
CLAUDIA RUIZ: Good morning, good afternoon, and good evening to everyone. Welcome to our second session of At-Large Week, “The At-Large Policy Session 1: Closed Generics: What’s Next?” on Monday, the 18th of October 2021 at 19:00 UTC.

In order to save time, we will not be doing a roll call today. However, attendance will be noted from the Zoom Room as well as the audio bridge.

We have Spanish and French interpretation on today’s call. If you need to dial out to the Spanish or French line, please send a direct message to staff with your preferred language and phone number.

Before we begin, I would like to remind everyone to please state your name when taking the floor each and every time and to please speak at a reasonable pace to allow for accurate interpretation, and to please keep your microphones muted when I’m speaking to prevent any background noise. Thank you all very much. And with this, I turn the floor over to you, Jonathan.

JONATHAN ZUCK: Thanks, Claudia. Thanks, everyone, for coming to attend this session on closed generics. I appreciate you being here. Staff, if you can stop sharing your screen and spotlight my video, that would be excellent because that will be the vehicle through which I will share my slides.

So thanks, everyone, for coming. We’re going to talk a little bit about closed generics. But one of the things I want to do first is let you know

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

that we're going to do an experiment, which is a second screen experience that you've heard about in the context of ordering things you see during a television show or is used sometimes when people do online quizzes, etc. And so what I want you to do is either go to this URL on your phone using the QR code or the URL below it, atlarge.news/2s for screen two. You can do it in your browser in a separate tab if you'd like. But go there to that link and answer the first question about where you're from. You'll notice that it's already showing here on the screen the dynamic results as you answer that first question. So please, if you would, at this time, take a second, go to this URL, and answer that first question.

I'm going to put the URL in the chat as well. So please refrain from reading each other for just a few minutes while people get a chance to use this URL that doesn't scroll off. We'll leave it up there for people to try and log on so that of the 75 participants we have, we'll get as many people as possible to log in to their second screen and to participate on this. So please log into this. What I'm going to do is change over to my slides here. So please again, just click on the link in the chat either on your phone atlarge.news/s2 for screen two. And please log on and participate. I'll bring this back at the end as well.

Okay. So what I'd like to do quickly is give a kind of a beginner's introduction to the topic of closed generics so that those of you that are new to the topic will have a little bit of an introduction as to what this topic is, what closed generics are, etc. It will not by definition go into huge, great detail. This is a topic that's been debated for basically the last ten years and really intensely for the last five. So this is really just a high-level overview for those who don't have a background in it. And

then the individual speakers will, in all likelihood, supplement my meager attempt to familiarize you with this topic when they get their opportunities to present.

So on the issue of closed generics, one of the things that's confusing about it is that we're used to this term gTLD which stands for generic top-level domain. And so that can be a point of confusion, because in this particular case, we're talking about top-level domains as differentiated from country code domains. And it's not the same thing that we're talking about when we talk about generic strings or generic string TLDs, for lack of a better term. So what are these generics and what does it mean for them to be closed?

Well, what we're talking about when we talk about generic strings are top-level domains that are everyday words that have meaning, that aren't the names of companies but they're just words that have a broad meaning on the Internet and among people, whether it's in English or other languages or Roman or non Roman script, it's the idea that there are just words that are in common use, words like cloud, books, jewelry, and app. The idea behind a closed domain is that rather than being available for anyone to register, they're controlled by a single company rather than open to everyone.

For example, Quicken could apply for .books, and then reserved for themselves quick.books, and then put everybody's cloud version of their budgets up on the web as icann.books and ibm.books, etc. and they could make those URLs available to their customers. But they wouldn't sell them to the general public, they would only be available to their customers and would only have you with their product. So that's a

closed generic. Or it could be a jewelry manufacturer for which all the jewelry domains only go to jewelry distributors of their product. So that's the issue in debate is generic words like this but that are controlled and sold by a single entity.

So what happened in 2012? It was the last time we had the big expansion of the number of strings that were available to be high-level domains. Well, after a lot of work, something called the Applicant Guidebook was created. This was a sort of a rulebook or a set of guidelines for those who wanted to apply for a new strain to be added to the roots to be a new top-level domain. It has rules in it like you can't discriminate between registrars and you have to act in the public interest. But despite the fact that there was some discussion of these closed generics prior to the publication of the Applicant Guidebook, the guide book itself is largely quiet on the topic of closed generics, which meant that different people came away with a different interpretation about what the guidelines specified with respect to these closed generics. And as a result, there were a number of applications for closed generics. There were companies that wanted to apply for a string that they would manage themselves, be the only ones that could give out those second level domains within that string, and to the exclusion of others. There were many, many examples of that. These are just a few of them that came up during that previous round.

So as you might imagine, there were a number of objections to these applications. The first came from the GAC with the advice suggesting that such generic terms should only be allowed when specific to the public interest. Michele Neylon, who was a pretty well known registrar, had a group of folks together and posted a number of different letters

to the Board about how these contradicted the policy on non-discriminatory access to these domains by different registrars and what the public interest implications of that and the competitive implications are of that.

Kathy Kleiman, one of our panelists also composed the white paper on this topic and discussed what some of the competitive effects might be, as well as consumer confusion that could be created if individuals thought that they were looking at an open domain, but really, it was closed. So if I went to .book, thinking that it was going to be a way to get to all books but it turned out to only be books that were available on Amazon, they might not be initially aware of that and how that would affect consumer welfare and consumer confusion. Even I was involved in disputing Google's application for .app, because at the time, I was the head of an app trade association.

So there was a lot of pushback. So this went before the ICANN Board, who, after discussing it, put it out for public comment. The lion's share of the comments did come back with negative views of this notion of closed generics. There were some positive arguments that were made by some that suggested that these generic terms offered an opportunity for innovation and a different type of URL than had been used possibly and made the case that the Applicant Guidebook did not specifically prohibit them, that it's difficult to define which strings are in fact generic terms, etc., and advocated for a more open access to this. The GAC had recommended that there be a public interest exception that you should only be able to have a generic term in a closed way if it was somehow in the public interest.

So all those things put together, the ICANN Board ended up saying they're banned for now, you can have your money back, you can withdraw your application if you want to, and many did, or you convert your application to an open TLD, which several did as well. So .app and .cloud, etc. went forward as open TLDs. The Board specified that this just go back to the community for discussion for a consequent round, which has since happened. So the Subsequent Procedures Working Group whose work ended in 2021 but began nearly five years ago—and these conversations I said began way back closer to 2010—discussed these issues and there were a number of proposals for allowing them all, prohibiting them all, or providing a public interest exception. But the net result was a lack of consensus. The report back the GNSO was that they couldn't reach a consensus on what the outcome of this should be, and so they put it back into the hands of the Board once again to make a decision about what the policy on closed generics should be. So we find ourselves in apparently similar situation, although an awful lot of work has been done and a lot of conversations have been had, we find ourselves in a similar situation to the one we did just after the application process started in 2012, which is why we decided to try and have this session and begin to have this conversation.

