## Internationalized Domain Names Group - IDNG
## TRANSCRIPTION
## Wednesday 21 April 2010 at 14:00 UTC

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**Domain**

**Names Group** - **IDNG** meeting Wednesday 21 April 2010, at 14:00UTC Although the transcription is

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**http://audio.icann.org/gnso/gnso-idng-20100421.mp3**

**http://gnso.icann.org/calendar/#apr**

**Participants on the Call:**

**Edmon Chung - Registries Stakeholder Group - Group leader**

**Chuck Gomes - Registries Stakeholder Group**

**Cary Karp - Registries Stakeholder Group**

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**Julie Hedlund**

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**Glen de Saint Géry**

**Gisella Gruber-White**


Coordinator:  The call is now recorded. Please go ahead.

Edmon Chung:  Thank you. I guess Glen or somebody could help - just a quick roll call
who's on the call 'cause I also don't have a login for the conference
(view).

Gisella Gruber-White:     I do - and it's Gisella. I'll do a quick roll call for you. Good morning, good afternoon to everyone. On today's IDNG call on Wednesday, the 21st of April. I have Edmon Chung, Avri Doria, Cary Karp, Chuck Gomes. From Staff, we have Glen de Saint Géry, Julie Hedlund, Olof Nordling, and myself Gisella Gruber-White. Apologies from Adrian Kinderis.

And, if I could just please remind everyone to state their names when speaking for transcript purposes. Thank you. Over to you Edmon.

Edmon Chung: Thank you. So for this meeting, I'll try to use less ahh and ums, but that seems to be my problem. So, the really - the only real agenda on the call is to take a look at what we should do next. A couple of documents were proposed previously. One on the confusing similar string, basically a statement back to the Council, and also a document that was essentially nobody seems to like, which is to suggest the creation of a working group to address that issue as well as specifically on IDN.

So, I'd like to actually focus more on the issue itself, the confusing of the similar string and what if any should we report back to the GNSO Council, and then whether we should also recommend some next steps.

I did see Avri's very long email, because I was running around later in the afternoon today. I haven't had the chance to read through all of it. So, if it's okay, can I ask Avri maybe to speak to that so I'm up to speed on that, and we can go from there and start the discussion. Does that make sense for everyone?

Man:          That's fine.

Edmon Chung: Yes. Okay. And, I guess everyone can just - because we don't have a lot of people on the call, I think everybody can just jump in and speak. In case we get into a chaotic situation, we'll take the queue.

Avri Doria: Okay, hi. So, I guess you want me to talk - first of all, I apologize for it being such a long mail. As you know, I really try to write short ones. Sometimes that's fine, but I guess they were a little too short. But, just wanted just to work it all out, to say what I was trying to say, and hopefully I said it intelligibly. You know, it ended up taking a lot of word.

So first of all, I wanted to reiterate that what I wrote there was my opinion, though I have vetted it with the NCSG, and the NCUC, and I've gotten that you know, comments that basically, very trademark issue oriented, sort of saying I don't go far enough. And, I have asked the NCSG to basically work on producing -- and it doesn't really relate to this group -- work on producing a you know, free standing statement on where the stakeholder group views this issue.

First of all, I also admitted you know, in terms of looking at things, I believe that there are senses in which both Chuck and I are making correct argument. He is right when he says there is nothing in there that says visual confusability is the only one, which is a statement I get pretty close to having made in at least one email.

I believe that I am also correct in having said - and there's nothing that says confusability based on meaning is defiantly one of the criteria that will be used. And the basically, I go into trying to explain why I believe that visual confusability is indeed the primary one we're dealing, and

basically base my argument on the fact of it is the one that almost no one that I can find disagrees.

Almost none of the documents that referred to say you know, there's any question about visual - those are indeed issues about how one determines when a string would be similar to another in a confusing way, or likely to cause confusion. So basically, I'm treating that one as having a special status, because there is no disagreement on it. And, I think that it is rightfully reflected in the nature of the draft application guide, as I understand it.

And, I apologize for my - you know, since we do get into criticizing other people's speech defects, I apologize for the stuttering. That I get it sometimes when I'm talking to anyone (that that offends).

So basically, I believe it has a (primacy) because it's something that we all agree on. I believe that the DAG does reflect that in making that one the one that is tested for the initial evaluation.

Going on to all the other possible reasons that there may be for confusion, I basically sort of said, "Yes, there are many - there's a why." It could be you know, anything from freedom of expression reasons to they sound the same, to perhaps meaning, and getting into a very complex issue of what it means to be confusingly similar and what it means to that.

And I argue that the Council took no position on any of these specific reasons, but basically put in the whole notion of making (unintelligible) of the company with standing, i.e. the person that already has that gTLD, or another who's applying for a similar one. Some with standing

saying, "You know, I think that this is likely to cause confusion because it," meaning it's the same as mine. And so, I don't deny the fact that's certainly a valid reason for making an objection, but there's many, many valid reasons for making an objection.

