

**GNSO New gTLD Question and Answer Open Teleconference
8 December, 2008 at 19:00 UTC**

Note: The following is the output of transcribing from an audio recording of the second New gTLD Question and Answer Open Teleconference held on 8 December 2008.

Although the transcription is largely accurate, in some cases it may be incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:

<http://audio.icann.org/gns0/gns0-new-gtld-qa-20081208.mp3>

<http://gns0.icann.org/calendar/#dec>

List of attendees :

George Kirikos - LEAP
Mike O'Connor - CBUC
Jeff Neuman - NeuStar
Eric Brunner Williams - CORE
Richard Tindall - DemandMedia
Alan Bidron - Orange
Caroline Greer - DotMobi
Sebastien Bachollet - ALAC
Cheryl Langdon Orr - ALAC chair
Ray Fassett - dotJOBS
Fabricio Vayra
Natasha Lipkina
Jon Nevett - Registrar c. chair
Amadeu Abril I Abril -
Michael Palage - Individual
Jean-Christophe Vignes - EURO DNS
David Maher - Registry C. chair
Tom Watson Bank of America
Paul Stahura - Demand Media

GNSO Council

Chuck Gomes - Registry C.
Edmon Chung - Registry C.
Stephane van Gelder - Registrar C.
Adrian Kinderis - Registrar C.
Avri Doria - GNSO Council Chair
Mary Wong - NCUC
Tony Harris - ISP
Kristina Rosette - IPC

Mike Rodenbaugh - CBUC

ICANN Staff

Olof Nordling
Karen Lentz
Kurt Pritz
John Jeffrey
Craig Schwartz
Dan Halloran
Patrick Jones
Glen de Saint Gery

Coordinator: Excuse me, I'd like to inform all participants today's call is being recorded, if you have any objections, you may disconnect at this time. Thank you, you may begin.

Chuck Gomes : I'm Chuck Gomes; I'm the GNSO Council Vice Chair and this time, we actually have Avri Dora, the Chair of the council, on as well, but she and I decided late last week that we'd just continue with me moderating the meeting. So, she'll be able to participate as an individual contributor here and then. She can set me straight if I get off base.

So, Glen, thanks again for all your help. Glen de Saint Gery is the GNSO Secretariat and she does all the logistics that make these things work. Kurt Pritz is on as ICANN Senior Vice-President of Services and, Kurt, let me ask you, like I did last time, to introduce the other ICANN staff on the call.

Kurt Pritz: There is Craig Schwartz, Karen Lentz, Patrick Jones, John Jeffrey and Dan Halloran on the call

Olof Nordling: And Olof..

Chuck Gomes: And Olof Nordling.

Olof Nordling: Yeah.

Chuck Gomes: *Welcome to all of you from the ICANN team. Again let me start off like I did last time. Because of time limitations, I'm not going to ask each person to identify themselves upfront. But the first time, you have a comment or a question, please give your full name and your organization, if you're representing an organization. After that, you don't need to give all that information: just make sure you give your name again each time you talk.*

We are going to have to be efficient of time use because I'm sure we'll need most of the two hours that we have here. The following guidelines are intended to accomplish that. Hopefully, you saw these because Glen did send them out to people that she knew had RSS with sufficient time.

The comments and questions should relate to issues in the draft new gTLD Applicant Guidebook and the supplementary documents, as well, that are posted on ICANN's site. Remember this is not the time to rehash issues that were dealt with in the new gTLD PDP process. In other words, this time shouldn't be used to try and change GNSO recommendations that were already approved by a 2/3 majority of the GNSO Council and have been presented to the Board.

Again, we will organize the Q&A session by module, starting with Module 5 and then doing Module 6. When asking a question or making a comment,

please, if you can, site the guidebook section number, the page number and paragraph if possible.

Again, we won't be to rigid on that, but the more identification you give to the section, it helps Kurt and his team, and the rest of the people on the call, identifying where you're at in the given module or supplementary document.

When asking a question or making a comment, I will be assuming all the way through this call that you've already reviewed the relevant documents. Kurt may give a one or two minutes' intro when we kick off, other than that there's not going to be any presentation so that we can save time to focus on questions and answers.

I will again be trying to manage the queue and as long as it can be done effectively, I'll probably also allow follow-up questions.

In other words, I will let people jump into the queue if it's specifically related to a question or a comment that was just made. Again, as long as that works efficiently, I will do that.

You don't have to get in the queue right at the beginning when I open up the queue. You can get in later. I will try to pause periodically, at appropriate times, and ask if there's new people for the queue. If I'm not very good at that, just try to find a convenient place to let me know you want in the queue and do that in a minimally disruptive way if you can.

Again, let me repeat, like the operator already said, that the call is being recorded, and let me also say – that like I already said, you need to give your name each time. The recording will be available on an MP3 shortly after the call. So, you can let your colleagues and friends know that they can listen to the whole call on that MP3. It may also be transcribed, but we'll see whether

that's possible to do that or not. the key thing is that it will be recorded though.

Any questions? Okay, Kurt, let me turn it over to you for just a brief intro, if you'd like to.

Kurt Pritz: The board overview is that the Applicant Guidebook, the instruction manual for applying for a new gTLD maps to the proposed process for applying for a new gTLD. So the modules in the guidebook sort of map to the process.

So Module 1 provides an overview of the process and gives you some specifics on the necessary detail and how to go about applying for one.

Module 2 describes the evaluation process, particularly with request to business and technical criteria, and other checks that the string and the applicant must pass.

Module 3 describes the objection and dispute resolution processes that map to the GNSO recommendations that certain very important interests should be afforded some level of protection through this process and that a path should be provided to bona fide objectors to object to names and have a dispute resolution process in order to resolve the conflict.

Module 4, then after applications are through the process and have passed, if there's identical strings or very, very, very similar strings that have passed, there needs to be some method of resolution of that contention between or among the identical strings. So Module 4 applies to that.

Module 5 and Module 6 aren't what we're going to talk about today. So I'll just do tag detail.

Module 5 is entitled “Transition to Delegation” and it’s comprised of three major sections: one is the proposed registry agreement that ICANN and registries might enter into as a precursor to delegation. Second, it describes a set of pre-delegation tests, mostly technical tests, to ensure that the registry is followed through on some of its promises that were made in the application, and then finally, the module describes the IANA delegation steps. So this module really addresses a host of the 19 policy recommendations by the GNSO, two broadly and then, nine of them specifically.

There are certain terms in the agreement that were required by the GNSO policy recommendations: that the base contract be available to applicants at the start, that it be of commercially available length, that there be a renewal expectancy, that there’s a requirement to comply with consensus policy, that it features compliance and sanction procedures, that it requires compliance with IDN guidelines and requires the use of ICANN accredited registrars. So, it’s just a brief bulleting of the GNSO policy recommendations and I’m sure that just about everybody on this call has read the agreement carefully and has mapped those requirements into them.

Module 6 really are the terms and conditions to which the applicant agrees in applying for the new gTLD.

So, that’s the introduction and I appreciate everybody taking the time to be on the call. I know it’s an investment in time: some of you are not in the middle of your day like I’m in the middle of mine, so I appreciate that, your undertaking that inconvenience too.

So, Chuck, if you want to take questions or if there are none we can just conclude the meeting.

Chuck Gomes: *So it'll be a short call, huh? He knows he won't get off that easy, besides, he enjoys it. Okay, let's start a queue for Module 5 only, right now. So, if people will let me know, I would start writing down names.*

George Kirikos: *George, here, I'd like to join the queue.*

Chuck Gomes: *George? I got George, okay.*

Jeff : Jeff Neuman: *. Jeff Neuman*

Chuck Gomes: *Jeff, okay.*

Eric Williams: *Eric Williams.*

Chuck Gomes: *Eric, okay.*

Amadeu Abril: *Amadeu.*

Chuck Gomes: *Amadeu, okay.*

Amadeu Abril: *Yeah.*

Chuck Gomes: *Somebody after Amadeu? Okay.*

John Nevett: *John Nevett.*

Chuck Gomes: *John Nevett? Okay.*

John Nevett: *Yeah, thanks.*

Chuck Gomes: Anybody else?

Cheryl Langdon-Orr: Cheryl.

Chuck Gomes: I'm sorry, who was that?

Cheryl Langdon-Orr: Cheryl, you've forgotten me, already.

Chuck Gomes: Oh, Cheryl, okay, I remember you.

((Crosstalk))

Chuck Gomes: Anybody after Cheryl? So, I have George, Jeff, Eric, Amadeo, John and Cheryl and then I'll add myself at the bottom of that list for the questions I have on this one. And again remember...

((Crosstalk))

Chuck Gomes: Who was that?

Paul Stahura: Add Stahura, I'm sure I want to talk. Add myself after yourself.

Chuck Gomes: I'm sorry, who was this?

Paul Stahura: Paul Stahura.

Chuck Gomes: Oh, Paul, I'm sorry it blurred when you said your name, Paul. So, I missed it. Okay, very good! So, you're anticipating a follow-up to mine, right?

((Crosstalk))

Chuck Gomes: *All right, let's start and remember you can get in later. If you do have a follow-up on one that somebody asks, just find a convenient time to let me know there and I'll probably allow follow-ups as much as we can do that efficiently.*

Let's start off with George.

George Kirikos: Hi it's George Kirikos from Leap of Faith Financial Services Inc. I have two questions. I actually posted 18 questions in regards to the written comments but I'll limit myself to two. And the first one goes to the issue of how the proposed contract interacts with existing GTLD contracts?

In particular dot com, net, biz and org, all have what's called the equal treatment clause, which is Clause 3.2.(B), which basically says that anything - any other registry gets, they get to amplify it.

And so...

Chuck Gomes: *Just do the one at a time, George if that's okay. I'll let you do your second one too in your turn here.*

George Kirikos: Actually, that equal treatment clause doesn't appear in the U draft, which is actually a good thing because that equal treatment clause can create lots of problems, as we know. So my concern first is with the interaction of that equal treatment clause with the elimination of pricing controls.

And that's Clause 7.3, which actually doesn't appear in Module 5 because it's gone from the agreement. And in the black lining document that was just

released last week 7.3 wasn't listed. So they might want to redo that black lining document because that 7.3 was important. The 7.3 created pricing caps for dot come, net, biz, 7% a year for dot com and 10% a year for the others. So, my first question is about the elimination of pricing controls. Isn't it true that VeriSign and other registries could ask for the same thing under the equal treatment clause and replace it with their 2.9%, which is a transparency of pricing and obviously a very weak alternative?

Chuck Gomes: *Just to let you know, George, a question like that came in one of the workshops at the IGF last week. Kurt, it's all yours or whoever you want on the team to address that.*

Kurt Pritz: Thanks, George. I'll start and then if my - if I misspeak my answers need augmentation, I'm sure somebody will help me out.

