ICANN GAC-Board Consultation
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Brussels

>>PETER DENGATE THRUSH: Good morning, ladies and gentlemen. Could you start to take your seats, please.

We will be beginning in two minutes.

Thank you.

>>PETER DENGATE THRUSH: Well, good morning, everybody. Welcome back to Brussels. Welcome particularly for this consultation between the Government Advisory Committee of ICANN and the ICANN board on implementation issues arising from ICANN's planned implementation of its introduction, program for the introduction of new gTLDs.

My name is Peter Dengate Thrush, I am the chairman of the ICANN board, and I am joined today by the President and CEO of ICANN, Rod Beckstrom on my left.

The session is going to be co-chaired by the chair of the Governmental Advisory Committee, Heather Dryden. And it gives me, also, great pleasure to introduce Jeremy Beale who is part of the new secretariat team supporting the GAC. And we are very pleased to see you, Jeremy, and look forward to your contribution.

I am obviously just the front end of a huge team that has been working for many years on the new gTLD project. And just a reminder, this is the third round, if you like, in ICANN's expansion of the generic namespace.

We began the first round in 2000, and we had a second round in 2004. And this round began in 2005. And so expansion of the generic namespace in an orderly and safe way is embedded in the DNA of ICANN. It forms part of the tick, for example, of our very first Memorandum of Understanding with the United States Department of Commerce.

And this particular round kicked off after several years of policy development work beginning in 2005 in the GNSO, the support organization or division, if you are thinking in corporate terms, inside ICANN responsible for developing generic name policy.

And I will just read from some highlights from that policy as it was passed to the board.

New generic top-level domains must be introduced in an orderly, timely and predictable way. The evaluation and selection procedure for new gTLD registries

should respect the principles of fairness, transparency, and nondiscrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicant prior to the initiation of the process. Normally, therefore, subsequent -- no subsequent additional criteria should be used in the selection process.

So the board adopted those generic statements from the GNSO in 2008, and we have been working on implementation strategies since that time, including, as most of you know the publication of five sets of rule books that we call the Applicant Guidebook.

And we produced what we now call the final draft of that, and released that before our meeting in Colombia at the end of last year, and the final comments on that and aspects of that have now closed and comments have been processed.

Now, the Government Advisory Committee announced in Cartagena and published in its communiquÈ that it released after that that there were a number of issues that it wished to give further advice about. And from that discussion, the concept of this meeting emerged, that the most productive way of addressing the GAC concerns about the new gTLD implementation process would be to have a consultation like this.

And a fantastic amount of work has been done since then. We have had weekly calls, for example, by the board action team putting things together. There has been liaison between that group and the meetings team. Finding a venue in the world to have a consultation like this is no easy task and arranging the accommodations and various other things. Liaising with the GAC, liaising with -- appointing from inside the board topic leaders on each of the 12 topics that are mentioned in the GAC and liaising with the same kind of leaders that the GAC has put up in relation to each of those topics, and there has been a series of calls between those parties, just to mention some of the activity that's been going on.

So -- And a few days ago, the end of that process we have now got from the GAC a tremendous thing that the GAC calls its scorecard, which is the GAC analysis and summary and synthesis of its key advice on these particular processes. So that's a tremendous piece of work. I pay tribute to all of the GAC members who contributed to writing that, assembling that, editing that and going into all of the work that does that. And we do appreciate Heather and other GAC members, some of the resource implications of work in the GAC, and we appreciate the effort that's gone into producing that for us. It's a tremendous piece of work and it will be the focus over the next two days as we understand what the GAC concerns are. So thank you for that.

And just a few words in opening about GAC advice in general, how important it is to ICANN to have a strong, fully functioning GAC, providing advice on public policy

matters which are the proper preserve of governments in its contribution to the multistakeholder model.

So we are grateful for that work in general, and for the support that we get in ICANN from GAC members in the ICANN forum itself and elsewhere for the multistakeholder model.

So we appreciate the advice. It's very important to us. And we're here today as part of the process of listening to that advice.

The goal, obviously, is to move towards closure. As I have indicated, we have been working on this now for many years. It's a very longstanding project, and the community is ready. And the board and the GAC are now very close.

The most important priority in this process from the board's perspective is clarity. We are here to really get very clear what the issues are, and then what the GAC advice about those issues is, and how then to take it forward.

It seems pretty clear from the interactions that we have had leading up to this and including a very nice dinner that we had together between the board and the GAC and the staff last night that despite some indications in some of the media, this is not going to be an adversarial session. It's certainly not my intention that it be at all adversarial.

Nor is it anything like the board versus the GAC or any of that. Because we are all ICANN. We are all here for the same goal. We all want the same outcome. We all have the same good will. And that is a safe, orderly, predictable expansion of the generic namespace.

The board's job of course is to consider in balance the GAC advice. Balance it with many competing pressures. We have got an existing community policy development process which has expressed its view on a number of these issues.

There are sometimes technical issues that we need to take into account to make sure things actually work in a safe and stable way.

There is occasionally legal issues, existing contractual matters and of course the statutory framework that we operate in.

Another perhaps obvious point, this is not a board meeting. So there won't be -- it won't be ending, as some of our public meetings do, with a series of board resolutions defining and crystallizing process. This is a listening and consultation session. This is not the consultation that we have to have under the bylaws if we propose to disagree with GAC advice.

The other thing I want to mention is that we have arranged, consistent with our obligations under the transparency and accountability principles that we live by, to permit as much observation and participation by others as possible. And so we have a number of facilities available for streaming and making this available for others.

We do have the facility to go into four other breakout rooms. If on any of these particular topics the GAC team and the board team think that further discussion in private would be helpful, they can go and do that. The expectation, if that occurs, when those teams come back is that they will report into the record some of the outcomes from any such private sessions.

So the formal goal is to be clear where we stand by the time we meet for the actual scheduled bylaws conference that we have set for San Francisco on March the 17th.

We expect to continue working with the GAC between now and San Francisco, with the topic leaders, if any issues remain after the Brussels consultation.

Structure of the room. I understand there is some concern that this isn't the most productive format for that. I hope we can think about that and learn from any lessons today. And if necessary, we may adjust things perhaps for tomorrow. Hopefully we can move off that now.

Structure of the day. We have agreed with the GAC that what we would like to do as the board is hear from the GAC on all of the issues and make sure that by the end of today, we have gone through each of the topics and understood what the GAC scorecard says and how it relates and ask questions. So very much an information, fact-gathering day, to be very clear what the GAC scorecard says and means. And there are a couple of things that there will be some questions, and then some discussion.

For tomorrow, what we would like to do, then, is revisit those issues which have emerged as likely to require or benefit from further consultation.

So we'll get into, hopefully, some very detailed discussions on those topics at that stage.

Finally, in relation to conflict of interest, the board has published the statements of interest of the board members. This is not a board meeting so we don't have to have a resolution about participation. I'm expecting all board members to be contributing and participating as they always do. Occasionally on some topics, some board members may feel -- and this is entirely at their discretion -- that they won't participate on one or more topics.

So, Heather, I hand over to you. Thank you very much for all of the work that's gone into this from your side and from the GAC and right from the very beginning, the very willingness and openness of the GAC to participate in this consultation.

Thank you.

>>HEATHER DRYDEN: Thank you very much, Peter.

The GAC is really pleased to be here today. As you mentioned, a lot of work went into developing our scorecards. However, I'm really pleased to point out that the scorecard does represent GAC consensus views.

We did have a meeting yesterday to prepare for today's discussions, and we were able to refine and adjust some of the points that we expressed in the scorecard.

So we hope that that will help further our progress in exchanging with you today.

As you pointed out, there are GAC topic leads on each of the topics, and today we're expecting the topic leads to present the GAC view and in response to questions they may answer, and other members of the GAC may also wish to answer to help clarify and address any of the questions that the board members may have for us.

So this has been, as I mentioned, a really welcome offer that was made to hold this meeting. And the GAC has been advising since's its principles in 2007 on new gTLDs. And we see this as being the extension of that. We're not saying anything particularly new, and we're happy to have this opportunity to really be heard, and hope that our advice would be taken in as a result of this consultation.

I would like to invite several of my colleagues from the GAC to speak. They would like to make some comments, to provide some context for governments. There's a lot at stake regarding new gTLDs. And we do have roles and responsibilities as governments, as public authorities.

And so I will allow them to convey to you a sense of that perspective before we begin today.

So I'm looking out into the audience now. If there are GAC members -- Ah, I see European Commission. Please.

>>EUROPEAN COMMISSION: Thank you, and I will be very brief because I can see we have a long agenda of items to discuss today.

But my name is William Dee. I am from European Commission. I am the GAC representative for the Commission at the GAC, obviously.

And I have jumped in early, actually, because I have been around in the GAC for quite a while and I held the pen on the GAC principles which we adopted in 2007.

I point out that the work inside the GAC actually started well before then. That was the adoption date, March 2007.

I think some of us like to think that we also helped kick off the new gTLD process back in 2005 when we started drafting these principles and working with other members of the community. I remember we had several meetings with the GNSO, with ICANN staff, before we adopted our final set of principles. I think we think they are reasonable, fair, common-sense principles.

I think anybody who reads them would now recommend to anyone who wants to understand why the GAC appreciate this meeting today that you read that document. It's a fairly concise document.

I stress this point because some of us are a bit concerned to hear from other stakeholders an impression that some of them have that the GAC is against the new gTLD process, while I think nothing could be further from the truth. We are very sensitive to the fact that one of ICANN's chief goals when it was created was to introduce competition into the new gTLD market.

And back in 2005-2006, some of us were a bit concerned that after eight or nine years, actually, there was still a very, very high level of concentration in that market, in registry and registrar market, according to ICANN's own reports at the time.

So that's why we were encouraging ICANN to move forward. And we thought the best way we could contribute to this process is to provide a framework of public-policy principles to guide the rest of the community and the board on what governments felt would be desirable in the process, and where there might be some red lines.

And it was intended to help that process and to try to avoid, I guess, in many ways, the situation we're in today.

So I think it was meant with best efforts. I think that's still the way for governments to proceed, is to try and stick to principles, the level of principles.

I am very pleased that we have this meeting. I think I just made the observation there might -- for the future, we might reflect on the fact that it would have been more useful if this meeting was two or three years ago, I think. There seems to be a lacuna where there has been a clear gap between GAC advice and the PDP and the implementation process. And it's really only now here today that we are starting to close that gap, I feel. So welcome very much, and I hope this is a precedent for the future.

But I shall leave my comments there for now.

Thank you.

>>HEATHER DRYDEN: Thank you very much.

I am now looking around the room again. I see Norway. Please.

>>NORWAY: Thank you. Thank you. My name is ÿrnulf Storm from Norway.

Thank you, Bill, for those words.

I would also like to say thank you, Peter, for the words you said, you appreciated that we took the time, spent time on these issues and that you also said that you appreciate the GAC advice. And you also want a strong GAC.

We, from the Norwegian perspective, have always been in favor of a very strong GAC. And as you know, the role of the GAC, advisory or not, has been discussed.

So I just wanted to make that point that we believe it's important for this ICANN model to function, for us, at least from our perspective, that we see that the ICANN board take on board the advices from the GAC. Because if do you not, then we feel that you are not taking the government side seriously.

So I just wanted to say that, well, we do have these gTLD issues now, but I think it might be more at stake here. Other issues will come.

And I think a willingness to do this kind of meeting as we have here shows us that you also want to resolve these issues. So I think that's a very positive thing.

So I really think that we have the prospects of getting an agreement, and that we have the prospects of having the message from the governments that you can see our perspective as well, and that you will take our advice seriously. So that we have the feeling that we will be heard in this context.

So I think that's -- I just wanted to say that, to say that it is not only this gTLD issue here. I think there's more at stake. Again, I just want to repeat that, that we really feel it's really important for us to say this, that we must see some progress on these issues.

And as Bill reminded us, GAC was really early in this process. And I think if we had more dialogue a little bit in the past, we might not have been here at the present time discussing these issues.

So I just wanted to say that.

Thank you.

>>HEATHER DRYDEN: Thank you for that, Norway.

I have Italy and then U.K.

>>ITALY: Stefano Trumpy from Italy.

No doubt, this new gTLD process is a real challenge for ICANN, if not the best, the more important challenge. Because it really add something that there should be in the benefit of the users and of the private sector. And we have these two elements to converge.

And we learned in these past years when we started talking about implementing the process that the complexity is something that, as much as we discuss and complexity increases instead of letting think that the process is rather easy.

But the point now is that the process has to start. And the meeting that we have having today, I would say that should be a convergence plan in order to let the process start. And then when the process will start, some of the problems, also those that were included in the GAC advice, will be refined. There would be the necessity of a continuous adjustment in order to let this process to be -- to realize the goals that were conceived at the beginning.

So I am confident that today and tomorrow we will be able to confront, maybe, also some different ideas. But we should try to adjust something, but assure that there is a specific date that it's possible for the process to actually start.

Thank you.

>>HEATHER DRYDEN: Thank you for that, Italy.

I have the United Kingdom and then I have the United States.

Thank you.

>>UNITED KINGDOM: U.K. very much, Heather, and our thanks also to Peter and all the team for convening this meeting. It's a very useful and important opportunity to, as you say, join together in addressing some very important issues.

This is a very important initiative, to launch a new open round of gTLD applications. And one that's crucial for the development of the Internet. We well recognize that. And governments have certainly broadly supported it as likely to promote competition, innovation, and opportunities from all stakeholders all around the world.

This is a multistakeholder process, and consistent with the Affirmation of Commitments, ICANN needs to ensure that in launching the round, it takes full regard to the public interest globally.

Government Ministers, parliamentarians, law enforcement, competition authorities, users, business communities, consumers, all look to governments and their representatives in the GAC to ensure that all their interests are fully taken into account.

And a lot of those interests are crucial to the public interest.

It's been a long road, certainly, since 2008. A lot of hard work done by the ICANN staff. And that demonstrates that this is a very complex initiative, as has already been commented on. It's very, very intricate, complex process that the launch is going to involve.

And we appreciate very much the advice, the consultations which ICANN staff have dedicated to helping us in the GAC embrace this initiative and contribute to developing all the processes that it requires.

It's been well recognized that there are risks associated with this as well as opportunities, and moving the Internet forward, there are risks. And these, in the government's view, need to be addressed comprehensively and robustly.

For example, dangers and costs to business and risks to consumers arising from cybersquatting and malicious conduct are needing to be mitigated as much as possible. And that's certainly one of our objectives in these consultations. We really share that objective with ICANN. I'm sure we do that. It's getting to that point where we feel the balance is right and so on.

And this has to be a truly inclusive initiative that engages stakeholders around the world, including in developing countries. So that's a particular focus as well for the GAC, to ensure with its wide representation across the world, to ensure that that inclusivity is achieved.

Any significant failure in addressing these risks is not going to help internationally. There are those who would like to see the multistakeholder model ended, for governments to take control of the Internet, to manage and coordinate the Domain Name System.

The future of ICANN, you could argue, is at stake here in these discussions. And I think we all share the objective to ensure that that risk of failure and handing over to those parties in other fora who would like to see failure, to ensure that that does not happen.

So with those thoughts in mind, we certainly embrace this opportunity to work with you. And as Peter quite rightly said, we're all in this together. Let's achieve some results.

Thank you.

>>HEATHER DRYDEN: Thank you very much for that, United Kingdom. Unless I see an additional request, United States will be the final speaker in this opening session.

United States.

>>UNITED STATES OF AMERICA: Thank you, Heather. This is Suzanne Sene. I am from the Department of Commerce representing the United States at the GAC.

I also wanted to chime in and join my colleagues, and obviously very clearly concur with the sentiments that have already been expressed.

Certainly we very much welcome this opportunity to exchange views on something as critical as the introduction of new gTLDs.

But I have to say, we, too share the sentiment that this meeting is important for far more than that. We do believe that this is a very pivotal moment in the GAC-ICANN relationship. That we consider ourselves certainly a significant member of this multistakeholder community and have always been an active participant, and we would like to see some improvements as we go down the road because we do think it's going to be, as Mark said, as ÿrnulf said, it is really important for us. We are actually, at the end of the day, your public face in every national capital. It is the GAC that actually represents ICANN.

So it is our job to report back up through our political management food chain as to what is happening and why is it happening and what decisions have been taken, and on what basis have they been taken and how are the public-policy concerns that the GAC has been advancing for, oh, these many years, how are they being taken into account.

So that is why this is so critical, because we need some actual, demonstrable evidence, credible evidence that when the GAC does provide advice, it actually is -- ICANN is seen to be accepting that advice and to working with it.

Thank you.

>>HEATHER DRYDEN: Thank you, United States.

Peter, would you like to take over for the....

>>PETER DENGATE THRUSH: Thanks, Heather. Thanks to all those GAC members for those comments. Resonating with all of the board members, I'm sure.

Let's come into the first of the items of work. I think up on the screen you should see the things. What we have done is taken them in the order that they appear in the GAC scorecard. And ask -- I am just checking what I have....

I can't quite see what's on the screen there.

It's in that order. All right. Thank you.

What we would like to do, given the constraints of the room, without any intent to limit input from any GAC or board member, is ask the topic leader from the GAC to come up and join us up here. And also, the topic leader from the board to come up and -- if you don't want to, that's fine. If you want to speak from there. But I think it might be more helpful if we can see you and can ask questions.

So the first one is the -- what we have just subtitled, it says the objections and review of sensitive strings topics.

Can we begin with that? And then according to my sheet, the GAC leads on that, Heather, are Hubert Schˆttner and Suzanne, and the lead from the board is Bruce supported by Amy.

Would the GAC leads like to come up and join us for that?

>>HEATHER DRYDEN: I believe Suzanne Sene from the United States will be leading the discussion.

And some members may want to stay at their desk because if they are using their laptop, it will create a bit of a disruption. I see nodding.

Yes, please.

>>PETER DENGATE THRUSH: Suzanne, you are going to lead this one? You are going to do it from there?

>>SUZANNE SENE: Yes, if I may.

Shall I put up my hand so everyone knows where I am? I am on the left side of the room. And I can see you all very clearly so thanks very much.

I am not going to actually walk through what's in the scorecard because everybody has it in front of them, but I think in the event anybody has any questions, it might be helpful for us to explain the rationale. And this is, as Heather stated quite clearly at the outset, this is a consensus position of the GAC.

As we looked at the final version of the Draft Applicant Guidebook, regrettably we saw that while the title of this section had been amended for morality and public

order, or as we, the GAC, used to affectionately called MoPo, it was amended to something called the limited public interest, or limited public order objection. My apologies. The text itself remained the same.

So from that perspective, it provided the same sort of concerns to governments because, from our view it was a -- presented a rather flawed process. And since it seemed to stand as the primary mechanism for governments to raise objections, we gave it quite a great deal of scrutiny.

So just at the outset, a couple of markers to put down.

There are some references in there to international principles of law, which of course we would have no issue with. As governments, we have negotiated most of those treaties in which you would find those principles. However, at the end of the day, even taken together, it is our considered opinion that a collection of principles of international law does not really create an internationally agreed standard that can be used in an objective way.

We also felt, quite candidly, as you look at the process, a government would have to pay a fee to file an objection. It would then have to agree to work with the International Chamber of Commerce and its dispute entity which, in turn, would be guided by panels of so-called expert -- juridical experts from around the world.

Quite candidly, from a sovereignty perspective, that was a very challenging process to be able to endorse, which is why we are now at this point suggesting to you that that particular part of the DAG not apply. It needs to explicitly state that it would not apply to objections from governments.

There are a couple of reasons. Number one, we think it is inappropriate -- the concept that a panel of experts would be able to tell a government whether the basis for its objection had any merit is really unacceptable to governments.

Our other concern is that if the mechanism available to governments such as this were not effective -- and we consider this to be ineffective, unworkable -- then governments would feel compelled to take other action. The most obvious action from our perspective would be blocking. We consider blocking at the top level to be rather harmful to the architecture of the DNS. And we have, in fact, been guided by some very, very capable technical experts who have definitively told us that, yes, indeed, blocking is harmful to the architecture of the DNS. So that was another main objective we had. We wanted to minimize any incentive that a government might have.

We also wanted to capture, frankly, the practical and political reality that any government that might feel strongly that a proposed string would be unacceptable to them would take whatever action they feel necessary. The obvious action, again, as I just stated, is blocking which is harmful.

So the goal was to replace what appeared to be -- My apologies for sounding flippant. I don't mean to be. But the scenario that comes across when you try to describe the whole introduction of new gTLDs quite candidly comes across to some of our political managers as "anything goes," first come, first served. You pay your money. You get in the queue. Boom, you are in with no consideration of the harms and the cost to consumers.

At the end of the day, we're very mindful of the fact that strings that generate negative domestic reactions, which they will, will ultimately be taken up with individual governments rather than with ICANN.

It is the GAC members that will be considered the responsible parties for permitting the introduction of controversial or objectionable strings into the DNS. And it is going to be individual governments that will be challenged to explain why and how such strings meet a global or even a national public interest standard.

So what we've also tried to do, though, is introduce another concept that we will get to in the sensitive strings idea, is to flesh out what we had first advanced in March 2007 with the GAC new gTLD principles, that we urged you great caution at that time to avoid situations where certain strings might generate sensitivities.

Now, I'm sure a lot of people would like us to define that word. But I think from a government perspective, using it as diplo-speak, we all understand that there are certain terms that might identify either a country, a culture, an ethnicity, a religion, any number of things, a geopolitical situation. Those things raise sensitivities at the end of the day. So we're trying to offer a little more guidance in that regard.

But just sticking to objections, our position is at the end of the day that we would like to have the DAG amended to clearly state that the limited public interest objections process would not apply to governments. Thank you.

>>PETER DENGATE THRUSH: Thanks, Suzanne.

Bruce, do you have any questions for Suzanne in terms of remembering today's exercise is the clarity rather than the consultative and debate side of the thing? So any aspects requiring clarity?

And after Bruce, I will ask any other board members if other board members want to question the rationale behind this particular piece of advice. Bruce?

>>BRUCE TONKIN: Thanks, Peter. I guess it is probably easiest the way I am looking at things, I'm going through the GAC scorecard as you had sent us and using that numbering convention.

I guess I have slightly separate comments about Section 1 versus what I will call Section 2.1.

Section 1 as has been provided in the GAC advice, the way I'm reading it anyway -- and maybe you can clarify this for me -- is deleting the whole section. The concern the board had with that was the way we've structured most of the objection processes is that we have a concept of an area of an objection; and we also have a concept of criteria that are used to evaluate that objection; and then we also have the concept of standing, who has standing to object.

And this was a particular area that had a lot of board discussion over a number of meetings as to who has standing to object in this general area. And so it was obvious to us that the governments did have standing to object. And so -- But we recognize your feedback to us that you don't want to use this particular process.

But we still felt that the way we had worded it is other parties had standing to object as well and we would use a process to evaluate that against what we were sort of looking at generally, international principles of law.

Now, recognizing that that would still need to look at how those principles are being implemented in national law. So taking a racism example, if a particular group, which might even just be a subgroup or might be a group that's spread across multiple countries, felt that a particular string was racist or criticizing them in some way, that there is an international treaty in that area that could be used as a starting point to say, There is an international treaty that many governments have signed up to regarding racism. And many governments which might be in addition to those who have signed the treaty have some form of national law that relates to racism. And then a panel would then consider that -- those national laws in aggregate and then form an opinion as to whether a particular string was racist. And that would form part of the process.

So really, my question is, do you have an objection to us continuing to use a process like this where parties other than governments could raise an objection and that there is a process that we could use to have experts look at that from using national laws that relate to international treaties?

It is a bit long-winded, but that's the essence of the question.

>>SUZANNE SENE: Thank you for that, Bruce.

Thank you, Heather. Apologies.

Actually, yes. Apologies that I wasn't more clear at the outset. In our discussion yesterday amongst ourselves, we did agree that we needed to be more clear, perhaps and rather than suggesting the complete deletion of the section, that we

would simply ask that this section be amended to indicate it would not apply to governments. Is that helpful?

>>PETER DENGATE THRUSH: Thank you, Bruce.

Any other questions in relation to this?

>>BRUCE TONKIN: I assume we are going on then to the next topic?

>>PETER DENGATE THRUSH: I was going to check with other board members if they also wanted to ask a question. I know you are the topic lead for that, and I'm pretty sure you are -- Okay. Let's move on, if that's been asked and answered, to the next topic.

>>BRUCE TONKIN: Probably Suzanne as well.

>>PETER DENGATE THRUSH: Procedures for review of sensitive strings.

>>SUZANNE SENE: That would be me again. Thank you. Well, since the existing objections mechanism was considered to be unworkable, we went back to our own sort of basic rules of procedure and looked at the GAC itself and we believe that it is -- the GAC is the most appropriate platform for governments to raise objections. That is actually part of our function here, is to coordinate public policy views and concerns and to communicate those to the board.

So what we would like to see, and as we understand it, in the initial evaluation period, we would like to see an opportunity for the GAC to look at a summary of all of the new gTLD applications. And any GAC member -- Again, this is from a sovereignty perspective. Any government that thinks it has an objection can raise it within the GAC, and it would be considered in the GAC.

So the GAC has the discretion, according to its normal rules of operation, to either agree to the objection and agree on whatever kind of advice it believes appropriate on a consensus basis to forward to the board.

GAC advice could also conceivably suggest measures that could be taken to improve -- to address the concerns that might be raised vis-‡-vis any particular string.

And, obviously, then as per the normal operating procedures that we have and consistent with the bylaws, then if the board were to determine that it would not accept GAC advice, then we would expect the bylaws provisions to apply and the board would provide a rationale to the GAC for its decision.

So, again, from our perspective, this meets several fairly significant goals for governments. It provides governments with an effective mechanism. We do consider the GAC to be an effective platform to convey government views. It is

certainly a more appropriate mechanism from our perspective. And it affords governments an early opportunity to provide advice to the ICANN board about particular proposed strings. And we believe that is supportive of ICANN's commitment to ensuring that its decisions are in the global public interest and that they do reflect community consensus.

Should I continue on with the notion that we're urging you to expand the -- No?

>>PETER DENGATE THRUSH: I think Bruce has some questions on -- So let's come back to Bruce about some questions.

>>BRUCE TONKIN: Thank you, Peter.

And certainly, Suzanne, what you're talking about there in a way is already in the bylaws, that the GAC has the opportunity to provide advice. So I guess what's particular about this case is to how we fit that procedurally into the new gTLD evaluation process. And one of the things, as Peter said, in terms of the initial objectives, I think they're shared because I see similar words in the GAC principles, but that the process be sort of predictable and orderly and transparent, et cetera. And it is making sure that the implementation of your recommendation meets those requirements.

So the first part of that, you mention in your GAC scorecard that you have the early opportunity to -- as part of the initial evaluation, to see the list of names. And we'd make that same opportunity in summary of applications available to the community generally, so it wouldn't just be for the GAC.

But there is a sense of the time frame that you might envisage giving a response. So if the GAC had an early look and a GAC member raised an issue and it was then considered in the GAC, how would you see the timing of that working? Would the GAC actually have a prescheduled meeting? So if ICANN says it is going to have the initial evaluation by a particular date, would you actually have a meeting scheduled ready in case there was something controversial?

We just need a bit of a sense of how you see the working timing and how that would be predictable for an applicant.

>>SUZANNE SENE: We have not gotten to a point of sort of figuring out what discrete processes we would need because we were hoping to use this opportunity to get a little more detail from your side, from ICANN.

So forgive us if we have not understood. But it is our -- it seemed to us at the initial evaluation period -- is it 45 days? For the initial period? At some point, I think we believe that we could work with a 45-day period. It is just knowing when it starts and then counting 45 days, business days, calendar days, whatever.

>>BRUCE TONKIN: That's very useful. We weren't sure whether it was sort of open-ended. I think if it is part of the process and if the period is 45 days and you're, I guess, doing your own internal planning around that, I think that would be the first point that should be very helpful.

The second point we had was, I guess, ultimately you are providing advice to the board at that point and the board's then got to consider that advice. What sort of detail would you envisage being in that advice?

Just to give you examples that we are wanting clarity on, would your advice be about the string or would it be about the party that's applying for that string or would it be both? That's the first question.

One of the things that we are essentially saying, the government thinks a particular name, the name itself should not be there regardless of who runs it. Maybe that goes on to some sort of reserve list. Or are you really focused on the actual application and saying that this party is not the appropriate party to run this particular name?

>>SUZANNE SENE: It certainly could be both. That's why we tried to put more flesh on the bone of what could be considered a sensitive string. It wouldn't just necessarily be the string itself. It would be who is applying for it? And are they the appropriate entity? And do they have the support from a relevant entity?

I would like to pause here for a minute and ask my colleagues. We had quite a bit of discussion yesterday about the link between this review and actually what's at the end of the agenda, early warning. So the two are actually quite linked.

And I would defer to some of my colleagues in the room to address that and what our goals might be there and how we could perhaps marry the two concepts.

>>HEATHER DRYDEN: I see Germany. Thank you.