And the Council did not adjudicate in any way which of those was legitimate, which of those wasn't. It basically - it's up to the (effector) and it's up to the evaluation panel to determine was this a valid objection. And then if people don't like the evaluation panel, I'm sure there's trademark courts and courts of law, and everything else to make final determination on such things.

So, that's why I say that these have a different status. Now, for the...

Edmon Chung: Can...

Avri Doria: Yes?

Edmon Chung: Can Cary ask a question?

Avri Doria: Sure. Sure.

Cary Karp: Without suggesting...

Avri Doria: This is Cary? Yes. Okay.

Cary Karp: ...is that the notion of graphic similarity being something that we all agree upon? I mean, that - this is right at the top of the list. There's no way to turn that into objective criteria. I mean, anything visual is literally in the eye of the beholder, and their distinction - there's a cultural

dependency on this. Someone familiar with a script is going to regard as distinctive graphic nuance that somebody unfamiliar with a script won't even notice.

So ultimately, every single request does have to be assessed on its own merit. And given that, why all the fuss about some proscriptive - prescriptive framework, when ultimately everything is going to be as you say, up to some panel to assess.

Avri Doria:     Well I don't...

Edmon Chung:     Cary? Sorry, Avri. Just want to cross out one thing. Just Cary, the discussion here, I think you know -- just as background -- we're not trying to re-discuss this whole confusingly similar in this situation, but I think one of the main reasons that this came up was the situation where the same registry is applying for a confusingly similar string, potentially an IDN string that is confusingly similar to the existing TLD, whether its existing now or existing in the future.

And for that particular issue, the DAG -- well in my view and some other's -- it's unclear, and that was the background of bringing this up. I do believe what you mentioned that each case should be looked in to, but is important. But, the issue is right now, the DAG seems to be prohibiting even any applicant to apply for a confusingly similar string.

Cary Karp:     Yes. But what determines that threshold criteria? I'm going to apply for something that I don't think looks at all like a pre-existing string, so does my application. And then, that needs to be assesses. Or, is there supposed be some pre-application judgment that's going to apply to this? And if so, on what objective criteria saying that it looks like

something else is as objective as objective can possibly be. So I mean, how does this get objectified? For the benefit of this perspective applicant?

Edmon Chung: No. I guess my point is regardless of what that process is, when it hit the point where it's being assessed and it's being assessed, and you know it's found to be confusingly similar, then what? Because right now, it says it's prohibited.

Avri Doria: Right. If I can get back to that.

Edmon Chung: Okay. Sure. Avri.

Avri Doria: Right. One place where I do think we have an issue is that I think Cary starts to point at, and this is one that we may want to pass on to the Council, is there is an initial evaluation. From my understanding and my reading, and of course you know, staff should certainly correct me if I'm misunderstanding them; that initial evaluation which includes both pools and evaluating panels -- I believe -- is primarily initially on a complex of factors that indicate a visual confusability - and it's experts (unintelligible) whatever.

Now, one of the things that seems to be missing is on most things when you lose in an initial evaluation, you have an opportunity to ask for an extended evaluation, and sort of say, "Hey. You know, you guys judged this as similar, but I don't think it's similar." For example - in Cary's example, or in the example of this work group, "Yes, I know it's similar, but I already have the one that is similar too, so that makes it not a problem." Maybe, maybe not. I'm not judging whether it is.

But at the moment, there is an initial evaluation. It seems to me that that initial evaluation is being deemed primarily if not completely on the visual basis. But yes, there is a panel involved. And if you fail that one, as far as I can tell, you're dead in the water.

Then, there's the later set of things. The more you know amorphous set of conditions that are only brought up if there's an objector to say, "Hey. Because of the meaning of this, I believe that this would be you know, confusing and/or likely to cause confusion; therefore, I request that it be blocked."

Now in that case obviously, if it's the gTLD registry that's got the current one, and they're applying for the one that is similar, they're not going to object. No one's going to have standing to object, so that one could sail through without any real problems. The only problem falls in the ones that may get blocked because of some (visualness) or whatever other criteria are in the initial. So, that's was really the point I was trying to make.

Cary Karp:     Can Cary ask another question?

Avri Doria:     Yes.

Edmon Chung:  Please go ahead.

Cary Karp:     Okay. One of the really thorny issues that attaches to the fast track at this moment is the situation where a request has been made for two - what are different strings that are visually identical. Not just confusable but absolutely identical. That there is a sequence of Unicode - a

displayed label that can be generated by two separate strings of Unicode code points - sets of Unicode code points.

And, these are being applied for in parallel, and the terminology describing parallelness, and saying this is causing infinite anguish. But let us assume simply for the sake of argument that the Board tomorrow decides that there will be a situation where two identical strings are put forward as legitimate, and they were requested by the same entity. So, that entity is obligated to somehow articulate policies about how these two (zones) are going to be operated in tandem, okay.

What happens if that goes through, and then some other CC fast track applicant comes along and says, "I only requested one string, but I note that the duplicate string that's been requested by one of our colleagues equates exactly to an (authographic) situation that we have in our country, so we would now like to request the visually identical but different sequence of code point strings as an additional label for our TLD."

