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EVAN LEIBOVITCH: Welcome to the new gTLD call. And so, I guess, staff could you do a roll call please? This won't take long.

TERRI AGNEW: Certainly, yes. Good morning, good afternoon, and good evening. Welcome to the new gTLD working group call on Tuesday the 16<sup>th</sup> of September 2014 at 14:00 UTC.

On the call today, we have Evan Leibovitch, Matthieu Camus, Olivier Crépin-Leblond, Etienne Tshishimbi, Avri Doria, Glenn McKnight, and Tijani Ben Jemaa. We have apologies from Alan Greenberg and Hong Xue.

From staff, we have Heidi Ullrich, Gisella Gruber and myself, Terri Agnew. I would like to remind all participants to please state your name before speaking for transcription purposes. Thank you very much and back over to you Evan.

EVAN LEIBOVITCH: Okay, thanks Terri. All right, since this call is being recorded, just please be aware of that. And for the benefit of anyone listening to this in the future, just identify yourself before speaking. And so, like I said, this is going to be an abbreviated meeting because we do not have a very high attendance. So, Avri, if you could possibly...

I know you didn't come in with much prep into this, but if you could talk just a moment about the overture that we had from the community

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*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.*

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applicant group, and also about considering the fact that there is going to be, that there is already some mumblings within the community talking about a next round. If you would like to share some thoughts, how we might want to proceed and address that now. Thanks.

AVRI DORIA:

Okay, thanks. And yeah, I didn't have a chance to do much prep, but I'll just talk about it a little bit. In terms, okay, I'm echoing. Somebody has got me on echo.

Okay. So in terms of C Tank, we...

Okay. I'll try again, hopefully without echo. In terms of C Tank, certainly there is an interest in looking to see how help can be gotten. Now, we're pretty much past this particular round. This is really very distracting.

Is the echo gone?

OLIVIER CRÉPIN-LEBLOND:

Avri, it's Olivier. I think it might be Tijani's line. Because his microphone is on.

[CROSSTALK]

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AVRI DORIA:

Anyhow. ...very largely has its head down, because a lot of people are still going through the community evaluation, process procedure. And there is a certain fear that, you know, if you say anything too critical about the process who knows what will happen, because certainly while the process is done by outside experts, it is then checked over for, I think they call it, [inaudible], or something like that by ICANN staff.

So that's one of those sort of unknown puddles that something can fall into. So I think people are being very, very careful in terms of what they say. There are certainly concerns, but... And I think you'll see far more discussion afterwards. Now, in terms of other things that are going, so I think that if ALAC is prepared to work with C Tag, I think that there is work that can be done.

I think it would be even stronger with GAC, but this will be work for the next round. There is very little that I think can be done about this round. Who knows what will happen after the CTEs are over. In terms of going forward, as several of you know, the new gTLD sort of discussion team has gotten stuck by it, I wasn't on it originally. I'm on it now. I've certainly put out a private position that in some sense melds to what this group had been doing previously.

In other words, while I take the general position that we don't need any more of these open rounds for anything, and I think that we may be able to, at some point, move to, you know, rolling applications, obviously want to avoid digital [archery?] problems, so at least the day kind of period, but basically not get into any more of these mega rounds. But I have suggested in that group, and we'll see if it goes anywhere, and perhaps, you know, someone had suggested it before

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me, I don't know, because I just joined the group, is you know, do remedial rounds.

One for communities, because I think the community, getting communities in was botched, and so this is something similar to the supported rounds that was held previously, but though under the new conditions. And especially the one that this group had worked on, the remedial round for developing economies. And, you know, so those are certainly things that I'm pushing individually, but certainly goals of the C Tag yet.

Whether the community round ends up a goal of C Tag remains to be seen, it has been mentioned in that group. But then again, as they say, people are still looking to the present and not the future. So that's about what I have to say for the moment.

EVAN LEIBOVITCH: Okay, thanks Avri. This is Evan. First of all, before I have any of my own questions, does anybody on the call have... Okay, Tijani, I see you raised your hand. Go ahead.

TIJANI BEN JEMAA: Okay. Thank you Evan. Do you hear me?

EVAN LEIBOVITCH: Yes I can. Go ahead.

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TIJANI BEN JEMAA:

Okay. Thank you. Thank you Avri for this explanation. You know, when the discussion group started, I was on this group at the beginning, and the [inaudible] trying to make something special for the brand. Not for other things. And I raised the point of the poor communities and developing economies, and I propose that we may have a round for both, developing economies and poor communities.

It is not restricted to them, at least they have special conditions, especially because normally the cost of economy has been done from the first round, and now normally the fees must be zero, more or less. But I know it will not be like this, so at least for those communities and those economies, no fees would be applied for them. So they can perhaps, we have perhaps, some applications from there.