>>GERMANY: Yes, thank you. Good morning. My name is Hubert Schˆttner from German Ministry of Economics, here as a GAC representative.

Yes, indeed, all of these issues are linked. And I am the lead for geographic names, and we have had a discussion how to define geographic names. And there we learned that although in this context this early warning system -- system of comments could be used for governments to raise their opinions in regard whether they consider certain strings as geographic names. And, therefore, there is a strong link where we could use this time window at the very beginning of the application for also this purpose. Thank you.

>>BRUCE TONKIN: Just -- if I can ask a question on that, Hubert. At this stage, they've paid 185,000. They have probably spent maybe the same amount in

preparing their application, getting advice, et cetera. So they put significant resources in at this stage.

What are you expecting they do at that point? So at this point of the process, they get advised that there is an issue. Are you expecting they can withdraw, or are you expecting they have the right to change their application? What's the expectation after you have delivered that advice?

>>GERMANY: If I speak on geographic names, I think it is just for a question of identification. And we have a certain part of the applicant guidebook with certain regulations for geographic names. I think in principle, the applicant would use the same application and it would be possible to proceed as foreseen.

Most of the applicants I have talked to, they know very clear that they are representing a geographic name and, therefore, I don't think it would be a problem.

If it is really advice for the sensitive strings, yes, then it would be a question where we think it would be -- we should try to have possibilities for the exit and create possibilities for the exit. But I think that is something we should discuss with the board, and we should soften it for the applicant. That's what we would suggest in this regard.

>>HEATHER DRYDEN: Thank you, Germany.

I have the U.K. asking for the floor.

>>UNITED KINGDOM: Yes. Thank you, Heather.

I mean, just to add to that, I think what the governments are sort of primarily trying to do at least is to help potential applicants and avoid them blundering into a situation where they have committed a huge amount of resource, including the application fee, then find they are in a lot of hot water in terms of sensitive strings or even as Germany has indicated other aspects of the application if it raises geographical issues relating to the string itself.

Within the GAC, we have been talking -- we haven't reached a consensus on this -- that the early warning could actually be before the application is submitted so that you avoid that situation of somebody accidentally getting into a major commitment, finding it difficult to withdraw because they have committed a huge resource to it and then engaging the whole of ICANN, the whole system, into something that's not 100% coherent and doesn't have good prospects or at least will become a very protracted form of application.

So as I say, we haven't reached a view that creating a preapplication stage might be one option. But certainly an early opportunity after application for an exit strategy, that's going to help the applicants. It is going to help ICANN. It is going to help

everybody else who will be sucked into a very protracted process avoid that situation. And if it means instituting some kind of fee refund structure, that's something to -- for us all to consider, I guess. Thank you.

>>BRUCE TONKIN: I have got more questions. But if there are any more comments on this one?

>>HEATHER DRYDEN: Norway, please.

>>NORWAY: Thank you. Just a quick comment. While we expect there is a firm system for evaluating sensitive strings, objections will also work as a deterrent for the applications -- well, for them to sort of think twice before they go into a possible string that they, of course, would know that could be problematic or not.

So there are several strings I would expect they would know will cause problems somewhere. So I think a firm system would also work as a deterrent of having applicants having to sort of review what they are applying for.

So that's -- I think that is also an early warning thing with having them to know that this is the system. This is the setting, so they must also think twice. Thanks.

>>HEATHER DRYDEN: Germany, did you want to add to that point?

>>GERMANY: Yes, may I add something?

This early warning system would be an early warning system for the entire community. We have picked up the aspects of governments that was geographic names and the possibility of objecting on sensitive strings. But I think the entire community can raise their concerns. We consider it very important in an early stage of an application that an applicant is aware of serious objection.

And as our British colleague mentioned, we need some exit strategy, exit possibility. The worst I think we could have is an applicant after receiving all the applications does no longer stand by its application and by his project because he knows if I knew that there were so many objections, if this is such a critical string, I would never have applied.

This is something we should avoid and try to soften the exit possibilities for the applicant. Thank you.

>>PETER DENGATE THRUSH: I have just got a question. I guess one of my concerns is: Do you see this as a shift from providing policy advice, the GAC starting to function as an operational kind of way? That sort of has resourcing and timing and Bruce's question about where you see the GAC being able to operate sufficiently broadly and in timely fashion.

If there is a flood of applications coming, is the GAC really going to be able at an operational level to do the kind of work that you're talking about? I suppose there's a resourcing and administration question.

The second question is the much more important one, which is: How do we -- the strength of the multistakeholder model means that none of these processes can be -- it is not just possible, be captured. The President's Strategy Committee spent a lot of time working on mechanisms for -- trying to think about ways that parts of ICANN can be captured and tried to design protection mechanisms. My worry about this kind of mechanism is it is very difficult for us looking outside into the GAC to see mechanisms that would prevent us from being captured.

I guess what we would want to know is how would the GAC processes prevent this being captured by individual governments or individual pressure groups around any particular interest?

Great concern to us that there not be any individual company or individual or government that starts acting with effectively a veto right about something like introduction of a new top-level domain.

How can you help us with -- these are looking into how the GAC would actually operate this process.

>>HEATHER DRYDEN: I believe the European Commission is prepared to respond.

>>EUROPEAN COMMISSION: Yes, thank you. Two interesting questions. I think the first one actually where you say there appears to be a shift in the role of the GAC from policy making to operational, I think that must be very much an ICANN perception because from where I'm sitting, the GAC has a role in giving public policy advice on issues which we think pertain to public policy, and that can be anything.

The issue here for us is should we give the advice halfway through the process, at the end of the process? Or is it fairer to an applicant actually to tell them as early as possible in the process, particularly before they invest too much money in this process? So for us, it is an issue of transparency and fairness.

I think if a string that's applied for raises public policy interests and we object to it, I don't think we see that as an operational issue at all.

I think that's just a question of perception actually, and maybe we have a different perspective from you on that.

On the second question about how we avoid capture, I'm not sure I understand the question actually because the GAC has a long and, I think, a very respectable history

of giving advice to the board on a consensus basis. That requires all of us actually to discuss issues and all of us to agree before we give advice.

In the past, it has effectively given any individual GAC member the right to veto a GAC consensus position. So I'm not sure where the concern really comes from actually that the GAC would be captured.

I'm sure you would be pleased to hear we have very vigorous discussions in the GAC. Most of us actually are very happy to stand our ground politely and diplomatically against colleagues if the position of our administration is different from theirs.

So I think I would like to offer you some reassurance that this fear of capture is perhaps misplaced as far as the GAC is concerned. I think the fear of capture elsewhere, I think, is something that would make for a very interesting debate at some point.

But I think the GAC is probably one of the more open, actually, ICANN constituencies with the least danger of capture. Thank you.

>>HEATHER DRYDEN: Thank you, European Commission.

I see Italy asking for the floor. But before I give you the floor, just to add to what the European Commission is saying, on that first point, we certainly wouldn't consider that to be an operational role. We give advice, and this would be advice.

In terms of the implications for the GAC in its working methods, I think it's clear that the GAC would need to commit to a clear process, ensure that it had put in place the right measures and that it was always prepared and resourced in order to support this kind of a process. And we would want to do that by working with ICANN and ensuring that it was practical and that it was workable. So there is a recognition of that.

I have Italy and then, Bruce, you wanted to comment.

>>ITALY: Okay, discussion about this operational role, of course, is a very important one. In the past, the GAC has been able to apply the so-called GAC principles and then awaiting for the board and ICANN to act following these principles.

But as I said in my previous intervention, the process we are facing now is very, very complex. And I can understand the fear of the board that in this operational role of the GAC, the decision-making mechanism could be delayed or could face other complexity, let's say.

On our side, the side of the GAC, then we should also be careful not to be engaged in very tiny and continuous disputes because this is a danger, of course.

So the secret here is what we call in this list an early warning. And then possibly when there is a call for new applications to be involved in the beginning and eventually locate these critical strings as soon as possible and try to be active in due time -- As we were saying, 45 days is some engagement that the GAC could support, not waiting for only plenary meetings and then deciding in the list and so on.

So I think that from the two sides, there should be a limitation of this, what you call the operational role. And on our side, an engagement to respond in due time. So this is the real critical issue.

But in this new gTLD exercise, some convergence in this direction has to be studied and applied by both parties.

>>HEATHER DRYDEN: Bruce.

>>BRUCE TONKIN: Yeah, I think it's -- it should be very helpful for us to get a sense of recognition that, Heather, you would look at processes and how to support that. I guess in keeping with the concept of early warning and perhaps some degree of transparency on the process, I think as it's documented in the scorecard, an individual government might raise a concern, and then the GAC as a whole would look at that. One of the things that might be helpful for the applicant is early warning of that process is given to the applicant such that the government that's raising the issue, some notice is given to the applicant, and the applicant might have the opportunity to provide some response that then the GAC as a whole could then consider. So it's, I guess, two aspects of that: One, there's an early, early warning, because, you know, the GAC might take 45 days to consider something. But if the applicant knows about it as early as possible, have an opportunity to try and alleviate the concern of the individual government or governments, but also perhaps provide further information that the rest of the GAC as a whole could consider. So it's, I think -- I think, you know, doing some thinking that the GAC could do and then come back to us would be really helpful on just how the process might work and how that would be useful to both the applicant and the board, finally.

The final point on that, I guess, is that the advice we do receive would be useful, finally, if it did say a little bit of documentation of what's happened in the process, such as what the initial government that was raising the objection was, what their issue was, and then advice from the GAC as a whole as to the rationale behind the advice. Rather than just a sort of single statement saying, you know, reject this string or reject this applicant, it actually provides some detail as to why the string or the applicant is not suitable.

I don't know if you want to respond to that. But I think that's the sort of thing that would be helpful.

>>HEATHER DRYDEN: I don't see any requests for the floor. But I think we have heard you. Thank you.

>>PETER DENGATE THRUSH: And sometimes these things go unstated, but I suppose better to state it. Now, there's no suggestion, is there, that all of the ordinary ICANN transparency and accountability principles wouldn't equally apply to all aspects of the discussion about this inside the GAC? In other words, the source of the objection, the reasons put forward in the GAC why a particular string was seen as sensitive or raised a public policy matter in the view of one government, what other governments then said -- in other words, the discussion as we got to the advice from the GAC would be available as part of the public record and part of the materials supplied to the board? That's my assumption. Is there any suggestion that any of that wouldn't apply?

>>HEATHER DRYDEN: If I may try to respond to that, this isn't a question that the GAC has dealt with, but most of our meetings are open, the vast majority. It's only in exceptional cases where we deem it appropriate to have a closed meeting. And there are times when we do need closed meetings. And I think we do need to reserve that right and that opportunity.

As to what our approach would be to deal with these strings, that hasn't been discussed within the GAC. We do support, of course, accountability and transparency and would need to find a way to report on our discussions.

So I think that's my initial reaction to that.

I don't know whether colleagues would want to add.

Okay.

>>PETER DENGATE THRUSH: That seems to be the end of questions from board, looking around for board members. Any other questions -- Bertrand.

>>BERTRAND DE LA CHAPELLE: Good morning. Just a quick comment, or quick question.

I think it's important that the opportunities for commenting, the so-called early warning, is clearly established as potentially be open to all. I think it's an important element.

The question is, how is it different from the current 45 days public comment period that is existing in the applicant guidebook? I think it's a way to address the issue, to try to beef up, maybe, this element.

The second question is, on the notion -- and it goes also to what Bruce was saying -- on the notion of the GAC advice in this process or at different moments, let's say that an applicant decides to retract after the early warning thing. Okay. But if they keep on, what are the consequences of the early warning? How do we handle those things? And, in particular, if there is a GAC advice that has a specific recommendation, I think, and it's not for discussing it right now, but to further discuss it maybe tomorrow, I would emphasize the question that Bruce raised regarding how, in particular, the GAC agrees on advice, how much of a consensus it is, how the definition of consensus is. Because depending on the procedure, it gives a different weight or impact and different consequences for the board to follow or not follow this given advice. So these are the two questions.

>>PETER DENGATE THRUSH: Suzanne, I'm looking at you. But anybody else on the GAC. I think the first question is quite a straightforward one, the difference between this and the 45 -- the existing public comment process.

>>HEATHER DRYDEN: I see Denmark asking for the floor.

>>DENMARK: Thank you. My name is Julia Kahan. I'm from Denmark.

It's an answer to Bertrand, maybe, as I have understood the GAC, the public comment period is -- is through the electronic system, so it goes to the evaluators, or, I don't know, a mailbox somewhere. And, I mean, we in the GAC give advice to the board. So that's just -- that's my comment.

Thank you.

>>HEATHER DRYDEN: Thank you, Denmark.

>>PETER DENGATE THRUSH: And does somebody want to tackle the second, longer, question from Bertrand? Perhaps we can come back to that tomorrow.

Bertrand, does that suggestion that there's -- that there should be a structural difference between public comment and GAC advice as the response, is that something you want to take further or --

>>BERTRAND DE LA CHAPELLE: I think it's interesting to keep it in mind. We'll dig deeper, because there are different facets to this elements, and it would be a discussion in itself. So let's keep this question pending, and we will explore it further.

>>HEATHER DRYDEN: Would the U.S. like to comment?

>>UNITED STATES OF AMERICA: I just thought it might be interesting to share, since we were asked to share the definition of a consensus. We've all agreed in our

different capacities in different intergovernmental bodies. There is a United Nations definition. And perhaps I should read that out. You all might find that useful.

The concept of consensus is understood to mean the practice of adoption of resolutions or decisions by general agreement, without resort to voting, in the absence of any formal objection that would stand in the way of a decision being declared adopted.

So in the event that consensus or general agreement is achieved, the resulting resolution and decisions would be adopted without a vote, and they would be considered by consensus. So we hope that is helpful. I'm happy to give you a hard copy, Bertrand, if you would like.

>>PETER DENGATE THRUSH: I'm just not sure of the applicability of that. I think we've all got -- you're saying that's been adopted into the GAC principles that's now a part of the GAC operating principles, or -- so what's the relevance to the way the GAC would operate in this instance?

>>UNITED STATES OF AMERICA: I believe we were -- perhaps I have misunderstood, Peter. I thought we were asked a question as to how we develop consensus-based decisions. That is the basis on which we develop consensus.

>>PETER DENGATE THRUSH: Erika.

>>Erika Mann: Since we are all developing something new, we are fighting about understanding what kind of consequences the new string will have with regard to sensitive topics. Now, it's always difficult to work, I think, with worst-case scenarios. I'm aware that governments must do this. But for the whole Internet, of course, the concept of worst-case scenarios is sometimes troublesome. I do understand the concept of early warning, and I think it's an interesting concept. But I wonder if we -- and we discussed this briefly yesterday in our working group when we discussed the topic -- actually, we haven't evaluated, but we discussed it, and we looked into it briefly -- if it wouldn't be helpful as well to include after the first batches are released, a truly worthwhile review period which would give us all the time to reflect what happened and then to reconsider maybe certain procedures or redefine them. In the moment, as far as I understood, we only have an evaluation period included. But this one is not defined. It's just a thought, because I think this might help us to actually define the early warning period as having an addition in mind, like a review period, which then can reflect on all the topics which we are discussing.

>>PETER DENGATE THRUSH: Bruce, did you want to add something to that? Okay.

Bertrand.

>>BERTRAND DE LA CHAPELLE: Just one important question, I think, regarding the definition of consensus or the practice of consensus that Suzanne has mentioned.

In the U.N. system, an intergovernmental organization, this is something that is used very frequently to make resolutions. A lot of those resolutions have no actual implementation force. So it is made to adopt a document, and if there is no objection, the document is adopted.

In the case we are discussing here, the consequences of an advice by the GAC, and if we want to really take into account the advice fully, maybe to basically receive for the board something that says, the GAC, by consensus, wants to convey the advice that the board should not enter this string in the root, which is a very operational consequence for the applicant, for the root server system, and so on.

And one of the things that we need to address is that in that case, it is very important for the board to know whether all the GAC members, at least, have been fully informed or having had the opportunity to discuss, because in the U.N. system, if people are present in the room during that specific meeting, something is adopted by consensus, and okay.

Here, there is a very operational consequence. So just to highlight this element, making sure that there is full consultation, it goes to the operational principles of the GAC itself, it will be the responsibility of the GAC. But in terms of the discussion we are having here, it's very important to understand more clearly, as Bruce said, how each side develops its position and what is the expected reaction and attitude on the board side and the other side. Because if it is about the GAC saying a string should not get into the root, it is a very important advice. And how it was elaborated and how the agreement has been achieved is important as well.

Thank you.

>>HEATHER DRYDEN: I see the European Commission and the United Kingdom.

>>EUROPEAN COMMISSION: Yes, thank you. I think this is a very interesting subject which many of us have been involved in before.

I think it's a subject that's too big, actually, for this meeting, actually, for new gTLDs. It goes beyond that.

I'd just make the observation that, you know, the requirement for the GAC to provide consensus advice is not provided for in the bylaws, your bylaws. We didn't draft them. So that's an additional requirement that you might be introducing now.

There's also no requirement for us to motivate the advice that we give to the board, although I would hope -- and my GAC colleagues and other members of the

community will see that most of us are very happy to motivate the advice that we give, even if that often means us repeating ourselves several times at successive meetings.

So I don't think that's the problem.

But I would add from a purely legal perspective, maybe the bylaws need to be revised. Because the bylaws do require the board to motivate a decision when it rejects GAC advice. But this idea of a consensus, I mean, is not a problem on the GAC side. We've been working on the basis of consensus for 12 years. We've never had a problem, actually. We know when we've got consensus. And that's when everyone agrees in the language in our communiquÈs or letters. This is a problem that's come from the board side or the staff side. And what I'd suggest is that you look at your own bylaws, actually, because they may need revising before you can achieve some of the things that you appear to want. And that I would have thought would add a significant delay to the new gTLD process.

So bear that in mind.

Thank you.

>>HEATHER DRYDEN: United Kingdom.

>>UNITED KINGDOM: Thanks so much.

I just wanted to come in in support of the last two substantive board member interventions, first of all, Erika's point about having a review mechanism. I think that's an excellent proposal, because we are entering into new territory. You, Peter, have suggested that we might actually be extending our role in the GAC in some way. So that's -- that is something we're pretty mindful of, actually. And if we are sort of reviewing a proposal and that involves national-level consultations, that could be a lengthy process. That could actually hold up the operational aspects of what ICANN is doing. So that's -- in that sense, we're sort of, you know, touching on the operational role in that way.

And so a review of how this is working up to the first batch, I think, is going to be very useful, because we are sort of fumbling around. We're not sure, you know, what scenarios could ensue with particularly sensitive proposals and how we handle them and the extent of GAC involvement, and to what extent they hit on foreign policy positions and so on, and how open GAC members can be in articulating arguments for and against. It's -- you know, could be very tricky territory and has to be handled very carefully. And we're not really in the position at the moment to anticipate exactly how we do that.

So review is going to be very useful for all, I think.

Secondly, Bertrand's point about full involvement of the GAC, we have -- it's a very valid point. We must ensure that the GAC, in fulfilling its role, is doing so properly, all representatives are properly engaged and empowered to present their views.

Thanks.

>>PETER DENGATE THRUSH: Yes, thanks, Mark. I was thinking along the same lines as Bertrand, consensus advice about many matters is perfectly routine. A decision by the GAC that actually might deprive an applicant of their application is something that seems to involve much more concept of due process and knowing what the challenge is, who the challenger is, and what process has been through. That was where I was coming from before with that kind of thing. This is different from other forms of consensus where you may or may not even be in the room when it's determined.

>>UNITED KINGDOM: I broadly agree with that. But I just wanted to emphasize, we're not talking about a veto process here. It is one of formulating advice for the board to help the board take its decision. And, actually, that reminds me of a point about what happens if, despite strong early warnings, the applicant still pursues?

I would envisage at some point further down the track, after we're all a lot more educated about the proposal and the pros and cons, a further recourse to the GAC for advice at that later stage. And it may be at the same time as the board is seeking independent advice from human rights organizations, Council of Europe, or whoever, in tandem with all those requests for advice, so that there would be one to the GAC for a further take on it, if you like, in the light of what everybody has learned through the process of the application, having been pursued a lot further, if you like, and the position of the applicant might have changed. That might be a factor to take into account.

But as I say, it would be advice in tandem with other sources of advice that the board may feel -- wish to seek.

Thanks.

>>PETER DENGATE THRUSH: Rod.

>>ROD BECKSTROM: This is -- Mark, I want to say thank you. That clarification is extremely helpful, that what we're discussing here is GAC advice on the strings or applications, and not a veto. That's very helpful, certainly to me, and I think to other members of the board.

Thank you.

>>PETER DENGATE THRUSH: There's no more on early warning and sensitive strings. We have five minutes before the coffee break. Let's see if we can't get started on the next topic, which is root scaling.

So are we ready to change teams? Bruce, one last comment.

>>BRUCE TONKIN: Just one comment. It's really more of a scheduling question.

But under this category, there's a section in here which is 2.2, which is expanding categories of community-based strings. And there's about five points there.

So it may be the suggestion is we pick that up tomorrow morning. Because I think that's probably a substantive discussion as well.

Heather or Peter, do you want to comment on that? It's really partly for Suzanne and I as to when we would speak to that issue. My suggestion would be tomorrow morning.

>>PETER DENGATE THRUSH: I'm quite happy to put it wherever suits the protagonists, as it were, all the people who are helping us. If it suits you tomorrow, Bruce -- unless -- Suzanne is agreeing. That seems to be the answer. Perhaps rather than shuffling into something and stopping, let's stop now for -- Heather, unless you wanted to do something more -- let's stop now for coffee break. Can we please have you back strictly within the 20 minutes. I know there's a lot of things that you can do in the corridors with each other. But we get back here and have the discussion continue, that would be the most useful.

Just as a housekeeping matter, could I just confirm, please, for the room, when you come back, the tables with microphones are for board members and GAC members. It's -- so observers, if you could just make sure that you sit somewhere, please, where there isn't a microphone and make sure that board members and GAC members have got access to the microphones. So when you come back in 20 minutes, please, we'll be ready to start root scaling. If the root scaling leaders could be ready to join us, that would be great. Thanks, Suzanne, thanks, everyone.

(Break)

>>PETER DENGATE THRUSH: Ladies and gentlemen, thank you for coming back so promptly from coffee. Would you please take your seats and we will begin the root scaling discussion.

Thank you very much. Let's build on the very good start we had to this morning's discussion. And thank very much to those who contributed to that first session.

Can we have a bit of hush at the back of the room, please? Thank you.

We come then to the root zone scaling, and the topic leaders are, from the GAC, Thomas de Haan, and the from the board, the root server advisory liaison for the board, Suzanne Woolf.

Thomas, can we start with you. And again, I think the way we worked last time went very well.

You can assume the board has very carefully read the scorecard and understands it, and what we would like to do is understand the rationale and then I think some questions.

So, Thomas, over to you.

>>THOMAS DE HAAN: Thank you, Peter. Thomas de Haan from the Dutch government, GAC rep.

This scorecard issue is one which I would consider as an issue which we have remaining concerns. I don't think, and we make this clear in teleconferences, we don't have a difference of opinion. We have just a couple of remaining concerns.

And I think these concerns, what I can do is just briefly say that why we have these concerns.

First of all, we think this change in Internet will be one -- let's say a huge leap. We are doubling in one or two years the root zone system, the root system. And then of course we will continue to do this in a pace which could well be up to a thousand a year.

And this is completely new. I think this is something which could have unforeseen effects. I think everybody agrees, it's irreversible. We will have this new system for the foreseeable future. And that makes us very nervous, I think, as governments.

We have seen in the last ten, 20 years that Internet is becoming the backbone of our economy, of our society. We depend on it. The success of Internet is basically, also, a factor in which we are becoming dependent of the Internet.

So what I think we agree with the whole community is that we cannot risk any failure of this system.

The security and stability of DNS and also the universal resolvability is something which we cannot afford to have any failure or any negative impact.

We have two areas of concern. The first one is the -- what we -- I think the community has been calling now the monitoring and early warning system. I think there are other terms, but, okay, Suzanne can correct me, if you want.

>>SUZANNE WOOLF: No need.

>>THOMAS DE HAAN: This monitoring and early warning system, I will comment to this a little bit later.

The second one is more on operational issues, resource issues. And to be sure that we don't face any congestion, operational problems, in the whole continued integration of the system.

Let me pick out only two advices which I think are crucial in this context. We have formulated seven. I will take two of them concerning the monitoring and alerting system.

What we advise to the board is they should continue implementing monitoring and alerting system for two reasons. To ensure that ICANN can react predictably and quickly when there are indicators that new additions and changes are straining the root zone system. And secondly, to ensure that the processes and resulting restorative measures that flow from its results are fully described in the Applicant Guidebook before the start of the first application rounds.

The second point is, I think, important, also expectation management to applicants and to the whole community, that if somebody -- if something comes out of this system, the evaluation of the first round or batch, it should direct have impacts on the process.

Secondly, what we advise the board is to commit to defer the launch of the second round or batch, if you would, of applications unless an evaluation shows that there are indications from monitoring the root system that the first round did not in any way jeopardize security and stability of the root zone system.

I think -- Suzanne can, of course, elaborate on that. I think there is, of course, this intention. Possibly what we, as GAC, want to stress is more the explicit use of the system in the sense that it's not that we continue silently if there's nothing happens. Now we want to really have confirmation that in no way security and stability was jeopardized by the first rounds.

I think I will go very quickly to the one advice on more the operational resource issues. What we advise -- it's not an advice, it's more a concern. I think the board is confident that all relevant actors, IANA, root server operators, et cetera, are sufficiently informed about what is expected from them in terms of work loading and resources in order to fulfill their respective roles. In particular, the predelegation (dropped audio) implementation of potentially 200 to 300 root zone

changes per year, and also important, your expected post delegations. If you have an introduction of a couple hundred entries of new gTLDs, you, of course, have the maintenance after it, which has yearly changes to perform.

I think I will leave it with this. Suzanne. I am very curious for your....

>>SUZANNE WOOLF: Thank you.

I would also like to keep it very brief because we're here to listen to our colleagues here and make sure we do understand where we are.

But just as you said, there's quite properly a set of concerns both around the operational management and making sure that all the issues have been addressed as far as the implications on the functioning of the system of an expansion in the size of the root zone.

But in addition, as almost a separate concern, what I'm hearing from the scorecard and our conversations together here is that there is also an almost separate need for further transparency and for some of that assurance to be pushed outwards. And the creating assurance and confidence that the homework has been done on operational matters is really as much what we are here to address as the underlying operational considerations.

We could go on at great length about where the operational considerations have been addressed to date. We're here to identify any remaining gaps. There's been a great deal of work that has gone into identifying the operational issues and assuring that they will be handled.

The root scaling study that the RSSAC and SSAC sponsored, formal request for advice from the RSSAC and SSAC, and related operational discussions. And in fact a great deal of work has been done that now needs, as we said, to be pushed outward to turn into confidence and assurance. And as Thomas referred to, some ongoing ability to keep a dialogue, to keep reporting and monitoring done openly so that not only are the issues under control but that everybody can see that they are.

And so what I would most like to hear is whether, first of all, that's a shared understanding of where we are amongst the board and the GAC, and to make sure that we are of a similar mind so that we can go ahead and address any remaining details.

My own impression is that we are not far apart as far as large-scale issues of policy, perhaps unlike some of the issues we're here to deal with.

So for the most part, what we're looking at is confidence building, assurances that the details have been looked after. Implementation issues of dialogue and so on.

And if that's the shared understanding, we should go forward with that, and if it's not, we need to identify that.

>>PETER DENGATE THRUSH: Looking for other comment from board or GAC members or any other questions.

>>HEATHER DRYDEN: Sweden, please.

>>SWEDEN: Thank you very much, Heather and Peter. This is Maria from Sweden, GAC member.

I just to say I think we are not very far apart, actually, so I can agree on that one, but I think also to what Thomas de Haan said, he read from the scorecard I think a very important step actually is the evaluation step. Kind of have some kind of, after a first round, you make some kind of evaluation. And based on that one, actually, you know how to proceed.

So that kind of step in the process I think is very important.

And even from my point of view, I think I told you before in some of the other meetings we had with you, actually, I think it's also important that you have some kind of limited first round so you could actually have this batch. And then you evaluate. And then kind of based on that information you get, you can move forward.

Thank you.

>>PETER DENGATE THRUSH: Suzanne, if I could just ask a high-level question, because we have been through this on the board quite from early days. And perhaps just before I -- Thomas, just to confirm how important this topic is to us as well. I think I'm just looking at line one of the mission of ICANN which we are all here to support, which is ensure the stable and secure operation. I mean, that's point one of just about everything that we do. So we share with you the sense of the importance of this as a topic.

Suzanne, I suppose the question -- because the nontechnical members of the board, like me, also approach this on the basis that the root system was kind of like a boiler and that you could stick a thermometer or have a valve that was reading operating calmly, operating, you know, dangerously. And I think technical people like you put me in my place very early on and told me that's not how it operates.

