Cross Community WG discussing Recommendation 6 of the new gTLD process (Rec6 CDG-WG)
TRANSCRIPTION
Monday 6 September 2010 at 20:00 UTC
Note: The following is the output of transcribing from an audio recording of the Cross Community Working Group discussing Recommendation 6 of the new gTLD process (Rec6 CDG-WG) meeting on Monday 6 September at 2000 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:
http://audio.icann.org/gnso/gnso-cwg-20100906.mp3

ALAC
Cheryl Langdon Orr - ALAC chiar
Alan Greenberg - ALAC
Dave Kissoondyl - ALAC
Olivier Crépin-Leblond – ALAC
Sivasubramananian Muthusamy – At Large
Sebastien Bachollet – ALAC
Evan Leibovitch – ALAC

Commercial Stakeholder Group
Marilyn Cade – CBUC
Jaime Wagner - ISCPC

Non Commercial Stakeholder group
Avri Doria
Konstantinos Komaitis
Mary Wong
Robin Gross

Registrars Stakeholder Group
Tony Kirsch
Krista Papac

Registries Stakeholder Group
Chuck Gomes – GNSO Council chair

Individuals
Richard Tindal
Jothan Frakes
Stuart Lawley

GAC
Marc Carvell – GAC – UK representative
Frank March – GAC - New Zealand representative
Bertrand de la Chapelle – GAC - French representative
Liang Wang – GAC - China

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Massimilliano Minisci - Manager, Regional Relations - Europe
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Apologies:
Heather Dryden - Interim GAC Chair – Canadian representative
Stephane van Gelder - RrSG - GNSO Council vice chair
Caroline Greer – RySG
Dirk Krischenowski
Paul Stahura
Anthony van Couvering
Jon Nevett

Coordinator: Excuse me. This is the operator. I just need to inform parties that the
                  call is now being recorded.

Chuck Gomes: Welcome to everyone who's called in for this meeting of the
                  Recommendation 6 Community Working Group. This is Chuck Gomes
                  speaking right now. And I ask Glen to do a - just to identify the ones
                  who are on the call and then we'll see if anybody is missed in that roll
                  call. Glen, go ahead.

Glen de Saint Gery: Thank you Chuck. Good morning, good afternoon, good evening
                  everyone. This is the Community Workgroup call on the 7th of
                  September. On the call we have Sivasubramanian from the At Large;
                  Stuart Lawly, individual; Konstantinos Komaitis, non-Commercial

Stakeholder Group; Frank March, GAC Representative, New Zealand; Avri Doria, non-Commercial Stakeholder Group, Chuck Gomes who is co-Chair from the Registry Stakeholder Group; Mark Carvell, GAC Representative from the U.K.; (Leann Wan), a GAC Representative from China. Please correct me if that's wrong.

Krista Papac, Registrar Representative; Richard Tindal, individual; Jaime Wagner from the ISP; Olivier Crepin-Leblond from the At Large ALAC; (David Kishuan Duiez) from the At Large; (Maximilio Mimisteve) who is the GAC Liaison staff person; Robin Gross, non-Commercial Stakeholder Group; Marilyn Cade is the Chair of the Business Constituency; and Bertrand de La Chapelle from the GAC, representative of France.

Thank you Chuck. Over to you. And for staff - sorry. We have Marika Konings and Glen de Saint Gery, myself and of course also (Maximilio Mimisteve) like I said. Thank you Chuck.

Chuck Gomes: Thank you Glen. Just one correction. I think this is September 6, not September 7.

Glen de Saint Gery: Oh sorry.

Chuck Gomes: Sorry. Well you'll have a chance to say the 7th tomorrow I think so.

Glen de Saint Gery: Yes. That's right.

Chuck Gomes: (Unintelligible). Thank you. Thank you very much Glen. I appreciate it. And welcome to everyone for calling in. Special thanks for those of you calling in from in the evening hours and early morning hours as well as

those calling in from the U.S. where it's a holiday. Appreciate that very much.

Our first agenda item is the - to talk a little bit about the poll results. Now please don't make more out of the poll than what it is. I think a couple people did that and it was just a tool used to help guide our work this week because we may not be able to cover all 14 of the threads that were previously identified.

So this gives us a little bit of a feel for how we can prioritize things and get what most of the people think are most important done if we don't have time for all of them.

So Glen would you please give us a summary of the results? And just before you do that, all the people were asked to do was to identify their top six threads out of the 14. That's all, nothing more than that just so that we can kind of see from that some sort of a trend. And I think it came out fairly useful and we'll talk a little bit about that after Glen does a summary of the results.

Glen de Saint Gery: Thank you Chuck. I will start by saying that there are 58 subscribers to the list.

Man: Okay. Thank you.

Glen de Saint Gery: That does not - that excludes the staff on the list. And there were 27 respondents to the poll 18 of which came from the GNSO, four from the GAC, four from At Large and there's one unidentified person.

Now, the thread that got the highest number of votes, 24, was the use of morality and public order terms. The next thread that got 20 votes was international principal of law. The next thread that also got 20 votes was high board threshold for approving, rejecting Recommendation 6 the DRSP decisions.

And the third category that got 19 votes is strings only. After that comes Category 4 that got 17 votes, which is outsourcing of dispute resolution process.

Category 5 that got 11 votes universal availability objective with limited exceptions the - as well as the category that got 11 votes standing for filing objections and then the sixth that got nine votes guidebook criteria Number 4. Seven that got seven votes use of the term incitement. Eight that got six votes quick look procedure. Ninth that got three votes is independent objector and also timing of Recommendation 6 dispute resolution.

Chuck Gomes: Glen, did you skip the International Center of Expertise or did I just miss it?

Glen de Saint Gery: The International Center I don't think we've got that on Chuck. Just let me see where that came.

Chuck Gomes: Right after quick look.

Glen de Saint Gery: Yes. That's right. Yes, yes, it was skipped. That got one, two, three four, five. And it was skipped. It was in the - yes, International Center of Expertise of the ITC and DRSP. You're quite right Chuck. Thank you.

And then after that comes the ninth Category 2, three votes independent objector. And the last category with one vote was incitement to discrimination criteria.

Now of the respondents there were three from the Registrar Stakeholder Group, two from the Registry Stakeholder Group, four from the non-Commercial Stakeholder Group and four from the Commercial Stakeholder Group and five who were classified as individuals. And then, as I said, four GAC participants, four At Large and the one unidentified person. Any other - any questions?

Chuck Gomes: Any questions on Glen's summary? Please raise your hand in the Adobe Connect room if you can. To we have anybody on the call this time that is unable to participate via the Adobe Connect room?

Marilyn Cade: Chuck I'm not on Adobe. It's Marilyn.

Chuck Gomes: Okay. So Marilyn when you - you know what to do. Just verbally let me know when you want to get in and I'll fit you in there. Thanks for letting me know.

Okay. Did you have something to say Marilyn? Okay.

Marilyn Cade: Thank you.

Chuck Gomes: I didn't hear that - hear all of that you were breaking up.

Marilyn Cade: Never mind.

Chuck Gomes: Okay. Thanks. Sorry. All right. Going on then. Actually I was pretty pleased with the results on short notice. And it's a pretty good spread, pretty broad participation. Obviously there's a lot more GNSO participants than any other one group if you break it down by stakeholder groups and then GNSO spreads out a little bit more. But I think we had some from every major SO or AC, which was - which I really was happy about.

So my intent would be to just start with the morality and public order terms and how we deal with those in our report first. Because it almost received unanimous support for being a high priority and then work our way down the list in terms of importance. Does anybody have a problem with that? Just raise your hand. Okay. Everybody's okay with that.

Well than rather than taking a lot of time analyzing the poll, which it wasn't intended to be that precise, let's start talking about the use of the terms morality and public order and how our report, which is due in a week, would deal with that. Now we made clear in previous meetings or I made clear in previous meetings that the use of the terms in Recommendation 6 are not going to be changed.

