Transcription ICANN Durban Meeting

New gTLD Update

Sunday 14 July 2013 at 09:00 local time

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Jonathan Robinson: Good morning, everyone. If I can give you a one-minute warning and we'll start. If we could get councilors at the table and everyone prepared for the meeting. Thanks.

Man: For the recording time stamp this will be the new gTLD update starting at 9:00 am to 9:30 local time.

Jonathan Robinson: Right, good morning, everyone, and welcome to the Sunday GNSO Working Session. We are going to kick off this morning with an update on the new gTLD program which will take the form of a brief update from Christine Willett and an opportunity for Q&A.

So I'd encourage all of you to be prepared, willing and able to ask any questions you see fit both from the councilors and from within the room itself. These are the GNSO working sessions and we welcome contributions from anyone in the room.

Right, good so we're good to go. We'll start the recording. And this is the first session of the GNSO Working Session on Sunday, new gTLD updates. Over to you, Christine.

Christine Willett: Thank you so much. Good morning. Happy to be here. I thought I'd start with just a few brief comments on the new gTLD program and then open it up for questions. Cyrus Namazi will be joining me in a few minutes. I'm sure there are probably questions for him as well around the Registry Agreement and the RAA.

I'll speak more towards the progress of the program, the evaluation progress. We've been - since Beijing we've been making steady progress on evaluations. We've released initial evaluation results through priority Number 1200. We have had a very large number of applications successfully pass initial evaluation. Only 13 applications eligible for extended evaluation.

The other large activity in addition to evaluation we've been supporting is the objection process. Although staff is not involved directly in processing objections we certainly support the DRC and track and administer the progress of the objections that they are handling.

There were 263 objections which were accepted by the DRC. And just this past week, perhaps even overnight, there have been more resolutions posted. But the objections - the DRCs have come to conclusion on four of the objections this week. So that work is progressing well.

We are looking ahead. We've spent much time in the last several months becoming operationally ready and capable of moving forward with the other phases of the program, extending evaluation, community priority evaluation and auction as well as getting prepared to move into the contracting phase. So we are implementing enhanced systems, staffing up and implementing procedures to move forward with that.

On July 3, after the Registry Agreement was approved, the NGPC, we initiated contracting information requests; basically invited 31 applicants - the 31 applicants of the top 50 priorities who were eligible to move forward to contracting were invited to initiate the contracting process with us.

And we've been working with those applicants since. We expect to extend additional contracting information requests to more applicants after the Durban meeting. So we're making steady progress.

The rights protection mechanisms, particularly the trademark clearinghouse and URS are moving forward steadily. We're hitting our milestones. I'll be speaking tomorrow about some specific dates. But we're very much on progress there.

There are operational readiness mechanisms, our SLA monitoring, our (unintelligible) program, etcetera, those are also very much on target to be ready by the time we delegate the first new gTLD.

So that's, in essence, a quick update of what's happened since Beijing.

Jonathan Robinson: Thank you very much, Christine. I would very much encourage any questions, thoughts, comments from the room as well as the table. So if you have things - I'm sure there's many things that are stored up in people's minds so let's hear from all of you. I've got Jeff and then Adrian.

Jeff Neuman: Good morning, Christine. It's Jeff Neuman. I have a question on the dispute resolution and objections. And I'm wondering what kind of oversight ICANN has on - let me go through a little background here.

So we are part of an application for a particular string and that string was objected to by the independent objector in front of the ICC. And we were quite shocked at the bill we got from the ICC, at the estimate. So just so everyone in the room knows, for this particular string, the bill was $190,000.

So we all had to put up - the three bidders for this string - even though the case was, quote, consolidated, each one of the bidders had to put up $190,000 and it will have to (unintelligible) of that. I'm sure, as most of us expect, the objection will fail and ICANN will have to pay those fees which I think is pretty exorbitant.

So as we contemplate future things like the PICDRP and others that have dispute resolution providers - so two questions, Number 1 is, what is our (redress) right now for getting issues about the - what I will call is nothing better than extortion - of these fees at this moment for the objections?

And the second thing is, what protections will we all have in place against all of the third party resolution mechanisms that have been created as part of the new gTLD process? Thanks.