So could you comment really on the concept of a monitoring and alerting system, as a concept.

>>SUZANNE WOOLF: Sure. And then, actually, I suspect that my SSAC colleagues here, having done the deep dive with me on some of these topics, might also have some supplementary comments but I will get us started.

There is a -- One of the factors we identified early in the normal attempt to review all these things is that as a DNS operation, as the technical operation of a DNS zone, the root is not complicated. It is not large. It is not complicated in terms of the kind of data it carries.

What is very important, though, because the critical parameter is stability, is limiting rate of change, more importantly than limiting magnitude of change. And this is pretty extensively documented where this thought comes from in some of the primary materials I referred to earlier.

So what we look for -- what I would expect we would think of in terms of monitoring and what we're talking about in terms of monitoring is, first of all, because the system is so public, there's a great deal of public information that can be used from anyone who is interested to refer to how certain -- how the system is responding. But in addition, for subject matter experts, what you look at is a few relatively simple things that you want to look at over a long term for changes in behavior. And as we get further into specifying details, you know, things will be clearly and precisely defined.

But the high-level take-away has to do with rate of change and the ability to do trend analysis and long-term review as well as instantaneous data.

And I believe Steve had a couple of comments, maybe.

>>STEVE CROCKER: Thank you, Suzanne.

Yes, along with Suzanne, she and I and several others have spent quite a bit of time on this over a long period of time.

When the question about root scaling first arose, there was no bound on how big the root might grow under the pressures that were being anticipated. And numbers were thrown around that went into the millions, into the hundreds of millions, and were really quite extravagant.

What's become very evident and very solid is that the maximum rate of change that we're going to see is very, very small numbers. On the order of a thousand or 2,000 or whatever, you figure in that range you want to choose, per year. And as Suzanne said, the root is a very, very small operation. That if you look at the root in contrast to all of the top-level domain operations, the biggest top-level domain operation, of course, is com which has on the order of a hundred million separate entries, and the root has on the order of 300. That's a huge, huge, almost five orders of magnitude --

more than five orders of magnitude difference, pushing towards six orders of magnitude. That is a factor of a million, almost, difference.

And then all of the root operators -- I mean, all of the TLD operations range up and down within that. But, for example, in your country, dot NL has a million plus a few million, I think, now entries.

So we're talking about what's fundamentally a very tiny operation. And even under the most extreme hypotheses now on the table, the maximum change still puts it in the tiny, tiny range.

So if I could draw a kind of loose analogy, take one of these cups or bottles of water sitting around here, we are talking about a system that is capable of carrying a liter of water that is currently carrying a drop. And we are talking about expanding it to ten drops or a thousand drops and it's still a very small amount in a very small container compared to the massive systems that we know how to build that are capable of holding reservoirs full. So the magnitudes are hugely different.

Another point Suzanne alluded to that I want to emphasize quite a bit, there is a huge amount of work that's done. The root operators are very capable, experienced people. They have all kinds of meters and gauges on their boilers, if you will.

The principal high-speed part of the operation is the part that faces the Internet users and is responding to queries from users. And those are measured in millions to billions per day.

There is no anticipated change due to the things that we're talking about here. The principal thing that causes a sharp rise in the number of queries to root systems are the number of users on the Internet, not the number of domains.

The back side of those systems where you're putting new names into the systems is changing at a very slow rate. A simple rule of thumb is that there is approximately one change per day per TLD, and that includes the WHOIS changes as well as the other things. So these are tiny numbers. And these changes take a fairly long time to propagate through the administrative processes. So the root operators sitting at the far end of this change are able to see these changes coming a long, long time in advance.

So this image of a boiler that is about to explode, perhaps, if it gets too high is not the right kind of image to have. This is closer to watching grass grow and worrying about if the grass is going to get to be a little too high and whether or not you are going to be able to respond to it in time. And come by once a year and check it out. It will be fine.

So I don't want to make too light of it, but I think the other point that Suzanne pressed is quite relevant. There is a lot more information that the people who are

running these systems actually know, and they actually do communicate with each other. What is less clear to most of us in the room here and to the people that we talked to is whether or not that communication is taking place, whether that documentation is available.

And I think a relatively easy and quite appropriate thing would be to have more formal communication related to that. I would certainly be very supportive of that, and I think that would be very helpful.

And I would also invite the nontechnical people to request, even demand a simple tutorial once a year, or little briefing, that makes them feel more comfortable, and appropriately so, in terms that are understandable. And I think that would be a very helpful thing to do.

And then putting my board member hat on, I think we could commit to that in a heartbeat.

>>THOMAS DE HAAN: Well, thank you, both. Apparently, I think I agree -- or we agree with the fact that transparency helps enormously, especially if we come from governments and our Minister wants to have all the things you said, let's say, in ten sentences.

So it's a task for us to give them the confidence feeling that we experience from you now.

So transparency and more formalization, I agree. However, I think we did not have reactions, which we think is quite important, to the sense of -- to advices that, for example, ICANN commits to not start the second round unless you have information. And the second -- and the first point is about, I think Mark also -- we jointly set this up, this scorecard point, the parts that whole consequences of potentially, hypothetically, you have to slow down the process should be at least integrated somehow in the DAG so that applicants are aware of potential risks.

Thank you.

>>STEVE CROCKER: Let me take privilege of responding to the points that you are raising there.

I would argue that the evaluation should be a continuous process, not just put off for some time and then done at the end of this. That there should be a pretty clear picture.

And I would have no objection to a formal additional evaluation or taking the measure of the system so that everybody is comfortable with it, but all the data relevant to that ought to be available on pretty much a continuous basis throughout this entire process. It's much easier to do that than it is to say, okay, we're going to

stop the world. We're going to do an evaluation and just have a single point in time. And you have much more confidence if you have a system that is under measurement and is continuously reported and you can see where it is.

So I would go -- I'm not suggesting not doing -- pardon me for the double negative. It's perfectly okay to do the evaluation at the end but I would take it a step further and do a continuous evaluation.

The other aspect is in terms of putting things into the DAG, the relevance there, I think, is your very well taken point of keeping applicants informed. But that is only a part of the picture. The other part of the picture is is the root system healthy and stable and so forth. And that's not of interest only to applicants. That's of interest to the entire Internet community. And the proper place for reporting that is in a much broader forum.

So I think the connection between reporting on root server system stability and its performance under changes due to scale is a separate topic, and it applies back to the TLD process to the extent exactly that you have suggested of keeping the applicants informed.

I don't know how much really there is to inform because the process is so long, and it's very hard to tell the difference between the process going forward and the process stopped at any given instant. I mean, it's a pretty slow moving treadmill, if you will, not a high-speed train that all of a sudden comes to an abrupt halt. But I think it's relatively easy to report on what the Q links are and how long to expect an application to go through and whether or not there are any big changes due to external circumstances like a big change in the root server system.

>>PETER DENGATE THRUSH: Steve, we are starting to get into solutions, et cetera, which may mean we don't have to talk about this tomorrow, so that might be quite useful. We sound like we are very close.

Just to summarize what I think you are saying, you are saying these reporting systems are already there and a lot of people already have this kind of information. So perhaps what you are talking about, and this is Thomas's point about the transparency and accessibility, and what you are saying is we don't necessarily need to go and invent new monitoring systems to meet this requirement. We need to make better use of the systems that are already there. Is that what you are saying?

>>STEVE CROCKER: Fundamentally that is right. And packaging the information that exists to address this community rather than the operational community that watches this very closely by themselves.

>>PETER DENGATE THRUSH: Ram, you wanted to add to this as well.

>>RAM MOHAN: Thanks. Just a question.

In the recommended GAC advice, there is a sentence here, Thomas, that says the processes and possible resulting restorative measures that flow from the results.

So this is talking about the monitoring and alerting system. And the recommendation or the advice is that the processes and the possible resulting restorative measures should be fully described in the Applicant Guidebook before the start of the first application round.

I'm curious to understand a little bit more of the thinking behind that, because some of what -- when you look at the measurement of the root system and how that process flows, that tends to be somewhat -- first of all, as Steve and Suzanne had mentioned, there are many measures already in place, most of which are public right now. And secondly, some of the -- as change happens, when there is a dynamic event and as change happens, what you measure currently often ends up -- may sometimes give you a clue as to what else may need to be measured.

So I am wondering what is the intent behind the GAC advice, that all the possible -- it feels like you are asking for all the possible processes and possible resulting measures be defined ahead of knowing what the problems itself might be. And I'm just curious to understand that a little bit more.

>>THOMAS DE HAAN: I think basically our advice also, and the wording, comes out of the fact that it's still very un- -- not sure what will be the effects. Again, transparency works.

If we talk about restorative measures, we just -- if we don't know exactly what can happen and how you can slow down, we have of course the reflex of trying to secure it in wording, which from things we know.

So I think I agree with you. We don't know yet what kind of effect you can expect and what kind of solution you can have. So it's hypothetical.

And I think the interpretation of the advice should, of course, be tailored to what the system can deliver and what can -- let's say what kind of effect you can take into the applicant's process.

I don't know if I have made it clear, but I think that maybe Mark can add to this point, or....

>>HEATHER DRYDEN: Thank you, Thomas. If I may.

I think one way of looking at this set of issues from a government perspective is that our leadership is seeking assurances that everything is being conducted in an orderly, thoughtful manner; that the appropriate mechanisms are put in place, and so on and so forth.

And we noted very early on that at a high level we are really close to agreeing, but we shouldn't forget the importance of having some sort of record or documentation or something that members of the GAC can actually point to and demonstrate that ICANN is doing all that it needs to do. These are its plans.

And so whether we're talking about changes to the DAG or some other written plan, you know, there is that need. And so that might help explain the nature of the request made. That's what we are at least in part seeking.

>>RAM MOHAN: Heather, thank you. That is extremely helpful because that helps clarify where potentially we might be able to go. Because I was concerned, when I read it, I was concerned about the desire to -- or what seemed like a desire to document what we don't know and how we are going to solve a problem we don't know about.

Thank you.

>>HEATHER DRYDEN: Thank you, Ram.

I have the U.K. and Sweden asking for the floor.

>>UNITED KINGDOM: U.K., thanks very much, co-chair.

The point of -- one point of anxiety is that, you know, if there is -- if the monitoring throws up some problem, what, then, is the process? I mean, who takes the decision to apply the brakes or how to communicate those applicants that are sort of waiting in line wanting to know what the impact is going to be.

And part of the anxiety is that there's obviously a lot of actors involved in this process of delegation and operational implementation.

So, you know, how -- when we turn to a Minister and say, "I'm not sure who actually has the final decision on this," it's a bit awkward. So clarity on that I think is pretty important. It's important for us in answering questions from colleagues in government, and also, it's important for the community of registries to know what is the process, how predictable is this and who do we talk to. Is it the root server operator? Is it NTIA? Is it VeriSign? IANA? ICANN? Who is in control, if you like, in such a critical situation?

I mean, talking about external actors, I mean, that was one of the important points that came up in national consultations on this.

It does involve a lot of actors. And sometimes some of the analysis leaves you a bit guessing.

And the delegation rates scenarios paper, for example, assumes that there are no capacity limitations. It is on the fourth page, "The model assumes no limitations on IANA's, VeriSign's or NTIA's ability to execute delegation activities." That's a big -- that's a big gap, if you'd like, in the analysis.

So it's important for us to get a complete picture and in terms of the DAG, for that complete picture to be fully articulated as regards all the actors.

In terms of -- we've touched on the idea of limiting the first batch. I don't think we're there yet in terms of what that limit might be. We've heard from the ICANN team 200 to 300 in the first batch. How is that figure arrived at? I don't think I can explain that to a minister.

But that's -- that would be a doubling of the root. Is that safe? That's the kind of question you have to answer to a minister on. And it is difficult for us to be precise about that. And we always tend in government to err on the side of caution. Is a doubling of the root in one go, in the first batch, a safe option? Thanks.

>>HEATHER DRYDEN: Thank you, U.K.

I have Sweden and Italy. But I know you have a speaking order as well, Peter. So shall we go? Okay, Sweden, please.

>>SWEDEN: Thank you very much, Heather. To start with, I just want to comment on Ram's question about the formulation about the restorative measures. Of course -- of course, it's hard to describe measures before they are done or before you know the results in the application guidebook. So that's certainly not meant to be here.

But it's very important that it's described actually how you take care of the measurements, the information from the monitoring and evaluation that you're doing. So that is actually what's meant to be here so far as I can see.

But what Steve said about the evaluation has to be an ongoing task. And I think that is very important, of course, that you have this monitoring and doing the evaluation on the go. But that doesn't mean actually that it has to exclude to have a limited first round.

And then before you start with the second batch, you actually look at the information that you get from the evaluation because if you don't have this limited first round, then I'm coming back to what Mark was saying. How is the process going to be? Even though it is a slow process, even though it is not a running horse or whatever Steve was saying, it still needs to become some kind of process and some kind of tools to actually be able to stop.

So that's why we wanted to have some kind of first round evaluation and then based on that information, you know how to move forward, as I said before. Thank you.

>>HEATHER DRYDEN: Thank you, Sweden.

Italy?

>>ITALY: Okay. Thank you, Chair.

I would like if the board staff can elaborate a little bit more about this evaluation, the delegation rate scenario saying that expected delegation rates were 200, 215 to 240 per area. But maybe it is important to have an idea of realistic evaluation of the potentiality of activating this new gTLD.

So what I mean is expectation on how many applications will be -- will arrive and then, of course, there is a time spent for evaluation of the applications, negotiating contracts and then, after signature contracts, activation of the new registries.

And then it is important to figure out realistically in quarters, in the next year after the call, how many new registries will be activated because in the end, it may be the realistic data is lower than indicated here.

So the -- I mean, the administrative matters are a limiting factor, of course, on the number. And I happily can believe that ICANN will be able to sign one contract per working day in one year, at least in the first instance, because it may be there is time then to adjust the evaluation and the contractual matters in the future -- in the future cause in the second round.

And, of course, it is important to do an evaluation of how much time will be needed to end up with satisfying the first call and then the community wants to know the second call will be made.

So I wonder if these practical considerations then lower a bid or significantly the person connected to the root zone increase. Okay.

If you can give some more specific ideas on that, it would be interesting for the discussion.

>>PETER DENGATE THRUSH: Thanks, Stefano. I suggest we hold answering that and getting into a debate about board papers. The key thing for us today is to understand the GAC concerns. We will come back and answer that if we have the further discussion.

Was there another GAC speaker? Because I've got Suzanne wanting to come back and Bruce wanting to say something.

Suzanne?

>>SUZANNE WOOLF: Sure. Just as a very brief note, to the extent we have identified a need to talk to each other more about some of the operational issues involving the outside -- the root server operators and related outside actors, I would invite us all to take advantage of the opportunity that RSSAC will be actually be doing a workshop and a committee meeting and a number of members will be -- frankly, more of us than are usually at ICANN meetings as, frankly, a fairly basic shift in how we're looking at the relationships -- relationships within the community -- more of us in a workshop and so on in San Francisco and other future meetings ongoing.

And if we should -- I think from what I'm hearing, we should be exploring some ongoing or recurring way to make sure we have some of these conversations and just, as you say, transparency works.

>>BRUCE TONKIN: Thank you, Peter.

I wanted to very briefly comment on some of the terminology used and perhaps provide some clarity on this. First, when people use the term "rounds," rounds in a new gTLD context, this would be the third round. The first round was in 2000. Second round was in 2004. We're looking at potentially the third round this year.

In terms of the administration or processing of applications, the terminology there is "batches." So if there is only, say, 200 applications that would essentially fit within one batch, what the staff document has stated in terms of the processing is that if they got 2,000, then they break that up into batches of 1,000. So probably just separate terminology from "rounds" and batches."

And so the limiting factor there is it is really the administrative capacity of ICANN to handle those, and that's why they are broken down into those batches.

The third thing is delegation rates. And that's the rate at which you would install something in the root. And perhaps an analogy could be the difference between planning approval for, say, building a house or building buildings and when they actually get built. You know, a counsel office might give planning approval for 100 new houses, but they don't all get built at the same time. They might be limited by the number of carpenters or the number of building supplies. So they actually get spread out over time.

We've seen that even in the 2004 round that we did, the actual delegation of that was pretty slow. It was about one a year. And some of that was maybe limited to some contractual aspects, but a lot of it is just that organization -- it is a significant effort to set up a new gTLD. You have got to set up contracts with distributors.

You've got to do marketing. You have got to do planning. It can be one to multiple years after ICANN approves the application between when it actually goes live.

I just want to be clear. It is not like ICANN approves 100 applications and then 100 applications go into the root. It might take five years just for those parties to put their applications in there.

So the answer to the question who is dealing with that part of the process, the delegation part, that is IANA. And IANA, again, would be batching the requests. And if there is an issue that's identified and people use the terminology "break" at that point, a lot of that can be dealt with through discussions with those parties wanting to go live because some of them aren't really in a hurry to go live. They might be fine saying, Yeah, if it's a delay of a couple months, it is not an issue. We haven't got our plans in order yet either. Others might say, We have a desperate need to go live because we've got something that needs to be done. And that can be dealt with. So just want to sort of give a sense of these timings are really quite different things.

And then the technical impact in terms of traffic on a root server, it is really not related to the size of the file. It is pretty irrelevant. The bigger impacts are probably the number of new users on the Internet because they are driving the queries to that root. Whether it is just a single name in that file, it could be just dot com or whether it is a thousand names isn't really an issue. It is about how many users are doing queries into the root. So it is more limited by the number of users.

And then broadband networks are having a big impact because as people get more and more capacity in their network, their ability, whether they do it deliberately or accidentally, to generate traffic in mistake to the root or deliberately generate traffic to the root is increased by the availability of this broadband infrastructure and number of users.

So I just want to sort of put the context there that for managing the root and monitoring the root, it is much more about what's going on in the traffic of the Internet, much more about the fact that there is more users coming online, much more about the fact that there is more and more broadband capacity out there than it is to the size of the file. Just sort of put those things in context.

There is many variables that deal with root traffic. The number of entries is only one of those variables.

>>HEATHER DRYDEN: Thank you, Bruce.

I have Denmark next.

>>DENMARK: Thank you. I would like to agree with what my GAC colleagues have said, and I'm happy to hear that -- the assurances that there will be an evaluation throughout the process. But we need assurance that there will be such monitoring

and alerting system in place before the application starts, as has been said before, and that there will be an evaluation after the first batch as well so that we can assess what will happen next.

And, of course, the basis of such a system is that there is a limited number that can be evaluated on, as Sweden has said previously, before the launch of the second batch. Thank you.

>>HEATHER DRYDEN: Thank you, Denmark.

Thomas? Netherlands.

>>THOMAS DE HAAN: Thank you, Heather. Picking up on what Bruce said, I think this is also our intention to have a more holistic approach on the effects of expanding the root zone or the root system.

And I agree with you, I think things like, well, what's the effect on the latency of the whole system, there will be more queries but which will they be extra?

So we would also urge not to look only at the pure organizational and all the effects in just the root zone system operators' part of the game but try to look at it more broader. Thank you.

>>PETER DENGATE THRUSH: I think that's been very helpful. Thank you. Any other questions from other board members about root zone scaling? I think the key point is that what's being asked for is, in fact, already available and so it is not a question of setting up something new. It is a question of making it available and sharing it and putting it into formats that GAC members can take home to ministers and make this relatively complex process visible and help you give the ministers and your masters the confidence that the technical people already have. It is a question of sharing that and making sure that this is understood.

So that's very helpful, thank you, topic leaders from the board and from the GAC.

Let's move, then, if we are ready, to the next topic which is market and economic impacts. Thanks, Thomas.

My sheet shows from Portugal Ana Neves is one of the leaders on that and from the board, Ray Plzak. If you want to come up. I think it is helpful to see you as you are talking.

You want to do it from there? Sure.

>>HEATHER DRYDEN: Portugal, were you going to present on this topic? Okay. Please, go ahead.

>>PORTUGAL: Thank you very much and good morning. Well, the GAC's views on this issue are the following. The several economic studies carried on are not able to conclude or to show evidence on the expected costs and benefits of the new gTLDs to the market and to the consumers.

Some economic studies containing important findings that the past introduction of the new gTLDs provided many mild public benefits in terms of competition and potential commercial opportunities for existing gTLDs plus the introduction of new gTLDs made costs on intellectual property owners what might result in defensive registrations and other costs associated with protecting their brands.

While this issue which is reflected in the laws of every GAC member country mirrors the GAC -- the GAC's public policy concern in the rights protection issue. To launch the process of new gTLDs with no further delay and coming from these concerns, the GAC proposes that we proceed by acknowledge that studies of market and economic impacts have not produced effective information so that there is a need to set up a process to follow the markets and the economic impacts of the new gTLDs once they are adopted.

For that, criteria and metrics have to be identified so that responding data can be obtained in order that evidence-based analyses on market and economic impacts is feasible, allowing of us to better understand cost benefits obtained through lessons learned from the first round or batch of launching of new gTLDs.

So we proposed a methodology that should include to follow some criteria to facilitate and to assure that the opportunities and benefits outweigh the costs for consumer businesses and other users of the Internet in the evaluation and award of new gTLDs as well as to consider evidence on increased competitiveness of the gTLD market. This criteria should set on the basis of expert advice coming from OECD or from other reliable source.

To require to the new gTLD applicants to provide information on the expected benefits and on what they will propose to minimize costs to registrants and consumers, this will allow to make the applicants both accountable and sources of crucial information. And we should require to the new gTLD applicants as well to address how they would assure positive markets and economic impacts. And if the criteria that I mentioned for measuring are put in place, applicants should indicate how they expect to fulfill them.

So after this first round or this first batch of new gTLDs, it should be commissioned an independent review to identify deficiencies and scope for further improvement to be incorporated prior to the next round, batch, of applications and so forth before the other rounds.

So thank you.

>>RAY PLZAK: Thank you, Chair. In looking at the scorecard that was presented to us and what you have just presented to us, I'm hearing in certain circumstances entirely different things. And so from a standpoint of clarity, for evaluative purposes, one would question which we listen to. We're given the assumption that the points that were made in the scorecard are the points that should be dealt with.

And so -- and in the scorecard, there is an identification of providing criteria and identification of a requirement to respond. And it is also a reporting requirement.

But in your presentation right now, I've heard an additional requirement which is an evaluative study which was not present in the first -- in the scorecard. And so I'm not certain if that's something that we should be taking up here, so I will defer to the chairs to answer that.

>>PETER DENGATE THRUSH: Heather?

>>HEATHER DRYDEN: Shall I respond or would you like to -- the idea of the study relates to the requirement in the Affirmation of Commitments in relation to market and economic impacts.

So what's in the scorecard in terms of identifying criteria or indicators or some such measure is -- with the idea that that needs to be measured, and you would need to establish appropriate criteria or indicators now so that you have something to measure so that you can report against the Affirmation of Commitments.

I think Portugal mentioned the OECD as an example organization or whether you would go to Katz, Rosston & Sullivan or some sort of expert body in order perhaps to help identify those kinds of criteria, but it is really meant to be forward-looking that we've identified this here.

>>PETER DENGATE THRUSH: I think Ray has identified two different things. One, thank you, Portugal, for your discussion about that.

A post-launch study is something that we are very happy with. It already occurs as an obligation in the Affirmation of Commitments. And I have asked staff if they could find the text of one of the resolutions. I think I would call up the Tonkin resolution from Cartagena. I think Bruce wanted to call up the Zuck resolution because it is -- one of the members of the community's been asking for these kind of metrics.

Bruce, you might be able to help me with the text if the staff can't quickly pull it up.

But one of the resolutions in Cartagena said, We should start collecting that kind of data now so we can do the evaluation. So I think we are completely at Eden with the need with the GAC to do that. I don't think there is any issue about that. And

discussions about how well we can do that and how useful that will be, et cetera, we are all going down the same track together.

I think what we would like to come back to, what I have questions -- obviously Ray has questions about -- is what's in the scorecard, which is about adding burdens to applicants or what appears to us to be adding a considerable burden to applicants which arises for the first time and would be in conflict with some of the existing principles and would, in fact, in my view be a throwback to the old kind of applications where people had to try and assist the goodness and merits of applications. And the GNSO policy moved very carefully away from trying to make a priori assessment of which applications were likely to succeed or not.

What we really are asking is: What exactly do you mean by points 1 and 2 of the scorecard, which says you want to add a different kind of evaluation to the application -- what appears to us that you may be suggesting that we go into a completely different kind of evaluation process for applicants and require each individual applicant to go through a cost-benefit proof as part of the application.

So I think -- is that what's intended? What would be the limits of this? So that's the first question.

>>PORTUGAL: Okay. Thank you very much. I think that the GAC is being very positive, and our aim is really to -- not to delay the process. But still, we don't have evidence on what will happen. And so that's why we are -- what we are asking here, is the study that will be done after this first batch will be very important. It will be crucial for us to see and to learn from the process.

On the burden that you mention, well, I don't know. I don't know if this burden will be really hard or not. So that's why we are saying that we don't have this evidence for the time being.

We have to be cautious, but we have to launch this process. But we have to have -- we have to see how to deal with the problems that will arise. And from the problems that may appear from this first batch, we should improve and to see how to deal with them for the second and third batches.

>>RAY PLZAK: So getting to the criteria, we're talking about two sets of criteria here. One set of criteria is that it's going to be used in the application. And the other set of criteria is the criteria that's going to be used in this post-deployment evaluation.

Now, I can certainly see the need for symmetry in that the criteria used in the application can serve as a basis for the post-evaluation. However, I don't see the criteria that are being placed up on the applicant, force the applicant into believing he has become Sisyphus. He is continually pushing this rock up the hill in order to get his application through.

Is then the assumption that I'm asking in this question, that the criteria that we would use in the application could be not so burdensome to the applicant but, at the same time, could be used by the evaluative board as they develop a more in-depth criteria to conduct their study. So that would be my question.

>>HEATHER DRYDEN: Thank you, Ray. I have the United Kingdom and the United States in the queue.

>>UNITED KINGDOM: Thank you, Madam Chair, Nigel Hickson, Department of Business, U.K. government.

I think we have to go back to the rationale for what we're doing. And if the rationale for what we're doing is competition, is innovation, is growth, is choice, is dynamism, then it seems quite logical that the applicant, in spending their money, both putting together the bid and the monies that they are going to commit for the bid itself and the ongoing process, will have in their own way assessed the market. They will have taken economic choices. They will have evaluated the economic advantages of introducing a new generic top-level domain into the community. And, therefore, for us, it seems entirely logical that in doing that, the applicant should be able to put down in some words -- and we're not suggesting an essay or a sort of complete treaty on economic theory here. What we're saying is that the applicant should have at least addressed what they're trying to do in the particular area. So if I am putting in a generic top-level domain dot bank, then I have some expectation, I have some indication, I have some knowledge as the proposer of that, of the type of applications I'm going to have, the type of customers I'm going to have, and the value that they're going to use on that generic top-level domain. Are they going to do more on the Internet by having a dot bank, driving more traffic, which is what we were discussing earlier? Or, you know -- so what is the advantage there?

So it seems to us entirely logical and appropriate that an applicant would be able to spell out some of these economic and competitive issues.

Now, I think what we're not saying is that we're not putting an onus on the board at this point to necessarily come up with detailed, weighted criteria in terms of the assessment of those economic parameters. I think that's very difficult. If you want to do it, good luck to you.

But I think you put your -- you put your finger on it here in that by putting -- by the applicant putting this information down, it then allows us after the first round or whatever to be -- third round, fourth round -- it allows us to be able to assess, allows us to be able to assess whether the economic benefits did really occur. And, therefore, you know, some of the parameters of the study would be much easier to assess.

So I think this is something, you know, which applicants should be able to do. And I don't -- certainly we don't see it as a great burden on them.

Thank you.

>>PETER DENGATE THRUSH: Just a quick follow-up. So what is it that you would do with that information? Who would look at it? And at what point would it ever be useful?

>>UNITED KINGDOM: Well, I think it would -- as I've just said, I think it would be useful in terms of if a study was done post -- you know, post a certain amount of applications to see if there was economic benefit. And then you would look at the results of the study against what was the projected economic benefits of the various generic top-level domain names that were put forward. But also, it would be information which I would have thought that in the assessments that were taking place and whether it's an assessment of a sensitive string by the GAC or whether it's an assessment by ICANN or an assessment by any other objective -- under any other objective criteria, having some sort of economic information would be quite important.

>>HEATHER DRYDEN: Thank you, U.K.

I have the U.S. next in the queue.

>>UNITED STATES OF AMERICA: Thank you, Heather. And thank you, Ana and Nigel. You've covered most of the territory that I had planned to cover.

But I thought I would add just a little bit that might also help shed some light and provide some context.

I think what we are seeking to do with this recommendation, with this proposal, is to bridge the gap, actually, between expectations that there will be demonstrable benefits to the introduction of new gTLDs, and the concerns that we have been expressing from the outset that we would like to feel a little more confident that those benefits will in fact not be out weighed by costs or harms to consumers and to users.

