

**Cross Community WG discussing Recommendation 6 of the new gTLD process
(Rec6 CDG-WG)
TRANSCRIPTION
Monday 20 September 2010 at 17:00 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 20 September at 1700 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:

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ALAC

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Alan Greenberg – ALAC
Olivier Crépin-Leblond – ALAC
Evan Leibovitch – ALAC
Sebastien Bachollet – ALAC
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Individuals

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GAC

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Apologies:

none

Coordinator: Excuse me. I'd like to remind all participants this conference is being recorded. If you have any objections, you may disconnect at this time. You may begin.

Chuck Gomes: Welcome to everyone. This is Chuck. We're here for our Recommendation 6 Community Working Group meeting on the 20th of September. It's not quite so late at night for me this time. Sorry that isn't the same case for others of you.

I am now in Hershey, Pennsylvania. Just checked into my hotel room here for some company meetings about 40 minutes ago. So I have not caught up on email for the last four hours. So the team will have to help me out in that regard. So if there are things that need to be said in that regard.

I appreciate the excellent exchanges that have been going on. I thought there had been some very constructive things. There's been some disagreements. That's okay. If we didn't have disagreements on a topic like this, we wouldn't be covering it, so.

But thanks everybody for your cooperation. Any - be thinking about any comments or questions on the agenda while Gisella tells us who's on the call.

Gisella Gruber-White: With pleasure.

Chuck Gomes: Go ahead Gisella.

Gisella Gruber-White: Good morning, good afternoon, good evening to everyone. On today's call we have Chuck Gomes, Cheryl Langdon-Orr, Frank March, Konstantinos Komaitis, Milton Mueller, Stuart Lawly, Krista Papac, Jon Nevett, Sebastien Bachollet, Alan Greenberg, Avri Doria, Dave Kissoondyl, Richard Tindal, Olivier Crepin-Leblond, Evan Leibovitch, Steve Pinkos. From staff we have Margie Milam, Marika Konings, Amy Stathos, Liz Gasster, David Olive and myself Gisella Gruber-White. And I don't have any apologies noted. Over to you Chuck.

Chuck Gomes: Thank you very much Gisella. Does anyone have any comments on the agenda that I sent out? I guess it went out probably late U.S. time on Sunday after I landed on my flight back to the U.S. Any comments or questions on that?

So what we will do is first of all determine the level of support for each of the remaining recommendations. And then we'll talk about any final edits to the report. And then the last few things are mainly just kind of wrap up things that I won't go over right now.

And to the extent that we have time, we can go back and tweak some wording. In fact I want to do it - I thought some very good suggestions in terms of fixing a few of them are probably easy things to do. And to the extent that we can do that quickly, we'll do that as we go.

If something gets a little more complicated, we'll come back to it time permitting. Any comments or questions on that? Then let's jump right in. And I know Cheryl and Frank will keep me straight when I don't look at my screen or I'm looking somewhere else or whatever. Please feel free. I'm very comfortable with that. In fact I welcome it. And the rest of you too.

So starting off with Recommendation 2.5. The latest poll had a 21 out of 21. Does anyone who did not do the poll want to speak to that one? Just raise

your hand if you do. And we can take an oral vote if you're quick. I don't see any hands. So my conclusion is that's full support for that recommendation.

Does anybody want me or need me to read the recommendations when we come to them. If just one person does, I'll do it.

Evan Leibovitch: Chuck, if you could just do the topic header rather than read the whole thing.

Chuck Gomes: Well let's see. In one I'm looking at - oh let's scroll down here to this one. I can probably do it. Well they - what I'm looking at doesn't have the header. Let me read it real quickly.

Recommendation 2.5 is if individual governments have objections based on contradiction with specific national laws, such objections may be submitted through the community objections procedure and standards outlined in Applicant Guidebook Version 4.

Okay. Any comments or questions on that? It would be full consensus and I'm going to ask all of you to help especially those that have been online today. I was just online in the morning and then had to be driving after that. So if there are any suggested edits that were made that are fairly constructive edits, please let me know when we do these and we'll cover them at that time. Though I don't recall whether there were any on this or not. I don't think there were.

Okay. Oh yeah.

Jon Nevett: Hey Chuck, this is Jon if you're not looking at the queue.

Chuck Gomes: Go ahead.

Jon Nevett: There was one edit that Milton posed on this one just for grammatical purposes. He - I think he - before the word standards, he added the word

using or utilizing. I don't have it in front of me but I'm sure Margie may have taken it down. So objections may be submitted through the community objection process and utilizing or using standards outlined in the AG V4.

Chuck Gomes: And okay. All right. So got that Margie?

Margie Milam: Yes, I have it. Thank you.

Chuck Gomes: Good. All right. Very good. Thanks Jon. And I'm going to need to rely on all of you. If I'd been by my computer all day, I would have probably get this all captured. But I couldn't do that driving, so. Very good.

Let's go then, if there are no more hands, to Recommendation 4.1. And that one is ultimate resolution of the admissibility of a TLD subject to a Rec 6 objection rests with the Board alone and may not be delegated to a third party. We had unanimous support on that one.

Does anybody who didn't participate in the poll want to comment on that? Just raise your hand. Okay. So we have full consensus there. Were there any edits suggested on that one? Just raise your hand if you're aware of one and - okay.

Going on then to Recommendation 4.2. It reads under its authority to obtain independent expertise as stated in Article 11a of the ICANN bylaws, the Board shall contract appropriate expert resources capable of providing objective advice on the applicability of principles of international law in regard to objections received through this process.

Now we only had one objection to that one and that was from (Bertrand). Has Bertrand joined us? Not yet, huh. So I was going to ask him what his view was there. Anybody else want to comment on Recommendation 4.2? Yes, Alan.

Alan Greenberg: Yeah. I'll just point out that the second half of this, the applicability of principles of international law, really is redundant with a later recommendation which talks about what principles - on what basis to make a decision and which does add in context and linguistics and things like that.

So I'm wondering if we end up with a conflict because there is a somewhat wider description a little bit later on. But this one is very narrow.

Chuck Gomes: Yeah. Redundancy I suspect we can live with but if there's conflict, we probably should correct it. Now in your opinion, which is it?

Alan Greenberg: I - well, what it says is redundancy. What it doesn't say is conflict. So the fact that it says - it doesn't say primarily or something like that but it says purely principle international law implies the conflict with the later wider scope.

Chuck Gomes: And the later one said what?

Alan Greenberg: Oh, I don't know if I could find it quickly. Does anyone know where it is?

Chuck Gomes: Okay. Well take - let's do a - let's do this Alan to save time. We're going to go through these. So when we come to that, would you remind us of 4.2 and let's decide then?

Alan Greenberg: Sure.

Chuck Gomes: Okay. Is that all right?

Alan Greenberg: Yeah.

Chuck Gomes: Thanks. Okay. So that one then...

Cheryl Langdon-Orr: Chuck, Cheryl here.

Chuck Gomes: ...would be consistent...

Cheryl Langdon Orr: Whoa, whoa, whoa. Hang on Chuck. Hang on Chuck.

Chuck Gomes: Oh.

Cheryl Langdon Orr: So we don't have to move back to...

Chuck Gomes: My eyes are going through about three different documents including the screen. Go ahead Cheryl.

Cheryl Langdon-Orr: No problem. So we don't have to look too much and Evan has his hand up. Can Margie just note a potential edit would be the removal of the words referring to the applicability of the principles of international law as a possibility under this? So it would then read under its authority to obtain blah, blah blah; expert resources capable of providing objective advice in regard to objections received through this process.

So if we see that as redundancy, these are words that would be removed.
And then it's clarified later on.

Chuck Gomes: So you would - I mean the possibility would be leading on the applicability of principles of international law.

Cheryl Langdon-Orr: Because the later one picks it up, gives it far great definition and makes it stronger.

Chuck Gomes: Okay.

Cheryl Langdon-Orr: So that's if the group agrees.

Alan Greenberg: That's...

Cheryl Langdon-Orr: Okay.

Alan Greenberg: That's certainly what I would have...

Cheryl Langdon-Orr: (Unintelligible).

Alan Greenberg: ...what I would have said if I had had the presence of mind.

Chuck Gomes: Okay. Let's go to Evan and then we'll talk about that. Okay. Go ahead Evan.

Evan Leibovitch: Well, I guess what I thought is that when people were suggesting what to put in 4.5 would include the kind of expertise that would be - that would be needed. So maybe this information - so maybe it's redundant with what could go into 4.5.

Now I realize 4.5 doesn't have unanimous consensus but the idea being is that it already has a number of the - well the expert should possess this, this and this. So maybe that stuff should just be - I have no problem with deleting it from here and just referring to the other clause we've already introduced.

Chuck Gomes: Deleting what? The same thing that Cheryl was talking about?

Evan Leibovitch: Correct. And...

Chuck Gomes: Oh okay.

Evan Leibovitch: ...relying on the fact that we've already proposed wording in 4.5 that already says this is what the experts are expected to know.

Chuck Gomes: Okay. So let's come back to - Cheryl, did you want to comment further?

Cheryl Langdon-Orr: No. No, I just didn't want us to move around too much.

Chuck Gomes: Oh, I'm sorry. You know, if I'd paid attention that it was a checkmark and not your hand, I would have understood. I just saw a mark. Okay. So does anybody object to removing on the applicability of principles of international law? Now we're not changing our position. We're just not saying that here. Did I express that properly?

Evan Leibovitch: As long as we ensure that it's somewhere else.

Chuck Gomes: Yeah. Right. And so does anybody have concerns about removing that in this recommendation only? Because since we've already done the poll, if somebody does, I would say we just leave it in and deal with a little redundancy. I don't see anybody or hear anybody objecting. Going once, twice...

Man: Hello, hello, hello...

((Crosstalk))

Chuck Gomes: Okay. So I think we can delete Margie the phrase on the applicability of principles of international law. And we're not deleting it just to be clear because it still doesn't rely - we're eliminating relying on principles of international law but because it's redundant and covered later. Any questions or comments on that?

Margie Milam: I got it.

Chuck Gomes: Thank you very much. So that one is a consensus.

Cheryl Langdon-Orr: Yeah.

Chuck Gomes: All right. And what did we decide on - in our final report, I don't think there's any need to show the numbers. Is there? But what do people think? Our methodology isn't so precise and we don't involve everybody. That's why I'm

kind of concerned about showing the exact numbers. The four categories are a little broader so the lack of scientific accuracy maybe is as little bit better covered in a broader category.

Any - okay. Alan, go ahead.

Alan Greenberg: Yeah. It might be worth in an appendix or something showing what the numbers are but not in the main body.

Chuck Gomes: But why would we show them in the appendix if we're not going to show them in the main report. I mean it's easy to show them in the main report.

Alan Greenberg: Just as back up for the development of the description.

Chuck Gomes: Now Frank, you don't think we need to show the numbers. I see your check mark. So...

Man: (Hi guys).

Chuck Gomes: ...anybody else want to comment on that. Avri, you agree not showing the numbers. Okay. Anybody else? Does anybody want to speak up in support of Alan's suggestion of showing them in the - as an appendix?

Alan Greenberg: I wasn't making a strong case for it. I was just giving an option.

Chuck Gomes: Yeah. No, that's fine and I appreciate that. Cheryl.

Cheryl Langdon-Orr: I certainly think it should be no numbers. And if anything it's going to be (unintelligible) going to be necessary, because I thought it was embodied in the text, the definition in the new draft GNSO (PBP) guidelines would be the only thing I would put in. Because it makes clear to Board members who may not have had time to read understand, digest and (learn it) like that.

Chuck Gomes: Right.

Cheryl Langdon-Orr: ...(criteria of thought) it is but beyond that no numbers.

Chuck Gomes: Well said. Margie, help me out here. It's been awhile here since I - a few days since I looked at the report. Are the definitions of the four categories in the report?

Margie Milam? Yes they are. I have them in a footnote...

Chuck Gomes: Thank you.

Margie Milam: ...in the paragraph it describes what (unintelligible).

Chuck Gomes: That's all I needed. That's excellent. So I figured they were and I do remember seeing them in a footnote now that you mention it. But a lot of things are blending together for me just like probably the rest of you. So all right. Going then to Recommendation 4.3.