Christine Willett: Thanks, Jeff. We'd actually received a number of inquiries from applicants as well as objectors on the fees for a few of the community - the community objections and the limited public interest objections being managed by the ICC.

Those two types of objections did not have fee limits in the Applicant Guidebook. And my understanding, not having been here at the time, but as no one had ever arbitrated such types of proceedings before that these were complex issues.

And we were - the community was unable to conclude what the appropriate limit might be although the string confusion objection and the legal rights objections were - fees were stipulated in the Guidebook.

What the ICC has communicated about their fees is that they are utilizing preeminent jurists to arbitrate and manage these disputes. So they are using a fee - an hourly rate of €450 which is analogous to what - probably lower

than what some of these jurists get in public fees. But that is what we are being charged.

We are seeking - and we've requested the ICC personally - staff has - to provide more details about their costs so that - and we intend to make that public what is included, what is not included and the basis for those estimates.

Although the objections themselves were limited in the length one of the other complicating factors is that some of the objections also had attachments of length of 1000-2000 pages. So there are, you know, the limit to the objection was not limited on the exhibits so there is, in some cases, quite a bit of material to review for the arbitrators.

We're not insensitive to - and I understand $190,000 is significant. So we're trying to get as much information as we can make public about those fees. The other thing that, as you said, the prevailing party will have those fees refunded. So that is one point.

The other point is that in order to - for the ICC to move forward and all the dispute resolution providers to move forward in processing of the objections and not to have to go back to either the applicants or the objector to seek additional funds that they have estimated from their perspective conservatively they do not expect that the - they will need to go back to any applicant or any objector for additional costs.

Even any costs that are not - and the expenses which are not used those fees would also go back to the non-prevailing party if the objection is underspent and those fees are underspent.

So in terms of redress of fees, the situation is if you prevail you'll get your fees back. We'll try and give clarity on that. I think given - once we get through this round and we have more information on what community

objections and limited public interest objections take and require to arbitrate we will, in future rounds, be able to put some better parameters around the scope of fees for such objections going forward.

Jeff Neuman: Quick - just, okay, so that - that's okay, I guess. But I guess you didn't answer the other question, which is now that we know and we've selected providers for the other dispute resolution processes like the PICDRP - or I don't know if you've selected them, the PDDRP, the RRDRP and others, what steps is ICANN going to take to ensure that everyone knows going in what the fees will be?

And I will say that the letters that we got - just as a side note - the letters we got from the two providers said it's $190,000 at their - at conversion - now, but we obviously reserve the right to come back to - this is just an estimate. And we think it may take more and we'll come back to you and ask you for more so that's what it says.

So there's no bound. And, you know, just translated $190,000 at that rate is about 316 hours of doing nothing but this one objection which, put into perspective of a year, you know, it's 1/6 of a year of doing nothing but this one objection.

So when you put into the perspective of this is no way a conservative estimate, €450 is not a low price. What's done is done, we can't do anything about it. But, you know, ICANN needs to do - before you're advocating to third parties these things ICANN needs to do a much better oversight over those types of things.

Christine Willett: Jeff, I would agree. I think ICANN - the community as a whole would have to take into account just what limits are reasonable for such fees and the expectations we have of our service providers.

I will tell you as we look forward to these other dispute resolution providers, the PICDRP, registry restrictions, trademark, etcetera, we are certainly taking this into account as we did with URS looking for limits and structure around fees that provide more clarity.

What I've been told is that the ICC does not expect to have to go back for more fees. And most of the - the ICC range of objections I saw was anywhere from €30,000 to €150,000 for either a one-person or three-person panel. So 300 hours could be 300 hours across three different panels.

So it - I understand the point. And we will certainly be taking it into consideration as we go forward. Thank you.

Mason Cole: Adrian.

Adrian Kinderis: Good morning, Christine. Adrian Kinderis on behalf of International Domain Registry.

Just hearing your spiel this morning, going through the different facets of the program I didn't hear pre-delegation testing. This may, indeed, now sound self-serving. However, you did note that there are (surveys) going out and continuing to go out and with that hoping to get more and more contracted parties.

The next clear step then, is pre-delegation testing. Are you able to provide us some status update as to that and those newly contracted party's ability to book in their pre-delegation testing to get that moving would be helpful. Thank you.