So this is in the hands of the Board. But the GAC, the ALAC, others may, through correspondence or advice, be trying to discuss options with the Board and so that's why we thought we should have this conversation. So at a very high level, there's kind of four scenarios that we wanted to discuss. Yes, as Jeff says in the chat, hopefully a definitive decision will happen before applications begin.

So in very, very broad terms, the scenarios we wanted to discuss was the possibility, as proposed by some, that we should just simply get over it and allow all closed generics. That's too difficult to define and they'll lead to more innovation. There's plenty of open TLDs at this point so allow them.

There's also the possibility of prohibiting all of them. They're too much of a source of confusion for end users and the competitive impacts might be long lasting. We'll hear about some of the issues associated with those and what sort of the rights creep associated with them might be.

The third is the idea of some sort of public interest exception. If you have a nonprofit or a trade association that operates in the public interest, could it operate a closed TLD and what might that look like, and is that a possibility moving forward?

Then the final possibility in front of the Board is to push a better community once again as happened in the 2012 round, although in this case, even that pushback to community could potentially happen prior to a new round.

So with that, I will switch back to my camera and just say welcome to everyone. What I wanted to do before we got too much further was to get Avri Doria and Becky Burr who are both on the Board and very constrained in the opinions that they're able to express here as part of this session. But as members, the Board hopefully can give us a perspective on the state of this discussion and their perception as to what exactly the responsibility is that lies with the Board at this time. So

I'm open to whoever would like to go first on this topic, either Avri or Becky next, if you're available.

AVRI DORIA: Should I go first, Becky? I'll go first? Okay.

JONATHAN ZUCK: Go first.

AVRI DORIA: Okay. Thank you. Thank you for the invitation. This is something as co-leads on the subject, something that Becky and I do a lot. "You go first?" "No, you go first." "Okay, I'll go first." But anyway, thank you for that explanation and that sort of abridged history of it all. And yes, thank you also for mentioning that neither of us can speak for the Board at this point. Mostly, we can't speak for the Board at all unless specifically enabled. But on this topic, the Board has not yet decided on a position. The Board is basically you asked, "What are we doing about it?" It's something that will be considered by Org in terms of the ODP, in terms of what's practical, what's possible, how much does it cost to do one thing, how much, how difficult this is to do one thing, etc. So they'll be bringing in evidence of what are the constraints and such around.

Also, the SubPro caucus, which is a sub project within the Board that has followed the PDP and now is working on understanding the issues so that it can eventually make a recommendation to the Board is working through all the issues. This is obviously one of them. Now, in looking through the issues, we're actually going a little further back in

the history, I think, than you did in yours, and we're going back to the original decision of 2007. We're going back to the recommendations of 2007, the Board's approval of those recommendations in 2008. There's the AGB as you mentioned, there's GNSO in 2013, having confirmed that because something was not specifically allowed does not mean it's disallowed statement, the GAC advice, and then all the work that's been done by SubPro, the discussions in SubPro, the various advice made and other commentary that's pursued.

So basically trying to understand what it is we are facing here and what sort of decision needs to be made. At some point, we may have to go back to the GNSO with a question. At some point, we may need to go back to the GAC with a question. At some point, there may be a need to come to the community. No decisions at all have been made about doing those things but they're all possible. At the end of the day, when the Board makes a decision on the recommendations we've received from the PDP, this will perforce to be one of the parts of that decision that that will be discussed and decided upon, all things being equal.

So, basically looking forward to this discussion. It's sort of interesting to see if positions have changed much or if there's anything new on it. But basically, we have a large amount of decisional material and advice and recommendations that we need to work through and understand. Thanks.

JONATHAN ZUCK:

Thanks, Avri. Becky, do you want to follow up?

BECKY BURR: I just want to add one thing. Of course, the Board's authority with respect to policymaking is quite limited under the Bylaws, where our role is to act on policy recommendations that come up through the bottom-up policy development process. So how do we go through this material that Avri was mentioning? We have to keep in mind the role of the Board and the limits on the Board's authority with respect to policy.

AVRI DORIA: Thanks for adding that.

JONATHAN ZUCK: Okay. Thanks, you two. I appreciate you participating in this and I appreciate your work on the Board in discussing this. So what I want to do is remind everybody once again of the second screen experience, if you will, and if you haven't had a chance, go to the URL on your phone with the QR code or use the domain as it's posted there to go to your phone. So what we're going to try to do is, again, just an experiment to hopefully allow folks to participate as we're talking, we're going to start with a discussion of allowing all of the closed generics.

So what you're going to see then next—bear with me a second, this is all very experimental but we will try to keep it interesting. If I say do this, in theory, you should now see in your app a little thumbs up and thumbs down on the topic of allow all. Then what I'm going to put up in my video is actually a gauge to show how people are voting as they go along. And to keep people from just hammering the gauge, there's a built-in random delay. That means that you have to wait and hear

something interesting as someone talks before voting again so that you're not just spending your whole time hitting up and down.

So this is what it's going to be inside of my video window as staff spotlights Marc's video window to discuss the possibility or the scenario of simply allowing all closed generics in the next round. So if possible, staff, if you could highlight/spotlight Marc Trachtenberg's video, he can give us a little overview of his thoughts on closed generics. Thanks, Marc.

MARC TRACHTENBERG:

Thanks, Jonathan. I'm actually filling in for Paul McGrady last minute and didn't have so much time to prepare for this. But fortunately, I think the reasons for permitting closed generic TLDs are clear, although I'm also pretty sure that some in this session will not agree with me.

First and foremost, I think one of the most important aspects here is that there's no evidence whatsoever of any harm to competition or otherwise from closed generics. Any potential harm is completely speculative and really not based on any facts or evidence. You don't have any evidence from the first round because closed generics were allowed in the AGB but then they weren't. The evidence that we do have, which is in the form of generic domain registrations, the second level I think really makes clear that there is no harm to competition or otherwise from ownership of generic domains by a single entity.

The reason for this is simple. There's virtually an unlimited number of alternative potential domains at the second level. This is also true and even more so with new gTLDs. Not only are there virtually unlimited

number of potential TLD strings that can be created but also a virtually unlimited number of second level and third level registrations that can be registered in each one of these TLDs.