But that does not mean in the implementation portion the use of the terms can't be changed. And so what I'd like to throw open right now is what suggestions do people on the call have for adjusting the use of those terms in the implementation plan in the Applicant Guidebook Version 4. And just raise your hand if you'd like to make a suggestion or have a question or comment in that regard.

While people are thinking, I believe it's accurate to say that -- thanks for the hand -- I believe it's accurate to say that the use of those terms anywhere where it implies that there are any international standards related to those would note be acceptable but I'm going to let others jump in. Frank, why don't you start please?

Frank March: Thanks Chuck. Just to reiterate, I think what I suggested once before that changing the term at this stage given that it's embedded so deeply into all the documentation would I think be - cause more confusion than clarification. So what I would suggest is we simply redefine the term to mean sensitivities or whatever agreed to and (argued) to have. But remove any reference to international legal norms and leave it at that. I think that would be the easiest way to deal with the term. Thanks.

Chuck Gomes: So just to try and recapture that make sure that we all heard it accurately. First of all, and I'm taking your second one first, remove any references to international law related to morality and public order. If any of those statements exist, that needs to be fixed. And then secondly, define the terms morality and public order. Is that correct?

Frank March: Yeah. That's my suggestion. And we have several suggestions for how that might be done, you know.

Chuck Gomes: Can you go ahead and share those if you're willing?

Frank March: Well I think the comments came (at) various people talking about sensitivities of various types. And I don't have the (reading) in front of me but I know that there have been other suggestions that have been

made by various people and I'm sure we can find some way of doing it other than referring to international law. That's really all I'm saying.

Chuck Gomes: Okay. All right, thanks. No that's very good and I do recall discussion on the list that there were several that had some concerns with the use of the term sensitivities but we'll get to that as we move down the line. Bertrand.

Bertrand de La Chapelle: Hi. I wanted to link maybe the - following Frank's remarks the two first callings because we're addressing two issues, as he mentioned; the expression international principles of morality and public order, which is clearly a problem for GAC reasons.

And so when we deal with the second column, it would probably be useful to keep the international principles of law, which do exist, and to remove international principles of whatever formulation of morality and public order, which do not exist.

Now the second question we're addressing in the first column is the current morality and public order terms. Richard would probably repeat it. But I noticed with interest his comment on the list saying we could use a formulation that is just other objections.

I believe it is maybe going a little bit too far in terms of generality. Sensitivities is something we can explore but in a sub element, I was wondering whether we couldn't use as I raised before the expression public interest objections and try to define what they are.

Chuck Gomes: Yeah. Interesting idea. Thank you.

Richard Tindal: (Unintelligible) Richard. Yeah. Bertrand just noted for the group if people hadn't seen what I wrote that I just proposed that we could do away with the term completely and just call it other objections. But just wanted to bring that to people's attention to think about. But I'm actually quite comfortable with the notion that Bertrand just put on the table, which is public interest objections.

Chuck Gomes: And public interest objections would replace what in the implementation plan?

Bertrand de La Chapelle: In that case the title which is currently morality and public morality and public order objections.

Chuck Gomes: Oh okay. Okay. Does anybody

Bertrand de La Chapelle: And we would...

Chuck Gomes: Go ahead.

Bertrand de La Chapelle: And we would decide how it is used because the thing is morality and public order as the GAC has discussed the plans is something that can be used potentially by a national government as an exception and this connects with the other column later on, which is universal availability objective and limited exceptions.

Morality and public order could probably remain somewhere as an exception that some governments could raise at the national level to block a TLD that has been in the general global route.

Chuck Gomes: So if I understood you correctly there Bertrand...

Bertrand de La Chapelle: (Unintelligible) as exceptions.

Chuck Gomes: Yeah. So morality and public order objections could still be a subset of the public interest objection category. Is that right?

Bertrand de La Chapelle: No. This is not exactly. What I'm meant is that this could be used or limited to national measures just like in the universal declaration of human rights where Article 29 says there can be limitations to freedom of expression or freedom of association and so on at the national level by national law for public order and morality reasons.

So when we come to that later whatever the regime we adopt at the global level, there could be a paragraph that would satisfy I believe most GAC members that maintains that governments can under specific circumstances take measures at the national level regarding accessibility or availability of a TLD that is in the route.

Chuck Gomes: Okay. Thank you. Thanks for clarifying that. And that's why I wanted to make sure that I had it right in my own head. Richard.

Richard Tindal: Yes. This is Rick again. So I just wanted to clarify and see if people are thinking about this the same way that I am. In my mind - when we talk about this specific issue, in my mind we're talking about it in two contexts. The term morality and public order as it fits in whatever standard we're coming up with. And in my thinking it's that something that we want to remove from the standard. We want to remove those words from the actual standard that w create.

The second context that I'm thinking about is as the overall description of this objection in the DAG. And that was the more to the point earlier where I was saying I don't think that that adds value. I don't think it's an accurate term. And I was proposing some more simple term like other objections Bertrand has put on the table public interest objections and I think that probably works even better.

So again thinking about this in two contexts. One, the use of this term as an overall description or this objection; I think we need something kind of bland - more bland there if you like. And then specifically with respect to the standard that we create, I think that the term morality and public order is not accurately - not encompassing enough and we should remove it from that.

Chuck Gomes: So do you find the term public interest objections too bland?

Richard Tindal: I think that's beautifully bland.

Chuck Gomes: Oh it's beautifully bland. Okay good. No, that's fine. That answers my question. So are there other comments on this? And while you're thinking, Marika are you - let me know at any - are you capturing the ideas for us.

Marika Konings: This is Marika. Yes Chuck.

Chuck Gomes: Thanks. I was sure you were but I just wanted to confirm for everybody else. And certainly Marika if you have any - if anything's not clear, stop us so that we make sure so that you get what you need. Okay?

Marika Konings: Okay.

Chuck Gomes: Thanks. All right. Now - okay this is - I think these are constructive inputs. Does anybody that's on the call have any objections to the suggestions made by Bertrand and Richard in this regard? So it would be talking about a category - oh, go ahead (Mary) and I'll let you go and then I'll say what I was going to say.

(Mary):   All right. Thanks Chuck. Hi everyone. I like where this is going I guess. I think there is certainly - I wanted to support Richard's distinction between what we call it and what the standard is. The concern with saying public interest objection as Richard was just saying, it really is bland. It's kind of broad. I'm not sure it adds that much clarity.

    So one suggestion I had was if we don't reach - maybe we ought not to reach a resolution on what we're going to call it or what the terms going to be until we've had a chance to discuss the standard or standards and that might give us some clarity on what the overall title ought to be.

Chuck Gomes: Okay. Thank you. And I think the standards will come in when we get to Category 4 of the four categories that are in there right now, which is one of the threads that we have on this thing. So thanks (Mary). I think that's helpful. Does - Robin go ahead.

Robin Gross: Thanks. Can you hear me?

Chuck Gomes: Yes.

Robin Gross: Okay, great. Yeah I just - I have a problem with calling - just a sort of catch all public interest objections. That's extremely broad. It's far more broad in my view than morality and public order, which at least tries to

focus on a couple specific public interest objectives. So I've got a huge problem with calling it public interest objections. Plus I think it's not objective. I think we need to stick with having this rooted somewhere in international law.

We have to remember that we have to come up with a test that is objective and rooting this, grounding this in international law and those kinds of objections gives us some kind of objectivity. Gives us some kind of guidance to go on. So I think we don't want to move away from grounding this in international law.

And I'm also concerned with broadening this up to more - to just public interest this fuzzy term in general because I feel like that will have significant impact on Principle 6, excuse me, Principle G which guarantees freedom of expression. So I think we want to be careful that we don't undo existing principles and existing recommendations, which in fact be outside of our mandate anyways. So that's all I wanted to say on that. Thanks.