[Inaudible] the only thing we have to do, there is a lot of other problems that made the applications from those countries and those communities, not coming and not applying. But I said that we have to think about that, and fortunately, what is his name? The one from Latin America? He supported me, it was [inaudible]. But I don't see it on the list they have now.

So I asked Avri to join the group to help. And she joined, and that's very good. So I think we have to be very visual, and we have to love you for that. If we don't do that, we would really lose all the work we did before. And what we have to do for those communities. Thank you.

EVAN LEIBOVITCH:

Thanks Tijani. And so I guess the question I had, which is a follow up, and I guess I can ask it to both Avri and to Tijani, listening to you talk,

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one of the things that makes me wonder if it's within our capability is for At-Large and the ALSs to, in fact, put out a statement, put out explicit advice to the ICANN Board, asking that the next subsequent round be restricted to community and to developing economies.

That if we were to actually try and get ahead of the game, while everyone is just sort of grumbling about how they want to do it, is there a value, perhaps, to At-Large coming out and saying, "Okay. Let's catch our breath. We saw the applicant support program did not generate the benefits that it was intended. We saw that the community application program was too narrowly applied, and in fact, shut out a lot of communities that could in fact, could have taken advantage of the program."

Is it worthwhile for At-Large, perhaps, to be ahead of this and put out a statement suggesting to the community, that the next round be specifically communities and developing economies? Because essentially the rich world, and the commercial industry has more than its share of applicants in the stream right now. Community, you know, small communities and developing economies essentially got shut out.

By limiting the next round to only those, perhaps we have an ability to do a little bit of catchup. So could I sort of find out what the other people on this call think about possibly trying to address it that way? And that's the advantage of doing this now while everyone is just in the talking stage of perhaps having us get ahead of it, and making a suggestion to the ICANN Board along those lines.

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So I saw Avri has her hand up, and so did Tijani. So please, Avri go ahead first.

AVRI DORIA:

Fine. This is Avri speaking. I believe there certainly would be value in it. You know, it's hard to say to what... ..to be increased... You know, you put it out and then you have GAC in LA come out with a supporting statement of your statement. So I think a statement with a strategy is a good thing.

You know, especially since it's a goal that this group had historically, you even have some of the information that was built out in the work that this group did, you know, what is it? Last year, the year before, in terms of looking at the issues. I know it never got to a final report, but there is certainly a lot of information and discussion, and thought out stuff. So in terms of creating such a letter, you know, you certainly have got stuff to put in it, and then you have looking at how it has gone since then, both in terms of developing economies and communities if you're grouping that.

Obviously, there would be contention against the idea. I'm sure that brands would say, "Hey, we're another type that you can do specifically and it doesn't interfere with these." And so, I'm sure that, you know, there would be. But still, you know, it's something. So it also opens up a mention of, we had a big general open round, but you know, perhaps we don't make the general open rounds anymore. We need specific types of rounds people have been talking about, you know, types and categories of names.

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So if you're also selling the notion of not only of doing a developing economy and community type first, but you're arguing the whole notion of types, there may be something in that, I don't know. But I certainly think that ALAC basically being that part of the community that is looking forward, is looking towards communities and developing economies, to sort of raise that alarm, raise that interest, and do it in a way, hopefully, that you can get others to sign up to parts of it.

So that's my contribution. Thanks.

EVAN LEIBOVITCH:

Okay. Tijani, I saw your hand up. Go ahead.

TIJANI BEN JEMAA:

Yes. I would like to agree with Avri, 100%. Perhaps we don't have to do it as an advice, without any, how do you say? [Inaudible]. The discussion is now open for the new gTLD upcoming round, and so the ALAC is concerned about that. So we can do it, we can do some advice to the Board about that. And I think also we have to be really present in this discussion group, really, because who are [inaudible] now?

Mostly bank and commercial people. So we need to be there. We need to be several people to advocate for the same thing. So that's the discussion. And the output of this group will be at least balanced, if not in favor of our proposal. Thank you.



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EVAN LEIBOVITCH: Thanks Tijani. And I note that Glenn McKnight, who is on the call, has expressed agreement with that. So thank you Glenn. Olivier, your hand is up, go ahead.

OLIVIER CRÉPIN-LEBLOND: Thank you very much Evan. It's Olivier for the transcript record. Just have a question on these proposals. Are there... Is there an ability for these proposals to be gamed one way or the other? Because I understand this comes out from a good wish that is basically positive, but as we know, everything in ICANN is gamed, and game-able. And then those who are able to game things will actually do it.

And it might go outrageously wrong. So would there be a way, if we are to contribute to this, to actually keep track of the gaming aspect of it?

EVAN LEIBOVITCH: Okay. Avri has her hand up. I'll give my own answer to that. One thing that I remember about both the community programs and applicant support, is that everyone was so deathly afraid of the system being gamed, that we put in criteria evaluation that essentially, and as the result show, nobody was able to pass.