And it reads such experts advising the ICANN Board are to be independent of any conflict with ICANN affiliated bodies in accordance with other provisions in the Applicant Guidebook. Their advice will be limited in scope to analysis of objections based upon the criteria as expressed within this policy. And there were 13 people that supported that out of 21, which I think would be no consensus but strong support. Any comments or questions or edits on that one? Okay.

Man: Chuck, I guess the question I had was in the first - in the first go round of this, it had pretty - it had pretty wide spread consensus. I'd like to find out from those who have changed their mind since the previous poll what changed?

Chuck Gomes: Would any one who posed this one care to comment?

Woman: Jon's on the line.

Chuck Gomes: Jon?

Woman: Go ahead Jon.

Chuck Gomes: Your hands up. Good. Go ahead.

Jon Nevett: Sure. Here are the two concerns I had with this. One in the first sentence, I think the experts should be independent of any inappropriate conflict of interest regardless of whether it's with an ICANN affiliated body. So I thought that was too limiting. And it says or to be independent of any conflict with ICANN affiliated bodies in accordance with other provisions of (ADB).

Chuck Gomes: So how would you - how would you have worded that differently Jon?

Jon Nevett: You know, like I said an expert - the most important thing is the expert should be independent of the objection, you know, the applicant or the objector who actually the parties to the dispute. So I guess you could broaden that it should be independent of any inappropriate conflict of interest or something like that.

And then the second sentence I think that takes the concern that some people have with the issue that was talked, you know, on the list today regarding advice versus recommendation. I think that may have swept this one when we say their advice will be limited in scope to analysis of the objections based on the criterias expressed within this policy.

So the question is does that mean recommendation, no recommendation? Does that mean, you know, a determine - not a determination but an opinion of whether the, you know, the objection is valid under that standard or not. And I suspect that's why a handful of people voted against that one as well.

Chuck Gomes: Okay. Thank you. I'm wondering your point about - your first point resonates with me. I'm guessing that we probably meant more than just conflict with ICANN affiliated bodies. I mean what you say - does ICANN affiliated bodies mean any objector? I mean we obviously would not want them to have any interest with regard to the objector; him or herself, regardless of whether they were an ICANN affiliated body. So I wonder if we ought to fix that. Richard.

Richard Tindal: Yeah hi this is Richard. Yeah, I agree with both of Jon's points and I don't know why we would even mention ICANN affiliated bodies. As Jon said all that matters in my mind is the applicant and the objector. They're the two parties with whom the expert should not have a conflict. I think any other party is irrelevant.

Chuck Gomes: Now by the way, this particular issue I believe is already fairly well covered in Applicant Guidebook 4. There's a conflict of interest policy that's spelled out in quite a lot of detail. I don't know that we're adding anything here. It doesn't hurt to say it though.

But I think we probably ought to be, you know, it ought to be conflict - a little bit broader than just ICANN affiliated bodies. So and we'll come back to the other part later. Amy, am I correct if you are free to comment on that that the guidebook as it stands right now really requires independence of the experts and they can't have interest with any of the objectors or any particular interested party. Is that a correct inclusion on my part?

Amy Stathos: Yes Chuck. It definitely calls for independence from all of those groups.

Chuck Gomes: Now it's okay for us to state it here. Let's see if we can do a quick fix on it or to be independent of any conflict in accordance - how about if we just say independent of any conflict in accordance with other provisions in the Applicant Guidebook and take out the with ICANN affiliated bodies. Jon, let me ask you first. Does that work?

Jon Nevett: Yeah. That works with me.

Chuck Gomes: Evan, go ahead.

Evan Leibovitch: Chuck, as the person that wrote the original, my intent with that was we were talking at the time about whether or not, you know, the GAC was going to appoint experts or ALAC or others were going to appoint experts and the consensus seemed to be that we were going in the other direction.

So the intent of the words ICANN affiliated was essentially to explicitly not say that the experts had to be independent of ACs or SOs and so on. That's the intent. I mean this group may not agree with that but that was the purpose for that wording.

Chuck Gomes: Thanks. Are you okay with deleting the prepositional phrase there with ICANN affiliated bodies?

Evan Leibovitch: As long as the intent is clear. I mean I don't think this group wants stakeholders appointing experts anymore than we did previously. That was my main concern when writing this. If everyone's comfortable that taking that out doesn't introduce that again, I'm okay.

Chuck Gomes: Okay. Thanks. Anybody opposed to taking out the phrase with ICANN affiliated bodies, please let us know right now. Then Margie, we have - we're going to take out that phrase and this one will be a no consensus but strong support or however the proper way is of describe - did I - am I saying it right? Is that exactly what the working team recommends? Is that no consensus but strong support or strong support but no consensus? I don't know if that matters.

Evan Leibovitch: What if you - well will the consensus change now that you've fixed the wording?

Chuck Gomes: Well, I don't think we can determine that unless there are - unless all seven of or what is it all eight of the people who voted against it are on the call. So and we really don't have time to do another poll. So my recommendation is at least at this point is to call it no consensus but strong support.

I think I'd like it worded the other way but I don't know what the work team says Margie. What exactly does the work team call it? Is it strong support but no consensus?

Margin Milam: No, it says no consensus but strong support.

Chuck Gomes: Okay. Let's use what they said then because they probably had reasons for that. Now what I will do is I'll mark this one for coming back if we have time to try and determine that Evan. Let's see. I don't know that we will but we'll see. Okay.

Cheryl Langdon-Orr: Chuck, I was just going to say - Chuck, Cheryl here. I was just going to say we do have not everybody but a significant number of those and if we do have time, I agree we could perhaps come back and do an online polling there.

Chuck Gomes: Okay. Good. Thanks. Yeah, we're thinking alike on that. Okay. Recommendation 4.4 says the number of experts to be consulted, the method of their selection and terms of their engagement are to be determined by the Board subject to these policies. Twenty out of 21 supported that. Bertrand opposed it. I was going to ask Bertrand if he could explain why but I don't believe he's joined us yet.

A concern just flashed into my mind as I read that. When we say subject to these policies, what policies are we talking about?

Evan Leibovitch: Chuck when I wrote that I meant policies essentially described elsewhere in these recommendations because (unintelligible) the thing was going to be - I

mean, it seemed at the time that that was all over the place. If you want to nail that down to specific areas of the recommendation that's fine. I didn't know that at the time.

Chuck Gomes: Yeah. I'd probably rather not even refer to it for a couple - probably my main reason is is this is not a policy development body and the GNSO has very specific procedures for developing policy and I don't want to get into the debate what's policy and what's not. I'm fully - I fully understand all that.

My suggestion would be to just delete subject to these policies so it's not confusing. In other words, are to be determined by the B. Now the Board's subject to the bylaws and subject to the policies and so forth. So I think we're okay there. Would anybody object if we deleted subject to these policies
Margie?

Margie Milam: Oh Chuck, I think you said the same thing I was going to say. The other thing I was going to suggest was subject to these recommendations if you wanted to change the word policies.

Evan Leibovitch: Actually I'd much rather that Chuck and the reason being is because I'd like it to make it clear to the readers of the document that this whole thing is being framed of context of the other recommendations that are being made in this document.

Chuck Gomes: Yeah. I'm much more comfortable with recommendations than policies there. Does anybody -thanks Cheryl agreeing there on the screen. So if nobody objects, we'll change policies to recommendations. Thank you Evan and thank you Margie.

Going on then to Recommendation 4.5. The contracted advisors will be expected to have specific expertise in interpreting law instruments of public international law and relating to human rights and/or civil liberties.

The Community Working Group recommends that the Board augment this with complimentary expertise in other relevant fields such as linguistics. So this is one that we combined. We had - I had added a 17 based on Avri's good input and we combined these two together here...

Evan Leibovitch: Yeah, with the old 6.4.

Chuck Gomes: Yeah. And so now there were five people that opposed this one. Do any of those five want to comment? Raise your hand if you do. This one I think while you're thinking whether you want to say something and maybe they're not on the call. This one I believe then is no consensus but strong support or is it enough support for a consensus? I don't know where the line is...

Cheryl Langdon-Orr: It's not enough for consensus.

Chuck Gomes: Sebastien.

Sebastien Bachollet: Just one question because we go through the (unintelligible) - the public international law and if I remember well in the Recommendation 1.2, there was some discussion about using that. I'm not - and that's not finalized which term we will use. And other parts of the document, it's - it say that it will depend on what we will decide in 1.2. Is that the case here in 4.5 and maybe before?

Chuck Gomes: Let me go - 1.2 we - you refer back - you're referring back to Recommendation 1.2?

Sebastien Bachollet: Yes. Because in some other parts I don't remember well remember but for example in 3.1 what it excludes from the poll but it's written or whatever term is used Recommendation 1.2.

Chuck Gomes: Yeah. We didn't have - on 1.2, there was quite a bit of divergence on the alternatives. The one that had strong support was objections based on the

principles of order public or order public. And so even though there was full consensus on the statement itself, that the name of the Rec 6 objection should not be morality and public order. That part was full consensus. What - any substitute that we didn't have good consensus on so.

Sebastien Bachollet: I know but, sorry, my question is that if you referred to Recommendation 3.1 or 3 dot 1, it's last line or...

Chuck Gomes: Let me find 3.1. Bear with me a second here.

Sebastien Bachollet: No problem.

Chuck Gomes: Okay.

Sebastien Bachollet: Just to be sure that I understand where - at the end it's written the principle of order public or whatever term is used per Recommendation 1.2. My question is that is it not the same thing about what we are calling here public international law or I am wrong here and is that something different?

Chuck Gomes: I don't know that you're necessarily wrong. I think maybe this was a little bit different usage of the term. You know, law instruments of public international law. Anybody - people have their hands up. Let me just call on some of them and see if maybe they have a suggestion. (Mary).

(Mary): Thanks Chuck. And this is a similar point and I'm not sure that I'll be answering Sebastien's question entirely. But I was going to suggest that instead of saying law - instruments of public international law, we simply say instruments of instruments of international law and then taking on what Milton's suggestion on email so that the whole (space) would say interpreting instruments of international law relating to human rights and/or civil liberties.

And my reason for that is I don't know that we gain anything by saying law instrument as opposed to instruments. We don't want to get into what all that

means in international law context. But also secondly, we do say international law elsewhere. And while it would be accurate to say public international law, I just feel it would be better to stick with consistency and so I'm suggesting this particular rewording.

Chuck Gomes: So you would delete the first law...

(Mary): Yeah I would.

Chuck Gomes: ...and just say instruments of public international law?

(Mary): I would just say, instruments of international law.

Chuck Gomes: Oh, yeah that's, that's, that's - okay. So we'll both give other people a chance to talk. One question for you (Mary) is this a place where we could just say, "Expertise in interpreting principles of international law," which is a term we've been using?

(Mary): You know, I thought about that Chuck and I don't see why not, because first of all we're not drafting a legal document. So one question I did have since you raised it was whether - I think it was Evan who drafted this whether he or someone else had something else more specific in mind.

Because when I think about instruments of international law obviously I am primarily thinking of treaties and, you know, communiqués and the like. I don't know that it makes that much of a difference to answer your question but maybe Evan or Konstantinos or someone can remind us.

Chuck Gomes: Okay. Let's go to Konstantinos.

Konstantinos Komaitis: I actually agree that we need to remove, "(law - instruments of public international of the law)" word, and I think it circulated in an e-mail because it just doesn't make sense.

On the other side I'm not sure whether replacing instruments with principles - and I understand where (Mary) is coming from for issues of compatibility would either make sense.

I mean we cannot possibly interpret principles. We interpret the instruments through - with these principles that exemplify but the principles are there. S and they cannot really be interpreted. And I understand that this is not a legal document but I think that wording it to the best possible and legal way would be beneficial.

So I am in favor of deleting law between interpreting and instrument but I would continue to use instruments because as (Mary) said its convention is treaties and we have actually made reference. Two examples of these conventions and treaties are the previous recommendations. Thank you.

Chuck Gomes: So if I'm understanding you correctly I think it's okay to delete public, isn't it? So...