So this is a way of helping to build the record to make the case that a proposed string is intended to achieve X, Y, Z, et cetera, et cetera. So it's part of our evaluation as well. Because I think as several of my colleagues have noted, we are on the hook domestically, in capitals, to explain, to describe this process and explain the expected results. And so we get asked all the time, "Well, how do you measure costs versus benefits?" And so we've briefed our superiors on the results of the studies. And, quite candidly, we read the results of those studies perhaps somewhat differently. From our perspective, the studies are, frankly, inconclusive as to how

you can actually measure the benefits. But they have been quite clear that to date, there have been costs.

So we're very mindful of that. And as we go forward, we thought this would be another useful addition to the record of trying to assess what those benefits might be.

Thank you.

>>PETER DENGATE THRUSH: Thank you for that. I understand that very clearly. So it's not intended that these be some kind of fresh evaluation on the applicant. They're for data collection for use in the agreedly useful evaluation of the first round. This isn't intended to be another evaluation mechanism.

>>HEATHER DRYDEN: I think the U.S. would like to respond on that point. Is that right?

>>UNITED STATES OF AMERICA: Yes, thank you, Heather. I think our goal is to have this as part of the application process. In the application itself, the applicant would spell out what the proposed string would achieve, would accomplish, what the benefits would be from moving ahead with that particular proposed string.

And I have to say, Nigel, we're going to have to take this offline, but I'm not sure I would have used the dot bank example necessarily. In our case, that would fall into the sensitive string category. We'd have a few more things to analyze.

>>PETER DENGATE THRUSH: Thanks. You're agreeing with me that although this is forming part of the application, it's not going to be part of an evaluation against the application. Someone is not going to come forward and say we don't think that your assessment of the economics is not accurate. It's not going to open up another ground of challenge. It's to provide data for the later application. I want to get this clear. That was our worry that this was going to be another route for challenge, another worry, another cause for delay. I'm happy that you don't mean that. So I think, Ray, you've been waiting.

>>RAY PLZAK: Yes. Actually, it's -- Peter, I think you've done some clarity there as well, is that this is actually data that would be required to be provided at the time of application that could be used later on. Because I'm hearing two things. I'm hearing some people saying that this is -- we want to look at the benefits of a particular string, and then the other thing is, what are the benefits of just, in general, adding new gTLDs? What are we really evaluating in the end when we do these post evaluations? Is it the economic effectiveness of this one string? Or is it the effective evaluation -- economic effectiveness of adding all of these strings? Those are two different things that we would be looking at, and I'm hearing people saying we're doing both things.

If, on the other hand, the criteria that we are using here are actually not criteria per se, but are actually data collection pieces of information that are going to be used by an evaluator later, that's something else entirely different.

I don't want to get into a discussion of anything pertaining to intellectual property here, because that belongs in another area. And so I think that we should keep that out of the discussion.

The other thing that bears in here is cost.

We will spend a lot of time at some point talking about fees. And we're talking about the fees that are being collected. But somewhere or other, we have to bear in mind that all these other things we are asking for are costs. And so we have to be careful that as we go through and ask the applicant to do this and that and everything else, these are costs that they bear. And they are monies that -- costs that we don't see.

And so when I start thinking of those that would be considered to be disadvantaged for which we want to have pricing structures and everything else that has been proposed, we have to bear in mind that those costs are going to be the same there as well.

So I think when we get to those other money discussions, we need to bear that in mind as far as when we start talking about adding things to the applications, we're adding costs. Those costs are going to be borne by everyone equally.

>>PETER DENGATE THRUSH: I've asked our staff to put up the text of the resolution I mentioned. It seems like we're talking about the same thing. Looking at the resolution that's on the screen, going through the first of the whereases, it just records our various interests in this. And the key -- the resolution part is the board is that the board is requesting advice from our advisory committees, including the GAC, on just the kind of thing that I think we're now talking about, establishing the definition, measure, and targets for competition, consumer trust, and consumer choice.

So we have actually asked for that. We want -- we are asking you to help us work out how to do this kind of evaluation.

So I think this is -- I think we're talking about the same thing, that we've got other commitments to provide this, and so I -- I think this is very helpful. Thank you.

>>HEATHER DRYDEN: I think Bruce.

>>BRUCE TONKIN: Thank you. Yeah, I just want to sort of separate the two layers of discussion here. The first layer is how are we basically evaluating the program as a whole with respect to its economic benefits. And I think Peter is pointing out

that's something that the board takes very seriously and is looking for assistance in getting the right measures and definitions of what the terminology such as "consumer choice," "consumer trust" means. So that's the macro level. In terms of the benefits of putting data in a specific application, I guess probably that may, then, inform outside parties that may be deciding whether they wish to object or not. And I know this morning, we haven't had the chance to have this discussion, but we will tomorrow. That's part of the community objections side. Because I think people are saying that if you were applying for a community-based string, say, dot Mary, and you had some of this information in there, then that might assist that Mary community to decide whether they think that that applicant is the appropriate party to run that string. So the -- having it in the specific application, I think, is useful for parties outside to evaluate, you know, is that the right party to run the string.

At the macro level, though, I think as Peter's pointed out, is this board resolution, how do we measure it at the macro level.

>>PETER DENGATE THRUSH: Thank you.

Bertrand.

>>BERTRAND DE LA CHAPELLE: I think the discussion has clarified a few things. And, in particular, what I take out from it is that the applicant themselves -- and I agree with Ray that it may be an additional burden of sorts for the applicant.

However, the applicant is thus encouraged to develop a little bit more the reason why such a string would be useful and the reason why his or her personal application is going to make a good use of this string.

So those two elements must be taken into account, understanding that on the one hand, there's an agreement, I think, that this is not going to be used as a criteria for distinguishing between applications. So it's not a new type of criteria, sort of a beauty contest, that's clear. And the second element is that, however, if you detail it correctly, and if you give some arguments, it may actually help the applicant itself by alleviating some objections that may have come up, because you can anticipate some of the questions, some of the concerns, some of the fears of potential objectors, particularly community objections or things like that. And if this documentation is written in a way that alleviates some of the fears, it actually reduces the cost for the applicant itself if it prevents going through an objection mechanism.

So I think it's a sort of dialogue, and what we're trying to identify here is the kind of information that will be useful for the process to try to avoid misunderstandings, and, two, to provide information and data that will be used in the evaluation parallel of the process itself.

>>RAY PLZAK: Right. So we're not necessarily looking for -- to -- establishing criteria as much as we are attempting to define data points. And so -- and in the -- defining the manner in which we expect those data points to be used.

>>PETER DENGATE THRUSH: Okay. Any more from the board on that?

If not, thank you, Ray, and thank you, Portugal, and thank you all the other GAC contributors to that topic.

We come, then, to registry/registrar separation. And I see that Bill Dee is down as leading us on that one.

Thank you, Bill.

>>BILL DEE: Thank you, Peter.

Yes. Essentially, you'll see from the GAC scorecard, actually, that there are two basic issues. The first one relates to the substance of the issue, actually, the current approach endorsed by the board. And there you see that the GAC has made a proposal, actually, that the GAC advises the board to instruct ICANN staff to amend the proposed new registry agreement to restrict cross-ownership between registries and registrars in those cases where it can be determined that the registry does have or is likely to gain market power.

I should explain, this proposal comes from the antitrust authorities, some of the GAC members, it's been endorsed by the GAC, but it does mean at this stage I would have to take questions myself under advisement, actually, and refer them to my colleagues, if you have any, partly because it's, as you will appreciate, actually, we can be entering quite formal territory. Also, I wouldn't like to mislead you, actually, by entering into a good-faith discussion based on my imperfect knowledge of antitrust law.

So I am happy to take questions. And I understand my GAC colleagues are as well, back to their respective antitrust colleagues.

The other issue which I think is easier for us to talk about now is the request from the GAC, I think at our last meeting, for some background to what some of us perceived as an apparent reversal of a board decision last year in relation to the Nairobi board decision to maintain strict separation.

I think at that point, the GAC was not surprised to see that decision, because in our view, we saw that as ICANN deciding to maintain an established practice and also a fairly fundamental practice, given the history of ICANN and how it was set up and its initial challenge to deal with the -- the limited amount of competition in the gTLD space and the fact that separation was a very explicit provision, actually, to try and

encourage competition between registrars and to ensure nondiscriminatory treatment of registrars by having separation.

So we didn't comment at that time, because I think we thought that was a fairly anticipated decision.

We then had the decision later in the year, actually, from the board to reverse that situation. And that's why we asked for more explanation. We do appreciate that the staff papers, received, I think, ten days ago or a couple of weeks ago, did provide quite extensive information on the rationale of the staff or the board, actually, for making that decision in November. The problem is, actually, that it doesn't really explain the reversal, as such. Now, I do appreciate that argumentation has been provided that in the Nairobi decision, the board decided to maintain strict separation. But they did leave the door open if there was a proposal from the community that they would be prepared to change their minds. It's just that we understand, and I think it's confirmed in the staff paper, that there was no consensus proposal from the community and that that raises a couple of issues. One, the extent to which the board appear to be taking quite significant decision which was not based on a consensus proposal from the community.

And also, in the broader context, something which was mentioned in the last item as well, in terms of the AOC commitments on transparency, I think many of us feel that we are obliged to push this issue a little and ask for more explanation from the board about what happened between March and November for the board to change its mind.

Because I think many of the arguments now put forward in the staff paper are based on information that was available in March.

So as a stand-alone rationale, it kind of has logic to it in November. But some more background, actually, on why there appeared to be such a radical turnaround actually would be appreciated.

Thank you.

>>PETER DENGATE THRUSH: Just looking if Joe Sims is with us.

Joe, could you come up? Again, partly because it's a technical area and partly because we have been advised throughout by Joe. We have asked Joe to help us with this.

Bill, my concern about this topic is not that we not have this discussion but we have it at the right time and place.

The exercise today, as we have explained, is to extract as much information from you about what you want to see in the guidebook, and you have got a very clear statement about that, and I think that's perfectly helpful and useful for us to discuss.

I guess the difficulty I have is discussions about the board's performance under the Affirmation of Commitments, again a serious topic, but how is it relevant to helping us write the guidebook?

So I guess my difficulty is while those are perfectly good questions to which the board should have answers, is today the right place to discuss them? Relation to closing the gap and what goes into the guidebook?

So just before -- Joe is quite -- we're quite happy to have a long discussion about the Nairobi meeting and what's happened since and the work that the board has done in providing the rationale, which is in the board papers of January and so forth. My concern really is the time management and productivity sort of exercise.

So how much time is it useful, and how does it help us write the guidebook to discuss our performance under the Affirmation of Commitments, I guess is the bottom-line question.

Bill.

>>BILL DEE: Yes, that's a fair question, actually.

I had taken it from comments made earlier this morning, actually, that the board felt it was quite important for us to explain the background for our positions. And that is part of the background for our positions.

But I'm not proposing that we go through making an evaluation of your performance in relation to the Affirmation of Commitments. So I apologize if I gave that impression.

I am merely providing as background, actually, so that you will understand why it's an issue we feel we have to push a bit further with you. That's why I mentioned it in passing, not to suggest that we abandon our agenda for today and go on to an evaluation of the AoC.

Thank you.

>>PETER DENGATE THRUSH: Why don't we ask Joe, perhaps, to deal, if you can, Joe, in the time, with this first point, which is the advice that we amend the registry agreement to restrict cross-ownership between registries in those cases where there is effectively market power. That's one of the key topics.

>>JOE SIMS: I think it might be useful just to recap briefly how we got to where we are, because that leads to the answer to this question.

The original separation issue was obviously a response to the unique and peculiar circumstances that we found ourselves in at the time that ICANN was created with a single commercial registry operator and a single commercial registrar. In order to introduce competition into the registrar part of the space, there was thought that we should have some protection to ensure that the single commercial registry did not discriminate or favor its affiliated or owned registrar. So that was a particular solution to that particular problem. That concept was applied irregularly after that. Never, of course, to registrars. There has never been any constraint on registrars owning registries, and only sometimes, but not always, to registries.

And of course during this history, we haven't had any series of problems.

So the board I think it was continually seeking the community to come to a consensus position. There was considerable back and forth between the board and the community and considerable activity within the community, but no consensus was forthcoming for a variety of reasons, I think which we all can understand.

So in November, the board decided that it had to finally come to a position on what was going to be required in the guidebook.

The board concluded, for the reasons laid out in the rationale paper, that there really was no principled basis for a strict separation. And, thus, the default position should be no separation, but the board should retain the right to take whatever action was appropriate with respect to, one, existing registries who might wish to switch from their existing contract to a different one, and those circumstances might require some form of separation or perhaps even continued separation. And then, second, those situations where there became evidence of the existence of market power and abuse thereof, in which case the board could take appropriate remedial action.

So that's how we got to where we are. That was the thinking process that was used to get to where we are.

So the rule that the board adopted in November was a default of no separation, but if there were issues, it could be referred to the appropriate competition authorities around the world, and they would have to obviously deal in particular, given the particular circumstances, with any existing registries who sought to change to a new contract.

Peter, I hope that answers the point.

>>PETER DENGATE THRUSH: Bill, does that -- That deals with part of your question. I think the other question is a more fundamental question relating to the role of the board when there's no consensus in a support organization.

I am quite happy, again, to have that debate. I think that's, quite frankly, the role of the board when we can't find consensus in the organization is to go through that kind of a process. So that's how we got there.

We think, in case it wasn't clear from what Joe said, we think we have actually provided for the point that's made in the guidebook, that where there is not necessarily market power, but when there is abuse of market power, we propose to refer that to the relevant competition authorities. And we can be clearer about that, if that's helpful.

>>BILL DEE: Perhaps I can offer two comments in response, actually.

The first one is, I think we have a proposal on the table from the GAC, actually, so at some point I think it would be useful to have a response from the board, actually, about whether our proposal is acceptable or not.

The other point I'd make is, one question which kind of hangs in the air a bit for me is that I understand that after Nairobi and before November, there was a process in the GNSO which didn't generate consensus. But the question that hangs in the air for me is I wonder why the board didn't consult with the GAC at that point because the bylaws require them to consult with the GAC on public-policy issues. And it's a fairly obvious public-policy issue, actually, determining arrangements for competition in the market. And so that's not a question I am going to expect you to answer now, actually. And I think we do need to avoid diverting into other areas. I do understand the need to focus today.

But it's just an observation that I would make that maybe we could have avoided having this discussion today if we had had that consultation at the time.

But I would certainly take the comments provided back -- I am grateful for them, actually -- and share them with colleagues.

Thank you.

>>JOE SIMS: I believe, Peter, subject to correction by you or other members of the board, that the intention of the resolution that was adopted in November was consistent with -- or certainly it was intended to be consistent with what at least I take from the GAC scorecard language. Amend the registry agreement to restrict cross-ownership in those cases where it can be determined that the registry does have or is likely to have market power.

We fully anticipate that the registry agreements will provide for the appropriate remedial steps if and when those circumstances arise.

>>PETER DENGATE THRUSH: Bill, I think what we are saying is we agree with you. We can be clearer that we agree with you on this point.

Mike, you are in the queue.

>>MIKE SILBER: I think the clarification has helped, but maybe just to repeat, to some extent, what Joe was saying.

The resolution as passed clearly indicated that where there was a determination of SMP that we wouldn't be reversing existing restrictions. And the GAC request now is to create a proviso that says in the case where there is existing SMP, we shouldn't reverse, which is what the resolution says. Or in the future, if a situation arises where somebody is determined to have SMP, then ICANN reserves the right to re-impose a restriction on somebody who has been unrestricted up until then.

Is that essentially what you are suggesting? I just want to clarify for my own understanding.

>>BILL DEE: I think so. I mean, perhaps it's something we can confirm tomorrow.

Thank you.

>>PETER DENGATE THRUSH: I think there's some possible mechanistic difficulties if we just take the simple statement in the score book, which is, in other words, we start with 2- or 300 new applicants. We have no prohibition on integration -- on separation. One of them develops market power in their particular market, and then under this we would have to go through some kind of process to divest them. We would have to go through a busting up kind of situation. At the moment what we are saying is we would probably want to refer that to competition authorities for their recommendation as to remedies, which may not include divesting.

So I think there's -- this is where we need to talk, as you say, Bill, to the experts slightly more.

A simple decision that we will, at that point, require separation may not be the most sophisticated way of dealing with the particular abuse of market power which has emerged. Which is why we think rather than us trying to invent market rules for circumstances we can't see, the safest thing is to refer it to competition authorities who are used to dealing with these things and who have got a whole range of competition remedies available for the particular abuses that might emerge.

That's, again, part of our thinking, that we thoroughly recognize that the problem you have identified needs a solution.

Joe.

>>BERTRAND DE LA CHAPELLE: Thank you, Peter. Just to highlight one point. I must confess that I'm not a specialist in competition rules. However, in this -- in this regard, I think the ultimate end point that will happen in three, five, or six years, will -- I mean the objective for both the board and the GAC, and I think community, is more or less the same, which is that there is not too much burden on starting TLDs so that they are not overwhelmed with constraint, but at the same time, the ones that are in a position of important market power have rules that apply, especially if they are -- they have been behaving in a bad way.

The next question is what are the route we take? Because there are two possibilities. Either we start from establishing the principle of separation in general and somehow alleviating this for special cases, which makes a lot of sub-rules that are difficult to monitor. I never liked the expression "invites gaming," but that might be the case. But in any case, increases the burden on the administration of the regime.

On the other hand, starting with a situation where there is no separation a priori allows to have something that is easier to monitor and that is probably more -- or at least that's the way I understand the rationale, is more adapted to the situation where, by definition, all TLDs that will start, will start relatively small. Even those that will have a rapid catch-up will become maybe important, but in competition policy, even if you have market power, it's usually not sufficient to require remediation. It's abuse of market power that is important.

And so fundamentally, separation is a remediation. And this is why it was introduced for dot com. The rationale that I think we have to consider is that the path that starts with no separation allows an easier management administratively speaking, is probably more coherent with the classical competition policy. And it's also better for innovation, because it places less burden on the different actors. At least that's the way I understand the decision that was taken in November. I say that because I was just joining as an observer at the time.

>>PETER DENGATE THRUSH: Thanks, Bertrand.

Erika, I think, and then if there's no further questions, we are about to close for lunch.

Erika.

>>ERIKA MANN: I think what Bertrand just said is absolutely right. It's very important to understand that competition policy, it's designed the way it is designed now, it usually observes the way the market functions. And if there's market abuse -

- because you can have a monopoly but there is still no market abuse. Take Airbus and Boeing, for example. You have a duopoly. But that's the world reality.

Now, you will see in the future other competitors coming up, then you have to judge the market in a different way. Here you have a completely new market situation. So if you go in with a predefined understanding of how the market shall look like in an ideal phase, the only thing that will happen is you block market development, which you don't want to see.

So let it happen, observe it, have the definitions clear, and that's well developed in the competition language, and the lawyers need -- I mean, just need to look in their competition guidebooks how to define this. And then if market abuse happens, I mean, everyone can jump into it. It's either the market competitors will jump into it and bring the case to the authorities, or we might like to ask for advice, you know, on a specific case.

So it's not something which we do not understand. The only difficulty we might see on a global scale, that we have some differentiation between the way the competition philosophy is developed. So there are some areas in some countries which have a less developed competition -- understanding about how the competition should function. But I think this is so well defined and understood globally that I do not see a difficulty actually arising here.

>>PETER DENGATE THRUSH: So let's just make sure we have covered.

Any questions from the board about what's in the scorecard?

Any other questions from the GAC about the board's approach to this and to the principle side? Because I think it's something we have substantial agreement on.

>>JOE SIMS: Peter, if I can just make a minor point. I am supposed to be a competition specialist, and I must say that I could not have said it better than Erika or Bertrand.

>>PETER DENGATE THRUSH: Yes, the board feels very lucky to have all the expertise that's available on all of these subjects.

Okay. Well, ladies and gentlemen, thank you for another very productive session. We are going to break now for lunch. I am instructed by the meetings committee that lunch is provided for board and GAC, but sadly, not all the observers.

So board and GAC, in return for the hard work you have been doing, get lunch.

Thank you for that.

Observers, I am told there are plenty of eating facilities all around the square and that you won't go short.

So we only have an hour put aside for lunch. Can I ask you to come back, please, at 1:15 sharp, and we will begin on the next topic which is protection of rights owners.

Thank you all very much.

[ Lunch break ]

>>PETER DENGATE THRUSH: We're about to begin the trademark session. I understand this is going to be led by Mark Carvell, and on the board side by Rita Rodin Johnston.

That's fine. Let's see if we can't ask the people by the door to either go out or come in. And let's see if -- Mark, I think we'll follow the usual pattern, if you wouldn't mind, and you can take us through perhaps some of the rationale. I know some of these are considerable detail. And I don't want to avoid that. But, again, assume that the board have worked very carefully through the scorecard and, again, thank you very much for the work that's gone into collating and preparing those.

Again, I think focusing a little bit on rationales and principles is helpful.

And then as much of the detail, obviously, as you want to go into.

Now, mark, I hope it wasn't overburdening. But what we tried to do last night was give you an indication of some of the questions that we wanted to ask. I'm not quite sure how you and Rita want to handle that. It struck me some of those questions will have a simple answer, in which case we don't need to discuss them now. Others might be more complicated. So I just wonder if you two could perhaps give an indication of how you want to do that. We have about a half hour to about 45 minutes. We can take up to -- why don't we begin.

Over to you.

>>MARK CARVELL: Thanks very much, Peter. And good afternoon, everybody.

And as we're now on to this afternoon's schedule of protection of rights owners, and I have endeavored to help the GAC in formulating the consensus advice on this issue, some of us in the GAC have been very active in consulting I.P. experts and also consulting stakeholders in developing our individual inputs into the GAC. And so the GAC scorecard on this issue is very much a distillation of contributions from several GAC members. And all of the GAC, of course, have had the opportunity to go through it and chip in with comments and statements of support and so on.

So in terms of essential rationale for what we're doing here, it was a strong message to us from brand owners and rightsholders that while they recognized that the expansion of the gTLD space is going to provide them with opportunities that some may well take advantage of and submit applications into the round, into the initial round or maybe subsequently, there was also a very strong message to governments that the right tools needed to be in place to manage that process, the process of the round and protecting their interests as rightsholders. So many of them come at this issue from both sides, as potential participants and contributors to the balance of ensuring that their rights are adequately taken into account.

So the rights protection mechanisms in the guidebook are essential, really. And, you know, there was a lot of engagement in the processes in developing those rights protection mechanisms and the commitment of the ICANN side to constructing a series of mechanisms was welcomed by governments and by many stakeholders.

Key issue is mitigating the costs of protecting rights and reducing the burdens to business. That is a key element of government policy, to reduce the burdens on business so that they are able to develop their opportunities, contribute to the economy nationally -- regionally, nationally, and globally. So it's a key element of public policy that we -- that the burdens on business are reduced as much as possible. And we have that as a challenge for government. That is part of my ministry's role, is to ensure that within government, governments do not create burdens for business.

So the opportunity of the new gTLD round within ICANN, again, it's the same issue, how can we reduce the burdens of business in the face of potential significant escalation of cybersquatting and abuse of rights, infringement, and so on.

So the scorecard, which you have in front of you, goes into some detail of how we felt we could remedy what we perceived as certain inadequacies or inconsistencies in the rights protection mechanisms described in the scorecard.

We don't -- Sorry. In the guidebook.

We don't propose reactivating previous proposals which were ultimately rejected. We don't have any new mechanism to submit to the community. What we're doing is really working with what we have in the guidebook, taking account of all the hard work that's gone into preparing the mechanisms, and, indeed, the consultations that have gone on very thoroughly by the ICANN team, the staff, Kurt and all his colleagues. But working with that to try and sort of raise the bar a bit in certain areas. So that's really been the GAC's approach. It's not one of trying to obstruct any element of the preparations for the round in any way, but actually just to sort of work with what we've got and address some areas where we feel there are deficiencies and where there may be inconsistencies in approach.

So I won't go -- you'll be glad to know I'm not proposing to go in this opening session today into any great detail of the proposals we describe in the scorecard. Some of them are quite detailed.

But as I say, it focuses, really, on two -- sorry, three elements: The trademark clearinghouse, the Uniform Rapid Suspension system, and the post-delegation dispute resolution process.

I guess in terms of -- if I start off on -- with regard to the URS, the Uniform Rapid Suspension system, the consensus in the GAC is that this has -- this has kind of lost its way. Its intention was a very positive one when it was originally formulated, and that was to provide a quick not resource-intensive, but effective mechanism to combat cybersquatting, very obvious cases. So it was a kind of quick mechanism to do that.

But we now -- it having progressed through several iterations, it's now considered by us to be cumbersome and lengthy and too closely, really, mirroring the UDRP, which was intended to deal with much more complex disputes.

The consultations that individual GAC members have undertaken and some of the surveys that have been done, such as that provided by the -- undertaken by the trademark review, have indicated, really, that -- sorry -- World Trademark Review -- have indicated that pretty much -- over 80% of trademark counsel believe that the URS as now described in the guidebook is really not meeting its objective and it's ineffective, really.

So the proposals, really, are -- in the scorecard are designed to bring that objective back to the fore. And we've got -- we've submitted some detailed ways in which we think it could be streamlined. We've had a go at shortening the time line as well. There's a table attached to the scorecard which, unfortunately, was left off when we originally posted it on the ICANN Web site. But I hope that everybody's had a look at the table where we've tried, really, to see how we can reduce the time line by cutting the amount of time for review, by saving two days there, and also cutting the time for notification, saving a couple of days there. So we've tried to sort of work with the time line and see how we could shorten it. And then in terms of streamlining the process of the URS, we've tried to work out, you know, how it could be made easier to use, less documentation, less requirements, fewer requirements to be submitted. And then there are issues such as the problem we have with substantive examination, where this is really a problem for those administrations, including the whole of Europe, where a substantive examination is not undertaken when the mark is registered.

So we've got those proposals there. As I say, I won't go into detail now.

The clearinghouse, we feel that there are issues there with regard, really, primarily, to its operation. We established, really, within the GAC something which perhaps

had been not pursued before, and that is that both sunrise services and I.P. claims should be made mandatory, so that the mark owner really has that degree of choice whether to -- well, to go down the defensive registration route, if you like, through sunrise, rather than going through I.P. claims approach. That was the consensus from the consultations that GAC members had undertaken, that those actually should be -- they should be equally available and mandatory for the registry operators to have. They have different functionality. And a mark owner may decide that one is preferable to the other, one course is preferable to the other. So that's one key issue.

We also discussed the issue of whether they should require exact matches or whether they should be -- in addition, there should be key terms attached to the mark. And the view was that it should be extended to include key terms to go with the mark.

So there are issues like that which we -- I won't go into detail now, but where we feel that the clearinghouse and its role could be -- and its functionality could be improved. It's a very welcome initiative. There was a lot of support for it as a very cost-effective means available to trademark holders. You know, sort of one-stop shop, if you like, a single central database. So it was a very welcome proposal, a very welcome mechanism. But it needs improving in terms of what can be admitted to it and its application to sunrise services and I.P. claims services.

We also came to the view -- this may surprise others -- that it should continue after the launch of each gTLD. So that was the consensus view, again. That's, again, an issue to -- I guess to be discussed tomorrow.

The third element, the post-delegation dispute resolution procedure, we've got several recommendations there. Again, I won't go into detail now. But, again, it's with the view, really, to get some of this -- some of the balance right and some of the, you know, compliance-related issues much more effective and consistent with a strong commitment by ICANN to ensure full compliance. As I say, I won't go into detail on that now. Maybe that's something, again, to be discussed in more detail tomorrow.

I think I've managed -- sorry this was rather lengthy. But I've intended to cover, really, our aims there and what the key elements, if you like.

Thanks.

>>PETER DENGATE THRUSH: Thanks very much, Mark. And just a very high-level response, first of all. I think I just appreciate the way you've expressed that, that you haven't attempted to reactivate mechanisms that the community has gone through and rejected through the normally process. And I think the focus that you've put on the detail of the existing mechanisms and working with us and we want to work

with you on how to improve those, I think that's a very productive focus. And, hopefully, we can do that.

And then by way of conflict of interest, perhaps I should confess that I am actually an I.P. trial lawyer. And I sympathize with a lot of the thrust of -- in relation to the URS. And I think speaking on behalf of the board, I think that's what we thought we were looking at was a rapid system that we had that wasn't going to try and act as a repair job of the UDRP. And we're pleased to see that since this began, the GNSO has now got a process for looking at improving the UDRP.

So just some quick high-level comments.

Rita, can I come to you? Because there are some questions. Just explain to the audience, the board has actually delivered, through Mark to the GAC, a whole series of quite detailed questions about some of these. Not quite sure, Rita, whether it's productive now to go through all of those questions and ask Mark to give us answers. But I think some of the principles probably are worth having a good look at.