So, yes gaming is an issue, and I guess there is more work that needs to be done on something that has a sufficient amount of gaming, anti-gaming mechanisms. But at the same time, is not so paranoid about gaming, that it blocks basically all of the legitimate applicants as well.

I think that's exactly what happened with the applicants. We were so scared of things being gamed, and I think, I know it's my personal

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opinion that I would rather see an illegitimate, quote/unquote illegitimate application go through the process, rather than have all of the legitimate ones blocked out because of processes put in place that were so tough against gaming that they basically...

The applicant support program speaks for itself. The mechanisms essentially didn't allow organizations that might have been legitimate applicants to come in. Avri, go ahead.

AVRI DORIA:

Hi. Yeah, this is Avri speaking again. I can tell I can be heard because I can hear the echo again. So anyway, I think in terms of gaming, one of the things that I've come to believe is that, and I certainly don't, you know, put this on Olivier's plate, but the accusations of gaming are indeed one of the games that people play here.

And any time you don't like something, and again, as I said, I don't put this on Olivier, I just know that his antenna is picking up all of the cries that will come from others, but that, you know, as soon as we hear an idea that might not be good for us, how can this be gamed? You know? It's kind of like the old discussions, any time you don't like a technical...

So now obviously things can be gamed, that has to be dealt with, but we also have to deal with the fact that the anti-gamers have gamed the system so badly, that developing economies, and communities, and others, are essentially shut out. And so, you know, as soon as the gaming argument comes up, the answer really needs to be, "Yes, of course we need to deal with gaming, and dealing with accusations of gaming is the first..."

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EVAN LEIBOVITCH: Hi Avri, you cut out.

AVRI DORIA: Yeah, I thought I was done. I think I'm done sometimes, but I thought I was done.

EVAN LEIBOVITCH: Well you were saying, "It was the first," and then it cutoff after the word first.

AVRI DORIA: Oh, okay. Basically I was saying that the accusations, or if there is a possibility of gaming, is indeed the first game that we need to deal with.

EVAN LEIBOVITCH: Okay. I fully agree with that. Olivier, go ahead.

OLIVIER CRÉPIN-LEBLOND: Thank you very much...

EVAN LEIBOVITCH: Olivier, we haven't heard you after the thank you.

Olivier, are you speaking?

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HEIDI ULLRICH: Evan, we're trying to get him back. We're trying to see if he has actually dropped and then we'll get him back. One moment. Sorry for the technical challenges we're having.

EVAN LEIBOVITCH: While we're waiting to reconnect with Olivier, I personally couldn't agree more with what Avri and Tijani have been saying. Clearly, the issue of gaming has itself been gammed. I guess that's something of a meta discussion that we could take to some other level. But in the very short term, I think we need to be able...

I mean, it sounds like we're making the case that ALAC should be able to make a statement, and that statement should also indeed address the fact that we can be too aggressive with gaming, and that indeed can be used as a tool to shut out people and to make this too restrictive.

So maybe rather than just having an eye behind us on the gamers, that we should concentrate on our own efforts in just saying, "Who is it that we want to encourage to create communities through TLDs? Who is it that we want to encourage in developing economies to build themselves up through the use of TLDs?"

And how do we encourage that? And how do we do that in a positive way rather than spend all of our time worrying about blocking others. Do we have Olivier back? Okay. Terri says he is. Olivier, you have the floor.

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OLIVIER CRÉPIN-LEBLOND: I am back. Thank you Evan. It's Olivier speaking. I have no idea when I got cut off. I launch into some explanation.

EVAN LEIBOVITCH: It was after thank you Evan.

OLIVIER CRÉPIN-LEBLOND: Oh no, oh dear. Well I haven't stopped talking ever since. So I'll summarize then. To summarize what I said earlier. I'm just saying that you have a number of applicants in the first round that have made use of special vehicles, shell companies, in tax free havens around the world in order to avoid paying tax later on.

And I'm just concerned that you will have a similar process being used in a second round, where they would make use of shell companies in the developing world. And therefore, you know, basically making use of the second round to just expand on their work without their developing economies really benefitting from this at all. I don't have an answer to how to avoid that, but it's something we need to be aware of, and I'd be very concerned if we ended up with a second round that was as bad for developing economies as the first round was.

So, that's all I have to say on that. Thank you.

EVAN LEIBOVITCH: Okay. Thank you. Tijani, go ahead.

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TIJANI BEN JEMAA:

Thank you. It's Tijani speaking. Olivier, you are right, but believe me, we... For the upcoming rounds, we have to be very vigilant because we have to look at the support program in the other way. We have to find a way to make it applicable, to make it doable, at the same time being very vigilant on gathering the [inaudible]. Not put very tough criteria, since if you put tough criteria up, sure [inaudible]. But we have to find a way.

This is not something that we can speak like this and say we do that. We have study it, we have to work on it. But the main idea is to have a way to make those regions, and those communities apply for new gTLDs, to give them the means to apply. That means that make the fees almost none, that means help them for a lot of things because as I said, the financial aspects wasn't the only one aspect that made the applications from those regions and those communities very poor and [inaudible].