Nobody in their right mind would dream of saying that that's an illegitimate request, because it was made in two stages rather than simultaneously. So once these issues have been sorted out on the CC side -- which they have to be -- how does the wisdom generated by that process not immediately impact the gTLD instantiation of all of this?

Avri Doria:     If I can give an answer. That was one of the things that I bundled in with the issue that if the Council decides to take up this topic of how you treat this situation, they have to take that situation that you know has been coming under the synchronicity name and other names

within this ccNSO issue. Indeed, if you say that they are identical at the top level, how are you dealing with the second level so that you haven't introduced confusion there? And all sorts of other issues.

So, yes. I have sort of argued that if we - if the Council takes this issue up, they have to take it up with that sub-issue.

Edmon Chung: Right. And I think Cary and Avri, you mentioned - I'm happy that you mentioned this item, and that's also one of the reasons why I'm wary about - Avri, when you say that we can depend on some extended evaluation, there's a whole - this whole synchronized IDN ccTLD thing came about because of a - what is termed a glitch in the implementation plan.

Even though the situation was well anticipated in the policy process, it still created this glitch in the implementation plan. And this is exactly the type of glitch that I'm seeing in the DAG right now. And I think we should be very clear. We should, you know, that's the reason why I think the Council should send a very clear note about the issue so that we don't hit this glitch.

And it is in a way, there could be situations which would be similar to what the synchronized IDN ccTLD is trying to address. I'm not trying to say that, you know, this statement or this process we're talking about here should include all those discussions because that's, you know, a completely different Pandora's box in a way.

But I think what the reason why I, you know, think it's important to make it clear, and even to try to make sure as that - that the DAG

actually takes care of this rather than hoping that some extended evaluation would magically solve the issue.

With no disrespect to the staff, I mean these issues came up. But I guess the worry is that if we don't make it clear, it might create unintended glitches down the road.

Avri Doria: Edmon if I could correct one thing. I actually did not say that I thought eval - extended evaluation would take care of it because at the moment it's not one of the included issues that extended evaluation...

Edmon Chung: True.

Avri Doria: ...can even...

Edmon Chung: Right.

Avri Doria: ...stop. And yes, I guess I was indicating that if it was included as something that it would take up, then I thought that yes it could deal with it. But at the moment it's not even permissible to take it up in extended evaluation if I read correctly.

Olof Nordling: And...

Edmon Chung: Right.

Olof Nordling: ...this is Olof here Cary. That's to confirm that Avri's description is absolutely correct. There is no sort of second step if the initial level action has found two strings to be confusingly similar. They are considered to be confusingly similar and there's no appeal to that. So,

so far that's - it's not an issue that can be brought up to foreign extended delegation as the DAG goes right now.

Edmon Chung: Hmm. So I guess Olof that does mean that something needs to be done if we at all think this is an issue that needs to be addressed.

Olof Nordling: That is - that would be a consequence of your going to that conclusion and getting unanimous support for it.

Man: Oh I'm not sure it has to be unanimous, but anyway let me jump in here a minute.

Olof Nordling: Whether it's a glitch - whether it's a glitch or not, I mean, that I think is also in the eye of the beholder as it stands right now?

Man: Edmon can I jump in?

Edmon Chung: Please. Go ahead.

Man: Let me first of all, as I did in an email that I just sent because I had a Council meeting to chair this morning, it's early for me. The - I very much appreciated Avri's response because I thought it was very thoughtful and carefully prepared. And I sent a response back with some - a few comments. But I don't think we're too very far apart if in any significant way.

The question I have is this for our discussion right now. It seems to me, regardless of what type of confusion or how confusion is measured, whether it be with visual or some other criteria, that it can't be - a string can't be evaluated strictly on whatever kind of similarity is involved.

The ultimate question, and Avri says this in her response and I agree with it is the ultimate question comes down to, and correct me Avri if I say this wrong, comes down to whether there's a probability of confusion. And that question in my mind, and I want to get your reactions to this, needs to be asked whatever type of similarity we're looking at.

And you can't look at that strictly on a set of characters. You've got to look at a little bigger picture than that in the context of how a string is offered to see whether or not the probability of confusion exists even in the case of visual similarity. Because for example, and if I - there may be ways of offering dot Asia or dot museum - I'll use those because they are actual words instead of something like com or net that are not in the full sense of the word.

The - two museums for example, being visually similar, but if they're both offered by MuseDoma and done in a way that mitigates most of the possible confusion, then does anybody disagree that it would be okay to allow those?

Avri Doria:     This is Avri. I think what I've always argued, and of course where my argument fell apart because there was no extended evaluation is that, you know, that should be something that is looked at later, that was looked at in extended evaluation where it would be flagged as no because of whatever reason. And then one could circle back and sort of take the analysis.

And because once you open up the discussion, you'd have to go rather deep because you'd have to look not only is it the same owner but are,

you know, is there likely to be confusion at the second level or do they have an implementation scheme that prevents there being confusion even at the second level and so on.

So while in principle, you know, I agree that if there is no confusion possible, that should be determined. But I don't see how that could ever be determined in an initial evaluation. That would be something that would have to come later.

