discussed. Dennis could correct me if I remember wrong, there is a suggestion to clarify what we refer to as blocked variant is only the ones within the same script and exclude the mixed-script ones because those are numerous and they cannot exist at all at the top level. So we really shouldn't take those into account.

I think that's something RySG was noting. And then ICANN Org also has similar input and asked the group to clarify on the notion of blocked variants. So that's why I want to provide folks a quick heads-up on this. This input is specifically related to option two but because blocked variants are mentioned, I thought it's relevant for folks to note. And now we probably need to develop a recommendation, or at least in the glossary, we need to specify what we mean by blocked variants. And I see Michael and Dennis both have comments in the chat. I will pass here. Donna, do you have something to note?

DONNA AUSTIN: No. It seems that it makes sense that we specify that what we mean by a blocked variant label is within the same script and not the label that's created by mixing various groups. So, I agree that we have to find a way to be specific about that. Whether it's in the glossary when we develop that or whether it's in some other place, then it is something we probably should do for clarity purposes. Sarmad?

SARMAD HUSSAIN: Thank you, Donna. Certainly, I think that will help make things more effective. Just one small exception to note when we do that glossary, there are a couple of instances where mixed-scripts are actually allowed in Japanese, for example, and I think, possibly in Korean -- maybe not, I will have to look at the proposal. In those cases, when we are developing this glossary, those exceptions could be noted. Just saying that for the script consideration. Thank you.

DONNA AUSTIN: Thanks, Sarmad, understood. We'll be specific and call out the exceptions. Anything else, Ariel?

ARIEL LIANG: Yes. Satish noted the Org input on the slide here that's specifically relating to the mixed-script labels. Org did note that for TLDs or brand labels, they could be mixed-scripts as the original trademark for that brand. So, that could be part of the consideration. If, for example, option two is chosen for the legal rights objection and a mark holder uses a mixed-script mark as the base to argue the apply-for string is confusingly similar to its mark. So that could be

a potential argument for including blocked variants in the legal rights objection.

But then if you do that, you will have to consider mixed-scripts blocked variants, too. And that could expand the scope quite significantly because you include that, that would be more now what this group originally envisioned. So I think Satish did note that Org input but I wonder whether this is something that changed the understanding by the group.

Are we still going with option one or does this Org input make people rethink and reconsider option two? I don't want to muddle the water but I do want to be truthful and transparent about all the Org input provided on this topic and just so you have all the information to digest and deliberate a recommendation. And I saw there are a few comments in the chat too, from Dennis and Nigel. They can speak up as well.

DONNA AUSTIN: Ariel, is there a distinction in the input from Org? Because No. 1 seems to be about whether blocked variants can be objected against and No. 2 seems to be about whether an applicant can apply-for a TLD, which might be mixed-script, and they've identified -- well, I guess it's really a brand TLD that they're calling out here.

ARIEL LIANG: Yes, I think there's no change to what can be applied for. Mixed-script blocked variants typically cannot be applied for except for the exception noted by Sarmad. In certain mixed-scripts, the labels may be applied for, but in general, they cannot be applied for. So I

don't think Org is saying something different from that. What Org is saying is if option two is being considered for legal rights objection, for example, then should the blocked variants also include mixed-script block variants?

Because some trademarks are mixed-scripts, and then if you deny objection on the ground of the mixed-script block barriers, then those mark holders potentially cannot file an objection on that ground. But at the same time, Org noted that if we do include mixed-script block variants in the objection process, then it would significantly increase the complexity of handling the process because this will lead to millions of permutations. It's a mixed bag if a blocked variance is taken into account for legal rights objection. So that's basically what Org input is saying, I think. But Sarmad, and others, please chime in if I'm missing anything.

DONNA AUSTIN: Go ahead, Dennis.

DENNIS TAN TANAKA: Thank you, Donna. I'm trying to seek clarification. When we're talking about trademarks, these are text, basically. I'm not even going to say they are words, because some of the trademarks are not words. So they are acronyms, mnemonics, what have you. And yes, they can contain, for simplicity of the conversation, a mix of digits and letters, for example. And we know that for TLDs, digits are not allowed. The Root Zone LGR would not validate those, and there are long-standing rules against digits on top-level labels.