And so we have to do a very big work to make the upcoming round, giving basic for the developing regions, and for the communities. So again, the intention is not to waive all of the, or things we put to prevent gaming. No. We have to perhaps to strengthen the gaming, the anti-gaming rules, but also we have to make criteria which are doable for developing countries and for the communities. Thank you.

EVAN LEIBOVITCH:

Okay. Thanks Tijani. Okay. What I'd like to do is, since we're more than halfway into the call, I'd like to try and turn this into an action item. Clearly there is interest in this. We have a meeting time that is assigned

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to us at the LA meeting. So I would like to see just, between now and then, that we start putting together a possible statement to present to the ALAC, that indicates our interest in having a round that is limited to community and developing economy applications.

And that between now and then, we try and think of expertise that we might want to bring into the group. There are perhaps legal expertise that can help us with some of the wording and some of the strategy that would try and eliminate the most egregious of gaming, but at the same time not be so restrictive that it shuts out legitimate applicants.

So, that seems to be, I think, one of our biggest challenges going forward. So there is a number of people in our community that I can think of, that I would want to at least consult with about either they coming on or helping us out. People like Kathy [Kleiman], possibly Wendy [Seltzer], some of the other legal expertise that we have within the community, within the NCSG and elsewhere.

That we just start talking to other communities in advance of the LA meeting, let them know what we're working on, and perhaps build ourselves some extra support, and perhaps some expertise from people that can help us, you know, dance that line between keeping out bad intention while wadding through those that really need to get it.

Anyway. Is there any opposition to doing an action item? I'll work with staff, but essentially what I want to do is, make this a part of the LA meeting, and possibly have at the LA meeting a statement capable of being voted upon by the ALAC during the LA meeting. Tijani, go ahead.

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TIJANI BEN JEMAA: Thank you Evan. I don't oppose to this proposal. It is very good. But I would like to make another action item. Make call for participation in the discussion group about the upcoming round of new gTLDs. Make At-Large people participate in this discussion group. This is the only way to make the output of this group, let's say, more or less balanced, or at least in favor of our proposals.

EVAN LEIBOVITCH: Okay. Is anybody on this call part of that discussion group at this time?

TIJANI BEN JEMAA: It is only Avri and me.

EVAN LEIBOVITCH: Okay. Subject to time constraints, I will join that as well.

TIJANI BEN JEMAA: Thank you.

EVAN LEIBOVITCH: And so I guess in a follow up call, or in a follow up email to the committee, we should mention that we want to encourage people to do that. So, staff if you could note that as an action item in a follow up email to the gTLD working group mailing list, we want to encourage people to get involved in that discussion group.



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And Avri has mentioned the possibility of, in our work on this, talk to the GAC, specifically members who have in the past raised issues about supporting developing economies and communities. And yes, Heidi, so that's a second AI. The first AI is starting to work on a statement for further work and possible ratification at the LA meeting. And the second AI is to send out a message to the ALAC list, encouraging people to join the discussion group for future rounds.

So yes, that's two AIs. Okay? Avri, sorry, Tijani, is that okay? Go ahead.

TIJANI BEN JEMAA:

It's an old hand. Sorry.

EVAN LEIBOVITCH:

Okay. Avri, your interest is noted, at the same time, your participation and your passion in making this happen is also noted. And right now, as far as I'm concerned, having noted what you might perceive as a conflict, personally I don't see it as a problem. So your participation in this group is absolutely welcome.

Anyway. Okay. So, is there anybody else on the call who wants to comment on this before we move over to the next issue? Going once, going twice, okay. So, the other issue has to do with the public comment process that was started by ALAC, initiated by our working group on the issue of public interest commitments, and policy advisory boards.

This was a very lengthy process that went through the LA meeting, and we now finally have a staff summary of that in our hands. A link to that

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was kindly posted by staff in the page that announced this meeting. So essentially what we have is a staff summary, thank you for putting this up, is a staff summary of the positions. If I can be really, really crude in summary.

Essentially we have current applicants in the domain industry saying that the problem with picks, and we're possibly replacing it [pabs], is an awful idea, and we have people outside the domain industry saying it's a good idea. It really does seem to be split along those lines. So, what I would like to do is just find out from the people that are on this call, what your take is on this, what kind of further action we need to do, and the original public comment process, essentially ALAC reserved the right to do whatever it was we wanted.

In result, we didn't commit to a particular cause of action. So I would like to just try and find out at least from our nice little tidy group here, what people might think is an appropriate course of action going forward? Anybody with an interest on it? I was hoping to get some of the other proponents outside of the community such as Ron Androff who has been very diligently working with us on this, and in fact, having pressed us on some of the deadlines.