George Kirikos: I also want to remind people that we had this debate about tiered pricing two years ago and the community was very vocal about registrant protection. The Board go back to the drawing board, we need to make sure that registrants are protected. It's very shocking that this elimination of pricing control would appear in a draft contract a second time.

Chuck Gomes: Okay, Kurt?

Kurt Pritz: Initially, these new contracts don't affect the existing contracts in any way. The existing contracts will continue to exist in their form. In fact, going forward whatever force is required, say, price controls in existing contracts still exist. Those agreements will be taken up on a case by case basis when they expire.

I think that we tried to address, but maybe did not sufficiently, in Cairo the issue of equal treatment or maybe we didn't in all the forums that this was discussed. So ICANN has taken what's become a sort of complex issue and really reduced it down to really simple terms. ICANN undertook to simplify the new agreement and you can tell by the vastly lower number of pages in it that it's been simplified and part of that process was to take out clauses that we thought might not have real effect.

So everybody in ICANN certainly sees the equal treatment of registries as an obligation ICANN has to its bylaws and other legal obligations. It is not in the current agreement because we assume that whether it's in or out, ICANN has an obligation to act as if this clause was in the agreement.

We've certainly heard all the comments about possible effects of taking it out. And I'm sure that the results of all these comments will be seen in a subsequent draft to the agreement.

Regarding the elimination of price controls, George, you're right that the new sTLD agreements all feature no price controls, as do the renegotiated agreements. Right now only com, net, org, biz and info have price controls and the remaining registries do not.

In order to contribute to this dialogue ICANN will release a paper very shortly with some outside expert advice that we've gotten about the effect of price controls as far as encouraging competition in the domain name system and the effects of price controls and the effect of elimination in price controls. I hope that contributes to that discussion.

And then finally, we heard your comment about missing something in the black line version of the agreement and Dan Halloran's already taken a note and is having our council look at that.

George Kirikos: Am I hearing you right that you just said that there's the possibility that, even higher, there's going to be elimination of price controls on dot com?

Kurt Pritz: No you didn't hear that.

George Kirikos: Okay but...

((Crosstalk))

Chuck Gomes: I was hoping that I heard that but I didn't. Sorry about that.

((Crosstalk))

George Kirikos: ...that'll advise people on it?

Kurt Pritz: Excuse me?

George Kirikos: You said that there's some paper that's coming out on price controls?

Kurt Pritz: Yeah, with respect to the new gTLD's

George Kirikos: My second concern was about just general. You said that, in general, the interactions with the existing contracts people can propose changes to the new gTLD's under a certain process.

And we have to be very, very careful that the Module 5 draft contract is specific enough so that it protects registrants from any changes that happen in new TLDs because there are millions of people that don't care one iota about new TLDs, whether it be dot store, dot sports, whatever.

But because the existing gTLDs can ask for anything: that new registries get some dot butterscotch or dot flowers or whatever, could ask for something and the whole community is not going to be watching for every little change that those minor TLDs ask for? But I'm sure the big TLDs will pounce on anything that those little TLDs get?

So, the interaction between those new TLDs and the legacy to TLDs needs to be made bullet proof because...

Jeff Neuman: Chuck, this is Jeff...

((Crosstalk))

Kurt Pritz: That's right, George. And, I agree with you completely on that. One of the goals of having a standardized agreement is that there are not different provisions for different registries that might fly under the radar.

George Kirikos: Exactly.

Chuck Gomes: Jeff, did you have a follow-up?

Jeff Neuman: I have a follow-up on this topic but...

Chuck Gomes: Go ahead.

Jeff Neuman: Do you want to take a queue for that or...

Chuck Gomes: Well does anybody else want to follow-up on this one?

Tony Harris: I'd like to get in queue, Tony Harris.

Chuck Gomes: Okay, Tony, got you in the queue as well. So I've got: Jeff and Tony...

((Crosstalk))

Chuck Gomes: And Mike, did I hear somebody else besides Mike? Okay, let's go with Jeff.

Jeff Neuman: I guess two points. Obviously I've been heard on a number of occasions. First thing is I want, even though George is making these comments about existing registries, just to point out that George is not an existing registry and so, anything that's reflected in this transcript of George's assumptions of what existing registries will ask for should kind of be taken as an outsider's comment.

((Crosstalk))

George Kirikos: ...will ask for, but they are able to and so, I wanted to preclude the possibility that...

Jeff Neuman: But second of all those, equal access provisions are in there to ensure that there's fair competition, which is one of ICANN's missions. But on the equal access - where you said that registries will have access to existing mechanisms if I'm correct? if you take that out of the agreement, I'll ask your legal staff because I know the answer, that can ICANN be...

Chuck Gomes: *Those of you who are not talking you might want to put your phones on mute until you're ready to talk, just in case there are external noises that will interfere here. Thank you.*

Amadeu Abril: Can you remind the command was asterisk 4 or something like that?

George Kirikos: Star 6.

Chuck Gomes: Six.

Jeff Neuman: The question is - and maybe it's for ICANN - by taking it out of the agreement, then ICANN can no longer be in a breach of contract suit since you can't really have a breach of contract against someone's bylaws. So, just to refresh under the ombudsman and the independence review, those are still advisory to the Board, is that correct?

Kurt Pritz: I don't quite understand your question; what's advisory to the Board?

Jeff Neuman : The bylaws - invoking what you said in the existing mechanism whether it be the ombudsman or independent review or I forgot the other one that's mentioned, those are advisory to the Board, is that correct?

Kurt Pritz: Well they're procedures that are employed by those wishing to be heard by ICANN. There's three different procedures.

Jeff Neuman: Right but there's no outside binding arbitration that would be binding on ICANN?

Kurt Pritz: Right.

Jeff Neuman: So, really, not an effective mechanism to enforce a contract and certainly it doesn't help accountability just from our standpoint? And I'll follow up later with other questions.

John Jeffrey: Jeff, do you want to clarify the question because we're not really understanding where you're going. We can all agree that the three different courses, independent review, the reconsideration and the ombudsman are all advisory to the Board; there's certainly no argument about that. And I don't think that if we said it, we certainly didn't mean to imply that those replaced the need for equitable treatment.

I think the comment regarding that provision and the inclusion of it in the next draft have been well heard.

Chuck Gomes: And, Jeff, before you respond, and for those of you who don't know his voice: that was John Jeffrey.

John Jeffrey: Sorry about that.

Jeff Neuman : Where I'm going with that, is that under the existing - when you have something in your contract that is something, you can go to an independent legal authority that's got jurisdiction over the contract and you could force the other party to the contract, who's violating the contract, to actually remedy that violation.

Whereas, if all you say is we shouldn't even have the equal access provision in the agreement because it's part of our bylaws, then even if there're other mechanisms that ICANN has created, they're all internal within ICANN and ICANN's board has a choice of whether to follow the decision, let's say of the ombudsman or an independent review panel or not follow it.

And that's really not an effective mechanism, especially if ICANN is found in violation of a certain provision.

Chuck Gomes: Did that help, John?

John Jeffrey: Yeah, but I think the answer is still the same; we've heard and understood the comments that you made both in Cairo, subsequent to that, the comments that are already coming in on it on the public forum.

You know, I hope we don't spend the whole time talking about equitable treatment because I think we can all agree that the points have been well made and I would expect to see a different way to treat this in the next version of the agreement.

Chuck Gomes: Thank you. And before we go to Tony, George, I want to make sure that the equal access or equivalent treatment that you mentioned in your question is the same that what Jeff's talking about here; is that correct?

George Kirikos: I'm talking about 3.2.B of the dot com registry agreement, which says, "ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably or inequitably and shall not single out registry operator for disparate treatment unless justified by substantial and reasonable cause."

Chuck Gomes: Right, okay.

George Kirikos: That's...

Chuck Gomes: And, Jeff, you're referring to the same clause?

Jeff Neuman : I am. I just want to stress those last few words that George had mentioned, 'unless justified by really substantial and reasonable cause'. So George, I think in some of your circumstances, your concerns could be taken care of when viewed in a certain context.

George Kirikos: I agree with Jeff that, for example, we could have no price controls on TLDs that have say less than 1 million or 100,000 or some other number of registrants and that could be a way to differentiate and have it be a reason for disparate treatment that's justifiable. That might be one solution and you can call those consumer GTLDs or just like the way we have different rules for sponsored and unsponsored gTLDs. But the way it's drafted now, it's too unclear.

John Jeffrey: Right and - I'm just curious. The second comment I had was on the paper ICANN said it was producing, or maybe it's not in that paper, but we all have - biz, info...- have price controls because of the legacy situation; there was never an economic study as to whether, let's say biz, who has less than 2% of the market really, needs price controls. We have it as a result of just the legacy.

So, if there are new rules for new TLDs, that do not have price controls, then, we would ask that certain study be done as to whether the current TLDs that have price controls actually need them. And if they don't need them, then those price controls may need to be removed.

Chuck Gomes: Okay, let's move on to Tony Harris.

Tony Harris: Yes, I'm sorry, I was thrown off the call, there was an echo on my line so I probably missed part of the the previous discussion on price control. I just wanted to confirm whether or not there will be price controls on new gTLDs?

Kurt Pritz: The way the current guidebook is written is that there are not price controls and that's...

((Crosstalk))

Kurt Pritz: ...that's the opportunity for public comment.

Tony Harris: Thank you.

Chuck Gomes: Okay, let's go to (Mike).

Mike Blade: Thanks, Chuck. Mike Blade. Kurt, this is just a quick question and it's kind of a follow-up to George's concerns about, if you will, a revision of the existing registry agreement. In the draft plan that I was just reading today they talk about coming up with a well-defined and publicized process for reviewing registry agreements by 2010.

So, I guess my question is, that statement there has nothing to do with reworking existing registry agreements to comply with this model template or is that just a - am I mixing apples and oranges?

Kurt Pritz: I don't think you're mixing apples and oranges. I think what's in the strategic plan is one item where ICANN's attempting to identify all its important relationships. You can put the organizational reviews under that and take all the important aspects of its operations and services that it provides and review them so it can provide better service. So I think the draft plan is referring to that.

((Crosstalk))

Chuck Gomes: Is that all right, Mike?

Mike Blade: Yeah, yep, fine.

Chuck Gomes: *Okay, going on then to our next person in queue, Jeff Newman.*

Paul Stahura: Hey...

Kurt Pritz: It sounded like there were more people in queue, weren't there?

Paul Stahura: Yeah, I had a follow-up from the original George's thing, remember?

Chuck Gomes: Oh I thought you wanted in the bottom of the queue, Paul?

Paul Stahura: Yeah, but then after George spoke, I said I would like to follow-up to his comment.

Chuck Gomes: Oh, I missed that one, as you could tell. So, go ahead, Paul.

Paul Stahura: Yeah, I'm going to read that one clause again because I think it's really critical. The clause in the registry agreement says: "ICANN is not going to apply standards, policies, procedures or practices, arbitrary, unjustifiably or inequitably and not single out registry operator for disparate treatment unless justified by substantial and reasonable cause."