Konstantinos Komaitis: Yes.

Chuck Gomes: ...we could just say instruments of international law is what you're suggesting?

Konstantinos Komaitis: Yes. Yes. Correct.

Chuck Gomes: Okay. All right. And so does anybody object to just changing it to instruments of international law? Not hearing anyone or seeing any hands. So did you get that Margie? In the first sentence we'll delete the first occurrence of law and then the word public.

Man: And Chuck do you remember who wrote the original 6.4?

Chuck Gomes: No I don't. If I had time I obviously could go back and look but I don't think we, you know...

Man: Probably doesn't matter anyway.

Chuck Gomes: I think this is probably okay what we've done here. And so somebody want to - okay Richard.

Richard Tindal: Yeah. Hey Chuck. Sorry about that. So I understood from (Mary) that we're also proposing to delete the phrase, "relating to human rights and/or civil liberties." Is that not the case also?

(Mary): Richard - sorry Chuck can I jump in? I...

Chuck Gomes: Yes.

(Mary): ...would propose deleting the word and. This was not so much my proposal but I recall Milton or somebody saying that on the list. So I'm not sure that's something we were supposed to discuss today. In which case the new language would read, "interpreting instruments of international law relating to human rights and/or civil liberties."

Chuck Gomes: That is - I think that's a no brainer isn't it, to delete that and? Does anybody disagree with that - Alan?

Alan Greenberg: I'm just not sure semantically that says the same thing or not and do we want to change it at this point?

Chuck Gomes: Oh I see what you're saying Alan, yeah.

Alan Greenberg: Because it can be read as "expertise relating to human rights and civil liberties," which makes - which makes human rights...

((Crosstalk))

Chuck Gomes: In fact this is the problem the word relating - are the words relating to?

((Crosstalk))

Alan Greenberg: Well it's - taking it out weakens the import of humans rights and civil liberties.

Chuck Gomes: Yeah. No I...

Alan Greenberg: And I'm not convinced...

Chuck Gomes: Let me make a suggestion, see if this works. So, "expertise in interpreting instruments of international law and human rights or civil liberties." So that in other words instruments of international law - well let's see that doesn't quite work either does it? I see a flaw in my own suggestion so anybody else...

Man: (Unintelligible).

Chuck Gomes: ...have a suggestion. Konstantinos did you have another one?

Konstantinos Komaitis: Yes and I hope that this makes sense. I think that the and needs to - if we remove the word public the and needs to stay. Because if we keep the word public, public international law already says (generally speaking) to human rights. So if we remove the word public and should stay so it can say, "expertise in interpreting instruments of international law and relating - as well as relating to human rights and/or civil liberties."

Chuck Gomes: So what specifically was your suggestion?

Konstantinos Komaitis: If we don't want to keep and we could put as well as.

Chuck Gomes: As well as instead of what? I'm sorry I didn't follow.

Man: And.

Chuck Gomes: As well as. Well are there instruments of international law that do relate to human rights and/or civil liberties? So there's a construct there that seems to be a problem. Generally we want them to have expertise in instruments of international law. In - what if we said, "including those related to human rights and/or civil liberties?" In other words...

Man: (Unintelligible).

Chuck Gomes: ...we're not asking them just to look at instruments of international law related to human rights and/or civil liberties but those should be included.

Man: I can live with that.

Chuck Gomes: So let me read it one more time. So we have, "expertise in interpreting instruments of international law including those related to human rights and/or civil liberties." And I see a hand - (Mary).

(Mary): Yeah Chuck. I don't have a problem with your formulation. But I was just thinking about what I think it was Alan who had said that one possible intent of this recommendation is that the expertise is not just in terms of legal interpretation of treaties whether they be treaties relating to human rights or other aspects of international law but they should also have some expertise dealing with human rights (unintelligible) of some sort.

So it's somewhat different and somewhat broader. If that is the case, if that's what Alan was referring to then my suggestion was going to be simply switching the phrase, you know, "relating to human rights and/or civil liberties," with the phrase, "interpreting instruments of international law." In other words it would read, "specific expertise relating to human rights and/or civil liberties and in interpreting instruments of international law."

Chuck Gomes: That in my opinion seems to work. It seems to accomplish the same thing I was trying to accomplish there in that if my logic is correct. Would anybody - is anybody opposed to (Mary)'s formulation? And would you say that one more time (Mary)?

(Mary): Okay. So the rewording of 4.5 or the first sentence of 4.5 would now read, "The contractor advisors will be expected to specific expertise relating to human rights and/or civil liberties and in interpreting instruments of international law."

Chuck Gomes: Did you get that Margie?

Margie Milam: No. Could you repeat it? Sorry I can't write that fast.

(Mary): Should I just send it to you by e-mail?

((Crosstalk))

Man: Put it in the chat.

(Mary): Okay. I'll put it in the chat. Okay.

Chuck Gomes: Richard - yeah go ahead and send it while Richard's commenting if you can (Mary).

(Mary): Okay.

Chuck Gomes: Richard go ahead.

Richard Tindal: Yeah. Thanks. So I understand (Mary)'s change. I guess though I would probably not vote for that on the grounds that I think we've been fairly strict

about the notion that the focus of the expertise of these experts should be on principles of international law.

Now we're introducing something that whilst it's related I guess and many of us may consider important it's never the less not specifically a component of international law per se but rather some other qualifications separate from international law.

Chuck Gomes: Yeah Richard but it seems to me that the group for quite a while has also been suggesting that that needs to include any principles of international law related to human rights and our civil liberties. So...

Richard Tindal: Perhaps I'm misunderstanding it but I interpret this - the two pieces of this now to say that first of all the experts should have expertise in principles of international law - all the principles whatever they are.

Chuck Gomes: Right.

Richard Tindal: But presumably a subset of that is human rights...

Chuck Gomes: Right.

Richard Tindal: ...(unintelligible) others. Then I read it as they should also separate from actual sort of international legal principles that they should have expertise specifically in human rights. Am I reading it incorrectly? If I'm not reading it incorrectly then it seems to me that it's introducing come second category of qualification that seems to have strayed from what I thought was the core set of qualifications for these folks.

Chuck Gomes: Okay. I follow you now. All right. Now we don't want to - we can't spend too much time on this one here. So (Mary) can you re-read your formulation and let's test Richard's concern there.

(Mary): It's in the chat window Chuck if you can see that.

Chuck Gomes: Oh okay good. Yeah, I can.

(Mary): And I understand Richard's point. I would say we're not introducing new things but it does seem to spell it out more specifically than the original language did that we really are talking about the focus on human rights in this particular instance.

Chuck Gomes: I have some empathy for the point Richard's making because the civil liberty - the way you worded it the - human rights and civil liberties is kind of given preeminence the way it's worded. Technically I think it's kind of the same

So I - if we go back to my formulation of - and not because I want it to be mine, but I think it doesn't have that same result. In other words, "have specific expertise interpreting - in interpreting international law including those relating to human rights," et cetera.

(Mary): Right.

Milton Mueller: Well I don't with that and I had my hand up for some time.

Chuck Gomes: Oh I'm sorry, I was looking elsewhere. Go ahead Milton.

Milton Mueller: Yeah. I mean what are these decisions about? They are about whether a string or an application either violates some kind of human right such as the rights of a child, the gender, you know, all of those things or it's about whether the free expression right is being unduly restricted

So people - indeed preeminence has to be given to issues of human rights and civil liberties in interpretation of instruments of international law. This is not about radio spectrum management international law, it's not about, you

know, environmental law, it's about basically about human rights and civil liberties.

Chuck Gomes: Yeah. But it doesn't include more than that?

Milton Mueller: No. Mostly - what other principles of international...

((Crosstalk))

Chuck Gomes: Well you said mostly.

Milton Mueller: What other principles of international law are relevant here?

Chuck Gomes: Well are there - excuse me for using the terms, but are there any principles of international law related to morality and public order? (Harold) seemed to think there were. Now he didn't say specific laws, he said principles of international law.

Milton Mueller: Well I mean (Mary)'s formulation you have and conjoining those things. You have people I think expert in principles of international law and specifically as they relate to human rights and civil liberties.

Chuck Gomes: Yeah. Okay let's go to Alan and then I'll make a call on this one. Go ahead Alan.

Alan Greenberg: Yeah. This is our final call and we're trying to come to closure on this. Flipping the order and putting human rights and civil liberties first changes the tone of this, and I think putting this in at the very last moment is not appropriate.

I'm quite happy with the formulation you had or even (Mary)'s if we invert the order of the two. But I think changing - putting human rights and civil liberties

forefront when it hasn't been mentioned in that context before in our previous polls I think is inappropriate given that not everyone is on this call.

Chuck Gomes: Okay. So here's what I -- and Cheryl and Frank correct me if you think I'm going in the wrong direction here -- is that we definitely make the changes of deleting the first occurrence of law, we delete public and that we come back to the rest if we have time. Okay?

Milton Mueller: No. I don't understand, can you just read what you're proposing?

Chuck Gomes: Well in other words Milton the recommendation would stay as is except for the deletion of two words, law before instruments and public before international law. We had already essentially agreed to that. And we'll leave the rest the same. Not perfect but that's what people commented on. We - sound like we have a - we don't have agreement on the change of language.

Milton Mueller: Well I thought that human rights and civil liberties was in there all along.

Man: It is.

Chuck Gomes: It was and it's staying in there.

((Crosstalk))

Man: It is and we're saying we're keeping it in there.

Milton Mueller: So can you just read it?

Chuck Gomes: Oh okay.

Cheryl Langdon-Orr: "The contractor's advised they will be expected to have specific expertise in interpreting instruments of international law and relating to human rights

and/or civil liberties. The CWG recommends that the Board augment this with complementary expertise in other relevant fields such as linguistics.”

Milton Mueller: Okay. So other than that and that doesn't belong there which I flagged on the list...

Chuck Gomes: That's what we were trying to fix Milton that's why we're going down this path.

Milton Mueller: Okay so let's - that's fine. that's fine.

Chuck Gomes: Okay. So if we have time we'll come back to that and try and fix it. Okay.

Milton Mueller: (Unintelligible).

Chuck Gomes: Okay. So going on to Recommendation 5.1.

(Bertrand): Chuck hi this is (Bertrand). Just to say that I'm joining. I had a meeting that lasted a little bit longer and I got a problem connecting. So I'm joining. I'm not on the Adobe Connect because of connectivity problems but I'm there.

Chuck Gomes: Okay. And if we have time (Bertrand) I'll come back to you on a couple recommendations we already covered where you were the only one...

(Bertrand): Yeah. Yeah.

Chuck Gomes: ...to oppose. If we have time I'd like to hear from you on those for right now we're going to keep plugging along. Okay? Thanks.

(Bertrand): Yeah. Yeah. Absolutely fine.

Chuck Gomes: Okay. Recommendation 5.1...

Margie Milam: Hey Chuck it's Margie, sorry to interrupt. Back to 4.5 you never told me the consensus level for that. What is 16 out (unintelligible)...

((Crosstalk))

Chuck Gomes: Oh that's right. I had asked opinions. My conclusion was that it was - I mean it's between consensus and no consensus with strong support. I suggested no consensus but strong support but I don't know if I'm - if I drew the line there or - correctly there or not. Does somebody want to...

Cheryl Langdon-Orr: That's correct. You're correct with that interpretation.

Chuck Gomes: Okay. All right. Thanks Cheryl I appreciate that. So it's no consensus but strong support.

Cheryl Langdon-Orr: Correct.

Margie Milam: Thank you.

Chuck Gomes: Okay. Thanks for reminding me of that. I meant to come back to that Margie. All right. Five-one, "A higher threshold of the Board should be required to uphold an objection." There were 17 out of 21 for that. I'm assuming - is that still a no consensus but strong support Cheryl?

Cheryl Langdon-Orr: Correct.

Chuck Gomes: Okay. Good. Any comments on that? Margie you still have your hand up.

Margie Milam: Sorry that's an old one.

Chuck Gomes: That's okay. We all do it but I will ask just to make sure because I can't tell. Any discussion on 5.1? Okay.