Sorry. Couldn't hit the mute button fast enough. So, what, is there anybody on this call that would like to express any comments, or interest, or ideas for moving forward based on the response so far to the public comment proposal? If not, I'll defer this to the LA meeting where hopefully we'll have more people in attendance. Are there any comments at this time?

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And I see nothing. Heidi, I am able to scroll the document. Okay. So, nobody has anything to input at this point? So perhaps I think the issue of how we deal with this, I'm going to defer and make it an agenda item at the LA meeting, unless there are any objections to that? Olivier, your hand is up, go ahead.

OLIVIER CRÉPIN-LEBLOND      Thanks very much Evan. It's Olivier speaking. Just asking, on the negative responses to the proposal, was there anything of substance in there that basically made it very, very difficult indeed to accept a [pab]?

EVAN LEIBOVITCH:              Based on my reading, both of the summary and of some of the detail, essentially the industry is saying, "We're too far down the road. It's too late to do anything now. You would be causing undue stress on the existing applicants by causing a change at this time, and in any case, we're confident that the pick system does is adequate for us."

OLIVIER CRÉPIN-LEBLOND:      It's Olivier again. What about the next round?

EVAN LEIBOVITCH:              No comment has been made in the next round. I believe there was applicant that was talking about unfairness between having some applicants to set up to, one set of rules regarding public interest issues, and previous applicants being subject to another. So, I believe at least

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one brought up the issue of fairness and divergence between different rounds and different applicants.

That's basically the best I can answer your question based on what I've read.

OLIVIER CRÉPIN-LEBLOND: Okay. Thanks.

EVAN LEIBOVITCH: Now does that govern how we're able to move forward? Obviously you asked that for a reason, I'm just curious to sort of flesh that out.

OLIVIER CRÉPIN-LEBLOND: Yes, thanks Evan. It's Olivier. Well I asked because I also read the report, and it looks like there is a split of course, and I can understand that some just don't want to be subject to the [pab], and some say there is much wisdom in using a [pab] on it.

It doesn't really take us anywhere at the moment. And I'm just concerned that now we're going to, if we don't reach, we kind of have consensus on a decision today, and it doesn't look like it because there are so few people on the call. We will probably have to do this face to face in LA. And I just wondered whether in the lead up to LA, there could be some discussion on the list, to try and focus on exactly what we will be discussing and what we will be focusing on, when we are face to face.

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If we just leave it as an open question, by say, “Well, here is the report. What do you think about it?” I’m just concerned that we’ll spend whatever amount of time, 20 minutes or 30 minutes, just looking at life go by with very little progress.

EVAN LEIBOVITCH:

Well, Olivier, you raise a very interesting question, and so maybe this leads to a smaller question that perhaps this group is capable of addressing. On the issue of [pabs], do we want to be implicit that At-Large make a statement about things going on for this round? Or do we essentially try and do what we’re doing with applicant support and community applications, and sort of tool ourselves up to be able to come up with something very coherent and forward thinking in advance of subsequent rounds?

Do we give up on this one? Or do we still say something needs to be fixed? And so I think that’s a valid point. One other issue that I think needs to be raised, is that in some of the comments I had, especially some of the verbal comments I had from GAC members, on the whole issue, is I think we would find very widespread agreement the pick mechanism itself, is insufficient, and does not sufficiently serve the public good.

However, I found a lot of pushback on the idea that the policy advisory board that was being, that was designed by Ron and some other members of the business community, there was wide skepticism that was actually going to be any better. So I’m almost wondering if we

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need to split these, one of which into say, we identify what doesn't work, but we're not quite sure yet what needs to replace it.

The [pab] model is one possible thing, strengthening the pick and giving it some teeth, and giving third party eligibility to complain might be a better way to do this. What do the other people think on the call about number one, the question of, do we still try and do something for this round, or do we just look forward to the next?

And the other one is, is it worth it at this point, splitting the issue of complaining about picks, but not necessarily advancing [pabs] as the answer to it? Does anyone have any comments on either of those two questions?

Okay. Nobody is raising their hand, but Avri is writing something in the chat. Avri, if you have voice, why don't you just say what you're thinking? Okay. So Avri she's hoping that, since getting third party for accountability for picks is the most we could hope for, I'm assuming you mean in requesting for this round. It is being able, expanding access to third parties doesn't necessarily require a big change in the RAA, it simply changes the, you know, who can have standing. Avri, your hand is up, go ahead.

AVRI DORIA:

Yeah. I finally, after I stopped talking, I had changed microphones around, because I didn't plan on talking anymore. Okay. I should know better. So yeah, I think that, you know, in terms of changing anything at this point, you're going to meet a whole lot of resistance in terms of, you know, one of the things about this round...

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...new stuff has been layered on people that there is really a lot of resistance too. So the idea of forcing any kind of new structure on people in this round seems to me to be, you know, fighting [inaudible] windmills at the same time. I think getting any ability for third party complaints about people living up to picks are not, even though most of the, some of the picks are, you know, quite difficult to understand how they be enforced, is probably the most you can ask for.