>>RITA RODIN JOHNSTON: Thanks, Peter. Yeah, I don't think so. I just want to echo your comments in beginning, Mark, I think it was helpful to note that the GAC was encouraged by the engagement in this process to construct these mechanisms throughout this new gTLD process. I think that's very much how the board feels. And we're happy to feel that you agree and that this is kind of the end game in trying to tweak and perfect some of these mechanisms. So I appreciated that comment from the GAC.

Just to take them in your order, as Peter said, we have a series of specific questions. I think that the scorecard was quite detailed. Hopefully, most in the room have read it. But there were some quite detailed bullets which we don't want to go through here, and we have given some questions to Mark. I guess I'll just ask a few, Mark.

The first was, in connection with the URS, there was a comment that if there was a default, then there should be an adjudication in favor of the complainant and the Web site should be locked. And the examination of defenses in the default case, that provision should be dropped as well.

So we were wondering if you meant that there should be no substantive examination of the complaint in the event of a default or just no construction of possible defenses.

>>MARK CARVELL: As I understand it, I think it's the former case, actually. That there should be no elaboration of the defense in a default case, if that's the question.

>>RITA RODIN JOHNSTON: So I think that was the second option, though. I think the first was would there be a substantive evaluation. So there would be a

substantive evaluation complaint make sure there was a trademark. But in the DAG, it says the examiner would almost conceive of possible defenses. And that would be an obligation. So the GAC is suggesting to drop that portion. Okay.

Fantastic.

I think the other questions were mostly about the clearinghouse. I know that historically, I think the IRT, the STI all talked about this either/or for sunrise I.P. claims. You mentioned this was somewhat of a new concept that you guys came up with, that they served different interests. Can you give us a little bit of an idea of how that would actually work in practice to have both of those at the same time in each TLD.

>>MARK CARVELL: Well, there would be -- you know, the registry would be required to provide those two options. And I guess it's the opportunity, then, for a marks holder to go for the sunrise, to go down that route of applying for a registration, putting in -- you know, getting in there first, if you like.

And if that were not available, you know, that would deny that choice, that option. It may not apply in every case. But that's the reason for it, I guess, having the two available.

In operational terms, I don't really see there's an issue. But if you think for the registry that's going to be a problem or for the clearinghouse, well, we'd be happy to hear what that particular issue might be. But I'm not aware of anything in terms of a problem that would manifest itself by that -- those two being offered by the registry operator.

>>RITA RODIN JOHNSTON: Okay --

>>PETER DENGATE THRUSH: Perhaps Bruce can help with that. Obviously, there's an immediate doubling or increasing of costs in registries having to operate two completely different systems.

Bruce, can you give us some input into that from the registry side.

>>BRUCE TONKIN: If you're looking at them both operating together, there's a degree of overlap in the function between the two. We had a little bit of discussion over lunch here. Mark, is it correct what you're actually looking for there primarily is notice to a trademark holder in the clearinghouse of a particular name being applied for during the launch process? Is that a correct summary of what -- the outcome you're looking for?

>>MARK CARVELL: Yes. That there would be a notice, yes.

>>BRUCE TONKIN: 'Cause I.P. claims incorporates a notice at the end of it -- of the process, if you like. But the earlier parts, if you were doing them both, it's basically saying, one, you have to register your trademark in the clearinghouse. Two, you're applying for a name on the basis that you have a trademark. Then you're going to get an I.P. claims response back saying, "Hey, you have a trademark. Do you think you're going to be infringing your trademark?" Like they kind of overlap, because the I.P. claims is intended to have -- with respect to you, say you're applying for your trademark, which is why you're applying in the first place. You know what I'm saying? It's kind of circular for combining those two together. If what you're trying to say, if I'm understanding correctly, is there are -- a trademark holder may choose not to apply during sunrise, but they want to be informed of someone else who has the same trademark in a different industry is applying, as an example. So it's more than notice that you're trying to achieve. I don't think you're really trying to achieve I.P. claims and sunrise together.

>>MARK CARVELL: Well, I think we still are. We still feel that there's that option that should be available. For the marks holder.

>>BRUCE TONKIN: Yeah, but you understand, you're getting (dropped audio) doesn't actually directly participate in I.P. claims. The holder receives messages for any application that is across any TLD in their trademark.

>>RITA RODIN JOHNSTON: Mark, I think what we're saying is that in sunrise, right, the only people or entities that you will are entitled to participate in sunrise have trademarks. And we know that you guys have a comment about whether substantive evaluation, i.e., use, should be required, or if it can be a common law mark or community mark.

So whoever that is, whatever that trademark is, you can only participate in sunrise if you have a trademark.

In I.P. claims -- I think what Bruce is saying is to have that together would be weirdly circular.

If what you're saying is I.P. claims is meant to just give notification to trademark owners that anybody is filing for a domain name that incorporates their trademark, then, in theory, I guess my question -- I'll answer my own question -- I think when you're saying they're going to happen together, it means there's going to be sort of a sunrise period, which is just for the trademark owners. Then there's another prelaunch period, which would be this I.P. claims, which almost is sort of a land rush type period where people preregister -- that's why we got into this discussion at the board level where it actually didn't make sense. Because if it was -- if the GAC meant that ongoing -- and this I think is what Bruce is trying to get at with notification -- if the GAC meant that this notice of anybody trying to register anything that reflect the mark in the trademark clearinghouse went on forever, that would be, I think, a

change to the DAG that wasn't discussed before. So we're just trying to understand what you were looking for here.

>>MARK CARVELL: Okay. I appreciate that. And more or less come back to this, I mean, the circularity argument is quite a reasonable one. You know, let's go back to it and consult overnight, if necessary.

>>PETER DENGATE THRUSH: I guess I've got a slight difficulty in terms of the process in that the IRT, who are the source of this, recommended one or the other. And so I think we're going to be looking for some really good arguments why we would depart from the authors' advice here. That's the specialist team we put together. And we're very grateful and continue to be for the work that they did. That's a high-level question about all of these things, where we're departing from what was originally recommended, I think we're going to want to be really clear why.

Particularly because, as you've, you know, said, and the process that we've gone through to get there.

I've got a different question, Rita, when you're ready. Have you got any more on -- yep. Keep going, then. Yep.

>>RITA RODIN JOHNSTON: So the other comment -- and I think you also mentioned this, Mark, in your opening remarks -- was about extending in the trademark clearinghouse from exact text matches to include key terms associated with the goods or services and typographical variations.

So, again, we want to understand how that works. Our understanding of the clearinghouse is that brand owners -- and, again, the type of trademark that's eligible is still at issue -- but brand owners will go and register in the database. So I will go register, you know, that I own Rita.

Are you saying that if the -- and then this clearinghouse is going to be used, registries will check against that to see if there's any kind of violations when registrants are trying to register a name.

Are you saying that I, as the trademark owner, have the obligation to register my name spelled correctly, R-I-T-A, my name is spelled R-E-E-T-A, really tall Rita? I can go on and on, right, about different things incorporating my name. So how does -- If you're going to include that, I guess we wanted to know why you wanted to expand it, one. And then, two, how does that information get populated in the database?

>>MARK CARVELL: Okay. Thanks.

I think it's an option, isn't it? It's an option for the marks holder to put variations into the database it's not an obligation. Not meant to be universally comprehensive in terms of every possible variant or typographical alteration.

But a mark holder may well feel, well, quite often, this is where they get into infringement areas, that an extension of the -- of the mark becomes a point of infringement. And that's quite well-established practice within I.P. generally in terms of protection. Why should it not apply for entering into a database which is designed to protect the rights of the mark holder? So can I throw that question back? -- in that way, back to you?

>>PETER DENGATE THRUSH: I can answer that, Mark.

Because the -- it's dealt with at the point of making the decision about whether or not there's an infringement or whether or not it needs to be stopped. And that's the standard that's applied by the panel, which is looking at this and saying, is this substantially -- you know, we've got the test, is this confusingly similar or deceptive or whatever the test is. So that's where you do that exercise. The difficulty I have with this proposition is we go to a great deal of trouble to specify exactly what kind of property goes in, and then, again, very carefully exactly what kind of property can be used in these services. But there's absolutely no definition about what this consists of, so we're having a detailed and useful argument about whether it's going to be trademarks from these jurisdictions and whether or not there's going to be substantive examination or not. Then we have this other category of simply author-generated, created, good ideas that every trademark owner can just make up in addition to their registered rights. This seems to be suggesting that not only do we have those carefully defined categories, some of which we use for some things and some of which we use for others, but then there's just this other thing of, "Here's all the other things I want," kind of a category, with no limit, no description.

So I have a great deal of difficulty in knowing how we would know what was properly in there. And then in the last point, you know, that says that they should also be used, I mean, there isn't -- what's the principle of trademark law that allows you to not only have a definition that says confusingly similar and deceptive, but also looks like one of these things? I mean, I have -- you have to help us with that. There's precision issues, there's categorization issues, there's data entry authentication issues, and then there's the application at the time of making the assessment of infringement. How do we use that? Again, maybe too much for today. But these are the kinds of problems we're having with this sort of expansion beyond what the IRT suggested.

>>MARK CARVELL: If I just could come back really just to underline what we are talking about in terms of extension beyond exact matches, our key terms associated with the marks, there is a limit, if you'd like, to what we are considering as going beyond exact matches. We can talk about this in more detail tomorrow, the

practicability of that and where you feel it might be inconsistent with the aims of the clearinghouse.

>>RITA RODIN JOHNSTON: Thank you, Mark. Another change that the GAC had proposed was during the I.P. claims service, the way the DAG reads currently, if a non-trademark owner wants to register a name and it corresponds to a name in the trademark clearinghouse, there is a notice sent first to the potential registrant that says there is a trademark, red alert, you better make sure. And there is some obligations that turn up.

Then the name is given to the registrant if they make certain certifications. And then later in the process, there is a notification to the trademark owner. I think the GAC wants to change to the notification simultaneous, the domain name registrant gets told there is a trademark in the clearinghouse and then the domain name -- sorry, the trademark owner also gets a notice at the same time.

Again, we were wondering, why you wanted to do that and what effect that was meant to have on the process.

>>MARK CARVELL: So I think this is something I would have to consult on. But as I recall it, I think the intention was to enhance the communication two ways. I don't recall any problem arising from that. It would serve to enhance really the functionality of the clearinghouse. I think that was our objective. But I can consult further on that question with my I.P. expert and maybe colleague experts.

I see my German colleague may have a more authoritative answer than I.

>>GERMANY: Thank you. In this specific question, I think we are now moving in a rather detailed discussion on these issues. I received this question after lunch, and it is really difficult to follow it -- to follow the discussion here, read the question and try to consult with colleagues. Therefore, I would ask if we could have this kind of discussion.

I think what Mark showed us and demonstrated is a clear way what are our proposals. I think we should leave the detailed discussions perhaps for tomorrow because these are questions we have to discuss also with our colleagues at home in our capitals. And, therefore, I would really ask to have this discussion tomorrow.

By the way, this discussion for us also is a very important one and we contributed significantly also to this development. And we consider it is important that there is an improvement. And I welcome the possibilities that we have the open exchanges now to come to a substantive improvement. Thank you.

>>PETER DENGATE THRUSH: Thanks. We are all very sympathetic to the point.

>>RITA RODIN JOHNSTON: And I think that was helpful. If we can give you back our principle when you are taking this back to your different constituents. I think we went through this quite carefully. There were much more comments than ICANN staff had anticipated would be made in connection with the trademark issue. So we've spent a lot of time the last week going over in detail.

As you can see from some of the questions, and you will see in the sheet, they really were understanding how -- the specifics and how they would be implemented because, again, this exercise is to amend the guidebook, right, and finalize this process. So that's why as much detail as you can give us as to what exactly this meant and how it was going to work would be great. Thanks.

>>PETER DENGATE THRUSH: Bruce.

>>BRUCE TONKIN: I guess my first comment is this is probably an example of something we anticipated in the planning of this event where we might want to have a breakout of a smaller group go through some of this stuff because it is very detailed. And most people will be lost because you really need to know the detail of the guidebook down to the individual words, not even individual sentences.

Just one thing that I would like to clarify in the comment here and perhaps where we go from there, that if I look at the dot point 4 under the trademark clearinghouse, dot point 4 reads, All trademark registrations of national and supernational effect, regardless of whether examined on substantive or relative grounds, must be eligible to participate in the sunrise mechanisms."

This might be just a matter of wording, but I guess from our perspective that is already the case. Like, there is a -- two things that need to -- you need to have to participate in sunrise as it is currently drafted.

One, you must have a trademark registration which includes all these that you have already stated in your sentence; and, two, being able to show use.

And so I think what we have come to the understanding is that most -- in most cases that's going to be a process that's done at the clearinghouse.

So the clearinghouse would get all trademark registrations that you have included here, and it would have some sort of evidence of use which could be perhaps a PDF file of a brochure or something, some evidence of use. And then the clearinghouse then accepts that as being eligible for sunrise.

So it is not a case of some trademarks are eligible and some trademarks are not. The first thing you must have for eligibility is a trademark, which includes all of those. The second thing you must have for eligibility is use, which in the majority of cases we now understand will require submission of that information directly to the clearinghouse.

So really the question for you is: Are what you're actually saying, you don't want to have a use provision in there? Because that's a slightly different thing as opposed to saying whether the trademarks are eligible.

Before you answer that question, understand the implication. So you've got in here presumably a protection against frivolous use of the process and your protection in here, I think, is to say registrations to be eligible must be before 2008. Now, that has two impacts.

Firstly, most of these generic words and words that we use frivolously are already registered prior to June 2008 but most of them don't have use. So removing the use provision that the ICANN process has incorporated pretty much means that everybody that's going to game the process is now in because those registrations preexist June 2008.

So all the generic words are registered. Half the brands are registered because they have registered them in trademark places that haven't done any effect there. Pretty much that means -- in effect, you aren't getting a sunrise where you have got valid brand homes eligible for sunrise as a first right to register and then other compete. You have actually got everybody in sunrise the way this is currently drafted.

So what we had tried to do to prevent the gaming of people -- because we've seen this happen. That's the experience. That's what the registry operators and registrars have been saying, is this has been gamed and we are trying to prevent it from being gamed.

To prevent it from being gamed, one of the preventions was to require a use because most of these fake -- what I will call fake approaches don't actually use the name or may not be using the name. So that's why we had a use provision. So you have to have a trademark, which includes everything you have, and you have to have use. That was to stop people gaming for sunrise.

Without having use, certainly the June 2008 won't protect you nor will it -- then it has another effect for brand holders. How many products have been launched since June 2008? We are now 2011. There must be thousands of major products launched in the last three years. And we are saying those products in the last three years are not eligible. I'm just not sure whether that really meets the objective to trademark holders either. It is kind of understanding how these work together, I guess.

>>PETER DENGATE THRUSH: Mark, you are in the hot seat still.

[ Laughter ]

>>MARK CARVELL: We in the U.K. are certainly sympathetic to what you identified as a quick means of establishing use, submitting a PDF of a Web site or a brochure or something like that. So I think that's something we can certainly accommodate in certain -- well, from the U.K. perspective, I would have to double-check that point with GAC colleagues.

The June 2008 proposal here, I have to apologize because there is still an ongoing discussion within the GAC about that because actually we, U.K., are making the same point. We're three years on from 2008 and a lot of bona fide registrations are going to be -- trademarks are going to be screened out. (multiple speakers).

>>PETER DENGATE THRUSH: Excluded. It lets the bad ones in and keeps the good ones out. At a high level, we are very sympathetic.

What we want to try and do, let's be clear, is the same as you. We want to get an effective sunrise, and we want effective protections. The principle that comes through from the GNSO we have working right from the very beginning is we have got to protect the rights of others. And trademark rights are clearly crucial ones. So we start from the same position.

The point is we've got quite a lot of experience in learning from sunrises. And if we just have a registration somewhere, as we all know, they can be manufactured or gotten very easily. And we don't end up with a useful sunrise at all unless it is coupled, as Bruce is pointing out, with some further things.

As Bruce says, it is not to discriminate between kinds of trademark registries. It is to try and get who has the right to get into this very powerful mechanism that we've created for this agreed purpose. It is just a question of getting a good one, not a registered one.

More on that? So, again, topic for breakout perhaps today and certainly for more discussion tomorrow.

Rita, back to you for more questions.

>>RITA RODIN JOHNSTON: I think we've taken up our time. I think that was one of the big ones really. So I think it will be helpful if you all can caucus with some of these principles in mind and we can take this up again tomorrow.

>>PETER DENGATE THRUSH: Okay. Any other questions or comments, including you, Mark, obviously as well about trademark protections?

You don't want to talk much about the URS? You have talked about the clearinghouse.

>>RITA RODIN JOHNSTON: They are very specific questions. I thought there was a request from the GAC not to get into the specific questions. Why don't we let them caucus on the specific questions and take them up at a later time.

>>PETER DENGATE THRUSH: Is there anything you wanted to say -- I agree, Rita, completely. We have given quite detailed questions about the URS.

Is there anything you wanted to say today, again, more about the URS as a matter of either policy or principle?

>>MARK CARVELL: Thanks. I mean, I would be interested to hear what your initial reaction is to the complaint we've heard a lot and our government I.P. experts have endorsed, that URS has just lost its way.

I mean, Peter, you indicated that you had some sympathy for that. So we are sharing a common objective, I take it, in bringing this thing back on course, if you'd like, and restoring its effectiveness.

So some sort of -- before we go into detailed discussion tomorrow, some sort of shared understanding that that is now a problem that we share.

>>PETER DENGATE THRUSH: Perhaps I put my foot in my mouth by reflecting my trademark trial lawyer bias. But the other -- what I have to counter that with is, of course, that process was quite a well-documented, well-discussed community process. The pushback on that has come from -- you quoted statistics that said the trademark owners didn't like it. But the fact is that all the rest of the community is for it for their own particular interest group. The free speech people have a view. The user -- we have had a strong representation on elements on this from the user community who wants to make sure they are not put in a position by wealthy brand owners and so on. Everyone has got their own view on this.

So what our difficulty is having had that process and having reached a reasonable kind of community balance after a long and very proper, if you'd like, ICANN process, we got quite a lot of persuading to undo a community process.

We had that discussion earlier in relation to vertical integration. What is the board's ability to start undoing that when there isn't consensus?

Here we've got consensus. Just putting you in the context that we're in.

>>MARK CARVELL: Thanks, Peter. I mean, I didn't want to sort of raise this really because it's kind of history and we wanted to sort of focus on what we've got now and how to move forward.

But when we in the U.K. convened a meeting with stakeholders, one of the biggest messages that came over in talking to -- I was amazed actually when around the

table with me were the likes of Shell, BBC, really big global names saying they weren't being listened to anymore. They were saying actually this process from IRT onwards actually had effectively detached them.

So there was a very strong negative vibe that actually that process from IRT through STI and beyond progressively sidelined those interests. And we also heard it from representatives of SMEs, too.

So it's history. I didn't want to sort of embark on a rather negative reflection on how perhaps the multistakeholder process had not quite matched the expectations of some very big pillars of the global economy, if you'd like, that were sitting opposite me saying, What can the governments do to sort of restore their position at the table, if you'd like, in the ICANN community?

So I just offer that sort of reflection back to you. And I'm sure there was similar expressions of discontent received from other GAC members, too. I just happened -- I mean, in the U.K., a lot of these big global brands are headquartered in the U.K. so they turned up at my door. Thanks.

>>HEATHER DRYDEN: Thank you, U.K. I think you are about to hear with another GAC colleague with those shared concerns. Denmark, please.

>>DENMARK: Thank you. In Denmark, we fully agree with what Mark has just said. Rights holders in Denmark, some large ones, like Lego, for example, and there are several others, are not satisfied with this process and they feel they have not been heard in this process.

They have fed into the ICANN multistakeholder model with letters and feel still that they have not been heard. So that's why we are raising the bar on this issue. Yeah. Thank you.

>>HEATHER DRYDEN: Thank you.

>>RITA RODIN JOHNSTON: I just want to respond to that. I think we definitely heard that on the calls that we had preparing for this session. And I think the board is unhappy that that's the way the people in the community feel. That was not the intention of the board at all. I just have two responses, I guess.

One, to Mark, how does the board feel about getting back to a principle of rapid suspension and making it more rapid? The board doesn't have a view on this, which gets to my second response, which is we heard that there were a lot of issues with big brand owners, I'll call them, and concerns rightly so about how are hundreds of new gTLDs going to impact my brand and my cost structure, if you will.

So if you look at the resolution that the board passed when forming the IRT, we were very specific to make sure that it had to do with, we'll say, trademark rights

knowledgeable people. We wanted to have people that knew from all types of businesses and all types of organizations around the world how will this impact me so we can get people to start from that position and then have community -- this multistakeholder community input.

So the extent to which the GAC is saying now the URS sort of got diluted, that is a result of the multistakeholder approach. So the board has tried to oversee that as best as possible and foster that consensus. That's why we want to hear from everyone. But we really are sorry people don't feel they're listened to because the board has tried to listen to everyone and foster a scenario where everyone has input that will end up resulting in, for lack of a better term -- it is a U.S. colloquialism -- a hodgepodge of different things that try to come to a result that's acceptable to all people. That's where we have been trying to move, which is why we are looking forward to your input and just try to understand exactly.

>>PETER DENGATE THRUSH: Okay. We have got three -- sorry. SÈbastien?

>>S…BASTIEN BACHOLLET: Yes, thank you. As I'm allowed to speak here and there are people observing here who are not able to speak, I would like you to take into account that if some large companies are coming to your doors in your country, to the government, I am not sure that the door also is open for end users -- for individual end users.

And they are participating through this process. They were not in the URS, but they were participating in the multistakeholder process and they have a different view on some of these issues.

And I have the feeling that the board decision -- and I was not a board member when this decision was taken -- is a compromise about all the things that were listened from the different constituencies and participated in the multistakeholder.

And I really would like that you take that into account also in pushing one or the other because at the end, the board will have to take into account all that and make a decision. Thank you very much.

>>PETER DENGATE THRUSH: Thanks, SÈbastien.

Any other comments about trademarks from board members?

If not, let me say thank you very much, Mark, for the work that's being done and obviously we're continuing in some detail, I guess, this afternoon, tonight and tomorrow on this because there is a lot of detail here and we are very grateful for the work that's being done.

Thank you also, Rita, to you and your team for getting to grips with this at short notice.

The next aspect of protection relates to consumer protection. And we have another topic after that here. We have the post-delegation disputes all in this section.

So the next one is consumer protection. I'm not sure exactly who the GAC lead is on this. It is Mark again. I know Jayantha was there at some stage. But from the board, Ram Mohan is going to front that for us. Thank you, Ram.

Mark, back to you, round 2.

>>MARK CARVELL: Back in the hot seat, you might say, yes.

But I think here -- well, it is another shared objective, I think, in terms of ensuring that the new round does not significantly increase the opportunity for malicious conduct and compromising the interest of consumers, creating confusion, creating more opportunity for online fraud. I mean, the risk of proliferation of these problems is well-recognized by everybody in this process, I'm sure.

Consumer protection is obviously a very important public policy area for governments and there was a lot of focus on this in view of the rise of e-commerce and online trading, online payment systems, online banking and so on.

So this whole area of potential escalation of abuse came to the attention of policy leads in a number of GAC country administrations to their fair trading people, to trading standards people and to consumer protection policy people within governments.

So this element of the scorecard reflects the consideration of these issues and discussions that have taken place within administrations and with law enforcement and with agencies, some of which may be in governments sometimes, depending on the country, or outside government but kind of empowered, if you'd like, to act in the public interest. Consultations with all those entities had the opportunity to look at the proposals and there were consultations with representatives of the financial community and so on. So it is a product of that, these proposals and the scorecard.

And we wanted, first of all, to shift away from only thinking in terms of law enforcement. As I just described, there are key instruments in countries for addressing mal trading and fraud and ripping off consumers. And we needed those brought into the consciousness, if you'd like, of the registries.

So our first proposal there is we amend the abuse point of contact maintenance paragraph to ensure that registry operators are aware that they need to engage and provide direct communication with consumer agencies fair trading people, trading standards and so on. So that's the first element of the GAC proposals.

Compliance is obviously a key element as gTLDs roll out. Compliance has got to be top notch in terms of the registries, and that must be brought into the sort of confidence-development area, if you'd like, in terms of the contractual relationships and so on.

And vetting, I think we've touched on this maybe earlier, maybe in the opening remarks this morning, that there are going to be those sectors in business where registries are going to be specifically active in terms of targeting customers, consumers, and sectors that are regulated to ensure that the rogues are kept out, the standards are high and the opportunity for abuse of consumers is reduced as much as possible.

So in addressing that, we proposed that certain strings -- more the application for the strings, the process should require particularly intensive vetting procedures to ensure that that risk of registries that are very active in the online consumer area are legitimate and people who will not seek to use this opportunity to enhance their fraudulent activities.

So I guess those are the main elements of what we're proposing here, basically, flagging up that there is a risk. It is one of the risks I touched on in my opening remarks this morning. And we look to ICANN and this process really to do its utmost to mitigate that risk. Thank you.

>>PETER DENGATE THRUSH: Thank you, Mark.

Ram, over to you.

>>RAM MOHAN: Thank you, Mark.

I appreciate both the comments here as well as what's in the scorecard.

In our discussions, we had a few clarifications, a few questions, that perhaps the GAC could respond to and help clarify for us.

The first one on points of contact for abuse, would it be possible to explain what the GAC considers the scope of government agencies and agencies endorsed by governments? Because as it stands, it is just written as is. I would like to know what the scope of these government agencies and agencies endorsed by governments are. That's the first question.

>>MARK CARVELL: We are not going into great detail here, but it should be pretty obvious that the kind of entities that we're trying to bring into the process here are those that are going to be active in protecting consumers. And this is the -- it varies from country to country. You have different kind of agencies. Some of them are part of government. Some of them are delegated down into agencies or into trading

standards, organizations associated with regional and county or state level of local authorities. So it's difficult to put precise parameters on that.

But the point we're trying to put over is that the operators have really got to be cognizant of their obligations, really, in terms of due diligence, that they assist and provide points of contact with those kinds of authorities. I think I can only speak of it really at that kind of general level. Thanks.

>>HEATHER DRYDEN: The United States, please.

>>UNITED STATES: Thank you, Heather. And thank you, Mark, for the overview. And thank you, Ram, for the question. Hopefully this might make it a little simpler. I think we are trying to capture both agencies that have both criminal and civil law enforcement capabilities. So they are constructed somewhat differently depending on the country you're dealing with. But we didn't want it to be limited to criminal law enforcement only but also civil.

For example, in the United States, the Federal Trade Commission is not a part of the Administration. It is an independent regulatory body with civil law enforcement capability. In other countries, they have different structures. So if that helps.

But it's -- we did try to specify that it would be an entity or an agency that was authorized by a government. It isn't intended to be wide open, but it is intended to provide -- to give a sense of the kinds of agencies who really need to feel confident they will get the support they need when they ask a question.

While I have the microphone, could I continue just for a few minutes to add a little bit to what Mark had presented to complement? On the vetting of certain strings, I think there was a slight oversight on our part in the scorecard itself so our apologies. And this refinement came up in our discussions yesterday around the GAC table.

We think that there are potentially other strings that describe or are targeted to a population or an industry that is vulnerable to or has been the target of online fraud or abuse. So I could give you an example of something like dot kids or dot pharma. But there are many, many, many other examples so I did want to get that concept across as well. It would not necessarily just be regulated industry. It would be a sector that has been the target of -- or been vulnerable to abuse.

And then I did want to sort of emphasize -- and you will hear it again in the next subject we get to, two from now, I guess -- or four from now, law enforcement, we'll return to this. But stress just how critical effective contract compliance is and will be.

It is critical now today, and it seems to be a challenging area with staff reductions and not a lot of resources. So you can appreciate the concerns that are held by many

governments looking ahead to many, many more registries, possible many more than the current 900 registrars. There is a great deal of concern about the ability to effectively enforce compliance with contractual terms. Thank you.

>>PETER DENGATE THRUSH: Can I just jump in at the first point, Suzanne, which is the scope issue.

We understand the urge. At the moment this is so completely unlimited that there are 206 governments. This isn't even limited to the requiring registries in the same country as the government that makes the recommendation.

So at the moment, this is open to all 206 governments recommending an unlimited number of agencies in relation to every reg- -- there is no limit to this. And when you think that what this is requiring is all -- is the current registries that we are going to ask to sign contracts, is they are going to then have to do pretty well anything any of these agencies asks them to resolve abuse.

We don't disagree with the principle. We just have to have something we can put into a contract with the registry so the registry knows what it is signing up for. Who are they going to have to answer to? How do they know it's a valid -- that it's a proper agency? And once that's done, I don't think there's a lot of difficulty in the idea of complying.

So we need to get a lot more proscription around this. At the moment, as I say, it's mathematically unlimited.

>>HEATHER DRYDEN: I have Senegal asking for the floor, so go ahead.

>>SENEGAL: Thank you, Chair.

My name is Maimouna Diop. I am representative of Senegal, my country, on the GAC.