(Bertrand): Chuck just one comment. The reason why I was saying a no on the 5.1 is basically because I don't think it is exclusively to uphold an objection. We need to see the threshold in more general terms and it is connected to the other 5.2 and 5.3.

Chuck Gomes: Okay. So you weren't necessarily opposed to a higher threshold for upholding an objection.

(Bertrand): No. No.

Chuck Gomes: I got it. Okay.

Cheryl Langdon-Orr: He wanted a higher threshold across the board.

Chuck Gomes: Yeah.

(Bertrand): Yeah.

Chuck Gomes: Thanks (Bertrand) that's helpful. And then please just jump in when - as appropriate since you're not in the Adobe Connect.

(Bertrand): Yeah.

Chuck Gomes: Recommendation 5.3 says, "The higher threshold should be at least two-thirds," and we had 18 out of 21 there. And that was intentionally left kind of general so wherever the higher threshold applies it would be two-thirds. Anybody that opposed that want to talk to that? Just raise your hand. Okay. Going on - and so that one I guess is still no consensus strong support or are we getting...

Cheryl Langdon-Orr: No.

Chuck Gomes: ...into consensus level Cheryl?

Cheryl Langdon-Orr: At 18 it slips into consensus.

Chuck Gomes: It's consensus?

Cheryl Langdon-Orr: Yep.

Chuck Gomes: Okay. Did they specifically define the - how do we tell?

Cheryl Langdon-Orr: It's a proportion and out of 21-18, 18 plus is it. Out of another number it's another number.

Chuck Gomes: Yeah, okay, all right. Thanks. Appreciate it.

(Bertrand): Chuck.

Chuck Gomes: Yes?

(Bertrand): This is (Bertrand). Just a (precision) not to change the recommendation on consensus. We haven't discussed whether it is two-thirds of members or two-thirds of voting. The reason why I raise this is because we are confronted with a situation where in many occurrences the Board will be potentially in a situation where some members will be abstaining from voting depending on conflict of interest. So we have to just decide whether it is two-thirds of members or two-thirds of voting.

Chuck Gomes: Yeah. I'm going to - I fully understand it as you probably know. And there are cases where it's two-thirds of the board members present and other cases where it's two-thirds of the Board and it is an important distinction. We can come back to that if you want but I - my guess...

(Bertrand): No. Just to put a note.

Chuck Gomes: Yeah. I'll put it down as a possible come back if we have time. I think it's probably unlikely and that we may just have to leave that into the hands of the Board. But...

(Bertrand): No just to mention that in parenthesis the question to whether it is two-thirds of the Board or two-thirds of the members voting is left open at this stage.

Chuck Gomes: Yeah. It is. I understand that. So I wrote a note to come back if we can. Recommendation 5 - oh hands, I'm sorry, Avri.

Avri Doria: Yeah. I'm actually not sure that within the bylaws they get into that that much with the Board in terms of the voting and whatever but I think if we're saying two-thirds of the Board we're saying two-thirds of all possible votes from the Board.

(Bertrand): Okay.

Avri Doria: I think that that was always the notion. But I really don't think - and remember - I mean I haven't - don't have them in front of and I'm sure Margie can quickly correct me if I'm wrong but I don't think they differentiate on the cases where there's two-thirds voting. If they say, they say two-thirds of the Board they do not say two-thirds of those voting. So - but I'm not positive.

Chuck Gomes: Okay. Thanks. Maybe it's just in the GNSO where we try to make clear on that.

Avri Doria: Yep.

Chuck Gomes: But you may be right. Okay. Milton.

Milton Mueller: Yeah. I'm just confused by (Bertrand)'s explanation on his vote on 5.1. And since the distinction between 17 and 18 vote seems to be important, I'm wondering if we can revisit that and just ask (Bertrand) whether - if it's

accepted that we are talking about two-thirds majorities here why would you - I mean I understand that you prefer to have it across the board, but I don't understand why you would maintain a vote again 5.1 if it's clear that no, you know, everyone else is in favor of two-thirds for upholding an objection. That's all.

Chuck Gomes: (Bertrand) is that a vote you would change?

(Bertrand): Yeah well actually going to the 5.1 it was indirectly connected with the 5.4. Basically it is going back to the discussion that we had in earlier conference calls. The notion that in any case for upholding an objection is not exactly the definitive point. It can be depending on whether the panel whatever it is - however it is composed is saying that there is a problem or that there is not and so there is a connection with 5.4

My concern with the - I voted no on 5.1 and 5.4 because I think we are wording it inappropriately. It is more related in any case to the recommendation that is being made by the panel as we'll see when we discuss 5.4. And I think there is an interesting notion that could be explored which is to have a super majority of the Board to approve TLDs that have been submitted for an objection.

Chuck Gomes: Okay. Thank you. I think we'll leave 5.1 alone.

(Bertrand): Yeah. Yeah. Let's get to 5.4.

Chuck Gomes: Five point four - Alan you have something to say before we get there?

Alan Greenberg: Yeah. I put my hand up when we were talking about defining two-thirds. And I was going to caution that if one says two-thirds of the Board because of people who have conflict of interest you may never be able to meet that, you may not even have two-thirds of the Board even voting.

Man: Yeah.

Alan Greenberg: So if we're going to go back to there we should be really careful with that one but if we're not then we'll leave it to the Board.

Chuck Gomes: Thanks Alan. I'm going to have to push a little bit faster...

Man: Yeah.

Chuck Gomes: ...on this because we got a long ways to go. Recommendation 5.4, "Approval of a string should only require a simple majority of the Board regardless of the input from the experts." We got 18 out of 21 which is consensus. Any quick comments? And I do ask you to be brief if you have one - or any edits? Okay. All right. Moving right on.

(Bertrand): (Bertrand). Chuck.

Chuck Gomes: Yes?

(Bertrand): This is (Bertrand) a quick explanation. I voted no on the 5.4 because if the panel of experts do consider or does consider that there is basically a string that is contrary to international law principles I would not see a situation where the string would have a simple majority of the Board approving the string and overturning the recommendation.

Chuck Gomes: Thank you. And we did, you know, I raised the point of those kinds of decisions at one point but it didn't get very far but I understand what you're saying. Margie.

Margie Milam: I'm just confirming on 5.4 we're calling that consensus, right?

Chuck Gomes: Yes.

Woman: Yeah.

Margie Milam: Okay. Thank you.

Chuck Gomes: Cheryl's our expert decisionmaker on that.

Cheryl Langdon-Orr: Avri.

((Crosstalk))

Chuck Gomes: Avri can too, huh?

Avri Doria: I wasn't....

Chuck Gomes: Avri if Cheryl does it wrong please set her straight okay?

Avri Doria: No. I put my hand up but not about that at all.

Chuck Gomes: Okay go ahead Avri.

Avri Doria: I would have chirped in otherwise if I'd thought so. This is where - on (Bertrand)'s point is what I...

((Crosstalk))

(Bertrand): Well Chuck...

Chuck Gomes: Just a second (Bertrand) let's let Avri...

(Bertrand): No, go ahead, go ahead.

Chuck Gomes: ...go and then you're next.

Avri Doria: Yeah. I was actually responding on (Bertrand)'s point. And this is something that has had me somewhat confused in all of our discussions and I've talked about it.

Is I believe what the Board is presented with - and I think we've got unclarity in our language which makes 5.4 a problem for (Bertrand). And forgive me if I'm simplifying or getting it wrong in that what the Board is faced with at this point is not approval of a string, the Board is presented with an objection to a string which they either uphold or they deny.

The Board then gets it whether the group is recommending that string or not what the Board says is, "Is there objection? We've heard the comments, we've heard the analysis. Whether we have a recommendation or not is beside the point. We've heard the analysis on this string, do we uphold the objection to the string? If we do the string is out." That's the two-thirds.

Otherwise there's really nothing. The Board is not going to approve a string until the end of the whole process where not only these objections but any other objections and any appeals and all the other (unintelligible) that one has to go through in an application has been gone through.

That is where I think we're saying that there is approval of a string is a majority thing. Whereas I truly believe that at this point all we're talking about is the objection of a string and the Board either upholding that by two-thirds of not and so there is no approval of a string at this point.

Chuck Gomes: Okay. Thank you Avri. Let's go to Recommendation 7.1 and I'll read it quickly. "This criteria should be retained but (rephrased) as follows - this is the incitement to discrimination right? "Incitement to and instigation of discrimination based upon race, age, color, disability, gender, actual or perceived sexual orientation or gender identity, political or other opinion, ethnicity, religion or national origin."

There were 19 out of 21, so that's a consensus position. Does anybody who opposed that want to say - make a brief comment? Okay so that one is consensus.

The - going on then to statement A3. The current language for incitement states, "Incitement to or promotion of violent lawless action, incitement to or promotion of discrimination based on race, color," this is a long one isn't it? Yeah.

And let me just jump to the new proposed language if that's okay which would read, "Incitement and instigation to violent lawless action, incitement and instigation to discrimination based upon," and so on. "Incitement and," including the previous recommendation, right? "Incitement and instigation to child pornography or other sexual abuse of children."

So the - there was 19 out of 21 in terms of that change of the language which would be a consensus position and I have a bunch of hands up. Let's start with Margie.

Margie Milam: Yeah. I was just wondering if we should change it from statement to recommendation? I don't remember why I was using the language earlier...

Chuck Gomes: Oh yeah, I think you're right. Yeah. Go ahead and change it to recommendation thanks. And let's go to Sebastien.

Sebastien Bachollet: Yeah. It was wondering why in the second point the (discrimination) (unintelligible) upon it's not the same that it's in 7.1? Because we are missing some and I was wondering why it's not the same list?

Chuck Gomes: I'm sorry the second one? The incitement and instigation to discrimination?

Sebastien Bachollet: Yes. Based upon - and based upon there is six item. In 7.1 it's got two or three additional one and I don't know why it's not here to...

Chuck Gomes: Well it just has a dot, dot dot which is supposed to be filled in with the rest of that. Is that what you're getting at?

Sebastien Bachollet: No, no, no, no. It's not my point. My point is that the dot, dot, dot's refer to what's on the page previously on 8.3 but my question is why is 8.3 is not the same list and it's 7.1.

Man: Yeah. Yeah.

Alan Greenberg: Because we added some to 7.1 and forgot to add them to 8.3.

Sebastien Bachollet: It's why I am asking the question Alan.

Chuck Gomes: Yeah. Yeah. And that's what I - that was what my little side added comment was including what we just did on the previous recommendation on 7.1 but you're correct. In other words 7.1 would tie in to 8.3.

Alan Greenberg: Okay.

Sebastien Bachollet: Okay. Thank you.

Chuck Gomes: Yeah. Good question to raise. (Mary).

(Mary): Yes. Thanks Chuck and this is a follow up from Margie's and Sebastien's comments I guess. I guess my first comment was yeah it probably should be a recommendation as Margie said in which case do we want to instead of saying the new proposed language could read that we would say should read?

Chuck Gomes: Yeah. I think that's correct. Yeah.

(Mary): Yes.

Chuck Gomes: ...I think it's correct, yes.

(Mary): And then my second comment is really short. I'm sorry, it's madam conformity striking again. If we say incitement to and instigation of in 7.1 I think it was - then our new proposed language her should probably also read incite (language not) instigation of.

Woman: I agree. It should match.

Chuck Gomes: Yes. I don't think anybody's going to disagree with that. Good catch. Appreciate that. For the checkmarks on the screen, okay. Thanks (Mary). That's very helpful. Anything else on 8.2?

(Bertrand): Yes (Bertrand), just very quickly. The strengthening of instigation, can somebody give me an example of the distinction between something that will be just incitement and something that will be incitement and instigation?

Chuck Gomes: Can anybody do that quickly? I know there was quite a bit of discussion on this on the list that - a few days ago. Anybody want to jump in?

(Unintelligible). In fact, let me ask this for time's sake. Can someone please - would someone volunteer to try and answer (Bertrand)'s question. It's a good que- fair question and it'd be helpful to answer it.

Are there some on the list that participated in that discussion that would be willing to do that on the list for (Bertrand)?

(Bertrand): Yes, on the list and anyway I would only be able to do that tomorrow because I don't have connectivity in this hotel room but.

Chuck Gomes: Or I guess in the chat if you - oh, you don't have that either so.