People have to really re-read that again and again because because that's in there doesn't, in my opinion, mean that dot com gets to have unlimited prices and enable whoever they want just because these new gTLD's have that

ability. And just because these gTLDs might have some other clause in their agreement, doesn't mean that the legacy registries get those clauses.

So, I don't think there was much affect of these new gLTD contracts on the current GTLD contract, but it would be nice for ICANN to come back...

Chuck Gomes: Are you still there, Paul? You broke off.

Paul Stahura: I'm sorry, I was going to say it'd be nice if - I don't think the new gTLD contract affects the old contracts, okay, because of this statement.

George Kirikos: George here. I respectfully - I think you're wrong; it definitely does.

Chuck Gomes: Well, we're not going to debate that here...

((Crosstalk))

Chuck Gomes: I think several people have made good points on this. Does anyone else want to follow up on this issue?

John Nevett: This is John Nevett. I have a follow-up on the pricing control issue. So, I don't know if that's the issue you're talking about, Chuck?

Chuck Gomes: If it relates to the discussion we've been having, John, yes.

John Nevett: As far as the point that George and others have made, my question for Kurt and John and other ICANN staff people there, did you all consider one of the current pricing positions that are in there, requires a six-month notice period before registries increase fees? And many folks feel that's an important

characteristic and important requirement when you're talking about increases, especially with regard to renewals of domain names.

If a consumer or a registrar and their end user customers can have an increase with very little notice, it could be considered as a competitive behavior. Do you guys all consider not a pure price control provision but at least a required notice provision when putting this contract together?

Jeff Nevett: That's how we discussed quite a bit what we would call opportunistic behaviors by registries, especially as they apply to renewal prices and how that would play out.

I think the idea of a notice period going to mitigate the effects of that is an excellent idea as opposed to trying to write a price control provision. It's really difficult to write over a large number of registries with different business models.

Kurt Pritz: Okay, thanks, Kurt, thanks, John. Anyone else want to follow up on George's questions? And you'll hear me say this several times in this call but I'm assuming that most, if not all, of you have already done this, but if you haven't submitted your questions in writing to the comment forum on ICANN's site002C please make sure you do that by the 15th which is the deadline of the English comment period.

Anyone else on George's questions?

Cheryl: Just Cheryl here, and it's a comment, not a question. It'll be related to...

Kurt Pritz: Go ahead, Cheryl.

Cheryl: Sorry, I seem to have brought back a bit of a froggy throat from India. It just piqued my interest and it's not related to the questions I have listed later; we've often talked about seeing this opportunistic behavior in the industry space.

One of the ways we approach that was the development of the Industry Code of Conduct, which is an industry self-regulatory document that was, in fact, worked on both by the supply and the demand side. So, we had real consumer interest groups sitting around with real registries and registrars.

And of course, it is the overarching document that controls things like the amount of time that needs to be given, the mechanism which the time is given right down to the size of the font that it needs to be given.

So there's other ways to look at controls rather than just pure from a registrar's protection point of view rather than just pure pricing.

Kurt Pritz: Let me add one other comment on price controls that I think it's very important that everyone understands. We typically think of price controls as maximum prices but elimination of price controls also can allow freedom for lower prices as well.

I think that's important and I suspect that was part of the rationale with regard to competition that ICANN's staff has considered in their discussion of this.

Let's go on to Jeff Newman.

Jeff Neuman: My question's on Section 6.1 of the agreement and it has to do with the fee that we charged for the transaction and it says, "Including all bundled

products or services that may be offered by registry operator and include or are offered in conjunction with a domain name registration.”

So I submitted a question on the list on this which is my second question on that email. So I was wondering if ICANN could explain exactly its concerns and why it came up with this provision and how it intends to implement that position?

And a little bit of context is when ICANN originally said that it needed fees from registries it did so under the guise of recovering its cost as opposed to some sort of revenue share arrangement, which is more common amongst for-profit organization as opposed to not for profit organizations.

So I understand, you know, why you have a minimum because you want to recover your cost no matter what, whether not dependent on the number of sales that it means, but why does ICANN have both a minimum plus a rev share that includes any and all bundled products and services, which means, for example, if there were a registry that sold a domain name in conjunction with - and I'm making this up - but a hosting account or some other technical function that it would not only get 5% of the sale of the registration of the domain name but it would get 5% of the domain name, plus 5% of the hosting, plus 5% of anything else.

So that's my concern, if you could just explain that for a couple minutes that would help. Thanks.

Kurt Pritz: Yeah, just a few comments, Jeff, thanks very much. So the fees provision attempts to anticipate a wide variety of business models. So, business models may not just be the registration of domain names and may not focus on them.

And some business model may garner a large amount of revenue and therefore require a significant attention or the provision of services by ICANN staff.

So that the fees provision started with trying to anticipate different business models and writing separate clauses for each, and that became, as you can imagine, unworkable right away.

So what we're trying to do here, is create a simple agreement that applies to many different business models. Some might be anticipated and some certainly not and that's what we're trying to encourage here as part of this whole process.

So that was the intent. I think that with regard to revenues and cost-recovery, certainly ICANN's not for profit and intends to stay not for profit and comply with those requirements. I think with supporting any new gTLD there are some minimum services that are going to be furnished that kind of tied to the floor, a floor fee.

And then, as registry would become very large, it would exceed that floor and pay some transaction fees and that's in anticipation of a very large registry then requiring - or being provided - more breadth or more depth of services by ICANN.

So if you think about the ICANN budgeting process, it's up to this community discussion. Expenses are set through this community discussion and approved by the Board and then, the revenues need to match those expenses and also comply with the legal requirement imposed by ICANN being a not for profit.

So you'll see in the new gTLD budget that ICANN releases, that there's a plug number right now but we're going to develop numbers for, as revenues

increase - as we anticipate they will due to the large number of registries. We think those registries should pay their fair share, and then we think that fees as a whole will come down because necessarily the fees can exceed the expenses by some set amount that complies with whatever the rules are for not for profits that I don't know.

Chuck Gomes: Kurt, a follow-up to both Jeff's question and what you're saying just for more clarification here. What happens if you're using a percent of number of registrations assuming that they go beyond the minimum thresholds, however that ends up, what would happen if a registry gave away domain names?

So, you know, 5% or whatever of nothing is nothing. So I know you guys as detailed as you look at this you look at that case.

Kurt Pritz: We'll charge them 10%.

Chuck Gomes: Ten percent of nothing is still the same.

Kurt Pritz: Oh, okay.

Chuck Gomes: As you knew.

Kurt Pritz: So I'm doing very well.

Chuck Gomes: Yeah, you are.

Kurt Pritz: They get the ccTLD framework accountability where they pay what they feel is equitable.

Kurt Pritz: so, that's exactly right that there wouldn't be higher fees in that regard. If somehow, services were bundled and there was some other revenue generating mechanism. This fee agreement attempts to capture that and it also attempts to capture the idea that a registry could theoretically charge nothing for a registration and then say it's obligated to pay no fees and derive its revenues through some other bundled service.

So it's an attempt to accommodate that and also to, you know, anticipate the different business models. But you're right, on the percent of registration fee if the registration fee was 0 then that fee to exceed the floor would be 0, too.

Jeff Nevett: Can I follow up on that?

Chuck Gomes: Yeah, I was going to give you a chance. Go ahead, Jeff.

George : I'd like to be on the queue, George.

Chuck Gomes: George? Okay.

George Kirikos: A couple things, number one is: Kurt, that's why you have a minimum. Even if there's a percent of nothing, you still have a minimum but once - but ICANN is not done yet and maybe I haven't seen it is something - a statement from you guys showing what it costs or what you believe it will cost per registry regardless of how many registrations it has.

We don't know what figures you guys use to determine how much you think it'll cost per registry to support these gTLD's from ICANN's perspective unless you're saying it's (70)...

Chuck Gomes: Let me share that thought

Jeff Nevett: All right, unless you're saying it's \$75,000 a year. But it would be good to see of the back up detail for that because we just haven't seen that. I'm sorry, there was another point that I had and I'm sure I'll remember it after you...

Jeff Nevett: Oh, I'm sorry, yes, I just remembered now. You made the statement that you kind of correlated revenue with the amount of work that ICANN does to support it and I'm not sure that that's an accurate correlation.

I don't think that the amount of revenue generated by a registry necessarily has any correlation with the amount of work that ICANN's staff is going to have to do to support that gTLD, and it just sounded like that was a given, and I disagree with that wholeheartedly.

I mean, I'm not sure if, for example, .org ,which probably makes four times the revenue of .biz or more, requires you to do four times the work that I make you do, for example.

Chuck Gomes: Kurt, you want to respond?

Kurt Pritz: Sorry, I didn't say there was a direct correlation there; I just said that as a registry becomes very large it is reasonable to think that they might require more depth or breadth of services.

Kurt Pritz: And what was the first part of Jeff's? I think you're right, yeah, the first part I just agreed with, yeah, the floor is there and we anticipate that. So, when Chuck said 0 fees we all agreed that was on top of the floor.

Jeff Nevett: So the first part was: if ICANN will release its fee justification for what it thinks to support a registry. How much it's going to cost ICANN to support a registry on a per gTLD basis, I guess.

Kurt Pritz: I think two things: I think that the floor fee as it's set now at \$75,000, if you think about it, given overhead and support and all those functions, that's about one FTE per registry. So that's one FTE spread across registry liaison, compliance, finance, legal and other support functions: the development of IDN's.

As a rough estimate that doesn't sound horrible? It might be a third of a person or a quarter of a person but it's not orders of magnitude different. But we understand the public comment clearly about the fee structure and the floor fee and particularly how it applies to different TLD's.

And we've read all the public comments to date about that floor fee might be too high or there might be alternative models for how to calculate the floor fee and we're going to fully take those into account as we publish the next version of the guidebook.

The second part of it is as you know, and nobody appreciates this more than me, is that the gTLD registrant contributes the most to ICANN's budget and that is done through the gTLD registrars and registries.

And we're doing a couple things. We're working hard to sign ccTLD's to frameworks and I understand Mike's comment completely but you have to get started somewhere.

Dough has flown to Europe and elsewhere several times to discuss ccTLD's fees or exploring different source of revenue. So we continue to press on all of

that, but also, we have a model for establishing an ICANN budget that provides for services to gTLD registries, gTLD registrars, but also works towards the stability and security aspects and some of our outreach to create registries and registrars in different regions of the world and to service other needs in other regions of the world and improve IANA services.

As you know better than anybody and the members of the community, the contracted parties on this call, those parties have paid from registrants due to ICANN most of ICANN's budget.

So two points: is that in this contract, in the gTLD registry agreement, we're seeking to ensure that the new registries pay their fair share of that ongoing, compared to existing gTLD registries and registrars. And also that through the budgeting process then, where fees and revenues are set annually, we expect in the long term and long term, I think that's in the short term, that fees across the board would probably come down based on the increased revenues.