I really want to welcome the opportunity to take part of this meeting. It is a first time we have this intersession with the GAC -- with the ICANN.

And since I was involved in ICANN meeting, it was in Carthage in 2003, that was the first time we spent more than two hours discussing our issues. And I think that is a good beginning and a good way to understand each other and our big concern as government.

To come back to this issue, the protection of the consumer. In developing countries, I think it's a big issue for governments and public authority. And because we have lack of a lot of means of technical things, I think we need to take care to this issue. And that's why I really want to fully support what Mark say about having these kind

of -- at least point of contact. I think it's important for us to have this point of contact to help us to identify this agency we can use if we have this kind of problem.

Because the only one issue -- the only one solution we have is just to block some string. And I think it's not -- For our country, it is not good to block string because just we cannot have -- know what is going on and have the opportunity to just have the good information.

That's why I think that in our perspective, developing countries, protection of the customer is a big issue.

Thank you.

>>HEATHER DRYDEN: Thank you, Senegal.

I think Bertrand was next, and then we have U.K. and Brazil and U.S.

>>BERTRAND DE LA CHAPELLE: Thank you.

I'd like to explore just a little bit more the expression "more intensive vetting." And also the type of strings that are being potentially covered. Because I think the concern is interesting, but as Peter said, we are basically expanding tremendously the number of possible strings that could be covered by this. Because if I take an example, there would be a perfect argument to say that dot music would fall exactly in this, because there is an entrenchment and a lot of things, likelihood of abuse. If you look at international measures, there are several countries where the main takedown on domain names is basically oriented towards possible infringement and copyright. And that goes for dot video, dot film, dot movie, dot whatever you think of.

So the question that we're facing is how to avoid that this becomes an additional set of criteria for the evaluation of an application. This is the question one. What would vetting mean and what would be the result of such a vetting? Is it, for instance, a sorting out between different applicants in a contentious set?

The second thing I think would be interesting is to see what is the connection with the part that we have postponed until tomorrow that was in the early morning about the community strings. Because I sense in the discussion, or at least in the scorecard, the notion that those community strings are actually something that could very easily evolve into something that is almost vertical, where there are, for instance, specific constraints regarding the type of operator and the type of support by the community or the stakeholders concerned.

So is there a connection in your mind in this type of concept?

And finally, this point, if I understand correctly the rationale, this point to criteria that have not been developed, particularly which are the choice of the "appropriate," quote, unquote, operator or the "appropriate" registration policies, which is getting into a very deep level of detail.

So my main interrogation is how to handle the limits on this and how is it connected to the issue that we will be discussing tomorrow on community strings that will require support or special operators.

>>PETER DENGATE THRUSH: I can just paraphrase that. We have often had requests for good reason that seems to create more categories. This seems to me to be an unspecified, undefined new category called generally -- generally regulated industry. And we have got no policy development work, no explanation, no community discussion about what this category would consist of.

And so our starting point is to go back, as we have always done, is to say we don't want to create categories a priori. The market might start creating categories and we will create rules for them as appropriate but we don't know what the categories that are going to be interesting or useful are.

So I hope that was an add-on, Bertrand, to the way were you putting in. I think we agree.

>>HEATHER DRYDEN: United Kingdom.

>>UNITED KINGDOM: Thanks very much, Heather.

Just on that point, I think when these applications start coming in, I mean, you will be able, really, to identify those that are going to be in this general area of e-commerce and online business and consumer interaction.

So we could try and work up some criteria on that. I mean, we, the community, could try to work up some criteria, perhaps to sort of mark this particular application is going to be in the financial services area or in online consumer payments or online retailing.

You know, that's the kind of obvious area of vulnerability as far as consumers are concerned. So I don't think we need to construct something beforehand in terms of defining a category or whatever, but it's -- we could -- I could imagine a set of criteria which distinguishes those kind of activities that could be on a kind of score sheet. This needs careful look at. Who is going to run this? And let's enhance the vetting on that.

So that's my concept for that.

In terms of the scope, I really didn't anticipate this being a major problem, actually. I mean, assisting law enforcement is already there, so you need a point of contact for that.

It should be relatively easy, I would have thought. Likewise to identify an appropriate consumer protection or fair trading agency in similar fashion.

I could offer, you know, to consult with GAC colleagues on how we might examine the danger of this being impractical, but we'll try and help you out in terms of allaying your concerns there.

As I say, it's not been raised to me as a problem that would impair the ability to add this into the guidebook. Say it's GAC consensus. We do seek it, but we will try to help new terms of the practicalities of it.

Thanks.

>>HEATHER DRYDEN: Brazil, please.

>>BRAZIL: Thank you. Alvaro Galvani from the Brazil Ministry of Foreign Affairs. Just a brief comment. We were talking about consumer protection and we are focusing on one aspect, that is law enforcement. And since talking about this difficult question of defining the scope of governmental agencies regarding to this issue, maybe it also should be useful to take into consideration, but the language that we used in GAC's communiquÈ from Brussels last June, when we also added the expression that any -- any measures regarding law enforcement should also respect applicable law and requirements concerning the processing of personal data, such as privacy, accuracy and relevance, just in order to have a balanced approach in any idea regarding law enforcement.

Thank you.

>>HEATHER DRYDEN: Thank you, Brazil.

United States.

>>UNITED STATES OF AMERICA: Thank you, Heather.

Just wanted to sort of chime in on the issue that, Peter, you and Ram have raised and Bertrand has raised that we seem to be presented with yet another category.

I think just to provide some context, at least in terms of our preparations and monitoring the development of the DAG in each successive version, it has been the lack of any certainty in the successive versions that certain strings that might need to be handled more carefully than others, there didn't seem to be the prospect for that.

So, hence the attempt to continuously try to highlight there are going to be certain kinds of strings that might need more careful attention.

For example, there isn't a ministry of finance, or in my case the Department of Treasury, that would be confident right now that some criminal enterprise wouldn't be the arm's length owner of an applicant for dot bank, God forbid.

So these are the kinds of things we are trying to anticipate problems for.

So as we have been briefing up in our respective capitals to our management, the questions are, well, what about this? What happens if somebody comes in and it's a highly regulated industry in our country and we have no idea that the due diligence has even done what it's supposed to do. Has this applicant been properly vetted? Da-da-da. So this doesn't even get to Bertrand's question which we will return to tomorrow morning of the link between the string and whether the applicant is the right entity. It's a little bit of that, but it goes to a great deal of sensitivity in capital because there are certain strings that might expose consumers to more possibilities of fraud.

So that's, hence, the constant returning to say we have always been concerned about consumer protection issues.

We were trying to be more practical here in offering more concrete suggestions. But we are trying to emphasize, as we have from the beginning, the outstanding concern that we have that the benefits to consumers should not be outweighed by the cost via harm.

So that's just a little bit of context.

And I agree with Mark, we will certainly put our heads together, and we will certainly consult with existing registries. It has not ever been my understanding that maintaining an abuse point of contact to interact with law enforcement has been an unduly burdensome task. It's always been my understanding that most registries and registrars would like, in fact, to collaborate with law enforcement to provide assistance.

Thanks.

>>RAM MOHAN: Suzanne, thank you so much. If I could just quickly jump in on that one. The DAG actually does have a requirement that the registries must maintain an abuse point of contact. So that requirement exists. And in fact, there is a scoring system that requires that there is expedited attention provided to requests that come in for abuse.

So you're right, there is concurrence that both registries as well as ICANN believe, as do governments, that an abuse point of contact is an essential component of running a registry.

There are two other issues that I would like to ask for clarity from the GAC. One is under vetting, the scorecard says that gTLD strings which relate to any generally regulated industry should be subject to more intensive vetting.

Has the GAC identified what the standard for "more intensive vetting" is? One of the questions or the concerns is that ICANN could initiate a process and put something like that and might still not meet your thoughts of what "more intensive vetting" is. So some guidance there would be helpful.

The other question is on the point of contact for abuse. What level of governments does the GAC suggest that registry operators must assist? Is it national or state? Local? Something else? Where does it stop, or does it stop at all?

So those are two questions that I would like to get some clarity on.

>>PETER DENGATE THRUSH: And does it apply on assignment (Off microphone).

>>HEATHER DRYDEN: United Kingdom, did you want to respond?

>>UNITED KINGDOM: Just very briefly.

It will vary. No doubt about it. I think it's for the registry operator to do, you know, the necessary research as to what the most appropriate point of contact should be. So it's down to research, really, in terms of that.

>>RAM MOHAN: Mark, I'm sorry. Could I quickly ask a clarification?

The point of contact is from the registry. So is what -- The requirement is that the registry must assign a point of contact. And there is no contention on that. We're all agreeing on that.

So I'm curious as to, when you say that the registries must research who the right point of contact is, could you explain that?

>>UNITED KINGDOM: Yeah. I'm thinking in terms of, okay, appointing a point of contact. But in terms of who is going to make use of that contact, that's, you know, a point of -- an issue of communication, if you like, with the appropriate authority at the national, regional, local level. That's what I was suggesting.

In terms of vetting, I guess it's down to a bit of work to try and work out what that might be. You know, how you establish a system of more intensive vetting. But this is what we're proposing that ICANN do. I mean, we're not making any -- I don't

think it's incumbent on us to go into too much in terms of specifics, but it's -- the point we're making is the key thing, that there's got to be, in this kind of situation with this kind of applicant, a particularly rigorous vetting procedure. The bar has to be a bit higher. Quite a bit higher.

Thanks.

>>HEATHER DRYDEN: Thank you, U.K.

Unless I see requests from the -- from GAC members for the floor -- GAC members for the floor, it maybe useful for the GAC, actually, to reflect on those questions a bit more and come back with clarifications wherever we are able. As a general point, I think that might be useful.

Okay. So Bertrand, and I will keep my eye out for GAC requests.

>>BERTRAND DE LA CHAPELLE: Yeah, just a very brief comment to say that whenever we see in the scorecard something that requests examination of a criteria or deeper vetting and so on, we should not necessarily jump to the conclusion that it will create a new process. There are, actually, several examinations. Like, for instance, on the screening of the applicant, exactly today in the Applicant Guidebook, the applicant is being screened for a certain number of things.

And so one way to implement that effort of deeper vetting could be to identify in those procedures something that would be a trigger, that would say if the GAC, for instance, highlights that this type of string is worthy of a particular attention, then there could be a provision that says in the administrative validation of the applicant, a specific attention will be done, for instance, to the fact that there has been no fraud or that the applicant has a special -- that is particularly screened. I don't know.

What I mean is that it's not necessarily a new process every time there is a requirement for more in-depth analysis. We should just keep that in mind. Wherever we can just enhance an existing step in the Applicant Guidebook, it may be some solution sometime.

>>PETER DENGATE THRUSH: Well, just a general warning about trying not to solve problems. We're trying to clarify -- The other high-level principle, of course, that this, to me, conflicts with is the original principle that it has to be orderly -- the application process has to be orderly and predictable. And a lot of this starts to have ad hocery about it. Someone is going to come up and say I think this is different; therefore, we will do a different mechanism for it. So I think whatever we do, there has to be clear descriptions, clear lists. Applicants have to know beforehand what they are up for.

Okay.

Is there more on obviously this very crucial thing that we are committed to, which is protection of the rights of others. This is the consumer protection.

Is there -- Do you want a last comment, Mark? Again, thank you for all the work the team has put into this.

Ram, a final comment?

>>RAM MOHAN: No, thank you very much.

>>PETER DENGATE THRUSH: Okay. Well, thank you all.

Let's move on, then, to the last part of this section which is the law enforcement due diligence, which is the RAA considerations as opposed to the guidebook considerations. And the team on this one from -- again, I think Mark, are you -- We're going to let you off?

Oh, I'm sorry, sorry, I have jumped one. They are bunched here slightly differently.

Post-delegation disputes with governments, which, Heather, it looks like it's got three GAC topic leaders, which is excellent. We get Mark off the hook and hear from some fresh -- and from -- from the board side the post-delegation dispute is Bertrand.

>>HEATHER DRYDEN: I believe Norway is willing to present this topic.

Yes. Okay. Fine.

So Norway will present.

>>NORWAY: Thanks.

>>HEATHER DRYDEN: All right. I see that we have actually moved past law enforcement due diligence in the agenda, and it's related to the issues we have just been discussing around consumer protection.

So the agenda today I believe is based on the original listing of -- that we had of topics divided by leads. So they are not the same. So --

>>PETER DENGATE THRUSH: Let's not get hung up about what's on the screen. We have lumped these topics together for understanding convenience. These are all these consumer protection issues. If we haven't quite captured it on the screen, with your permission we'll keep to this grouping that was originally prepared as the topic leaders were appointed.

So let's come to law enforcement due diligence, and that's --

>>HEATHER DRYDEN: United States.

>>PETER DENGATE THRUSH: United States, and Gonzalo Navarro for the board side.

Bill.

>>BILL DEE: Yes, sorry. I don't want to be difficult, actually, but I am being joined by a colleague and I told him he needs to be here at 1645.

>>PETER DENGATE THRUSH: Oh, okay.

>>BILL DEE: Because it's up there. So I would really appreciate if we could defer the item. Thank you.

>>PETER DENGATE THRUSH: Absolutely. No problem at all. We can do it any way that's convenient.

So if you would rather go to -- stick with that, we will go, then, to....

>>HEATHER DRYDEN: Post-delegation?

>>PETER DENGATE THRUSH: I think we might be at coffee break.

Why don't we take the coffee break and then we can make sure that Bill's colleague arrives.

[ Applause ]

>>PETER DENGATE THRUSH: And we clearly have plenty of topics to go on.

Let's take a 15-minute break and by that point we will be clear on what's best to go on.

Thank you.

[ Coffee break ]

>>PETER DENGATE THRUSH: Ladies and gentlemen, could you take your seats? We're about to resume.

And could we have the speakers on post-delegation disputes.

>> I could barely hear you.

>>PETER DENGATE THRUSH: Thank you, ladies and gentlemen. We're going to start again once you're seated. The next topic is post-delegation disputes.

Followed by geographic names.

We're doing post-delegation disputes.

Heather, did we clarify which of the three GAC speakers is going to take the lead on this one?

>>HEATHER DRYDEN: Norway.

>>PETER DENGATE THRUSH: Norway.

Can we -- would you like to do it from there or would you like to come up and --

>> (Speaker off mike).

>>PETER DENGATE THRUSH: You'd like to be surrounded by protective colleagues down there.

[ Laughter ]

>>PETER DENGATE THRUSH: Bertrand, what about would you like to do it from there or would you like to come up? All right. Fine, just so that the audience knows if you can just put your hands up, the two speakers, one from the GAC, one from the board.

So, why don't we, as we've done before, ask the GAC to just give us some high-level -- again, understand that we've very carefully read the scorecard. Thank you, again, for the work that's gone into producing it. What will be most useful now is some high-level principles, and then if we can just question, as we've done with the other speakers.

>>NORWAY: Thank you, my name is Elise Lindeberg. I'm from Norway, obviously, as you said.

This post-delegation thing is something that has been bouncing back and forth for a while. And I don't think it is one of the issues that it's not impossible to get an agreement on. This is something that we should obviously try to clarify, because it's just, as we said, now it is a question about small words. But, of course, it is details that we think it is important.

But, you know, the Norwegian government has been very aware of the post-delegation disputes problems, ever since we got -- the Norwegian Ministry of Transportation & Communication received a request, not a formal application, but

we got a request for dot Oslo, and we started to dive into this legal framework or lack of legal framework, what you call it, because we wanted to see, okay, if we want to give support for this, we will make conditions, obviously. And how can we possibly safeguard the conditions that we will put forward in a nonobjection.

And then we saw that we had some problems.

So when we have been discussing this with the board, I think you have understood us quite good on these questions. I think you have understood that we had a problem. And given a response where we have tried to agree on the wordings that would safeguard the government positions.

But we thought we had good wordings in DAG 4, as we have said. And then we got the AG, as we call it, the supposed last version of the draft applicant guidebook, and the wording was changed. So we want the old word back, basically. And we said that to you.

And we had conference calls on this. And as we see it, the most important thing for ICANN is to make sure that there is a legal, valid process in the case of ICANN acting on national decisions. Maybe this is a safeguard for not being sued. Maybe this is a safeguard to have a clear view for the applicant of what could happen in the future and so on. And we understand that.

So we think that we understand your need for this, and at the same time, we will provide you with good proceedings around this. But we would like you to commit -- or to have a legal framework that enables you to commit to the government. When you say that you will follow a legally binding decision from, let's say, the Norwegian government on dot Oslo, we would like to be able to follow up on that on the registry agreement you have with whoever runs dot Oslo.

And as we see it now, you don't have that, because you have a registry agreement that says that you may implement or may follow a national decision (inaudible) decision, not that you will. And maybe there's some -- maybe your law is different from the European and the Norwegian law, but at least we will say "will comply," so that it is very clear for the registry that if they break the conditions with the national government, the consequence will be that you will follow a national legally binding decision on this, and maybe take them out if that is -- in the worst case.

So -- And also, we would like you to change the wording that you put in that it is a court decision. We would like it to be a legally binding decision. That is because we have different -- well, some states use -- what do you call it? -- we call it administrative, public administrative, legally binding decisions. They will not go to court with them, but the regulator can make a decision to give some- -- to give someone the rights to run -- let's say we do it, we say you can run dot Oslo. But if you break these and these conditions, we will take it back. And you can, of course, go to court with that decision and sue the governments, but you will have to do that

within three weeks or a month or something from the decision we will put in front of you. And if you don't do that, this position from the government is legally binding.

It's an administrative, legally binding decision. That is no problem for ICANN to follow up on. If you don't believe it is legally binding, you just go and ask us and we will confirm that it is legally binding in Norway.

>>PETER DENGATE THRUSH: Okay. Thank you very much for that. I think this is, in fact, one of the simpler issues that we have to face.

But, Bertrand, perhaps you can introduce some other questions, if there are any.

>>BERTRAND DE LA CHAPELLE: Yeah, I think, actually, the conference call was very useful in clarifying those elements.

There are two points, as was just expressed. The first one is basically relating to the strength of the commitment of ICANN regarding the respect of the national decision, whatever that decision is.

I think, from what I understand, we need to validate it finally within the board. But I understand that it is going in the right direction and that there seems to be understanding that this is not causing a major problem.

The second question is -- requires a little bit of clearer understanding. And this is more on the second one that I will focus.

The context here is very interesting, because the letter of support and nonobjection is actually growing and developing into a major tool for the government to basically decide where it wants to put the cursor in terms of the degree of control or the degree of supervision that it will retain afterwards when it has given support on nonobjection.

And we will have another issue in geographic names that goes into more detail in that respect. But I just want to highlight here that in the course of the discussions and the interactions between the GAC and the board and the community, this document that was initially just a three-liner, no objection or support, is actually evolving into something that can be tailored in different levels. So it's already an instrument.

In that context, the change from something that is a court decision to a legally binding decision has two different situations.

The question I would like to ask is, there is a distinction between a dispute situation and something that would somehow amount to a redelegation, for instance, like, you want to redelegate.

It is something that is slightly different. In one case, it is the sovereignty of the country to decide how much constraint it has put in for the future to keep this capacity. In the other case, it is the government having a dispute on a specific topic with the operator.

The question I want to ask is, if the standard is extended to any legally binding decision, isn't this a risk of putting the operator in a sort of unequal position and not having enough due process to be able to defend itself? If there is a court process, then there is a capacity to respond, and the two parties basically have to debate and argue, and the decision is easy to implement afterwards.

If it is a decision by the administration in a case where there's a dispute, isn't there the potential for abuse in certain countries where the due process is not that clear?

So I would like to make this distinction and maybe get your feedback on this.

>>PETER DENGATE THRUSH: Elise.

>>NORWAY: Well, of course it could be a difference in different countries. I think that is something that an applicant will have to take into account. You can go to your government, your own government, or the government of the -- the geographical name, and you don't trust the government, you don't trust the process, and so on, and you base your case or your whole existence on an approval, a nonobjection from someone that you don't trust or that you don't trust the system. I don't think ICANN is the one that should go in and decide that. I think that is a dispute you will have with the applicant, of course, and the country, both in front of their -- of the yes or no to this new string, and also as -- of course it would be a risk afterwards, but I don't think should you put into -- don't think that you should narrow the government's possibility to guard their own positions and guard their own terms in your agreement or your basis. That is a national decision.

And if you don't trust the position that comes out or the decision that is made, okay, let's see. If you want to have a document, do this and that, and you say, this government, we don't believe them, or they're not democratic or something, let's try and test a case like that.

But I think you give the government, each government, you give them the right to say yes or no. You give them, in fact, a veto for a geographical name, and then you should also give them the tools or the decision on how they will act on breach of contract or breach of terms.

That is what I think. It's an easy way or more clean way, as I see it, than to sit and just rely on court. And, by the way, if you don't rely on the country's administrative -- yes, capabilities, then maybe you would not rely on the court decisions. That is just -- that might be some of the same thing in some countries.

>>PETER DENGATE THRUSH: Follow up, Bertrand.

>>BERTRAND DE LA CHAPELLE: Yes. Just a quick follow-up, because I think we are clearly identifying the points, and I'd be happy to have other comments from other board members and other GAC members.

Just a quick follow-up to highlight that, fundamentally -- and this is the reason why I was referring to the letter as a tool -- the paragraphs that are there are optional, but I do not understand -- and correct me if I am mistaken -- I do not understand that the text of this letter is limited in any way.

The fact that it is optional can even allow the government to enhance the requirements. And we've said in many cases that if the government wants to condition the letter of nonobjection or support to a full RFP process, to something that is very detailed and has very strong constraints in the legal framework nationally, it's almost not even in the letter. It is that the -- in that document, the registry agreement and the applicant will obviously have to apply the national law that is there. So the administrative decisions and the whole legal framework is there.

So I'm wondering whether we should keep in mind the fact that the letter itself is not set in stone and that there are probably variabilities.

The second follow-up, which is a slightly different question, is, how do we handle the situation where, for instance, you have a string that has been vetted by several public authorities because it actually covers different countries, and how do we handle the possible conflict if there is a decision in one country versus others? Which is not covered here, but this is an issue that came to mind as we were discussing this.

>>HEATHER DRYDEN: Norway, to respond.

>>NORWAY: To the first one, at least. I didn't get the last one quite.

But the first one is, of course we can have all the conditions we want in the national agreement with the registry. We have been aware of that for a long time. It could be, I think, a (inaudible) or it can be just a paper just saying yes or no. It could be a approval without any condition or it could be a large agreement. Still, this is the whole problem with the thing, we don't have any tools to safeguard the conditions, because we cannot -- when it comes to the term, we cannot take it out. So because of this -- because you have three parts in this and because ICANN sits on the key to put it in, we have to rely on ICANN having the tools to give us or to listen to the governments. And if you make an obligation to us as governments to say, "We will listen to you and we will follow your decisions, legally binding decisions in your

country," we have to make sure that you have the tool towards the registry to do that.

And as we see it, you don't have that if you say, "You may comply." You have to say, "You will comply."

But as we say, it's a tool to make the agreement you want. But that is not the main point. The main point is not what you can do on the national level. It's what's possible to follow up on the ICANN level, actually. So we said to ICANN, don't promise something to us that you are not able to enforce in front of the registry.

Thank you.

>>PETER DENGATE THRUSH: Okay. I think we've -- I think we understand this better than almost anything we've been dealing with. I think we can move on. I think we've --

Not today. We understand the issue.

Okay. Well, is it a quick one we can deal with now, Erika? Quick question? 'Cause we -- this is the kind of thing I think we may not need to spend time on tomorrow the way we've been working on this.

>>Erika Mann: Yeah. I don't know. It's pretty quick.

I mean, the second point from Bertrand was, what are we going to do in case of a dispute? You have many geographical names brought forward by different -- you know, from different states.

Now --

>>PETER DENGATE THRUSH: Bertrand's question was where the same applicant is authorized in multiple countries and is fired, if you like, in one. Again, I think -- I don't think today is the time to resolve that kind of interesting hypothetical, quite frankly.

The number of --

>>ERIKA MANN: I have a little bit different one, but it's no need to discuss it right now.

>>PETER DENGATE THRUSH: Okay. Well, thank you, again, team responsible for that. Very clear presentation.

Let's move to the geographic names topic. Another long-running and interesting one.

Heather, who's going to handle this one from the GAC?

>>HEATHER DRYDEN: Germany.

>>PETER DENGATE THRUSH: Excellent. Thank you, Germany.

And, Bertrand, you're going to be handling it from the board. Thank you.

So as we've done all day, can we have just a high-level overview of the GAC advice in this area with some helpful explanations, and then we'll see if there are some questions.

So over to Germany. Thank you.

>>GERMANY: Yes. Thank you, Chair.

Yes, this issue on geographic names is an issue that we -- that follows us from the beginning. I think it is very important we have quite a lot of discussions on this issue. In the current understanding, we have various categories which ICANN considers to be geographic names. This is country and territory names, capital cities. And then we have the subdivisions of the countries. These are normally federal states or provinces. Then we have city names in general and U.N. regions.

Still, after various discussions where we see that not all geographic names are considered now to be geographic names, we see quite a lot of abbreviations of names of cities, of federal states that are, if I follow the definition of ICANN, would not fall under the category of geographic name. And city names would fall under -- may be considered as geographic names only if the applicant was confirming that he is applying for a city name, and therefore it is some kind of tautology.

To overcome this problem, ICANN has offered a secondary avenue that is called community objections. We have also discussed and considered these possibilities. But we came to the conclusion that this procedure, which is a very formal one, would be -- would not fulfill the requirements of governments in this regard. And there I have to come back to a discussion we had this morning on early warning. And this early warning system could be a perfect system of alerting applicants of strings we as governments would consider to be geographic names. I think during this first step, this could be very helpful. These strings and these applications would, as any geographic name needs some nonobjection apart from the respective government and follows the requirements of the applicant guidebook.

I think this was -- would be a quite swift solution for a problem we have been discussing for quite a lot of time, and not coming to a solution where we are, as governments, at least, are not quite feeling comfortable. I just want to highlight for protocol that in respect of geographic names, there is still no consensus on country

names in future rounds. I think this is a discussion we not necessarily need today, but this is something just for bearing in mind that there is some open question.

For further considerations, we have added some remarks that could be resolved, I think, within some wording. We discussed it in the conference call. And I think there was an understanding for that.

First of all is, we want to make clear that it is under national sovereignty to decide which level of the government files the nonobjection letter or the letter of support. There are some -- in some parts of the text, there are links or is text that can be interpreted that ICANN expects some legal -- some administrations or governments that they would consider adequate for sending this nonobjection letter. And I think it's a question of national sovereignty.

We in Germany have a federal system. For us, it would be not a question of the central government; it would be delegated to the communities. I know other countries, they may have a more central perspective. And they may want all of their geographic names being nonobjected or supported by central government.

I think this is something that can be solved easily, but I think this is a sensitive issue for governments and it should be highlighted and should be also mentioned in the guidebook.

Another issue I want to raise is the question what happens if there is more than one application for the same name.

We -- for the same geographic name.

We have -- If you have asked me two years ago or one and a half years ago, I would have said that's hypothetical. But now we see the development and I think the attraction of these kind of top-level domains is increasing, and we see more applicants, and so we also may see some competition.

And the question is, how is ICANN reacting on that.

We fully understand if there is a letter of support from different entities for different industries or different companies. That would be a bit difficult for ICANN to decide is it the ministry of interior or the ministry of finance who is the correct administration to file a nonobjection letter. And if they are contradicting themselves, it's not on ICANN to decide this issue.

But in some cases, there may be, also for pragmatic reasons, governments come to -- may come to positions that they actively do not want to decide which of the applicants to choose from. And they would support every applicant who fulfills certain requirements. This would have the advantage if it comes to also legal question, because maybe there is a need for call for tender, and all of these

discussions which if there is more than one applicant for a city name or a name of a province that have to be discussed, and therefore it would be a practical solution for at least some of the governments came to me and asked why not leaving this decision on ICANN? And I would ask whether it would be possible for ICANN to come in this case where the same administration supports more applicants, whether ICANN could not make the decision or would it be necessary to leave the application pending in the current applicant guidebook.

That's, from my point of view, the issues on geographic names. I think there is a way to come to a solution with this early warning program I have highlighted. And in respect of the two other issues I mentioned, I think that it is really a question of I hope where we can find a solution. And sometimes it's a question of the wording. Thank you.

>>PETER DENGATE THRUSH: Thank you. Let's move to Bertrand for some questions about the GAC advice in relation to geographic names. Bertrand?

>>BERTRAND DE LA CHAPELLE: Thank you, Peter. Fundamentally, what is presented is actually two different topics. The first one is actually what triggers the qualification of geographic name, basically. The current applicant guidebook has an explicit list. And here there are some uncertainties, for instance, for the name that some countries are known as, which is a country name is covered explicitly but not necessarily in a specific formulation, abbreviation or so.

And the second thing is below the capital city or the explicit city, is there any mechanism that would allow a government to say this is actually a geographic name?