So, not sure if there's anything else to say here. A company can have a trademark, could be mixed-script, again, an example of digits and -- any mixed-script. Let's say it's a mixed-script that Root Zone LGR can calculate. But at the end of the day, the label they apply-for has to be a DNS label. And that means that it has to be valid. And for that, you cannot mix script, again, with the exception of a few orthographies like Japanese, for example.

And so my question is, do we even have to make exceptions for these? Because I don't see how these will be -- To have a standing on the objection process, they will have to have a mark to the basis for objection, which would be their DNS label, and the DNS label will have to be valid. I'm not sure whether we're talking about mixed-scripts in this context of trademarks. And being also gTLD labels, it makes sense. What are we trying to solve here? I'm not sure there even is a problem to solve. I don't know, I'll stop there.

DONNA AUSTIN: Thanks, Dennis. It seems in chat that Maxim and Satish are on the same page as you are in the mixed-script, can't be a TLD label. So maybe this is [inaudible - 00:39:34] that if we can better understand why this was identified as a potential issue by ICANN Org, it might be helpful. Perhaps what this is about is, I don't really know, maybe No. 2 is not talking about an entity that has applied for a TLD.

Maybe what they're talking about is a trademark holder that may be a mixed-script, whether they're allowed to file an objection. So it's not really about being allowed to apply-for a mixed-script trademark. Some of you have said that's not possible but I guess it is possible

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that somebody has a trademark which happens to be mixed-script, and it's whether they are allowed to file for an objection.

DENNIS TAN TANAKA: On that point, Donna, I'm not familiar with the objections so this is coming as a question. In the example that you just mentioned, a trademark holder buys an objection, is this trademark holder also an applicant or he just happens to [inaudible - 00:41:12]? I'm just trying to understand whether the organization would be eligible, even if it's not an applicant.

DONNA AUSTIN: I think that's the question, Dennis. I don't know whether to assume that this person is an applicant or not an applicant. I'm going to say, for the time being, that they are not applicants. If we have a recommendation about mixed-scripts, that basically excludes the possibility of having a mixed-script label. Does it mean that it's somebody who does happen to have a trademark that's a mixed-script and in the internet world or the real world at large? What rights do they have to file an objection? I don't see why we would restrict anyone from filing an objection. I'm a bit like you, I'm not 100% on the objection process. Justine, and then Maxim.

JUSTINE CHEW: What I have to say is pretty much along the same lines as what you alluded to. ICANN Org's question is pertaining to whether someone is allowed to file an objection. As far as I know, there isn't anything that prevents someone from filing an objection, so long as that entity is a trademark holder.

So it doesn't really matter whether they are an applicant or not. If they have a trademark which they think is somehow impinged on a particular application for a string or by a particular application for a string, then they might want to file an objection. So, filing an objection is not prevented in the way I see it. It's a question of whether they can make the case to win the objection. Thanks.

DONNA AUSTIN: Thanks, Justine. Maxim?

MAXIM ALZOBA: If the trademark holder has rights for mixed-scripts, first of all, from the [inaudible - 00:44:08] perspective, mixed-scripts are not good, and thus are not allowed to be applied for. And speaking about variants of something not applicable most probably is not applicable too. And they, of course, have the right to go to court, etc., but I'm not sure why we should restrict anyone. Because something which is not allowed looks like something which can be applied for.

I think it's mostly the issue of those trademark holders who decided to go for mixed-scripts, and they can apply-for objection. But I do not understand how it can be used in the IDNs world. For example, the string where the first part of the sentence is in English, the second is in Chinese variants. Nothing prevents them from applying. I'm not sure what we can do from a technical perspective. Because whatever they have is not allowed.

DONNA AUSTIN: Thanks, Maxim. I guess the possibility of why they'd want to object might be confusingly similar. But I will note that some of this conversation is mute because we've just agreed on option one. All we're doing here with this Org input is just making sure that people are aware of it. Ariel, back to you.