And that's why I flagged the problem of, you know, once kicked out no more talking being perhaps an issue that needed to be looked into, and the least complicated solution. It says, you know, you have a chance for extended evaluation where any of these things can be discussed.

Man:        And maybe extended evaluation is a way to deal with this. I'm not yet there that it would be necessary in all cases. There is a panel even on - in the visual confusion check at the beginning, the initial check that is going to have to look at these things.

And what I'm saying is if they just look, you know, rigidly at the similarity from a visual point of view in isolation without looking at the other factors like okay and this one factor could be, it doesn't have to be just this, but, you know, it's offered by the same Registry.

They're offering it in a way that really mitigates the confusion. That's not hard to look at in the application. And, so why does that need to go to an extended evaluation? The question, and I think Avri, and correct me if I'm wrong, but the real concern in the Council's recommendation was user confusion.

That's the issue. And if two visually similar strings don't have a high probability of causing user confusion, they shouldn't be disallowed.

Avri Doria: I guess the - and please Edmon stop me if I, you know, I - we get too much into our on and on debate. I guess my issue with that is the panel that's doing the - is this confusing. It's specialized in one sort of way.

Once you take that next step and say is there mitigation that makes this confusion not really confusion because of the way they deploy, because of synchronicity, because of whatever, it's a much more complicated question that basically fits into the pattern that we see in the DAG that if it's a question that can be cut and dried, if...

((Crosstalk))

Man: What...

Avri Doria: ...initial. If it's anything complicated and hard, then it moves to extended. So that's why I would tend to sort of say no. It shouldn't get kicked out because of that in initial, but neither should initial be geared up to take the full nuance of what's being talked about into account.

Man: What happens, if we're going to stick to the dot museum thing, let us assume that the whatever the ground rules are, we'll figure out how to submit separate compliance applications and the Japanese committee - that the Japanese National Museums Association submits a request for a country representation of the Japanese word for museum used almost as that's fine by them where we've already agreed to share policy.

This is the way we're going to do it. And that's no risk to visual confusion whatsoever. There's semantic identity, not semantic confusion, semantic identity. That's the whole idea with this. And that's just fine.

And then the Spanish National Museum's Association comes along and says well we want dot museo. And a slightly more tenuous discussion is conducted about the risk for confusing museum and museo and that goes through.

And then the French National Museum's Association comes and say well they want dot musee. And MuseDoma thinks oh this is just absolutely great, which is exactly what we're going to think, simply by coordinating the order of these applications from the absolutely beyond any conceivable notion of visual confusion to situations where there might be visual confusion but the multiple museums have been well precedented, I think this entire discussion is on - at a level of detail that's making so many assumptions about what's going to happen next, for goodness sake, wait till the Board decides what it's going to do tomorrow about the fast track applications because these issues are replete there.

So I see - actually the reason I dialed in was because I took a look at some of the communications on the distribution list and I've never seen so much heat being generated by something. And I don't know, it would be kind of nice to see as much light generated there as well.

So I think where - I think this discussion, although in every single detail absolutely necessary and absolutely justified and legitimate may be

eased if some of the wisdom that's going to be generated during the fast track thing, most possibly tomorrow, were folded into it.

And there's just all of these assumptions about an evaluation panel. What an evaluation panel is likely to do and what constraints are going to be applied to it.

Avri Doria:      Can I ask a question?

Edmon Chung:  Sure. Please Avri.

Avri Doria:      And so, but, as I understand it in the DC fast track ccTLD case, the initial evaluation of strings has already occurred.

Man:            That's right.

Avri Doria:      And so what...

Man:            And a protest...

Avri Doria:      ...so we're now...

Man:            A protest has been lodged about the outcome.

Avri Doria:      Right. And we're now in some sort of extended evaluation and discussion. And that's all I'm saying is I'm not trying to predispose anything about what happens in an extended. I'm just basically saying that a second stage of discussion is where I think these things are best handled. And at the moment there is no such second stage in our process.

Man:             Well then why not simply argue for the need for that. I mean Olof made mention of the fact that the ground rules are as they're being represented at this point. But there's still talk about some revision of the DAG. So maybe that's exactly what this effort should be focused towards rather than evalued - objected evalued criteria that are applied to what our by definition subjective concept noting that and seeing to it that there are multiple - that evaluation is a tiered process.

Man:             Olof can I ask you a question? In the initial evaluation with regard to recommendation two and in particular the visual similarity check both in terms of the tool, the algorithm and the panel look, are they literally just looking to see if there's visual similarity or are they looking to see if there is a probability of confusion? If there is - assuming there is visual similarity.

Olof Nordling:   They're looking at the visual similarity...

((Crosstalk))

Man:             Not looking at the probability of confusion at all.

Olof Nordling:   That's - oh well yes. That the visual similarity would be leading to confusion.

Man:             Okay.

Olof Nordling:   A rendering of confusing similarity, huh?

Man:             Okay. Let me make sure I'm clear. Are they...

Olof Nordling:    Yes.