The difficulty we have here is that it is changing the current mechanism which is using objections, which is a formal mechanism to refuse that an application be conducted to something that would trigger the applicability of a letter of support and non-objection. That's the way we can understand the proposal.

In that respect, following what Hubert was saying, if we're talking about this sort of early warning -- and if I take the expression to define names that are to be considered geographic names, how would that function? Would it be the government itself that would submit an explicit letter saying, "In this list of strings that has been published in early warning, for instance, this is a geographic name" and would that be enough in the view of the GAC to automatically trigger the requirement of letter of support and non-objection? That's the first question.

Would it be simply to say, This is a geographic name for the following reason? We want a letter of support or non-objection to be required?

On the second issue, the two elements that you've mentioned and that are in the paragraph 2 in further requirements, they are interestingly complementary. On the one hand --

>>PETER DENGATE THRUSH: Bertrand, perhaps why don't we get an answer on that first question because I think that is actually quite complex. And I, amongst others, may have trouble holding it in my head while we go through the next question.

So, Hubert, this is -- Let me just respond at a very high level the difficulty I have in this area. And that is the use -- And I have cautioned against this before, the assertion that governments want to use this instrument to protect their legal interest. The difficulty is that we can't find a legal interest. If we had a legal interest, it would be a lot easier for us. But nothing in the law prevents me at the moment from setting up a shop in my country and calling it Germany Ski Club or France. If there were laws protecting the rights of names, we would simply be relying on them.

It is, in fact, the absence of any clear legal requirements that have forced us into this long and complicated exercise of trying to find other people's defined lists that create the kind of certainty that we can then consider extending rights to governments in relation to those lists.

And so Bertrand's question triggers -- is the same kind of thing. This is something that's not on a list. If it is on a list, then there is no issue. In the objection process, is it simply going to be enough for a government to assert "I think this is a name that I have -- "that I want geographic protection rights in relation to"? That's the difficulty for us, and it's part of the predictability and certainty exercise.

If an applicant has gone through a whole other thing and wants to register a name and this name doesn't appear on one of the ISO-3166 lists and then is met by an assertion by a government that, although it is not on a list, this is actually name that I think I have some rights to, that's part of the problem that we've got.

Help us out. How do we solve that? It is trying to be predictable and certain.

>>GERMANY: Yes, thank you. From our point of view, it is really an approach which strives to use a lot of common sense in this process.

I understand that it might be an application of German's Ski Club and, yes, it would be a discussion whether this is a geographic name or not.

But is it really necessary that we -- so if this issue is at this stage and regarding the question of a legal corrector of a geographic name, I just can speak on behalf of our jurisdiction.

In our jurisdiction, geographic names are protected. We have protected similar trademarks and we have legislation for second level domains under the "E" where certain names must not be used because they are -- because users might anticipate that they are operated by governmental entities or cities.

Therefore, we have legislation on geographic names. I'm not sure whether this is something that's existing internationally. But at least we would have this -- it would fulfill this precondition you are mentioning.

>>PETER DENGATE THRUSH: Can I just respond to that because that's actually the heart of the difficulty of this. What you are seeking you don't at the moment have extraterritorial application of that German law. I don't want to pick on Germany.

German law at the moment won't stop someone in Morocco, for example, from setting up and using all those names which would be prohibited in Germany.

What this is seeking to do is to expand into the Internet what is, in fact, national law. So that's the difficulty we face, is what is the -- what should be the permitted extension extraterritorially of this principle in your country so you can prevent someone in other countries in relation to the Internet using these names?

So this is the high-level conceptual struggle that has been behind this all the way through. That's why we go to these national lists because there's international agreement on those and we've got the certainty. We don't have to solve the extraterritoriality problem.

Do we have to solve this now? I'm not sure in relation to Bertrand's particular question we do. So I would be happy to move on if that's been asked and answered.

Bertrand, is there another question?

>>BERTRAND DE LA CHAPELLE: There is another question, but I would like to do a quick follow-up on this one. The notion of extraterritoriality applicability is an important one, but there is also the mention of how combined the words are.

The difficulty we have is as long as we keep with very strictly established lists, we're fine. We agree on that. They're applicable.

The question is when we expand vertically and horizontally, horizontally is country commonly known as...

That is probably easier as far as I think, easier to handle than going deeper into every single geographic name or the combination of a geographic name with other words.

So without finishing the matter here, I want to make this distinction between the fact that there is a global agreement, I think, in the community regarding the protection of geographic names for the country that should not be in. And whatever is described as a qualifier for the country, we can probably find ways to do this.

When we get to any geographic name that a government would consider had to be protected in any combination, we get into the extraterritorial dimension you mentioned.

The second point I wanted to highlight is on the second block of issues, I just want to reformulate to make sure that we understand exactly what you're proposing.

The first thing is, basically, now in the applicant guidebook, there are some indications that say there is an expectation that the level at which the support or non-objection will be made is this or that.

In the document, it is important -- and it was discussed in the call -- that it is just an indication. And maybe, I think, the idea -- And I wanted to ask if this is the way you wanted to go forward. If something could add more precisely that this is just an indication, maybe it is a way to go? That's the first point.

And the second point is the reverse, is a situation where the country wants to have the right to say, "I don't want to choose, I don't want to be forced to launch a request for proposal or to filter among the different actors. And I want in that case ICANN to decide among competing applicants."

My question there is: Is this exactly what you are suggesting? And in that case, how can we ensure that we will not be in a situation of remorse afterwards? Like, in terms of stability, if the country has said, "No, I don't choose" and ICANN makes a decision, if I combine this with the suggestion we had with post-delegation disputes, we have to be careful to guarantee some legal stability to the applicant that will have been authorized. If there is a change in government, a change of policy, how do we handle this?

>>HEATHER DRYDEN: Would any GAC member like to comment further on this point or earlier points made? The U.K. I see the Netherlands. U.K.

>>UNITED KINGDOM: Yes, thank you, Heather. I'm going to respond to the first question about indications in the guidebook about where the approval or letter of non-objection would issue from or be sought from.

We would prefer, first of all, that those indications actually be taken out because they will mislead the applicant in -- for those countries, like the U.K., where the letter of approval on non-objection is going to issue from the central government for whatever, for a city, county, region, member of the Union, England, Scotland, Wales, northern Ireland.

So we would like the guidebook to state clearly that the applicant will need to determine from the relevant state who to approach for a letter of approval or a non-objection from -- in the case of a geographical name.

>> (Speaker off microphone).

>>PETER DENGATE THRUSH: How does that work? You have got somebody in New Zealand wanting to apply for something that the government of Senegal -- How does somebody go through that process? Wasn't it appropriate if a government wants rights in relation to these things, governments should publish the name of the authority that is going to be used in this particular -- We just need to keep making it predictable, certain, et cetera.

>>UNITED KINGDOM: Yeah, I'm trying to think about the predictability of that. I mean, if somebody wants to use -- apply for Manchester, they would have to apply to my ministry in London, the national ministry. So some means of communicating, it is not going to be the same for each country.

Our policy is that, as I say, the letter for dot Manchester would have to come from the ministry. We would consult the city, authorities, of course.

So we wouldn't want the guidebook to suggest to that applicant in whichever country applying for Manchester would go to Manchester City Hall or whatever. So that's the problem we've got.

It is a question of national sovereignty as the scorecard indicates as to how each government handles this issue of letters of approval. Obviously, for those countries that are members of the GAC, source of advice for an applicant in Senegal or wherever who wants to use an English city name or British name of some sort could come to the GAC representative. But then there are the non-members of the GAC. So some means of indicating a point of contact, which I don't have the answer for.

>>HEATHER DRYDEN: Thank you, U.K. I have Netherlands and Norway and Switzerland and Italy.

>>PETER DENGATE THRUSH: And Germany.

>>HEATHER DRYDEN: And Germany.

>>NETHERLANDS: Thank you, Heather. I will make it short. One way out -- I think I understand Peter's concern about predictability, extraterritorial effects. You can know whether somewhere on Earth somebody is entitled to carry this name, geographic name.

I think one of the ways out is I think, as GAC, we are not proposing kind of very legalistic system in which every geo name name on Earth should be protected.

I think the main point is especially in the early periods, in the initial registration periods, when it comes out through -- in some trigger mechanism which, of course, can come out from the GAC country or from the GAC, comes out that, okay, this geographic string is sensitive for some country, there is sufficient time to deal with the sensitivities of this string in a particular other country.

Basically, what you want to do is to get -- before the application gets into the process, to have this remedied somewhere. It doesn't mean that somebody is not entitled to be the applicant of a certain string. But it does mean it has to be sensitive of the concerns that it might be used against some other geographic area of the world in which there could be possibilities.

Of course, the trigger mechanism cannot come from the applicant. It should come through a GAC member or otherwise. Thank you.

>>HEATHER DRYDEN: Thank you, Netherlands.

Norway.

>>NORWAY: Yes, Peter, I just wanted to thank you when you put up this reminder for us about what is accountable, about what is actually happening outside this domain name world. We recognize we have agreement about using the name of geographical names and so on.

We think that we should use this as guidelines when it comes to protection of names in the space, geographical names. We think that is a useful tool to look outside this domain name world. Okay. Thank you.

>>HEATHER DRYDEN: Thank you, Norway.

Switzerland?

>>SWITZERLAND: Thank you. I just have a small remark with regard to the question of how to deal with the fact that there are different responsibilities or different authorities responsible in different countries.

Do not think that we have to go into this detail at all in the DAG. I think anybody who is willing to apply for a ccTLD will find out in one day who is responsible by either contacting the city or by contacting the national government.

The other question is: Do the cities and national governments themselves know who is competent? And this might not be the case for every country. This is something they have to find out.

But I don't think we should go into this detail because the applicant will find this out.

>>HEATHER DRYDEN: Italy and then Germany.

>>ITALY: Yes. Making a list of geographic names is impossible, of course, unless it is the list of country names reported in the U.N. list.

So the point is every country has the protection of his names. In Italy, we have 20 regions, 100 provinces and a large number of municipalities. So, of course, if we try to get all the names for all the countries is something that we'll never reach to an end.

So in this case, the only solution I see is to recognize that after the early warning and the list of names that has been proposed, it may well happen that a community in Canada has the same name as the region in U.K., let's say.

In this case, what has been requested here is to give -- possible for the GAC to act and to suggest, to give priority to the community that is represented as a country name.

And I don't know if this is something easily to be achieved because, of course, the applicant might well propose this name for very different purpose than a typical geographic community. So this is the kind of legal problems that are maybe not easy to be solved. Thank you.

>>HEATHER DRYDEN: Thank you, Italy.

I have Germany and then Bertrand.

>>GERMANY: Yes, thank you, Bertrand, regarding your question on remorse. I wonder really, okay, if a government would have made a decision for a certain applicant that would not exclude after a certain period of time, there might be some remorse because it selected the other one.

But I think if you have clear procedures in this regard, I don't see a difference. If it is a question of procedure and you have -- and the government itself knows that it surely can give its non-objection letter to one applicant or it can give it to several applicants.

And, yes, therefore, it is deliberate decision of the government and the government has to fulfill and clearly comply with the consequences of this.

Regarding the geographic names, I also welcome your remarks, Peter. I know that clearly we don't have any international legislation on names and geographic names, and that is exactly why we started the whole discussion here.

And I think we tried to come along, and I agree as colleagues have mentioned, we don't have a list. And we cannot -- we won't be able to produce an exhaustive list which includes all geographic names. And, therefore, I would come more from a common sense point to let's see what are the real applications.

It is not a hypothetical question to be frank because if you look at the application lists that are published on the Internet, you may find quite a significant number of geographic names and quite a significant number of geographic names using abbreviations.

And it is really important from our government's perspective that these applications are really considered as geographic names. And, therefore, we should look to have -- and to lay this as a fundament for such a position.

And I would consider that the system we suggested would allow such a common-sense based and easy-to-handle possibility to identify what are the geographic names. Thank you.

>>HEATHER DRYDEN: Thank you, Germany.

Bertrand?

>>BERTRAND DE LA CHAPELLE: Yeah. I think on this topic, it is probably useful to wrap up and continue the discussion tomorrow. I would like just to highlight first that there is a clear connection between this discussion and the discussion on the early warning process and the other topic that we postponed to tomorrow morning on the community and sensitive strings because we -- there is a connection here. If something is not in the list, apparently the two other processes may be worth your discussion. So we'll keep it in mind when we talk about the early warning and the communities string.

The second thing that I sensed emerging that we could explore further is this notion that if it is the national responsibility to identify who is in charge of giving the non-objection support letter, then it would be very beneficial for all to have a better understanding in each country of who is in charge, and maybe some communication effort during the campaign would be useful in connection with the GAC.

And the third element is regarding this question about remorse and stability. The more I think about it, the more I see a problem that is similar to the question of redelegation in ccTLDs. And, basically, it is the question of whether the government, because it is a geographic name, will have the capacity to change the operator or come back on what they have agreed upon.

And the reason why I asked the last question earlier is if you, as a government -- And I want to finish with this. If you, as a government, have detailed very thoroughly in the letter of non-objection or support, the process you followed, the conditions under which there will be changes or things like that, it is a slightly different situation than a situation where the government would have said, "I don't choose, you go" and then a couple of months or years later because there is a very valid policy change or government change, the government says "Well, actually, we would like to launch the equivalent of a redelegation process." So the question of stability legally both for the applicant and the government is important to explore.

The final point we haven't touched upon is the fact that there are several geographic names that are clearly cross-border. I was given the information that Manchester, for instance, is in many, many countries such as Suriname and other places. Not to mention Naples where there are obviously different countries.

This is a problem where the last question where ICANN would have to choose if the governments do not take a position is a very delicate situation. But we can discuss that further. Thank you.

>>PETER DENGATE THRUSH: It is the end of the speaking list on that. So thank you, everyone, for that long running, very difficult issue. I think we are gradually getting down. Certainly, if we can use common sense at any point in this process, I know the board would be very willing to do that.

Let's move then, if we can, to the last of the topics. We are running a little bit behind time. So if we can just bear that in mind as we move through. I don't want anyone to feel they are cut off on any of these topics.

The next topic is, then, legal resource for applicants. And this is a matter of contractual exclusion wording in the proposed registry agreement. It is a relatively straightforward point.

I understand that Germany is fronting this one as well. Thank you, Germany.

From the board side, Mike Silber has accepted responsibility. Mike, do you want to work from there or come up and get in the hot seat? Up to you.

Germany, why don't you follow the now accepted pattern. Over to you.

>>GERMANY: I'm waiting for Mike. Sorry.

In the terms and conditions of the application for TLDs, the applicant has to accept that he his desisting from any legal recourse to ICANN's final decisions.

This is a very strong legal requirement. And the GAC understands that any legal decision in the multistakeholder process should be legally -- it should allow legal recourse.

We just want to recall even our parliaments make decisions that can be challenged. And this is, I think, very natural in all decision-making procedures.

And we were really asking what is the specific need for ICANN to have this requirement in this respect.

During the conference call, I think there was quite a lot of clarification. One clarification that could not be understood if you read the clause itself is that, yes, we have quite a lot of ICANN internal recourse procedures. And these recourse procedures should be highlighted and mentioned. We discussed quite a lot of these objection procedures during this morning and probably also tomorrow.

Yes, we have quite a lot of instruments in this respect and we should mention them. And there is still a legal possibility for allowing the applicant to use the ICANN instruments, even if there is a board decision not to introduce, for example, a top-level domain.

I further want to recall that ICANN is in a very, yes, unique situation. It is the sole organization that is able to provide an applicant with a TLD where there is no other organization.

And if you have such very strong clause in your terms of condition, this might raise some questions in respect of competition laws. And we just want to make sure that ICANN has considered competition questions in this respect, has asked for legal advice or expertise in this respect. And as I said, the decisions in this clause will not harm ICANN in this situation.

Thank you.

>>PETER DENGATE THRUSH: Thank you, Germany.

Mike, and remember what we are doing. We're making sure we are getting clear what the advice is. In some of these discussions, I think I have allowed us to stray a little bit into solutions. Given we are getting short on tile, can we be reasonably strict that we understand the points.

Are there questions about what the meeting of the GAC advice in this area is?

>>MIKE SILBER: Peter, we are very fortunate on this one of, I think, understanding exactly what the issues are and, in fact, being pretty close to solution as well.

I have no questions. If the board and GAC would like, I could sum up in no more time than Hubert took, our responses to those issues, because I think they were pretty crisply put. They are all extremely valid, and have been considered. And I think this is one of those that we are ready to move on.

>>PETER DENGATE THRUSH: If you can do it really quickly, that might be helpful. Thanks.

>>MIKE SILBER: Thank you. With regard to the last issue first, if I could, the issue of competition, that's one where we have taken advice, and we have taken advice both within a U.S. law and an EU competition law context. And the advice is that we don't have an issue; that ICANN is not a player in the market, so therefore, placing rather beneficial terms wouldn't create a competition issue.

If there are any GAC members who feel that it would, within their national law, create a particular concern and would like us to look at that, by all means we're amenable to having a look at the context. But given that outside of the U.S., certainly my own jurisdiction follows the EU competition law reasonably closely, and I think many other countries around the world have followed a similar path, we couldn't find a concern over there.

With regard to the second issue, which is the internal process, I think we agreed completely that we don't have the appropriate linkages and we don't have the wording necessary just to confirm that applicants are not excluded. And I see I am being looked at by somebody who has used one of those internal processes rather successfully.

Those processes do exist, and the proposal is to agree wording that would simply just point that out and bring that to the fore.

With regard to the first point that you made in terms of the context and the impact, I don't want to go into detail because I don't think it will lead to any sort of change to the Applicant Guidebook in its current form, but simply to note that unwarranted litigation could lead to really unfortunate circumstances. ICANN could be in a situation where either it wishes to proceed with a popular or well supported application and is then, through some sort of injunctive relief, forced to halt while parties dis- -- get embroiled in a dispute, or the other one is that ICANN could, simply from a cost perspective, be -- again, have its arm twisted at the cost of fighting extended and extensive litigation to try and manage litigation, could be brought to the brink of collapse. And the intention is to avoid that.

This is something that has existed. Certainly Dan and I went through it. We didn't look at what Bruce described as the first round, but certainly the previous round of new gTLD applications had a very similar set of clauses around litigation and the limitation of the remedies available to an applicant.

>>PETER DENGATE THRUSH: Thanks, Mike. Does anyone have any further questions? It sounds like there is, first of all, complete understanding of the issue. Some of the work that you suggested in fact has been done, and, yes, there is no issue at all about making clearer that the available -- the other remedies are available.

Does that give rise to any other board comment? Any other GAC questions?

Excellent! Perhaps the late hour is helping us a little get through.

Let's move to the next topic.

Thank you, Mike. Thank you, Germany, again, for the work that has gone into analyzing these issues.

We are now at the opportunity for all stakeholders topic. Providing opportunities for all stakeholders, including those from developing countries, is the full title.

Alice, are you taking that one for the GAC? Excellent. Thank you. Would you like to come up or are you happy do it from there? Fine. Thank you very much. And almost alongside you, and interestingly from a similar geographic region, from the board we have asked Katim -- Katim volunteered straight away to take this one.

Katim, do you want come up or do you want do it from there? Come up. Thank you.

So again, I think if we can keep this reasonably brief. I think this is a well understood point. We briefed carefully the point here. It's something, as we've said previously, the board itself has stimulated some work setting up the working group and has supported the concept in a number of ways from the beginning.

The difficulty, as I think we expressed in Trondheim, is around -- is the job in front of the working group to define what a needy applicant is and what are the restrictions and qualifications.

So, please, take us through this, Alice.

>>ALICE MUNYUA: The GAC applauds ICANN very much for exploring a way for a sustainable approach of providing support for applicants requiring assistance through the working group.

And this come from the premise that we can see from the first round, as you called it, first batch of new gTLD process. There was very little global diversity achieved in the location, ownership of new TLDs, as well as in redelegation and reassignment processes.

So, I mean, we acknowledge that the first round or batch seemed to have achieved very little success in introducing new registrars outside of the limited geographic or developed regions.

So GAC's main concern is obviously to ensure that least developing countries and smaller communities and stakeholders are not excluded from this new process through cost in terms of access to financing as well as access to resources.

As well as taking into consideration that this is a public global policy process, and noting ICANN's respect for diversity and inclusiveness, we believe that the process should therefore support further geographic and cultural diversity of the Internet, meeting all the global interest in promoting a fully inclusive and diverse community. Again, consistent with the Affirmation of Commitments.

So the main issue is cost, of course. GAC acknowledges some applicants cannot afford the process, including the additional cost considerations involved in submitting applications, complying with the guidebook requirements. For example, legal costs. And also evaluation fees, for example. It's very difficult to determine ab initio which applications or applicants would require more or less resources, and even how to define those who are needy.

And that is an issue that GAC is also considering.

Again, also noting GNSO final report dated 2007 around application fees and ensuring that there's adequate resources to cover the total cost to administer the new process as well as the approach in terms of application fees may defer for different applicants.

Other issues, and I think there is no differences here between the GAC and board, is the key documents should be presented in various U.N. languages. The timeliness, a reasonable period in advance of the rounds or batches, introduction of. As well as an inclusiveness in the entire process. And this goes back to the point on inclusiveness, in terms of just carrying everybody with us. I mean, we can't afford to tell developing countries, "You wait for the second, third, or fourth round, and we are not very sure when those rounds or how -- what form those rounds are going to take."

And the GAC welcomes and supports the JAS working group, milestone report, and wishes the working group to encourage their efforts. And we also welcome future exchanges on the final recommendations.

Thank you.

You know, we worked on it with various colleagues that want to chime in.

Thank you.

>>PETER DENGATE THRUSH: Thanks, Alice.

Katim, are there questions arising from the way this advice has been put?

>>KATIM TOURAY: Thanks, Peter. And thanks, Alice, and the members of your group, the GAC. We very much your taking the time and effort to really think through some of these issues and come back to us with your concerns in the form of the scorecard that you presented us.

We did have some deliberations on the matter. That's myself, and the members of the working group that was appointed to work on the developing and understanding of the GAC scorecard on this issue, and also developing a response on it.

And as Alice said, by and large, we really do have agreement on quite a number of issues. There are, of course, a few sticking points, beginning with the cost considerations issue.

Clearly, this is an area of difference which we need to work on moving forward because the argument has been forwarded that, you know, the price that has -- the cost that has been decided upon is based on the average cost of -- the average cost for processing and -- a new gTLD application. And so it wasn't based on basically an assessment of differences in, you know, whether -- differences in background of the applicant, whether it was a government or an organization or somebody from a developing country.

So clearly this is something that we have to thrash out, moving forward. As Alice said, there was another, with regards to language diversity point in the scorecard. This is not considered an area of difference simply because of the fact that ICANN is actually, indeed, implementing this, making documents available in all six U.N. languages, and this is a practice that the organization definitely is committed to as we move forward.

With regard to the third item, that is technical and logistical support, we, basically in our discussions, are saying this is also an area where some effort is being made here in the sense that ICANN actually has started looking at options of providing technical and logistical support to new gTLD applicants beginning with providing a list or publishing a list of those who are seeking help or support, and a list also of those who are offering support to those who are looking for support.

So sort of like a match-making kind of facility.

And also, one of the things that ICANN is thinking about is setting -- although this is not finalized, I must say, is setting up the regional help desk facilities. The idea is you set up this help desk at a regional level so they are more responsive to the

regional issues. And, of course, will be setting up in full cognizance of the fact that the issues they will have to deal with will change depending on the region they are located in. Like I said, this has not been finalized yet, but this is certainly something that is in the pipeline.

And of course all these are issues that we can take on board as we move forward with further consultations on this matter.

Regarding the fourth item on the GAC issues list, that's outreach, this is also an area that's not considered an area of difference because we have agreed that the communications strategy that we will launch before the launching of the new gTLD program will take full cognizance of the special needs of developing countries and we'll make an extra effort to make sure that those issues are addressed.

With regards to the implementation of the JAS recommendations, as Alice said, the GAC recommends -- or just that we adopt those recommendations, and we thought that quite a number of the recommendations can actually be merged with the GAC issues, things like the cost considerations, technical and logistical support.

And of course this in no means means -- by no means means that we are preempting the conclusions of the JAS working group. I believe they are still working on it, and we will eagerly await the conclusions of their work, and then take on board the -- or consider and discuss the recommendations that they come with. Of course, in full consideration of the recommendations that have been mandated on the subject from the GAC itself.

There is also the issue of applications from governments and national authorities with special consideration being given to developing countries. And here we are saying essentially pretty much the same thing as the first item in the list of recommendations, issues, the scorecard, which is basically cost considerations and support. And this is also going to be considered alongside considerations of other cost issues as we move forward.

There is one issue, Alice -- this is item "A," just labeled item "A," which expresses concerns about the economic impact of the new gTLD and the IDN programs on developing countries. The concern was expressed that previous rounds, as Alice had said, had by and large left behind a lot of these developing countries. And so we thought maybe we could benefit from a little bit more clarification from the GAC on exactly what you mean, especially some modalities that you could probably suggest, as to how we could move forward with this point here.

Thanks, Peter.

>>PETER DENGATE THRUSH: Thanks, Katim.

>>HEATHER DRYDEN: I do not know whether Kenya wants to respond on that point but I do have requests for the floor from both Senegal and Sri Lanka.

Did you want to respond?

>>KENYA: Yes, thank you.

The comments from -- in item "A" were received from communities, some communities which expressed some concerns. And Kenya identifies with those comments, given that we appreciate that some developing countries of different cultural diversities, they also have their local languages which are not within the ASCII characters. That is a non-ASCII.

And in this case, there may be some cases where we may need to consider parallel redelegations in terms of the strings for the gTLD within the ASCII and the non-ASCII as well.

This is basically in line with the gTLD implementation principles, which is meant to carry along all the societies and the citizens of the world, not to appear kind of to isolate some communities.

On this, it is likely if the selection -- or, rather, if we have kind of parallel implementations of the gTLDs and to also ensure that we carry along everybody, this has a ripple effect in terms of cost. And that's why Alice has mentioned that we need to be able to look into how we can accommodate some of these special needs within developing countries so that Internet continues being a tool which is widely used and which is inclusive within all the arenas of the world.

Thank you.

>>HEATHER DRYDEN: Thank you for that, Kenya.

So Senegal is next.

>>SENEGAL: Thank you, Heather.

My concern is about the participation from developing countries in the GAC.

We know that as it is required by the AoC, ICANN is enhancing the GAC role in ICANN PDP and also on the review.

But if you look at the participation, we still have still not good participation from developing countries. And I want to take this opportunity of this intersession to really think about how could we, GAC and ICANN, do to improve participation from developing countries and to raise an acceptable percentage of how could we really have more participation from developing countries on the GAC.

Thank you.

>>HEATHER DRYDEN: Thank you, Senegal.

I have Sri Lanka, then Bruce, Portugal, Brazil, France, and U.K.

>>SRI LANKA: Thank you, Heather. Firstly, I thank ICANN for this opportunity given to GAC members from developing countries to be inclusive in this dialogue. And thank you, Katim, for that excellent exposition or very positive response that the board is looking at possible solution to all of the issues we have raised in the scorecard.

I just had a question specifically in the context of potential government-backed gTLD applications, especially in countries where they don't have specific policies requiring municipal authorities or provincial (inaudible) to use the ccTLD as the only means of presenting themselves on the Internet.

In a scenario where a government-backed gTLD application from a developing country, I take it from the point you mentioned that the fee, the cost consideration, would be the same given the fact that this is the processing fee that you are talking of.

Is there a possibility of looking at a different model of cost recovery or voluntary contribution kind of a model which really opened up a way and an opportunity for IDN process to take off very successfully within ICANN?

So that is my question. Thank you.

>>HEATHER DRYDEN: Thank you for that, Sri Lanka. I have Bruce next.

>>BRUCE TONKIN: Thank you, Heather. I guess my question is partly directed at some of the earlier speakers, but anyone could really respond.

When I read some of the work that's been done in the working group and I read some of the things in the GAC scorecard, it's what I'd say is a little undirected in that there are a lot of hypotheticals. And so we have a long list of what could be a needy organization, and pretty much the list is every organization might fall into that category.

I'm wondering if the members of the GAC from developing countries are actually aware of, in their country, people that wish to apply, and is there a way of us being more targeted in what sort of assistance is available to actual parties that are ready to apply?

Because I just get a sense of if we actually had some concrete examples -- there are numerous ones that have been published that I have seen in let's call it the western developed world, and they are nearly all entirely in ASCII, and they are either sort of generic words, mostly generic words, in fact, and then city names is the other category. But I have seen virtually nothing coming out of the developing world in terms of even ideas and potential applications.

So just wondering if members of the GAC from those parts of the world are aware of examples of --

>>PETER DENGATE THRUSH: Bruce, in the interest of time, can I say that's an excellent question, and it's slightly the kind of discussion I am quite happy to have with Bill Dee about the board performance under the AoC.

The Senegal point is an excellent one. It's a longstanding concern of ICANN of how we better engage with the developing world. The task today is slightly more restricted. It is that we have got some explicit advice from the GAC about this.