Chuck Gomes: Thanks Robin. A couple questions for you to make sure that we're all on the same page. I don't think I heard anybody say moving away from principles of international law. I think the concern is is that there's no international law specifically related to morality and public order.

Now the second thing is, and I think maybe you hit on something and I'm not even sure this was your point. But instead of calling this category public interest objectives, I think what we're really talking about and Bertrand correct me if I'm wrong is public interest objections. In other words, objections that are put forward to a string that are

based on some to be defined, and has to be defined, principles of public interest.

Marilyn Cade: Chuck, it's Marilyn. Can I get in the queue?

Chuck Gomes: Sure. We - Bertrand's in there first and then you're in Marilyn.

Marilyn Cade: Thanks.

Bertrand de La Chapelle: Yeah.

Chuck Gomes: Go ahead Bertrand.

Bertrand de La Chapelle: This is an answer to - or an attempt at an answer to Robin for the very valid questions that she's raising. I put a comment in that respect in the chat. There are two points. The first point is that the expression public interest has a benefit in my view.

I may be wrong, but I sense that it has a benefit of forcing every object to present it's objections towards a string by making the argument in terms of the public interest; and in particular in terms of the global public interest because what is requested is not entering something in the route.

So a government or another type of (actor) could make an objection saying there's a national public interest here but there's also a challenge about whether it has a global public interest dimension. And I think it would also fit with the general responsibility of ICANN as mentioned in the IOC.

The second element is, and here Robin is absolutely right, public interest objections would be only the title and the discussion we need to have is how these - the grounds for such public interest objections could be described in more detail or in a more precise way so as not to make it a catch all category.

So I think Robin is right. And in particular you remember that in again the universal declaration of human rights there's a last paragraph I think that basically reminds that any limitation of any provision in the charter - in the declaration that allows for restriction should not limit in any way the universal validity of the principles in general.

And maybe we could think of reaffirming in connection with recommendation G those principles in the same paragraph. I hope it helps.

Chuck Gomes: Thank you Bertrand. And I think that's consistent with what Richard was saying earlier. And my recommendation is that we don't spend a whole lot of time talking about the title. And the more difficult and the more important aspects are of the criteria for evaluating whether we have a global public interest involved or whatever. So let's go on to Marilyn. You're next.

Marilyn Cade: Thanks Chuck. You know, I know we keep saying that there's no specific international law. But I did post to the list quite an extensive list of the various - the core U.N. treaties related to human rights, elimination of violence against women, international covenant on economic social and cultural rights, the covenant on civil and political rights, the convention against torture and other cruel and human degrading treatment or punishment, convention of the rights of migrant

workers, convention on the elimination on forms of discrimination against women, et cetera, convention on the rights of the child.

There are a number of core U.N. treaties that in fact do address rights and freedoms. And...

Chuck Gomes: Thanks. Go ahead.

Marilyn Cade: Nothing. I just wanted to make sure that we take note of those existing relevant treaties.

Chuck Gomes: Okay. Now Marilyn a question for you. Do you think - would you recommend those treaties being considered to be added to the references that is in the implementation in addition to documents that are already recommend - included?

Marilyn Cade: I think so. I think that if the majority - you know, I should just say one other thing. I was clear in my comments that I think there has to be an expert of - an expert panel of some considerable standing if objection being raised were technical one then the board would certainly be seeking outside technical advice.

And my view is that the board has to be able to rely on independent and highly qualified experts. And it takes expertise to interpret treaties or international agreements.

Chuck Gomes: Thank you. And Cheryl thanks for confirming your agreement with that. Let me ask everyone on the call; is there anyone on the call who would object to a recommendation going forward suggesting that these other - that serious consideration be given to adding these other international

treaties that Marilyn has listed as references with regard to the implementation of Recommendation 6, in particular the dispute resolution process in that regard? Anybody object to that?

Bertrand de La Chapelle: Chuck?

Chuck Gomes: Yeah. Go ahead Bertrand.

Bertrand de La Chapelle: Yeah. This is Bertrand. I do not object. I just want to say that it's very important in whatever reference is being made to explicit text that it doesn't seem to imply that those were not quoted or not relevant. And in particular there are some international principles of law that are not necessarily codified but that can be used and are really general principles of international law.

And so any formulation and any explicit quoting of text could in any case have a formulation like such as (dah, dah, dah) Treaty A, Treaty B and so on in a non-inclusive list or something of the sort.

Chuck Gomes: Okay. Thank you. Marilyn do you have any response to that?

Marilyn Cade: No. I, you know, that's actually one that I would make and that is that not all, depending on the objection, not all of these Core 3Ds would be applicable. It would depend on what the nature of the objection is.

Chuck Gomes: But the - whoever the dispute resolution providers are, they could make a decision in their expert opinion as to - and site particular elements from these treaties if they were applicable.

Marilyn Cade: Right. So let me just say that, you know, I think it probably goes without saying but I'm gong to say it because maybe it doesn't. The process - the administrative process of operating a dispute resolution procedure is an administrative process.

So I favor the independent dispute resolution provider identifying and maintaining a identified group of experts that are brought into an (unintelligible) - into a panel depending what the nature of the objection is rather than thinking that it is the dispute resolution provider themselves who are actually acting as that expert panel.

Chuck Gomes: And I think if I'm following correctly that that's very consistent with the GNSO recommendations in that there really was not an expectations or at least we hope that it wouldn't happen this way that you have a dispute resolution panel of experts that voices their opinion whether something does violates Recommendation 6 or not.

But hopefully they can make a judgment based on, and this comes back to what Robin was saying and what Bertrand confirmed, based on some international treaties or whatever that can be cited to back up their expert opinion. So it adds more objectivity to the process I think. Let's go on to Konstantinos.

Konstantinos Komaitis: Yes. Hello everyone. Just one very small point. I would like to reiterate what Bertrand said. And in principle I agree with Marilyn but we need to provide examples of treaties but this list or whatever list we intend to provide, not the outstanding (unintelligible), international law has more things than treaties like for example customary international law which is - which plays a very, very important role.

So we need to leave whatever panel there is to make determinations based on their own knowledge and their own expertise in international law. We can provide guidance but I would be very concerned if we were to provide an apologies if I have understood incorrectly an exhaustive list of those treaties that we consider relevant for these purposes. Thank you.

Chuck Gomes: And I think your point is very well taken. I don't think - I'm not sure we have time or even if we had time we could provide an all-inclusive list of possible documents but we could certainly include a list of possible documents that may be relevant. And that wouldn't - shouldn't exclude in my opinion the experts themselves in bringing in their own knowledge of treaties and so forth. So I think that's consistent with what your intent is, is it not Marilyn?

Marilyn Cade: Yes, yes. It certainly is. I wholeheartedly agree.

Chuck Gomes: Thank you. Let's go to Richard.

Richard Tindal: And so just quickly I agree with all of that. And I just wanted to point out that the current DAG I think kind of does recognize the things that we're saying. It uses terms like - when it talks about these treaties it uses terms like "for example but not limited to." So it opens the door for other ones that it hasn't listed. It does of course talk about sort of generally accepted principles. So it - again, it's addressing the scenario where perhaps some countries have not signed onto the treaty. So the current DAG language it is kind of (rule announcement) (unintelligible) talking about now.

Chuck Gomes: Okay. Thanks. Now what I'd like to ask Marika to do for me, if you would, I haven't heard any objections to this direction suggested by Marilyn on the list and then on this call today but we need to reach out to those that are on the call. So Marika could you put out a possible recommendation that would go in the report that with regard to the dispute resolution process that the documents listed by Marilyn could also be possible documents that could be used by the experts but that it's not intended to be in an all-inclusive list or that they apply in every case.