There's also I think no likely confusion for end users as to whether a TLD is open or all registrations are controlled by a single entity, which, frankly, all TLDs are anyway, not like consumers or people in the community are directly navigating to a wildcard.book or some other domain name. They either know where they're going and are directly navigating there because they saw a domain name or URL in an advertisement or they're finding it through a search engine. But either way, there's not going to be any confusion as to who operates the TLD. Frankly, I don't think any user is going to care.

Opponents of closed generics also think it's wrong, that one entity can own a TLD, and not let third parties register any domain names and hamstring, and that somehow this gives the registry operator control over that word or language. I think, again, this is simply not the case. As I already mentioned, there's a virtually unlimited number of alternate TLDs and second level domains available. Digitally, equal access to all for any potential domain name in any string is not a fundamental right. If it was, then so called open gTLDs, those registry operators would not get to cherry pick the most valuable domain names and sell them as premium domain names for whatever amount they wanted to do. Domain names also have no intrinsic value, only the value that the owner or potential owner imputed to it to actual use or potential use.

Opponents for closed generic strings also argue that this locks up in generic term forever. TLDs are not necessarily forever. The reality is that

if an operator of a closed TLD would not be able to put it to good use and offer something innovative that users want, then that TLD will either be opened up by the registry operator, the registry operator will terminate its Registry Agreement, will sell the TLD to someone else who make a better use of it instead of holding on to it and continuing to pay for something that has no value. We've already seen a number of TLDs terminate.

Now, these are primarily .brands but I think that just further makes my point. If the registry operator is not seeing value in the TLD then it will not continue to operate it. Furthermore, if the generic TLD is delegated and is not useful, the public will find a more useful TLD just as they've done at the second level with all generic word domains long taken in all major TLDs. We should not forget that the DNS has gotten along just fine for 35 years without a delegation of more than a handful of generic terms at the top level. Also important is that prohibiting closed generics stifles innovation. One of the supposed base used for the first round expansion of new gTLDs with a need for innovation and competition in the DNS. There are many potential innovative uses for closed TLDs which we will never see they are prohibited.

Imagine a platform operated on a TLD where every user of the platform got their own domain for free. Imagine a .picture where you could upload and store pictures and share the photos or hardcopy, and yes, from your own portal on your own domain name. Or imagine what Amazon could have done with .book as a closed platform if they were permitted to. Now, that's interesting and innovative. What's innovative about the same old paper registration system that we've seen since the .com started? I can tell you absolutely nothing.

I would also point out that closed generics actually can already exist. All the registry operator has to do is create registration requirements that from a practical perspective only allow it and its affiliates register domain names. For example, setting registration costs at \$1 million or \$10 million. Then the registry operator has its 100 promotional domain names to do whatever they want with, which will be playing for most. And if they need more, they can just pay themselves the high registration fee. I say let's take that out of the shadows and permit it openly.

Now let's talk about the public interest test. As I've stated before, I think this test is completely unworkable and impractical. First of all, what does that even mean? No one is able to come up with a definition that makes sense it can actually be implemented. The development of such a definition will be convoluted. It's been very contentious as we've already seen in discussions during SubPro. Any vagueness in the definition, which is an almost certainly will make it difficult to implement and will make it the subject of endless disputes within the ICANN framework, and I think ultimately result in likely litigation outside of the ICANN framework. These disputes will be a huge and unnecessary drain on the community's time and resources.

But if we take the position that closed generics, if allowed, should only be allowed if they are in the public interest then why should so-called open gTLDs not have to meet the same test? If being in the public interest is important then this requirement should apply to all TLDs and get it in the public interest to allow operators of so-called open TLDs to cherry pick the best domain names and sell them as premium domain names for as much as they want at the expense of those in the

community that want to register those domain names. Where's the outrage from opponents of closed generics here? Even though that practice has demonstrable harm and is clearly anti-competitive, that practice is fine, but operating a closed gTLD when there's no evidence of harm is not.

So in some, I would say, there's no demonstrable risk to permitting TLDs to operate as closed generics that is not completely speculative. All available evidence indicates that no risk or harm will result from delegation and operation of closed generics, or at least no more risk or harm that might be presented by the delegation and operation of any so-called open gTLDs. The public interest test is also unworkable and impractical and the attempt to create it and apply it will cause significantly more harm than operation of closed generics ever would but if there is a public interest test which should apply equally to all gTLDs, whether they are closed or open.

JONATHAN ZUCK:

Thanks, Marc. And thanks, folks, for participating in the experiment. We'll keep it going. I'm going to switch back to my camera for just a second here. Thanks. What I wanted to do now is give Becky and Avri the opportunity to ask questions, again, understanding the limitations you face. Of Marc and some of the points that he made, if there's anything that—clarifications, make sense of, etc., before we move on?

BECKY BURR:

I do have a question. The question that was being discussed in the chat, which is, of course, Marc is absolutely right, that there is no evidence

that there's anything anti-competitive or harmful about closed generics. Of course, there's also no concrete evidence about contributions or the way that they might be used for innovation. I guess there are lots of thought about that.

Marc, in the absence of evidence about how closed generics operate, which of course, we can't have any evidence because we don't have any closed generics, what would you be concerned about in terms of tangible anti-competitive effects? And why are you comfortable with the notion that they're not likely to be anti-competitive?

MARC TRACHTENBERG:

As I said, there's no evidence of any demonstrable harm. So yes, there may not be evidence of use for innovative purposes, but at least given the opportunity to be using it for an innovative purpose. If there's no evidence of harm, then why would we prohibit it? One of the bases of the whole program was you allow competition and innovation. And people want to be competitive and be innovative operating closed strings, but we haven't let them even though there's no evidence of harm. So if we're going to operate on a schema of no evidence of harm is not sufficient then we should not have a second round. That's a conservative approach we're going to take because we've seen plenty of harm that resulted from the first round, not only the anti-competitive behavior. I discussed multiple times of premium domain names, which clearly is anti-competitive and harmful to the community but also other abuses to the system. So I don't think we can just operate by saying there's some phantom potential risk, which no one has any evidence for because that would have stopped the entire program.

Everyone has no trouble taking on all these other risks. But for some reason, this one risk that there's no basis for, no evidence, no facts, this is the one that people are getting stuck on, that's where I just have difficulty. I don't understand it. Again, the evidence demonstrates the opposite. The evidence we do have in the form of generic second level domains has demonstrated to us there is no competitive harm. Because there's an unlimited number of other domain names, which people can register that also include that generic term, which is the same situation with TLDs.

BECKY BURR: Thank you so much.

JONATHAN ZUCK: Go ahead.