I would like to move us off the general topic of greater involvement with developing countries. I think that's absolutely a topic and should be addressed as part of the four-month communication program.

>>BRUCE TONKIN: What I am looking for is just examples so that we can to test to see whether this --

>>PETER DENGATE THRUSH: Is going to work.

>>BRUCE TONKIN: I am not trying to open it up widely. I am just saying are there some examples that developing countries are aware of that people want to apply, and can we use that as our case -- what we use to determine what's the best approach. Because it's all pretty general at the moment.

>>HEATHER DRYDEN: Thank you, Bruce. I think that question is actually very useful to the GAC.

If your concern is that it's difficult to identify which organizations or what criteria you could use, you know, to run such a program, I think that's quite a useful question. And I invite GAC members to reflect on that in the coming day or so.

All right. So I have Portugal next.

>>PORTUGAL: Thank you.

Well, for me to speak, I think I need the reply from the board to the question raised by Sri Lanka. Sorry.

>>KATIM TOURAY: Thanks, Jayantha, and it's a very valid question that you raise, but you remember that our response to the -- what's the item number? The sixth item on your scorecard, basically was that it essentially refers to the issue of cost considerations.

So I suppose the answer to a question really would be coming out from whatever recommendations we get from the GAC and also the JAS working group. That is, what do we do to support needy applicants? And here it would be up to you to define who exactly is a needy applicant. You are certainly free to include in there governments, you know, national governments, municipalities, and whatever other entities that you want to include in there that you think would be deserving of support. And then in that case, they would be eligible to receiving support, whatever level of support it is that we have arrived at as a community.

>>HEATHER DRYDEN: Thank you for that, Katim.

I think you can take it that the example of municipal governments is being prompted by some degree of interest. And so that would be an example of such an organization or a request.

Okay. Brazil, you are next, please.

>>BRAZIL: Thank you, Heather.

First of all, thanks, Katim, for the comments. I'd like to support also Kenya's and Senegal's speech about importance of this subject, as well as Sri Lanka. And, well, my -- I have two, three, four -- four general comments, but very brief.

First, the importance of being transparent in the process, the transparency in the process. It was mentioned that the process -- the whole process would be published, announced in the six U.N. languages. Maybe should add languages in which we have relevant market of Internet, a big number of users, and that may be interested in follow the mechanisms of creating new gTLDs.

So just for consideration, this specific process should be translated to more than the six U.N. languages.

My second comment would be that regarding the question of applicants from developing countries. Of course we have the question of cost, and we have been in very interesting discussions during this lunch because there is a concern about if you allow low-cost for applicants in developing countries, how can you avoid that people from developed countries go to developing countries to apply, since -- from there.

So we do agree that this is a difficult issue. We have to work on that, in trying to find alternatives for that. But also, regarding the applicants from developing

countries, there is also the question of technical barriers. In this sense, I'm not telling specifically about receiving support for technical services but the fact that the technical barriers required so far I believe could only be met by very big registries. And I think this is -- it seems like a barrier to the market, and it at least has this effect. So we should take this into consideration. Maybe consider reducing technical barriers.

In general sense, we want to avoid that the speech for inclusion of developing countries should not be an excuse for an artificial increase of the market services related to Internet. Instead of developing countries being an excuse, developing countries, or communities from developing countries, multistakeholder approach, they should be players.

So in this sense, there is a lot of brainstorm to do. I have no ideas, no position so far, but just my personal view. One possibility, for example, should be why not supporting the creation of registries in developing countries, for example. We should -- In this sense, we would be enlarging the whole market of Internet services. It would be much more in line with the idea of competition and increasing of players.

My third comment is about the objection process.

I believe that -- this is specific point, the matter of reduction of cost -- cost reduction or specifically the exemption of cost for developing countries' stakeholders should be applied.

So if a small community in developing countries, they felt that they need to object to any process, or at least to start a dialogue on this, there should be a total exemption of the cost.

I think this is a different problem of the costs related to applicants. We are now talking about objection. So at this moment, I think stakeholders from developing countries should have the exemption of costs to, if necessary, express their views about objection.

And finally, I would just agree with the others, we have a lot of work to do in going deep in the report of the joint working group, in exchange of views, and come to concrete proposals to help ICANN to implement this guideline.

Thank you very much.

>>PETER DENGATE THRUSH: In the interest of time, we're now out of time on this topic. We're straying well beyond what's in the GAC advice and talking about what may be very well useful discussions about outreach and other things. If we can just please help us by making sure that we achieve today's goal, which is understanding what the advice is and questioning around that.

So Heather, you're running the list.

>>HEATHER DRYDEN: All right. Next we have France, U.K., then SÈbastien, and then Ray.

>>FRANCE: Thank you. Just a quick word to say that France is strongly in favor of an alternative way to calculate the cost, because the thing is, we just think it's unfair and wrong to have this situation.

It's a question linked to the Internet we want for tomorrow. And we have to take this developing country issue seriously. So I'm not an idealistic guy. I know there are financial problems, technical problems. And I think we can move on. But I'm just a guy thinking there are alternatives always, if we want to.

An alternative could be an equity-basis calculation, like the income tax. The less you have, the less you pay. The more you have, the more you pay. What about criterias? I don't know yet. But I trust the expertise of ICANN to find the best solution with the community for this.

The last question about this is, I read the budget for last year, 500 new gTLD is projected, which represent $100 million. So what ICANN is going to do with the money? Maybe -- I don't have, of course, the answer. But maybe a part of this answer, if you use a part of this money to -- for trust, foundation or something to help developing countries to have better access to the -- to this procedure.

Thank you.

>>HEATHER DRYDEN: Thank you very much, France.

Next, I have the United Kingdom.

>>UNITED KINGDOM: Thanks. I had a proposal for finessing this package of support through an outreach effort. So I'll submit that in writing rather than take up time. Thanks.

>>HEATHER DRYDEN: Thank you for that.

SÈbastien.

>>S…BASTIEN BACHOLLET: I was sorry to say that I will have to disagree with my colleague of the board, but I am also to say that I will be disagreeing with my colleague from France. And it's a good deal here.

There is a working group here. We are working. I urge you to participate to this working group, but not coming here to give us how we -- this working group will

finish its work. Go and help the working group to find the best solution. And all the things you are talking about, the points they are taking one by one into a conference call each week. Join them.

My second point, I am quite reluctant to ask the needy applicants to give us some example, as we didn't choose to have an NOI, because it will create an unbalanced situation where we will have people -- we are not willing to make public their project, that they will have to make it public, and we don't know what will happen with that. And we might find other way than to ask for public announcement, if they don't wish to do it, to find a way to know how to help them. It's a goal, once again, of the JAS Working Group currently.

Thank you.

>>HEATHER DRYDEN: Thank you, SÈbastien.

I imagine that the GAC is interested in working with the working group to come up with solutions. So I hope that can at least be an outcome from today.

All right. Next we have Ray.

>>RAY PLZAK: Thank you, Chair.

First of all, SÈbastien said some of the things that I was going to say. This working group does exist. To date, it has only been able to produce an interim report. And so it is important that the ideas, as he said, that have surfaced here be brought into that group.

The other thing for comment and consideration is that on main issue number 1, the cross-considerations point in the scorecard clearly identifies that the specified -- or specific costs and fees that are there, and then it also touches on the ancillary costs that may be incurred because of technical requirements, and then this generic "other requirements" statement.

So as we proceed through this, I think it is very important at some point that as a requirement is placed upon an applicant as a result of work in these two days, that at some point in time, someone's going to have to give consideration to those ancillary and implied costs that may be incurred. And so the biggest impact that these obviously will always be on the developing communities or in developing countries, and, for that matter, in developed countries as well.

Thank you.

>>HEATHER DRYDEN: Thank you for that, Ray.

I don't see any further requests for the floor, so I think we can probably conclude this topic.

I would just add that this has been useful, I think, to have this exchange, because it signals the degree of importance not only for developing countries, but the entire GAC. And if ICANN is serious about internationalization, that means including gTLDs in IDNs and increasing participation in the organization. And that's how we view these issues, as a package. So I hope that has come across clearly.

Thank you.

>>PETER DENGATE THRUSH: Thanks, Heather. I just want to agree with everything you say. It's equally important to the board and I think the rest of the community. And just remind you that this goes right back to one of the early principles from the GNSO, is that we are authorized under those principles to have -- create differentials for -- in the fee structure.

What the problem for the board, again, is predictability and certainty of process, and something that can't be gamed. And the gentleman from Brazil mentioned the fact that if we simply declare a region is going to be subsidized, effectively, all applications, of course, then will emerge from that region. Similarly, if we define a characteristic of a kind of applicant, we'll suddenly find all applicants will start meeting our criteria.

So the issue is, how do we define -- this is what we're waiting for from the working group, is what are the characteristics of need? Who is needy? And how do we make sure that they are genuinely needy, not being -- as soon as we've got those results, then we can start working through this work that we've asked for. There should be no doubt about the board's intention to try and implement what -- as I say, what's an original recommendation from the GNSO, and with some kind of implementation structure.

So, again, I support SÈbastien's point about, you know, if we can -- if you can help the working group, that's the place I think at the moment for the focus.

SÈbastien, quick.

>>S…BASTIEN BACHOLLET: Just a question about the transcript.

You say you are authorized or you are not authorized to have different price? Because it was written "you are authorized," and I think --

>>PETER DENGATE THRUSH: Principle N, capital "N," for Nancy, from the GNSO recommendations, from memory, says that if the board wants to, it can set up disparate fee structures, including for needy applicants. We just need to work out how to do this. There's no difficulty with the concept.

So -- so agreeing with Heather about the importance of this to everybody. So thank you for all the contributions so far.

Can we move, then, to law enforcement.

Thank you, Katim. Thank you, Alice, and thank you for all the teams behind all of that work. An excellent summary.

I'd like to catch up, perhaps Katim and SÈbastien, after this. Is there something that we can do to help at a more formal board level the work of the working group. So perhaps you and I can talk about that.

Let's move to law enforcement.

Heather, who's the action team here?

>>HEATHER DRYDEN: I believe the United States will lead the discussion.

>>PETER DENGATE THRUSH: Excellent.

And from the board, Gonzalo Navarro from Chile is helping us with that.

Suzanne.

>>UNITED STATES OF AMERICA: Thank you. As per -- to give a little bit of background context for these particular recommendations, they are drawn from -- they're an extension, if you will, from the law enforcement recommendations on due diligence and the registrar accreditation amendments that the GAC endorsed last summer in this very room, June 2010.

And we tried to extend the -- some of the concepts in those recommendations to the draft applicant guidebook. So we would -- are proposing -- I'm going to be fairly brief, because I know we still have some additional issues to discuss -- proposing to include a broader range of criminal convictions as part of the -- as a criteria for disqualification.

We're proposing that higher weight be assigned to applicants offering the highest level of security, to minimize the potential for malicious activity, particularly for those strings presenting perhaps a higher risk of serving as venues for criminal, fraudulent, or illegal conduct.

In Module 2, we're proposing to add domestic screening services local to the applicant to assist ICANN in conducting its due diligence. Quite candidly, it wasn't entirely clear to us in the DAG exactly what screening services would be used.

We're also proposing that you add criminal background checks to the initial evaluation. That you also amend the statement currently in the final DAG -- proposed final DAG that the results of due diligence efforts will not be posted publicly and convert that to a positive commitment to make such results publicly available. From our perspective, it's always wise to have the public informed about the individuals affiliated with the gTLD applicant, as they may be aware of other unlawful activities based on publicly available information that could form the basis of an objection.

We also think it would be helpful -- it's not in our guidebook, we're going to have to update it, so apologies for that -- helpful to require public disclosure of all of the officers of companies. And what I think I'd like to do then is pause, perhaps, for a minute if there are any questions.

But I'd like to sort of report a little bit back, if I could, from a two-day joint U.S.-E.U. meeting that was hosted by the E.U. Commission last Thursday and Friday, February 24 and 25, here in Brussels. And it was a meeting between law enforcement representatives and registrars and registries, representatives from the registrar and registry communities.

It was an extremely helpful and productive two-day meeting. I think we have come away with a better understanding of one another's concerns and agreement that there is a shared intent to cooperate more fully in combating criminal activity using the DNS.

What I think is interesting to report to you, the registrar constituency has very graciously shared a draft copy of a report that will be approved by the registrar constituency itself. So it's just a draft, but they were very gracious in sharing it. With their assessment of the results of the meeting. And one thing that was interesting for us to know -- there were a few of us GAC representatives in the room -- that the registrar community does not necessarily believe that the Registrar Accreditation Agreement is the most effective tool to meet all of the needs of law enforcement. So that was useful to know.

We did discuss as a group the possible way forward agreement on some joint activities, one of which would be an agreed template that could be used in a standardized way for all law enforcement requests to registrars and registries, which would help, then, indicate which agency, so it goes a little bit to our earlier discussion which agency the request is coming from, what are they actually looking for, et cetera, et cetera.

And also, we discussed the possibility of moving forward a little more quickly on an agreed code of conduct, which we thought was very, very positive.

I am personally very happy to report a complete consensus. I asked the registrars and registries in the room if I could say this, and they said yes, that both

constituencies support the GAC's view that there needs to be more rigorous due diligence conducted by ICANN and more robust contract compliance. That, of course, is music to the GAC's ears. And we thought you would find that useful to know today.

What we would like to ask for is a -- if we could, the GAC communiquÈ from Brussels did notify the board that we had endorsed the law enforcement recommendations. And it would be very helpful to have, in addition to the staff draft, which we do appreciate having, a board response, so we have a sense of what we might want to recommend as a next step.

We have yet to have a formal response as to what you think might be able to happen. 'Cause I can tell you, the purpose of -- in large part, of the most recent meeting, joint U.S.-E.U. meeting, was, in fact, to prepare for a U.S.-E.U. summit this summer, which will be attended by presidents.

And cooperation and forward movement in this particular arena, law enforcement concerns about online criminal activity using the DNS, as well as others, but including the DNS, is a very, very high priority. And as many of you know, whether you're preparing for I guess one of your board meetings yourselves or briefing your CEOs, when we do summits, presidents like to see deliverables. So we are very, very eager to see some forward movement and would like to stress, just frankly cannot emphasize enough, how important it would be to see self-regulatory initiatives in this arena that are a little more visible and a little more demonstrable.

And just in closing, on a slightly different subject, it's a process point, it literally took us -- and I'm looking at Bill here, and Elise was also in the meeting -- I think it took us the full two days to kind of grasp one of the challenges that we should look to down the road. So apologies, Peter, it's not about the guidebook, but I think it's important in terms of how we tackle some subsequent exchanges and subsequent policy issues.

Although the law enforcement recommendations had been shared with registrars and registries beginning in 2009, and they had been sort of circulated at different ICANN meetings, they were finally endorsed by the GAC in 2010, they were the subject of a meeting the United States law enforcement people hosted last September in Washington, and yet -- and again here we have the E.U. meeting, and yet until that time, their recommendations had never been commented on formally.

So in sort of bureaucratic world, when we draft something -- and this is how the GAC works as well -- when one of under the circumstances drafts something as a lead, everybody else chimes in with track changes. Right? You indicate what edits you need to see in the document. You put your comments in.

We had never gotten that. So we had no real clue except a general sense that there were portions of the recommendations that the registrars felt were not workable

and wouldn't meet the desired objective. But these were verbal comments. Both parties agree that we need to operate more like that in the future.

But also was striking, though, was the GAC recommendation goes from us, to you, the ICANN board. Registrars certainly well aware of it, had been in discussions with law enforcement. And rather than at that time the two groups coming together to figure out what to do, the registrars, quite understandably, were -- redirected their efforts to the Registrar Accreditation Agreement Amendments Working Group in the GNSO. So, again, it was a real sign that, you know, these paths -- the way we are currently constructed, never the twain shall meet. So if we continue along these lines, we will continue to encounter the same challenges.

So it's just a pitch. And I think all of us in the room recognized it ourselves as we were talking. It's a point for future work, if you will, in terms of -- and I think these are process points that can easily be addressed. But I thought it was worth flagging for the group.

Thank you.

>>PETER DENGATE THRUSH: Thank you. Let's go to Gonzalo, who may have some questions for you, Suzanne, and the team, about this aspect of GAC advice.

Gonzalo.

>>GONZALO NAVARRO: Thank you, Peter. And thank you, Suzanne.

First of all, we believe that this is really positive and it's really helpful to -- for us to clarify some ideas regarding law enforcement.

We were reading the document carefully, and we have some questions just to know where exactly are we going or what's the position of the GAC regarding the specific issues that you have included on the proposals?

For example, on the number 1, under little 1, you talk about including or include criminal convictions as criteria for disqualification, such as Internet-related crimes, felonies, misdemeanor, or drugs.

Well, two questions that we have regarding that proposal is -- the first one is, what kind of criminal conducts -- Because drug curriculum convictions is too generic. So it will be really helpful, you know, to have a better idea about what kind of convictions are you thinking, and especially it will be really useful to know if you have a treaty or international piece of legislation in mind while you are talking about convictions. That's the first question.

I don't know if you want to go question by question or just to -- I don't know, to walk through the document.

>>UNITED STATES OF AMERICA: I'd be happy to try to take a crack at it. Apologies if it doesn't seem very clear. And we will certainly work on it to give you a better sense.

Regrettably, of course, as we all know, in -- different countries each have different legal traditions and define criminal activities differently. So what might be considered a crime in one jurisdiction may, in fact, not be considered a crime in another.

So we will work a little bit harder to try to define that.

The point, however, was to strongly urge that the scope of the due diligence be broadened to ensure that it can capture a range of possible criminal convictions, which is related to suggesting that you also use domestic screening services, where the local applicant is based, in the locality that the applicant is based in. Because that would also help let you know, or whatever screening services you are working with, the range of criminal activity.

So we will certainly try to refine that. Does that help you a little bit?

>>GONZALO NAVARRO: Yes, sure.

Well, I don't want to rush the discussions, because we have some -- actually, some questions regarding the screening services, the level of the screening services that you are thinking of. But usually -- and we do understand that different jurisdictions or countries or legal traditions have different understandings related to what is a crime, how to punish the crime. So usually you have the legal international standard of the treaties to have an idea about what are the boundaries or what kind of conducts are you having in mind while dealing with these kind of crimes.

Let's go to the second point that we have. Thank you very much. It's really helpful, Suzanne.

When you are -- on point 2, assign higher weight to applicants offering the highest levels of security to minimize the potential of malicious activity, has the GAC considered what kind of parameters will you -- will be set to determine what strings present higher risk in comparison with other strings?

Suzanne.

>>UNITED STATES OF AMERICA: Let me get to your first question on the issue of screening. I guess -- let me first turn the question around to you. And maybe I have misunderstood, so my apologies.

The guidebook says that screening will be conducted. You will use screening services. So are you asking us to provide better guidance as to the questions you ask your screening services? Because I assume that a proper, efficient, professional screening service would have an idea of what they are to be looking for.

>>GONZALO NAVARRO: Okay. Let's go to that question.

When we talk about screening services, what is included on your proposals? You are talking about to increase the level of screening services and to add local screening services to applicants.

We are not sure about the level of the screening services, the local -- what do you mean about local screening services? Using the jurisdiction of each country? Or what each country understands for screening services?

That's the rationale behind the question.

>>UNITED STATES OF AMERICA: Thank you for that. And perhaps we put this in because it wasn't clear to us what screening services you would be using.

So, to our knowledge, we weren't entirely sure that there are entities offering screening services that truly could capture the full range of international criminal conviction, you know, list country by country.

So in the absence of knowing what entity and at what level you were going to use, this was an added suggestion, because it's unlikely that any -- every screening service will be able to track down certain data about certain applicants. So this is the suggestion that you augment or complement such screening with local screening services from the domestic area that the applicant comes from. Presumably, if there had been any convictions, because that's their country of residence, they could be found there. But this may be just a subject of misunderstanding, because we're not entirely clear what screening services you intend to use. So I'm sure we could clarify this fairly quickly.

>>GONZALO NAVARRO: Thank you.

So there is one question remaining. Well, the question about what kind of strings presents, in your eyes -- I mean, the eyes of the GAC, higher risk. Because you are mentioning health care, financial services, children, but I'm pretty sure that's not a complete list that you are presenting there. So it would be really helpful to have the scope.

>>PETER DENGATE THRUSH: This is the categorization question, again. You seem to be suggesting that there are -- there's another category of registries.

How do we, again, predictably describe what is a higher risk of serving as a venue for criminal, fraudulent, or illegal conduct?

>>UNITED STATES OF AMERICA: Actually, our law enforcement colleagues have some experience at this point. Perhaps we can go to them and ask them to provide examples of cases. There has been an enormous amount of illegal activity online using the DNS selling pharmaceuticals. An -- that's just one example.

So we can -- if it would help you, we will try to identify particular sectors. We were trying to hint at that to say those sectors that are actually more prone to abuse.

So if you have a proposed registry operator with a string that would fall into one of those categories, we are simply suggesting that you give that applicant higher marks if they can That demonstrate they have deliberately in fact, it's my understanding that certainly for the financial sector, there is an understanding that should there ever be such a thing as a dot bank or dot fin or dot whatever anybody comes up with, and should it ever be agreed, but, nonetheless, that a string such as that would definitely require much higher levels of security. So it's simply expanding a subject that has been discussed and just sort of highlighting it as a key importance for the GAC.

>>PETER DENGATE THRUSH: Isn't the answer here to simply do the remedy, which is to give greater weight -- give greater points to anyone who shows they've got strong security? Everyone who's got strong security should get an extra point or two. Trying to say that you have to do it if you're in a particular category seems to create an unnecessary difficulty.

So the remedy is to give greater weight to people who do more towards security. Isn't that the answer?

>>UNITED STATES OF AMERICA: Clearly, we would like to have every applicant offer a very, very, very, very high level of security, the maximum possible.

But it is true, Peter, I think you can make distinction, depending on the nature of the string.

>>PETER DENGATE THRUSH: Well, I think that's the --

>>UNITED STATES OF AMERICA: So this is what we are proposing. If it would be helpful for us to go home and provide a little more -- perhaps a longer list of examples, I think we're very happy to take a crack at that.

Thank you.

>>PETER DENGATE THRUSH: Steve?

>>STEVE CROCKER: Twitching here a little bit. Suzanne, with all respect, you've said that people selling pharmaceuticals abusing, using DNS, they are selling pharmaceuticals using the Internet. I think that's the maximum to say. The DNS is an incidental and essentially irrelevant part of that equation.

The attempt to inflate and focus on DNS as the primary control point, I think, is a piece of misdirection frankly.

>>PETER DENGATE THRUSH: Suzanne?

>>UNITED STATES: Well, actually, Steve, I think we have a number of cases that would change your mind. But let me make a suggestion. I know that law enforcement agencies, several, are in discussions about traveling to the San Francisco meeting. And, perhaps, we need to have a proper, broad, expanded briefing so that you can hear firsthand from a variety of law enforcement representatives from a variety of countries outlining the types of cases that they are currently involved with that involve the DNS. Happy to try to work on that.

>>STEVE CROCKER: I would look forward to that.

>>PETER DENGATE THRUSH: Where do we get to? Speaking order? Are there any other questions, Gonzalo, about the GAC advice?

>>GONZALO NAVARRO: Yeah, we have some questions.

>>PETER DENGATE THRUSH: I'm sorry, Erika. Yes?

>>ERIKA MANN: You are under time pressure, I do understand this, yes. Just a short point to pick up the proposal from Suzanne, I would actually -- I would support us to have the meeting with the law enforcement in San Francisco because I attended the meeting -- the two-day meeting with the law enforcement agency in Brussels. And there was quite a lively debate and discussion how to take this forward, this initiative. It is clearly a valid one, and it is absolutely clear registrars and registries would like to find an understanding, and the paper is an indication.

But there is so much more work which needs to be done. So it is good actually to foresee the meeting in San Francisco, and then we should take it from there.

And we can obviously build it into the evaluation and the review process which we have already debated after the first batch. So it would be actually good timing to do this.

>>HEATHER DRYDEN: Thank you. I have Brazil. So did you want to comment now before we move -- Yeah, please, Brazil.

>>BRAZIL: Very quick comment on suggestion. Sorry. Very quick comment on suggestion that this next meeting between law enforcement and ICANN, should also be -- you should also invite people from privacy protection agencies and civil society organizations that are concerned with the proposals of law enforcement. It is just a matter of having a balanced dialogue and reach a very good result. Thank you.

>>PETER DENGATE THRUSH: Katim?

>>KATIM TOURAY: Peter, I just wanted to mention briefly that the issue of cybersecurity and, to some extent, privacy is becoming increasingly important in a lot of developing countries. This is -- I think one of the reasons for this is it is a matter they really don't have their hands around, and they sometimes perceive this as a threat.

And, also, let's also bear in mind over the past couple weeks, a few months ago, beginning last month, I think, quite a number of governments have been overthrown or threatened with being overthrown by virtue of the use of the Internet. So this has become quite an important question, and I think we should really take up Suzanne on the suggestion that we sit down and have a chat with law enforcement officials.

>>PETER DENGATE THRUSH: Okay. Gonzalo?

>>GONZALO NAVARRO: Thank you, Peter. Suzanne, just last question -- or maybe a point of clarification. On Number 2, Model 2, you said that we need to add criminal background checks on the initial evaluation in the DAG. But actually that has a screen that happens before the initial evaluation.

So what we are trying to figure out here is: Are you proposing to move actually the evaluation -- sorry, the screening or the check to the initial evaluation process? Or are you thinking something different or maybe broader? Thank you.

>>UNITED STATES: No, I think we were proposing -- And I'm sorry. I didn't follow you, Gonzalo. My apologies. You are telling me perhaps we have misread the guidebook? We have misread when the criminal background checks are conducted?

>>GONZALO NAVARRO: Yeah, because before the initial evaluation, actually staff -- ICANN conducts a screening or background checks. So we are not sure if the GAC is suggesting to move that particular check to another moment of the process during the process or increase that check because that check includes some kind of criminal activities like terrorism or money laundering. So we're not sure about this proposal -- this specific proposal.

>>UNITED STATES: Thank you. Fair enough, Gonzalo. I will go back and check again. Perhaps we just had misunderstood and we will clarify.

>>PETER DENGATE THRUSH: Thank you, Suzanne.

Anymore?

>>GONZALO NAVARRO: That's all for the moment.

>>PETER DENGATE THRUSH: Very helpful session. Any more from any GAC or board members about the current bullet points? Okay.

That means we can close that session. And I've had a suggestion that we don't actually need to now go back into early warning. We actually have done early warning in a number of ways, and we are going to be talking about it again tomorrow.

Obviously, I'm in the hands of the GAC and the board as to how best to use the time. But is there any sense that we now need to go back into early warning? If there is, we will do so. If not, we can close today and go and convene and work out exactly how we are going to manage the agenda tomorrow.

I think -- I would personally like the time with board colleagues to -- and GAC to work out how best to use the day tomorrow and make sure we get the work done.

>>ROD BECKSTROM: If I could make some brief comments. I just want to thank everyone concerned. As CEO of ICANN, I want to say I couldn't have imagined a more productive first day of meaningful discussions. Excellent clarifications by the GAC after very good preparation work with the 28-page document, and I think some very good clarification questions on the board side as well.

I'm just encouraged by the spirit of the discussions and really looking forward to our coming together tomorrow.

I know I took a fairly quiet role today compared to at other times that's simply because it is a board-GAC consultation and is appropriately led by the chairs.

But as CEO, I'm very encouraged and just want to thank everyone for a really excellent session.

Back to the two chairs.

>>PETER DENGATE THRUSH: Thank you, Rod. I have one housekeeping announcement while we start closing down and that is that the chair of the Nominating Committee has asked me to tell you that the Nominating Committee is going to be sponsoring drinks at the Meridian Bar starting at 10:00 tonight. In true ICANN fashion, our last meeting is often scheduled for late at night, not always in a bar, I have to assure you. Very often they are in my -- they are in rooms.

So the purpose of this is because the Nominating Committee has a reasonably aggressive and reasonably constant outreach program to the community looking for leadership at the board, the councils, the SOs, the ACs. That's the Nominating Committee's job.

They want to make a presentation to you about that to encourage all of you to be recommending names through to the Nominating Committee process.

So if you could -- if you are about -- I have already explained to Adam Peake, who is the chair of the Nominating Committee, who is making this proposal, that the board probably won't be there. We will be working. It is not the board he wants to reach. It is the rest of the community for names.

Heather, anything else as we close down? All right. I will add my thanks and comments and associate myself with everything the CEO said. I think it has been an excellent session. I want to thank everybody again for the work that's done. We achieved the goal we set ourselves. We have gone right through the scorecard. We have heard from the topic leaders, and we've had questions which I think have -- from my perspective and looking around the rest of the board, we've substantially advanced our understanding of the issues raised in the suggestions from the GAC.

So thanks very much. Let's close and we will be back here tomorrow morning, same time. Meeting adjourned.