You can probably word that a lot better than I just did but if you could put that out to the list and just state that as far as we could tell on this call today there were no objections to making that recommendation but that we would like to find out from the rest of the group participants whether there are any objections and if so, to please explain. Okay?

Marika Konings: (Unintelligible).

Chuck Gomes: Thank you very much. Now so are there any other issues we need to deal with with regard to the use of the terms "morality" and "public order"? And we've actually gotten right into the second priority which is the international principles of law. We'll cover that a little bit more but anything else on the terms "morality" and "public order"?

And I think the recommendation - and I guess Marika we should be put this out to the list as well, as it stands right now is -- and we can still discuss it on this call -- is that there would be this category called "Public Interest Objections," just a title, nothing more, the criteria for evaluating that would still have to be developed, and that we would remove all morality and public order references to the extent that they

try to define a standard that the experts would use. Did I express that well? Anybody want to express that better?

So we should also - I guess Marika what we need to do is make a list of the various things - recommendations that are coming out of this call and then ask those who weren't on the call, or even those who were on the call if you have additional thoughts, to - if they have objections to state so or if they have improvements. Okay?

Marika Konings: (Unintelligible). Would you like those to go out in one single email or would you like to create (unintelligible)?

Chuck Gomes: Yeah, I think probably otherwise we're going to have - I think that's probably okay considering our short timeframe, unless you think differently.

Marika Konings: No, that's fine.

Chuck Gomes: Does that sound okay to you? Okay. Okay.

Marika Konings: Yep.

Chuck Gomes: Thanks. I appreciate that. Let's go on to the second priority then which is international principles of law. Is there more we need to talk about that? Now we talked in a previous meeting about the fact that I think staff in their documents with regard to Applicant Guidebook Version 3 have made it clear that, you know, they're not claiming that there's an international law out there with regard to morality and public order but there are some commonalties across various jurisdictions.

So I - is anybody - does anybody have a problem with that application of the recommendation that the GNSO Council made? Okay. Is there anything else with regard to international principles of law that anyone thinks we should talk about today? Please raise your hand if you do.

(Evan): Hi Chuck. It's (Evan).

Chuck Gomes: Go ahead (Evan).

(Evan): Hi. Sorry. I am not on Adobe Connect and I just joined the call recently. Things on Labor Day are a little weird here. Anyway, regarding - I think the whole - the difficulty is given that there is, you know, not any specific treaty or, you know, not anything specific that unless it can sort of be enumerated what those common things are, it becomes difficult to even talk about this issue in the sense that, you know, if there are international principles, okay, let's be a little bit clear at least in the public face of things about what we're talking about.

There's a lot of speculation and a lot of fear that I've seen on this issue from people that are thinking that, "Well this could be the lowest common denominator of simply that which is not objectionable to everybody." And at the other extreme is sort of, "Well it has to be that very small subset of things on which everyone agrees with very few exceptions are universally (abominable)." Can we make some clarification on, you know, that we're clearly on one side of this?

Chuck Gomes: Well (Evan), let me ask you a question. Don't you think staff has done that in the documents that they have presented already? Don't you think that the first three categories -- I'm not talking about the fourth one now -- but the first three categories do exactly what you're saying?

They have found common elements and identified those across I think what is it, eight jurisdictions or something like that. Go ahead and respond.

(Evan): Well I'm just saying that as a matter of a public (unintelligible) to what we're doing, we ought to be very, very clear about this (set up). I don't know. I'm just saying if - I'm just saying that what I've seen come across other channels is there's been an awful lot of fear and like has been said in the email you can interpret a certain - you can even interpret the GAC email as saying, "Well it has to be things that are simply not offensive." I think we just need to make sure that from what we're saying that we need to simplify that - clearly what side of this thing we're on.

Chuck Gomes: And I think that's what the GNSO intended as well is that there should be objective standards to measure these things. And all I'm saying is I think - I guess I'm challenging you. If you don't think the first three categories meet what you're just suggesting and we need to improve those, then we should work on that. But I have the impression with a few things that we've got to work on like the use of the word "incitement" and things like that, it does identify some specific things that would fall into categories of possible - of viable objections.

(Evan): Okay. I don't want to impede things further. I mean I've sort of said my peace. But you're right, we need to move on and clarify things in the context of everything you are talking about.

Chuck Gomes: Yeah. Okay. Good. Thanks. Okay. Bertrand.

Bertrand de La Chapelle: Yeah. Thank you. And I apologize in advance for saying something that some people may not like but I think it has to be aired. We're dealing here with two different types of objections. One category I think we have covered more or less with modification to wording which are the words or the strings that would be in a certain way universally objectionable like there are really superior principles that make them really, truly offensive and we can discuss how precise we are, what kind of reference documents we make but it's the notion that there are global principles.

But there is a second category that I think the GAC wanted to highlight and I know it is not very pleasant to hear but there are situations where a national government, for instance, or several of them, will express concerns regarding a string because of their national framework. And being able to handle these doesn't mean that we consider as we said before that any objection should block a string.

But I give you for instance a very concrete example. If you have an applicant in one country that does a string that is really offensive to a very specific subset of this country, a community or there is a very strong hatred between two groups within a country, the country itself will feel very concerned and there will be a strong sensitivity, to take the GAC wording, regarding the idea that this specific applicant from that country will go to the global root and do something that is really going to cause major legal problems in the country.

I do not have the solution but I think that it's very important that the procedure allows in one way or the other, the government in that case, to raise its concern. What the solution to handle this concern is, we have to discuss. But I think the procedure should deal not only with

things that are globally objectionable, (unintelligible) whether they are
or not, but also to find a mechanism that guarantees and ensures or
get the support from most governments that there is a way for them in
such cases to voice their concerns.

Whether they're taken into account, whether nonetheless the string
goes in is a second issue. But we should not forget that this problem is
going to arise and to convey not the position of the GAC but the
sensitivity of the GAC members. I think it's important that we have that
in mind.

Chuck Gomes: Well said Bertrand. I think that's important information. Now a question
for you, am I correct in assuming that those kind of objections
regardless of whether they are - it's agreed to prevent a string or not
would come under the public interest objection category?

Bertrand de La Chapelle: Yes it could because for instance I - let's say I take a
hypothetical situation but I remember something that a representative I
think in the - a representative of an Asian country and it was not China,
I think it was Indonesia but I may not be sure, said - and it was not only
about TLDs, it was at the lower level regarding restriction to freedom of
expression and so on, what do you do as a national government in
terms of entering the security of your citizens if there is a purposefully
offensive proposal that is dealing with a subgroup in your country that
can lead to real social unrest, that can lead to even riots or murder not
against the government but among different communities?

There are some cases where things are very sensitive and I know it is
a very delicate subject because you can veer or err very quickly
towards the notion of preventing blasphemy and things like that. I

understand the danger. But I think it is a case where it is the responsibility of the national government to try to at least raise a flag. How the flag is being handled afterward is another issue. But it is a national public interest issue and one of the challenges that ICANN as a global manager of the global root service system has to face is that there has to be a balance regarding the global public interest and the national public interest in that case.

Chuck Gomes: Now in follow-up to that -- and (Mary) you're next so hang in there just a second -- but is there anybody on this call that thinks that an individual government should not be able to raise an objection along the lines that Bertrand is talking about here. Now I'm not saying that they should have veto power, please don't go there. That's not what I'm saying.

Is there anybody though that would disagree with what I think Bertrand is saying that an individual government that has a concern in this way should not be able to at least file an objection in that regard. And you can either speak up or raise your hand if you do object to that. I would think that we would all support that but I don't want to assume that without asking and that's why I'm doing that. So, okay.

(Evan): Chuck this is (Evan).

Chuck Gomes: Yeah. Go ahead (Evan).

(Evan): Okay. I think one of the things that may be a very significant transition that we're making here is the acknowledgement that not every single objection has to lead to a massive yes-no process that leads to either (utter) rejection or utter ignorance of the objection.