And I think that making a... ...to the community, to the larger community, you have to be careful with the word community, you know, there are the little communities that apply for a name, and there is a larger, you know, ICANN community and then beyond that, the larger, Internet ecosystem as it were. And so I think that if you want to... ...that the picks were required, that would pass through, that people submitted them, are not, and that having submitted them, there needs to be some third party accountability on them, as opposed to them just...

...and even that, I think, would be a stretch. But that's something that you possibly could argue for still. I'm not sure it's worth your energy, but it's part of a consistent At-Large, you know, goal, is you know, At-Large has been very strong in many different places in terms, we need people, you know, we need compliance, we need ways to be able to go for dispute resolution, we need to be able to file a dispute somehow. You know, when At-Large members show up in working groups like higher TTP, that is a theme that they argue.

And you've argued that theme in so many places, we've argued that theme in so many places that, that seems a good steady state issue for

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At-Large and ALAC is, okay, we've got picks, lovely. You know, so what do they mean? So, you know, as for requiring mechanisms [inaudible] and stuff, you know, in future rounds, I think that's something to be considered, especially when you're talking about this next round we referred to before, that was developing economies and, you know, communities, that the existence of a community to be able to be in a [pab], or something like that is indeed one of those criteria that might help in the gaming issue.

So I think that keeping to that threat, even if there is no... ...At-Large's effort. Thanks.

EVAN LEIBOVITCH:

Thanks Avri. I have a follow up question to you. It's one thing to say, okay, let's do this for future rounds. The specific question raised in the, oh. Olivier I just had a follow up question for Avri and then you're next. The specific public comment process that we initiated was for what were called category one TLDs, that was being those that were very high sensitive to public trust, being health related, financial services related, and so on.

Is it possible that sort of all of that real estate has already been taken in the first round? And that even if we had much stronger enforcement in place in subsequent rounds, that the low hanging fruit has already been plucked so to speak, and the high sensitivity that some of the most high sensitivity trust issue things that we wanted to address, are already too late to fix? Do you have any comment on that Avri?



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AVRI DORIA: Yeah. I tend to look at, you know, the community resource, you know, of names as... There is still a lot of names out there, and there is still a lot of benevolent societies and bank type things and what have you, that can come up in the future. So in general, no I don't see an issue, you know, yes. We missed on these.

The only thing one can come up with is that if these are developed in the second round, and if problems of accountability are seen in existing ones, than a movement, you know a public opinion movement can possibly change those later, but changing them now, I think is just, it's not going to happen. Thanks.

EVAN LEIBOVITCH: Okay. Thanks Avri. Olivier, go ahead.

OLIVIER CRÉPIN-LEBLOND: Thank you Evan. It's Olivier speaking. Avri, you mentioned third party accountability for the picks. By third party, do you mean completely independent third party, outside of ICANN, or do you mean ICANN compliance department, or any other process?

AVRI DORIA: I'm not being specific. When I think of a complainant, someone that is having an issue with the TLD not living up to what it put in the picks, that there be some way for them to raise the issue, and to have it dealt with in a serious manner. What the details of that are, and that's why I mentioned solutions, and complaints, and reports to compliance department, that's all something that needs to be understood.

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I would think at the moment, you know, the simplest form was the compliance compartment has to do something, and someone can complain, can make a complaint that would find its way to the compliance department. Maybe it goes via the omnibus, I don't know. But basically, that there should be some way for someone who is not ICANN corporate to say, "They're not living up to their pick."

You know, compliance has to pick a complaint based on them not living up to the contract, but the pick is [inaudible] as something extra. And I think what they're trying to say is, you have to have some way of compliance with it. [Inaudible]

OLIVIER CRÉPIN-LEBLOND: Thank you Avri. It's Olivier again. Evan, if you will allow me a follow up question, please.

EVAN LEIBOVITCH: Sure, but also I had maybe a bit of an answer to myself to that. What I understood to be third party is that under the current working of the pick description, you have to be an organization that is directly impacted by what you would consider to be a breach of a pick. You would have to be in a party directly, financially affected by that breach in order to be able to complain about it or submit it to a pick DRP.

I think what we're talking about in third party is to expand those, so you don't have to be yourself financially impacted to see that there is a public complaint against the breach of a pick. That was my understanding of when we're talking about third parties. Go ahead.

OLIVIER CRÉPIN-LEBLOND: Thank you Evan, it's Olivier speaking. So that helps, but then I really would like to understand and get clarification of what parts of the picks are applicable to being enforced. And the reason why I'm asking this is because, and I have asked this question in the past, and I have spoken to Board members about it, I have spoken to members of the new gTLD Board committee.