AVRI DORIA: I do have a question. My question has to do with the impossibility of determining global public interest. Now, certainly the Board is responsible for every decision being shown in terms of its global public interest. We've created a framework that we're developing and testing and using to do that. In fact, that framework is going to be used in the ODP to determine at least a point of view on whether the program, as you say, is or isn't in the public interest and perhaps some of the arguments you've made may sway that, I don't know. But I don't really understand why there's such a certainty that a framework, especially one that's rooted in ICANN's mission and its values and its

commitments can't be created, that these names could be described under and perhaps even judged under with common sort of procedure could not be built using a general global public interest framework such as we are now trying to use because we always have to act in that. I'm not sure I understand why it's impossible. We understand that you can't create a unitary definition but a framework that constrains it and shapes our way of looking at it seems to be creatable. I'm just wondering. Thanks.

MARC TRACHTENBERG:

My response to that question, which is based on the discussions we've had so far, we haven't made any headway. And I don't believe that there's something that could be rationally applied that's not completely arbitrary. What I think the framework we end up with, if any, will result in problems like community TLDs, where people argue about them forever. I have not seen anything which leads me to believe that there's going to be something that people could agree on and that could be implemented in a rational way. But that being said, my other point was if we could find some sort of definition, why should that not apply to all TLDs and why should it only apply to generic TLDs? If ICANN's mission is to be in the public interest, shouldn't all TLDs have to have a public interest in benefits? That's an answer that no one has been able to give me. Why should we discriminate and only apply this requirement to closed generics when, again, as I said before, we have actual evidence of anti-competitive behavior and other harms created by so called open TLDs? So we're going to have a test, let's apply it to everything.

AVRI DORIA: Thank you for that. Perhaps it is something that should be looked at.
Thank you.

JONATHAN ZUCK: Great. Thanks, Marc, so much. Again, just a reminder to people that we've had some people added on. If you want to engage in the second screen experience, the experimental audience interaction, go to the URL that's here below the QR code or type in the domain name and participate via your phone. For the next section, we're going to allow Kathy, basically, to present the view of the opposites, that all closed generics should simply be prohibited. With that, Kathy, I will let you take it away.

KATHY KLEIMAN: Can you hear me, Jonathan?

JONATHAN ZUCK: I can just fine. Thank you.

KATHY KLEIMAN: Terrific. Thanks. I understand I have 10 minutes and I'm looking forward to sharing a lot of information in that time with you and with everyone. I'm Kathy Kleiman. I'm a professor in Washington, D.C. at American University, Washington College of Law, where I served as a faculty member in the program on information justice and intellectual property. I also know many of you on the co-founders of the Non-Commercial Users Constituency. I really, really enjoyed the times that

I'm invited to talk with At-Large. So thank you, Jonathan and everyone, for having me.

Marc, I appreciate your taking over the last minute from Paul. Jonathan told a very important story and I don't use that word lightly. The very important story of what happened in the first round. Jonathan, since we didn't have a huge amount of time to prepare for the session, I'm going to retell that story. This is what I prepared, to retell that story with a little more background and information because it's a very important story and you really, really hit the important parts.

First, I used to work with .org a while ago. And a registry, let's think about what a registry is. A traditional registry, a gTLD registry runs the database. It's responsible for the security and stability of the database of a generic top-level domain. We don't, we can't, we didn't sell domain names directly to the public. We sold domain names through registrars to registrants. That's a traditional registry. When we were creating the rules for new gTLDs, we had that model. Most of us have that model in mind, traditional registries selling domain names through registrars.

But we realized that there was a bit of a problem. How could you force a .ibm or a .sony or a .google? All of which we speculated would be there, how could you force them to sell a second level domain to someone else? The affiliation is apparent at the top level—IBM, Sony, Google. So we did say that a certain group we created, an exception was created along the way for .brands so that they would own not only the top level but every second level domain. That's what a closed gTLD is. So please keep this in mind as we talk about closed generics.

But otherwise, most of us have the image that we were going with traditional registries. So imagine our surprise when we woke up on a reveal day in 2012, the day we learned what top-level domains, what gTLDs applicants had applied for and found out that a bunch of top-level domains had been applied for as closed generics. We didn't even know that term then. I'm going to read you some of them. Baby, beauty, blog, Jonathan shared app and books and clouds and cars and cruise and games and flowers and movie, and it went on and on and on. It wasn't even a bit, there was an upheaval. Wait a second. The common name of a business or industry being registered so that that business or industry, and in this case, some of the largest companies in the world and some of the main competitors in the world would then own all the second level domains of the generic word, the basic, common term of their industry or business.

Well, the GAC started to object. We had early warnings by the dozens on this. The ones I read to you came from Australia alone. So GAC early warnings are when you take the temperature of individual governments and they say, "Wait a second." Let me read you what Australia said in many of these early warnings. They said the proposed string, whatever it is, still in baby or beauty or book, the proposed string is a common generic term related to a market sector restricting common generic string the exclusive use of a single entity could have unintended consequences and a negative impact on competition. That's government officials telling you that.

I wrote about these concerns, as Jonathan noted. And Michele Neylon, the registrar in Ireland, Blacknight, wrote about a great piece—I'll put the link into the chat later—a Circle ID piece called "Five Reasons Why

Closed Generic gTLD should be Opposed.” Some of them, I’ll just read you the highlights. One, the Internet thrives with freedom of choice and openness. Two, dozens of applications to ICANN for new top-level domains seek to completely segregate and close off common words for use by one company rather than for the entire industry, group, or class. He then lists off some of the same strings that I just shared. And since this closed generic TLDs lead to unfair closures and improper restrictions, companies will be barred from using the generic string of their industry to promote their own businesses on an equal and fair footing.

Microsoft filed a letter with the ICANN Board, Parminder Jeet Singh—and I’m sure I’m mispronouncing his name but many of you know him. He was—I’m not sure if he still is executive director of IT for Change. He wrote a huge editorial that got a lot of play in the Hindu in 2012 called “Beauty Lies in the Domain of the Highest Bidder.” He was upset and here is one huge example, that L’Oréal had applied for .beauty as a closed generic and that this would deprive thousands of companies, small businesses in India of using domain names in .beauty for their beauty services.

The ICANN Board held a public comment process. And what happened was we heard from more small businesses, individuals, entrepreneurs from a wider part of the world than I’ve ever seen before in a public comment. This was not the usual suspects. We heard from small booksellers around the world and publishers and writers saying, “No, don’t let Amazon have .book as a closed generic.” And many, many other participants. The Board banned generics. Nobody is silent on the issue. The Board passed a resolution to ban closed generics in 2015 and

ask the companies to change their applications to open generics or they could withdraw or they could hold. And the vast, vast majority of companies, we saw dozens and dozens of applications becoming open for these basic common terms of their industry.