(Bertrand): No. No, no, no, no.

Chuck Gomes: That doesn't work. I'm sorry.

(Bertrand): Later on.

Chuck Gomes: So (can I get a) volunteer to do that? Somebody that was involved in that discussion? Rephrase your question (Bertrand).

(Bertrand): No, the key question is that I understand that it is an attempt at strengthening the criteria. I'm not absolutely sure that I understand what it would impact and what kind of strength would be acceptable if we had only incitement and would not be acceptable where incitement and instigation. I wonder if it's just an artificial distinction.

Chuck Gomes: Well and of course there's another element of it too. We're not using the word promotion anymore either. So it's instigation instead of promotion as well.

(Bertrand): Yes. But anyway let's put it on the list and have a look.

((Crosstalk))

Chuck Gomes: I can't remember the gist of it. Milton.

Milton Mueller: Yes, maybe Konstantinos should answer this but basically instigation is better than promotion because promotion in many forms of expression are - you can, for example, believe in and express your support for certain ideas that would be illegal if you acted them out.

And there's a very important distinction for between promoting something and instigating it. For example, you can say I'm a communist. I believe in worker's revolution and that's perfectly legal in the United States to say that the workers should overthrow the ruling class blah, blah, blah.

But if you go out and instigate a riot in which workers actually start breaking windows and doing things then you are (unintelligible) and there is an important distinction there.

(Chucks): Thanks.

(Bertrand): And why would that be different from incitement?

Milton Mueller: There's a legal distinction between incitement and maybe - is Konstantinos still on? Maybe he wants to get into this.

Konstantinos Komaitis: Yes, still on. Instigation always carries a negative meaning with it while incitement does not. So if in fact it's both incite and instigate, it would definitely fall within the category that we are discussing now while (a simple string) in which whole discussions started on what basis, does not - incitement does not (avail) action while incitement and instigation is both. Am I making myself clear?

(Bertrand): Okay. Okay.

((Crosstalk))

Chuck Gomes: Okay I...

(Bertrand): Okay I can change my vote to yes.

Woman: (Unintelligible).

Chuck Gomes: Oh okay so that becomes a 20 out of 21.

Woman: Woo-hoo.

Chuck Gomes: It's still a consensus.

Woman: Yes.

Chuck Gomes: But thanks. I appreciate that. Margie, are you okay on - I guess there's no changes there. Oh yes, there is - the two changes - incitement to and instigation of and each of the three items. You got that?

Margie Milam: Yes, I got that.

Chuck Gomes: And Sebastien did you have your - still have your hand up intentionally? I guess not. Okay. Let's go to number 9.

Man: Yes.

Chuck Gomes: I'm going to push a little bit faster.

Alan Greenberg: Chuck, with regard to the wording, you also said that the missing items from 7.1 should be added to the second bullet (made) three.

Chuck Gomes: Yes. Got that Margie? Thanks Alan.

Alan Greenberg: Okay.

Chuck Gomes: Did you get that Margie?

Margie Milam: No. Can you repeat that? Sorry.

Chuck Gomes: In the second one where we have the dot, dot, dot...

(Mary): Oh yes, fill it in.

Chuck Gomes: ...we should fill that in and fill it in with our - what we recommended in 7 with (unintelligible).

((Crosstalk))

Margie Milam: Yes, I got (this one).

Chuck Gomes: Yes. Okay?

Margie Milam: That's right.

Chuck Gomes: Yes okay. Going to 9.1, the experts should conduct their analysis primarily on the basis of the string itself only. They may, however, if reasonably appropriate for a particular objection, take into account additional context based on information in the TLD application and rendering their advice to the board. Fifteen out of 21 supported that which would make it a no consensus but strong support.

And then on - I'm going to jump ahead to Recommendation 9.2 which says the DRSP should conduct its analysis on the basis of the string itself only. Six out of 21, so there was definitely divergence on 9.2. And now real quick comments, if anybody has any on that. We're not going to have time to wordsmith this unless it's really critical.

(Bertrand): Chuck, just one suggestion from (Bertrand). I think primarily and only in 9.1, redundant. It should say primarily on the basis of the string itself. If we adopt 9.1, it has both so the string and the context so only is excessive.

Chuck Gomes: Yes, anybody have an objection to deleting only?

Woman: Nope.

Chuck Gomes: Okay so why don't we do that? And let's go to Evan.

Evan Leibovitch: Well, just noting that we still have DRSP language in there. I'll just (note) that.

Woman: And I thought we got rid of that?

Evan Leibovitch: Yes.

Chuck Gomes: Yes, so the experts, instead of the (DRSP)?

Evan Leibovitch: Yes.

Chuck Gomes: Okay. You got that Margie?

Margie Milam: Yes, I have it.

Chuck Gomes: Okay thanks for catching that. Appreciate that. Anything else on 9? Going on to 10, 10.1 is - had 21 out of 21 support. It was full consensus. The (Rexes) community working group hopes that - by the way that should be CWG not CWB - so hopes that the mech- that the mechanism that proposes in this report will help (lend) up blocking of whole CLDs at the national level, blocking of TLDs should remain (unintelligible) and be established by due legal process.

The group also recognized that reduced blocking of TLDs is of little value if the result is that the opportunity to create new TLDs is unduly constrained by an objection process. The absence of blocking is of little value if it creates a name space that does not reflect a true diversity of ideas, cultures and views on the Internet.

There was unanimous support on the poll on that. Any brief comments? So we have full consensus on that one. Moving to...

Alan Greenberg: Chuck, it's Alan. That one should remain a statement 10.1 I think, not recommendations.

((Crosstalk))

Chuck Gomes: Yes and it does say statement so thank you for pointing that out. It's good to make sure we got right. Thanks. Eleven-one. The Recommendation 6 community working group proposes modifications to the ma- is this the really long one?

Man: Yes.

Chuck Gomes: Yes, I don't want to read that whole thing. So I apologize for (Bertrand) who's not on the Adobe Connect but it would take too long. It's a page long.

(Bertrand): No, no. I have the text. And I have the...

Chuck Gomes: Okay so you have it.

(Bertrand): ...text on paper.

Chuck Gomes: Good. Good. That makes me feel better. Okay. It actually goes over a page long. Now that one is 11 out of 21 supported it which I assume that's - I - well I'm not sure. Is that - Cheryl and Avri help me out. Is that no consensus strong support or is it divergence?

Cheryl Langdon-Orr: Bordering on divergence in my view. Avri?

Avri Doria: Yes. I...

Chuck Gomes: So it's divergence?

Avri Doria: Yes.

Evan Leibovitch: Chuck is it possible - I - this may be too late in the game but is it possible, I mean, as you just said the thing is so long. If it's broke up - broken up into component chunks we would be able to find what people agreed on and what they didn't?

Chuck Gomes: We might be able to but you're right, it's too late in the process to do that because keep in mind the board retreat is the end of this week and we really need to get this report to them with a few days' advance.

Man: Yes.

Chuck Gomes: This (unintelligible).

(Bertrand): Chuck?

Chuck Gomes: Okay.

(Bertrand): Yes, Chuck this is (Bertrand).

Chuck Gomes: Go ahead.

(Bertrand): Just a quick input. I think one of the reasons why there is mixed feelings about this is as Evan said because it's very long and so there are bits and pieces that we agree upon and not necessarily. This is about a very important element which is the role of the independent objector. I don't think we have completely finalized this so I suggest that on this it is the current state of the discussion and it should mention that the group has not completely agreed on that. Rather than divergence, the text is not finalized.

For your information, my sense is that the board will not finalize things now. And this thing related to the independent objector is clearly one thing that

needs to be explored further and might even go down the road up to (council) again now to be finalized in ultimate time.

So I would suggest that instead of rating it as consensus, non-consensus and so on, we say this is the current state of the discussion and we have not finalized this yet.

Chuck Gomes: Does anybody object to stating that on this one? And let me call on Sebastien and Milton and then I'll come back to that question. Sebastien.

Sebastien Bachollet: Yes, I just wanted to ask if on this recommendation on Line 2, Section - it's written Section 3.1.5, it may be better to write (off the deck) Version 4 because we don't know what section if we look to the document where it's coming from, this section.

Chuck Gomes: Yes, the source document. Can you add that Margie?

Margie Milam: I'm sorry. Can you repeat that?

Chuck Gomes: It refers in the first sentence to Section 3.1.5.

Margie Milam: Yes.

Chuck Gomes: Three-dot-one-five. Let's put the source document that that section is a part of. Okay. Independent object- I think it's - isn't it after the guidebook Version 4?

Man: Yes.

Chuck Gomes: So let's just say that. You know, Section 3.1.5 of AG B4. Got it?

Margie Milam: Oh I got it. Yes.

Chuck Gomes: Good. Thanks Sebastien. Milton?

Milton Mueller: Yes, just to say that the people who voted against this need to (unintelligible).

Chuck Gomes: Are you still there Milton?

Milton Mueller: I'm sorry, somebody is making noise. There's new material on here. This is a point that was (unintelligible) by (unintelligible) consensus (unintelligible) and now the people have turned around so I just want to hear why. And particularly is it the issue of initiating objections or not? I think the important thing about 11.1 is that we didn't want the independent objector to be initiating objections and whether these - you know, if people disagree on that issue that's important.

If they're disagreeing or - about minor language issues in that long list that's a different matter. So I want to hear from the people who have little red marks here what's going on.

Chuck Gomes: Yes, unfortunately because it's so long we're not going to have time to delve into that in a lot of detail. I'll have a suggestion in just a minute. I think maybe (Bertrand) may be on to something there. But let me let Avri talk first.

Avri Doria: Yes hi. I was going actually address (Bertrand)'s point. I would think that in any place that we've got divergence, what we are saying is that is the point we are at now and further conversation might move us, you know, more towards agreement.

So I would recommend that just, you know, we talked about explaining our comments, you know, the consensus, full consensus, some support, divergence, that we indicate under the general discussion of divergence is that any issue that was marked with a divergence, you know, category might, you know, benefit from further discussion.

Chuck Gomes: Yes. Yes, and maybe we should make that general point with regard to divergence Margie, maybe when - a little note or something with regard to the definition as it applies to this particular group. But it seems to me that it's especially applicable in this one because it's not some minority support. We actually have little over half of the group supported it.

Man: Yes.

Chuck Gomes: And so I wonder if it would be good to say - actually give numbers in this case and say 11 out of 21 of the group supported this but - and the group really needed more time - especially needed more - maybe especially needed more time on this one. Would that - anybody object to that kind of a comment on this one? I mean, we've had some at 6 out of 21 and even lower than that I think in some cases.

But in this case, you know, there was little over a simple majority of people supported it. At the same time it's still - if we just classify it as divergence it fits in with those others where there was really minority support.

Woman: (I can)...

Chuck Gomes: I see one hand up. Margie.

Margie Milam: Yes, I think it's - it would be a pro- problematic to have a number just here and nowhere else. I mean, if you want to convey the concept maybe the way to do it is to just say, you know, more than a, you know, a simple majority were in support of it or something, you know, something that kind of quantifies it without actually putting the number down.

Chuck Gomes: I'm okay with doing it that way. That's good and I think that - this one is a complicated one because of it's length and so forth and we probably, like Evan said, if we were able to break it down we could probably do a little bit

better but there's not time for that. So on this one if you would, you got the gist of the comment then and what you just said was fine.

Margie Milam: Okay.

Chuck Gomes: Okay?

(Bertrand): Chuck, this is (Bertrand). Just quickly I think Milton put his finger right on the most delicate element of this paragraph. I would slightly disagree with Avri. I think there are a certain number of items where we do have a divergence which is very low support for the recommendation. Here I think it is really split within the group and some people, including me, were voted against - basically voted against because I feel it is not refined enough whereas in other cases I really voted against because I didn't agree with it. So it is a slightly different one.

And Milton is right to say that there is probably a key question on whether the independent objector can only act if it is - if he or she is triggered by somebody else or if he can or not act on his own. And I don't think we've discussed that enough.

Chuck Gomes: Yes.

(Bertrand): He's right in saying that the main...