And then finally, I just want to reiterate again, it sounds like I might be defending the number \$75,000 in the base agreement, I'm just saying that back of the envelope calculations shows that's not absurd but that certainly we're considering other models and other levels for that initial fee.

Chuck Gomes: Thanks, Kurt. George?

George Pritz: On the issue of the 5% pricing, I think it'll actually create a lot of problems if you do that because it's very hard to audit what the registries actual revenues are. They could do, for example, transactions with related corporations in order to make the domain free for that related corporation and that related corporation could then be the one that profits from the registration.

Also, you could have a case where you have the equivalent of the site finder or you have 10 billion domains registered that are a wildcarding of the gTLD which we don't want to rehash.

And that's going to be prevented if you have some base minimum fee, which is the same as every other gTLD, 20 cents or whatever. Having it based on the number of domains registered is more measurable because anybody could download the zone file and be able to verify what the total number of domains is as opposed to what the registries revenues are.

Also, I wanted to go back to one point that Jeff made about competition, you can see from the kind of question that the registry operators - or prospective registry operators are asking, they're more concerned about competition between themselves.

If you look at what policy makers should be concerned about. It's competition that'll bring down prices for consumers. That's lowering prices at the registry level, which they're certainly able to do if there's a price cap in place but if you eliminate the price cap that can only raise prices.

They have every incentive to raise prices with the elimination of pricing caps, but there's nothing that prevents them right now to dropping domain prices to \$2 a year or \$1 a year. If you look at the actuality they've all been trying to raise their prices by the maximum or close to the maximum. Obviously the price caps are essential.

Chuck Gomes: Okay, is there anything else in follow-up to Jeff Newman's comments and questions?

Jeff Neuman: Chuck, could I just follow-up to - not to George but just to follow-up on my own?

Chuck Gomes: Sure, Paul.

Jeff Neuman: Sorry, it's Jeff Newman again.

Chuck Gomes: Oh, Jeff? Sorry about that.

Jeff Neuman : Following up on my own question, Kurt, just to ask my question in a different way and maybe it's something to consider for the guidebook that, if this provision stays in about 5% and includes bundled products, if there's something that you could give to the applicant so that when it's making its business plan, it's submitting its business plan, it knows exactly which services that the 5% fee will attach to.

That might help out because, you know, it does help for business planning and when they do submit business plans to ICANN to evaluate, that needs to be a consideration.

And the only thing I will say to George is, George is making assumptions that are completely not true on the existing operators but this is not the place to argue that.

Chuck Gomes: Did anybody...

Chuck Gomes: Kurt, did you want to respond?

Kurt Pritz: Yeah, it gives me kind of a good segue, Jeff as I was saying earlier as part of this discussion, we were attempting to scope out what the difference services

might be or how fees might attach to those. And it was thought that we would also leave out some anticipated service or could not contemplate or anticipate a service.

So it's a great question and a comment to it would be even better. So, if there's any way, maybe in subsequent discussions, if we can discuss different models how that might work out, that would be really good because we could describe what our thinking has been and there's not time here in trying to formulate what the different models might be.

So, if there is some way to put into the agreement something that would capture that, it would be great. I look forward to comments on that as well as the questions.

Chuck Gomes: So if you have ideas there, I encourage you to submit written comments on that, which would be helpful.

Anyone else on those issues?

Stephane Van Gelder: Yeah, Chuck, Stephane, here.

Chuck Gomes: Okay, go ahead, Stephane

Stephane Van Gelder: Just to follow-up on something Kurt said earlier on - Stephane Van Gelder, I'm sorry, I forgot to introduce myself. Just to clarify something, you said you were looking at and considering the comments that had been made on the fee structure.

Are you saying that there's a good change that that fee structure will change for the second draft?

Kurt Pritz: “good” is a really interesting choice of words but it definitely means “finite”.
It doesn’t mean, you know, yes, there’s a good chance.

Stephane Van Gelder: Thank you.

Chuck Gomes: All right, let’s move on to Eric and we’re going to need to move ahead a little
bit because we have to cover Module 6 today, too. So let’s...

Paul Stahura I have to leave the call.

Chuck Gomes: What’s that (unintelligible)?

Paul Stahura: Chuck, I have to leave the call so I guess (unintelligible).

Chuck Gomes: If you want to - (Paul), do you want to jump ahead to get (unintelligible)?

Paul Stahura: Never mind. I’m just going to (unintelligible).

Chuck Gomes: Okay, all right. Okay, Eric.

Eric Williams: Thanks you, Chuck. I have three questions and I’ll be happy to take them one
at a time with other people in between or all three in one go.

Chuck Gomes: Go ahead.

Eric Williams: The first question is about specification number ‘6’, and in an effort to inject
some levity into this discussion, ‘section 6’ begins with the statement that,
“Registry operator shall implement and comply with all existing (RFP)’s.” So
my question is does this include (RFP) 2549?

Chuck Gomes: Let's let Kurt work through it.

Eric Williams: It's IP over Avian carriers RFP's.

Kurt Pritz: Right.

Eric Williams: The point of my asking the question, Kurt, is if we can't state what the requirements are, the technical requirements, that registries need to implement and so we just have this big shotgun approach that says, "All (RFP)'s", then we probably don't know what we actually want to do and it makes it somewhat risky for registry applicants to say that they meet the requirements when in fact the requirements are not stated.

Kurt Pritz: I understand that.

Eric Williams: Okay. So what I suggest between now and not too long from now is something like Internet host requirements but for registry operators. I contributed to that (RFP) a dogs age ago, but the point is we ought to be able to say what the questions are we're going to ask.

Kurt Pritz: All right. Eric, number two.

Eric Williams: Yeah, going back to section number '5' - I'm sorry; I have to click over to get to the right window - specification number '5' requires that example be present on every level that the registry operator directly does registrations for.

Now in the (CRAI-1) model, the single registrant model, this could be arbitrarily deep. So, the first of the two questions in this part is what is the utility of having the example registered arbitrarily deep?

To take name as an example, suppose name and proper name were two similar registries and proper name does three levels deep and name does two levels deep, why do we need example at two levels deep in dot name and why do we need example of three levels deep in dot proper name?

Kurt Pritz: I have muted myself. I think is a good result. So, examples reserved at the second level - I hope understand your question and this gets close to the answer. Examples reserved at the second level is part of the IDN test bed which is example.test.

What we're seeking to do is preserve that across registries so we can use the example.test label in different languages. Dan's kind of shaking his head. So, that might not be it.

I think at other levels - oh, so the question is why do you reserve it at higher levels?

Eric Williams: Deeper down.

Kurt Pritz: Or lower levels.

Eric Williams: Yeah.

Dan Halloran: Eric, this is Dan, I think the intent there is going to models, you know, some registries have operated at the second level, some have operated at a third like nameDot or proDot when they started out and the intent is to capture that kind of thing where people are going and registering names directly at the third level.

I think, you're right that we're planning to look at that again if we're talking about names where if a registry operator theoretically is controlling names at third level or registering names to itself at the third level. So, it's a good comment and we'll go back and look at that again.

Eric Williams: Thank you.

Dan Halloran: I don't think the intent is to go all the way down to like, you know, the fourth level or something on that.

Eric Williams: Good.

Adrian Kinderis: Chuck, it's Adrian, can I get in the queue, please?

Chuck Gomes: Yeah, let's make sure - you good on that one, Eric?

Eric Williams: Actually, there's a second half of that question but I'd be happy to have Adrian's question now.

Chuck Gomes: Okay, let's go ahead, Adrian.

Adrian Kinderis: Actually, my question's on a new topic, Eric, if you...

Chuck Gomes: Oh, you wanted in the main queue, Adrian? Okay, I...

Adrian Kinderis: Yeah, the main queue, Chuck.

Chuck Gomes: I got you in the main queue. I thought you wanted a follow-up. You're on. We'll get to you when we get through a few others. Okay, Eric, go ahead.

Eric Williams: Okay, so now about the issue of item 3166 code points we've said that all two character labels, but 3166 is a subset of a two character label space but what is the point of having reservations where there are no country codes associated with the two label characters?

I could pick on in particular AP, I think, which is the African intellectual property organization. They're not a country. Why should we care about their claim on the label?

Kurt Pritz: I think you're exactly right, after you. Our intent was to address that through the rest of that paragraph which says, "The registry operator may also propose to release these reservations based on its implementation to avoid confusion with country code domains."

If you're thinking about one agreement across all registries, the way they handle that and the way to provide access to these two letter codes would be to release them for those registries that are exactly, as you described, not involved in that at all.

Eric Williams: Well, it's not actually the code points that are not yet assigned or - and probably never will be assigned by the 3166 maintenance authority. Now, it's possible the 3166 MA may assign AB to the Arab League, and they may not but there's basically half of the code points are not assigned to countries. Why do we care about them?

Kurt Pritz: Well, so they might but, also, I know some are specifically prohibited, right? So AA is specifically prohibited and ones starting with Q, I think. So...

Eric Williams: Those are prohibited from assignments by the MA - by the MA of 3166 MA.

Kurt Pritz: Right, I'm helping you make your point. It depends on the size of the benefit we're conferring here but we should certainly talk about whether it's worth it or not to call those out in here and...

Eric Williams: Okay.

Kurt Pritz: ...provide them.

Eric Williams: I'll take any help I can get. So...

Chuck Gomes: Yeah, and if you have specific ideas there, Eric and haven't already submitted them go ahead and do that. You have one more question?

Eric Williams: Yeah, I do and this one is about section 'specification 2' - escrow. Now, a long time ago Louis and I wrote one of the original escrow specs and we put in compression because we were thinking of registry escrow going by a physical media to the escrow service provider.

And, of course, in our wildest dreams we thought that the new registries, then in 2001, would fill up an entire CD, not so much in fact. The current language drops are actually specifically bans the use of physical media for transport of the escrow deposit.

Given the fact that registries are going to be provisioned with PDF in all likelihood and the registry escrow provider should be adequately provisioned from birth again, why are we specifying compression in the escrow specification?

Patrick Jones: This is Patrick Jones. This draft specification was developed through a working group on a detailed (B) registry. And this was one of the

recommendations that came out of that small group. I guess if you have a question, send it in as a comment and I'm sure this section will be revised.

Eric Williams: Thank you very much Patrick. And thank you Chuck.

Chuck Gomes: Thank you Eric. Lets go onto Amadeu.

Amadeu Abril: First, I want comment on the pricing issue because I think that Kurt has already submitted some comments. So that's it. I would like commenting on things that are not there to start with.

The first, is that it's mentioned that, community based TLDs will have some sort of an annex. I guess something like traditional Appendix (S) or Schedule (S) to the sponsored agreement where the registrations limitations or the community definitions will be described.

It would be very helpful if you could provide some more model language for that or boundaries, some more description in the next draft of the guideline.