Let's talk about consumers and end users. Why does this matter? We know companies, you can make a fortune monopolizing the basic term of your industry and business. There's no question why people want it. Why is it that we know there's harm and why is it that it's a fundamental principle of the world of trademark law that you do not allow a single business or entity to monopolize exclusively the common word of the business or industry?

So it turns out we do it for consumers and for end users, certainly in Trademark Law. So the basic principle—and I'll start with the U.S. Trademark Office because that's where I have easy access to and I teach it every day. U.S. Trademark Law—you can't see it, but I'm holding up something that's examining attorney's use—the people reviewing trademarks in the United States and says, "Generic terms are terms that the relevant purchasing public, understand primarily as the common or class name to the goods or services. Generic terms are the ultimate descriptiveness and they are not registerable on the principal register. Generic terms are refused registration in the U.S. under the Trademark Act."

The basic principle of language, you cannot register truck or car as a trademark if you are in the truck or car industry. And I've checked with my friends who are professors of International Trademark Law and they affirm that this is one of the basic principles of trademark law around

the world. That's a basic principle of language that for us, for consumers, for end users, for those of us who will be using this domain name, opening up the top levels to make sure that anyone who has an app can be in .app. If you imagine if we shut down .cloud in 2012 just as that industry was breaking through. Instead, it's become a model of competition of new entrants of the innovation. Domain names, we know—that's why we spend so much time in this area—are critical to innovation, they're important to competition and you can register brand. Again, .sony, .ibm. Register your brand name as a top level but don't take away, don't monopolize the top-level domain that's generic to your industry. It's not fair, it's not right, and the implications are enormous, especially for consumers and end users. There's a fundamental principle. We did the right thing in 2012.

I just want to say candidly that after all this time in ICANN, I've never seen us revisit issues that had so much time and energy so much international participation across the world. We've heard from so many small businesses and entrepreneurs. I still don't know why we have to revisit it. We ban closed generics in the first round and that was right and it did it on a Board resolution. But the right way to do it is to continue that ban.

As Marc said, there are lots and lots and lots of other gTLDs you can register. Do something funky, do something cool, do something different, create your own arbitrary coined just fanciful term, but don't take away the basic descriptive term for the business or industry. Don't lock it up under one company, don't lock up all those domain names, because a registry of closed generic owns all of its second level domains.

We don't want that. That's not competitive. The GAC already told us that. Thanks very much. I look forward to the discussion.

JONATHAN ZUCK:

Thanks, Kathy. I wanted to open it up to, again, Becky and Avri to pose questions to Kathy. I know some things have come up in the chat. But if either of you have questions on the proposal of simply banning all closed generics. That's what Kathy proposed in this section.

AVRI DORIA:

Thank you. I have a question or two. One—and this came up in the chat—is there are a number of trademarks that indeed do look like generic words. And I'm assuming that for you, any word in a dictionary is a generic word. If we could find the word of a brand in a dictionary, why do they have the ability to operate it in a closed manner, whereas other people wouldn't? Is that just giving some extra rights to those who are able to do a branding exercise as opposed to those who don't?

KATHY KLEIMAN:

May I respond to that, Avri? It's a great question. Before we get to another question, let's—

AVRI DORIA:

Sure thing.

KATHY KLEIMAN:

Great question. Okay, so trademark registration—I have so many students doing them these days. Trademark registration is, in context, you’re not just registering a word. Avri, if you apply for a trademark, you’re not just saying, “I want to own the word Doria Associates.” What you’re doing is you’re applying for that word in the category of business services. I’ve always thought that if I opened up a line of children’s clothing, I would call it Milk. Milk is absolutely a word in the dictionary. But I would be using it in a special way to mean children’s clothing. And if I could associate that with children’s clothing, then I could get a fairly strong mark. And it’s kind of descriptive because children drink milk, lots of it. But if I apply for milk because I’m a dairy farmer, because I’m a pasteurizer, I don’t get it. It will be rejected. The category of goods and services is going to correspond. And the trademark examiner will see that I applied for it in the very category that I’m working in, and they’ll deny it. So all of these things matter.

In the first round, we saw Coach apply for Coach as a .brand. Now, of course, if it were a hundred years ago, which it’s fun to think about, a hundred years ago registering gTLDs, but if it were a hundred years ago and you and I both had coach manufacturers or coach leasers, we were leasing coaches with beautiful horses to everyone, it would be a generic. But when Coach registers it for purses, it’s not. So all of this depends on the context. And here too, it’s pretty easy to tell when Google applies for .blog and .search as closed generics. We know what they do and they knew they had to change that in 2012 because they were using it as a generic term in their industry and business. So back to you because I know you have a second question.

AVRI DORIA: The question I have on that, when you're applying for a TLD, you're not applying within a specific—let's say within a specific fund. You're applying for a generic name or a general name, a generic TLD that exists on the Internet. Is that to be policed within your mind to make sure that it is never used for anything generic?

KATHY KLEIMAN: Again, the context. If it's your brand and you're applying for closed generic or if you're applying for an exclusive gTLD where you're on all the second level, that makes sense. But no, it's pretty easy to know who the biggest competitors—in the first round, we saw some of the biggest competitors in the world applying for the generic of their business or industry. There wasn't anything unusual about their listing. When Amazon applies for .book, you know exactly what they're doing. They're the largest bookseller in the world. I'm a little confused.

AVRI DORIA: Perhaps I explained myself badly. After they've gotten it, yes you know that you're applying for .milk because you create children's clothes that are called Milk. But is there anything to prohibit you then from using it for whole milk or something else? Is that to be policed? That's one that's in a brand.

KATHY KLEIMAN: In Part 18 of the public portion of the applications, we do tell people, we do tell the public in the public comments. So for end users and consumers, ALAC, please take note that we have a huge public

comment process where we, the public, had the opportunity to comment to the ICANN Board and the ICANN community about these applications. I don't know whether it will still be Part 18 in the future. But I spent a lot of time reviewing the public portion of the application as did anyone who cared about .kosher and .halal and other things. So yes, I do think companies are bound as in the trademark application. I think in a gTLD application, you should do, in general, what you told the public and the ICANN Board and the ICANN community what you're going to do.

AVRI DORIA:

And you should police it afterwards. The other question I have is about generics. Looking at the IDNs that we're going after, that going for IDNs was one of our hopes.

KATHY KLEIMAN:

Okay, let me check. We're saying IDNs, Internationalized Domain Names. Not IBMs?

AVRI DORIA:

Yes. Thank you very much.

KATHY KLEIMAN:

Okay.

AVRI DORIA: In looking at those, we've already established that we want to basically treat every word in the dictionary as generic. Do we need to do that with all dictionaries? Basically, any word that's in a dictionary is prohibited.