Chuck Gomes: Yes, this is one we really could've used more time on for sure. And I don't know. I'm sure the working team for the working group model and the P-policy process, the PPSC - I can only spit out the acronym right now - you know, they probably have discussed this quite a bit. But this - Cheryl and Avri, you might want to go back to them and just use as an example the situation we ran into but we don't have time to talk about that more now.

Let's go to 11.2. If requested in writing by the GAC or ALAC, the independent objector will prepare and submit a relevant objection. The independent objector will liaise with the GAC or ALAC in drafting such an objection.

Any objection initiated from a GAC or ALAC request will go through exactly the same process as an objection from any other source and must meet exactly the same standard for success as an objection from any other source. And we had 20 out of 21 which is a consensus. (Philip) objected this and (Philip) hasn't joined us, right? So any quick comments, questions, edit on this?

(Bertrand): (Bertrand). Just quickly, I think exactly is excessive. Must meet the same standards would be enough.

Chuck Gomes: Oh let's see. Oh, so in the last sentence, any objection initiated from a GAC or ALAC request will go through the same proc- oh yes. It's probably - the same - yes, it's redun- it's unnecessary isn't it? Unless anybody objects, let's delete the word exactly in that last sentence. Thank you. I'm not seeing any objections. Plugging ahead to 12.1. Okay, Richard.

Richard Tindal: Yes, just a small note here that I don't think it was (Philip) that objected to that one.

Chuck Gomes: Did I look at it wrong? I did that just before the call. So who was it?

Richard Tindal: It was the gentlemen just below (Philip) there - (Cela).

Chuck Gomes: Oh okay thanks. Thanks for pointing that out. My mistake. I did that very quickly before the call started. Okay so - because I had just gotten online.

Okay going to 12.1, applicants should be encouraged to attempt to identify possible sensitivities before applying and where possible try to consult with

interested parties that might be concerned about those sensitivities to see how serious the concerns are and to possibly mitigate them in advance.

We had 17 out of 21 which is no consensus but strong support. I suggest we just kind of leave that one alone and move on. It's a - it might be a nicety or something if they did it. It's - I think there are other issues that would be better spending our time on. So if nobody minds, we'll just jump right on and...

(Bertrand): Chuck?

Chuck Gomes: Yes.

(Bertrand): This is (Bertrand). Just one comment the same way as before. I think attempt is excessive or unnecessary. Should be encouraged to identify is enough.

Chuck Gomes: I'm sorry. Which word?

(Bertrand): First line - applicants should be encouraged to identify possible sensitivities instead of attempt to identify which is redundant.

Chuck Gomes: Anybody object to that? I'm okay with that. Okay.

Margie Milam: Could you repeat that? I missed it.

Chuck Gomes: In the first line, applicants should be encouraged to identify - in other words, delete attempt to identify. Attempt to are the two words that are deleted. So it reads applicants should be encouraged to identify.

Margie Milam: Got it.

Chuck Gomes: Thanks. Keep us - make sure you get what we said. Thanks Margie. Recommendation 12.2, the dispute resolution process for Recommendation 6 objection should be resolved sooner in the process to minimize costs.

Everybody supported that. I suggest we just move on from that one unless somebody really needs to say something.

Recommendation 12.3, applicants should be formed - informed of Recommendation 6 complaints as early as possible to allow applicants to decide whether they want to pursue the string. Again, that was unanimous support. It doesn't seem to be too controversial so unless somebody jumps up and down in Adobe, I will move on.

We go then to Recommendation 14.1, in addition to or instead of an objection based on general principles of international law, no - or whatever title is chosen for Recommendation 1.2, ICANN, GAC and at large advisory committees or their individual governments in the case of the GAC have the possibility to use the community objection procedure as currently specified in applicant guidebook Version 4.

A community objection can be filed if there is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted. We had 17 out of 21 support that which would be a no consensus but strong support. Does anybody - Richard's got his hand up. Go ahead Richard.

Richard Tindal: Yes thanks Chuck. This is Richard. So this is a very similar recommendation to 2.5. In 2.5 I think we had consensus. I think the difference with this one and the reason perhaps that people didn't vote this, those that didn't, was two reasons. The title of the recommendation includes the word expanded. And I think that's inappropriate. The wording of this Recommendation 14 doesn't expand anything.

So I think we should leave the word expanded from the title and just make it use of community objection. And then I think the second thing that people might have objected to, in the very first sentence is says in addition to or instead of - I think some people object - I know some people like Milton

objected to the notion of in addition to. That implies that both community objection and a (Recommendation 6).

On the email it's at least - I think we agreed that, yes, this wouldn't be something that you'd do in addition to, it's that you would probably do an instead of. So my suggestion is that we remove the word expanded from the title and that we move the phrase in addition to. If we did that I suspect that we'd get the same vote for this one that we got for 2.5.

Chuck Gomes: And would you leave or - instead of there in af- okay, you said delete in addition to and it goes on to say in- or instead of. Are you deleting both of those or just the in addition to?

Richard Tindal: Well I think to be consistent with the point that Milton and others made we would want to leave the word instead of. Otherwise it would imply to do both.

Chuck Gomes: Any - yes Milton.

Milton Mueller: Just to agree with what Richard said and just to make it clear that I would alter my vote if the changes suggested (were made).

Chuck Gomes: So you would vote in favor of this if that - those changes were made? Is that what I understood?

Milton Mueller: Yes.

Chuck Gomes: Okay thanks.

Man: The same Chuck.

Man: The same here Chuck.

Chuck Gomes: So it's actually 19 out of 21?

((Crosstalk))

Chuck Gomes: Okay so regardless it would be consensus instead of - does anybody oppose those changes?

(Bertrand): Chuck, this is (Bertrand). To go further in that direction I support the suppression of expanded. I would replace recommendation by statement because actually this is just a reiteration of what corporate said during the conference call.

And instead of the sentence that begins with in addition to or instead of an objection, da-da-da-da, replacing the end of the - Page 8 by the working group recalls or reminds that - and ICANN, GAC and ALAC indicates add the possibility to use the community objection because as Richard was saying it's not an expansion. It's just a reminder. So it's a statement. And the working group just recalls that the GAC and ALAC have the possibility to use this.

Chuck Gomes: Okay now I didn't get the change you were suggesting (Bertrand). Help me on that one.

(Bertrand): Changing recommendation by statement.

Chuck Gomes: Okay. You're okay with that?

(Bertrand): Me?

Chuck Gomes: You're okay with changing it to statement?

(Bertrand): Yes, I'm suggesting to change it to statement.

Chuck Gomes: Okay. All right.

(Bertrand): And...

Chuck Gomes: So statement - and that's the change you're recommending?

(Bertrand): Yes, and the second thing is instead of the beginning of the sentence which says in addition to or instead of in the direction based on general principles of international law, or whatever title it shows in Recommendation 1.2, suppress this thing and says the working group recalls that ICANN, GAC and at large have the possibility to do this and that, because it's just a reminder that this is already in the (deck).

Chuck Gomes: So we could say the working group notes that - and then could we just continue it...

(Bertrand): Yes.

Chuck Gomes: ...instead of and so on.

(Bertrand): And it goes directly to the beginning of the next page.

Chuck Gomes: Yes.

(Bertrand): The working group notes that ICANN, GAC and at large and an individual government - actually their individual government is not appropriate but an individual government have the possibility to use the community objection.

Chuck Gomes: Any objections to that?

Man: Didn't we already add the - in 2.5 say governments could and we don't need to phr- to rephrase that here? It doesn't hurt I guess.

Chuck Gomes: Yes, probably not. Margie, do you have that? Milton, did you have something else to say?

Milton Mueller: No, sorry.

Chuck Gomes: That's okay. Margie, do you have that?

Margie Milam: Let me read what I understand. Okay, so we're changing recommendation to statement.

(Bertrand): Yes.

Margie Milam: And then we're stating that...

Chuck Gomes: And we're - deleting expanded in the title.

Margie Milam: And deleting expanded in the title. And then it reads the working group notes that instead of an objective...

(Bertrand): No, no, no, no, no. No, no, no Margie. The working group notes that - and you jump immediately to the top of Page 9 - the working group notes that ICANN, GAC and ALAC and individual governments have the possibility to use the community objection.

Margie Milam: Okay got it.

(Bertrand): Okay. Thank you.

Margie Milam: Okay thank you.

(Bertrand): (You're welcome).

Chuck Gomes: Thanks for the confirmation there Evan on the screen. I appreciate that. Any other things on 14.1? Okay 14.2...

Margie Milam: And so I'm calling that one consensus, right Chuck?

Chuck Gomes: Yes. In fact it was even stronger consensus than we had at the beginning, so. But it's still consensus. Recommendation 14.2, the working group recommends that the fees for community objections by the GAC or the at large communities be lowered or removed. That was unanimous support on that. Anything else on that one?

Recommendation 14.3, ICANN should consider looking into a slight lowering of this threshold for objections from the GAC or at large advisory committees. Staff should explore ways to reasonably lower their required standard for a successful at large or GAC advisory committee in the areas of standing 3124 level of community (opposition) 3.4.4 or likelihood of detriment 3.4.4.

And we only had eight people support that so that's definitely a divergence one. Anything on that? Okay going to Recommendation 15.1, the current language of Criterion 4 should be revised to read, "A determination that an applied for gTLD string would contrary to specific principles of international law as reflected in relevant international treaties." That was unanimous support. Konstantinos

Konstantinos Komaitis: Yes, sorry Chuck. I was very taken back. I think that's Recommendation 14.1 which was turning to a statement that after the changes that Richard suggested in the new language, that's unanimous support now.

Chuck Gomes: I'm sorry. That what?

Konstantinos Komaitis: Fourteen point one has unanimous support after the changes of the new language that was (unintelligible).

Chuck Gomes: Well let's ch- oh, okay that's interesting. I had gotten it up to 19 out of 21. Did you also - let's see. Let me get it in front of me. So we're talking - hold on, I need to scroll down.

Konstantinos Komaitis: (Just be) - sorry, we wrote it on the chart but I changed also my vote according to the new - you know, after the new language and I feel - I think that (Robbie) and Milton and Evan expressed the same.

Chuck Gomes: Okay (Rob) and Milton, Konstantinos, Evan. Okay. So I think you're right. Thank you. So Margie on 4- thanks for catching that - on 14.1 with the changes we now have full consensus.

Margie Milam: Okay.

Chuck Gomes: Thank you very much Konstantinos for catching that. Jumping back to - and I'm glad you - very glad you did that - 15.1, the - that's the - there was unanimous support for that, a rewording of Criterion 4. And any discussion on that? Konstantinos? Or is that your hand from before?

Konstantinos Komaitis: Sorry, my hand from before.

Chuck Gomes: Okay. Alan?

Alan Greenberg: Yeah. I'm - I wasn't here for the original discussion on this so I may be missing something. But the only Criterion 4 in the guidebook is the prioritization of community applications. And I don't see the relevance of this particular phrase. So I think it should say exactly what it's replacing instead of...

Man: That's a very important...

Alan Greenberg: Instead of simply saying what an unspecified thing is revised to.

Chuck Gomes: Okay. And criterion - you remember there were four criterions for objections. But three we already dealt with, right, the incitement and instigation, those three. And then there was the fourth one.

But I think you're right. It would be much clearer if the language that's in the current applicant guidebook was quoted and then recommend that it be changed to that.

Alan Greenberg: Okay. There is only one thing that's a capitalized Criterion 4 in the applicant guidebook and it's not that. So...

Chuck Gomes: Yeah.

Alan Greenberg: We should get the reference correct.

Chuck Gomes: Good point. You got that, Margie?

Margie Milam: Yeah. I got it.

Chuck Gomes: Good. Okay. Thanks, Alan. That's a good catch.

We go then to the last one, Recommendation 16.1. And...

(Bertrand): Chuck, just one element -- sorry -- on 15. Oh yes, sorry, you're dealing 15-1. Sorry. I was - I thought you was - you're still on...

Chuck Gomes: Okay? You're okay?

(Bertrand): Fifteen one?

Chuck Gomes: Yeah. Go ahead.

(Bertrand): Just on 15-1 at the end relevant international treaties might be a little bit restrictive. It should be at least international treaties or agreements because it can be international agreements that do not have the value of a treaty.