And this sort of follows up from Bertrand's answer to my proposal that I sent on the email list which was extremely useful to me in framing this and thinking that, you know, perhaps in addition to, you know, there's certain objections that have to be listened to as being a go/no-go thing.

But perhaps, you know, to use Bertrand's wording, maybe we're over-engineering some of this, that maybe some of this is simply a matter of making sure that there is a way of getting the objections put in front of the applicant so that they are absolutely aware of what they're about to do. That may or may not lead to a complex adjudication process but at least offers a way for governments and maybe others to make sure that those objections have a proper and open channel.

Chuck Gomes: Thank you. That makes sense to me. Let's go to (Mary).

(Mary):   Thanks Chuck. And actually I'm going to change what I was going to say and follow up on what others are saying. And this is something that I've been thinking about after reading (Evan)'s proposal and Richard's proposal. And to answer your question first, at least for me when I look at the DAG, clearly when you say anyone is (standing toward) (unintelligible) that's got to include national government. Maybe it's not explicit enough, I'm not sure that it should be. But as (Evan) also said, the distinction here is what happens.

And what I've been trying to figure out and trying to put it in a particular way to send by email, but I'll just try and say it orally on the call, is if we look at some of the proposals that have been made whether it's (Evan)'s or Richard's or (Anthony)'s is maybe whoever raises the objection and let's use the example of national governments here,

national government could say, "I object to this string because it contravenes a particular well-known custom," or something like that or, "my national law." As was said, this doesn't necessarily make it an international legal norm.

So what I was trying to figure out in my own head is whether or not if we keep the standing to object pretty broad it includes national governments who could object on the basis of national law custom but in terms of the dispute process or whatever we want to call it that there is some kind of international expert that determines whether this raises and issue of public international law. And if it doesn't, then if the national government, then they can do whatever they want to block the string or so forth. But if it does not amount to a contravention of public international law, that's as far as it goes. And if it does in an expert opinion amount to an issue under proper international law, then it could go into the fuller-blown dispute resolution process.

I don't know if this makes sense to anybody but this was kind of the idea I was working out over the weekend.

Chuck Gomes: Well actually (Mary) and again as chair I'm going to - co-chair, venture my opinion. I think that's consistent with what the GNSO intended and I think that hopefully the dispute resolution process whatever that looks like in the end would do exactly what you're saying. So I didn't find anything - I thought you articulated it very well so I think that's very good.

Olivier.

Olivier Crepin-Leblond: Thank you Chuck. I'm just a little concerned about this - the idea that we might be over-engineering things a little bit. When I hear about Bertrand say that he believes some countries should be able to object to a string because they think it will cause serious trouble in the country itself of might cause serious trouble in the country itself, I believe that that country in any case is going to block that name whether it's allowed or whether it's not allowed.

And here we are trying to think of dispute resolution mechanisms and turning our heads around and so on and ultimately issues of national sovereignty such as those are probably - most probably going to be just taken up by those countries no matter what ICANN does or not. That's all I wanted to mention on that. Thank you.

Chuck Gomes: Olivier, a question. What do you think is being over-engineered? I don't understand what's being over-engineered because what you describe, several others I have heard say as well.

Olivier Crepin-Leblond: Well we're looking at ways - we're looking at trying to find out whether we should allow specific terms such as terms like Bertrand mentioned or other terms which might be derogatory or - now of course some terms will not be terms of national objection as such but the terms which are of national objections which I think that we're trying to define, we're just wasting time on at the moment, that's all.

Chuck Gomes: Okay. And right now I don't think the intent is to talk about specific terms but rather a higher level of the process but, okay, thanks. Thank you. I appreciate that.

(Alan).

(Alan):   Hi. I just wanted to go on a little on something I just put on the chat regarding what (Evan) said that the concept of a list or something which alerts an applicant to the fact that something may be objectionable presumes that everyone is honorable and once they realize that they may decide to take action on it. And I think the reality is that we may see cases where people deliberately put things because they are inflammatory or to prove the point. And we need to grapple with are we interested in trying to fix - to address that or is that something not of any concern to us? I think we have to recognize that not everyone is going to be going into this with the same motives.

Chuck Gomes: Okay. Thanks (Alan). Appreciate that. Let me ask a question of others on this particular issue. I guess it's more - does anybody object to adding to our list of possible recommendations out of this meeting a statement that would say that the - that - I mean I think this is helpful maybe for GAC members for individual governments to say that they are - they can in the existing process they are able to file an objection based on a national concern. We can't guarantee how that will come out in the process but I think that possibility is already there.

The (kind) know that the GNSO in its recommendations specifically intended governments and the GAC to have standing so I think that already exists. But I also think that is might be helpful to state it to make sure that it's clear and I think that's consistent with several people's comments in that regard. Anybody reject to that being - adding that to our list for people that are not on the call to weigh in on? Okay. So Marika that's another one.

So okay, going on then to the - anything else on international principles of law? Okay. Going on then to - and forgive me if there's a little bit of background noise here. I'm in a public area. That's the only place I can connectivity so I will do my best here. If I need to move outside, I will. Okay. All right.

(Mary): Hey Chuck. It's (Mary).

Chuck Gomes: Yes, (Mary). Oh I see your hand up. Sorry. I was...

(Mary): Yeah.

Chuck Gomes: Go ahead.

(Mary): Yeah, I was scrambling to raise my hand. Sorry. No, just quickly to note that in whatever statement or recommendation we came up with to (unintelligible) that we are consistent in our usage. And I would ask the group to think about whether if we're going to use something along the lines of international principles of law whether we need international principles of law or principles of international law, which is the one I'm suggesting. But in either case it has to be consistent.

Chuck Gomes: Now which one are you suggesting (Mary)?

(Mary): I'm suggesting that we should use - to the extent we use any phraseology along these lines that it would say principles of international law. I can't offhand recall exactly what the GNSO wording was but maybe we could use that as well but, you know, A) it has to be consistent and B) I think we should make it clear that we're talking about international law here in some sense.

Chuck Gomes: So I'm still not clear on what you think the best formulation is.

Man: You're differentiating international principles of law from principles of international law, correct?

(Mary):   Yes.

Man: Okay.

Chuck Gomes: And which one do you prefer?

(Mary):   I would say principles of international law although I think the more important point is consistency internally and consistency with what the GNSO intended.

Chuck Gomes: Yeah. So the points well said on consistency so I'm with you there. So but does anyone disagree with using the term "principles of international law"? Anybody see any problems with that?

Mark Carvell: Chuck, it's Mark Carvell from the UK. I'm sorry I've had no luck actually accessing Adobe Connect. Virgin Media for some reason is denying me that. Can I just (unintelligible) but can I just go back one step? I mean with reference to international law, is this going to cover the range of sensitivities that this whole process is aiming to address?

I mean I take the point about achieving some sense of universality of problem strings that is not - we may not be dealing with an objection from a single entity but some broader scope of this process so that we're not going to deal with every possible objection or every possible

sensitivity. But my question is do - when we talk about Principles of International Law, are we actually binding ourselves in some way because we know it may not be catching the full range of sensitivities, the kind of sensitivities which the GAC identified in its principles on new gTLDs?

So I'm sorry if I'm going back over territory that you may have discussed before or what has been covered online but this is nagging me, this pursuit of a framework of international law.

Chuck Gomes: Actually I think that's right along the line I was asking for comments on. So I think that's very appropriate. Now what I'm wondering though is I wonder, and maybe Marika can help me on this, although she hasn't be as closely involved as (Margie) and (Liz) have been and they're not on the call, whether we could maybe raise that issue and the one that (Mary) is suggesting, the difference in terminology, with the attorney from Jones Day who is going to be on the call tomorrow.

Marika Konings: Yes.

Chuck Gomes: Does that make sense?