KATHY KLEIMAN: We characterize—like I said, when L'Oréal applies .beauty as a closed generic, we know exactly what's going on. So if L'Oréal applies for .beauty in Hindi, assuming they have the huge presence in India, you'd have an issue on that as well. Again, fundamental principles of law, generic words in businesses or industries, it translates across languages and it translates across scripts, basic principle of international trademark law and registrations that we all get to use language in its ordinary and normal way regardless of what language we're speaking.

AVRI DORIA: I understand you. It's only brands that can have closed TLDs?

KATHY KLEIMAN: There may be a spectrum. But we created it for brands. Brands are the easiest case to justify. Closed generics on the opposite end of the spectrum should be open because of that generic word in the business or industry. There may be something in the middle that we need to talk about.

AVRI DORIA:

One last thing I wanted to point out, that the decision of 2013, the NGCP decision was not a policy, it was merely a decision made as a practice for that round. They were very specific in that motion to say this does not apply for future rounds because the Board cannot make policy. The Subsequent Procedure's new gTLD PDP, in not confirming it, they didn't bring it up to the level of policy. I do wonder to what extent you can consider that a policy.

KATHY KLEIMAN:

I consider it a precedent. I'm holding the resolution here, the Board's Resolution 2015, and I consider it a precedent. The Board understood exactly what was going on. A generic string needs a string consisting of a word or term that denotes to describe the general class of goods, services, groups, organizations, and things, as opposed to distinguishing a specific brand of goods, services, groups, organizations, etc.

The Board when it took its actions, the GAC when it took its action, the dozens and dozens of early warning, the ICANN in the next round, wanted the community in the next round to create a new set of rules. We didn't. So we didn't, we couldn't. There's a lot of lawyers who want to get closed generics for their clients in the next round, and consultants too. So we didn't create a new policy. The question is what policy prevails? And again, I'm wondering why consumers and end users, small businesses, and entrepreneurs have to refight the same fight again, and again, and again. The Board did act and it was successful. Notice the world did not come to an end. Brands got to keep their TLDs. The closed generics became open generics, and opened up to innovation and new industries and a wide variety of competitors. That seems like the right

move for consumers and end users and the Internet community and the world community.

JONATHAN ZUCK: Kathy, I think that's a good note. I think that's a good note to end on. I want to give Marc just two minutes, just because there's been a lot of conversation going on in the chat about trademark law itself and its application here, and I just want to have the opportunity for those ideas to get expressed. If you can do that in a pithy way, Marc. Thanks.

MARC TRACHTENBERG: Here's pithy. Who cares what trademark law says in this case, right? ICANN is not the Trademark Office. So what can be registered as a trademark in the U.S. is not necessarily applicable to what should be available as a TLD. So I think it's just apples and oranges here. And frankly, I haven't heard Kathy say one thing that addressed any of my points. We still have no evidence of any harm whatsoever. There's not likely to be any sort of confusion here. And there's no reason to not let future applicants make innovative uses of their TLDs as closed or open.

KATHY KLEIMAN: May I respond?

JONATHAN ZUCK: Very quickly, if you will.

KATHY KLEIMAN:

We each formed a speech beforehand, before this meeting. Marc, I couldn't respond to you because I didn't know what you were saying and we didn't even know you're going to be here until today. But I think the harm is shown—we have decisions before the International Chamber of Commerce from communities objecting to closed generics. The Trade Associations objecting on behalf of their own communities, of the CTIA, the Wireless Association objected to this DBS and Amazon controlling .mobile as closed generics on behalf of all their members. And in fact, the panelists there agreed with them that there would be harm, that they proved there would be harm to the community. We know what will happen if the largest competitors get these closed generics, far better to let them get the brands as closed, keep the generic words open, and then there's lots and lots of room, as Avri I think showed it. Lots of room in the middle for innovation and ingenuity and cool naming, but not in the generic word, be it business or industry. Thanks.

MARC TRACHTENBERG:

Kathy, you don't know what the future holds and you don't know what any of those companies will do with those TLDs. If we're going to operate on a schema of avoiding all possible risks, then we should not have another round because there's too much risk and potential that all sorts of TLDs can be abused. And that's just not a basis to make this decision on.

KATHY KLEIMAN: Marc, I think the first round actually went stunningly well. We opened up these closed generics and the GAC told us too, in addition to everyone else, we opened them up and they worked for the most part. Again, you want the .brands and you've got .brands. So those are going forward and lots and lots of room in the middle for .horse and other things being used by artists. So I actually think that the proof is in the pudding the first round went well.

MARC TRACHTENBERG: You think it went well because you oppose closed generics, but for those that think closed generics should be approved, they don't think the first round went so well, especially when they had to either abandon their applications or open up those TLDs. There's many other abuses and many problems, again, like premium domain names and other competitive issues that have arisen. So the first round was not perfect. And if it was and it went so well, you wouldn't need SubPro, we could just use the same AGB in the same system we used before.

KATHY KLEIMAN: You and I spent thousands of hours in SubPro trying to really work hard under Jeff Neuman and Cheryl Langdon-Orr, the co-chairs, and really working hard to dot the I's, cross the T's, get this right, and this is still one we fundamentally couldn't agree on. But so many other things hopefully have been greatly improved, and I look forward to seeing what happens in the next round and rounds.

MARC TRACHTENBERG: I agree with you that we could not agree.

JONATHAN ZUCK: Thanks, Kathy. I've been pinged by staff that we're running through our time. Becky posted a question in the chat that I wanted to give you the chance to ask quickly. Kathy, answer quickly before we move on. So go ahead, Becky.

BECKY BURR: I just have a question. This is a question of, is there a slippery slope spectrum issue here that we're not dealing with? So we allow gTLD operators to lock up generic terms for specific industry groups, so .bank or financial institutions that possess certain credentials. But of course, it's not great for blood banks, but we thought it was okay. And I'm just trying to understand why it is okay to take a word out of circulation at a certain level in the DNS and lock it up for a specific set of actors that have some relationship to it, but it's not okay to do that for a smaller set? I'm just looking for the principal difference here.

KATHY KLEIMAN: It's a good question. So let me take .attorney as an example. My sense was that we were going to allow—this is a great question as the chat says—the registry to restrict who could register a domain name under a .attorney or .advoca to those people who are credentialed like you and me as attorneys. And that would be okay, but they couldn't just restrict it to French attorneys or German attorneys or American attorneys, that the domain names have to be open to those who reasonably fit the

category. That was my sense of what we did with these sensitive strings like .hotel and .bank. We obviously want somebody minding the .bank for security. We want real banks in there. We want someone checking the paperwork. But if .bank just became the largest American banks, I think there'd be an uproar and that's not the policy they've set in place.