Christine Willett: Absolutely. So the pre-delegation testing we've gone through a beta mode. We have made a number of iterations through enhancements of the pre-delegation testing, the criteria. We've gotten a lot of good feedback from the

Registry Stakeholder Group in working with the group on what's working for the test, what types of information needs to be communicated.

So we, I believe, just Friday we published some revised specifications around pre-delegation testing. We will be moving into a production mode on pre-delegation testing next week. And applicants will be able to - contracted applicants will be invited after they have signed the Registry Agreement to schedule their appointments on pre-delegation testing.

And previously we've said, for some time now, that we will have capacity for 20 pre-delegation test slots per week. And that is still the case.

Adrian Kinderis: Thank you. Can I do a follow up, Mason, please? If you don't mind? Will you be scheduling those pre-delegation production tests via prioritization order or in order of contract signing? Prioritization number order from the draw prioritization, just to be clear? Otherwise first in with respect to the contract signing.

Christine Willett: So the intention is to take all of the applicants that have signed contracts in a given week, in a time period, right now we're anticipating the week - it could be larger tranches - to invite them to participate and then they would - anyone who signed a contract in a given week will be invited to schedule their pre-delegation test appointment or they will either be given the opportunity to select the next available pre-delegation testing appointment or to select a pre-delegation appointment after the first available after a date of their own choosing.

So it will be on a weekly basis that they will be able to participate.

Adrian Kinderis: So if I understand you're batching within a week so I get - within that week I get prioritization numbers 3, 20, 60 and 100 so I imagine the prioritization number that is 3 gets to choose the first spot and so on and so and so forth so prioritization number will matter within the batched week?

Christine Willett: That's correct. Now that said, it's not like dinner reservations. There's not a 9:00 am slot and a 10:00 am slot. There will be 20 for the week. So we will engage with 20 contracted parties to proceed through pre-delegation testing and we will take that batch through pre-delegation testing the week.

Some parties will be able to move more quickly through that based on how they've progressed through the best testing, if they're ready, there's a documentation - they have to provide documentation. So it will be based on how quickly the applicants move through that phase.

Adrian Kinderis: And so I imagine the very first batch, therefore, will be everybody up to that line in the sand which is when we're ready. So that first batch could well be a month's worth of contracted parties coming through?

Christine Willett: Correct. And then those appointments will be scheduled based on priority number.

Mason Cole: All right, we're almost to our time with Fadi but we've been told he's running a bit behind so we have some extra time with Christine if that's okay? Okay, Jeff.

Jeff Neuman: Yeah, on the - thanks, Christine. On the contracting information request, the CIR, so you've done the first phase, which is good. And then you said the next however many are going to be after Durban. Do you guys have like a set amount - like is there anything we could design for our clients to say, okay, you guys are Number 400 and whatever in the priority; you should expect a CIR around X date.

You know, it was - I got to say the process on the initial evaluations was fantastic. It was predictable, it was - you guys did everything you said you were going to do on releasing nodes. And so it was great. We can advise our

applicants that, you know, on this day you're going to see it approved or whatever. Is there any kind of predictability around the CIRs too?

Christine Willett: Yes. So although I'm stealing some of this from someone's presentation later this week. The intention is the week we return from Durban - I want to say that's the - Wednesday the 24th is my target date, target, not a commitment.

And we intend to release contracting information requests for those applicants who are eligible to proceed to contracting through Priority 108. So we want to get all of the applicants, all of the IDN applicants, into the contracting process that we possibly can.

Then we are working towards a schedule where we invite 40, based on priority number, 40 per week through Priority Number - in batches of 40 priority numbers. That will go up or down based on our need to, one, we need to kind of fill our pipeline.

So everyone who - we've actually only had a handful of applicants who are - who have been responsive to their contracting information request. We're asking for quite a bit of information so we anticipate it will take time for some folks.

So we want to fill our pipeline. Once we fill the pipeline we may ratchet that number down. But if we have more capacity we will increase that number. I, too, appreciate the predictability of the (IU) schedule so my expectation would be if we are going to deviate from that 40 per week pace that we would communicate that ahead of time and everybody would know we were either going to move up or slow down a bit.

Mason Cole: Other questions from councilors or anywhere in the room? Yes, sir.