And I've always had different answers, and I gather we have someone who has helped on the call, at least one person here has got an application, maybe others have too. The concern is as follows: we have those picks, which I hear from some quarters being called voluntary picks. The ones where an applicant basically says, "I'm going to be good. I'm going to do this. I'm going to do that."

The ones that actually even include a line at the bottom of that pick which said, "And I reserve the right to completely forget about any of the above." Then we have another class of pick, apparently, which is part of the registry accreditation agreement. And that's actually part of the contract, and it's just a one pager which does not, which doesn't have anything that's added by the applicant, it's actually a set of things, set of requirements that are in the contract as drafted by ICANN.

And which I would say are very small subset of a satisfactory pick, as far we're concerned. But which has some premises of a pick, which apparently are part of the contract. These are enforceable. I'm told that the voluntary picks are not enforceable, because they're not part of the contract. Is that true or false?

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And that was with a big question mark afterwards.

EVAN LEIBOVITCH:

I think part of the problem with answering that Olivier is that we don't have any lawyers on this call. At least by my very amateur, I am not a lawyer, reading of this, it's my understanding that picks end up being almost like an appendix to the contract, and as such, technically a part of it. So as long as the applicant does not put in that line saying, "We reserve the right to remove them," then they are enforceable.

The problem is, what are the enforcement mechanisms? You have the pick VRP, which is a very expensive drawn out process, that requires that the complainant take, and also the remedies are also very difficult, because right now the only remedy available to breaching of a pick is rescinding the agreement.

So it's either a nuclear option or nothing happens. There is absolutely no intermediate punishment that's possible. So nothing is built in, not even mutual agreement of fines, or mediation, or anything like that. So I've always seen the problem as that way. Number one, the fact that, you know, as you say the voluntary ones are exactly that, but even if the quote/unquote voluntary ones are enforced, essentially the only remedy available is rescinding of the contract over breaching of a single pick.

That was never thought out very well. And that causes a problem. And so nobody is going to say, "Oh, you know, they've breached a pick, therefore the registry has to go done." So that is what to me as made

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even the quote/unquote mandatory ones unenforceable, because nobody is going to go to that distance.

And that's always been reading of it. That the combination of the third party, the combination of, you know, the difficult to enforce, and the fact that there is absolutely no intermediary penalties between nothing and rescinding the contract, these are all what makes these things useless.

Whether or not the quote/unquote voluntary ones are less enforceable than the core ones, I was under the impression that because a pick ends up becoming an appendix to the contract, that indeed they are enforceable as part of it, but when the applicant puts in a specific line saying that they reserve the right to modify or rescind, then that basically guts that anyway.

It's my understanding from what I've heard from some applicants, that when they don't put that wording in, that those clauses in the picks are enforceable as an appendix to the agreement. I don't know if that helps answer your question.

Anyway. Olivier, are you okay with that? Or have we...

**OLIVIER CRÉPIN-LEBLOND:** Thanks very much Evan. It's Olivier speaking. I'm mindful of the time. I think we'll probably have to follow up afterwards. The ones which are mandatory are specification 11 of the registry agreements. We'll probably have to spend some time looking at that, and I would ideally

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like to find out if we have any of our members that are lawyers that could actually give us clarification on this.

It's just confusing, and understandably, ICANN legal, and I have asked ICANN legal, they've been very neutral about this, and I'm being kind here. Not being able to come back with a definite yes or no, or what it's like. And I'm just concerned something is falling. Something has the potential of falling through the cracks at the moment. The specification 11 mandated picks are really a subset of things.

Like, you know, failing to make a WHOIS records, and violating registry operators, acceptable use policies, etc., this sort of stuff. You know, infringement of copyright, trademarks. Were they not speaking about the actual commitments that a registry makes in selling names that are to do with pharmaceutical companies, for example, or pharmaceuticals to a restricted set of customers.

EVAN LEIBOVITCH:

What you are calling a mandatory picks are essentially simply a set of regulations, part of the contract that they've decided to call public interest related.

OLIVIER CRÉPIN-LEBLOND:

I wouldn't be able to... Yeah, I don't know if they decided to call it this way. I don't know the history of it, but it was, I think it came out from the discussions they had with the GAC, the Board had with the GAC, and it kind of, they take it from there. We'll have to study this further, and I guess we can move on. Thanks Evan.

EVAN LEIBOVITCH:

All right. As you say, it is the top of the hour. We've gone the length of the meeting, even with our small group, so it has been good. What I would like to do is turn this discussion into an action item, and so we definitely want to follow up with this, so this will become a part of the agenda for the LA meeting.

But essentially I want to charge the group going forward and into the LA meeting, with two questions. One of which is, to what extent do we want to press the issue for the current round, as opposed to making recommendations for future rounds. And at this point in time, do we want to continue to push for policy advisory boards? Or do we simply want to strengthen the pick system and try and make it more useful?