So these sensitive strings, as you know, the GAC was very careful. We had both the exclusive strings that we now call the closed generics and the sensitive strings. And so we treated sensitive strings specially. But the idea that .attorney or .hotel or .bank would withhold that registration of a domain name to a reasonably credential applicant somewhere in the world domain name registrant is not what we were expecting. We're expecting that that they're allowing that competition is my understanding. Thank you. Thanks, Becky. I appreciate it. I know you've been struggling with some of it.

JONATHAN ZUCK:

Thanks, Kathy. And so this is a good segue, actually, to Bill Jouris, his question in the chat about maybe we make a policy that closed generics can only be owned by someone who's not in that industry, which is an interesting way of putting it. But Marc kind of jumped the gun in his initial discussion on this idea of a compromise whereby—and there were white papers on this as well that we'll put in the agenda for folks that want to read more—but the idea of a public interest exception to this rule, and so there's a couple of different forms that could take them. One is that nonprofits like the Red Cross could apply for .relief because there's been so much phishing scams and things like that in that context, and so that would be something that they would maybe

manage and validate in a stronger way than just a restricted TLD like .bank, I don't know.

Another non nonprofit idea could be a trade association. That's more like .bank but a trade association that's an industry group, that's got an open membership, might apply for something as closed TLD because they want control over who's able to get those second level domains. So it could be a trade association of insurance companies or something like that that wants to get .insurance. So there could be instances in which the public interest could be served by an organization that isn't a standalone, I guess, as a competitor within that as a possible definition for the public interest.

Marc, you've already sort of let your views known that you think that that kind of a process would have way too much overhead be too difficult to define the public interest. But rather than define the public interest, is there is a way to look at this as a variation on the restricted TLD that might be in the public interest. And so I guess I go to Kathy first to talk about this, and then back to you, Marc, to talk about this idea of a compromise in which trade associations or nonprofits and others could apply for closed generics. With the attend, as Jeff puts it, to be in the public interest of the of the public at large, as opposed to registrants, in particular. Kathy, I'll go to you first.

KATHY KLEIMAN:

Jonathan, it sounds good in theory. The devil is always in the details and I spent months on this issue trying to come up with something that we call the public interest closed generic TLD. I worked closely with George

Sadowski who was on the Board when the Board had the resolution ban in closed generics, worked closely with Alan Greenberg and Greg Shatan. We all put our names on a proposal. The community couldn't agree on it. We thought we were really reaching out but it's hard. It's really, really hard.

Marc, if I miss attributing, please let me know. But I think he said that the overhead would be enormous, and it really would. Who defines public interest? Who can test public interest? What do you have to submit up front? What would the applicant have to submit up front? Here I'm reading from our proposal that they're not for-profit organization or comprised entirely of not-for-profit organizations. How are they going to run the TLD? How are they going to open it up to all kinds of reasonably situated registrants the domain name that a .bank or .attorney might? How does ICANN know when you're sitting on a stack of applications, perhaps thousands of them? How does ICANN go through the process of determining? Is it like a community application? How do you go through the process of determining whether the statement of purpose is enough, whether the applicant is enough, whether the governance plan for the TLD is enough? Who rejects? Who reviews? Who rejects? I mean, it's possible, it's conceivable, I think it would take an enormous amount of ICANN's involvement for the At-Large community, for the Non-Commercial Stakeholder Group. For the Commercial Stakeholder Group, I think it would take an enormous amount of our time—enormous—to review, to monitor, to oversee. I think it could be a big black hole in the next round of new gTLDs because it would take so long to process these applications. At least

that's partially what SubPro told us when we worked again very hard to submit a proposal on public interest closed generics gTLDs. Thanks.

JONATHAN ZUCK:

Thanks, Kathy. I wanted to give you a chance, Marc, since it's been a while since I've heard from you on this topic to revisit this issue. Is there a big difference between—I mean, the primary difference between this and a restricted TLD as Becky put up, really, actually has to do with the vertical integration, really. Even with the restricted TLD, it's still an entity that somehow approving who would be allowed. But in this case, it would allow a single entity to suggest who could get a second level domain and register them directly, I guess. That seems like the primary difference between this and a restricted TLD like .bank as we had today.

MARC TRACHTENBERG:

I'm going to shock the world and agree with Kathy, yet again, twice in this session. Like I said and like Kathy said and I think SubPro said, it's just too difficult to figure this out. And how is ICANN qualified to be in the position of being the arbiter of this in determining who has officially met this test to being in the public interest? The proxies that have been suggested I don't think are good ones. Not for profit as a tax benefit, they said in the chat, it doesn't necessarily mean in the public interest. It means different things in different parts of the world and in different jurisdictions. In a trade association, its purpose is to advance the goals of the trade association, not the public interest. The Association of Travel Agents, they're not there to help the public, they're there to help travel agents, which is not to say that a trade association couldn't have

a dual purpose and that all the things are meant to harm the public. Some things I think are meant to really help the public as well but a trade association is not there for the public interest.

I can't imagine no one has come up with any good tests that we could use, and I just don't think that there is one. And even if there was, which I don't think there is, I don't think that ICANN is the right organization to be applying it. Again, if there is such a test, then it should apply to everything. We shouldn't discriminate. Everything is about non-discriminatory access and equal treatment so let's treat all TLDs the same. And if we're going to have this test, which I don't think we can have anyway, it should apply to everything.

JONATHAN ZUCK: Thanks, Marc. I'll go back to Becky and Avri, if you've got questions on this issue of public interest exemption for either of the panelists.

AVRI DORIA: I don't. Thank you.

BECKY BURR: I feel just as confounded as they do.

JONATHAN ZUCK: Okay. Thanks. If we might discuss a final scenario, which is for the Board potentially doing exactly what they did in 2012, which is push this topic back to the community was part of a giant workgroup. But is this

something that we want the Board to decide? Or is it something with some guiderails or additional questions or something, it should be put back in the hands of the community to decide. Should they, in fact, do what they did in the last round, especially since we have time, and push this back? So I would like to, I guess, go to Marc first on that topic, and then Kathy.

MARC TRACHTENBERG:

I guess I would say that the one thing that we have evidence of that's clear that nobody can disagree with is that the community could not decide. We spent countless hours on this topic and people couldn't even agree on what the status quo was. To have the Board kick the can back to the community, not kick the can down the line just doesn't make any sense. I think the Board here just has to make a decision one way or the other. I hope it's one way but to just leave this in limbo doesn't really seem to make much sense to me. And to give it back to the community, what for? How does that work for the second round? People are talking about an open second round forever, which is constant continuous. So when does this get decided? Five years from now, 10 years now, 100 years from now? There's got to be a decision. That is the purpose of the Board sometimes. They listen to the input from the community, the community makes policy. But at the end of the day, that Board has to make a decision. In the last round, they made a decision to temporarily not allow a closed generic for facing a lot of pressure and for a variety of other reasons. I wasn't in the Board meetings but that was their temporary decision at that time. And so that's why we have the Board, because the community can't always

decide. So here the Board needs to make a decision and I hope they make one.