Man:    ...looking to see if that visual similarity, assuming they determine it exists, are they going one step further to evaluate whether there is a probability of confusion because of that similarity?

Olof Nordling:    Well yes. That's the probability of confusion between the strings. They don't look beyond the strings as to who is now applying for that particular string which is...

((Crosstalk))

Man:    But if they don't look beyond the strings, they cannot tell whether there's going to be a probability of confusion in many cases.

Olof Nordling:    Now we go into a probability of confusion in a deeper sense than we have really approached it in the applicant tag book.

Man:    And what I'm saying is you can't test - And what I'm saying is you can't test - you can't fulfill Recommendation Number 2 without evaluating at least to some degree and I'm right with you that some of this may have to move to a later stage. I'm okay with that possibility. I don't necessarily think it has to always occur but that's another issue.

If all we're doing is checking for similarity of strings without any consideration of probability of confusion in the initial check, then we're not doing anything - we're not fulfilling Recommendation Number 2 that the GNSO Council recommends.

Avri Doria:     I actually would disagree with....

Olof Nordling:  Yeah, well anyway, I mean what we do is to see - is there a risk that one would mistake one string for the other. That's what we are saying.

Man:            Yeah, but about the situation where...

((Crosstalk))

Man:            ...the string - what - but there's the situation where multiple strings are being requested because they are identical where confusion is being preempted by having multiple strings rather than confusion being avoided by insisting that there's only one of the candidate number.

Avri Doria:     And that's an extenuating circumstance.

Olof Nordling:  Right. But that is not a consideration that's taken into account right now.

Man:            And that's why Edmon raised his concern.

Avri Doria:     Right, and that's one of the reasons why I'm sort of arguing that there's a myriad number of things that might be extenuating circumstances.

                And as soon as we get beyond that initial visual inspection that raises a flag - see I think it should raise a flag not a prohibition, but that raises the flag and says, oh, there's more work to be done here. Then you move to something that's longer than what needs to be happening in an initial evaluation.

But the other thing we have to be concerned with is it slowing down the overall process because of the few applications that we'll require a further longer, more in-depth bit of thought.

And so the initial process has been designed, as far as I understand, to do as much as possible in a very quick - you look at this, you say yes or no. You look at that and say yes or no. And I think the yes or no is flag is up, flag is down.

If flag is up, anything that flag goes up on in initial should be, you know, extended valuation capable, but that's my own opinion separate from this topic.

But if you make those initial considerations take more complex stuff into account, which Cary is quite right about and you're quite right about that there could be all kinds of extenuating circumstances that make what appears to be confusing not confusing.

Then you just basically overloaded initial process and made it slow the overall process down for everyone who doesn't care about just getting one string and they know it's distinctive, they know it's not controversial, they got all the other stuff and they just want to cruise through fast.

And...

Man:       And so Avri don't we have a point of agreement here, and I'm asking everybody not just you, but I totally agree with you that instead of eliminating visual similarity check should result in raising a flag.

Edmon Chung: Well, this is Edmon, I'd like to sort of agree with that and sort of restate that. I think it seems to me that I do hear agreement that there's something to be fixed for this issue in the DAG. At least we have this agreement. Do we?

Man: I think so.

Avri Doria: Yeah, I think so. I mean I disagree vehemently when we talk about asking the initial evaluation to do more, but I believe that all that stuff, and that's what I've been arguing since Day 1, all that stuff should be put into extended evaluation. And it was only when I went back to read the DAG and I was going to show you that see, here's where it gets done, I realized that it wasn't.

Edmon Chung: Okay. So I guess I'd like to get back to that discussion because I have my thoughts, as well, but building on that particular agreement, is that something that at least okay to report back to the Council and get the Council to address the issue whether a making a statement back to the Board or staff?

Is that also agreeable?

Man: It is with me.

Avri Doria: Yeah, it's okay. As long as we word it carefully so that we're not, you know...

Man: Yeah, and we can all...

Avri Doria: Yes.

Man:            Chime in to the, you know, to the wording, because I'm not saying that we should slant it any one way, but yeah.

Edmon Chung:   Okay. That's great. So we have some agreement.

On the issue now, I guess two points. One on where to do the fix and the other is to actually what process we should take to make that particular decision I think.

But first again, sort of jumping the process, but so I sort of disagree with Avri on the sense that we shouldn't add a little bit more to the initial evaluation and reason being that I - in my view - in your view it might be that there is only just a few of these. In my view there's going to be a lot of these in the future.

Imagine, you know - imagine even after the first round, the second round might be majority this type of situation. Like a lot of the existing and then existing TLDs looking to get an additional IDN version or a confusingly similar version.

So I do not think that extended valuation is suitable for it because, you know, we do - in my view the frequency of this type of application would be quite high.

And the other thing is that I do not agree that it should be that hard to identify few key clearly defined requirements. And if we - if the applicant meet a few clearly defined requirements, then the flag doesn't even get raised and it passes initial evaluation.

If it gets into a more complicated situation, actually like what Cary mentioned, then yes, I do agree that perhaps that should go into extended evaluation.