Perhaps, you could take some of the historical examples from WGM to the (CAT) or wherever you want and say something like that particular community or just concrete points regarding that because I think that the current draft should be discussed and the next one should have some more detail on that.

The other thing missing now, and this is really a question, is whether this is intended. For instance, there is no reference to one traditional clause especially when the community base, the sponsor TLDs contracts, which refers to the extent of policy of authority delegation.

And there is nothing like that here, even not a mention, because this could be the case for community based TLDs or for single registrant TLD, single company. Anything but our usual publicly available TLD and therefore, we will have probably more things that could be decided internally.

The other questions is the question of the ownership of the database. I already mentioned that in Cairo, and things like that. So that's not very relevant either.

The last thing, Kurt made a comment some time ago, I think it was before Cairo, in the sense that in the country, they would take into account the fact that it could probably be signing the gTLD contract with what private entities and public global entities, be that international organizations or local authorities or things like that.

In some of these cases, for instance, the question of applicable law or mandatory arbitration are quite difficult. I don't know whether there's still some idea of handling that completely or that the current language is the one that they would need to accept even if some of them cannot through their local public requirements. Therefore, they should start a private law vehicle for doing that application. Thanks.

Chuck Gomes: Amadeu, am I correct that you mainly wanted a response now on the last question or issue that you raised and that...

((Crosstalk))

Amadeu Abril: Yeah, the first one was just a suggestion and the last one was the real question.

Chuck Gomes: Thank you.

Kurt Pritz: I think that is a very important issue. Recent negotiations ICANN conducted with certain entities that are bound by choice of law provisions and some other aspects of agreement has pointed out how this is difficult.

I would suggest for the next version of the agreement. It is something for us to discuss: to indicate which of these provisions we think might be problematic in negotiating with the public/ a public entity. Which clauses might be negotiable for public entities, going forward, just to identify and draw a dotted line around those. Thanks.

Chuck Gomes: Now (Amadeo) were you just talking about public entities or does that go further than that?

Amadeu Abril: No, the complete question was on public entities because it was a public question and an answer from Kurt. I think it was in Paris and it was specifically on that: applicable or mandatory arbitration and things like that.

Chuck Gomes: Very good. Thank you.

Amadeu Abril: So that answers my question, yes.

Chuck Gomes: Very good. Okay. I think we're up to John Nevett.

John Nevett: Yeah, just getting off mute, sorry. I have a couple of questions as well. First question relates to new Section '6.4' of the agreement; old Section '7.2' related to variable registry level fees.

And in the current registry agreement there is a cap on registry, variable registry level fees. These, for folks that don't know that ICANN puts in its

budget and registrars have the ability to vote on these fees. To date, registrars have always approved the fees but ...

The other existing question is a cap on these variable registry level fees of either 20 cents or 15 cents depending on the registry agreement and the cap doesn't appear to be the new draft gTLD agreement.

That could be just a blank check for ICANN. My question is: was that intended? and if so, could that be corrected? First question.

Chuck Gomes: Right. So thanks John. That distinction or that qualification is definitely not in this agreement. So, you know, please memorialize your comment and add it to the comments section so that there's a basis for considering it.

John Nevett: Okay. We will do that. But so was that deliberate or just ? - was that intentional or not, I guess, is the question?

Chuck Gomes: So...

((Crosstalk))

John Nevett: I'll save you...

Kurt Pritz: This is the best answer I have to your question. I'm looking around the room here, and this agreement has a lot of aspects to it that were prepared by outside council. So, among us in this room, nobody knows the specific answer to your question. But I kind of...

((Crosstalk))

Kurt Pritz: I kind of think that's irrelevant. The issue is whether or not it should be included or not, so...

John Nevett: Fair enough.

Kurt Pritz: you know, I appreciate your bringing it up and we should...

Man: And I certainly wouldn't blame it on outside council. I think we had a few discussions about it. I don't think, we decided formally to go one way or another.

John Nevett: Okay. Fair enough. Thank you. Second question relates to the changes dated a few days ago. That seems to include and incorporate, by reference, the number of items that aren't actually in the basic agreement.

I guess the intent was as Kurt indicated earlier to simplify the agreement so you incorporated by reference this other document. Are there any controls intended for those documents or can ICANN change those at its whim. So essentially you have two categories of documents that I'm concerned about.

Man: Okay.

John Nevett: Category one are the incorporated by reference documents. And what kind of process will go into changing those and updating those? And then the second category of documents is essentially the contract itself and then the amendment provision in the contract itself with the ICANN proposal to change.

Two thirds of the registries vote against it and then ICANN could still go forward with the vote of the Board. So, those are the two categories. Process

incorporated by reference document and I guess the thought behind the amendment process for the contract itself.

Dan Halloran I think the intent - I'm looking at Article 7 right now - is that Section '7.1' says certain provisions to the agreement and specifications may be amended in accordance with the process set forth in Article '7'.

So, the first part of your question, I think anything that we're changing, whether it's an external spec or the agreement itself, would be subject to the process in Article '7' and then, I'm not sure if there was another question about that then.

So Article '7' covers any change is my reading to this. Xchyu7j

John Nevett: Okay. And those documents that are referenced now, are they going to be published with the next round of the RFP?

Chuck Gomes: Isn't that correct that they would be published before the next round of the RFP.

((Crosstalk))

Kurt: So, I'm thinking there are the consensus policy where the consensus policy site was called out.

John Nevett: That's one of the examples is, you know, the new document for trademark protection is a document of...

Kurt Pritz: You're talking about the specifications to the agreement which we have draft, you know, in fact one through seven - no, you're saying no (Kurt).

Kurt Pritz: He's talking about consensus policies that are called out in...

John Nevett: No. I was talking - no, (Dan) had it right actually. I was referring more to the specifications.

Kurt Pritz: Yeah, we have the...

((Crosstalk))

Kurt Pritz: ...we have the seven draft specifications posted and if we want to change any of those specifications of the proposal, we'd have to go through Article '7'.

We'd have to first tell everybody, get public comments, all the registries we were thinking about changing something, take comments. Wait at least 30 days and then give notice of the proposed change whether it's a change to the spec or a change to the agreement.

And then there would be a 90-day period where it would be subject to veto. That's what the draft proposed. And we've already heard other proposals and we're open for comment on other ways that we might go about obtaining approval for those for any such changes.

John Nevett: Okay. So, you're accepting public comment (obviously) and hearing it on the amendment process, be it amending specifications or the contract itself.

Man: Absolutely yes. We want to hear all comments on that.

Kurt Pritz: And then, the thought behind the process for amending the agreement is that we're moving permanent environment where there are 16 contracted parties to an environment where there's hundreds of contracted parties and more.

And so, having hundreds of individual negotiations is somewhat untenable, especially in an environment where there might be changes to the marketplace or the technical environment that requires, the community would agree, an amendment to the agreement in a fairly timely fashion.

And that, for example, the current registrar accreditation agreement and the provisions for effecting a change there make it very difficult to execute a set of amendments that are agreed upon in a timely manner.

And that there's been a number of instances in that environment where certain registrars can start business models that the edges of the agreement that create a lot of public comment and criticism with no apparent means for addressing it.

So, this is an attempt at a mechanism or a suggestion for a mechanism to effect changes to the registry agreement. It came about after a lot of internal discussion and consultation is a suggestion and other mechanisms that might be used to effect changes to the agreement would be welcome.

John Nevett: Okay. Yeah. Obviously you understand this is not a criticism. So, we'll see if we can come up with some suggested changes that would be better.

And my last point is just back to the ICANN fee provision on the annual fee because this 75,000 or 5% - (Kurt) you said that you want the new round of registries to pay their fair share as compared to the existing ones and I look back at what some of the existing ones currently pay.

And they're all under 3% and you're looking for the new ones where they need help with competition and while they're starting out, you know, we should be helping them, not hurting them. They're all paying at least 5%, if not probably a lot more than 5%. The 75 grand will probably be more than 5% in the immediate time being, for a lot of that.

And then, if you look back at years ago, dot com, dot net, dot org, they all paid far less than 1%. If you look at verifying itself, they paid \$150,000 in 2003 I believe, based on 22 plus million names. Don't you want to give the new registries the same advantage and same ability to succeed as some of the old ones had.

And of course, all the additional fees are going to get passed on to registrars and registrants. So, we just want to make sure that it is, indeed, a fair situation. So I'll leave that as my comment and put that in the written comments as well.

Kurt Pritz: Thank you.

Chuck Gomes: Thank you, John. I'm going to move on to Cheryl because we need to get to Module 6 fairly shortly and so, right now, I have Cheryl, myself and Adrian in the queue.

Kristina Rosette: It's Kristina. Can you add me to the end please after Adrian?

Chuck Gomes: Okay.

Kristina Rosette: Thank you.

Chuck Gomes: All right. Cheryl

Cheryl Langdon-Orr: Thank you, Chuck, and you'll be relieved to know it's very short and at fairly high level and one of them is very much comment,. the other is a question.

You might be surprised to know that from the community I represent, the registrants point of view, they're not getting terribly excited about the nuances in Module 5 and Module 6.

I was concerned on a couple of points. They're all limited to Section 5.2.1 under technical testing. There has been some concern although it's not concern about the concept of self-certification. It's actually under questions 3, 7, 8 and 9, as listed. Rather that the plan for potential audit or possible audit worries a few of our members.

They would prefer to see that, particularly at the beginning of the new gTLD process a firmer commitment to audit under self certification might give them a sense of security and a better idea from the ICANN point of view, as well. And that's really a plea rather than a question.

The second section that has come, and again not terribly surprisingly, revolves around the six requirements. In other words, the questions 4 and 5. Certainly there'll be no surprises to realize that nobody disagreed with the ability to have the registries and to the reachability.

But the question has been asked, under the note in the criteria, that the reachability issue is under consideration and that the community is urged to provide feedback on this requirement.

There was a request from one or two of the IPV6 forum within Asia Pacific as to if there is a plan to have a specific forum or opportunity I think my notes say to have specific dialog on this small section of 5.2.1. That's it.

Chuck Gomes: Did you want to respond to that Kurt?

Kurt Pritz: Well yes. There's not going to be a specific forum under the new gTLD implementation to discuss IPV6 reachability or IPV6 overall. I know there's IPV6 workshops that are held periodically everywhere.

So, I would encourage either, you know, people taking the outcomes of those various forum and put them in the new gTLD comments site or if anybody here has a specific comment with regard to IPV6 reachability.

We're asking for a public comment on this specifically because I think it's understood that it's not a requirement yet and that so requiring this would be somewhat controversial or may be controversial. So to the extent ICANN receives comments that this should be a requirement, it would be very, very helpful I think.

((Crosstalk))

C Langdon-Orr: Thanks for that clarification. I'm sure there'll be a few of them coming in the not too distance future.

Chuck Gomes: Did I hear Eric there?

Eric Williams: Yeah, I'm sorry. I didn't want to step on Cheryl's statement but I also submitted written comments on this.