Greg Shatan: Greg Shatan from the IPC speaking in an individual capacity. I'm not sure if you're the right person to ask this question to but I've noticed that in the

approval process a number of applications have been pulled over for extended evaluation. And nearly all of them have been for failing on the same point which is failure to provide financial statements.

And it appears, from an unscientific review of the - that they are private companies, privately held companies that are not in the habit of disclosing their formal financial statements. And as far as I can tell so far there haven't been any resolutions to any of these extended evaluations or anything informal that's been worked out to allow these to move forward.

So I'm curious what is being done to try to resolve this issue for companies that, I think, have a staunch policy of not putting their financial statements in the hands of any third parties but which are, in at least one example that I know of, incredibly solvent and well-funded organizations that have, you know, easily the capacity to run this probably to, you know, out of their petty cash drawer but yet you're giving them zeros because they're not giving what was initially expected.

So I'm wondering how this is being resolved? It seems something creative is necessary. I'm curious about that. Thank you.

Christine Willett: Thank you, Greg. Yes, there have - without speaking about specific applications, which would be inappropriate for me, yes, the results are public; there are a number of applicants who have not successfully passed initial evaluation based on Question Number 45, which is about the provision of financial reports.

And if an applicant doesn't choose to provide financial reports then it would be impossible for them to - it would be problematic for them to score - have a passing score of Q45.

My view is that as the shepherd of this program we are endeavoring - ICANN and staff are endeavoring to follow the Guidebook as much as possible. And

it would not be our place to get creative on the criteria of the application. So our panelists, our panels are very much following the criteria in the Applicant Guidebook in terms of evaluations.

I think that the applicants will need to make some determinations of what they do intend to provide. Question 45 of the application was known and understood and published before the application window was open. So...

Greg Shatan: So you're telling companies that clearly have hundreds of millions or billions of dollars in net value that they can either give you information they give to nobody or they can kiss their $180,000 plus everything they've thrown into this good-bye?

Christine Willett: Well I certainly am not saying that. What I'm suggesting is that they - all applicants have the criteria of the Applicant Guidebook and if they want to pass evaluation they know what the criteria are.

I would actually suggest that if there are creative ideas and if the group has suggestions we would love to hear any creative solutions and options around this.

Greg Shatan: But are you suggesting that the Applicant Guidebook is sacrosanct and that somehow what is in there cannot be worked with to achieve the appropriate goals? If the goal is to...

((Crosstalk))

Christine Willett: Absolutely not. I think we've shown that there have been a number of - needed to be a number of minor modifications from a practical application standpoint.

Greg Shatan: So then I guess the question is whether there are minor modifications that can be made in this case so that companies that are clearly highly solvent

and well-funded can survive this without giving you the information they've never given any third party.

Christine Willett: So, again, I would welcome suggestions and feedback on that very sincerely.

Greg Shatan: Thank you.

Christine Willett: Thanks.

Mason Cole: Thank you, Greg. Mike Palage.

Mike Palage: Thank you. Christine, you were asking for creative solutions, and perhaps you may consider the following. There we go. Turn to your right. You were asking for creative solutions.

And one of the questions that I've previously asked is with regard to how one might want to transfer an application with regard to corporate restructuring. Obviously the intention of not prohibiting an application was originally to prevent gaming; someone from selling an application.

But in connection with corporate restructuring that happens this may be solution because I did work with a number of applicants, who, recognizing the ability of having to disclose financials set up a separate entity.

So, if you will, keeping with the letter and spirit of the Applicant Guidebook this may be one path forward. And, again, I would cite back to cases where ICANN did provide criteria about changing applicants and technical backend providers. They have not yet provided any additional documentation on those procedures. And that may provide a path forward for those applicants.

So I just put that out there as a constructive idea.

Christine Willett: Thank you.

Jonathan Robinson: Thanks, Mike. Thank you, Christine. Fadi has managed to join us now. We much appreciate the time. Fadi, and welcome to the GNSO weekend sessions. You and I have talked previously and we've discussed with the Council what areas we might cover and so we're very much looking forward to hearing from you on a couple of those.

So I think it's probably best that I just welcome you very warmly to our meeting. We're very pleased to have you here. And we'd love to hear from you and, if there's time, pose a couple of questions.

END