But in cases where it's fairly simple in the same applicant is going for a TLD that makes a lot of sense for their community and is a confusingly similar string and they have their policies in place to deal with that, I fail to see why that should, you know, get flagged and go into extended evaluation.

I think it should go through as a - you know, as an anticipated normal application. That's...

Avri Doria:     Yeah, okay, may I respond?

Edmon Chung:  Sure. Please.

Avri Doria:     Since I seem to be the one that's arguing this issue. First of all I don't think we should take second rounds that much into account. We're supposed to be through the whole process after the first round, see what kind of behavior and trends we saw and address prospective rounds.

So I don't really think the second round possibilities, whether - I mean I haven't stopped to think about. You may indeed be correct. I don't think those need to be taken into account at this point.

We're still trying to get the due process off the line as soon as possible which means making as few changes to the application process as possible to fix anything that needs to be fixed.

In the second case where I think it makes it more difficult is in the visual inspection that's being done now, there's a certain kind of specialist. Now as soon as you start adding other criteria, first of all, we have to go through a policy process that may take a while to discuss what sort of criteria we can all come to consensus on that may be good enough for the simple thing.

And then once we figure that out, then the application process has to be geared up to well how do we get those specialists involved in the process. And they still have to sequentially come after the visual guides that are specialized.

And so while you may be right and we'll learn from experience in this one that in the next one we need to come up yet another element in this - in the initial evaluation.

If to try and change - you one of the things I keep applying to this is the requirement that was put on us in the vertical integration where you must suggest nothing that will slow the process down more of getting there. And that that's become sort of a cardinal fixation in that there are tweaks that need to be made to make this thing work right, but let's not slow anything down if we can avoid it.

So those would be my responses to the two points.

Edmon Chung: Right.

Man: Right.

Man:                I mean...

Edmon Chung:   Please Olof.

Olof Nordling:   Yeah, well right. May I just raise one particular flag because - all right, then this would be the approach that we have a number of single owner and multiple confusing the similar than but not detrimentally confusing the similar strings and TLDs run by that particular operator.

And that's - I think we have to think about all right, what kind of permissions would be needed then in the base agreement in addition to the base agreement in such cases. Because now presume now that they are confusing the similar and then it's sold off, one is sold off to somebody else and they really becomes detrimentally confusing the similar because they're run by different operators and with different orientations or very similar orientations with risk of actual confusion in the detrimental sense would - well could then come as a following step.

That is something that has - would have be contained if we go down that path.

Man:                Now...

Man:                But that...

((Crosstalk))

Man:                Yeah, that's...

Olof Nordling:    I don't know. That was - is - makes sense, but I think I know what I'm trying to say, but you get my point that well if then that's okay and it's confusing the similar but that's a detrimental use confusion that results from it, well we would have to make it right, make it safe, also future safe in such a case.

Man:    Olof, I think you've actually...

Olof Nordling:    And that's actually foreseen in the beginning.

Man:    You've just proposed the terminology that should be applied to this. We're not talking about confusable similarity. We're talking about detrimental similarity.

Olof Nordling:    Well, we actually use that term in the doc somewhere so I didn't invent it right now. I'm too tired to do that.

Man:    Yeah, but I mean the notion of detrimental probably is more amenable to quantification than is the notion of confusability.

That two confusable strings are - the notion of there being two TLD labels that are visually similar is not necessarily negative. I mean, there are applications for similar strings in the fast track because they're necessary to avoid user confusion.

So the question is not so much are there two strings that might be confused. It's - the question is is that confusability beneficial to use - is the duality of the labels beneficial to users or...

Olof Nordling:    Yeah.

Man:            Potentially harmful. That's the key issue.

Olof Nordling:   But...

Man:            I think everybody has been saying. Chuck has been on about it all
                along.

Olof Nordling:   Right, still the - how to preserve the good case for the future is most
                actually the concern I raised, but maybe I helped the discussion a bit.

Man:            Well Olof, your point important with regard to the base agreement in
                terms of this. But - and again, coming from a non-attorney, okay? It
                doesn't seem to me that dealing with those kind of issues couldn't be
                handled in language in the base agreement.

                With - you're right. It would need to be dealt with so that some sort of a
                split up of the registry or something doesn't result in creating a
                situation that we try to avoid.

                So understand that, but to me that's an easier problem from - for our
                attorneys to solve and I think they can solve it than it is what - the one
                we're trying to solve here.

                And then a total - on a totally different note, you know, I think Avri
                you're right. We got to be concerned about avoiding delays. It's a
                reality. I don't even think the Board's going to be amenable to delay.

                At the same time we identified an issue that needs to be dealt with, so
                why can't this kind of issue be dealt with in an expedited implantation

sense like we did some of the trademark community issues in the IRD and STI and stuff like that?

Is that - does that seem totally unfeasible?

Avri Doria:     Well, this is Avri. That's what we're doing with VI backed up you guys.

Man:            Yeah.

Avri Doria:     Pass the prioritization thing to decide whether you can get it done or not. And I never know whether the Council is actually able to do those without a Boarding forcing function.