Chuck Gomes: Oh, thank you. Okay. Good. All right, let me move ahead. I had a few comments and questions referring to Section 5.1, the registrar agreement. In particular, the third paragraph says all successful applicants are expected to enter into the agreement substantially as written. And I fully understand.

As I think you know, Kurt, that the concern when you have hundreds of registry agreements, that amendments could be a challenge. My comment in that regard is that's all the more motivation and I know I'm speaking to the choir on this.

But it's all the more motivation to make sure the base agreement is really sound and one that not only meets the needs of the community but also still encourages innovation and diversity that are primary goals.

The first question comes from the fact that, I think and obviously I'm coming from the bias of the registry community, that the register agreements have been pretty successful.

I'm sure there are points that some people might disagree with that. But they've been pretty successful. And so, in that regard other than the fact of making the agreements much more simpler and brief, which I support if it's done properly.

But it seems to me that the changes from existing agreements to the new agreement in terms of content are pretty significant. And I'm curious if there are certain areas of existing registry agreements that staff thinks have really been unsuccessful.

And if so, what are those and why are they thought to be unsuccessful? That's a pretty broad question. So if you want to respond to that other than on this call I'm okay with that.

Kurt Pritz: I think they've been successful too. And I think that is based on the parties involved, the 16 registries, by and large and ICANN, almost always work together constructively to negotiate agreements and terms to agreements.

The hard part I think is that a lot of time was spent for example in the new sTLD round, negotiating agreements and part of those preliminary rounds was to inform this round and one thing we certainly took away is that the amount of time to negotiate those agreements was just not scalable. So that's the take away from that.

That really goes to your very first comment about trying to ensure the soundness of this agreement, encouraging diversity and everything you said. So, anything you can put as bullets under that big heading would be really good. And then, of course, where you think the agreement might really fail, we don't want to talk about that on this call, do we.

Chuck Gomes: Okay. All right. Yeah, I'd love to get some feedback on that. My next comments really are more for the point of view of the new registry operators that are selected. My own particular opinion is that the current base agreement is excessively one sided in ICANN's favor.

And I think that's really to the disadvantage of new registry operators. We're going to already have to deal with the uncertainties of a difficult economy and if there are uncertainties in the agreement that they have little control over from a contractual point of view and ICANN can make unilateral changes,

then I think that that's going to be bad for the success of new registries. And I'll just say that as a comment.

Kurt Pritz: So I'll respond to it and think of - so think of us sitting in a room and then, you know, you guys are registries sitting in a room and reading an agreement and deviding the intent. So, you know, walking in our shoes, our goal is to protect those new registries by some of the provisions in this agreement.

I think we're going to arrive to an agreement that the community agrees is a good one at the end of the day and it's this process that's going to get us there. But certainly, our attempts here were meant to protect registries old and new and try to ensure a level playing field by the provisions that are in there.

So, if you would - I'm not talking to Chuck here but everybody - read the agreement with that intent in mind, then you'd say oh, I can understand why this provision's here. I think it would be better though if it was written differently.

George Kirikos: So, I'd like to follow up on that.

Chuck Gomes: Go ahead, George.

George Kirikos: I noticed you said you wanted to make sure you protect the registry. I noticed you didn't say anything about registrants. That was very telling. I think if you want to have a more balanced set of contracts, you have to keep the registrants in mind, not just the...

((Crosstalk))

Chuck Gomes: Well actually George, just to set the record straight, what I said was: ‘serves the needs of the community while still encouraging innovation and diversity’. I think registrants would be included in the community. It would in my mind anyway. They're our customers, ultimate customers. But go ahead.

George Kirikos: I was done.

Chuck Gomes: Okay. All right. I think John talked a little bit about the specifications, and my biggest concern there, is that we make sure that process for changing those even though the specifications themselves may not be in the ultimate agreement, need to be very well defined so those are not arbitrary and so that registry operators have a predictable environment in which they can plan their businesses and offer services at a reasonable cost.

The next comment is related to Section 5.2.1, the technical testing. It says IDN tables must be developed and provided by the IDN string applicant at the time the application was submitted. The table must fulfill the requirements from the IDN guidelines as well as the IANA repository requirements in order to be considered valid. And then there's a URL reference.

Is it correct to assume that this requirement applies to both IDN gTLDs and IDN second level names in a given gTLD? And I suppose third level if it was applicable for a given gTLD. This is more of a question. I think probably that's the intent and if so I'm just suggesting that that should be explicitly stated.

Kurt Pritz: Yeah. So...

Man: That's a good question Chuck.

Kurt Pritz: Yeah. So, the requirement for an IDN table is a technical requirement. It would be required of all registries. Second, I'm reading this and I don't know if anybody has feedback whether at the time of application is the correct timing here. I just want to go back and make sure of that. But certainly, a technical requirement is a requirement for all registries.

Chuck Gomes: And all levels. Is that what you're saying? All levels of names.

((Crosstalk))

Chuck Gomes: Where I was going.

((Crosstalk))

Chuck Gomes: Anyway, we don't need to discuss that. But you understand, I thought it was maybe not too significant but probably fairly important from an IDN perspective.

Man: Yeah. It's very important.

Chuck Pritz: Adrian, you're on.

Adrian Kinderis: All right. Thanks Chuck. I've got a few questions. I'll try to spin through quickly. In Module 5, 5.2.2, it suggested there's a three to five year period of funding in the event of a failure. I know, Chuck, Kurt mentioned on a previous call that they were going to reconsider the sort of proposition of corporate TLDs, but one would argue that if a corporate fell over, went bankrupt and died, that you wouldn't need three to five years of funding and at the end of the failure, the registry would just go away, if dot, whatever. That's more a comment at this point in time unless Kurt wants to speak to that.

Kurt: No, thanks Adrian.

Adrian Kinderis: Okay. Thanks.

Chuck Gomes: Yeah, that's a good corner take. It's probably good to address because it might not be necessary. I think that's what you're saying Adrian for them to put three to five years up if they're strictly using that internally. Good point. Anything else, Adrian?

Adrian Kinderis: Yeah. I'm sorry, escrow probably goes in the same line as that. If the corporate is gone and the TLD doesn't need to function. The other side is with respect to Section 1 of the registry interoperability. It implies that there must be EPP protocol used.

In the event of a corporate where you're potentially you're registering two names, for example. It seems to be a little unwieldy to require that EPP is used in this particular circumstance. Could someone there comment on that? Was it the intention that all registries would use EPP?

Kurt Pritz: I don't know if this is worth discussing for a moment this idea of corporate registries, but it's an idea that's been floated. So I'd appreciate any comments on it.

On it's face, with the goal of of expanding the name space, increasing competition and creating opportunity for registrants, the idea of a corporate registry does not seem to be the means for getting to that goal the quickest and you've just highlighted three areas where trying to establish a corporate or corporate ID or single use registry, at three levels of complexity are now

added to the contracting process and the technical process and the registry fail over process.

I'm not sure that with the mission and the goal that was indicated by the GNSO when they developed the policy recommendations is met by this idea of corporate ID and then, the additional administration cost, complexity, different contracts, all that stuff, how do you register a name associated with a different label TLD, to put that together in time for the first round is appropriate but that's why I don't know what the answer to that is. That's why I'm trying to get opinion on this call.

Adrian Kinderis: Can I respond to that?

Chuck Gomes: Go ahead, Adrian.

Adrian Kinderis: First of all, I hope, I just didn't give the death knock to corporate TLDs by asking my question. But potentially, it's not necessarily a problem associated with corporate TLDs as much as it could be with different business models.

So, my last question, if you inserted rather than corporate TLD, would an EPP protocol be required for a domain registry that only needed three names or any envision having three names in their TLD, would an EPP be required for that registry?

Kurt Pritz: Well, whatever...

Adrian Kinderis: Not necessarily issues just around corporates, right?

Kurt Pritz: Right, so here's the problem. What about five, what about 500, what about 5000? So where do we draw the line?

Adrian Kinderis: Absolutely.

Kurt Pritz: Let's have a meeting about it and discuss that and get some technical people involved. And pretty soon we're spinning around quite a bit and spending really scarce resources on an issue that really doesn't contribute to stability, security or promotion of competition and we're trying to launch a very complex mechanism, as it is, to address the very important interests indicated by the GNSO policy recommendation.

So, our discussion here as a staff, is how to spend those scarce resources in a way that provides a launch in the most stable, workable, streamlined predictable and timely way possible. And...

Adrian Kinderis: For what it's worth I agree and I think you're going about it the right way. So yeah, if you want to make those rules based on, at a certain percentage, what you think that the TLDs will be and if that means it has to get caught, some of the peripheral ones will be caught up in that. Then I think that's the best you can do. So that's my opinion. Thanks.

Chuck Gomes: A follow-up on that Kurt and Adrian both - I think we ought to be careful though. If you try to find - define and cover every corner case, you're never going to succeed. And so you either eliminate some innovative and new ideas for the use of TLDs before you have some sort of an exception process that maybe is handled totally differently. I'm not sure what that is.

But if you really want innovation and creativity and new uses here, you're probably going to have to have some exceptional process to deal with those and I don't have the answer to what that is, but I do think that the GNSO left

that open because we couldn't really define the ideas that different people would have nor did we want to eliminate those.

Stephane Van Gelder: Chuck, this is Stephane. Can I throw in a follow-up on that.

Chuck Gomes: Go ahead, Stephan.

Eric Williams: I'd like to follow up on that also.

Chuck Gomes: Who is - oh that's Eric? Okay, be brief guys. We need to get to Module 6.

Stephane Van Gelder Okay, just a brief comment because I think what Kurt said was actually very important and I want to thank Adrian for bringing that up because if you're actually saying, which may be a valid point, that corporate TLDs may not fit with the aim of increasing competition and stability, then I think you need to be very clear on that pretty early on because you've got a lot of corporates looking at this at the moment and looking at it with the intent of putting together a TLD that may only have one or two domains in it.

So, if this process is not made with that in mind, then you may need to be clearer about it.

Kurt Pritz: Sorry, this is Kurt. I think, certainly, there will be corporate TLDs and there's no mechanism that seeks to prevent them or seeks specific applicants from applying for them. I was merely saying that trying to define a set of special rules across the board for them is difficult.

So there's a uniform set of rules and under that uniform set of rules there will be corporates, there will be communities, there will be traditional kinds of registries. There will be business models we're not even anticipating yet.

So, the idea is to provide a general set of rules under which all these different business models can bloom.

Chuck Gomes: Thanks, Kurt. Eric, be very brief please. We've still got Kristina and we still have Module 6.

Eric Williams: I'll be brief. I agree these are very (territory) sources and that when a registry fails or goes away, there's still a latent cost. There's going to still be resolution queries made against this name space and somebody has to serve those resolution queries. So, it's not the case of just going away is the end of the story. That's it.

Chuck Gomes Thanks, Eric. Kristina?