And so I want to put those two questions forward to the LA meeting. Now I have a question for staff. The two issues that we're talking about, in both cases, we've been asked that we need some legal assistance for this, whether it's wording for the gaming issues on the first issue we dealt with, or with helping us understand the enforcement capabilities of the RAA.

Can I make...? I would like to make a formal request to staff, to get us somebody from ICANN legal to help us go forward with this. Yes, we will be looking for other legal minds within our own community, but Olivier, since you are on the call and you're chair, I would like to make a formal request for ICANN legal staff assistance in helping us move forward with this. Is that reasonable to do?

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OLIVIER CRÉPIN-LEBLOND: Thank you Evan. It's Olivier speaking. [Inaudible] of others. I can make the request, of course, if the working group is asking for this, then of course I can make a request. Now how helpful ICANN legal would be in such a situation is difficult to know at this point in time. I can certainly see a certain set of conflicts for ICANN itself, because ICANN legal really is there to represent ICANN the organization.

And having them involved in helping out the ALAC to put together, or to well, to counsel the ALAC into building policy, might be seen by some, or even by them, as being a conflict, since staff does not get involved with building a policy. We're going to have to work this one out. And I might be overly cautious, Evan, but I'm just looking here from experience in the past few years, and whenever there was an issue such as that one, it was a tough one.

I don't know whether ICANN legal is able to operate in the Chinese world, and be able to send someone that would be able to offer us with fair advice on these things, on these matters, and for the community to write policy based on this, whilst at the same time, ICANN legal being hands on involved in the lawsuits and whatever that ICANN is involved with.

EVAN LEIBOVITCH: Understood.

OLIVIER CRÉPIN-LEBLOND: It's a double edged sword. We have to see. Thank you.



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EVAN LEIBOVITCH:

Okay. So then I guess the answer is, scratch that and we need to ask our community members to identify people in our community that are able to address these things.

Okay. All right. So, the action item for this then is twofold, one of which is to bring this to the agenda of the LA meeting. The other one is, if staff can put a call out to the community that we are looking for legal expertise to help us in the two issues, one which is gaming and the other one of which is dealing with contract issues regarding the public interest in the agreement regarding things.

I can work offline with staff perhaps on the specific wording of that. Is everybody okay with those as action items? Okay. Olivier, do you still have your hand up or is that an old hand?

OLIVIER CRÉPIN-LEBLOND:

Yeah, thank you Evan. It's Olivier speaking. It's another hand, and it's a suggestion for another action item. Throughout this call, I have been trying to find the wiki page that deals with the next round of new gTLDs, so the next application round. I was under the impression just from vague memory that we had created a page like this, which would list all of the issues which this community here would like to address.

So that we don't miss any of them. I understand that we've spoken about one type of issue earlier in the call. Another type is to do with the auctions. You know, we found time and time again, that communities have been very badly discriminated against when there are more than one applications for specific string, because it all ended up at an auction, and the applicant that had the most money is the one that

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ended up having the string, while the community, which usually is the applicant that usually has the least amount of money, are the ones that lost on every occasion.

So that was another issues which I thought needed to be lifted, and I'm sure there are other issues which we're going to have to address and list for the next round. We just need to have that wiki page ready, and I was going to suggest therefore, that if we can't find that wiki page, which I thought had been created, then to create one and start listing the issues we want to address to make sure that we don't forget it. Thank you.

EVAN LEIBOVITCH: Olivier, are you suggesting this as part of an ICANN wide page? Or is this something that we should create as part of the new gTLD, with the working group to be a specific At-Large area for future rounds?

OLIVIER CRÉPIN-LEBLOND: Thank you Evan, it's Olivier speaking. At-Large.

EVAN LEIBOVITCH: Okay.

OLIVIER CRÉPIN-LEBLOND: We've had... If you recall Evan, four or six months before the green light was given to the new gTLD program, the ALAC was on record to say things were just not appropriate, and we're not acceptable, I think were

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the words. And you know, we've seen how things have gone. I think on many occasions, we've been put right.

We're not there to tell people well, we told you so, but we want to do now is to make sure we address points strongly enough before the next round starts. And make sure that these issues are actually fixed, rather than watched in a way or another. Thank you.

EVAN LEIBOVITCH:

Okay. Personally, I couldn't agree with you more, having been the person that actually pens the words not acceptable in the document, so I remember exactly what you're talking about. Okay. We are 13 minutes over time, and so we have our action items of the two main issues.

Before I wrap up, there is a number of people who haven't spoken on the call. Glenn, Matthieu, Mike, do any of you have any comments or questions before we wrap up the call? I see Matthieu is typing. Mike, Glenn, do you have any comments or questions?

Okay. Matthieu is saying no comments, Mike is saying no. And okay. So if that's the case, then I apologize for the length of the call. It hasn't been a very well attended call, but the people that have been involved, I think we've had good contributions, and I think we've got a good buildup to the meeting in LA. And so on that note, I thank you. This call is adjourned.

**[END OF TRANSCRIPTION]**