But my concern is that there are principles of international law that are not necessarily embedded into treaties but that would be relevant to that sort of thing. So in any case at least relevant international treaties or agreement which is a formulation that I think we've used before.

Chuck Gomes: Yeah. And I'm sure you're...

(Bertrand): (Unintelligible).

Chuck Gomes: Right. I know you know that a lot better than I do. So Konstantinos, did you want to comment on that?

Konstantinos Komaitis: Yes. Just for the issues of compatibility with the previous language we can use instead of international treaties, international law instruments.

(Bertrand): Yes.

Chuck Gomes: So just say international instruments of law?

Konstantinos Komaitis: Law - yes or international instruments of law. Yes.

Chuck Gomes: Okay.

(Bertrand): Yeah.

Chuck Gomes: Got that, Margie?

Margie Milam: Yes. I have it.

Chuck Gomes: Thank you. Good catch.

Margie Milam: So I'm doing that instead of treaties, right? So it'll just say...

Chuck Gomes: Yeah, right.

Margie Milam: The international...

Chuck Gomes: Instead of international treaties, right.

Margie Milam: Got it.

Chuck Gomes: Okay? Thank you, (Bertrand) and Konstantinos.

Recommendation 16.1, the Recommendation 6 working group recommends that the ICANN new gTLD (unintelligible) form a Recommendation 6 community implementation support team to provide input to ICANN implementation staff as they further refine implementation details for Recommendation 6.

Fourteen out of twenty-one is a no consensus but strong support. This - I don't know. I think we'd be better off spending time discussing other things that we need to discuss than spending a lot of time on this but if somebody has a brief comment. If they don't - if nobody does we'll just call this one no consensus but strong support.

Looking at my agenda and my watch, okay, thanks, we made it through those pretty well. And there's a few we might - we're going to try to go back to. But there's a few other things that we need to cover first.

Are there any additional edits to the report other than the recommendation issues that we've been dealing with? Okay. I heard somebody groan.

Man: Oh it's - that was my minor sigh, Chuck. I was just going to ask now that (Bertrand)'s on the call if it's worthwhile coming back to his opposition to 4.2.

Chuck Gomes: Well - yeah, well I'll try and do that if we have time here so thanks. But before we do that I want to cover these other things to make sure we get through the agenda and then go back to those things. Okay? The...

Margie Milam: Chuck, it's Margie. I have my hand up.

Chuck Gomes: Oh. Go ahead, Margie.

Margie Milam: You had questions regarding the report. The one question I wanted to pose for the group was: what are we calling the report?

I've called it just report. But it kind of begs the question of if we're going to do public comment is there going to be a final report or (unintelligible) that. And if we are going to do that then maybe I call this an initial report. So if you guys could give me guidance on what you want to call this report that I'll issue tomorrow.

Chuck Gomes: My recommendation is that we call it a report and just like you've done. Does anybody object to that?

Man: No.

Chuck Gomes: And then we don't need to get into a debate whether it's final or anything else. Now what did we call the one we sent them already?

Margie Milam: Status report.

Chuck Gomes: Status report. So this one will not be a status report. This'll be a report. Okay? And we should say this replaces the status report that was given. Okay?

Margie Milam: Okay.

Chuck Gomes: Thanks. Okay, anything else on the report? Okay.

Going to Item 4, it's just an encouragement on my part that all of you that are members of the GAC or the ALAC or the GNSO, anything you can do to facilitate timely comments on this report would be much appreciated. Keep in mind that the report requests comments from the GAC, from the ALAC and the GNSO specifically.

Now I've already put it on an agenda for the next GNSO meeting to - and as soon as the report's done I've - we will forward it to the GNSO and to the chairs of the GAC and the ALAC and so forth. So - but anything any of you can do to facilitate comment and be - serve as resources to help that process not only advocating your viewpoints but some of the discussion that went on in the group would be greatly appreciated.

Cheryl?

Cheryl Langdon-Orr: Just to let you know that at last week's executive committee meeting of the ALAC it was put on our vote for confirmation list pending the fact that we could put in a report that was final, not a status update, once. So it'll be - as soon as it's ready as on tomorrow it'll go out for a five-day vote. And by the 28th which is our (X4) ALAC meeting it should be in fact an endorsed report by the ALAC.

Chuck Gomes: Thank you. I wish we were as fast as you. So you're putting us to shame, Cheryl so.

Cheryl Langdon-Orr: I have no...

Chuck Gomes: That's okay.

Cheryl Langdon-Orr: Problem with that at all. Thank you, Chuck.

Man: We don't have as many rules as the GNSO.

Chuck Gomes: Okay.

Cheryl Langdon-Orr: Hey, I'm happy to put you to shame. Don't get me wrong.

Chuck Gomes: I know you are. And I want you to enjoy it.

Cheryl Langdon-Orr: Oh and I do.

Chuck Gomes: Okay. Item 5, just some action items to make sure - and we can add to this or correct them but make sure we know what the actions are.

It's going to be an action item for staff to deliver the report to the board and the new gTLD implementation team, correct? And...

Cheryl Langdon-Orr: Yes.

Chuck Gomes: I put staff because, you know, I don't know if (David) will send it or what. But I just put the staff team to take care of that.

(David): Happy to do so, Chuck.

Chuck Gomes: Thank you, (David).

Cheryl Langdon-Orr: Yea, (David).

Chuck Gomes: And the co-chairs, it'll be our responsibility to send the report to our - to the - our respective groups. So, you know, I'll get it to the GNSO, Cheryl to the ALAC. And Frank, you'll get it to the GAC. Is that okay? Or you can send it to

Cheryl - to (Heather) and ask her to do it, however works best for you, Frank.
Okay?

Cheryl Langdon-Orr: And just for the record because it's going to public comment it'll be going to ALAC and the wider at-large.

Chuck Gomes: Yeah. Okay. Thank you.

Frank March: Chuck, just to note -- Frank here -- that sending it to the GAC, yes, no guarantees at all about when any approval or comment on it is likely to arrive of course.

Chuck Gomes: I didn't understand that, Frank. Run it by me again please.

Frank March: It's - there - given that we don't have a voting procedure online and no executive, there won't be explicit approval of the GAC. There may well be independent comment from GAC members.

Chuck Gomes: That's fine. It may be that way in the GNSO too. I can't tell until I get a sense of the council members in that regard. So don't worry about that.

But it would be very helpful if there's comments from - coming from the GAC. And frankly comments can come from separate governments or in the case of the GNSO it may be more appropriate for the comments to come from different stakeholder groups or constituencies.

That's one of the things we're going to discuss because on one like this it may be difficult to get a total council comment or whatever. But just so there's comments coming from your organization however that happens, I think it would be very helpful.

And then the last thing that Cheryl just mentioned, staff will have the responsibility of posting the report for public comment period. I guess a 30-

day - I don't have any strong opinions on this but I would think a 30-day comment period would be appropriate. I'm actually okay with staff deciding that unless somebody thinks differently on this call.

All right, now my last agenda item and we're going to go back to those items now but I do - so we'll probably run out of time next so - on the next issue so I want to really thank everyone for the tremendous amount of time and constructive input that has happened in this group so great job.

Now what I want to do is jump back to the items that we wanted to come back to. First of all (Bertrand), there were - and I need to find where they are, just a second. And I'm going to need to ask you to be really brief but if you can...

(Bertrand): I know.

Chuck Gomes: In a sentence or two respond that would be helpful. On 4.2...

(Bertrand): Yeah.

Chuck Gomes: Which was under its authority to obtain independent expertise as stated in Article 11A of the ICANN bylaws the board shall contract appropriate expert resources...

(Bertrand): Yeah.

Chuck Gomes: Capable of providing...

(Bertrand): I have that.

Chuck Gomes: Objecting - now we made a change in it so stay with me.

(Bertrand): Okay.

Chuck Gomes: Finding objective advice in regard to objections received through this process. We deleted on the applicability of principles of international law because we thought it was covered elsewhere.

(Bertrand): Yeah.

Chuck Gomes: Now you voted against that one. And you were the only one so can you explain why in...

(Bertrand): Yeah. Yeah. This is why I absolutely wanted to be on the call.

The main concern I have with the formulation the way it is today is that we've gone completely on the extreme from a situation where before we had basically an independent body external to ICANN that we feared would be imposing its application on the ICANN board. Now we're in a situation where according to the current formulation of Paragraph 4.2 - Recommendations 4.2 the board is basically at liberty to choose and pick the experts that would be composing the independent expert panel.

So in as much as we believe that the expert panel - the experts will be feeling independent afterwards the composition of the team is a very important one and I don't think it is appropriate to leave the board with the task of choosing the experts themselves. So something has to be done so as to incorporate the discussion we had about one, having an entity that is dispute resolution provider maybe to provide the procedure but also having something that is more independent in terms of the selection of experts.

I know this asks the question of who is going to select the experts. But I'm just a little bit worried about having the board having to select the experts and being basically a judge in determining who the experts are.

Chuck Gomes: Thanks.

(Bertrand): That's the reason for my vote now.

Chuck Gomes: Thanks. No, I appreciate your doing that. And we're not going to have time to have a discussion on this but just one quick response on my part. I mean the - my guess is it's going to be staff that picks the experts or the expert service provider is probably more likely if what's in DAG 4 is the pattern that's followed. But obviously if they enter into an agreement with somebody I assume the board plays in that.

But we don't have time to discuss that right now. But I do appreciate you doing that.

Now we also were going to try to come back to 4.3...

(Bertrand): But -- excuse me, Chuck -- I really want to have this noted. It's not just a minor objection.

It is a very important principle of whether it is the board which selects the experts or not. Staff or not staff -- I don't think staff is an appropriate mechanism -- the selection of experts should not be through or by the board. It is creating a feedback loop that I think is wrong. I'm willing to...

Chuck Gomes: So you think...

(Bertrand): Because that...

Chuck Gomes: Who should select the experts?

(Bertrand): I do not know. But this is the problem. We were discussing the ICC as a provider of expertise. We may have concerns with the ICC arbitration court for the selection of the experts as an entity. But the notion that there's an entity that selects the experts in an independent manner is something that I

think we shouldn't dish so quickly because putting the burden on the board is really making it delicate.

Chuck Gomes: Yeah. Okay. Yeah. No, that's - would you do this for me please? Would you put that...

(Bertrand): Yeah.

Chuck Gomes: Concern in writing so that Margie can add that to the report? Now she'll need that - if you can get it out tonight that would be much appreciated.

(Bertrand): Well I have to go down to the business center and I'll do that.

Chuck Gomes: Thank you very much. I appreciate that.

Richard Tindal: Chuck, do we have time -- this is Richard -- do we have time to make a quick comment there?

Chuck Gomes: Sure, as long as it's very quick.

Richard Tindal: So does Article 11A of the bylaws - does it sort of - is it quite specific about the methodology of picking experts or is it sort of a broad thing? I don't know that bylaw.

Chuck Gomes: I'd have to look it up myself. Anybody comment very quickly as we were within just five minutes of our deadline and there's a couple other issues to cover? Why don't you...

Richard Tindal: I'm assuming - sorry, I'm assuming that it - we should check but I'm assuming it's a fairly broad thing. I guess I'm interpreting this one differently.

So they're try - I don't think this is trying to hand to the board in terms of how they must select people themselves. I think that doesn't - isn't what it says to me. It just says that they have to contract.

So they could - as I'm reading is they could use any other mechanism including staff or any other entity that they wanted to to actually select the expert advisors. But...

Chuck Gomes: Yeah.

Richard Tindal: That's just the way that I'm reading it.

Chuck Gomes: Yeah. I kind of read it that way too. But it's still fine for (Bertrand) to add his comment.

And of course they - the board or the implementation team can always come back to us. Our list won't disappear too quickly. And we could - if they need some clarity we could talk about some things like that.

Four three we wanted to - we're going to try to come back to it. With such experts advising the ICANN board are to be independent of any conflict in accordance with other provisions in the applicant guidebook. Their advice will be limited in scope to analysis of objections based upon the criteria in this policy.