Khristina Rosette: Thanks. Three questions - first relating to Article 7, Section 7.2 - Notice of Changes - I don't frankly get the proposal that "a proposed change modification or agreement can be disapproved within 60 days from the date of notice of effectiveness of the change by either in the section option being a 2/3 vote by the GNSO Council pursuant to its procedures blah blah blah"

Is the intention there that the GNSO Council could take such a vote only after initiating and conducting a policy development process? And if not what is that reference to review in consideration a new consensus policies intended to mean?

Dan Halloran: Kristina, this is Dan. I think that's a good question and looking at it, I think a lot of questions will pop up and we've gotten a lot of comment on on the idea involved in the GNSO Council. The first question that might pop up is how

you handle weighted voting under the current structure. So, it could be an attempt to answer that.

I think, the intent is just to make sure that amendments go through that have the broad support of the community and the amendments are objected to by a broad slice of the community that they don't go through.

So the question – and what we want comments on- is how do we accomplish that and what's a good way to do that?

Chuck Gomes: Just a follow-up on that Dan and Kristina. I think there's a broader issue here when you involve the GNSO. It's one thing: the GNSO is clearly a GTLD policymaking body and this whole area seems like an expansion of that role that, I think, is really risky but let's not talk about that here because we're out of time.

Kristina Rosette: Okay. Yeah, I think it would be extraordinarily helpful to get some clarification of what's meant there simply because, if you are intending to refer to the normal (PDP) process I think the fastest time we've ever started and finished a (PDP) was delaying tasting, which was almost seven months. So 60 days is just not viable.

Second question: regarding Section 8.4, Changing Control. I'm curious as to whether there's any current intention to impose a requirement that ICANN approve in advance, any changes control for the registry operator and if the answer is 'no', what the rationale is for that in light of the RegisterFly situation?

Chuck Gomes: Isn't that already answered in your documents? I'm talking to ICANN staff. I thought, I just read that they can change control, but in terms of assignment they need approval.

Kristina Rosette: Right, but you can have something that's effectively an assignment that is taken care of through the change of control.

Dan Halloran: So, if I understood, your question right there's no block here. I could not block a change in control...

Kristina Rosette: Correct.

Dan Halloran: I mean, Kristina, if you had enough money you could go buy 51% of the stock of VeriSign this afternoon and you would then control VeriSign.

Kristina Rosette: Exactly.

Dan Halloran: We couldn't block that.

Kristina Rosette: Correct.

Dan Halloran: But we do get notice of it, which would be more than we have under certain agreements such as what came onto light in the RegisterFly situation, where a corporation can change control and there was no requirement that the current RAA. team can even notify ICANN about that.

Kristina Rosette: Okay, so, is the short answer to my question: "no, there's no current intention to change that from notice to approval"?

Dan Halloran: Correct, the proposal is just that we would get notice of change of control...

Kristina Rosette: Okay. All right.

Dan Halloran: ...not that we would get the ability to block a change of control.

Man: (That's) hard to do.

Kristina Rosette: Okay. And a second question with regard to that paragraph. I hate to use the phrase 'due diligence', but what requirements or obligations or what documentation is the current registry operator or potential assignor going to be required to provide, and similarly, the potential assignee, in terms of demonstrating their ability to actually operate the registry?

Dan Halloran: I don't know that that's resolved here. When we have some examples on that, I think the dot-Pro contract is an example of one that was assigned in the past.

And it just happens so infrequently that I don't think we've yet documented a formal application process. But once we get up to, if we're talking about hundreds or however many gTLDs these will have.

We do have for registrars, for example - there's 900-somethig registrars - and we do have a formal application we posted on our Web site. If you want to assign the accreditation to a different registrar, you follow the process we have on our Web site. So, we have to look into that.

Kristina Rosette: Yeah, I would just suggest that that might be -- and this is something you'll see in some comments - something that would be considered simply because I know that at least within the trademark community, there is significant concern about secondary markets and what some of the implications are for that. And those...

Dan Halloran: The secondary market in the rights to TLDs?

Kristina Rosette: Yes.

Chuck Gomes: I think those are very good points and thanks for the comments. Anything else, Kristina?

Kristina Rosette: No, I'm done.

Chuck Gomes: Thank you. Okay, we're jumping to Module 6 and let's start a queue right now.

Adrian Kinderis: Adrian.

Chuck Gomes: Hi, Adrian.

Jeff Neuman: Jeff.

Chuck Gomes: Jeff - that was Jeff Newman, okay.

Tom Watson: This is Tom Watson, I have a question.

Chuck Gomes: Okay, Tom?

Chuck Gomes: Okay, others can get in later. Let's start off with Adrian

Adrian Kinderis: Chuck, I kind of cheated but my question is - for the record - Kurt, can you just let us know whether there will be a comment period for the second draft?

Kurt Pritz: Yes, there will be.

Adrian Kinderis: Thank you. That's my question.

Chuck Gomes: Okay, thank you. Jeff.

Jeff Neuman : Most our comments are in the Registry Consistency Statement that we had proposed but it seems like the application in a round about way seems to prevent any sort of challenge.

All I'm going to say - in the interest of time - is just to read the Registry Consistency Statement. I don't want to take up time here. So, I might jump back in but that's it - to point out the registry statement.

Chuck Gomes: Okay. And, Tom?

Tom Watson: My question was on Paragraph 3 of the Terms and Conditions. It seems the statement is the decision to proceed with the review and consideration of an application is entirely at ICANN's discretion. My question is then what is the point of the guide book if not to guide and control and limit ICANN's discretion.

Man: Hang on just one second, Tom!

Chuck Gomes: That was an example of one of the ways where I thought that the application's terms and the contract were more one-sided than they should be.

Tom Watson: I would agree with you. I just didn't pipe up.

Chuck Gomes: No, that's okay.

Eric Williams: I'd like to get in the queue too Chuck.

Chuck Gomes: Okay Eric, I have you in there. And while the ICANN staff is thinking - and by the way I should have said this at the beginning but I'm one of those that has huge compliments for ICANN staff with all that they've put into this stuff. And so even though I question some of the things and are asking some hard questions in some cases I think they've done an admirable job for the job that we gave them. So I'm very complimentary in that regard.

And let me remind all of you again, if you haven't already submitted your comments or questions in writing to the comment site, either by individual module or to - for the whole package, please do so.

The deadline is a week from today for comments in English - if there are comments on some of the multilingual versions, you've got a little bit longer: you've got until like the first week in January. So please, do that.

Tom Watson: May I ask a real brief, unrelated -- it's related to what you just said - procedural question? I think it will be easy. What time of day on the 15th does the comment window close?

Kurt Pritz: That's a good question. I think it's specified in the latest posting. But I think it's like midnight - I think it's supposed to be midnight (UTC), you know...

Tom Watson: Okay.

Kurt Pritz: ...end of the day, UTC time. And then finally - to your first question, you know, that's clearly what it says. And it was put there in anticipation of a

peculiar or particular set of circumstances where, essentially, because of certain circumstances, consideration of an application would not occur.

And I think it's similar to a clause many, many, many, many or most businesses have in their agreements that say, essentially, we reserve the right to refuse service to anyone in a variety of agreements I sign.

So obviously, all business entities that have these clauses don't stay in business unless they service essentially everybody that applies.

And only in very clear cut cases would this set of circumstances occur if, you know, if ever in this new (GTLD) application thing. But it's a reservation that, from my limited experiences, I think many businesses, if not most businesses, provide for in their agreements.

Man: Yeah Kurt, this is...

Tom Watson: Actually, I would disagree rather strongly with that. I've never seen a current contract where one party reserves to itself the right to unilaterally and in its discretion violate the contract or act in a way contrary to the contract.

Also I would say that ICANN, in this instance, is working in a quasi-governmental - and these are like rule making proceedings of a governmental agency. And again once a governmental agency proposes rules and enacts in those rules it does not reserve to itself the right to act contrary to those rules.

And then finally, even in businesses - when you walk into many service establishments and you may see as some bygone relic of the pre-civil rights era a little sign that says we reserve the right to refuse service to anyone in our discretion. And, you know, those are not enforceable. They are just totally

non-enforceable. So I would say this kind of clause in your Terms and Conditions is totally at odds with the purpose and intent of the rules.

Dan Halloran: Tom thanks. This is Dan (over) at ICANN. So thank you for your comment on that and pointing it out. I mean it's - as you pointed out, I mean it's sort of this, legal phrase you see from time to time. I just while you were talking Googled Bank of America Sole Discretion - all that in quotes - and I got 58,000 hits on Google.

So it's something that even pops up I'm sure on Bank of America agreements but thanks for your point about this isn't exactly like Bank of America and we will take another look at that.

John Jeffrey: And this is John Jeffrey. I just wanted to point out that we're not quasi-governmental. This is a nonprofit organization proposing to enter into a series of private agreements. So, I just think I wanted to clarify that before we went on.

Chuck Gomes: Was there somebody else that wanted to follow up on this? I thought I heard somebody else speak up. No? Okay. All right, let's go to Eric.

Eric Williams: Thank you Chuck. You know, I read with great interest the registry constituency comments on this section. And I found myself thinking of the sort of humorous question I asked earlier about all our (F.T.)s, do you really mean this? My concern is that we are not able to scope the requirements.

You're not able to say what the questions are you actually have. And so the legal side of this is - we see in this section of the sort of unbounded grants of privilege to ICANN that mirror the one that I pointed out somewhat humorously on the technical side.

So somehow, it's as if that you're saying that you're not prepared. So you don't know what questions to ask or how to bound the scope of ICANN's rights under the contract. Thank you.

Chuck Gomes: Okay. Any...

Dan Halloran: And Eric just - this is Dan again. I would just thank you again for that and, please, again the point of this is to get your comments, especially people like you.

When you read this, obviously, we didn't intend all the April Fools comments so it's a good point. We should go back and look at that. If you have specific ones you think should be included or excluded or if you can help us set some bounds on this that would be greatly appreciated.

Eric Williams: Well, I don't play a lawyer on television, but I can help you with the technical side. It's just that I have the same concern when I read the contract language.

Chuck Gomes: Well even though, you're not a lawyer get the points in. There are plenty of lawyers that will take a look at it. So I know, I'm not either. At the same time I did make some comments about some legal things. So, anybody else want in the queue?

John Jeffrey: This is John. Sorry, I just wanted to point out - actually that's a very good point. There are a lot of lawyers that look at this. There are a lot of lawyers that will look at this. And most of the good comments won't come from the lawyers. So, we appreciate any comments you have.

Chuck Gomes: See Eric, yours and my comments are important.

Eric Williams: I feel so much bigger now.

Chuck Gomes: Anybody else like in the queue for Module 6?

George Kirikos: George, here.

Chuck Gomes: Okay, George. Anyone else? George, go ahead.

George Kirikos: Yeah I'd just like to echo the comment by Eric that you want to make sure that the contract language is bulletproof because that provision is in there because it's almost acknowledging you haven't planned for every contingency.