JONATHAN ZUCK: Thanks, Marc. Kathy?

KATHY KLEIMAN: Now I get to agree with Marc. Another break there, which is wonderful. Marc, you're right. Jonathan, going back to the community, let me tell you what you're positing is another PDP, an expedited PDP. But we're talking about another policy development process. We had the screws "put to us" in both SubPro and, as you know, I was a co-chair of the Rights Protections Mechanism Working Group, which Marc was on as well. We were told we had to move quickly, that the world wanted, that the community wanted, applicants wanted these new rounds to open up soon. We had to work very, very quickly. In the end, it took years but we tend to work as fast as we could. And now the new round stands at the precipice. You're going to throw it back to another PDP, that could take years too. I agree, I think the issue has been defined. I think the precipice has been set. There is nothing silent about what happened in the first round. The community spoke, the Board spoke, the GAC spoke. We know the issues are very, very clear and now it's time for the Board to speak again.

Marc's right. Sometimes you do the Board asks. This is one I think to move forward to the next round as quickly as possible. This is when I think they would hold notice and comment and other things. Again, you

know where I stand on this. The banning closed generic is the right thing for language and the right thing for gTLDs. So thanks.

JONATHAN ZUCK:

Thanks, Kathy. I guess I just find myself always feeling disconcerted when we're putting policy decisions in the hands of the Board. It feels like it's not their role to define policy. As tough as it is, as soon as we have them define policy, we now open them up for revisiting those decisions because of Empowered Community powers, etc. The entire landscape changes as soon as we start this process of saying, "Oh, you've made a policy decision that we don't like it." I mean, their job is supposed to be the backstop of the community in its decision to develop policy, not to develop but itself. It feels like the wrong role for the Board and one that's ultimately not good for the community to advocate. That's just my personal opinion and not one that's been established as part of the ALAC or anything like that. But I feel like that's a dangerous precedent whenever we abdicate our responsibility to form consensus on an issue.

In the few minutes we have left, I wanted to just go ahead and open it up to questions. I know Jeff wanted to say something. Since I know already you're ready, I'll go ahead and call on you. Thanks, Jeff.

JEFF NEUMAN:

Thanks for hosting this, Jonathan, and to the ALAC. I think that you're just getting a flavor for what five years were like within SubPro on this very issue. I know Kathy was saying that she sort of felt rushed at the end. And to be fair, I don't think Kathy joined until mid to later stages.

But a number of us had discussed this issue on multiple occasions throughout the year for hours and hours and hours.

The only advice I can give is that if the Board were to punt part of this back to the GNSO, it would have to be with some sort of concrete direction. It couldn't just be an open-ended just do it again. So it would have to be with some sense to the Board like we want to allow some closed generics if they need a public interest test and "This is kind of what we're thinking. Now, GNSO, can you come up with some policy to achieve that?" That might be a way it could be punted back but never to just say, "Okay, discuss it again," because there are just too many conflicting interests in this multistakeholder model and there's no incentive for anyone to back off of their original position because there's nothing positive for them to gain by doing so.

The other thing I really want to emphasize is we have to look at this from the end user perspective and not solely from the registrant perspective. Whether a registrant can register a domain name is not, I would argue, the only thing to look at as to whether something could be in the public interest. I'm not saying I'm for closed generics or against, I'm just saying I could think of a number of uses that a registry that's the sole registrant could do with a TLD, that would be much more beneficial and in the public interest than just selling domain names to the public. So I think that's something that needs to be considered.

Then the last thing is we're not looking for the best possible use of a TLD. That's never been part of the process. It has not been a beauty contest. So just because we can think of better ways that something can

be used doesn't mean that we shouldn't allow a use that can be shown to be in the public flash end user interest. Thanks.

JONATHAN ZUCK:

Thanks, Jeff. Alan Greenberg.

ALAN GREENBERG:

Thank you. The ALAC made a very extensive advice to the Board on closed generics and on the Subsequent Procedures. The closed generics was perhaps the shortest section in that. I don't think we can dispute the fact the Board is not there to make policy. The community in the GNSO is to make gTLD policy. And our advice was very simple to the Board. I'll read it because it says, "In the presence/absence of consensus policy recommendations by SubPro Working Group with respect to closed generics, the ALAC advice of the ICANN Board to direct ICANN Org to suspend any processing or acceptance of applications for closed generics until such time as consensus policy is adopted and it continues."

So we're not saying ban it, we're not saying allow them. We're saying since we don't have a policy and the community is supposed to make policy, suspend processing until such time as there is consensus. How that consensus will come about, whether it's a PDP or something else, if we ever get to the point where we think we can have consensus, fine. We can have a real quick PDP and get it done. But until then, the Board should continue the suspension. Thank you.

JONATHAN ZUCK: Thanks, Alan. Olusegun, you're up next.

OLUSEGUN AKANO: Thank you. Thank you for the privilege to be part of this audience. I want us to look at brand names in the future, not in the immediate. A company may be strong today. And because it's very strong, it has a trademark, it's applying for a closed domain. What happens to that company in the next 30-40 years? So I still believe all these domains should be in the purview of ICANN policy, whereby no one has a monopoly over it. Because the company you see today that you think is very strong, another company may come to [inaudible] in the next 50 years. And as we have, [I'm a member the ccTLD, there's a policy to relegate a domain] name. If we want to relegate a ccTLD, the policy for it. So if you have a closed domain, so a company who has a trademark, how do you relegate that domain? How do you manage abuse of that domain name? So I want us to look at this critically. Thank you.

JONATHAN ZUCK: All right. Thanks for your comments. So thanks, everyone, for participating in this discussion. I don't envy the Board. Again, I personally favor PDP to address this rather than passing this to the Board to make a decision. But I know there's a lot of discussions going on and I wish them the best of luck with this. Thanks, everyone. Here's a little bit of some analytics, maybe. I don't know, maybe not. I thought I had—here we go.

A bunch of people participated in the poll. Average response was about three votes. And it wasn't too dominated by people by any one

individual, just hitting the arrow up and down over and over again. So it was a good, interesting experiment from that standpoint. I look forward to any feedback you have on whether or not you found that interesting or valuable. I thank everyone for participating in this session. With that, we'll let the session close. Thank you.

CLAUDIA RUIZ:

Thank you all for joining this call. This meeting is adjourned.

[END OF TRANSCRIPTION]