Marika Konings: Absolutely. Yes.

Chuck Gomes: So let's please - would you please both (Mary) and Mark would you please -- I hope you can be on that call -- and would you please raise questions in that regard with that expert. Now the way that's going to happen tomorrow, there's going to be a brief presentation and then there will be a Q&A. And even if this isn't exactly in the topic of the

presentation I still think it might be helpful to raise it during the Q&A period. So I would like to ask you to do that.

Now Cheryl would you take over the call for a couple minutes. I'm going to go on mute and move outside under the pine trees where I think there will be less noise. Okay. And I think I can get...

Cheryl Langdon-Orr: Be my pleasure to...

Chuck Gomes: ...my connectivity out there.

Cheryl Langdon-Orr Be my pleasure.

Chuck Gomes: Okay.

Cheryl Langdon-Orr But of course the background noise isn't problematic. I think Chuck's being oversensitive about his holiday status there. I certainly wasn't getting any noise.

Chuck Gomes: Is anybody hearing the noise? If not, I'll...

Cheryl Langdon-Orr No.

Chuck Gomes: ...just stay where I'm at.

Cheryl Langdon-Orr No. Look, if you're comfortable, stay.

Chuck Gomes: Okay.

Cheryl Langdon-Orr But while you've given me the microphone Mr. Co-Chair, one of the things just with the Q&A point you were making to Mark, it would be very useful I think tomorrow if any questions with notice could come into a list or if anyone wasn't able to join the call, we could ensure that the questions were read to the record by those of us chairing and that they were responded to. So even if you can't be physically on the call, I think your questions can be raised.

((Crosstalk))

Mark Carvell: Okay. This is Mark speaking. Yeah, I'll have - is this call at the same time?

Chuck Gomes: No, it's earlier.

Mark Carvell: It's earlier.

Chuck Gomes: I think it's three hours earlier.

Mark Carvell: All right. I'll still be in the office then. I should be able to join the call. Okay. Thank you.

Chuck Gomes: Good, good. And Glen...

Woman: (Unintelligible).

Chuck Gomes: ...you're going to send out the call information on the call for tomorrow, right?

Glen de Saint Gery: Absolutely Chuck.

Chuck Gomes: I just kind of - I knew you were but I wanted everybody else to hear it. So, okay, going then - that's great. And Richard you're next in the queue. Marika, before I turn it over to Richard, could you please, in addition to this list of possible recommendations coming out of this meeting today, could you also then add in the message a request and a notice that anybody that's unable to make the call if they have questions that they'd like to be asked to the extent that they're on subject, we will try and get them asked for them. Okay?

Marika Konings: Okay.

Chuck Gomes: All right. Going on then to Richard.

Richard Tindal: Thanks Chuck. Who was the speaker just before you just a minute or two ago Chuck? Who was that?

Chuck Gomes: Mark. Are you talking about Mark or Mary?

(Mary):   Mark from the UK.

Mark Carvell: Yeah. I'm Mark Carvell from the UK representative on the GAC.

Richard Tindal: Right. Thanks Mark, yeah. I just want to reinforce what Mark said because I think that really is the central issue in my mind in front of this group. I think all of the topics here are important but to me that's kind of a central issue and let me see if I understand it correctly.

                 I think what I'm hearing is that there are potentially strings that are going to me sort of profoundly objectionable, or whatever word we

want to use there, but that nevertheless, don't reach the bar of being sort of contrary to international legal norms. I think that's the issue on the table that there are potentially strings that don't breach these international norms but nevertheless would be offensive, profoundly offensive, object - whatever term we want to use there and I think that's the central issue that we've got to find a solution too.

Mark Carvell: Yes. Mark speaking. Yes, that is the point I'm making.

Chuck Gomes: Okay. Thanks Richard. And I think you're right, you know. And some of that's going to get into the actual criteria that whoever makes a decision will have to apply with regard to an objection that is made. Anything else on principles of international law? Did I say it your way (Mary)? I'm not sure so we'll get that straight. And I do agree we should be consistent.

(Mary):   Thanks Chuck.

Chuck Gomes: Not seeing any hands or - yeah, you're welcome. Now this is very valuable stuff. Let's go on then to this - the third thread and actually tied with international principals of law I think - with regard to the high board threshold for approving or rejecting dispute decisions with regard to particular string in the process.

Now to get the discussion started on this let me - let me ask - jump to a conclusion and then ask if it's a fair conclusion. It seems to me that there's very strong support in this working group that there should be a high threshold - we'll talk about how high at another point - but a high threshold for the board to either approve or reject - and I know some people have suggested one way or the other - we'll get that too.

But is there agreement in this group - or is there any disagreement - in the idea that there should be a high threshold in that regard understanding that we've still got to define some of the details. Is there anybody that disagrees with that on this call?

Okay hand up, Avri. Oh I'm sorry, you disagree, Avri. Okay, all right. Okay and I'm going to call on you in a minute, Avri. Bertrand, go ahead.

Bertrand de la Chappelle: Yeah it's not really to disagree but to link this issue - sorry - this first column with the other column which is outsourcing of dispute resolution process. If you remember the expression outsourcing I think came from Frank if I'm not mistaken last time.

And I think the discussion evolved in the direction of saying there is some unease in the group regarding the notion that the - whatever panel is being constituted is the final decision maker. And I think we all agreed that there is a final responsibility or ultimate responsibility for the board even if it is useful to have expert advice.

So it is in this balance that the notion of a high threshold in the board emerged whether it is to support or object. But if there is a responsibility - a special responsibility ultimately for the board it is clear that there would be a benefit in having a really clear majority in the board regarding whatever decision is being made.

I think the two are connected and this is a (unintelligible) consequence of the thing that we tend to go in the direction of giving the ultimate responsibility to the board.

Chuck Gomes: Okay thank you Bertrand. Avri.

Avri Doria: Okay (unintelligible) okay yeah the reason I couldn't agree with the board statement that was said basically we need a high threshold no matter what is I believe there should be incredibly high thresholds for disapproving a name and the notion that anything that is universally offensive should be able to get a high threshold.

But if we start talking about approvals then I do not believe that needs to be high; I believe that, you know, majority approving something is having, you know, gone through the proper process, etcetera, is, you know, what it should be. So that's why I couldn't agree with the statement that said high in either case. Thank you.

Chuck Gomes: No thanks Avri. That leads in a direction we need to go. So - and I'm sorry for starting off in too general an area. But so Avri, I believe, and correct me Avri if I'm wrong, is suggesting - and others have done this on the list - is there should be a very high threshold, whatever that is, for rejecting a string based on Recommendation 6.

We're not talking about other recommendations and new TLDs, just Recommendation 6. So are there those on the call who think there should be an - a higher threshold just for approving a string that has (unintelligible) that is related to Recommendation 6?

I see there - Bertrand has his hand up. Go ahead Bertrand.

Bertrand de la Chappelle: Yeah, I'd like to explain a little bit more what I mean by raising the topic of approval. Imagine a situation where there is a string

that is of concern to a significant number of actors; it can be government, it can be other communities and so on.

Whatever panel of expert is making an evaluation saying for instance this is not contrary to international principals of law in general however there is a significant number of concerns that are documented in this way and that way. This report goes to the board without a recommendation that says, Frank, yes or Frank, no.

Likewise at the same time the GAC because a certain number of governments are concerned significantly about a given string is sending an advisory board that is neither a full no or a full yes that says, as it happens sometimes, we have different positions within the GAC. A large number of GAC governments do not see a major problem or even (unintelligible) and significant GAC members have raised concerns as documented in XYZ.

I think in that case we should not forbid the situation where the board would ultimately in the global public interest say all well considered; we believe that the pros outweigh the cons. We know that there will be a certain number of countries where this string is being blocked.

However generally speaking we see no reason to refuse and we decide to enter this string into the root knowing that some countries will block it; there will be objections by different kinds of actors.