ARIEL LIANG: Thanks, Donna, and everybody, for the discussion. Based on what I've heard so far, the Org input is really regarding option two. But because the group has already decided option one is the way to go for legal rights and community objection, the only apply-for string and requested allocatable variant labels, they can be objected to.

The consideration of blocked variants doesn't really matter here. So it doesn't really change the thinking of the group or move the needle in any sense, based on Org input. That's what we tried to capture in the draft text to reflect on that agreement. But we do note the Org input about being explicit on what we mean in terms of block variants.

Based on what Dennis, Sarmad, and others provided in the comments, we do want to specify block variants mean the blocked variant labels that are valid, which means they're within the same script but we do know there are some scripts, like Japanese, that may allow exceptions for mixed-script variants. So we will make sure to note that, at least in the glossary.

But if there are other relevant recommendations that refer to block variants, we can reference this definition. I think in the string similarity and hybrid model recommendation, we probably have to provide implementation guidance -- probably another recommendation to specify what blocked variance means in the

hybrid model. So that's what we understood as the agreement by the group.

If this sounds all right to everybody, we will develop text based on this. And if there's any misunderstanding or anything that's missing, please speak up and we will incorporate that too. I will pause for a moment before we move on to the next topic. And thanks, Dennis, for chiming in on the block variant definition part. They need to be valid DNS labels. We know that we can point the definition to the DNS label in the IETF standard. I'm not seeing other comments or hands so I presume we're good with E2.

DONNA AUSTIN: I think so, Ariel.

ARIEL LIANG: Let's move on to the last remaining question, which is the evaluation criteria for the variant labels of a TLD with restrictions. This slide is to capture what the group has already agreed on. The first box recommendation 2.A is a recommendation the group already developed, and I just want to quickly recap that.

So what it says is, in the future new gTLD application processes the primary apply-for gTLD class and its allocatable variant labels requested by the applicants are to be treated as different versions of the same string and will be bound by the same restrictions. So, this topic refers to the TLDs that are not standard TLDs, such as community TLD, GeoTLD, brand TLD, etc. If allocatable variant labels are also requested for these types of TLDs, then they are

treated as the same type and they need to be bound by the same restrictions. So that's the general recommendation on this topic.

The lighter green box underneath attempts to capture the agreement by the group that was reached recently. We haven't developed a draft recommendation on those, but we will. The first one is, to try to close the gap. Because in recommendation 2.A, what we refer here as to future rounds, like applying for a new gTLD class, it's allocatable variant labels that are pertaining to that scope.

But we haven't really discussed whether the same recommendation applies to existing gTLD registry operators applying for allocatable variant labels off its existing TLDs. For example, if an existing brand TLD applies for a variant label off the brand TLD, should that label also be treated as a different version of the same string and be bound by the same restriction? So I think we need to close the loop on that and make sure recommendation 2.8 covers both scenarios. That's what point one refers to here in this box.

And then point two is regarding the application for the variant label of the TLDs with restriction. What the group discussed a while ago is that if the applicant is required to submit documentation for the specific type of TLD application, then the required documentation must cover both the apply-for primary string and the requested allocatable variant label. And in the case of a community-based TLD, the required documentation is the written endorsement by established institutions representing the community. Such endorsements must cover both the primary string and the requested allocatable variant label.

And then in the case of GeoTLDs, the application requires the documentation of support of non-objection from relevant governments or public authorities. So in the application that also includes variants, such documentation must cover both the primary string and the requested allocatable variant label. So that's what we understood as the agreement from the group.

I want to check and see whether folks still have the same understanding and whether we're missing anything. And then in terms of point one in this box, do we have the correct understanding that recommendation 2.A also extends to existing gTLD registry operators applying for allocatable variant labels too? That's for input from this group. I want to stop here and see whether there's any comment.

DONNA AUSTIN: Ariel, I have a question, and you may not know the answer to this, but it's whether any of the existing IDN gTLD registry operators currently have what's considered a community-based TLD, or is it GeoTLD? Do we know the answer to that?