Once again we probably should change - would say within these recommendations I think instead of the policy. I didn't catch that one there. You got that, Margie?

Margie Milam: Yes I do.

Chuck Gomes: Okay. But I don't know - I don't think we have much time to do much more with that. My recommendation unless somebody really feels strongly is that

we - with that last change that I just suggested that we do a - just leave that for now. It was a no consensus, strong support one.

And then (Bertrand), on 4.4 you were...

Cheryl Langdon-Orr: Sorry.

Chuck Gomes: Yeah. Okay.

Cheryl Langdon-Orr: Sorry Chuck. That was the one where we did have enough people I thought on the call...

Chuck Gomes: Oh.

Cheryl Langdon-Orr: To make a difference.

Chuck Gomes: Oh okay. So...

Cheryl Langdon-Orr: If you wanted to re-poll it on the...

Chuck Gomes: Thank you. I forgot that, Cheryl. Yeah. Would - so are there - is there anybody who voted against 4.3 that would change their vote based on the slight changes that we made?

Cheryl Langdon-Orr: That would be (John), Richard. My eyes aren't working. I think that's about it, only (John) and Richard. It's not going to make enough of a difference now.

Chuck Gomes: Okay, all right.

Cheryl Langdon-Orr: (Marilyn)'s not on the call. (Steve) is not on the call.

Chuck Gomes: And that out...

Cheryl Langdon-Orr: Leave it as is.

Chuck Gomes: (Unintelligible) something like that. I wasn't that detailed in my notes.

Cheryl Langdon-Orr: Yes. Leave it as is.

Chuck Gomes: Very quickly, Recommendation 4.4 was the number of experts to be consulted, the method of their selection. And terms of their engagement are to be determined by the board subject to these recommendations.

(Bertrand), you voted against that. I'm guessing...

(Bertrand): Salient question.

Chuck Gomes: For yourself it's the same reason you just stated.

(Bertrand): Exactly, exactly. I think there is - it is important that the procedure is being established so that in that mechanism maybe we could set up a panel, (unintelligible), just like we have at - we intend to establish a geographic panel or so. Maybe we could set up a panel once and for all for instance for the duration of the first round.

Chuck Gomes: Yeah.

(Bertrand): But I'm worried that the mechanism seems to imply that on another basis the board is going to set up a panel according - to handle one specific string which is a big problem.

Chuck Gomes: So Margie, (Bertrand)'s comment should be referenced in both of those, in 4.2 and 4.4. Okay?

Margie Milam: Okay.

(Bertrand): Okay. And I'll send that. Yeah.

Chuck Gomes: Now...

Margie Milam: Thank you.

Chuck Gomes: Four five, I don't know that we have time. We spent quite a bit of time on this one already. (Mary) gave a formulation. I gave a little different formulation.

Right now the way it words is: the contracted advisors will be expected to have specific expertise in interpreting instruments of international law and relating to human rights and/or civil liberties, the first sentence only. I don't...

Cheryl Langdon-Orr: I...

Chuck Gomes: Deal with the second.

Cheryl Langdon-Orr: I thought Milton had asked to delete the and.

Man: He did but we decided not...

Chuck Gomes: Well he did. But there were also people that had other formulations.

Cheryl Langdon-Orr: Okay, fine.

Chuck Gomes: So that's why rather than spend - continuing to work that one -- and we would have probably taken another 10, 15 minutes -- I said come back to it if we can.

Konstantinos Komaitis: Chuck, it's - sorry, this is Konstantinos. Sorry to be jumping in without raising my hand. But I thought that we - you replaced and with including, including...

Chuck Gomes: Well that was my...

Konstantinos Komaitis: Relate...

Chuck Gomes: Suggestion.

Man: Right.

Chuck Gomes: Okay? I don't - I think Milton opposed that though, didn't he?

Konstantinos Komaitis: I'm not sure.

Chuck Gomes: So what I had suggested -- and I see your hand, Alan, just a second -- the contracted advisors will be expected to have specific expertise in interpreting instruments of international law including those relating to human rights and/or civil liberties. Does anybody object to that?

Now let me let - while you're thinking about that let me let Alan comment.

Alan Greenberg: Yeah. I was really commenting on the previous one and noting that to the extent possible (Bertrand)'s comment is supported by others. I'm certainly one of them. And if there's a way of wording it that - perhaps (Bertrand) can word it saying he and others on the group support.

Chuck Gomes: Okay. Thank you...

(Bertrand): Okay.

Chuck Gomes: Alan. Got that, Margie?

Alan Greenberg: Well I think (Bertrand) can word it...

Chuck Gomes: Okay, all right.

Alan Greenberg: To imply he's not alone.

(Bertrand): Yeah. Yeah.

((Crosstalk))

Chuck Gomes: Okay. And I see support for that from Cheryl.

Cheryl Langdon-Orr: Sorry. Can you repeat that? I missed it.

Chuck Gomes: Oh Alan says (Bertrand)'s comment that he's going to add for 4.2 and 4.4 he supports that as well. It's not just (Bertrand).

Cheryl Langdon-Orr: And (unintelligible).

(Bertrand): And so I will word it under (Bertrand) and a few others...

Alan Greenberg: Yeah.

(Bertrand): Supported the problem that...

Chuck Gomes: Okay. Thank you.

Cheryl Langdon-Orr: Okay.

Chuck Gomes: Now is there support for - now (Mary) had a little different formulation. But there was some concern expressed about putting the human rights and civil liberties in the preeminent in the front.

And I thought that - Milton, are - I don't know if Milton's still on. I thought that he didn't agree to my formulation, the one of - putting including those relating to human rights and/or civil liberties.

Man: Milton had to go.

Chuck Gomes: Okay. So now is - are there any on this call that voted against this one that would change their vote with my formulation, the including those relating to? Not hearing anybody it...

Man: No, no.

Chuck Gomes: Well because we're out of time and I think we have at least one more to come back to I think we just leave it alone. It's certainly not perfect. Margie, you might want to particularly note that this one we could have used a little more time on.

Margie Milam: Okay. So I'm not changing anything there?

Chuck Gomes: No.

Man: Well only the changes we agreed to earlier.

Chuck Gomes: Yeah.

Margie Milam: Right, the law...

Chuck Gomes: I think you...

Margie Milam: Yeah, yeah. I know that.

Man: Okay.

Man: (Unintelligible).

Chuck Gomes: And then very quickly I think the only other one we were going to come back to is 5.3, the higher threshold should be at least 2/3. My recommendation -- and I'm - I - you certainly can overrule me - well just a few people could overrule me - I'm not -- is that we let the board deal with that in terms of the definition of 2/3 whether it's 2/3 of the board or whatever. But the point is, is that whatever it is it should be at least 2/3.

Anybody - yeah, Konstantinos?

Konstantinos Komaitis: Sorry Chuck, I don't disagree. Just for Recommendation 4.5 I just realized that I had voted no and that is a mistake. Can you please just fix me as a yes?

Chuck Gomes: Okay. You would change yours on five...

Konstantinos Komaitis: Yes. I mean I don't know. I just realized that I had voted no. And that's a mistake on my part. Sorry for that.

Chuck Gomes: Oh okay. So we're up to - that was 4.5 so that was 17 out of 21. So if there's anybody else that changes their vote we could actually move to the consensus category but...

Cheryl Langdon-Orr: Can we reach out to (Antony) who had not managed to make his additional vote remembering that he...

Chuck Gomes: Oh.

Cheryl Langdon-Orr: Does...

Chuck Gomes: But didn't he...

Cheryl Langdon-Orr: Four point five?

Chuck Gomes: Didn't he vote? Didn't he...

Cheryl Langdon-Orr: No.

Chuck Gomes: Tell me that he...

Cheryl Langdon-Orr: He has not voted on that.

Chuck Gomes: To five?

Cheryl Langdon-Orr: If we reach out to him then it makes A, an opportunity to move it to consensus and B, validates the full 21 across the board.

Chuck Gomes: The full - I'm sorry, the - I - state that...

Cheryl Langdon-Orr: Well.

Chuck Gomes: Say that last sentence again please, Cheryl.

Cheryl Langdon-Orr: Then it would also validate that it's 21 respondents to all questions. At the moment it's 21 respondents to everything but 4.5.

Chuck Gomes: Oh, very - let's do that because I saw - I gave - of the - that is one email I saw that is in my inbox. There's a whole bunch others I haven't. So it would be 18 out of 21 then. And...

Cheryl Langdon-Orr: It would be consensus.

Chuck Gomes: That would be consensus. Okay? Now we...

Cheryl Langdon-Orr: As it is, if he doesn't vote then...

Chuck Gomes: Yeah.

Cheryl Langdon-Orr: Seventeen out of twenty is still arguably consensus.

Chuck Gomes: Thanks...

Alan Greenberg: I would like to know how we could avoid voting.

Cheryl Langdon-Orr: Four point five wasn't in the very first cut. And four or five table was so keen to get this done they did it the moment it came out.

Alan Greenberg: Got it.

Chuck Gomes: That was the - (Marika)'s first version didn't have that one in there, Alan.

Alan Greenberg: I understand now.

Chuck Gomes: And she - okay, you got it, good. Sorry. I won't go any further.

All right, you know, it's not perfect. I doubt if we'd ever get it perfect if we had...

(Bertrand): Chuck?

Chuck Gomes: Another couple months. But I...

(Bertrand): Chuck, this...

Chuck Gomes: I think that we've given - we're giving the board something - a lot of stuff to think about. A lot of good thought went into this. And certainly if they want to come back to us as a group I'm sure most all of you would be willing to provide some feedback.

Feel free to add some of your comments in the public comment period.
Encourage others to do so.

I hope that the board and the community appreciates the work of this group. I
certainly have appreciated everybody's contributions.

(Bertrand): Chuck?

Chuck Gomes: You know, with that...

(Bertrand): Chuck, Chuck, Chuck, Chuck...

Chuck Gomes: Does anybody think - have anything else before I adjourn this call?

(Bertrand): Chuck, do you hear me?

Chuck Gomes: Yes I can, (Bertrand).

(Bertrand): Yeah. Just one point on 5.4, the simple majority I will send to Margie a note
according to what I said before in the same spirit of the other one, the 4.2, to
explain the dissenting opinion.

Chuck Gomes: Thank you.

(Bertrand): Okay.

Chuck Gomes: That's good. And again you'll do that right away, right, because...

(Bertrand): Yeah, yeah, yeah.

Chuck Gomes: Okay. Margie's going to try and file it today and she's on an earlier time zone.

Margie Milam: That's for 5.4?

Cheryl Langdon-Orr: Yes.

Margie Milam: Okay.

Chuck Gomes: Yes.

Margie Milam: Got it.

Chuck Gomes: That...

Cheryl Langdon-Orr: Alan has his hand up.

Alan Greenberg: Yeah. Chuck, before you adjourn, thank you and Cheryl for leading us through this morass...

Man: Yeah.

Alan Greenberg: And getting us...

Cheryl Langdon-Orr: And Frank.

Alan Greenberg: And getting us to a -- and Frank -- and getting us to a point where I didn't think we would succeed.

Chuck Gomes: Yeah. And like Cheryl said, thanks to Frank for being, you know, representing the GAC and filling in for (Heather) on this. Thank you very much, Frank. And that's much appreciated. Avri?

Cheryl Langdon-Orr: She was clapping just like I am.

Chuck Gomes: Oh is that what that is? I can't tell. All right...

Frank March: Thank you very much, Chuck. Thank you all. I've - as - well Cheryl's saying, it's been a very great pleasure but it's been a very interesting experience.

Chuck Gomes: I think I'll leave that one alone.

Cheryl Langdon-Orr: Frank, you and I are going to have a chat when we meet, mate. Don't you worry about that.

Chuck Gomes: Okay. No and...

Man: Congrats.

Chuck Gomes: (Dave), I saw that. Right. Everybody have a good evening.

And we're not going to schedule another call right now. They - we - there could be an occurrence or a need for one. We'll just see how things fall out.

And have a good day, a good evening, whatever's left for you. And we will I'm sure talk again.

Man: We're going to miss it.

Woman: (Unintelligible).

Chuck Gomes: Meeting adjourned.

((Crosstalk))

END