In that case I think it would be good - maybe it's a different threshold but that there is a significant (unintelligible) within the board regarding the general interest of overcoming the objections.

So it may seem strange but for people who care about having sensitive strings in the root the situation may be that we need something that has a strong legitimacy where the board takes the decision in conscious to say we know there are objections, there are split positions in the world regarding this string but all will considered, we, the large majority, believe that it is not sufficient to not put them in the root.

So I would make the case - and maybe the thresholds are slightly different - but I think a little bit more than the majority - the single majority - would be beneficial to increase the legitimacy.

And once again it's a different situation - it may be a different situation in terms of requirements depending on what the recommendation of the panel or the position of other actors or ALAC or the GAC in terms of advice.

If everybody says we strongly object then it makes sense even for the board to take a non-approval at the simple majority. If there are actors who say, I mean, if there is no absolute objection by the DRSP or by the GAC and the board wants to not put it into the root it makes sense to have a strong majority.

And if there is a split recommendation by the DRSP or the board - sorry, or the GAC or ALAC and the board wants to put it nonetheless I think it makes sense to allow the board to have a significant majority that would show that the global public interest is being served. That's the rationale.

It is not something that actually is only going to refuse strings, quite on the contrary, it might be a way to overcome some objections with a

process that has the legitimacy of a stronger majority in the board. That's the reason why...

Chuck Gomes: So Bertrand, let me see if I can break that down a little bit. If I'm understanding you correctly you think there are instances where a higher threshold would be valuable to have for approval of a string not just rejection of a string.

And - so let me ask you one very specific question first. You're not advocating that all strings should require a higher threshold just some subset right?

Bertrand de la Chappelle: No you're absolutely correct.

Chuck Gomes: Okay. So now if I'm correct on that my next question for you is how would we define the category of strings for which - the category of strings that would require that higher threshold for approval not just rejection? Is there a way? Do you think that's possible?

Bertrand de la Chappelle: Thank you for the question. It is a delicate point. One way could be that the recommendation of the DRSP or the advice from ALAC or the advice from the GAC could explicitly mention or not the triggering of this provision.

For instance you could have a GAC saying - or ALAC for that matter - but the GAC saying this is the situation. There is a split position in the GAC regarding this. Some countries object and will likely block this. But that's all. And the board decides normal majority, whatever.

And there might be cases where there is significant concern in the GAC so that GAC would say there are split positions within the GAC but in that case the board - if the board takes a decision at the higher majority then this is a natural way to overcome these concerns.

So there would be - the input would trigger the application of this thing. That's the only way I can - see I agree it's a delicate question but it's probably a way to put some responsibility also on the DRSP, on the ALAC and on the GAC regarding the input that they give to the board.

Chuck Gomes: So let me request something of you because it's still - in my mind at least - I don't know if it's true of others - it's not really clear how we would identify a situation that would require a higher threshold for approval. Could you possibly draft something up that you could send to the list in that regard?

Is that, I mean, I know you've verbally said some things but it still doesn't seem to be defined enough that it would be easy to apply. And I think a lot of people would have concerns about it being too open, that it be a situation that could be used - maybe abused like that.

I'm not suggesting that the GAC or the ALAC or anybody would really do that. But is that possible? Do you think you could write something up?

Bertrand de la Chappelle: I think it's maybe just a little bit early. I'd like to get feedback on this idea that I'm just floating and answering your question. I think...

Chuck Gomes: Okay.

Bertrand de la Chappelle: ...it would be good to get feedback. And I see that there are already some comments on the chat. Can we just think about it a little, if I was clear enough. And maybe there are problems of implementation; I do not dispute that. But it's something that I just try to introduce in answering your questions. So maybe some feedback is needed on that before trying to formulate anything.

Chuck Gomes: And if someone would like to raise their hand to share something that would be fine. But let me go just a little bit different direction to see if we've got agreement in the other area. And that is is there anybody that disagrees with the idea that to reject a string for which a Recommendation 6 objection has been filed that there should be a higher threshold of the board?

Does anybody disagree with that idea? And Frank, I know your hand's up. Are you disagreeing or is it on different subjects?

Frank March: No, I'm not disagreeing, Chuck. And thank you for the opportunity. I'd just like to point out that if we're in a situation where the board is evenly split over whether a particular string should go into the root then we probably have a controversial situation on our hands no matter what.

The, you know, if there's an even split across the board then obviously there are people on both sides of the argument and it is a controversial string - almost by definition it's a controversial string. So I'd just make a plea that, I mean, Bertrand is trying to draw up a difficult definition. And I think it may be unnecessary.

The very status of the board itself would define whether the string is controversial or not. So I guess what I'm saying is a certain majority would always be useful thing. Thank you.

Chuck Gomes: Always useful for all TDLs or just TLDs for which there's an objection that has been filed with regard to Recommendation 6?

Frank March: I guess I am talking about where there is an objection of any kind. If the board is split then clearly there's some basis for the objection which appeals to more than a narrow majority or somebody exercising some sort of veto.

And, you know, I mean, the board is going to be - if there's no controversy then you'd expect the board to be virtually unanimous under any circumstance. It's only - what I'm saying is a split board means it's a controversial decision.

Chuck Gomes: Yeah right. So I think we have - and Richard, you're next. But I think we have - if I'm understanding correctly - three suggestions on the table. Number one, Avri's, I think is, is that only if the board rejects a string for Recommendation 6 reasons, should it require a higher threshold.

I think Bertrand is saying that there's some subset of them that also should require a higher threshold to approve. And if I'm hearing you correctly, Frank, you're saying that for any string for which there's a Recommendation 6 objection filed it should require a higher threshold whether it be for approval or rejection.

So one of the three of you correct me if I captured those incorrectly. Okay? All right so those are the things on the table right now. Let me - so go ahead. Who was that?

Bertrand de la Chappelle: No that was me, Bertrand, but I think Frank is asking to speak. I'm not sure that's what Frank said or maybe I misunderstood.

Chuck Gomes: Frank, go ahead; correct me if I captured that incorrectly.

Frank March: Thank you. I did leave my hand up by accident; I didn't mean to leave it there. But thanks for the opportunity anyway to clarify. What I'm saying is that in the situation where there's no controversy you'd expect the board will be pretty much unanimous; there may be the odd objection on the board but there shouldn't be a problem getting a certain majority under non-controversial circumstances.

What I'm saying is that a controversial one - and one which may get us out of this difficulty in terms of defining what is a difficult decision, what is a sensitive issue or not, is simply whether the board is split more or less evenly. So if we say a certain majority is required under all circumstances it becomes self defining as to what is controversial and what isn't.

And that's almost irrespective of whether a particular objection has been made under one ground or another. But I'm happy to go with your third option, Chuck, I don't think we need to get into that. I'm happy with your third option of simply saying a certain majority under any condition where there has been an objection raised under Recommendation 6 because that encapsulates what I'm saying well enough. Thank you.

Chuck Gomes: Oh okay, okay good. Thanks for clarifying that. Now I've got Richard and Bertrand in the queue. We're going to have to be really brief because we're out of time. But I would like - Avri could you just take a minute or two and respond with regard to why you would oppose requiring a higher threshold for approval of string - all strings for which a Recommendation 6 objection has been filed?

Avri Doria: Sure. Should I go before all the hands?

Chuck Gomes: Yes please.

Avri Doria: Okay, yeah. I think any time you've got any sort of controversial string you're basically going to have - the vote is going to be to reject it. I mean, it's always going to be framed in that. There's going to be objections; this string should not happen. And so therefore the board will be stuck in the position of having to decide on whether to bar it or not.

I think that there's no principal in the GNSO principals that said no string should be controversial but I was, you know, a fast track IDN thing. But there is no such concept within the GNSO (unintelligible) principals about controversial strings.