ARIEL LIANG: I can do some research on that. There's definitely a database on that, I just can't think of it off the top of my head. But I do know there are quite a lot of brand TLDs from the 2012 rounds. If they apply for a variant label of the brand TLD those situations will probably happen among the IDNs too. But I do need to check the database and get back to your question.

DONNA AUSTIN: Okay, thanks, Ariel. Originally, when I looked at this question, I thought it was pretty much, well, yes, of course, they should have the same requirements as an applicant who's applying for a primary in the allocatable variants.

But it strikes me that if there are community-based IDN TLD registry operators or GeoTLD registry operators that have been operating for the last, maybe, eight to 10 years, do we really need to put them through the laborious task of getting that additional supporting documentation or written endorsement from institutions, understanding that in applying for their variants, all they're doing is completing a set and improving the other TLD itself and the usability for the language community?

While I originally thought that the same should apply, I kind of think that we're talking about a limited number of registry operators that have been operating for a period of time. This really isn't a technical issue. I don't know whether it would go against the Geo application process, but to me, it seems like this could be an area where we could recommend that there'd be an exception for IDN gTLD operators from the 2012 round. So, interested in folks' thoughts on this. Maxim?

MAXIM ALZOBA: For clarity, we want to ask for an exception. Registries do not request letters of support from governments, or I misunderstood.

DONNA AUSTIN: Yes, that's correct, Maxim. We've acknowledged that we have existing IDN registry operators from the 2012 round, they may be a

GeoTLD, or in that classification. So it's a question of whether in applying for the allocatable variants that are now available to them, should they go through that process of seeking support or non-objection from the relevant governments or public authorities. And it's the same for the community base. What do people think about that?

MAXIM ALZOBA: GeoTLDs effectively act because they were allowed to. The nature of governments or City Mayor offices around the world is the same. If you ask for something, you have a paper allowing you to do something. And without asking the Mayor's office or federal government, a registry applies for variants. It's the start of a big type of trouble for the registry, and most probably, the organization is going to be out of business really soon. So I don't see the reason for an exception here. If something is said to be done on behalf of a community or a region, it should be supported.

DONNA AUSTIN: Okay, fair enough, Maxim. Justine?

JUSTINE CHEW: I agree with what Maxim said. I think we have to be quite careful with geo names. I don't have a sticky point about community base, per se, but GeoTLDs, I think the same conditions have to apply with the variants. Because there are very specific definitions of what the geo name is. And there is an existing SubPro recommendation that talks about the geographic name in every language. So, I think we should be careful to apply the same conditions. Thanks.

DONNA AUSTIN: Thanks, Justine. Michael?

UNKNOWN SPEAKER: I agree with Maxim and Justine for the mentioned reasons, but also, for another reason. If you make an exception now for the existing TLDs, you probably will have to do the same exception for TLDs that apply for their label in the next round and then want one of the variants activated in 10 years after that round, because that's the same situation as now. This would mean you always make those exceptions and then it doesn't really make sense anymore. That's my opinion. Thanks.

DONNA AUSTIN: Thanks, Michael. Zuan?

ZHANG ZUAN: Thanks, Donna. First of all, I'm not sure my understanding is correct. I think that the EPDP team has agreed with the recommendation that the variant labels are to be treated as different versions of the same string for the required documents of some community-based gTLD or GeoTLDs.

I think in developing the recommendations, we can make sure that the documents apply for the primary string and all of their variants. So, for existing gTLD registry operators and future gTLD operators, it might not be possible for them to submit the required documents for variants, once again. My understanding is that if they submit the

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required documents, we agree that the documents apply for their primary gTLDs and variants. Thanks.

DONNA AUSTIN: Thanks, Zuan. I think your understanding is accurate. What I'm hearing is that for GeoTLD applications, the documentation of support of an objection should still be a requirement if existing registry operators are applying for their allocatable variants. I think that's where we're headed there. With community application, for simplicity, we would go down the same path.