And people that are going to use the contract against you are not going to tell you in advance. They're going to wait for the contract to be adopted. One has to make sure that the contract is bulletproof and make plans for every contingency accordingly.

Chuck Gomes: While totally agreeing with you on that, I will express the belief on my part that you're never going to make it totally bulletproof. You just want to approach that as close as you can, within reason.

If we ask ICANN staff to make it totally bulletproof - I mean that's impossible. But I'm with you and this call, I hope, has helped move us closer to more bulletproofness than we're at right now.

George Kirikos: Well the thing is, the contract that eventually gets posted or agreed to is the best that ICANN is going to get and that any future amendment is something that the registry operator like the counterparty will have to approve also.

So once you think about that going forward that ICANN is only going to get as good as possible - what it posts and it can't later seek to correct any mistakes. The registries are only going to agree to amend it if they can get something even more favorable.

Chuck Gomes: And if amendments are virtually not possible from the base agreement, that means the new applicants will basically be at the mercy of whatever is decided there. Either you sign the base agreement or you don't. Do you want them on the root, then you will sign this. And that's why it's so important that every effort be made to make it sound and I believe that that's staffical as well.

Adrian Kinderis: Chuck, it's Adrian. Can I make a comment to that please?

Chuck Gomes: Sure, go ahead.

Adrian Kinderis: Just quickly - I'm just trying to get an understanding so we can fire our comments for the base agreement. Does ICANN (envision) that, eventually, all TLDs will be under that same agreement - both existing and new?

Chuck Gomes: I think that was answered at the beginning but go ahead Kurt if you want to respond to that again.

Kurt Pritz: That would be (G)s - right? (Unintelligible).

Chuck Gomes: Yeah, we could really start something off here and include Cs there. But let's not.

Kristina Rosette: Chuck, it's Kristina, could you add me to the queue?

Chuck Gomes: Sure.

Jeff Neuman : And Jeff.

Chuck Gomes: Okay, Kurt, do you want to just briefly repeat the answer to...

Kurt Pritz: Yeah, well the intent is that all new GTLDs should come under this agreement.

Adrian Kinderis: Okay, so whereas Chuck just said, then well, you're going to get the agreement or you're not getting the root, clearly the negotiation skills of ICANN previously were not following the same flavor. So you were able to negotiate your own contract previously but, you know, with various items within your dot com agreement etc. etc., but now that's not holding true. It's this agreement or the highway.

Kurt Pritz: Well, as I think many on this call would attest - George and a lot of others who are very vocal on the dot com agreement - that wasn't a pretty moment in ICANN's history and it was very difficult both from a standpoint of VeriSign in the staff but also from the standpoint of the public participation and the comments in it.

So, I don't think our previous model in negotiating agreements particularly in litigation or crisis, would be the model that we'd want to follow going forward.

Adrian Kinderis: I know it's hard to predict this then but when a contract comes up again for any of these new - (or) any existing TLD operators they will not be able to negotiate.

Dan Halloran: So, this is Dan. I think the wording they have is that they'll be asked to sign an agreement substantially in this form. So one of the things you might want to comment on - we'd invite comment on what should ICANN's response be when, Registry X comes to us and says this agreement is great but I want to change this. Should we say the highway or should we entertain that or - so it's one of the things that's up for comment?

The draft says 'enter it potentially like this'. If the community thinks we should be inflexible, that's one thing. If the community thinks we should be flexible in response to whatever it is - different business models, different jurisdictions, then, we'd also like to hear a comment on that.

Kurt Pritz: And we're hoping this will stimulate conversation on this and really have this be part of this dialogue.

Jeff Neuman : Can I jump in on that point?

George Kirikos: I'd like to jump in too. George, here.

Chuck Gomes: Go ahead. Who was first there?

Jeff Neuman: I just want to correct what Dan said. And it's kind of important. Dan said that it's substantially similar but actually dot com, dot net, dot org, dot biz, dot info, we all have a provision that says that it should be substantially similar to what the top five registries have.

So the reason why the existing registries are taking this so seriously, you could say to yourself well then why does this new agreement matter to the existing registries because if we could just have our own that's good for the

five of us and nobody else. I think we all have an interest in finding one form of an agreement that we can all agree to at a later point.

I don't want to come 2012 and dot com, VeriSign, Newstar, Philius, PIR are all saying: "well, we don't care what the new registries have. We're just going to insist on our own special form because we don't like what the new registries have". I think the community will not react well to that.

And George, I know you'll be the first one to make comments on that. There are some things in these new agreements that ICANN is getting and it's to its benefit, that that be applicable to the existing registries.

And it would be awful in an argument in a couple of years that says: "well look, we have the contractual right to have our own agreement that's different than the new TLDs". That's in no one's interest.

So, the reason the existing registries have really went through this agreement with a fine-tooth comb and have 20 pages of comments on this agreement is, because we do expect that we're going to get a form that looks like this one.

You can't impose it on us. I'm not speaking for every registry, but we want to voluntarily come into a sort of a best practices contract if we can. And that's why we're really paying attention to this.

Dan Halloran: So Jeff - this is Dan. I think we're talking about two different things. I was just responding I thought to a question about: will ICANN entertain individual negotiations from new GTLD applicants who want to modify the base agreement?

And I was reading from the Module 5 that says: “all successful applicants are expected to enter into the agreement substantially as written”.

And so the question, I thought I was answering, is what does that mean - will we entertain changes to this base agreement on a new TLD by new TLD basis?

Jeff Neuman : I thought it was existing because that’s out of the context.

Kurt Pritz: No, Dan had it right there.

Jeff Neuman: All right, so my comment is still what I was going to make for the main agreement as well because someone asked: “does it apply to existing registries?”

And the answer is: “no, it does not but ICANN does want that form to be applicable to the new registries in a couple of years’ time”. We want to avoid the whole discussion by the community of: “well why isn’t it coming into line with the rest?”

Chuck Gomes: Okay. And Jeff? that was why you were in the queue? Is that right?

Jeff Neuman: Yes.

Chuck Gomes: Okay, Kristina

Kristina Rosette: I just had two comments that I wanted to pass along. I think, in terms of the folks that I’m speaking to and with about this agreement and in particular this whole Terms and Conditions, there’s a significant amount of concern that’s been expressed about the possibility that Paragraph 7 could allow ICANN to

disregard an applicant's designation of certain information as "confidential" and proceed to publish it without consultation with the applicant.

And second, you should expect to get a lot of pushback on Paragraph '9'.

Chuck Gomes: Just real quickly, tell us what Paragraph '9' is about.

Kristina Rosette: "Applicant gives ICANN permission to use applicant's name and or logo and ICANN's public announcements including informational Web pages relating to top level domain space examples".

Chuck Gomes: Thank you. Okay, any response to that from ICANN staff?

Kurt Pritz: What's the concern about that last one Kristina?

Kristina Rosette: What? - Paragraph '9' - that it's basically an unlimited license. No one is going to agree to that.

Kurt Pritz: Then, you know, we'd be happy to receive better language if you have suggestions.

Kristina Rosette: We will.

Kurt Pritz: Obviously this is much more in your line of expertise than most of our lawyers that drafted it.

Kristina Rosette: Sure.

Chuck Gomes: Thanks Kristina. That's helpful. Well I think we're probably over time or - yeah, a little bit over time.

George Kirikos: George, here. I was still on the queue.

Chuck Gomes: Oh I'm sorry, George,. go ahead.

George Kirikos: I just wanted to follow up on the prior point about the substantially similar or substantially as written language. We do have precedence in ICANN of the RAA Agreement and the UDRP being universal.

So, I think we should try to move towards that kind of universal, take-it-or-leave-it kind of contract and not let-everybody-negotiate-their-own-little-sly-amendments-to-everything.

Chuck Gomes: Well, let's not get into a debate on that here since we're over time. Anyone else?

All right, well my thanks to the ICANN team and your openness. And I know you're taking lots of notes and I appreciate the seriousness with which you're dealing with all the comments that are being received. I don't envy you in your task.

But I am optimistically looking to a Draft 2 of the (RFP) that will be a lot closer to where we're going to end up and I think the whole community will appreciate that.

Thanks to all of you on the call. I can tell you that both of the calls that took place via the phone on Q&A - I was just very impressed with the quality of participation by every single person on the calls and I compliment you for that.

One last time, let me remind you, please make sure all of your comments and questions and any new ones that you have in follow-up to this session get put in writing to the public forum so that staff has that documented and that will facilitate their work.

Kurt, do you have any closing remarks?

Kurt Pritz: No, just to echo yours Chuck - thanks very much for your graciousness and all the work that went into chairing the meeting.

Chuck Gomes: And again...

John Jeffrey: One question Chuck.

Chuck Gomes: Go ahead.

John Jeffrey: I'm sorry, it's John. Do we have a sense of a timeframe for the next round? And I also want to echo your comments on complimenting ICANN and ICANN staff for not only this call but all the work that went into this new draft.

Chuck Gomes: I think I can speak for probably everybody on the call that they have spent weeks and weeks of work and they are to be complimented. Kurt, I think you do have an estimate. I've heard you share one in terms of the next draft. Do you want to talk to that now?

Kurt Pritz: It's planned to post the next version of the applicant guide book in mid February and have a 30-day comment period. And then it's planned to finish a final version of the applicant guide book in early May for consideration by the

ICANN board sometime during May and then post that after that meeting.

So...

Chuck Gomes: And because the Board is going to obviously have an awful lot to look at at that particular point in time, is it fair to assume that there will be maybe even before that final one is actually posted that there would be some briefings of the Board?

I would think that the Board would need a retreat to consider this thing in May and so, if we wait until then, it's going to be very hard for them to act. At the same time, if they don't act in May, we're looking at further delays. So am I correct in assuming that there probably would be some preparatory work going on in advance with the Board?

John Jeffrey: Yeah, as you can tell by many of the Minutes, the Board has been very active in the discussion throughout and we expect that they'll be briefed in, if not every meeting then, certainly nearly every meeting between here and that point.

Chuck Gomes: Thanks (John).

Jeff Neuman : Hey Chuck, just one - this is Jeff - just one comment.

Chuck Gomes: Okay.

Jeff Neuman : Is there any plan by ICANN to put, you mentioned one paper , but is there going to be any more interim papers before the next guide book such as, you know, there's still a couple of holes in the agreement on registry, registrar ownership issues and things like that?. Is there a plan to release those prior to that February date?

John Jeffrey: Yes, as soon as possible - so for example there is a paper to be posted shortly about price control and some of the economic.

Jeff Neuman: Contractual provisions with respect to registry, registrar ownership and I guess price control has something to do with that.

John Jeffrey: Yes.

Chuck Gomes: Okay, well thanks for being patient. We went over a little bit but again, thanks to everybody and have a good rest of the week.

Kristina Rosette: Thanks.

Man: Thanks.

Man: Thank you.

Man: Bye-bye.

Man: Thank you.