Man:            Yeah, I know. Okay. The...

Edmon Chung:    I think - sorry, some piece of it...

Man:            No, go ahead Edmon. That's fine.

Edmon Chung:    Okay. Well just looking at a time where I don't think will solve the issue on this call, but I do want to talk a little bit about what next; what are the next steps, how do we take this forward.

                And I think the - what is done in VI is it's probably pretty good - informs us well on what we might want to do here.

                We - I agree with not increasing any delays. And what we - perhaps what might seem - well at least what seems possible to me is to get the council to make a statement to the board about the issue, and get staff to make these - the appropriate fixes with, you know, or the minimal

fixes to the current DAG as we try to figure out - as we create a group to figure out a more long term solution if you will for the issue. I don't know whether I'm making sense.

But the point is I think we need to as soon as possible make this note to the board and staff so that it could be addressed in the DAG as soon as possible.

I do agree that we might - it might take a little - it will take some time. I don't think it will take too long though, but I could be wrong, to come up with some clear guidelines as to how to deal with this issue, yes especially as Cary mentioned that once we have some direction from the synchronized IDN ccTLD it actually might also inform this particular issue.

Man:              (Unintelligible).

Edmon Chung:  Yes.

Man:              Edmon with regard to the comparison to VI I think there's one flaw in that. Number one, new gTLDs can go forward whether the VI Working Group comes up with any concrete recommendations in the near term or not. Hopefully they'll come up with some that can be.

But if they don't, I think in the case of the issue we're talking about, we've identified a flaw that needs to be fixed. And therefore in my opinion warrants a special group forum to do it. It still has to come back for comment. And the group can involve people from interested stakeholder groups and so forth.

But I see it much more along the line of the STI and RIG groups that were formed to - except I think it's - I think I with you Edmon, it's a little simpler than some of those although not without complexities that to on that approach rather than a full-blown PDP.

Avri Doria: This is Avri. I'd like to - I think it would be easy probably to get the council to make a statement saying we need extended valuation to be enabled for this issue for, you know, confusion, detrimental confusion - - what have you. I think that might be easy.

I think, you know, that the other issue of what are the conditions and how to treat those conditions et cetera is a whole different kettle of (mix) that is I don't think - I'm not saying you should start a group to work on it whether it's a PDP or not. That's a different issue. I don't think it resolves quickly. So...

Man: No I agree.

Avri Doria: So I think getting a quick fix in for extended evaluations, that you can probably get agreement on fairly quickly at the council level.

To go beyond that it's just complicated. I think it's more complicated than anybody putting, you know, allowing for.

Man: Well if I take that, then what about getting a statement out that says at least it should be dealt within an evaluation and then also to form an urgent group implementation team sort of thing to address the issue?

And, you know, if we can be fast enough then it can infiltrated. If not, then it's the next round.

Avri Doria:       Yes if I can...

Man:              Does that...

Avri Doria:       ...on that statement just a little that not that it should be dealt with. I think what I would recommend as I was saying is that there should be extended valuation for issues of visual, you know, for confusability operating on the same principle as extended valuation works for other topics.

                  And if you want to list one or two examples from this as occasions on which that might occur as opposed to presupposing that it will occur and just sort of say what's missing is the extended evaluation for the confusingly similar and that being the simplest change that doesn't get into anybody (arguing).

                  And then perhaps include a couple of examples but, you know, so people understand why you're asking but not make this the cause of that. That's a problem in and of itself I would think. But...

Man:              Let me ask Olof a question. I haven't looked at a extended evaluation in a long time Olof.

                  Is extended evaluation as it's defined today, does it seem like an appropriate place to handle what we're talking about?

Olof Nordling:    Let me put it like this, that from a process point of view I think it would complicate things very much to make this kind of - the kind of

evaluation on the underlying (substance) of the application would complication this thing, some larger review big time.

So from that perspective it's much more appropriate I would say to have an extended evaluation. While...

Man: No I'm sorry, I didn't understand that. Are you saying...

Olof Nordling: Oh sorry, sorry. I'm just saying that while it is much more complicated to do something to add this kind of evaluation to what the string similarity panel should be doing.

Man: Does it fit - does what we're talking about fit in the extended evaluation model?

Olof Nordling: It would be sort of much more appropriate to have it in the extended evaluation...

Man: Okay. Thank you.

Olof Nordling: To my mind. I mean that's just from a process point of view. That...

Man: Okay.

Olof Nordling: If it should be done, then it should probably be there.

Avri Doria: That was good diplomatic - a secretariat type speech. I think it's wonderful.

Olof Nordling: Okay.

Man:            So that - then that's what I was getting at. I mean we don't necessarily have to say it needs to be an extended evaluation.

                I first of all wanted to get your sense Olof of whether it would fit there. Because I haven't looked at that in a long time.

                And I didn't want to overly restrict ourselves saying it needs to be an extended evaluation. Maybe there's another way that's more efficient.