But I'm just wondering because the reason for a community-based TLD is to -- if you self-identify as a community TLD it is so that you can go through the community priority evaluation process. And obviously, that written endorsement and support to say that you are a community is important at that time. But I wonder whether it's the same for requested allocatable variants. Do folks have a strong sense one way or the other with the community-based TLD? Hadia?

HADIA ELMINIAWI: I think for consistency, it's better to also go with a letter of support for the community-based TLD applications.   And although exceptions could make sense in some cases, we are not aware of each and every case right now. So I think it does make sense to just keep it as the GeoTLD applications. Thank you.

DONNA AUSTIN:	Thanks, Hadia. So it looks like for consistency we keep the registry operators of existing gTLDs that have the same requirements in applying for their allocatable variants. So for community applications, they need a written endorsement. Established institutions and GeoTLD applicants need a document of support or non-objection from the relevant governments or public authorities.
	And while I heard what folks were saying on the GeoTLD application, one of the challenges that the applicant could face is if there's a change in administration, which is probably likely because of a 10 to 12-year lapse, there could be a challenge for the applicant in convincing the new government authority that they actually need that GeoTLD and that they're the best people to do it. So, that is potentially a hiccup for a GeoTLD applicant. But I understand what folks have said so we'll go with it. Ariel, I think we can move on.
ARIEL LIANG:	Thanks, Donna. And thanks, everybody, for the discussion. We will capture the recommendation language based on the agreement, extending to 2.A to registry operators from the 2012 round applying for variant labels, if they choose, and also specify what it means in terms of community TLD and GeoTLD applications. The required documentation must cover both the primary string and the request to allocatable variants. So that's what we're going to capture.
	Moving on to this slide, this is something a little bit more complex and difficult, and I don't believe the group has reached an agreement on it. It's likely we need input from experts who are familiar with the brand TLD and trademark law. We're hoping folks

from IPC could chime in, but unfortunately, we haven't received any input, even after asking a few times. It's possible we can't reach an agreement on this one, but there's always an opportunity to ask the same question during public comment.

The actual question for consideration is, in the situation of brand TLD, the requirement is that the brand TLD must be identical to a registered trademark. If an applicant also requests the allocatable variants of a primary string, as a brand TLD, should that requested allocatable variant label be an exact match of the registered trademark?

And then in terms of the application for brand TLD, the applicant must submit proof to show that the requested label is identical to a registered trademark. If the applicant applies for a variant, does that mean the proof must show that the requested variant is identical to a registered trademark? So that's the question for the group to consider.

And I want you to know that ICANN Org provided inputs that are relevant to this topic, even though they applied inputs in the context of the different recommendations, but it is very relevant to the brand TLD discussion. The inputs note that there are different types of gTLDs. Brand TLD is one of the types, and they'll want to look further. So for brand TLDs, an applicant can only receive the specification [inaudible - 01:10:11] and associated brand designation, if, among other elements, the string matches a trademark.

For SubPro, they didn't really discuss variants in the brand TLD category, and that's why we are discussing this. Org has several

questions for the brand TLD discussion. Would a brand only be allowed to obtain variants for which they have trademarks? Or would the brand designation only apply to the primary string and the variants would be operated differently? Or would the evaluation only be upon the primary string and the variant would be allowed per need and the registry operator would have the obligation to operate variants under the same rules as the primary string?

So these are some questions asked by the Org, and I don't think there's a straightforward answer to them. And that's something to help the group think through this question. It's not an easy question to solve and we may not have the expertise within the group to address it, but in any case, we can discuss this. And if we really cannot reach an agreement on anything and need further input, an alternative approach is to develop a community question on this topic and then include that in an initial report to ask experts in the community to provide their input. So, that's my overview of this question. I saw Maxim has quite a few comments, also, he has his hand up so I will stop here.

MAXIM ALZOBA: Speaking about brand TLDs, we have trademark rights for the primary string and don't have rights for some IDN variants of the same string, in linguistic terms, and apply for it. If those additional strings are allowed to be just generic TLDs, it might cause confusion. Because customers think that, for example, some kind of boots in English is the brand and then variants in some other language might be used for some different reasons, maybe just as a generic TLD. It will just simply cause confusion. Thanks.