So I think to introduce that at this point is not a good thing to do. I think that if there is - remember what we're trying to get rid of is those things that are not just controversial but highly objectionable. And to prove that something is highly objectionable it should be clear to everyone on the board or close to everyone on the board that this is highly objectionable. Thank you.

Chuck Gomes: Thanks Avri. Let's go to Richard.

Richard Tindal: Yeah, thanks Chuck. I think this - so I agree with what Frank said and I agree with what Avri said to some extent. I think that there are - in my mind anyway - there are sort of two types of strings here. There are those that objectionable or let's use the word sort of offensive.

There are those that are offensive to some people and other people sort of don't care. And then there are those that are offensive to some people but in fact not at all offensive, in fact they have value to other people. And so in my mind, you know, Frank gave the example of - if something is 50/50 split on the board it's sort of inherently controversial.

In my mind, you know, maybe there's strings where some people actually find offensive but others see sort of some redeeming value from it that outweighs the fact that it gives offense to others. And so, you know, for me the classic string in this example - I know we don't like to give examples too much here but the classic example is gay, G-A-Y. I think that that's going to be a controversial string.

I think some people are going to find it highly offensive whereas other people are going to see that it's in fact a human right that needs to be protected. So they're sort of pushed in the other direction. So they're the sort of examples to me, the ones that have some sort of redeeming value, they're the ones where I can see that we might want to have a different threshold of voting in some way.

So anyway I wanted to put on the notion on the table that I think that there are certainly those that are just offensive - or not offensive but there are those that sort of invoke camps; they're offensive to some but others it's important that we have these strings in the root.

Chuck Gomes: Okay thank you Richard.

((Crosstalk))

Man: ...if I can just come in briefly. I know we're running out of time but...

Chuck Gomes: Okay yeah - yeah, go ahead.

Man: ...I'm very sympathetic to that - I'm very sympathetic to that last point. The very fact that a string is controversial should not be the determinant on whether it's approved or not because the - the aspects of it may be very complex. And, you know, we need to be objective about this process.

And I'm - I'll have to think further about what Frank was saying but I'm instinctively nervous about a deduction flowing from the fact that the board is split or there's a sort of inherent turbulent controversy about the proposal, the processes need to be very objective and provide absolute clarity as to the decision of taking - which affect the fate of a proposal. Thanks.

Chuck Gomes: So if - can I - and I maybe way off on this so please tell me if I am. But does that mean that you lean more towards Avri's suggestion that only a high threshold should be required for rejecting a string that has a Recommendation 6 dispute filed?

Man: Yes, in answer to that question yes that is my feeling. I'm always, again, uncomfortable about terms like high threshold because how do you actually define what a threshold is. And if something's slightly under is that treating something unfairly if it's - you know, so defining a threshold is a problem.

But my instinct is to go for that higher - what's the word - higher level of sureness, I don't know. I'm sort of working with words a bit here but, yes, in answer to your question, yes.

Bertrand de la Chappelle: Yeah, no very quickly I think the discussion helps me clarify one thing. I think we are making just one mistake in discussing this because Chuck, you keep referring to cases where an objection has been filed. As a matter of fact the determining factor is what is the result of the DRSP or the input from GAC and ALAC regarding that string.

In other words if an objection is filed and the DRSP says we didn't see any international law principal that was justifying an objection or we end up deciding that the string is okay in general terms then of course there is no need for a super majority.

If on the contrary the DRSP says - or if on the contrary the board wants to object or not approve something that the DRSP has said causes no problem I don't even, I mean, a super majority is certainly required and I think a lot of people in this group would even think that if the DRSP says there's no problem board should not be (unintelligible) the string at all.

The case that I'm trying to address is the situation where the DRSP says this string is really raising a problem and the board wants to decide to put it in. I think it is overruling the DSRP in a positive sense because of larger concern or interest and maybe here we might need a super majority.

The question is what do we do when the situation is that the DRSP gives an answer that is somewhere in between that says there are no absolute international objections but there are very significant national objections based on law in a relatively broad manner or whatever. And the board has to take the decision whether it decides yes or no.

And here the question may require a super majority, maybe in one way or the other. So I think we should focus - and I finish with this here, we'll think about it later - it's not about whether an objection is being filed; it's for overruling in one direction or the other the result of the DRSP so that there is some clear message from the board either versus a DRSP or versus GAC advice that is in between that would say yes we put it in.

Or if for instance the GAC says the GAC strongly objects to this maybe a super majority in the board would be needed to overcome a GAC objection for instance. But it's the outcome of the advice being given to the GAC by the DRSP, the GAC or ALAC that would trigger a super majority not the fact that something has been filed because if the DRSP or the GAC say we have no problem with that string of course there is no need for a super majority.

So I think it's...

Chuck Gomes: Okay...

((Crosstalk))

Chuck Gomes: By the way I think you - you're heading in the direction of that doing that task that I asked you that you postponed, right? I think that was very helpful. And I accept the correct; I think you're right, it shouldn't be whether a dispute is filed but that was well said so thank you very much.

Now here's what we're going to - we're going to have to pick this up tomorrow. We won't spend a lot of time on it tomorrow. But maybe we can zero it down.

I think, Marika, what we have is is that at least in this group today I don't think there's anybody that objects to having a higher board threshold in cases where a string is rejected for a Recommendation 6 issue but we still have to work on the other side a little bit more.

Now if I stated that wrong very quickly let me know that otherwise Marika is going to put it out and get feedback from those that aren't on the call. So while you're thinking and raise your hand if you disagree with that, tomorrow what we're going to do is we're going to first of all have a presentation by one of the legal experts that ICANN used in developing the implementation plan, the dispute process and so forth. And there will be a Q&A after that.

Once we've covered that then we're going to spend a little bit of time on the report that we have to produce and deliver a week from today. It will just be a - Marika, excuse me, Margie is, at my request, is

developing the - kind of the template, the basic information that hopefully will be relatively non-controversial.

And then we will - so we'll spend a little bit of time on that. You know, we've obviously got a long ways to go on that. But if we can at least have a straw man in place with the basic structure, the template, for doing that then as we agree on recommendations during this week we can feed those - fit those into there relatively easily.

Now last thing I think we're going to need another call besides tomorrow this week to get our work done so I have asked Glen to send out another Doodle poll for Wednesday and/or Thursday to - in that regard so please be looking for that. And I apologize for so many meetings but I don't know how else we can get this done or at least, you know, give a helpful report without doing that. So please be expecting that.

Now before I adjourn does - is there anything I've missed? Cheryl or Frank?

Cheryl Langdon-Orr: No I just popped in my great job let's keep it up message.

Chuck Gomes: Okay thanks. As you can tell...

((Crosstalk))

Chuck Gomes: ...tried to keep up in the chat because I was trying to keep up and manage everything else that challenges my mind enough so...

Cheryl Langdon-Orr: That's why you need three of us, mate.

Chuck Gomes: Thank you. I appreciate that Frank.

Frank March: I'm happy to echo that.

Chuck Gomes: Okay thank you very much.

((Crosstalk))

Chuck Gomes: And again my compliments for really cooperative work. Be thinking about this on the board threshold; we'll try and spend 10-15 minutes on that tomorrow. I'm going to try to make the call tomorrow. I think I will, it'll probably be in the same setting I'm in today so we'll see how that goes. And if not Cheryl will pickup for me in that regard.

Cheryl Langdon-Orr: Frank and I will tag team but your setting has been fine so if you think there's background noise, believe me, we didn't hear any of it.

Chuck Gomes: Okay I'm glad to hear that. Well thanks everybody, sorry for running over. The meeting is adjourned.

Cheryl Langdon-Orr: Thank you.

Woman: Thank you. Bye.

((Crosstalk))

Cheryl Langdon-Orr: Thanks everyone.

((Crosstalk))

Cheryl Langdon-Orr: Bye.

END