                But Edmon isn't it - doesn't it make sense to have - see if someone can draft up a message to the council. And it needs to be to the council on or before the 12th of May to be considered in the 20th of May decision and I think which we really need to expedite to make sure that happens.

                But if somebody can draft hey, we've identified this area that needs to fixing. We're not going to propose a solution but we can propose some steps and maybe even include a possible motion that could be made in this regard for the next council meeting.

Olof Nordling:  Well something...

Man:            Yes.

Olof Nordling:  ...along the line if I may say that - well that sort of keeps the string similarity review as it's done. It's sort of - regarding the string per se. But it would be a way then to invoke attenuating circumstances that in this case it's not detrimental or whatever because. And that would sort of be the possibility I have doing an extended evaluation.

I'm just thinking aloud how this could possibly be made.

Avri Doria: I can certainly - well I've had my nose buried in Module 2 and Module 3 in terms or writing up my semi-literate (treatise).

So if you want I could, you know, start off by putting a sentence or two on the list and see where people want to go with it.

And since I'm taking the most protectionist view, you know, of people that may also help. I don't know, but it's up to you guys if you want me to take a chance at casting a sentence out.

Man: I...

Avri Doria: Probably remember how to (write). It's been a while since I've written a motion but I could probably remember how to do that.

Man: I'm okay with that.

Man: That'll be great.

Avri Doria: Okay, so I'll try and take a crack on it in the next day. And I've got a couple other things I've got to do yet today. But I'll try to get it out before I sleep tonight and - at least the first draft of it and see where it goes.

Man: And Avri, even if you don't get to the motion in your first cut, that's probably not as critical.

Avri Doria:      Yes.

Man:            Once we come to agreement on what we're saying, it's probably easier to draft the motion.

Avri Doria:      Yes.

Edmon Chung:   Okay, so one last question before we wrap. I think it's usually constructive, this call. But is the anticipation really that, you know, we write this and then pass it back to council and this group would essentially dissolve and that motion would create some other group potentially?

Avri Doria:      I think don't think it's...

Edmon Chung:   Is that a good...

Avri Doria:      I think if the council decides that yes they agree and we should do more work like you're suggesting, and that could be part of the motion but not part of the statement that's sent to the staff or to the board, then this group might be the right place to continue arguing about, you know, how we set up a charter for such a working group.

Edmon Chung:   Okay. All right...

Man:            And we can always open it up to more people too Edmon. It's not as if we're an exclusive group so...

Edmon Chung:   Absolutely. And I've been trying. Trust me I've...

Man:            I know.

Avri Doria:     It took me a lot to get a bunch of people at NCSG to start paying attention to it because it is so mind-numbingly esoteric that you have to be in it for a while before it makes any sense at all.

Man:            Right.

Edmon Chung:  Okay so yes, we I think we had a really constructive meeting. And we look forward to Avri's draft.

                Do we want to try to reconvene again maybe in a week or so and so we keep track of the progress?

                Because it seems - and I fully accept the problems that I've created in slowing down the group because of my intimate contribution. So I'd like to try to take this momentum and keep it at least until we deliver this to the council. Does it...

Avri Doria:     (Unintelligible).

Edmon Chung:  It works - same time works?

Man:            Let me - next week's going to be a tough one for me. But let me look okay? The - oh hold on.

Avri Doria:     Yes, I mean there's an off chance that I may fly to Europe and be in an airplane. But I'm willing to bet I'm not flying to Europe next week.

Man:            Yes that's it...

Edmon Chung:    Well in that case why don't we do the same exercise then with I guess (all) helping us with the do over and get a call together. So hopefully Wednesday or Thursday, so about a week from now.

Man:    Edmon...

Edmon Chung:    Does that work?

Man:    ...we're talking - actually the - just to let you know, the registry stakeholder group conference call happens at this time next week. And...

Edmon Chung:    That's right.

Man:    It's a bad week for me because I'm trying to take off most of the week so - but I - so I just wanted to call that to your attention.

Edmon Chung:    Okay so when did you say we need the motion to be or a statement?

Man:    The motion and our statement that - no later than the 12th of May.

Edmon Chung:    So yes, we don't really have a lot of time so let's still try to meet sometime late next week Thursday or Friday then. Is that...

Man:    Well let's try. We can do a Doodle...

Edmon Chung:    Okay.

Man:    ...to see where we're at.

Edmon Chung:   Now is Gisella still on the phone?

Gisella Gruber-White:        (Unintelligible).

Edmon Chung:   Okay.

Gisella Gruber-White:        Next Thursday or Friday we'll try for a week - for a meeting.

Edmon Chung:   Great. Sounds good. So yes I think we're at the end of today's meeting and look forward - as I mentioned, look forward to Avri's draft and continued discussion on the list and next week.

Man:        Thanks a lot everybody.

Avri Doria:        Yes thanks.

Olof Nordling:   Okay thanks. Take care.

Edmon Chung:   Bye.

Gisella Gruber-White:        Thank you (Louise). Bye-bye. Enjoy the rest of your day.

Coordinator:        You too.

Gisella Gruber-White:        Thank you.

Coordinator:        Thank you. Bye-bye.

END