DONNA AUSTIN: Thanks, Maxim. Do other folks have thoughts on this? At face value, it seems pretty difficult to suggest that a brand TLD would be allowed variants if the absolute requirement to identify that you are a brand TLD requires that TLDs are identical to the registered trademark. So it seems difficult for variants to meet that requirement. Dennis, go ahead.

DENNIS TAN TANAKA: Thank you, Donna. This is an observation, just my way of looking at how mark holders may operate in the real world. Trademark is a well-known string. And looking at trademarks that are well-known worldwide, I have seen these companies protecting those labels.

Think Coca-Cola. I'm using variant here as a very wide term to look at the different translations and transliterations of a mark, and I'm sure Coca-Cola has some kind of rights and protections over all those variants of Coca-Cola in the different languages transliterations, scripts, what have you. Because they use those marks in different campaigns, different regions, and so on and so forth.

So I can imagine if a mark is well known in different versions -- and let's now hone in into what might be variants within the root-zone LGR scope -- if those marks are well known, those variants, I'm pretty sure it's highly plausible that the mark holder also has rights. It has some kind of protection and therefore they will have the documentation to apply as a brand TLD. It's hard for me to see a brand that has no interest in protecting a label variant of a mark, if

they don't have any protection that means that they don't have interest in even applying for, let alone operating a TLD.

I think it also goes into the conservative approach that we are taking in terms of how many variants are activated in the root-zone. And thinking along those lines, I think calling for enforcing, or at least being compliant with the same rules for brand TLDs and extending those requirements to the variants, is aligned with the conservative approach that we're taking into what labels are eligible for activation in the root-zone.

So, a few thoughts here. I'm not inclined to one way or another, but just making an observation based on the real world, or at least my sense of the real world in terms of marks and their variants and how that applies to our approach to activating variant labels into the root-zone for the first time. Thank you.

DONNA AUSTIN: Thanks, Dennis. So, Dennis, I'm just trying to understand what you said. I'm not sure whether you're saying that the variant has to be identical to the trademark, so if you can just respond to that.

DENNIS TAN TANAKA: Yes. Nigel, forgive me for jumping ahead, but just to respond to Donna. Let's, for a second, think of variants of the roots on LGR variants, but variants, in general. I used the symbol of Coca-Cola. Coca-Cola has many variants in the general sense of variations of the mark. Coca-Cola, Coke. Many years back, I had a collection of Coca-Cola glasses with every single script of the Coca-Cola brand -- in Japanese, in Chinese, in Spanish, and what have you.

And I'm sure Coca-Cola has some kind of protection on each one of those labels. And they do, because they think that it's important to protect those because they use it in certain regions, in the markets, marketing materials, and what have you. So now, think of the roots and LGR, if any of those variants are important to the brand, I will suspect they have some kind of trademark, or service mark, or something that protects them so that they are the ones that can only use and enforce the usage just for them. If they don't have any rights protection on those labels, that means it's not important. I don't think that they will be interested in even applying or operating a TLD.

And so, I don't think that requiring a brand to have trademarks or rights over a label that is a variant of the primary TLD label is a big ask. What I'm saying is that if they really wanted the variant, most likely they would already have some kind of rights over that variant label as well. And therefore, asking for them to provide that kind of evidence is not going to be a big ask in the world.

Again, I'm just speculating, but based on what I've seen in the real world of these global brands, I suspect that they will have no issue in providing that kind of evidence or fulfilling those requirements in terms of rights over a mark or a label. Hopefully, that makes sense.

DONNA AUSTIN: Thanks, Dennis. Nigel and then Jerry.

NIGEL HICKSON: Yes, good afternoon. Just very briefly, I fully understand what's being discussed here. But surely, in terms of the fourth bullet,

would a brand only be allowed to obtain variants for which they have trademarks? Well, yes. In most cases, that's why they're applying, presumably, as Dennis has said. But that might not be the case. I assume a brand might be applying for a variant because they want to safeguard that use by someone else, but it might not necessarily always be linked to a trademark. So, what's the purpose of this restriction? Thanks.

DONNA AUSTIN: Thanks, Nigel. What we're trying to unravel here is, the primary IDN gTLD or the source label would need to be -- well, my understanding is, it should be trademarked, and that meets the brand requirement.   What's our secondary thought about the variants? The variants are developed to the RZ LGR. That would be the variants that they would be applying for. Do we have a problem with that or do the allocatable variants have that same requirement that they have to be a trademark? I think that's the question we're trying to answer. Jerry?

JERRY SEN: Thank you, Donna. I'm trying to understand what Dennis just mentioned requiring the registered trademark. For example, Coca-Cola, they have the trademark right but maybe there's some reason that they cannot, or someone else has released a Chinese version of Coca-Cola before they enter the Chinese market -- I'm taking an example. I think they are using it and they are quite famous for such a script.   They have the trademark right.   We require a registered trademark, but in some cases, maybe they have the

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trademark right but they don't have a registered trademark of that script. Thank you.

DONNA AUSTIN: Thanks, Jerry. I'm not 100% sure where we are on this, and I think we need input from our IPC colleagues who, unfortunately, aren't on this call. And as Ariel said, if we can't reach an agreement, or feel that we're in a position to develop a recommendation on this, then we can put it out to the community.

Or, when we develop the language, we can come up with two possible recommendations, either/or. The brand must be identical to the registered trademark, and so should the allocatable variants. Or the primary source label needs to be identical to a registered trademark but the allocatable variants don't. So we could come up with language for those two recommendations as options and then bring it back to the group and see where we end up. Justine?

JUSTINE CHEW: I don't disagree with your approach but I'd just like to caution that in terms of trademark law, the rights are attached to one mark. It is a distinctive mark, so it can't vary in terms of having variants in that sense. If a brand owner has got a trademark of one trademark, it doesn't actually mean that they have the rights over variants. And if they want to exert rights over variants, then they have to show that they have the trademark for those variants as well. So I think we have to treat trademarks and brand .TLDs as distinct, apart from other things, in line with trademark law.

DONNA AUSTIN: Thanks, Justine, and I don't disagree. I think we'll develop a couple of recommendations and see if we can get the input from the IPC that we need. I think Justine's made some good points about rights. So it may be that brands are unique and that it will be difficult for allocatable variants to meet the benchmark of the registered trademark requirement. Ariel?

ARIEL LIANG: Thanks, everybody, for the discussion, and I do have a question. If we go with the two-option approach, it may not be simple because we have to think about what's the implication of option two. Option one is the most conservative. A variant can only be applied for as a brand .TLD if it's an exact match of the registered mark, so that will be straightforward. And then in terms of implementation, then that variant will be managed, like a brand TLD and will have the rights and obligations attached to it.   So, it's a simpler implementation for that.

But if we do go with option two, potentially expand the availability for what variant can be applied -- it does not necessarily need to be a registered mark -- then I think we have to answer the question posed by Org. How do we categorize that variant label? Will that also be categorized as a brand .TLD or it will just be a generic TLD?

And then in terms of operation, how is it going to be managed? Does it need to meet the same obligation as the primary or different? So I think if we do propose option two, we have to think through these follow-up questions. Maybe there's more to think through, but I just want to note that and see what the group thinks. Maxim has his hand up.

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MAXIM ALZOBA: I think we need to avoid the situation because of the confusion of the end user. Because the whole idea was about avoiding the confusion of the end user. Creating a situation where the same set of ideas which are variants to each are going to have a brand, a generic, and something else is going to be confusing, and I think it should be avoided. So if something is treated as a set of variants, it should have the same idea and have the same type of TLDs.

DONNA AUSTIN: Thanks, Maxim. The other way we can go on this is we just have a recommendation that says that a brand TLD must be identical to a registered mark, and so should any allocatable variant label. And then depending on what happens in the public comment period, we may have to change that. But in the interim, we'll try to get some guidance from IPC as well. Maxim?

MAXIM ALZOBA: I think we need to ensure that whatever we create here is not used where the company uses one trademark and has rights for all the variants in many languages without actually having legal rights there.

DONNA AUSTIN: Okay, thanks, Maxim. Dennis?

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DENNIS TAN TANAKA: We're talking about variants in the sense of the roots and LGR and it may be a coincidence that a variant is produced in a different language, that it's a real, valid label. We're not saying we're extending the rights. And one point that we all agree on is that the variance set belongs to the successful applicant. They have the right to apply for one label, and they are allocated -- I'm confusing the terms here but I think you understand what I'm saying. Once an applicant is successful through the application process, the primary label and the variant set are withheld for that same entity.

So in a sense, they have the rights over that variant set because no other applicant will be able to apply for any of those variant labels. We already established that any applicant trying to apply against a variant label of an already incumbent will be automatically rejected from the application process.

So I think the question is, the organization, the registry operator already has a TLD activated, they have variant labels withheld, and this could be a brand TLD, the question is, what are the requirements to activate the next variant label? What I'm hearing, and I'm also leaning towards, is that based on our conservative principle, the applicant of the variant label will need to present the same requirements to go through the application process, be it a brand TLD or a community TLD or Geo TLD.

DONNA AUSTIN: Thanks, Dennis. Ariel?

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ARIEL LIANG: Thanks, Dennis. What Dennis said actually made me remember the current discussion in ccPDP4 because it's kind of similar. They have a separate category for the disposition value of variant labels, it's delegatable. That's narrower than allocatable. Because for ccTLDs, they need to be a meaningful representation of the geographic names and the designated language.

RZ LGR may produce a set of variant labels that are allocatable, based on RZ LGR rules, but that doesn't mean all of the allocatable labels can be delegated, because they have to be meaningful as ccTLDs. So that's why ccPDP4 has a separate category of delegatable. And I think this is relevant or similar to our discussion of brand TLD. RZ LGR may calculate a set of variant labels that are allocatable to the root-zone but that doesn't necessarily mean all these labels are delegated as brand TLDs.

They have to be an exact match to register a mark, to be validated as brand TLDs. So I just want to note that. This is something similar happening paralleling the ccTLD world and I think this is something we could perhaps reference in our deliberation. I hope it's helpful.

DONNA AUSTIN: Thanks, Ariel. I wonder, Ariel, how that would apply to a community and a GeoTLD? A GeoTLD doesn't have to be a meaningful representation, but should we have a requirement that the variant actually means the same as the GeoTLD that was applied for? Maybe we're getting too complicated at the late hour of this call. I think we're out on this question, the brand. I think we're moving away from the idea of allocatable variants that don't have a registered trademark. So it seems that a brand TLD must be

identical to a registered trademark regardless of whether it's a ASCII or an IDN label. Maxim?

MAXIM ALZOBA: I think chances are that the federal government or City Mayor's office buying, with paper, with something which doesn't have meaning tied to the object, like the city or the region, is almost zero.

DONNA AUSTIN: Thanks, Maxim. Ariel, back to you.

ARIEL LIANG: Thanks, everybody. Based on what we're hearing, we will put forward option one for the brand .TLD that the variant label application must meet the same requirement as the primary string application, and it has to be an exact match of a registered mark to be applied for as a brand .TLD. So that's what we heard. And then we will capture the discussion so we'll also make sure IPC members and the representatives in this group take a look at that and if they have further input, they can provide that. I think we have wrapped up the last remaining question and closed the loop. I think we're done. That is our agenda. So, back to you, Donna.

DONNA AUSTIN: Thanks very much, Ariel. The good thing about moving to 2-hour meetings is that I can say at the end of it that I've just given you 20 minutes back in your day. So, thank you, everybody. I think we're good for the call next week. The week after that, I think ICANN Org

has an all-hands so we may actually have an upcoming meeting that we may need to cancel. But we'll get back to you on that next week. All right, thanks, everybody. We'll see you next week.

DEVAN REED: Thank you all for joining, and have a wonderful rest of your day.

[END OF TRANSCRIPTION]